CASE NO.
222
NORTHERN DISTRICT

MUSULACION GRANT

JOHNSON HORRELL

CLAIMANT

LAND CASE 222 ND. 190 PAGES

NOV 7 1962

584

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TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 584.

Johnson Howell CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Musulacion."

Office of the Board of Commissioners.

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

The Petition of Johnson Morrell, *for the Place named* "Musulacion," *was presented, and ordered to be filed and docketed with No.* 584 *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 July 26th 1853.

In Case No. 584. Johnson Morrell et al: for the place named "Rincon de Musulacon", the deposition of José S. Berreyesa, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed:

(Vide page 5 of this Transcript)

San Francisco December 1st 1853.

In the same Case the deposition of Juan B. Alvarado, a witness in behalf of the claimants, taken before Commissioner Thompson Campbell, with document marked T. C. No. 1. annexed thereto, was filed:

(Vide page 7 of this Transcript)

San Francisco April 1st 1854.

In the same Case the depositions of Manuel Torres, and José S. Berreyesa, witnesses in behalf of the Claimant, taken before Commissioner Peter Sott, were filed:

(Vide page 14 of this Transcript.)

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San Francisco October 21st 1884.

In the same Case the deposition of Salvador Vallejo, a witness in behalf of the Claimant, taken before Commissioner Peter Sott, was filed;

(Vide page 13 of this Transcript.)

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San Francisco, December 5 1884.

Case No 584 was submitted without argument and taken under advisement by the Board.

San Francisco December 12 1884.

In the Same Case Commissioner R. Aug. Thompson delivered the opinion of the Board confirming the claim:

(Vide page 41 of this Transcript.)

N. and the following order was made, to wit;

(Vide page 43 of this Transcript.)

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To the Hon the Board of Land Commissioners of the United States for the settlement of Private land Claims in California -

Petition

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Your petitioners Johnson Howell Joseph Green and Ramon de la Rua of the County of Napa respectfully represent that they are the lightful and lawful owners of a tract of land situated on Russian River Valley in the County of Napa aforesaid bounded as follows -

On the South by lands of Pinas Ranch and on the other sides by Summits of the Mountains which surround the said Valley. Containing two Square leagues.

That said lands were originally granted to Francisco Berryesa a Mexican Citizen by Pio Pico late Constitutional Governor of the Territory of Upper California on the second day of May Eighteen Hundred and forty six by a conveyance a copy of which is hereto annexed Marked "A" and a translation thereof Marked "B" duly noted and recorded in the public archives of the said Territory as will more fully appear by reference thereto which said grant was duly confirmed by the Departmental Assembly as will more fully appear by the several papers annexed hereto with a profile of said lands accompanying the same all Marked "C" -

That soon after the date of said grant a war broke out between the United States and Mexico by reason whereof and the interruption and confusion which followed in relation to all Civil proceedings no juridical possession was

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given to said Francisco Bunyesa of said premises but that he took actual possession of the same and continued therein until the sale and conveyance thereof to your petitioners as hereinafter mentioned who now occupy and possess the same.

That on the twenty ninth of July Eighteen hundred and fifty one the said Francisco Bunyesa and Maria Dias his wife for a valuable consideration paid by your petitioners to said Francisco Bunyesa the said Francisco Bunyesa conveyed said lands to your petitioners by a deed bearing date the day and year last aforesaid. A copy whereof is hereunto annexed "Marked R" which said deed last mentioned was duly acknowledged and recorded in said County of Napa as well more fully appears by reference thereto –

Your petitioners further show that there is no other adverse claimant of said lands or any part thereof to the knowledge or belief of your petitioners and they therefore pray that on the proofs herein referred to and such other proofs as may be deemed necessary to submit in this behalf their said title may be duly confirmed by your honorable body.

Filed in Office Feby 11. 1853
Geo Fisher
Secy.

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Office of the Board of
Land Commissioners for
California
San Francisco July 26, 1853

Deposition
of
Jose S
Bonifacio

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On this day before Alpheus Felch one of the Commissioners for ascertaining and settling private Land Claims in California came Jose S Bonifacio a witness produced in behalf of the claimant Johnson Howell & al being No 554 on the docket of the Commissioners and after being duly sworn testified as follows.

Questions by Judge Morrison Attorney for claimant

1 Question -

What are your Name age and place of residence?

Answer.

My Name is Jose S Bonifacio. My age is thirty four years and My residence Contra Costa in California -

2 Question -

Did you hold any public Office under the Mexican Government in 1846 and if so what Office?

Answer.

I was first Justice of the Peace of the Frontier of Sonoma.

3d Question.

Did you Know Francisco Bonifacio and if so is he a relative of yours?

Answer.

I do Know him - He is My brother.

4 Question -

Do you Know the Ranch called Rincon de Musalacon situated on the Russian River at the head of the Valley of

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Santa Rosa?
Answer. I do know it.
5 Question -
Do you know whether your brother applied for a grant of any land in that Valley?
Answer.
He did apply for the above named about the Month of April AD 1846 -
He made the petition and addressed it to my Office asking permission to occupy the land and for a report upon it and about himself in order to transfer it to the Government, I gave him the report which he asked and permission to occupy the land in the form of a deed endorsed upon the petition which he dispatched to Los Angeles the Seat of the Government - It was accompanied by a map of the land which I drew for him.
6. Question.
Do you know whether your brother went into possession of the Ranch?
Answer.
My brother received from Los Angeles a grant of the land in May. On the 14th June the Americans took possession of Sonoma whereupon I and my brother went to my Rancho and in Consequence of being driven from Sonoma and by reason of the Confusion which Ensued my brother was unable to take possession of the Ranch which had been granted to him until the latter part of the same year - He then took possession -
The land was then vacant and unoccupied - My brother built a wooden house on it, put his Cattle and horses on it began to cultivate it and in the following year built an adobe house on it and resided on it constantly

until the year 1831 when he sold it to Ramon de la Riva and others. He had fenced in all the land which he cultivated amounting to about five hundred varas square –

No judicial possession was ever taken of it it not being considered necessary after the country had passed under the Jurisdiction of the United States – My father was murdered by them under the Bear Flag in 1846 –

José S Berryesa.

Mr Grunhow Assistant Law Agent was present at the taking of this deposition – The witness gave his testimony in the Spanish language Mr Grunhow by consent of parties acting as Interpreter having been first duly sworn for that purpose.

Subscribed and Sworn to before me this twenty sixth day of July AD 1853.

Alpheus Felch
Commissioner –

Filed in Office July 26. 1853.
(Signed)
Geo Fisher Secy.

Office of the Board of U S Land Commissioners
San Francisco Decr 11th 1853.

Deposition of Juan B Alvarado

This day before Commissioner Thompson Campbell came Juan B Alvarado a witness in behalf of Claimant Johnson Howell & al Petition No 584 and being duly sworn his Evidence being in Spanish was interpreted by the Secretary as follows.

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1 Quest.

What is your name age and place of residence?

Ans.

My name is Juan B Alvarado I am forty four years of age and reside in Contra Costa County -

2 Quest -

Look on the paper now shown you and marked J.C. No 1 and annexed to this deposition and state whether you are acquainted with the hand writing of Pio Pico and if so state your means of knowledge and whether his name which appears on said paper is in his proper hand writing -

Ans.

I am acquainted with the handwriting of Pio Pico having frequently seen him write his name and the signature on said paper now shown me is similar to his signature and I believe from the similarity that it is his genuine signature -

Juan B Alvarado.
Associate Law Agent Present.

Sworn to & Subscribed before me this 10th day of December AD 1853
Thompson Campbell
Comm.

Filed in Office Dec 10. 1853
(Signed)
Geo Fisher
Secy.

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Deposition of Jose S Bernysa.

United States of America
State of California } ss.

San Francisco April 1. 1854.

This day personally came before Peter Lott a Commissioner for taking Testimony to be used before the Board of U. S. Land Commissioners in said State Jose S Bernysa a witness on behalf of the Claimants in Case No 584 on the docket of said Board in which Johnson Horrell and others are Claimants, and the said Jose S Bernysa being duly sworn on oath deposed in the Spanish which was interpreted into English by the interpreter to said Board as follows to wit.

The U. S. Law Agent is present.

Questions by R. R Morrison Esq Attorney for Claimant –

1 Question –

What is your name age and present place of residence?

Answer.

My name is Jose S Bernysa my age 34 years. My residence in Contra Costa County California –

2d Question –

When and how soon after the grant made to your brother Francisco was the house built by him to which you have referred in your deposition taken July 26 1853 in this Case?

Answer.

The wooden house was built on the Rancho Buenon de Monsalacon by Francisco Bernysa sometime in the latter part of the year 1844 or about the beginning of

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1847.
3d Question -

Can you State whether the first house was built before the Month of May 1847?

Answer -

According to the best of my recollection and belief the house was there in that Month tho' I cannot say positively as to that particular time!

4th Question -

Did your brother Francisco Bimpsa continue to live on the place after the house was built or to occupy it with his Cattle and up to what time?

Objected to as a leading question by U. S Law Agent.

Answer -

At the time he commenced building the house he took horses and cattle on to the place built corrals and continued there in the occupancy till he sold the place about the year 1851 -

Cross Examined by U. S Law agent.

1 Question -

Was any house built there by your brother before the 4th of July 1846.

Answer.

There was not.

2d Question -

Had your brother any other residence while he stood on the Rancho? -

Answer - He had not.

José S Bimpsa.

Filed in Office April 1, 1852
J. Ord
Geo Fisher
Secy.

Subscribed and Sworn to before me on this 1st day of April AD 1852.

Peter Lott Commissioner for taking Testimony &c

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United States of America
State of California } ss.

Deposition of Manuel Torres.

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San Francisco April 1. 1854.
This day personally came before Peter Lott a Commissioner for taking testimony to be used before the Board of U. S. Land Commissioners in said State. Manuel Torres a witness on behalf of the Claimants in Case No 584 on the docket of said Board in which Johnson Merritt and others are Claimants and the said Manuel Torres being duly sworn deposed on oath in English as follows to wit.

The U S Law Agent is present.

1st Question –

What is your name age and place present place of residence?

Answer –

My name is Manuel Torres. My age 28 years. My residence Marin County California –

2d Question –

Are you acquainted with Francisco Bimpsa and do you know that he occupied the Rancho called Rincon de Bucalaron – If yes in what year was the house built by him on said Rancho?

Answer –

I am acquainted with Francisco Bimpsa and I know of his living on the Rancho named – I was there on the Rancho in the Month of March 1846 and I saw there a wooden house in which Bimpsa lived at that time and he had a corral cattle and horses there – I was there also in 1846 and Bimpsa was then living there in an adobe house –

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Mark Jones.

Subscribed and Sworn to
before me on this 1st day of
April AD 1854.

Peter Lott Commissioner
for taking testimony &c. }

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Filed in Office April 1. 1854.
(signed)
Geo Fisher Secy.

Deposition of Salvador Vallejo

United States of America
State of California } ss
San Francisco Oct 20, 1854.

This day came before Peter Lott Commissioner for taking testimony to be used before the Board of U. S Land Commissioners in said State, Salvador Vallejo a witness in behalf of the Claimants Johnson Horrell et al in Case No 584 on the docket of said Board and said witness being sworn deposed in Spanish which is interpreted by the interpreter to said Board as follows.

The U S Associate Law agent is present.

Questions by Claimant Horrell.

1st Question -

What is your name age and residence?

Answer.

My name is Salvador Vallejo My age 42 years My residence Sonoma California -

2d Question -

Do you know the Rancho in Sonoma County called "Rancho de Musulacem" if yea state what you know of its localities

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and boundaries and look at the diseno in the document now shown to you marked "A. P. L" Exhibited in this deposition and heretofore filed in this Case and state whether said diseno is a correct delineation of said Rancho?

Answer.

I know said Rancho. I have been acquainted with it Ever since 1835 or 1836. It lies on the Russian River in Sonoma County. It is bounded on the North by high Mountains and on the east also by a Ridge of high hills or Mountains. The Southern boundary is marked at the South west part of the Rancho by a Conical hill a noted Natural land Mark sometimes Called (Aviseda so) and well known also as a dividing line between the lands of Francisco Bempsa and Gyman Peña. The Southern boundary is a line running directly across the Valley of the Russian river from said Conical hill in an Easterly a little North of East to a point at the hills on the Eastern side of said Valley.

This line divides the lands of Bempsa the Rancho in question "Punsem de Musulacem" and the lands of said Peña.

This diseno is a correct delineation of said land according to my acquaintance with it. it gives a very good idea of the land, at the North western boundary the Mountains from towards the East and west come near together forming a narrow gap or Canon through which the Russian river runs. and this narrow place is known as the boundary there.

3d Question.

How much land is Embraced in said Rancho?

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Answer –

About two leagues a little more or less.

4th Question.

How do you know these are the boundaries of said Rancho?

Answer –

I heard the father of German Peña who was an Officer under my Command tell Francisco Rimpsa in a conversation about this boundaries that that Conical hill was the boundary and they agreed that it was so – I have been in all directions through the place and seen the boundaries –

The Russian river runs down through the Rancho in a South Easterly course having high hills on each side forming the valley as well as of the Rancho.

5th Question –

How far is it from the gap or Cañon now mentioned in a direct line to Peña's line in a South Easterly course?

Answer.

It is probably 3 or 4 miles.

6th Question –

How wide is the valley at its widest part on this Rancho.

Answer.

It may be 4 or 5 miles tho its width is irregular –

Cross Examined by W S Associate Law Agent –

1st Question –

Describe the point at the Easterly termination of the Southern boundary where it

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strikes the hills?
Answer.
I do not know any particular Mark there - I only know that the line was to run directly across the valley from the Pelon (Conical hill) to the hills on the opposite side -
2° Question -
Did you Ever see the grant in this Case?
Answer.
No -
3 Question -
Describe the hills on each side of said valley?
Answer -
The hills on both sides are continuous ranges of Mountain -
4th Question -
State whether you know of the line between Pimpisa and Pima having been confirmed or rejected by this Commission?
Answer
I know Nothing about that.

Salvador Vallejo.

Subscribed and Sworn to before me on this 20th day of October AD 1871
Peter Lott Comm &c.

Filed in Office Oct 21, 1871.
(Signed)
Geo Fisher
Secy.

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Expedit. Pri prei Gubernadun Amstmeumeu, dei Ko

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Expedte G. C. No. 1

annexed to the Decs of Juan B. Alvarado

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Pio Pico Gobernador Constitucional del Departamento de las Californias

Por cuanto el Ciudadano Francisco Berreyesa Avecindado en la jurisdiccion de Sonoma ha pretendido para su beneficio personal el terreno conocido con el Nombre de Rincon de Muela con extencion de dos sitios de ganado Mayor colindante por el O. con Dn. Jerman Pina y por todos los demas rumbos con la tierra; practicadas previamente las averiguaciones consecuientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas à nombre de la Nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824. y reglamento de 21 de Novbre. de 1828. à reserva de la aprobacion de la Excma Asamblea Departamental y bajo las condiciones siguientes

1a Podrà cercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ò cultivo que mas le acomode; pero lo tendra ocupado con Casa habitada y bienes semovientes à fin de evitar el denuncio.

2a Solicitara del juez respectivo le dè la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos con las mojoneras necesarias.

3a El terreno de que se le hace donacion es de dos sitios de Ganado mayor dentro de los limites comprehendidos en el diseño que obra en el espedte respectivo y siempre que esta no resulte en perjuicio de terreno el juez que lo posesione lo hara medir conforme à Ordenanza quedando el sobrante que resulte à beneficio de la Nacion para los usos que convengan.

En consecuencia mando que tenienduse el presente titulo por firme y valedero se

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tome razon de el en el libro à que corresponde y se entregue al interesado para su resguardo y demas fines.
Dado en la ciudad de los Angeles en este papel comun por falta del sellado à dos de mayo de mil ocho cientos cuarenta y seis.

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Por pres # { José Matias Moreno
Sub Interino }

Queda tomada razon de este despacho su perior en el libro respectivo fha. ut supra

Moreno.

Annexed to Deposition of Juan B. Alvarado
December 16th 1853.

