CASE NO.
20
SOUTHERN DISTRICT

CIENEQUITA GRANT

ANASTACIO CARRILLO
CLAIMANT

LAND CASE 20 SD PAGES 76

20 SD
PAGE 1

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 328

Anastacio Carrillo CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

Cienequita

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

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

The Petition of Anastacio Carrillo *for the Place named* Cienequita *was presented, and ordered to be filed and docketed with No.* 328 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

Upon which Petition the following subsequent Proceedings were had in their chronological order, to wit;

Los Angeles Sept 9th 1852

In Case No. 328 Anastacio Carrillo, for the place called "Cienequita", the Deposition of Pablo de la Guerra a witness in behalf of the claimant, taken before Commissioner Harry I Thornton was filed, and is in the words and figures as follows to wit: (Vide page 3 of this Transcript)

Los Angeles Sept 28th 1852

In case numbered 328 the Counsel for the Claimant filed the follow-

ing motion to wit:

Moved, That Case numbered 328 be placed on the Trial Docket

Which motion was taken under advisement

San Francisco Feby 21st 1853

Ordered on motion of the United States Associate Law Agent that the following case be placed on the Trial Docket to wit No 328 Anastacio Carrillo for "Ciénegueta"

San Francisco Feby 28. 1853

Case No 328 Anastasio Carrillo for the place named "Ciénegueta" Called, The Counsel for the Claimant Mr Halleck read the Petition and papers in Evidence; The United States Associate Law Agent filed his Brief; Case submitted and taken under advisement by the Board

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San Francisco Mar. 14th 1853

In Case No 328 Anastasio Carrillo for the place named "Ciénegueta" Commissioner Harry I Thornton delivered the Opinion and the Decree of Final Confirmation of this Board

Ordered that the Opinion and the Decree of Final Confirmation of this Board delivered this day in this Case be recorded on the Journal

Which Opinion and decree are in the words and figures as follows to wit

(vid. page 29 of this Transcript)

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3 328

Petition

20 SD
PAGE 4

To the Honorable Commissioners to Settle Private Land Claims in California.

The petitioner Anastasio Coarillo respectfully shows that on the 10th day of October AD 1845 Pio Pico Governor of California by virtue of authority in him vested granted to the petitioner the tract of land called "El parage de la Cuiegueta" in the present County of Santa Barbara containing 4439 varas Square, a little more or less as is more particularly described in the title which with the map and act of possession are submitted herewith marked "A" with translations marked "B".

That he has ever since been and now is in the occupation and possession of said tract of land That he knows of no conflicting claims That he relies for confirmation of title upon the original papers submitted herewith, upon the minutes and records in the Office of the Surveyor General and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the Commissioners to confirm to him the aforesaid tract of land.

By his Attys.
Halleck Peachy & Billings

Filed in Office Sept 17. 1852.
(Signed) Geo Fisher Secy.

Office of California Land Commission.
Las Angelos Sept 9th 1852.

Guerra

On this day before Henry S Thornton one of the Commissioners for ascertaining and settling private land claims in California, came Pablo de la Guerra a Witness produced in behalf of the claimant Anastasio Coarillo. whose petition is No 328 on the docket of the Board. And was duly sworn, his Evidence being given in English.

The Law Agent of the U. S. attended.

4 250

20 SD
PAGE 5

1st. Question. What is your name age & place of residence?

Answer. My name is Pablo de la Guerra my age is about 32 years. I reside in Santa Barbara and have lived in California all my life.

2nd. Just Examine the documents marked "A" and attached to this Petition in this case and say whether you know the signatures and whether the documents are genuine?

Ans. I am acquainted with the signatures of Pio Pico, Jose Maria Covarrubias, Anastasio Carrillo, Raymundo Carrillo, Joaquin Carrillo, Antonio Rodriguez, Miguel de la Guerra & Antonio Jimeno their signatures to those documents are genuine and the documents themselves are to the best of my belief are genuine.

3rd. Question. What do you know about the possession of this land?