Geo: Fisher Secy

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"B"

Translation of original Grant

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Pio Pico Constitutional Governor of the department of California -

Stamp

Whereas the Citizen Francisco Berryesa a resident of the Jurisdiction of Sonoma has applied for his personal benefit the land known by the name of "Rincon de Musiguacon" extending "dos leagues de Ganado Mayor" adjoining southerly by the land of Don German Peña and by all the other points by the "Peña" - the measures and arguments having been previously submitted concerning it in accordance with the disposition of the laws and regulations & by virtue of the powers conferred upon me in the name of the Mexican Nation I have concluded by a decree of this day to grant to him the mentioned land declaring it to be his property by these presents in conformity with the law of August 18 of the year 1824 and regulation of the 21st of November of the year 1828 reserving it for the approval of the most Excellent Departmental Assembly and under the following conditions -

1st - He shall enclose it without prejudice to the roads by roads and servitudes he can enjoy it freely and exclusively destining it to such use and cultivation that he may choose but he shall have it occupied with an inhabited house and with farming utensils in order to avoid being denounced.

2d - He shall request the respective Magistrate to give him possession judicial thereof by virtue of this dispatch by which the limits & boundaries shall be marked with the necessary land marks -

3rd - The land of which donation is made comprises "dos Leas de Ganado

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Mayor" within the boundaries comprised in the design accompanying the respective Expediente and this is not to result to the prejudice of a third party. the Magistrate who has the possession thereof, will have it measured in accordance with the ordinance leaving the remainder that results for the benefit of the Nation for its own proper uses.

In virtue whereof I command that the party interested holding the present title as firm and valid it shall be recorded in the corresponding book and shall be delivered to the party interested for his safety and other Ends.

Given in the City of Los Angeles on this common paper there being no stamped on the second of May Eighteen hundred and forty six.

Pio Pico -

José Maria Moreno -
Secy ad interim

Record is made of this Superior dispatch in the proper book dated as above.

Moreno.

Filed in Office Feby 11. 1853.
(Signed)

Geo Fisher
Secy

221 G. D. R.

1846

Espediente promovido por el Ciuda-
danos Francisco Berreyesa del parage cono-
cido con el Nombre de Rincon de

'Musalacon'

510.

A. P. L. Exhibit to Deps. of Salvador Vallejo

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2 3

2. S. D. R

Sonoma Mzo. 8 de 1846

Dor Juez de paz 1.o pro pietario de Sonoma.

Franco. Berreyesa Ve cino del pueblo de Sn. José Sp.n y à la Vez de Sonoma: ante V. con toda subordinacion y el dere cho le permita se presenta y dice. Que hallandose del todo resuelto à esta blecerse y radicarse en esta Jurisdiccion con sus bienes semoven tes y no pudiendo beri ficarlo por falta de un terreno propio para el efecto suplico à V. me permita ocupar provici onalmente dos citios de ganado mayor poco mas ò menos en el parage conocido con el Nombre de Rincon de Musalacon colindante por el S. con Dn. Lorenzo Piña y por todas los demas rumbos con la Serrania cuyo terreno esta baldio y no pertenece à persona alguna. p. L. a. V. carecidamente suplico se sirva asederv à esta mi solicitud y permitirme dar principio à la fundacion interanto ocurro al Sobrno. del departamento por el titu lo correspondiente. de cuya gracia le bivere reconocido.

Sonoma Mzo. 11 de 1846

Franco. Berreyesa

Va en papel comun por no haber del sello que corresponde en este lugar.

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2/ S. D. R

See follows
map.

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map 8

245. L. D. R. Angeles Mayo 2 de 1846.
Vista la ultima peticion con que da principio este Espediente el informe que antecede con todo lo demas que se tuvo presente y ver convini de conformidad con la Ley de 18 de agosto de 1824 y reglamento de 21 de Nbre de 1828; de cido al Ciudadano Franco Berreyesa vecino de Sonoma dueño en propiedad de dos sitios de ganado mayor dentro de los limites comprehendidos en el diseño. Libesele el titulo correspondiente y reservese el Espediente para someterlo à la Aprobacion de la Excma Asamblea Departamental El Ciudadano pio pico Gobernador Constitucional del departamento de las Californias asi lo mandè decretè y formè de que doy fè
pio pico.

6. L. D. R. pio pico Gobernador Constitucional del Departamento de las Californias.
por cuanto el ciudadano Francco Berreyesa avecindado en la jurisdiccion de Sonoma ha pretendido para su beneficio personal y el de terreno conocido con el Nombre de Rincon de Mula con en estencion de dos sitios de ganado mayor colindante por el O. con Dn German piña y por todos los demas rumbos con la tierra practicadas previamente las averiguaciones convenientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas à nombre de la Nacion Mejicana, he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el por las presentes letras, de conformidad con la ley de 18 de Agosto de 1824. y reglamento de 21 de Novembre de 1828. à reserva de la aprobacion de la E. Asamblea Departamental y bajo las condiciones siguientes.
1a. podra cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutarà libre y esclusivamente destinandolo al uso y cultivo que mas le acomode pero lo tendrà ocupado con casa habitada y frutos semovientes à fin de evitar el denuncio.
2a. Solicitarà del juez respectivo le de la po=

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7. L. D. R. =sesion judicial en virtud de este despacho por el cual se demarcaren los linderos con las mojoneras necesarias.

3ª El terreno de que se le hace donacion es de dos sitios de ganado mayor dentro de los limites comprehendidos en el diseño que obre en el espediente respectivo y siempre que este no resulte en perjuicio del terreno; el prez que lo poseyone lo hará medir conforme á Ordenanza quedando el sobrante que resulte á beneficio de la Nacion para los usos que convengan. En consecuencia mando que teniendose el presente titulo por forme y valedero, se tome razon de el en el libro á que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en la Ciudad de los Angeles en este papel comun por falta del sellado á Dos de Mayo de mil ocho cientos cuarenta y seis.

Angeles mayo 8 de 1846.

Dado cuenta en sesion de hoy con este espediente á la C. A. D. Demandó pasar á la comision de terrenos baldios.

Pio Pico presdte. Agustin Olvera Secretario

8. L. D. R. Leño.

La comision de terrenos Baldios á examinado el presente Espedte promovido pr el C. Francco Berreyesa relativo al parage conocido con el nombre de Rincon de Musula con qe le fué concedido pr el Supr Gobno Departamento con arreglo á las leyes de la materia, en este virtud pone á la Deliberacion de V. E. la propocn siguiente.

Se aprueva la concesion hecha al C. Francco Berreyesa del parage conocido con el Nombre Rincon de Musula con en Sonoma en estension de dos sitios de ganado Mayor segun titulo librado con fha 2 de Mayo del este año de entera conformidad con la Ley de 28 de Agosto de 1824. y el art. 5.o del Reglamento de 21 de Nbre de 1828.

Sala de Com.n en la Ciudad de los Angl.s Mayo 22 de 1846.

J. Arguello.

En sesion de este dia aprobó la C. Asamble-

J. Vasquelles.

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Angeles Junio 3 de 1846.
En sesion de este dia aprobo la C. Asamblea Departamental la proposicion del dictamen anterior.

Office of the Surveyor General of the United States for 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 custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California do hereby certify that the ten preceeding and hereunto annexed pages of tracing paper numbered from One to ten inclusive and each of which is verified by my initials (S. D. K.) exhibit true and accurate copies of certain documents on file and forming 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; the twenty fifth day of January 1853.

Saml. D. King
Survr. Genl. Calif.

Filed in Office Jany 11th 1853.

Geo. Fisher Secy

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"6"

Translation

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Sinor Justice of the Place of Sonoma.

Francisco Bonifacio a resident of the Town of San José de Guadalupe and at the same time residing in Sonoma comes before Your with due respect and right and states. That he has become determined upon establishing himself and locating in this Jurisdiction with his moveable effects that he is not able to carry out his object for the reasons that he has not any land of his own to effect it.

He requests that you will permit him to accept provisionally "dos sitios de ganado mayor" a little more or less in the "paraje" called the Rincon de Musulacon" bounded on the South by that of Don Juan Pina & on all the other points by the ridge of Mountains which said land is vacant and belongs to nobody.

Wherefore I charitably request that Your Excellency will accede to this my request & allow me to commence operations until I can apply to the departmental Government for a title as corresponds for which favor I shall be grateful.

Sonoma March 4. 1844.

Francisco Bonifacio.

This is written upon common paper there being no stamped.

Sonoma March 8. 1844.

The party interested can occupy the land that he petitions for conditionally it being vacant & belonging to no person until such time as he can apply to the departmental Government for the necessary title subjecting

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himself to respect the remainder of the land which belongs to his Neighbor. - Firman Pena

José de la las Stos Bimpsea

Angeles May 2d 1841.

Having seen the last petition at the beginning of this Expedient with the information that precedes and all the other necessary requisites & being in conformity with the law of August 18 1824 and with the Regulation of November 21. 1828 I hereby declare the Citizen Francisco Bimpsea sole owner of "Las Sitios de Ganada Mayor" within the limits comprised in the plan, Let this title be delivered to him and reserve the "Expedientes" to be submitted for the approval of the Most Excellent Departmental Assembly.

The Citizen Pio Pico Constitutional Governor of the department of California thus orders decrees & signs to which I give faith -

Pio Pico.

Pio Pico Constitutional Governor of the department of California -

Wherefore the Citizen Francisco Bimpsea a resident in the Jurisdiction of Sonoma has solicited for his personal benefit the land known by the name of Rincon de Musqueaco being in extension "Las Sitios de Ganada Mayor" bounded on the South by lands of Firman Pena and on all other sides by the hills the necessary requirements according to the laws and regulations having previously been complied with by virtue of the authority in me vested

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in the Name of the Mexican Nation I have granted to him by a decree of this day the aforesaid land declaring it to be his property by these presents in conformity with the law of August 18. 1824 and the regulation of November 21. 1828. subject to the approbation of the Most Excellent Departmental Assembly and under the following Conditions –

1st. He may enclose it without obstructing the right of way he shall enjoy the same freely and exclusively devoting it to such use or cultivation as it may most suit him but he shall have it accepted with a house inhabited and both fencing utensils (Arms Implements) in order to avoid being dispossessed.

2d. – He shall solicit from the proper Magistrate the Juridical possession of the same by virtue of this patent and by which the boundaries shall be marked out with the necessary land marks –

3d. The tract of land that is donated comprises "dos Sitios de ganado Mayor" within the limits comprised in the design accompanying the Espediente" & this is not to result as a prejudice to the land – The Magistrate that gives the possession thereof shall have the same measured in conformity with the ordinance the surplus remaining to the Nation for its proper uses.

Therefore I command that this title being held as firm and valid and that the same be registered in the proper book and it be delivered to the party interested for his security and other purposes.

Given in the City of Los Angeles upon common paper there being no stamped on the 2d May 1844

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Angeles May 8. 1844.

In a Session of this day this Expediente was informed of to the Most Excellent Departmental Assembly who ordered that it should be opened to the Commission upon vacant lands –

Pio Pico
President.

Augustin Olvera Secretary.

Sirs. The Commission upon vacant lands on examining the disputed solicited for by the Citizen Francisco Ramirez relative to the land called by the Name of Rincon de Musulacon which was granted to him by the Superior Departmental Government in accordance with the laws upon the subject hereby place at the deliberation of Your Excellency the following proposition –

"They approve of the grant made to the Citizen Francisco Ramirez of the land known by the Name of Rincon de Musulacon in Sonoma Establishing "das Leagues de Ganada Mayor" according to the title delivered to him & dated May 2d of this Year it being in conformity with the law of August 18, 1824 & of Article 5th of the Regulations of Nov 21, 1828. Commissioners Hall in the City of Los Angeles. May 22d. 1843.

S. Argüello.

Angeles June 3d 1844.

In a Session of this day the Most Excellent Departmental Assembly approved of the foregoing opinion and proposition –
Filed in Office Feby 11. 1853
(signd)
Geo Fisher Secy.

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"A"

Copy of Deed.

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Know all Men by these presents that we Francisco Bemyesa and Maria Jesus Palamonto his wife of Sonoma County State of California for and in consideration of the sum of Ten hundred dollars to us in hand paid have granted bargained sold and by these presents do grant bargain sell and convey unto Johnson Horrell Raymon y de la Rosa and Joseph Green of Napa County and State aforesaid all that certain parcel of land situated in Sonoma County and State aforesaid bounded as follows, to wit, by the South with Vernon Sonia Ranch and by all the other directions by high Mountains containing two square leagues being the same land granted by Pio Pico the Constituted Governor of the Department of California on the second day of May A.D. Eighteen hundred and forty six with all the appurtenances and all the right title interest claim and demand of us or either of us in the premises - To have and to hold the same with the appurtenances unto the said Johnson Horrell, Raymon y de la Rosa and Joseph Green their heirs in fee simple for ever - And I the said Francisco Bemyesa for myself and my heirs do hereby covenant and agree to and with the said Johnson Horrell Ramon y de la Rosa and Joseph Green their heirs and assigns that I am now the owner of the said premises and am seized of a good and indefeasible Estate of inheritance therein and that I have full right and power to sell and convey the same in fee simple absolute and that the said premises are free and clear of all incumbrances and that the said Johnson Horrell Ramon y de la Rosa and Joseph Green their heirs and assigns may forever

himself to have hold possess and enjoy the same without and sent molestation or interruption by any person whatever lawfully claiming any right therein. And I the said Francisco Berryesa do hereby bind myself heirs executors and administrators that I will at any time upon the demand of the said Johnson Howell Ramon de la Riva and Joseph Grant peacably surrender full and complete possession of the aforesaid premises.

In witness whereof the said Francisco Berryesa and Maria Jesus Patrimonio his wife have hereunto set their hands and seals at Napa City this twenty sixth day of July AD Eighteen hundred and fifty one.

Francisco his ✝ mark Berryesa (L.S.)

Ma. Jesus her ✝ mark Berryesa (L.S.)

Signed Sealed and delivered in presence of
J. N. Southwick
G. H. Woodman

State of California
County of Sonoma

On this the thirteenth day of July AD one thousand Eight hundred and fifty one. Before me the undersigned County Recorder Napa County personally appeared Francisco Berryesa and Ma. Jesus Berryesa wife of the said Francisco Berryesa who are personally known to me to be the persons described in & who Executed the foregoing Instrument. and the said Berryesa acknowledged

that he Executed the Same freely & Voluntarily for the uses and purposes therein mentioned. And the said Mrs Dona Bonifacia wife of the said Francisco Bonifacio being Examined by me separate and apart and without the hearing of her said husband being by me first made acquainted with the Contents thereof acknowledged that She Executed the Same freely & voluntarily and without any fear of compulsion or undue influence of her said husband. and that She does not wish to retract the Execution of the Same.

Given under my hand and Seal of Office at Napa City this day and date above written.

H. H. Lawrence
Recorder by
J. W. Edmiston Deputy.

L. S.

This deed filed for record on the 6th day of August AD 1851 at 11 O'Clock A.M.
J. Hendley Recorder.

State of California
County of Sonoma } I hereby certify that the foregoing is a true copy from the records of Sonoma County in this Office as on pages 164 and 165 of Book A of deeds.

Witness my hand and seal of Office at the City of Sonoma this the 4th day of January AD 1852.

John Hendley Recorder
of Sonoma County by
John A. Brewster Deputy.

Seal

Filed in Office Feby 11, 1853.
(sgd) Geo Fisher Secy.

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Deed from Bempsa et al to Hewell et al

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Know all Men by these Presents that We Francisco Bempsa and Maria Jesus Palanquete his wife of Sonoma County State of California for and in Consideration of the sum of Ten Hundred Dollars to us in hand paid have granted bargained sold and by these presents do grant bargain sell and convey unto Johnson Howell Ramon G de la Rivas and Joseph Green of Napa County and State aforesaid all that certain parcel of land situated in Sonoma County and State aforesaid bounded as follows to wit, by the South with Arman Peña Ranch and by all the other directions by the high Mountains containing two square leagues being the same land granted by Pio Pico the Constitutional governor of the Department of California on the second day of May AD Eighteen hundred and forty six with all the appurtenances and all the right title interest claim and demand of us or either of us in the premises. To Have and To Hold the same with the appurtenances unto the said Johnson Howell, Ramon G de la Riva and Joseph Green their heirs in fee simple forever and I the said Francisco Bempsa for myself and my heirs do hereby covenant and agree to and with the said Johnson Howell, Ramon G de la Riva and Joseph Green their heirs and assigns that I am now the owner of the said premises and am seized of a good and indefeasible Estate of Inheritance therein and that I have full right and power to sell and convey the same in fee simple absolute and that the said premises are free and clear of all incumbrances and that the said Johnson Howell, Ramon G de la Riva and Joseph Green their heirs and assigns may forever hereafter have hold

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possess and enjoy the same without any suit molestation or interruption by any person whatsoever lawfully claiming any right therein and I the said Francisco Berryesa do hereby bind myself, heirs executors and administrators that I will at any time upon the request of the said Johnson Hegnell Ramon y de la Rosa and Joseph Wise peaceably surrender full and complete possession of the aforesaid premises with their appurtenances –

In Witness whereof the said Francisco Berryesa and Maria Jesus Salamanto his wife have hereunto set their hands and seals at Napa City this Twenty Ninth day of July AD Eighteen hundred and fifty one.

Francisco his ✕ mark Berryesa (Seal)

Ma. Jesus her ✕ mark Berryesa (Seal)

Signed Sealed and delivered in presence of
S. H. Southwick
G. H. Woodman

State of California
County of Sonoma

On this the thirteenth day of July AD. One thousand Eight hundred and fifty one. Before me the undersigned County Recorder Napa County personally appeared Francisco Berryesa and Ma Jesus Berryesa wife of the said Francisco Berryesa who are personally known to me to be the persons discribed in & who Executed the

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foregoing Instrument and the said Bonyesa acknowledged that he executed the same freely & voluntarily for the use and purposes therein mentioned and she the said Mrs Jesus Bonyesa wife of the said Francisco Bonyesa being examined by me separate and apart and without the hearing of her said husband and being by me first made acquainted with the contents thereof acknowledged that she executed the same freely and voluntarily and without any fear of compulsion or undue influence of her said husband and that she does not wish to retract the execution of the same -

Given under my hand and seal of Office at Napa City this day and date above written -

H. H. Lawrence E. B.
Recorder by
J. M. Edmiston Deputy.

This deed filed for Record on the 4th day of August AD 1851 at 11 O'clock A.M. -
J. Hendley Recorder.

State of California
County of Sonoma } I hereby certify the foregoing to be a true copy from the Records of Sonoma County in this Office as on pages 164 and 165 of Book F of Deeds.

Witness my hand and seal of Office at the City of Sonoma this the 21st day of January AD 1852

Seal

John Hendley Recorder of Sonoma County by.
John A Brewster Deputy -

Filed in Office Dec 10. 1853.
Geo Fisher Sec.

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Johnson Worrell and others
vs. } Rancho de
The United States } Musicacon.

Opinion by Comr. Thompson.

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The grant upon which this claim is founded purports to be executed by Gov Pio Pico to Francisco Burgess on the 2d day of May 1846.

The original grant is filed and its genuiness and authenticity duly proved. The claimants have also filed a traced copy of the Espediente from archives containing the proceedings of the Government preliminary to the grant, the diseno or map and the record of the approval of the concession by the Departmental Assembly on the 3d of June 1846 all of which appear to be in due form.

The Evidence shows that in consequence of the difficulties resulting from the American invasion the grantee did not enter into the possession of the land until the latter part of the year 1846 but that within a year however from the date of the grant he built a wooden house upon the premises in which he lived placed stocks of cattle and horses on it and commenced cultivating the land.

The next year he built an adobe house and enclosed and cultivated about 500 varas square of the land. The description of the land contained in the grant aided by the map to which it refers is sufficient to locate and identify the land and the Evidence goes to show that the quantity contained within the boundaries does not exceed the amount called for by the grant.

The title in this case although executed but a short period before the

American occupation appears to have been made in good faith and with due regard to the requirements of the Law. And the grantee is shown to have proceeded to fulfil its conditions by occupying and cultivating the land as soon as the condition of the country would permit -

The present claimants in proof of their title have put in evidence a deed from the grantee Bonyea & wife to them bearing date the 29th day of July 1851 and duly acknowledged and recorded -

The validity of the grant and the rights of the present claimants are fully established by the testimony and a decree will be entered accordingly.

Filed in Office Dec. 12 1852.
(signed)
Geo Fisher
Secy

Johnson Howell et al
vs.
The United States

Decree

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

The land of which confirmation is made is situated in the County of Sonoma and is known by the name of "Rancho de Musalacon" being the same

Duncan de Musubacon? being the same

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which was granted by Gov Pio Pico to Francisco Bimpesa on the 2d of May 1846 and has been held and occupied by him and those claiming under him ever since and is bounded as follows—

Beginning at a conical Hill known as the Redwoodero corner to the Rancho of German Siña and running thence a little north of east at right angles across the Valley and Russian River with the line of said Siña to the Sierra on the opposite side of the Valley — Thence North westerly along the Sierra to the mouth of a canon formed by the mountains coming in close to the River — Thence crossing the river to the mountains or Sierra on the other side and southerly along said Sierra to the point of beginning containing two square leagues for a more particular description reference to be had to the original grant & map filed in the case —

Alphens Fitch

R. Aug Thompson

claimants

Filed in Office Dec 12. 1852.
(signed)
Geo Fisher
Secy.

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and it appearing to the satisfaction of this Board that the land last adjudicated is situated in the Northern District of California it is hereby ordered that the transcripts of the proceedings and of the decision in this case and of the papers and evidence upon which the same are pending large and are only certified by the Secretary one of which transcripts shall be filed with the Clerk of the District Court for the Northern District and the other be transmitted to the Attorney General of the U.S.

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Office of the Board of Commissioners,

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

I, George Fisher — Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing Forty three — pages, numbered from 1 to 43, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 584 on the Docket of the said Board, wherein

Johnson Horrell is —

the Claimant against the United States, for the place known by the name of "Musulacion" —

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.

Geo: Fisher

Sec'y

U. S. DISTRICT COURT,

Northern District of California.

No. 222 222

THE UNITED STATES,

vs.

Johnson Howell.

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 584.

Filed. June 20 1855,

Wm. A. Dunne,

Clerk.

Vol 584

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Office of the Attorney General of the United States,

Washington, 29 June 1855.

584 / "Mispulacon"

Johnson Stowell, 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.

C. 12.

No. 222

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

United States
vs
Johnson Howell

Notice of Appeal
in Case No. 584.

Filed Sept. 6. 1855,
by Chevers,
Deputy.

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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
Johnson Howell

No. 222

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

That the said claim is invalid.

Wherefore, Appellants pray that the said decision of the Board be reversed, & that the Court decree the said title to be invalid.

Respectfully &c

S. W. Inge
U.S. Dist Atty

No. 222.

U.S. Dist. Court

The U. States

v

Johnson Howell

Petition

Filed Nov: 21. 1855,

by Chevers

Deputy.

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Russell

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No 222

United States of America } District Court
State of California } Northern District

The United States } Appellants.
vs
Johnson Howell et al } Respondents.

The said respondents for answer to the petition filed in said cause deny that said claim is invalid, but aver that the same is just & valid, & they therefore pray this Honorable court to affirm the decree of the Board of Land Commissioners confirming the same.

Crocker & Robinson
Attys for Respdts.

No 222

The United States
vs
Johnson Howell

Answer

Filed Nov: 21. 1855.
J. Chenes
Deputy.

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Crosby & Robinson
Attys for Respdt.

No. 222

The United States vs Johnson Howell, Joseph Green & Ramon G. de la Riva

United States District Court for the Northern District of California

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This cause coming on to day to be heard upon the transcript of the proceedings & decision of the Board of Land Commissioners, & of the papers & evidence on which the same are founded, & the pleadings filed in this court; & counsel having been heard on the part of the United States & for the claimant.

In consideration of all which the court is of opinion that there is no error in the decision of the said Board & that the same should be & is hereby affirmed.

And this court doth adjudge, order & decree that the title of the said claimants, Johnson Howell, Joseph Green & Ramon G. de la Riva, to the land described in said transcript is valid & the same is hereby confirmed.

The land of which confirmation is made is of the extent of two square leagues ~~or more~~ & is situated in the County of Sonoma in the State of California, & is known by the name of "Rincon de Musalacon" being the same which was granted by Governor Pio Pico to Francisco

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Bonyesa on the 2d day of May 1846, & has been held & occupied by him & those claiming under him ever since & is bounded as follows.

Beginning at a conical hill known as the Divisidero, corner to the Rancho of German Piña & running thence a little North of East at right angles across the valley & Russian River with the line of said Piña to the Sierra on the opposite side of the valley – thence North Westerly along the Sierra to the mouth of a canon formed by the mountains coming in close to the River thence crossing the river to the mountain or sierra on the other side and Southerly along said Sierra to the point of beginning containing two square leagues & no more ~~being the same tract of land described in the~~ ~~to the~~ the original grant & map copies of which are contained in the transcript in this cause & to which reference is hereby made

January 3 – 1856

Ogden Hoffman Jr
U. S. Dist Atty

No 222

The U. S.

vs

Johnson-Howell et al

Decree

Filed January 14th 1886

John A Monroe

Clerk

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

Present:

The Honorable OGDEN HOFFMAN, *District Judge.*

The United States
v
Johnson Horrell et al

D.C. 222: L.C. 584

The Attorney General having given notice that further appeal will not be prosecuted in this case and a stipulation to this effect having been entered into by the U. S. Attorney:

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

Ogden Hoffman
U. S. Dist Judge

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United States District Court, Northern District of California.

The United States

vs.

Johnson Horrell et al

ORDER.

vac appeal
~~Final Decree~~

Filed April 2d 1857

John A. Monroe
CLERK.

By W. H. Chever
DEPUTY.

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California Land Claims
Attorney General's Office
9 Febry 1857.

Sir:

In the case of the claim of Johnson Howell, et al., confirmed to the claimants by the Commissioners, case no. five hundred and eighty-four, (584), appeal will not be prosecuted by the United States.

I am,
Respectfully,
C. Cushing

Wm. T. Sanding Esq
U. S. Attorney,
San Francisco.

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

The United States

v

Johnson Horrell et al

} D.C. 222; L.C. 804

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

San Francisco April 2nd 1859

Wm Blanding
Dist Atty

Crocker & Robinson
Attys for Claimants

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U. S. District Court

The United States
v
Johnson Horrell et al

Stipulation

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

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At a Stated Term of the DISTRICT COURT OF THE UNITED STATES OF AMERICA, for the Northern District of California, held at the Court Room, in the City of San Francisco, on Monday the fifth day of September in the year of our Lord one thousand eight hundred and fifty-nine

Present:

The Honorable OGDEN HOFFMAN, District Judge.

The United States v. Johnson Hornell	No 222 : L.C. 584 "Rancho de Musulacon"

It being represented to the Court that there is a contest with respect to the official survey of the land claimed herein, it is ordered, on application of Lully R. Mse, Acting U. S. atty, that the U. S. Surveyor General for California return to this Court a certified copy of the plat of the survey made and approved by him of the land claimed in this case.

222.

UNITED STATES DISTRICT COURT,

Northern District of California.

The United States

vs.

Johnson Horrell

Order to return survey

Filed Sept. 5, 1859,

W. H. Chevers

CLERK.

By

DEPUTY.

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Towne & Bacon, Printers, 125 Clay Street, corner Sansome.

U. S. District Court.

The United States
v.
Johnson Horrell.

No. 222; L. C. 584.
"Ruiem de Musalacon"

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And now come the United States by their Acting Attorney Tully R. Wise, and except to the survey of the land claimed in this case, made under final decree and approved by the U. S. Surveyor General for Cala, a certified copy plat whereof was filed in this Court, pursuant to its order, November 20. 1869.

And the United States aver:—

1st That the said survey is erroneous, because it does not conform to the said final decree.

2d. That the said survey is erroneous, because the said final decree refers for more particular description to the original grant and map, or diseño, which original grant declares the land granted to be that shown upon the diseño; whereas the said survey includes land not shown on said diseño as the land petitioned for, ~~but~~ leaving out a portion thereof on the east and west and including a large portion to the south and west.

3d. That the said survey is erroneous, because the land as shown upon said diseño is

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greater in extent from east to west than from north to south, and includes the hills on the east and west of the valley land, while said survey leaves out the said hills and takes in valley land only, and to make up quantity takes in a large portion of the valley to the south west, not included by said grantor delineated upon said diseño as the land petitioned for.

4th. That said survey is erroneous, because the said final decree declares the land confirmed to begin "at a conical hill known as the Divisadero"; whereas the point of beginning of said survey is laid down upon said certified copy plat at the north-east corner of ~~so~~ the tract, entirely disregarding the call of said final decree.

Wherefore the United States pray that said survey be set aside as erroneous, and that said Surveyor General be directed to cause a resurvey to be made in conformity with the true intent and meaning of said final decree.

San Francisco, Dec 14. 1869.

Billy R Wise
Acting U. S. atty.

222

U. S. District Court

The United States

v.

Johnson Harrell

Exceptions to Survey by United States.

Filed Dec: 14. 1859.

W. A. Chenes,

Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Johnson Horrell

San Francisco, Jany 26 1860

On this day, before me, Jno B. Williams a Commissioner of the United States for the District of California, duly authorized to administer oaths, &c., &c., came John B. Wood a witness produced on behalf of the United States in Case No. 222, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 584 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: J. R. Wise Acting U. S. Atty by R. A. Thompson Esq, Claimants attorneys not present, but were duly notified as per annexed notice. Mr Horrell, the claimant is present.

QUESTION BY the U. S. Atty.

Question 1.

State your name, age, residence, occupation and present official position, if any.

Answer 1.

John B. Wood, lawful age, residence Petaluma, occupation Surveying; am now the County Surveyor of Sonoma Co.

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Question 2.

Look at Exhibit No. 1 to your deposition, being plat and notes, of a survey made on 26th Sept 1869 for J. N. Wilbur and others, and state by whom said survey was made.

(Objected to as irrelevant by W Howell the claimant)

Answer 2.

I executed the map and notes attached from actual survey made on the ground.

Question 3.

What portion of country is represented on said map?

Answer 3.

The portion lying immediately south of Russian River cañon, which is the first cañon above Sulphur creek - also a portion of oat valley and of Sulphur creek as I suppose. It includes Russian River valley for about three "half" miles to the south of the cañon.

Question 4

Describe the character of the country over which the easterly and westerly lines represented on said Exhibit No. 1 pass.

Answer 4.

They follow pretty much the summit of the hills on each side of the valley. There is an opening for the admission of Sulpher creek into the valley, which

is marked "Sulpher creek" on the Exhibit.

is marked "Sulpher creek" on the Exhibit.

Question 5

What is the character of the land from the said easterly and westerly lines down into the valley.

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Answer 5.

The valley is some two miles wide - may be 2½ - at the southern line, I dont recollect exactly now the dis-tance acros from foot hills to foot hills. It might be less than that. In some places the character of the country from the eastern and western lines is precipitous and rough - in other places more gentle - rolling hills.

Question 6.

What is the character of the portion of the country referred to in the pre-ceding question, as regards its adap-tation to grazing purposes?

Answer 6

At the time I was there it presented a very poor appearance for grazing; it looked as if it might once have been good for that purpose. When I was there the whole country round presented a poor appearance - very little grass on the hills.

Question 7

At what time were you there?

Answer 7.

Agreeably to my certificate, Sep 26. 1859, which I have no doubt is correct.

Question 8.

Is or is not the country in that section generally bare of grass in that season of the year?

Answer 8.

It is, in all the country I have passed over.

Question 9.

From your observation, did the slope of country referred to present the appearance of having produced grass during the preceding season, or otherwise?

(Objected as incompetent and leading.)

Answer 9.

I suppose that it produced more or less grass - as much so as that part of the hilly country round. - I mean the hills bordering on the Rufeian River valley.

Question 10.

What kind of grasses generally grow on those hills?

Answer 10.

Answer 10.

I don't know that my observation enables me to give an answer. I don't think I noticed any particular kind of grass.

Question 11.

Are you acquainted with the business of cattle ranching in Calª.

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Answer 11.

Somewhat.

Question 12

For that business what character of lands are best adapted, whether exclusively plain or valley lands or a mixture of hill and valley?

(objected to as irrelevant and incompetent)

Answer 12.

I don't think my experience is sufficient to give an answer.

Question 13.

Does or does not the grass on the hills generally afford pasturage after that on the plain has dried up & become useless for that purpose?

(objected to as irrelevant)

Answer 13.

That I think is the case, but we may account for it by supposing that the grass on the plains gives out first by being grazed on

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Question 14.

Read the following description, contained in the deposition of Salvador Vallejo, taken Oct 20. 1854, by Com. Peter Lott, to be used before the Board of U. S. Land Comm. and forming part of the transcript filed in this case from the Land Commission, to wit:—

"The Southern boundary is "marked the S. W. part of the Rancho "by a conical hill, a noted natural land "mark, sometimes called divisidero." and state whether or not, in making said ~~such~~ survey, you found an object answering that description, and if so, where is it situated?

Answer 14.

I found such a hill, I should suppose, on the west side of the valley, about 3½ miles below the mouth of the Cañon: designated "Conical Hill" on Exhibit No. 1. I also saw a second one a little S. E. from the first, but not quite so prominent as the other.