Ans. I know that the Claimant Anastasio Carrillo has occupied this land since 1845 for his "Mantanzas" or killings I do not know that he has used it for other purposes.

Pablo de la Guerra.

U. S Law Agent present.

Sworn to & Subscribed before me this 9th of Septr 1852.

Harry I Thornton. Comr &c

Filed in Office Septr 9th. 1852
(Sigd) Geo Fisher Secy

328
1 of Doc A.

5

1849.

Posesion Judicial en favor del Sor D. Anastacio Carrillo, de un Solar de cuatrocientas varas en el Paraje de la Cienegueta.

Document
A.

Title, Map
& Possession

20 SD
PAGE 6

Pio Pico Vocal decano de la Asamblea Departamental y Gobernador provicional de las California por Ministerio Constitucional.

Por cuanto Dn. Anastasio Barrillo ha pretendido para su beneficio personal y el de su familia una suerte de tierra en las Cienequitas inmediatas á la Mision de Santa Barbara, y que antes ocupó el finado Juan Pablo indigena de la espresada; practicadas previamente las averiguaciones necesarias, en uso de las facultades que me son conferidas á nombre de la Nacion Mejicana he venido por decreto de este dia en concederle la espresada suerte de tierra, declarandola la propiedad de ella por las presentes letras, de conformidad con las la ley de 18 de Agosto de 1824, y reglamto. de 21. de Noviembre de 1828, y bajo las condiciones siguientes.

1a La tierra de que se le hace donacion es de estencion de cuatrocientos varas en cuadro poco mas ó menos; podra cercar la sin perjudicar las trabesias, caminos y servidumbres; la disfrutara libre y esclusivamente destinandola al uso y utilidad que mas le acomode; pero la tendra cultivada para impedir el denuncio.

2a No perjudicara en manera alguna á los indigenas de la mision de Santa Barbara que estan radicados ó se radicaran en las Cienequitas, en el libre aprovechamiento del agua para el riego de sus siembras y fuentes ó demas usos que de ella puedan hacer.

3a Solicitará del juez respectivo la

3 2 of Doc 51

9

de posesion jurídica en virtud de este Despacho, por el cual se demarcarán los linderos con las mojoneras necesarias.

En consecuencia mando, que teniéndose al presente título por firme y valedero se tome razon de él en el libro respectivo, 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 que corresponde, á diez de Octubre de mil ochocientos cuarenta y cinco.

Pio Pico

José Mª Covarrubias
Secretario.

Queda tomada razon de este título en el libro respectivo.

Angeles fecha ut supra
Covarrubias.

Here follows a map

Place of the map

01

328
3 of Doc A

10

20 SD
PAGE 9

Señor Alcalde del Pto. de Sta. Barbara

Anastasio Carrillo vecino y radicado en este punto; ante la justificacion de V. como mejor haya lugar en derecho comparesco y digo; que teniendo concedidas cuatrocientas varas en cuadro en el terreno de las cienegitas inmediatas á la Mision de Sta. Barbara, por titulo espaso del Gobierno del Departamto. fechado en diez de Octubre de mil ochocientos cuarenta y cinco el que debidamte. acompano; suplico se sirva de darme la posesion juridica del espresado terreno.

P. J. y en tal virtud, espero de la justa litegridad de V. (si la tiene á bien) haga efectiva esta esta mi solicitud de lo que recibira gracia y merced, recibiendo esto en papel comun por no haber lo del sellado que corresponde.

Sta. Barbara Agosto 2 de 1849
Anasto. Carrillo

Sta. Barba. Agosto 4 de 1849.

En virtud de la antecedente solicitud procedase por mi el presente Juez á la medicion señalamiento de linderos y posesion juridicial de las varas de terreno q. solicita el interesado en este espediente con arreglo á los documentos q. acompaña señalando p.a verificarlo el dia seis del presente para lo q. se citararan con voleto de comparendo á los arrendatarios del establecimto. R. P. Mtro. y Alcalde del mismo, asi yo el Juez de 1.a Instancia del Distrito de Sta. Barba. lo mande, de=

creté y firmé actuando por receptoría con testigos de asistencia por falta de Escribano nacional y público de q.e doy fé.