Question 15

Are you acquainted with Russian River Valley for any considerable distance below the cañon spoken of?

Answer 15

Answer 15

I am partially acquainted with it — have travelled along the road frequently for 25 miles below the cañon.

Question 16.

Is or is not the hill above spoken of a noted and prominent object, and visible from different parts of the valley above and below?

~~Answer 16.~~ (Objected to as leading)

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Answer 16.

From the opposite side of the valley it can be seen very plain from both above and below for some distance, I do not recollect how far.

Question 17.

Within the distance often or twelve miles below the cañon, have you observed or do you know of any other noted and prominent conical hill which would answer the description contained in the extract from Salvadon Valleyjo's deposition above quoted?

Answer 17.

I don't know of any, though there might be ~~me~~. I have not observed any.

Question 18.

In passing up and down the valley

had there been such a hill, would it or would it not have been likely to have attracted your observation?

(objected to as leading)

Answer 18.

I think it probable I should have noticed something of the kind, had it stood in the same situation to the valley.

Question 19.

State the quantity of land embraced in the survey represented by Exhibit No 1.

Answer 19

I make it 9.341.70 acres, as appear by my notes - a part of Exhibit 1.

Question 20.

Of that quantity, as near as you can estimate, what proportion would be valley or plain land, and what proportion hill land?

Answer 20.

I can answer only by supposition - I may state that about one third is valley or plain land.

Question 21

Do you mean exclusive of the foothills proper?

Answer 21

Well, yes - ~~I do~~. I suppose it so.

I do. I suppose it so.

Question 22

Look at the plat of the approved survey filed in this case, and state how far a line commencing near Sulphur Creek Cañon, as represented on said plat by the words "point of beginning", and running across the valley to the corner on the opposite side marked "Rock" would pass below the mouth of the cañon on Russian River?

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Answer 22

From the appearance of the map and the scale represented it would be about 20 chains.

Question 23.

Taking your survey and the location of Sulphur Creek as laid down on Exhibit No. 1. how far would such a line pass below the mouth of Russian River cañon?

Answer 23.

The distance is not given in my notes, but from the scale on Exhibit 1, I should say about 100 chains.

Question 24.

Look at the plat of approved survey filed in this case, and a portion of the diseño embraced within the lines marked "1. 2. 3. 4," and described on

as the land solicited
said diseno, and state what is the difference in form of the two maps.

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Answer 24.

The eastern and western lines of the official survey are continuous lines of different bearings, forming an irregular figure - I dont know what to call it - That part of the diseno comprised within the figures 1. 2. 3. & 4 appears to be a rectangular parallelogram - that is the difference.

Question 25.

What is the greatest extent of that parallelogram - whether from east to west or from north to south?

Answer 25

From east to west.

Question 26.

What is the greatest extent of the official survey - from north to south, or from east to west?

Answer 26

From North to south.

Question 27

State according to the scale the distance from north to south on the plat of the approved survey.

Answer 27.

Answer 27.

About 560 chains or seven miles.

Question 28

What its greatest width from east to west?

Answer 28.

About 180 chains - it lacks a small fraction of it.

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Question 29

What its narrowest part as represented on said plat?

Answer 29

About 94 chains.

Cross Examination.

Question 30.

State where you commenced the survey mentioned in your answer to the 3d question, represented by Exhibit No 1.

Answer 30.

I commenced it at the point marked "Conical hill"

Question 31.

State who showed you that starting point?

Answer 31.

Mr Wilbur, and several others in company pointed it out - I am not positive who they were.

Question 32

State if you know where the north line of German Peña runs, and where it joins the Rancho known as the Rincon de la Musilacow.

Answer 32.

I do not know.

Question 33.

In your answer to the 4th question you state that the line follows pretty much the summit of the hills - state whether you have reference to the low hills or to the highest mountains in that vicinity.

Answer 33.

The hills or mountains, whatever you choose to call them, - my definition of a hill would be a small mountain of course, - the mountains on the N.E. are higher than any portion I run over - though I consider the main divide on the east of the line I run and on the other side west of the line I run.

Question 34

How near did you run to the summit of the east line?

Answer 34.

I cannot tell.

I cannot tell.

Question 35.

State how near you run to the summit on the west line?

Answer 35.

The S. W. corner appeared to be about the summit of the mountain. ~~Running to~~ The S. W. corner is rather on the east side.

Question 36.

State the distance from the east line as run by you to the west line.

Answer 36.

~~278 76 links chains~~ 278 chains 76 links.

Question 37

State if there is not a large mountain or hill running from the north line in a southerly direction, dividing the valley on the east and on the west; and if so, what proportion of land is contained in that mountain as near as you recollect.

Answer 37

~~There is a range~~ I dont recollect. There is a range of hills running in a southeasterly direction from near the N. W. corner. I did not notice them, and cannot state the quantity.

Question 38

State what the distance is exclusive

of that hill, to the foot of the mountain on the east side.

Answer 38.

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I cannot tell. It is narrow - not far accoss.

Question 39

State what is the distance from the foot of that hill on the west side to the foot of the mountain west of that hill?

Answer 39.

I cannot tell.

Question 40

State if that hill does not run from the N. W. corner to the south line as made by you.

Answer 40.

I don't think it does - not positive though.

Question 41.

State the character of the land after leaving the valley, on the north and east sides, - whether it is rough and precipitous or not.

Answer 41

Portions of it is and portions are not.

Question 42

You state in answer to 5th question

that the character of the country

that the character of the country appeared as though it might once have been good for grazing purposes; State the character of grass upon the land that induced this belief.

Answer 42

I said I couldn't tell what the character of the grass was - but that it looked so - there was some turf, indicating that it once produced grass - It looked turfy except the precipitous declivities.

Question 43.

~~Ins~~ & State if this conical hill, referred to by you in your answer to the 14th question, is the conical hill set forth in the deposition of Salvador Vallejo to which you have been referred, & known as the divisidero, of the Rancho Rincon de los Musilacas, and the lands formerly owned by German Peña, constituting the dividing line between the Rancho's,

(Objected to as calling for a conclusion from the evidence, which is the province of the Court.)

Answer 43.

I do not know.

Question 44.

State if you made an examination for

any other conical hill answering the description given by Salvador Vallejo, in his deposition heretofore referred to.

Answer 44.

I did not travel around for the purpose of hunting up any other, but from the view from this conical hill I could see no other, except the one on the southeast mentioned by me before, and which is laid down on Exhibit 1. near the south line.

Question 45

State what circumstance induced you to select that particular hill as the divideo?

Answer 45

I made no selection of it - it was pointed out.

Question 46

State now whether it was by the settlers upon that land, including the persons who employed you to make the survey, this conical hill was pointed out, and whether they ~~Answer 46~~ are included ~~I d~~ within the lines of the approved survey as shown by the plat on file.

Answer 46

I should suppose that some of the persons are included within the lines

persons are included within the lines

as shown by the plat. Some of the company showed me the hill.

Question 47.

State if you made search for any other conical hill south of the one pointed out to you as the S. W. corner or begining point.

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Answer 47.

I made no search except by looking round from the conical hill I commenced on. I made no other search.

Question 48.

Examine the diseño and according to the scale upon it state the distance from the north line marked 3 to the south line marked 1.

Answer 48

I make it 21.000 varas by the scale, if the scale represents 10.000 varas.

Question 49

State the distance on Exhibit 1. from the cañon to the divisidero.

Answer 49.

279 chains or 3½ miles nearly.

Question 50

Do you mean by Exhibit No. 1, as set forth in above answer, the plat of the survey made by you.

Answer 50

I mean according to my own diagram filed with this deposition as Exhibit 1.

Question 51

State the distance from the south line of the official survey now on file, to the north line of the same.

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(objected to because the question has been answered before.

Answer 51.

7 miles, or thereabouts.

Question 52.

Examine the diseño, and according to the scale state the distance of line No. 2 running north and south, in miles.

Answer 52.

As near as I can come at it from the scale about 11½ miles.

Derick resumed.

Question 53.

Were or were not the hills ~~and~~ or small mountains along which you run your east and west lines as laid down on Exhibit No. 1, the hills or mountains which bound that portion of the Russian River valley surveyed

by you on those sides?

by you on those sides?

Answer 53

They were.

Question 54

In running those lines did you or not, at any time crop the summits of the said hills or mountains so as to lose sight of the valley below?

(Objected to as leading)

Answer 54.

I don't recollect positively about it. I did not notice particularly.

Question 55

Does any portion of those east or west lines crop the main summit or divide spoken of by you in answer to question 33.

Answer 55.

It depends on a man's judgment about the summit. I do not ~~think~~ consider I croped it anywhere.

Question 56.

Does the foot of the hill referred to in answer to question 38 form a cañon with the hills on the east side, or is their level or plain land within them?

Answer 56.

It does not form a cañon, there is level land between - can't state the

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distance.

Question 57

Do the hills on each side at that point rise abruptly or precipitously, or do they slope gradually to the plain or level land?

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Answer 57

My recollection of the hills on the east is that they are pretty steep. on the west side I don't recollect.

Question 58

When you say "steep", do you mean the abrupt, precipitous, rocky walls which usually form a canon, or steep grass hills?

Answer 58.

I mean steep hills with grass on. that is, some grass on them.

Question 59

In your answer to question 42, you stated that there was turf upon those hill or mountain lands, indicating that they once produced grass: Did you mean by that answer that grass had been produced there during the preceding season, but had dried up, for the want of moisture, or that it had ceased to produce grass.

(Objected to as leading and

(Objected to as leading and

irrelevant)

Answer 59.

I wish to be understood that the grass was not there - I would suppose that the grass had been overgraged but would grow up again in some degree during the growing season. This was my supposition.

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Question 60.

What is the appearance of the conical hill ~~spot~~ referred to in question 43, and noted on Exhibit No. 1 in the notes as the beginning point; and what its height approximately?

Answer 60.

The appearance from the valley is of a prominent hill standing out from the range of hills on the west side of the valley - its shape is a cone, very distinct - I should suppose it about 150 feet higher than the level of the valley or of the river.

Question 61.

How does that hill compare in height with the other foot hills bordering the valley above and below.

Answer 61.

There is not a great difference between that and ~~those on~~ the one on Southeast.

on the south I did not notice but think they are lower - the hills above or running into the valley are lower.

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Question 12.

Could you or not from the summit of that hill overlook the valley to any considerable extent above and below?

Answer 62.

East and below, or south, I could see the valley plain - but above I dont think I could very plain on account of the hills coming down, spoken of before.

Question 13

To what distance as nearly as you could judge, could you overlook the valley south, or below, from the summit of that hill?

Answer 13.

About 4 or 5 miles I suppose - may be further - cant recollect.

Question 64

From the summit of that hill, looking south, ~~could~~ did you or not observe any prominent conical hill, answering the description contained in the deposition of Salvador Vallejo, as quoted in question 14?

question 14?

Answer 64.

I did not. I dont say by that, that there might not have been one.

Question 65.

If there had been, within the scope of you view from the summit of that conical hill, an object as prominent and striking as that hill would you not have observed it.

(Objected to, as leading and explanatory)

Answer 65.

I think I should, provided my attention had been drawn to such a hill.

Question 66.

Was not your attention particularly drawn to the peculiar shape and position of that hill, as differing from any other in that portion of the valley, at or about the time you made the survey.

(Objected to as irrelevant and leading.

Answer 66.

Yes.

Question 67.

Your attention then being called to that

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particular hill, if from its summit you had seen another, answering to the description, would you not have been likely to have observed it?

Answer 17.

Yes, I think I should have been likely to have observed it, provided this hill had not been pointed out to me as the one.

~~Question 18.~~

Adjourned until 9½ A. M. to-morrow. —

Jno B Williams
Mf. Cond.

Friday, Jan 27. 1860.
Examination resumed.
Question 18.

Is there any other considerable stream putting into Russian River on the east side of the valley, ~~which is~~ within 8 or 10 miles below the Russian River cañon spoken of in your preceding examination, except the stream marked Sulphur Creek on Exhibit No 1. and on the plat of the approved survey filed in this case?

Answer 18

I cannot answer the question positively not being fully acquainted with the country. I know of no other, although there may be.

Question 69

Is there any other stream within the limits of your survey putting in on the east side of the valley?

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Answer 69.

I think not.

Question 70.

Look at the diseño on file in this case, and state whether you recognize on it, from your knowledge of the country, the stream marked Sulphur Creek on Exhibit No. 1 and on the plat of the official survey?

(Objected to as not responsive to any questions asked upon cross examination)

Answer 70.

From its appearance on the diseño it looks like the one marked Sulphur Creek. It is marked on the diseño "Arroll de agua"

Question 71

Supposing the diseño is intended to represent that portion of Russian River valley lying immediately below or south

of the cañon, would you have any doubt from your survey, and other means of knowledge, that the stream marked "Arrolla de Agua" on the diseño was intended to represent the stream now known as Sulphur Creek?

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Answer 71.

I might have some doubts, that is, if you take into consideration the scale represented on the diseño.

Question 72.

Throwing the scale out of the question would you have any doubt?

Answer 72.

I would have no doubt.

Question 73.

What is the actual distance as near as you can estimate it from your survey and other means of knowledge of the country, from the mouth of the cañon to the point where Sulphur creek unites with Russian River?

Answer 73

I cannot state positively - I would suppose something like a mile or a mile and a quarter.

Question 74

According to the scale laid down on

the diseño, what is the distance from the northern line of the diseño at the point where it cuts the river, and where the mountain is represented as approaching the river, to the junction of the stream marked "Arroyo de agua" with the stream designated on the diseño as running from north to south, which stream is now ~~Answer 74~~, called Russian River.

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Answer 74.

12.500 Varas, or about ~~7~~ seven miles.

Question 75.

What is the difference as laid down on the diseño between the distance from the northern line, as described in the preceding question, to the mouth of the Arroyo de Agua, and from the latter point to the Southern line as laid down thereon marked No. 1., without reference to the scale on the diseño.

Answer 75.

~~There is not~~ Taking a scale of 40 chains to the inch, the distance from the mouth of the creek to the northern line is 144 chains - from the mouth of the creek to the southern line 118 chains - making a difference of 26 chains - both measured in a straight line.

Question 76.

Assuming the actual distance on the ground from the northern line to the mouth of the creek to be one mile and a quarter, as stated by you in answer to question 73, and adopting that distance as the basis of the measurement from the mouth of the creek to the southern line, what would be the distance between the two latter points?

Answer 76.

Thirteen chains and fifty links would be difference in length - the distance from the northern line to the mouth of the creek being assumed as 100 chains, the distance from the mouth of the creek to the southern line would be eighty six chains and fifty links.

Question 77.

Assuming those to be the true distances on the ground, and taking the scale of Exhibit No. 1, and drawing a line on said Exhibit to correspond with the southern line on the diseño as ascertained by those distances, would such a line pass above or below the conical hill laid down on Exhibit No. 1.

(objected to, on the ground

that testimony as to Exhibit 1 is incompetent and irrelevant.)

Answer 77

It would pass 92 chains and fifty links above the conical hill.

Question 78.

Look upon the plat of the official survey filed in this case, and state the difference between the distance from the northern line of said survey to the mouth of the stream marked Sulphur creek on the said plat, and the distance from the mouth of said creek to the southern line as marked on said plat, according to the scale laid down on it.

Answer 78.

The difference is 524 chains and 50 links - that is, the distance from the northern line to the mouth of the creek is 36 chains fifty links, or nearly half a mile - and the distance from the mouth of the creek to the southern line 524 chains and 50 links, or a little over 6½ miles.

Question 79.

Assuming the distance from the northern line to the mouth of the arroyo de agua on the diseño to be one mile and a quarter, and taking that as a basis of measurement, what would be the

length of the north and south lines marked on diseño Nos 1 and 3, and disregarding the scale on the diseño?

Answer 79.

Assuming that as a base, 219 chains.

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The witness desires to state that wherever he refers in this deposition to "Exhibit No 1" he means to refer to his diagram with the notes attached.

Examination closed.

Subscribed to and sworn before me this 27th Jany AD 1860

Jno B Williams
U S Com

Jno B Wood

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U. S. District Court

The United States

v.

Johnson Hornell

Dep of Jno B. Wood
for U. S.
(with Exhibit No. 1)

Filed January 28, 1860.
W. A. Cheves,
Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

The United States
vs.
Johnson Horrell

San Francisco, Jan 27th 1860

On this day, before me Jno B. Williams a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c., &c., came Charles F. Estes a witness produced on behalf of the United States in Case No. 222, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 584 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Acting U.S. Atty by R. A. Thompson, and Johnson Horrell in person.

QUESTIONS BY Acting U. S. Atty.

Question 1.

State your name, age, residence and occupation.

Answer 1.

Charles F. Estes, lawful age, residence in Sonoma Co, near Russian River Valley, have resided there about two years - my occupation is that of school teacher.

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Question 2

Are you well acquainted with the Russian River Valley from the mouth of the first cañon north of Sulphur Creek, for the distance of eight or ten miles south of that point?

Answer 2

I am.

Question 3

Look at that portion of the deposition of Salvador Vallejo heretofore filed in this case, of which the following is a copy: "The southern boundary is marked at the S. W. part of the Ranch by a conical hill, a noted landmark sometimes called divisidero", and state whether you know any object in the valley of Russian River, within the distance of from three to five miles south or southwest from the cañon, answering that description, and if so, describe ~~the~~ it.

Answer 3.

I know a hill that answers such a description. It is situated on the west side of the valley about, I should think, four miles more or less south from the cañon. It is a hill quite regular in its appearance, in shape like a cone or pyramid, and stands apart from the other hills about it. I should judge it was 250

feet above the valley - perhaps 300.

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feet above the valley - perhaps 300. I am not much in the habit of estimating heights.

Question 4

How does it compare in height with the foot hills above and below it, within a distance of 10 miles South from the canon.

Answer 4.

I should think it was higher. There is one hill to the S.E. of this one which is not as high nor as regular as this. It is almost immediately adjoining.

Question 5.

With the exception of the hill last spoken of, how much higher is the conical hill than the other foot hills above and below it, within the distance above mentioned, as nearly as you can estimate it.

Answer 5.

I should judge from 50 to 100 feet.

Question 6.

What is the character of the country bordering the valley on both sides to the summits of the hills which bound it, with reference to its physical formation and vegetable productions, from the conical ~~Answer~~ hill to the canon?

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Answer 6.

For the most part it is covered with soil, ~~and~~ suitable for the production of grasses; in other places it is somewhat steep and rocky. The hills bordering immediately on the valley are not very steep, as you recede they become higher and steeper. The trees are principally oak and fir - some redwood. The grasses are principally wild oats & bunch grass.

Question 7.

State, if you know, whether the hills bordering the valley referred to in the previous question produce annually a good growth of grass or otherwise.

(Objected to as irrelevant)

Answer 7.

They have borne good grass since I have been acquainted with them, and I should think them capable of bearing good grass again.

Question 8.

How do the lands on those hills compare with those in the valley for grazing purposes?

(Same objection)

Answer 8.

I should think they were about the same on the hills as in the valley - The

I should think they were about the same

on the hills as in the valley - The hills are better at some seasons of the year, and the valleys at other seasons.

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Cross Examination.

Question 9.

In your answer to the 3d question, you say you know the hill answering to the description of the one given by Salvador Vallejo in his evidence in this case before the Land Com: State if you know the northern line of the Rancho of German Peña, or about where it crosses over into the Russian River Valley as surveyed by the U. S. surveyor.

(Objected to as irrelevant and irresponsive to the examination in chief.)

Answer 9.

I do not.

Question 10.

State, if you know, if this is the same conical hill or divisidero referred to in Salvador Vallejo's deposition, and if it is the corner of ~~the line of~~ the Rancho owned by German Peña;

Answer 10.

I don't know anything about it.

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Question 11.

You state that this conical hill, referred to in your third answer, which you have described, corresponds with the description given by Salvador Vallejo; State what description Salvador Vallejo has given.

Answer 11.

He said a conical hill, a noted landmark sometimes called a divisidero.

Direct resumed.

Question 12

From your knowledge of that valley do you know of any other object within its limits for the distance of 10 miles south of the cañon, answering the description, as quoted, in Vallejo's deposition before referred to, except the conical hill above described?

Answer 12.

I do not, unless the hill to the southeast and almost adjoining, might be taken for it, which is not so regular in its shape.

Sworn to & Subscribed before me this 27th day of June A. D. 1860
Wm. B. Williams
U. S. Comr.

Examination closed.
Chas. F. Estes

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U. S. District Court

The United States

v.

Johnson Hornell

Depos of C. F. Estes for U. S.

Filed January 28. 1860.

W. ~~D.~~ Chevers.

Clerk

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UNITED STATES DISTRICT COURT,
Northern District of California,

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The United States
vs.
Johnson Horrell

San Francisco, Jan 27 1860

On this day, before me, Jno B. Williams a Commissioner of the United States for the Districts of California, duly authorized to administer oaths, &c., &c., came J. N. Wilber a witness produced on behalf of the United States in Case No. 222, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No 584 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows — ~~his evidence being interpreted by a sworn interpreter~~

PRESENT: Acting U. S. atty by R. Augustus Thompson Esq, and Johnson Horrell Esq, claim^t. in person.

QUESTION BY U. S. atty.

Question 1.

State your name, age, residence and occupation.

Answer 1.

J. N. Wilber, lawful age, residence in Russian River valley, Sonoma County, where I have resided nearly three years, am a stock raiser.

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Question 3.

Are you acquainted with the country embracing that portion of the Russian River Valley extending from the mouth of the Russian River cañon to the point formerly known as the residence of German Peña?

Answer 3.

I am.

Question 4

What is the character of the high lands bordering the valley on each side, within that distance, with reference to their adaptation to grazing purposes?

(objected to as irrelevant)

Answer 4.

I consider it as good as any portion of that section of the country.

Question 5

What kind of grasses, if any, grow upon those hills or mountains, and on what proportion of the same do the grasses grow, if any?

(same objection)

Answer 5.

Some wild oats, bunch grass, and some two or three other kinds. I am not a botanist and could not say, there is quite a variety. I consider all those hills afford plenty of grass in their season for grazing purposes.

Question 6.

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During what season of the year do the grasses grow, and at what period, if any, do the grasses fail?

(same objection

Answer 6.

After the rains commence to fall until the month of July, the grasses continue to be good; after the latter period they begin to dry up.

Question 7.

You stated your occupation to be that of a stock raiser; from your experience in that business which is best adapted for stock raising, lands exclusively level, or valley lands, - or those consisting partly of valley and partly of hill land?

(same objection)

Answer 7.

I would consider both necessary - the level to afford water, and grass in the early part of the season - and the hills in the latter part.

Question 8

Do or do not grasses on the hills continue green and nutricious longer than those upon the plain?

(same objection)

Answer 8.

They do.

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Question 9.

Were you present when a survey was made by Mr John B. Wood, the diagram or plat of which is filed in this case marked Exhibit No. 1. to his deposition?

(objected to - on the ground that the Exhibit and notes referred to is irrelevant & incompetent.)

Answer 9.

I was.

Question 10.

Look at Exhibit No. 1, attached to Mr Woods deposition, and state whether you know the point thereon marked "Conical Hill".

Answer 10.

I do.

Question 11.

What is the character of the country bordering the valley on each side from that point up to the mouth of the cañon, or north line laid down on said Exhibit?

Answer 11

I consider it hilly or mountainous.

Question 12

What is the character of the vegetation on those hills or mountains, and how far does it extend towards the summit?

(Objected to as before)

Answer 12.

The hills are interspersed with oak trees, fir, and chamise, grasses, wild oats - bunch grass and other kinds.

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Question 13

Describe the conical hill referred to in question 10, with reference to its situation and ~~Appear~~ appearance.

Answer 13.

It is situated on the west side of the valley and forms a portion of the foot hills. It is a high conical hill, differing from any other in that valley.

Question 14.

Look at the portion of the deposition of Salvador Vallejo filed in this case, of which the following is a copy: "The southern boundary is marked at the S. W. part of the Rancho by a conical hill, a noted land mark, sometimes called divisidero." and state whether you know any object in the valley of Russian River, south of the Russian River cañon, answering that description.

Answer 14

I do. ~~not~~

Question 15.

~~It is situa~~ Describe that object.

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Answer 15.

It is situated at and forms a part of the foothills on the west side of the valley, according to the best of my knowledge some 4 1/2 miles south of the cañon - It is a very high hill - running to a point or nearly - having the appearance from the valley of a conical hill, resembling a sugar loaf.

Question 16.

Do you or not know of any other object answering that description in the Rufian River Valley, between the cañon and the place formerly known as the residence of German Peña?

Answer 16

I do not.

Question 17.

At what distance is the conical hill of which you speak visible in ascending or descending the valley?

Answer 17.

~~Ascending~~ Descending, it would be visible from the cañon - ascending the valley from the other side of the river, on the east side, it would be visible some 7 or 8 miles.

Question 18

State whether or not in approaching it

within the distances you have men

within the distances you have mentioned, it presents the appearance of a noted, ~~con~~ prominent land mark or otherwise.

Answer 18.

It does.

Question 19.

Have you ever known that hill by any name; if so, what is it?

(Objected to as incompetent and asking hearsay evidence)

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Answer 19.

Conical hill or divisidero — Have always heard it called so.

Question 20

Is the hill of which you speak, designated on the diagram Exhibit No. 1, annexed to the deposition of W. Jno B. Woods; and if so, in what manner?

(Objected to as irrelevant, the Exhibit not being competent evidence)

Answer 20.

Its. on the south line near the S.W. corner, and described "Conical hill".

Question 21.

Are you acquainted with the place formerly known as the residence of German Peña?

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Answer 21.

By hearsay I do. I have seen some portions of an old adobe building.

(Objected to as hearsay)

Question 22

What is the distance from that place to the mouth of Sulphur Creek?

Answer 22.

As near as I can tell, it must be about eight miles.

Question 23

State if you know the distance from the mouth of Sulphur creek to the mouth of the cañon, or as near as you can estimate it.

Answer 23.

I would say from a mile and a quarter to a mile and a half, as near as I can estimate it. I have frequently passed over the distance.

Cross Examination.

Question 24.

State when you first became acquainted with the Russian River Valley.

Answer 24.

It will be three years the eleventh day of next month since I moved into that valley.

valley.

Question 25

State if when you first came into that valley or since that time you have taken up and settled upon any land, as public land.

Answer 25.

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I never took up a claim in California. I mean a land claim or preemption.

Question 26

State if you have purchased any pretended claim in the Russian River valley since you first settled there.

Answer 26.

I purchased an interest in a claim before I moved there.

Question 27

State if you ever resided on that claim, and what was the extent of the claim purchased.

Answer 27.

I did reside on it – its extent was 160 acres.

Question 28.

Look at the plat of the official survey filed in this case, and state whether the claim of which you speak in your last answer is embraced within the lines of that map.

Answer 28.

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The only means I have of telling is by Mr Sanzburys house, which is include in it, and I think I am also included. I mean where I formerly resided.

Question 29

State whether you are now the owner of that claim, or ~~by co~~ in what manner you left it - whether you have sold it for a valuable consideration or otherwise.

Answer 29.

I am not the owner of it now. I suppose I have sold it for a valuable consideration.

Question 30

Look on the plat of the official survey on file in this case, and state if you reside within the limits of said survey as marked on said plat, at this time.

Answer 30.

I think I do.

Question 31.

State if you became the purchaser of the tract of land on which you now reside, or any part thereof; or if you have any interest in that or any other land embraced within the bounds of the official survey.

Answer 31.

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Answer 31.

I have no right or interest in any lands in California.

Question 32.

State if you have rented or leased the premises on which you now reside, from any person or persons pretending to be the owners or claimants of said lands: and if so, for what period of time have you leased or rented the same.

Answer 32

I have not.

Question 33

State by whose permission you settled upon the ~~that~~ land where you now reside.

Answer 33

Mr. James Asher ~~Ashley~~ gave me permission to go into his kitchen and occupy it until Spring, when I expect to leave that section of the country.

Question 34

State if James Asher holds a pretended preemption claim upon the ~~that~~ land where you reside.

(Objected to, because the question of Mr. Ashers interest does not affect the competency of the witness)

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Answer 24.

I think he does hold a preemption claim.

Question 25.

Look at the survey made by Jno B. Wood ~~sum~~ marked Exhibit No 1 to his deposition, and state if you assisted in any way in making said survey.

Answer 25.

I was with Mr Wood when he made this survey, but did not assist him ~~with it~~, in making it.

Question 26

State the names of the persons who assisted in making the survey, - who acted as chain carriers, and who as marker.

(Objected to as incompetent, irrelevant, and not responsive to the examination in chief.)

Answer 26.

A young man named Sausbury was one of the chain carriers - the other's name I forget - they were both young men - I cant recollect who were markers - some two or three acted as such.

Question 27

Question 27

Look at the plat of the official survey, and state if any of the persons who carried the chain ~~and~~ or acted as markers, or all of them, reside within the limits of that survey.

(objected to for same reasons as last.)

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Answer 27.

The two young men who acted as chain carriers were at work in the neighborhood at that time; the markers I think lived within the lines of the official survey.

Question 28.

State if any of the persons you have mentioned as chain carriers or markers, claim any lands under a pretended preemption right or otherwise, within the bounds of the official survey.

(Objected to, on same ground as before, and for the additional reason, that if the intention of this cross-examination is to impeach the correctness and integrity of the survey made by Surveyor Wood, that this cross examination should have been made to

the deposition of said Wood.)

Answer 28.

The ~~markers~~ chain carriers did not; the markers I think did.

Question 29.

State the age of chain-carrier Stansbury, if you know, and whether his father resides on and claims land within the bounds of the official survey.

Answer 29.

I do not know his age - should think he was three or four and twenty; he has no father in this country.

Question 30.

State, if you know, what relationship he bears to the Stansbury who resides on said land; and state, if you know, where the younger Stansbury makes his home.

(Same objections, and further, that it assumes as a fact, which is not proven in the case, that Sandsbury lives on the land, and because the question is leading.)

Answer 30.

The younger Sandsbury I think is the brother of the one who lives on the land;

I couldn't tell where he makes

I couldn't tell where he makes his home. He works out pretty much all the time - He has no fixed residence that I know of.

Question 31.

State, if you know, who pointed out the conical hill mentioned in your direct examination as the beginning corner of the survey made by Mr Wood, marked Exhibit No. 1.

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Answer 31.

I could not answer that question. I do not know who it was; there were several there at the time.

Question 32

State the number of persons, as near as you can, who were there at the time.

Answer 32.

Six or seven, I cannot tell which now.

Question 33.

State their names, and whether they resided within the bounds of the official survey, or were interested in the survey.

Answer 33.

Mr. Westenhaven and Mr. Farris, I do not recollect the names of the balance making the quantity named.

Question 34

State how long you have been engaged in raising stock, and to what extent, & what number of stock have you now on hand.

Answer 34

I have been engaged in raising stock for about two years. to a small extent. and have now on hand not far from 30 head.

Question 35

State if this stock is kept & graged within the bounds of the official survey in this case.

Answer 35.

My opinion is that my stock ranges on both sides of the lines and in the valley. both within & without the lines of the survey on the hills and in the valley. At this season the stock range on the hills, not being able to live in the valley on account of frosts.

Question 36.

State, if you know, where the "northern line" of the Ranch formerly owned by German Peña, as surveyed by the U. S. Surveyor: if you know, - how far is that line from the conical hill

is that line from the conical hill

described in your direct examination.

~~Answer 34.~~ (Objected to, because the location of the Peña ranch has nothing to do with the boundaries of the land now under consider-ation, as ascertained by the original grant and diseño and decree of confirmation.)

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Answer 34.

I do not know where that line is.

Question 37

State if that conical hill is the same conical hill described by Salvador Vallejo in his deposition referred to in your direct examination by you; and does it divide the lands owned by German Peña from that described in the plat of the official survey filed in this case.

(Objected to.)

Answer 37.

My belief is that it is the same hill. I cannot say and do not know whether it divides the land of Peña from the land officially surveyed in this case.

Question 38.

State, if you know, where German Peña formerly resided, on Russian River, and what your means of information are

as to his residence.

Answer 38.

I have been told that he resided in the place where Dr. Ely lives now.

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Question 39.

State if you had any acquaintance with German Peña, while residing on the waters of Russian River; if so, state when you were acquainted with him.

(Objected to as irrelevant and not responsive to the examination in chief.)

Answer 39.

I never had any acquaintance with him.

Question 40.

State if you know where his residence was, in any other way than by information from others.

Answer 40.

I only know where his residence was by information from others, and by seeing the remains of the old adobe house, which I have been told was his place of residence.

Question 41.

You stated in your first examination that you knew the conical hill therein

described, as the divisidero - state

described, as the divisidero - state when you first heard it called the divisidero & by whom.

Answer 41.

I dont ~~remebe~~ remember when I first heard it so called, nor by whom. I think it was shortly after getting on the river.

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Question 42.

State if you ever heard it called "Conical hill" or "divisidero" by any other persons than those settled within the boundaries of the official survey; if so, what other persons have you heard call it by either or both of those names.

Answer 42

I have heard it so called by other persons than those settled within the bounds of the official survey; I cant recollect all of them. I have heard Mr Clar and Dr. Ely call it so, and many others. Mr. Clar being a Spanish scholar always called it "divisidero". I think I have heard Spanish people talk of it as the divisidero, but could not tell in what connection, I being unacquainted with the language.

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Direct resumed.

Question 43

You stated in answer to question 37 that your belief is that the conical hill described in your examination in chief is the same conical hill described in the extract from the deposition of Salvador Vallejo heretofore referred to; Will you now give your reasons for that belief?

Answer 43.

My reasons are these - that it is a hill different from any other hill I know of in that valley. It is a different shape from any other. It is ~~the~~ ~~a~~ a hill which answers the description in Vallejo's deposition.

Cross Ex: resumed.

Question 44.

How is that hill described in Vallejo's testimony?

Answer 44.

As a divisidero or conical hill.

Examination closed. —

Sworn to & subscribed before me this 27th day of Jany. A. D. 1860.

Geo. B. Williams, U. S. Comr.

J. W. Wilber

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U. S. District Court

The United States

v.

Johnson Norrell

Dep of L. W. Wilber
for U. S.

Filed Jany 28. 1860.
W. A. Chevers
Clerk

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DISTRICT COURT OF THE UNITED STATES,

Northern District of California.

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The United States
VS.
Johnson Harrell

San Francisco, April 26th 1860

On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came Isaac Day

a witness produced on behalf of the Claimant

in Case No. 222, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 584 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows— ~~his evidence being interpreted by a sworn interpreter, to wit.: By~~

PRESENT:

Judge Robert Robinson of Counsel for Claimant, and Lully R. Wise acting U. S. Atty. for the U. S.

QUESTION 1st, By Counsel for the Claimant.

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

Ans.

My name is Isaac Day, my age is 38 years, and I reside in Napa City.

Q.

Are you acquainted with C. C. Tracy,

Deputy U. S. Surveyor?

Ans.

Yes sir

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3rd

Were you in company with the said Tracy, when he made the survey of the ranch on Rufian River, belonging to Johnson Harrell etal.?

Ans.

I was.

4th

Look at the certified copy plat from the Surveyor General's office, filed in this case, and say, whether that is the survey you assisted in making?

Ans.

From the appearance of it, I think it is.

6th

Please state the character of the country commencing at the North East corner of the survey? and following the line across to the North West corner?

Ans.

It is most of it hilly, and mountainous where it commences.

7th

State the character of the land where the same line crossed the Rufian river?

Ans.

It is rolling hills, the river comes

2 miles out of the hills in a canon

2 right out of the hills in a cañon

8th.

Shape the character of the land commencing from the North West corner, and running to the South West corner of the Ranch?

Ans.

It is continuously hilly, with the exception of one or two ~~little~~ ~~flats~~ little flats, which would not pay for surveying, these flats were red gravelly ground, and marshlys.

9th.

Shape the character of the land from the South East corner of the land to the North East corner?

Ans.

It is a continuous range of mountains, as shown on the map.

10th.

What was your occupation at the time the survey was made and previous?

Ans.

I had been merchandizing and farming.

11th.

Shape the character of the land on the West side of the ranch, outside of the lines of the ranch?

Ans.

I don't know, but my impression

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is that it is exclusively mountains, The ranch as surveyed, is bounded by mountains,

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12th

State the character of the mountains for several miles, commencing at the South West corner, and running Northerly?

Ans.

It is a succession of high conical peaks, or high sharp hills, very abrupt in the rise.

13th

State the character of the mountains on the East side of the Ranch?

Ans.

It is a continuous range of mountains, I don't remember any valleys at all,

14.

For how long a distance, on the ~~East~~ West side of the ranch, do the low hills, run from the line down towards the river?

Ans.

I don't remember the distance, but they run very nearly down to the river, The ranch is nearly all hills, as distinguished from the mountains on the lines.

15th

From your knowledge of land, is

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3 the land on the West, South, and

3 the land on the West, South, and East side of the ranch, worth surveying?

Ans.

It is not worth surveying, I would not take the whole of it and pay for the surveying.

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Cross Examination

Ques: 16.

In your answer to quest: 3, you state that you were on the Ranch when Mr. Tracy surveyed it, state your knowledge of the land prior to that time?

Ans.

I have no knowledge of it prior to that time.

17.

In what capacity did you assist Mr Tracy in making that survey?

Ans.

As Axeman.

18.

How long were you occupied?

Ans.

It was less than a week, I don't remember positively.

19.

During this time, did you act under the orders of Mr. Tracy, and was your time fully occupied in obeying his instructions?

Ans.

Yes sir.

21.

Did you make any other examination of the land, during this time, except that which necessarily resulted from following Mr. Tracy's instructions?

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Ans.

I did not.

21.

Was not that examination confined altogether to that portion of the land through which the surveyed lines run?

Ans.

I saw a good deal of the land outside of that. I examined it somewhat particularly, for I had some idea of purchasing.

22.

In your answer to quest: 21, you say that you made no other examination of the land except that which necessarily followed from following Mr. Tracy's instructions, and in your answer to the last question, you state that you saw a good deal of the land outside of the lines. State particularly, the information obtained by you at that time, outside of the line of your duty

to Mr Tracy?

side of the line of your duty

H. to Mr. Tracy.

Ans.

Outside of the line of my duty I spent no time, but from my observation, and knowledge of mountain life I did not see anything worth going out for, in fact a man could not well get out without difficulty. I was satisfied that the land outside of the ranch was not worth surveying, and a good deal inside of the lines was in the same condition.

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23.

Is the opinion stated in the last answer, derived from your knowledge of what land was granted by the Mexican government, and confirmed by the U. S. District Court, or only from your estimation of its value, to you, for your own purposes?

Ans.

From both.

24.

Did you ever see the grant and decree in this case, on which the survey was based?

Ans.

I never did.

25.

Did you ever see the instructions of the Surveyor General to Mr. Tracy?

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Ans.

I did not. I think that he read the instructions in my presence, but am not positive.

26.

How then can you say that your opinion as expressed in your Answer to Quest: 22, is partly derived from your knowledge of what was granted by the Mexican government, when you have seen neither the grant nor decree, and have only an indistinct recollection of having heard the instructions read?

Ans.

I have no knowledge of the grant in this case, My opinion is based upon my own observation of the land only, and from my knowledge of different Spanish grants, that much better land has been thrown out.

Direct resumed.

27.

On what portion of the Ranch did you reside while making the survey?

Ans.

I resided somewhere near the North line, on the West side of the river, and in going from the

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5 house to my work, I necessarily

5 house to my mark, I necessarily travelled over almost the entire ranch, After the outside lines were surveyed, we made a subdivisions of the rancho for the proprietors, Meandered a portion of the river and made several cross lines, I have never been on the ranch since.

Isaac Day

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Sworn to, and subscribed this 26th day of April, 1869. before me.

W. F. Cheves,
U. S. Comm'r.

No. 222.

U. S. District Court.

The United States.

— vs —

Johnson Harrell.

Deposition of Isaac Day.

Filed Aug: 21. 1860.
W. A. Chevers,
Clerk.

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U. S. District Court

The United States
v
Johnson Howell et al } No. 222

It is hereby stipulated and agreed, for the purposes of this case only, that Exhibit No. 1, attached to the deposition of C. C. Tracy, taken in this case, is a certified copy of the official survey of the Rancho Izabaco upon which survey it is admitted that a patent has been issued by the Executive Department of the Government, transmitted to and received by the U. S. Surveyor General for Cal'a, and that the same has been delivered to & received by the parties interested, subject to all legal exceptions,

Sully R Mc
Acting U. S. Atty,
by Williams

San Francisco
April 27. 1861.

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Northern District of California.

The United States
vs.
Johnson Harrell

San Francisco, April 26th 1860

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On this day, before me, WILLIAM H. CHEVERS, a Commissioner of the United States for the Northern District of California, duly authorized to administer oaths, &c., &c., came C. C. Tracy

a witness produced on behalf of the Claimant

in Case No. 222, being an appeal from the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, in Case No. 584 on the Docket of the said Board of Commissioners, and was duly sworn and testified as follows— ~~his evidence being interpreted by a sworn interpreter, to wit.: By~~

PRESENT:
Judge Robert Robinson of Counsel for Claimant, and Tully R. Rise Acting U. S. Atty, for the U. S.

QUESTION 1st, By Counsel for the Claimant

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

Ans.
My name is Charles C. Tracy, my age is 38 years, I reside in San Francisco, and I am a Deputy U. S. ~~Deputy~~ Surveyor.

2d.

Did you make the official and final survey of the rancho "Rincon de Musalacan", as shown by the certified copy plat on file in this case?

Ans.

I did.

3.

~~Question Same~~ Day, the witness just examined, present with you as chainman, when you made the survey?

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Ans.

He was.

4th.

Was he with you in making any other survey, that you know of?

Ans.

He was not.

5th.

State the character of the country commencing at the South East corner of the survey, and following the survey all round?

Ans.

It commences on the South side of Sulphur Creek Cañon, among rough precipitous hills, near the summit of the main ridge on the East side of the Russian River valley, and runs West over a rough hilly country coming at the mouth of Russian river Cañon, as shown on the Diseño

B. in the hills on the opposite side

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Q. is the hills on the opposite side of the valley, and runs thence Southerly at about an average distance, on the East side of the summit of the ridge bordering the West side of the valley, to the Southern termination of the survey, ~~thence crossing~~ at the corner of the German Peña ranch, thence Eastwardly crossing the Rufian river valley at right angles to the general course of the valley, following the Peña line ~~Eastwardly~~ to a point on the Western slope of the range of mountains, bounding Rufian river valley, on the East side, thence following the general course of that range Northwardly to the point of beginning.

Q.

What is the character of the land on the outside of the East West and North lines?

Ans.

The North line runs over rough broken hills, that ~~to~~ terminate Rufian valley on the North. The West line runs over the rough broken ridges of the range upon the West side. The South line crosses the valley to the range of mountains on the opposite side. The East line passes over open hills fit for grazing, on the East-

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gram range bounding the line.

7th.

What is the character of the land inside of the lines, ~~the~~ p in regard to the proportion of hills and valleys?

Ans.

As far as I recollect about the Southern half of it is mostly open valley land. The Southern half of it is filled up by low isolated hills, which extend nearly down to the river on each side, leaving a small proportion of valley land.

8th.

Would the land on the West and South sides of the ranch, be worth surveying for public land?

Ans.

It might be upon the South side but not upon the West.

9th.

Did you under the direction of the U. S. Surveyor General make a survey of the Rancho Tzabaco of which Document marked Exhibit No. 1. P. T. C. to be attached to this deposition, is a copy?

Ans.

I did.

10th.

Does the survey of the Musalacon

 ranch, about upon the South

Does the survey of the Musalacon

3 ranch, about upon the North line of the Izabaca as shown upon this exhibit No. 1.

Ans.

It does.

10th.

What is the character of the hills on the dividing ridge between Dry creek and Rufian river, for several miles North and South of the Peña line?

Ans.

North of the Peña line, it is dense almost impenetrable chaparral, and rough broken ridges, South of the Peña line, the country is more open, of low hills with scattering oak timber, with little water in the dry season, and passable for stock. There are a number of isolated conical hills North and South of that line.

11th.

Is there a conical hill, at the point where the Musalacon ~~bar~~ corners, on the Peña ranch, and if so, how much of the valley can you see from that point?

Ans.

There is a conical hill a few chains from the corner, on the line running North Eastwardly

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across the valley, from which there is an extended view of the valley both North and South,

13th.

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From the old Deseño and grant, might that be the hill described therein, as the commencement of the ranch?

Ans.

It might be, and it is the one I took in surveying both the Peña ranch and this.

14th.

Look at the Deseño in the transcript in this case, and state from the scales how far it is from the mouth of Rufian River Cañon to the line of the Peña grant?

Ans.

It is over eleven miles.

15th.

Look at the Sulphur Creek Cañon as represented on the Diseno, (called Arroyo de Agua) and state if that is represented any higher up in the mountains, than you commenced the survey, judging from the make of the country, as represented on the Deseño, and observed by you on the ground?

Ans.

It is not.

16th.

It is not.

L

16th.

Are there not several branches of the Sulphur Creek, which come together immediately above the point, at which you commenced the survey?

Ans.

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There are,

17th.

Look at "Exhibit No. 1, to deposition of Geo B. Wood, S.O.N." on file in this case, and state from the location of Sulphur Creek as given by him, what portion of said creek is represented thereon?

Ans.

I should suppose it to be the South branch, as there is no part of the main below the branches creek, runs in that direction

18th.

State ~~the distance~~ how far 278 chains 76/100 would run into the mountains, following the South line as given by Mr. Wood?

Ans.

From to three miles.

Examination adjourned until tomorrow at half past 10 A.M.

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San Francisco
April 27th 1860.

Examination of E. C. Tracy resumed from yesterday.

Present:
Judge Robinson of Counsel for Claimant, and Lully R. Wise Acting U. S. Atty. for the U. S.

Cross Examination
Questions by Acting U. S. Atty

Ques: 19th
In your answer to quest: ~~17~~ 2? you state that you made a survey of the Rancho Musalacon, as shown by the certified copy plat on file. State the data upon which you made that survey?

Ans.
I made it upon the instructions from the Surveyor General, which instructions embodied a decree of the Court. I had also a copy of the Diseño.

2d
State what part of those instructions indicated the point of beginning as the North ~~West~~ East corner of the ~~survey~~ survey as shown upon the plat?

5

Ans.

upon the plat?

5

Ans.

So part,

21st.

The Decree describes the land as be=
ginning at a Conical hill known
as the "Divisiderí" Why was not
this point ascertained and made
the point of beginning, and shake
if that is shown on the plat?

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Ans.

In making the survey, I had
reference to the Decree, of the Court
and Deseño, and the calls of the
grant, the point called the Divisiderí
I did not make a shurking point
because there are several Conical
hills or Divisiderros situated at
different distances, on the West
side of the valley, and the evidence
could not be obtained to show which
was the actual Divisiderí, mentioned
in the grant and decree, as witnesses
differed in their opinion in regard
to it. The calls of the grant men=
tioned the mouth of the Cañon
of Rubian River, as a point upon
the Northern line of the grant, and as
that was a point easy to be identi=
fied, I made my beginning corner
on the mountains on the East side
of the grant, and made the Northern
boundary of the grant across Rubian
River valley at the mouth of the
Cañon, and extend to the mountains

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on the West side of the valley, as shown in the original Diseño, and thence extended the survey South for quantity.

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22d

Examine the translation of the grant, on page 20 of the transcript in this case, designate that portion of it which you construe as a call for the Cañon?

Ans.

Upon examination I find that the call for the Cañon is in the Decree, and not in the grant.

23d

In your answer to quest: 21st you state, that by making the point of beginning on the North East corner, and running the Northern line first, you were enabled to extend the survey South for quantity. Had you ascertained the Divisadero and made that the point of beginning, and that point had been ascertained to be a greater or less distance ~~from~~ North from the Laitheast corner, would you not have been compelled to have extended your Northern and Southern lines for quantity instead of the Eastern and Western lines as shown on the plat, it being admitted, that the Rubian

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6 River Cañon, must be on the

being admitted, that the Rapian

6 River Cañon, must be on the Northern line?

Ans.

It could only have extended there, but a short distance, because the exterior side lines would be carried beyond the summit of the ridge, and would not conform to the Deseno, The North East corner being as I placed it very near the summit of the range, and the line running South from there already touching the crest of the range in several places.

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Qst.

In your answer to quest: 21st. you say that the evidence could not be obtained to show which was the actual Divisidero mentioned in the Decree, this Divisidero ~~being~~ mentioned in the Decree being shown upon the Deseno as the boundary between the rancho, in this case and that of Tzahace, did you make reference at the time to the deposition of Salvador Vallejo, ~~on file~~ in the transcript on file in this case, who says that that Divisidero is probably three or four miles from the Cañon; and if so, did you endeavor to ascertain upon the ground, whether or not such a natural object existed?

Ans.

I did have reference to the deposition of Salvador Vallejo, but could not be guided by his estimation of the distance, as it was directly inconsistent with the position of the Divisidero, as shown upon the original Diseño which places it at a distance of more than ten miles from the Southern boundary of the grant, and had I selected one within the distance mentioned by him, I could not have obtained the quantity called for in the grant without extending the survey beyond the ridges of mountains on the sides.

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25th

Did you or not ascertain the existence on the ground of a Divisidero which moved answer the calls of the Decree and deposition of Vallejo before establishing your starting point, or did you establish your starting point on the South East corner without any endeavor to find the natural object shown on the Diseño, and called for by the decree as the first boundary?

Ans.

As I said before there were several of those Divisideros, and I could make no decision, on an uncertain point, when I had an

I called Brake to decision, under

uncertain point, when I had an unmistakeable natural object about which there could be no dispute, as defining the Southern boundary of the grant, but in extending my survey South my southern boundary reached a Diviseiro which I considered as much the one called for, as any that could be shown, as it more nearly conformed to the distance shown on the Desêno

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26.

In what manner did you ascertain that ~~you~~ the distance from the your South West corner from the Cañon, conformed nearer to the Diviseiro on the Desêno, than to any other Diviseiro which you saw?

Ans.

I ascertained it from the scale of the Desêno.

27.

Do you consider the scale on the Desêno as correct, when applied to the natural objects shown thereon, tested by those objects as they naturally exist?

Ans.

Only in some instances, The Desêno according to the scale, shows a much larger extent, than was actually granted.

These three instances which you consider correct?

Ans.

I don't know that I can show any that are absolutely correct, or more than approximately correct.

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Q.

Then why discard Salvador Vallejo's testimony, on the ground, that it is inconsistent with the scale on the Derroteros, particularly as even without the scale, the land petitioned for as shown by the Derroteros, shows a tract greater in extent from East to West than from North to South?

Ans.

Because I did not consider it ~~possible~~ or probable that there was an error as great as six or seven miles, in reference to the position of the Deviaderos as shown on the Derroteros, when I found I had so large a scope of country shown on the Derroteros, and that when I embraced in the survey the whole width of the valley, and part of the sides of the mountains I was still obliged to extend the survey as far South as I did for quantity, and there found the Divisaderos I felt justified in considering

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8 that it might be the one called for

I felt justified in considering

8 that it might be the one called for

30.

In your last answer you say you found a large scope of country shown on the Diseño, do you mean as shown by the relative position of the natural objects to each other, or by applying the scale, and ascertaining the quantity embraced in the four lines, without regard to the natural objects?

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Ans.

I mean the number of square leagues, as shown by the scale of the Diseño; out of which I was to ~~select~~ segregate the two square leagues called for by the grant.

31.

When you found upon the ground that the scale was incorrect tested by the natural objects, why did you not discard the scale, and consider the Diseño, only with a view to of finding the natural objects represented upon it, and in so considering it would not the testimony of Salvador Vallejo have been sufficiently explicit to enable you to find the natural object which he mentions, and had you then adapted the Divisadero which he mentions, would you have found a larger extent of ground than was granted?

Ans.

I only relied upon the scale of the Deseño, so far as the position of any object upon it approximated to such as I found by my measurement upon the ground, and had I selected any Divisidero anywhere near the distance from the Southern boundary mentioned in Vallejo's deposition, I should not have been able to obtain the quantity called for in the grant, ~~as shown by~~ and as shown by the Deseño.

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32.

Is there not a Divisidero on the West side of the valley about three and a half miles below the mouth of the Cañon, which corresponds with the testimony of Salvador Vallejo to wit:

"The Southern boundary is "marked at the South west part "of the rancho by a Conical hill "a natural landmark, sometimes "called Divisidero"?

Ans.

There may be, as there are several conical hills in the valley, but I do not now remember particularly the one mentioned.

33.

Assuming that there is a Divisidero at the point mentioned, and that

Assuming that there is a Discrepancy

Q. at the point mentioned, and that you had established it as a point of beginning, ~~xx~~ and as a position of the Southern line, what impediment existed in running the Eastern and Western lines, so as to include 100 square leagues? In answering this question, examine Exhibit No. 1 to deposition of Geo. B. Hood, on file in this case?

Ans.

As I before remarked, I should have been obliged to extend the sides of the survey over the ridge of mountains bounding the valley, which would have been contrary to the Decreto, because the Decreto does not show the lines as running further than the sides of the mountain sloping towards the valley. In regard to this Exhibit No. 1. to deposition of Geo. B. Hood, I regard the survey here shown, as entirely incorrect, at least as regards conformity with the Decreto, because I know that Sulphur Creek only runs the course shown upon this map, upon the Eastern side of the main range bounding the valley, and the lines here delineated must have crossed over the main range in order to reach Sulphur Creek, at a point

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where it runs as here shown.

34.

But as you discarded the Divisadero mentioned by Salvador Vallejo, as not agreeing with that shown on the Deseño, when tested by the scale on the Deseño why could you not take sufficient latitude by the same rule, that is, if an application of the scale from the East to the West lines of the ~~survey~~ Deseño would give you sufficient quantity to make the survey as shown on the said Exhibit No. 1?

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Ans.

I did not say that I discarded the Divisadero mentioned by Vallejo, but only declined selecting one at the distance he estimated it from the Southern boundary, I could not take the responsibility of carping the range with my survey, for quantity, because the grant calls to be bounded by the high mountains ~~[illegible]~~ enclosing the valley.

Chandler C. Tracy

Sworn to and subscribed this 27th April. 1860, before me,
W. H. Chevers,
U. S. Commr.

No. 222. ND
584 Bd

U. S. Dist. Court.

The United States,

— vs —

Johnson Harrell,

Deposition of
C. C. Tracy, etc.

Filed Aug. 21. 1860.
W. H. Chevers
Clerk

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$12.00

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

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

GREETING:—

WHEREAS, objection has been made to the official survey and location of the land finally confirmed, in case No. 222, to Johnson Harrell known as "Musalacon", and situated in the County of Sonoma in said District.

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

WITNESS, the Hon. OGDEN HOFFMAN, Judge of said Court, at San Francisco, in said District, this 21st day of August A. D., 1860.

W. H. Chever

CLERK.

The within Monition was received by me on Monday the 20th day of August 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice, for four consecutive Wednesdays, in the San Francisco Herald, commencing on the 22nd day of August 1860; and for ~~four~~ (4) consecutive Saturdays, in the Sonoma Co. "Democrat" a paper published nearest the land, commencing on the 25 day of August 1860

Dated San Francisco, Aug. 22nd 1860

P. L. Solomon U. S. Marshal.

No. 222

UNITED STATES DISTRICT COURT,
Northern District of California.
IN LAND CASES.

THE UNITED STATES.

v.

Johnson Sorrell.

MONITION.

Returnable Sept. 26. 1860.

Issued August 21. 1860.

Filed Sept. 26. 1860.

W. H. Chevers
Clerk.

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In the United States District court for the northern District of California

The United States
vs
Johnson Howell

On the objections to survey of the Rancho Nuestra Sra

Mr J. J. Williams
Attorney for Claimant

Please to take notice that on Monday the 26th inst we shall move the said court for an order to close the testimony in the above entitled cause and fix a day for the hearing of the same

Calhoun Benham
U.S. District attorney &
R Aug. Thompson
Attys for the U.S.

Nov 20 1860

U. S. District Court

222

United States

vs

Johnson Hamlin

Filed Nov. 27, 1860.
W. D. Cheever,
Clerk

Motion to close
testimony

Copy of above served
on me this day
Nov. 20. 1860.

Thornton Williams
J Thornton

By consent this motion
is to be made on the 27 Inst.
in stead of 26th. ~~by consent~~

Thornton Williams & Thornton

R. Aug Thompson
atty for U. S.

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To the 1st Alcalde of this Jurisdiction.

Henrique Fitch, a Mexican by naturalization owner of the Rancho of "Soto=yome," in due form before your Honor appears and says:

That as shown by the (title) which he presents with due formality and the necessary oath, that he owns in his said Rancho eight "Sitios de ganado mayor" (eight square leagues) as indicated by the boundaries given in said (title); and in as much as it is necessary that in all future time it should be known what is the extent of these limits, and wheth=er any of his neighbors encroach on him, or he on them, be pleased to order that, proceeding by the accus=tomed forms of identity, view, and recognition, with citation of the neigh=bors, survey be made of my said lands, for which purpose I name now, and for the time when it arrives, as Surveyor Don Gaspar Farrell, a resident of San Rafael, and intelligent in these matters; that the other parties interested name for themselves other Surveyors, and having done this, that those so named, with the said Farrell named by him, appear; accept and make oath, and in conformity therewith proceed to said Survey.

patent

patent

Surrounding

1.

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Wherefore he asks your Honor that receiving this document you be pleased to order it executed as he requests, and when done, to return him these acts with the original proceedings which may be drawn up for the security of his rights; also this writing and all that is necessary &c.

Sonoma Septr. 2d 1844.

(Signed) H. D. Fitch -

In the Pueblo of San Francisco Solano on the second day of September One thousand eight hundred and forty four, before me, citizen Jacob P. Leese, 1st Alcalde of this jurisdiction, the above petition was read, and examined as presented with the document referred to; and order issued that, with citation of the circunvecinos (owners of adjacent lands), evidence be taken ~~of~~ identity, appearance, and recognisance of said lands, in which I am ready to assist personally - Thus I approved, ordered, and ~~approved~~ signed with my assisting witnesses.

(Signed) Jacob P. Leese.

Assisting Witnesses
(Signed) Victor Prudon
(") Julio Burrillo

In the aforesaid Pueblo on the third day of the same month and year, I, the aforesaid, First Alcalde with the witnesses of my assistance, in order to proceed to the proof of identity, caused to appear before me, citizen Ramon Carrillo, resident of this Jurisdiction, a farmer by profession, who being sworn by God and the sign of the Holy Cross in due form to tell the truth, and being interrogated with respect to the knowledge of the lands and places, terms and bounds pertaining to the Rancho of Sotoyome, said: that for six years he has been a resident of this Jurisdiction and knows that the lands pertaining to said Rancho, belong to Don Henrique Fitch, that they have bounda=ries, on the North, the (Sierra), on the South a range of high hills, on the east the boundary of Marcos West; and on the West that of German Piña, which he has seen and recognized on vario=us occasions, and that since the said Fitch possessed them, he has worked them and cultivated them, and has grazed his cattle on them, and in proof of what he has said he is ready to go to said lands with the present Mag=istrate and mark out their places, terms and boundaries; and that

9 mountains cov=ered with trees —

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what he has said is the truth under the oath which he has taken, which he affirmed and ratified: and he declared that he is twenty five years of age, and not knowing how to sign, he made the sign of the cross, of which I certify.

Assisting Witnesses

(Signed) Victor Prudon (signed) Jacob P. Leese
(") Julio Carrillo (") Romont his mark Carrillo

In continuation, I caused to appear before me citizen Guillermo Burns, resident of this Jurisdiction, by profession a farmer, who being sworn in due form to tell the truth, and interrogated with respect to his knowledge of the lands and places, terms and bounds pertaining to the Rancho of Sotoyomé, said: That he has been a resident of this jurisdiction for five years and knows that the lands pertaining to said Rancho belong to Don Henrique Fitch, and have for boundaries on the North the (Sierra), on the South a range of high hills, on the East the boundary of Marcos West, and on the West that of German Piña, which boundaries he has seen and recognized on various occasions, and that since the said Fitch has possessed

Mountains covered with trees —

them he has worked and cultivated them, and grazed his cattle in them, and in proof of what he has said he is ready to go to said land with the present Magistrate and point out thier places, terms and bounds; that what he has said is the truth under the solemnity of the oath which he has taken, which he affirms and ratifies, and he declares that he is thirty years of age, and that he is not disqualified by law from being a witness in the case; and he signs with me and the assisting witnesses; of which I certify.

(Signed) Jacob P. Leese
(") Guillermo Burns

Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

In continuation, I caused to appear before me citizen Mariano Elizalde, resident of this jurisdiction, by profes=
=sion a farmer, who having taken the oath in due form to make true an=
=swer to the interrogatories put to him, respecting the knowledge of the lands and places, terms and boundaries pertaining to the rancho of Soto=
=yomé, said: that for seven years he has been a resident of this juris=

=diction, and Knows that the lands per=
=taining to said rancho ~~of Sotoyomé~~
belong to Don Henrique Fitch; and
that they have for boundaries, on the
North the (†Sierra), on the South the
High Hills, on the East the boundary
of Marcos West, and on the West
the boundary of German Pina, which
he has seen and recognized many
times, and that since the said Fitch has
possessed them, he has worked and
cultivated them, and grazed his cattle
in them; and in proof of what he has
said he is ready to go to said lands
with the present Magistrate and
mark out their places, terms and
boundaries; that what he has said is
the truth under the solemnity of an oath
which he affirms and ratifies; he de=
=clares that he is twenty eight years of
age, and is by law a competent
witness; and he signed with me
and my assisting witness, which I
certify. (Signed) Jacob P. Leese
(Signed) Marianot his Elizalde mark

Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo.

† Mountains covered with trees –

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Being in the field, in the place called
Sotoyomé the seventh day of September
One thousand eight hundred and forty

four, I, the first Alcalde of Sonoma, acting by virtue of my office, with two assisting witnesses for want of a Public Notary, and the witnesses ex=amined by me, present citizen Hen=rique Fitch, owner of said lands, and citizens Marcos West and German Piña, his (colindantes and) neighbors, proceeded to view and examine the lands of said rancho, and for the better understanding of the matter, I mount=ed on horse-back in company with all the said parties, ordered the a=foresaid persons to point out to me the places, terms and boundaries of the lands, according to the land marks which they have described in their depositions; and in conform=ity to this order they led the way to the East to a group of pine trees which they pointed out to me; and thence I proceeded with the examina=tion and view of said lands, direction South, till we reached the beginning of the line of Marcos West where there is a dry river=let (an (arroyo seco); thence con=tinuing in direction West, we reached the beginning of the line of German Piña; thence, in direction North, till we reached the point where the recognizance was begun, which they said were the last terms and bounds

(coterminous and surround=ing)

a dry river=let

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of the said lands belonging to Don Henrique Fitch, whose places, I, the said Magistrate saw and re=
=cognized with the witnesses of my assistance, the witnesses examined and the papers presented, and the documents referred to and attached to these presents, the identification of said lands being certain, in conform=
=ity with and according to the declar=
=ations of said witnesses: In testimony of which it is written out in due form, and I signed it with my assisting witnesses, and the others ~~who~~ who know how to write; I certify.

(Signed) Jacob F. Leese. at the request of Marcos West
(Signed) Guillermo Burns.
(Signed) German his + mark Piña
(Signed) Mariano his + mark Elizalde

Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

Immediately I, the aforementioned First Alcalde, said that in order to proceed with the survey referred to in these acts, I order notice to be given to the said Don Hen=
=rique Fitch that he ratify his appointment of a surveyor and that all the (colindantes) agree to appoint

co=terminous neighbors.

one on their part, required to be in=
=telligent in the matter of Surveying
and that the persons appointed, appear
accept and make oath, and this being
done, that I shall be prompt to ap=
=point the day for said survey:
This I approved ordered and signed
with my assisting witnesses.
(Signed) Jacob P. Leese
Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

On the same day, month, and year, I,
the first Alcalde of Sonoma, read
and (gave) (give) notice of the foregoing
order, according to its intent and contents
to citizen Henrique Fitch and to his
(colindantes) (coterminous neighbors) in their persons, who,
having heard and understood, said
they received notice; and the first said
he ratified the appointment of Don
Gaspar Farrell, and the second
appointed Don Guillermo Burns,
both intelligent and (honest men) of (legal capacity)
who were notified to appear, accept,
and make oath, and consequently to
proceed to said survey as ordered;
and those who know how to write
sign before me and the assisting witnes=
=es. I certify. At the request of Marcos
West, (Signed) Guillermo

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Burns.

(Signed) German his + mark Piña
(Signed) Gaspar O. Farrell
(Signed) H. D. Fitch
(Signed) Guillermo Burns
(Signed) Jacob P. Leese

Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

In the Pueblo of Sonoma, on the ninth day of the month of September One thousand eight hundred and forty four, I, the First Alcalde of the Jurisdiction, acting in virtue of my office with two assisting witnesses for want of a Public Notary, read and gave notice in person to Don Gaspar Farrell and Don Guillermo Burns, whom I know, of the order, its use and their appointment as Surveyors; and having heard and understood they said they accepted the office of Surveyors which was conferred ~~upon~~ on them, and they made oath in legal form, that they would perform the duties of the office faithfully and legally according to the best of their knowledge and understanding, and that they would make the said Survey with fidelity and exactness, and to the satisfac=
=tion of all the parties interested;

=tion of all the parties interested; and they sign it with me and the assisting witnesses.

(Signed) Gaspar O. Farrell
(Signed) Guillermo Burns
(Signed) Jacob P. Leese

Assisting Witnesses,
(Signed) Victor Prendon
(Signed) Julio Carrillo

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In continuation, I, the said Magistrate, having seen the acceptance and oath of the Surveyors appointed, order, that for making the said survey, the eleventh day of the present month be designated and appointed, and that it thus be notified to the said Surveyors, and they having said they acknowledged notice and signed with the present Magistrate and the assisting witnesses.

(Signed) Guillermo Burns
(Signed) Gaspar O Farrell
(Signed) Jacob P. Leese

Assisting Witnesses
(Signed) Victor Prendon
(Signed) Julio Carrillo

On the same day month and year, summons were issued to the (Colindantes) ter-terminous neighbors. Marcos West and German Piña to ap=
=pear on the 11th inst. in the said Ran=

11

12.

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=cho of Sotoyomé, at eight O'clock A. M.; and in testimony I sign with my assisting witnesses.

(Signed) Jacob P. Leese

Assisting witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

In the Rancho of Sotoyomé in the eleventh day of September One thousand eight hundred and forty four, present citizen Henrique Fitch and the circunvecinos (owners of neighboring lands), I caused to appear before me and my assisting witnesses, Gaspar Farrell and Guillermo Burns, the appointed Surveyors, and ordered them to take a rope and measure off fifty varas with a vara=measure of four castillian palmos and the said Surveyors in my presence measured off on a well stretched rope, with a castillian Mexican and sealed vara measure the aforesaid number of fifty varas, which they faithfully and legally verified in the sight and presence of the party interested and of the neighboring land holders; and in testimony, I ordered that it be written out in due form and that they proceed to said Survey as is

1 palms

ordered, which I certify, signing it

ordered; which I certify, signing it with my assisting witnesses.

(Signed) Jacob P. Leese

Assisting Witnesses
(Signed) Victor Prudon
(Signed) Julio Carrillo

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Being in the field and lands of pertaining to the rancho of Sotoyomé, on this eleventh day of September One thousand eight hundred and forty four, I the First Alcalde of the Jurisdiction of Sonoma, acting by virtue of my Office with two assisting witnesses for want of a Notary Public, present citizens Farrell and Burns, the Surveyors appointed by the party interested and the (colindantes) I ordered them to proceed to survey the eight leagues, more or less, which belong and pertain to the said rancho according to the (title) and map presented; In obedience to which, having examined and measured the cordel (rope), they began the survey at the point on the northern side called Arroyo de los (Pinanetes) on the boundary of German Piña, Letter A; thence along the margin of the hills E. S. E. to letter B. distant 28 cordels of 50 varas each; from B, in direction E. N. E. to letter C. seventy cordels; from C. to D. direction S. E.

Coterminous neighbors

1 patent

to again

Pinanetes

13.

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distant fifty seven cordels; from D. to E. direction N.E. distant four cordels; from E. to F. direction S.E. distant forty eight cordels; F. to G. direction N.E. distant six cordels; from G. to H. direction S.E. distant eighty six cordels; from H to J. direction E.S.E. distant seventy five cordels; from J. to K. direction S.W. by S. distant one hundred and fifty four cordels; from K. to L. direction S. by W., distant seventy four cordels; from L. to M. direction W.S.W. distant one hundred and twenty four cordels - from M to N. direction N.W. distant one hundred and thirty two and one half cordels; from N. to O. direction N.W. by W. distant twelve cordels, from O. to P. direction N.W. distant ninety four cordels; from P. to Q. direction N.W. by W. distant thirty cordels.

Whence it results that from the Survey of the land belonging to the Rancho of Sotoyome, of the said Don Henrique Titch, that it lies in a square form of fifty thousand, two hundred and twenty five varas of circumference from A. to Q. as is indicated in the adjoined diagram, reduced by the irregular=

of the ground to forty six thousand

of the ground to forty six thousand three hundred and thirty varas; and the said Surveyors declare (com=plete to him) that citizen Henrique Titch is informed of the lands which belong to him according to the (title) and map placed at the beginning of (these papers), Wherefore, and in sign of true possession and of the usual ceremony, he pulled up stones and grass, and threw them to the four winds in man=ifestation of his legal and legit=imate possession which he took for himself.

^patent

^this record of proceedings

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In consequence I, the aforesaid Magistrate, ordered, that for the better recognition of the lines described, he erect at his own cost and maintainance, some stone and lime, monuments, more than a vara high, in order that in all future time it may appear that the neighboring land=owners recognize and respect them as terms and bounds; and that said survey was made quietly and pacifically without any one gain=saying, he asked it as a testimony; and I the said Magis=trate give it to him as having been so executed; and that the

Tas they declared.

Survey was made to the best of the Knowledge and understanding of the Surveyors, without injury, fraud or deception against any person; and they for greater se=curity and satisfaction sign with me, and the assisting witnesses

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(signed) H. D. Fitch
(signed) Gaspar O. Farrell
(signed) Guillermo Burns
(signed) German his Piña mark
(signed) for Marcos West
(signed) Guillermo Burns
Before me (signed) Jacob P. Leese
Assisting Witnesses
(signed) Victor Prudon
(signed) Julio Carrillo —

Record of proceedings

In view of the (expediente) being completed, in which it is shown that Juridical possession has been given of the rancho called So=toyomé to Don Henrique Fitch, let the original papers be given to him for his convenient uses, with the documents which he presented.

I, Jacob P. Leese, First Alcalde of this Jurisdiction acting by vir=tue of my office, with two assis=ting witnesses, for want of a Notary Public, thus approve,

order and sign, in Sonoma, the

order and sign, in Sonoma, the seventeenth day of the month of September One thousand eight hundred and forty four on common paper for want of the corresponding stamp.

(signed) Jacob P. Leese

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Assisting Witnesses
(signed) Victor Prudon
(signed) Julio Carrillo.

Received the regular fees.
Sonoma October 17th 1844.
(signed) Jacob P. Leese

Fees $182 50/100.

I certify the foregoing to be a true and correct translation from the original spanish Docu=ment on file in this Office in case No. 16. Heirs of A. D. Fitch for the place named Sotoyome, an=nexed to the deposition of Julio Carrillo, Geo. Fisher
Secy—

(Endorsed) No. 16. Heirs of A. D. Fitch Sotoyome. Translation of Juridical possession, Filed in Office Febry. 2d. 1852. Geo. Fisher Secy. Original annexed to the deposition of Julio Carrillo Augt. 6th. 1852 Geo. Fisher secy—

17.

18.

Recorded in Record of Evidence
Vol. VII. p. 139.

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Office of the Surveyor General,
Of the United States for California

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

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I, J. W. MANNEVILLE, Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, **Do Hereby Certify**, that the Eighteen preceding, and hereunto annexed pages, numbered from one to Eighteen inclusive, exhibit a true, full, and correct copy, of an original document, together with the endorsements thereon, as the same appears on file in case No. 16 on the docket of said Board of Commissioners —

EXAMINED AND FOUND CORRECT-

Keeper of Archives.

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this 9th day of February 1861.

J. W. Manneville U. S. Surveyor General, for California.

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U. S. Dist. Court

The United States

vs

Johnson Morrill

Record of Juridical
possession - in Sacramento
"Sotoyome" Rancho

Filed Feby 15. 1861.
W. H. Chevers
Clerk

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Judge Morrell
$12.00

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U. S. Dist: Court.
Nor: Dist: Cal.

The United States. No. 222.
—vs—
Johnson Harrell. Testimony taken in open Court on the hearing of the case, on the part of the United States, on Friday the 15th February, 1861.

Cutter McAllister being duly sworn, deposes, and says, I am Clerk of the ~~District~~ Circuit Court of the United States for the Districts of California. In said Court there is a suit pending, entitled The United States, vs, the Heirs of J. G. Peña, decd, et al, said suit is brought on the Equity side of said Court, ~~and~~ by the United States, through their Acting U. S. Attorney Pelly, R. Wise. It is a bill asking for an injunction enjoining, and restraining the defendants mentioned in said bill from selling

or disposing of any portion of the lands embraced in the patent, lying within what is known as Russian River Valley, and also to set aside the patent so far as it embraces lands lying in Russian River Valley, ~~for~~ on the ground of fraud, and mistake in the survey on which said patent was founded, and on the ground that no lands lying within the Russian River Valley are embraced within the Grant, ~~and~~ or decree of confirmation, by authority of which said survey was made.

The foregoing deposition is objected to by Counsel for the Claimant.

Cross examined by Counsel for Ctt.

There is a decree on file in this Court, in said Cause, refusing the injunction prayed for in this bill.

There is a paper on file in this

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cause, endorsed "Answer to Rule to produce authority," signed by Philip R. Wise, Acting U. S. Attorney in which he states that said suit was instituted upon information which in his judgment was of such a character as justified him in proceeding against said defendants prior to receiving special instructions from the Solicitor of the Treasury, and showed the Solicitor not approve his action, he moved, under instructions from that office discontinue the suit.

Butler McAllister

Sworn to and subscribed February 15. 1861. before me,

W. A. Chevers,
Clk. U. S. Dist. Court.

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U. S. Dist. Court.

The United States.

— vs —

Johnson Harrell.

Deposition of Carter McAllister taken in open Court.

Filed Feby 15. 1861.
W. A. Clement,
Clerk

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Judge Dorrell
$4.00

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

I, **J. W. MANDEVILLE,** *Surveyor General of the United States for the State of California, and as such, having in my office, and in my charge and custody, a portion of the* **Archives** *of the former* **Spanish** *and* **Mexican** *Territory, or Department of* **Upper California,** *as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law,* **Do Hereby Certify,** *that the* One *preceding, and hereunto annexed page -, of tracing paper, numbered* ~~from one to~~ One *inclusive, exhibit a true, full, and correct copy, of* the diseño contained in an orig=inal document, purporting to be the record of Juridical possession of the Sotoyome Ranch, as the same appears on file in case of Heirs of H. D. Fitch vs The United States, on the docket of said Board of Commis=sioners —

Keeper of Archives.

EXAMINED AND FOUND CORRECT-

In Testimony Whereof, *I have hereunto signed my name officially, and caused my Seal of Office to be affixed, at the City of San Francisco, this* 9th *day of* February *1861.*

J. W. Mandeville U. S. Surveyor General, for California.

No 222 ND
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U. S. Dist. Court

United States
vs
Johnson Horrill

Map of Juridical
Possession in Soboyome
Rancho —

Filed Febry 15. 1861.
W. A. Chevers.
Clerk.

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At a Stated Term of the District Court of the United States for the northern district of California, held at the Court Room in the City of San Francisco on Wednesday the 3rd day of May, 1865.

Present:

Hon Ogden Hoffman, Dist Judge

The United States
v
Johnson Horrell } No. 222

This cause came on to be heard upon exceptions to the official survey of the land confirmed, which survey is shown by the copy plat filed November 25th 1859; and counsel for the respective parties having been heard and due deliberation had in the premises, it is ordered, adjudged and decreed that the said exceptions be and the same hereby are overruled.

And it is further ordered, adjudged and decreed that the survey and location of the land confirmed in this cause, the field notes of which survey were approved by J. W. Mandeville, then Surveyor General of the United States for the State of California, on the 19th day of March, 1858;

is a good and valid survey and location of the land confirmed herein, and that the said survey and location be and the same hereby is approved.

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And it is further ordered adjudged and decreed that the certified copy plat of said survey and location (containing 8,866 $\frac{89}{100}$ acres) filed November 25th 1859, and marked "approved May 3rd 1865, Ogden Hoffman, U. S. Dist. Judge" be attached to and made part of this decree for a more full and particular description of the eight thousand eight hundred and sixty six $\frac{89}{100}$ acres of land now finally confirmed to the said Johnson Howell.

Ogden Hoffman
Dist Judge

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(584 Bd)

U. S. Dist Court

The United States

v

Johnson Horrell

Final Decree

Filed May 3rd 1865
Geo. C. Gorham
Clerk
Per Dan'l T. Sullivan
Deputy

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No 222 The United States vs Johnson Howell et al } U. S. District Court Northern District State of California

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Claim to "Rancho de Musulacon".

Brief for Claimants.

The Record in this case shows that on the 2d day of May 1846, Pio Pico Governor of California issued a grant to Francisco Benyesa for two square leagues of land on the Russian River, the location of which is fully & particularly described in the grant. This grant is subject to the usual conditions, See Record pages 18 & 20.

It further appears that on the 3d day of June 1846, the grant was duly approved by the Departmental Assembly. See Record page 31.

The signature of Pio Pico is duly proved by Gov. Alvarado Record page 8.

The testimony of Jose Benyesa pages 5 to 8 & 9 to 11. & of Manuel Torres page 11. show fully & clearly that Francisco Benyesa, took possession of the land erected a house on it, with corrals & stock, & cultivated a small tract which he fenced in, within a year after he obtained his

grant, & that he continued to reside on it from 1846 to 1851, when he sold to the present claimants. The evidence of his brother Jose Benuysa page 6 discloses the fact that he was delayed in making his improvements by the disordered state of the country during the summer & fall of 1846, consequent upon the occupation of California by the Americans, but still he erected a house & took actual possession of the land within the Grant.

The testimony of Salvador Vallejo (pages 14 & 15) together with the map attached to the petition (page 24) shew that the boundaries of the grant are clearly defined & can be readily found from the description in the grant itself - and that the boundaries include about the quantity of land granted so that no juridical survey was necessary - & even if it had been necessary, the change of government so soon after issuing the grant, rendered it impracticable.

The southern boundary, separating this tract from that of Don German Piña, is very clearly marked, by the peculiar conical hill mentioned by Salvador Vallejo (page 14) & which he says was agreed upon by Benuysa & Piña as the point dividing their ranchos. This conical hill is clearly marked on the original map as being the

South West corner of this claim. There are probably few claims ~~specifically~~ before this court where the boundaries are so clearly marked out.

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The evidence further shews that on the 29th day of July, 1851, Francisco Benysa & his wife executed to the present claimants this warranty deed for the conveyance of these premises. Record page 32.

The Board of Land Commissioners, confirmed the claim & in the decree of confirmation, set forth a full description of the boundaries, & the claimant asks this court to affirm the said decree.

Crocker & Robinson.
Attys for Claimants.

I have examined this Brief and also the record to which it refers: and am willing to submit the case upon the Record.

A. G. Russell

Nov. 24. 1855. Asst. Counsel of U.S.

No. 222.

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Claimants Brief.

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Crooks & McPherson
Attys. for Claimants.

The United States
vs
Johnson & Howell et al

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The claimants in this case have produced the original grant made by Governor Pio Pico to Francisco Berreyesa on the 2d May 1846 —
The is pedente the archives of the former government and contains in addition to the usual documents the record of the approval of the concession by the Departmental assembly on the 3d June 1846 —
No doubt is suggested as to the genuineness of any of these documents —
The grantee appears within the year prescribed by the grant to have entered into the possession of his land and to have resided in a wooden house built by him upon it. He also placed upon it cattle and commenced its cultivation —
There is no difficulty in identifying & locating by means of the description in the grant

and the map to which it refers. and which is contained in the expediente

The Commissioners in their opinion ~~on~~ this case observe "that altho the title was executed but a short time before the American occupation it appears to have been made in good faith and with due regard to the requirements of the law."

This Court perceives no ground for differing from the Commissioners in their view of the ~~law~~ case —

~~The claim must therefor be~~ decision of the board must therefor be affirmed & a decree entered accordingly

Sept. 3. 1856

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Johnson Francisco
Transcript - Francisco Sales
P. W. Thomson & Respondent
Appellant

Opinion

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

The United States
vs.
Johnson Howell
} Private Land Claim "Musilacon"

Please take notice that on Tuesday ~~xxxxx~~ the 21st instant at 11 o'clock A.M. or as soon thereafter as the same can be reached the above entitled cause will be taken up and submitted to the Court on the questions therein involved, including the question as to the validity and correctness of the survey and location of the land claimed in the said cause.
Aug 14th 1860.

Calhoun Benham
U.S. District Attorney

To
R. Robinson Esq
Attorney for the said
Johnson Howell.

Johnson Howell Napa City
Robert Robinson Sacramento

Service accepted this 14th day of August 1860. Robert Robinson
E B Crocker

U.S. Dist. Court

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The United States

v.

Johnson Howell

Notice.

21st Dec.

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Office of the Board of Commissioners,

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

San Francisco, June 20th 1855

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. 584 on the Docket of the said Board, wherein Johnson Harrell is the Claimant against the United States, for the place known by the name of "Musulacion"

and request your receipt for the same.

I am, Respectfully,
Your Ob't Servant,

Geo: Fisher