Raym.o Carrillo

Ante
J. Carrillo

Ante
Antonio Rodriguez

En seguida y en presencia de mi el espresado Juez, los medidores q.e lo fueron los indejenos Guillermo y Camto, tomaron un cordel de Yerda y con una vara de medir usual Mejicana midieron sincuenta varas para hacer la referida medicion en la flia. citada en el decreto anterior, y para q.e conste lo rubrique

(a formit)

En el paraje conocido con el nombre de la Cienegita á seis dias de Agosto del año del señor mil ochocientos cuarenta y nueve como á las tres de la tarde, yo el espresado Juez y presentes los Sres. q.e se citan en el decreto de esta misma flia. para proseder á la medicion de tierra concedida por el Sup.r Gob.no al Sr. D. Anast.o Carrillo segun el titulo q.e presenta, situadas en la orilla Norte del actual camino real q.e guia á Sta. Ynes y en linea recta con el seco q.e se halla hacia el Nordeste de la huerta del indio Benbenito, se comensó a tirar el cordel rumbo al Norueste y se midieron cuatro cordeles q.e son doscientos varas las q.e remataron en el tope de una pequeña Colina en donde se mando poner un mojon; Desde este punto rumbo Este cuarta al Norte se midieron nueve cordeles q.e son cuatrocientos cincuenta varas, y tambien allí

328
4 of Doc A

12

se ordenó la colocación de un mojon; desde alli con el rumbo Nordeste se medieron tres cordeles q. son ciento y cincuenta varas é igualmente se deberá poner en dho. punto otro mojon, desde el cual y con rumbo Esnordeste se midieron seis Cordeles q. componen trescientos varas y cuya medicion remató precisamente en el camino real citado desde donde con rumbo Oeste cuarta al Sur siguiendo el dho. Camino se midieron doce cordeles q. son seiscientos varas hasta donde por torcer el camino se torció igualmente de rumbo para poder llegar al punto donde se comenzó la medicion del terreno, y así poniendo alli su otro mojon y con rumbo Suroeste se midieron tres cordeles ó ciento cincuenta varas rematando como se á dho. la medicion en el punto donde se comenzó formando en consecuencia, el terreno cuya jurídica posecion se confiero á D. Anastacio Carrillo, una figura irregular de seis lados y conteniendo en calculo aproximativo una area de setenta y nueve mil y quinientos varas cuadradas, advirtiendo ademas q. los rumbos aquí designados son los q. demarca la aguja, y no los verdaderos ó corregidos

20 SD
PAGE 11

Y para constancia lo firmé por auto, siendo testigos presenciales de esta judicial posecion D. Miguel de la Grua. y D. Rafael Leyba, y á ruegos de mi asistencia Ordinaria de q. doy fé.

Raymd. Carrillo

asistta
J. Carrillo
Miguel de la Guerra
Fr. Antonio Jimeno

asista
Antonio Rodriguez
Rafael Leyba

En el referido lugar de la Cienguita y en el mismo dia mes y año D. Anastasio Carrillo, vecino de Sta. Barbara, acompañado del Alcalde 1.ro y testigos de asistencia de estos autos dijo, q. habiendose medido la tierra q. le corresponde segun consta en el auto anterior, tomaba y toma la verdadera y corporal posesion de dha. tierra - tierra medida pues le pertenece por justo titulo q. obtiene de la concesion q. de ella le hizo el Supor. Gobno del Departamento entro y poseó pr. ella - arranco yerbas espacio puñados de tierra rompio ramas de los arboles, é isó otras demostraciones y actos de posesion en señal - - - - - de la q. dejo tomada de dha. tierra, y yo Dho. Alcalde mando q. desde entonces lo tubieron y reconocieron por verdadero señor y poseedor de ella.

De todo lo cual ó expresado, pidió dho. D. Anasta.o Carrillo, q. para memoria en lo venidero, y conservacion de sus derechos, le fuese estendido por mi el repetido Alcalde una constancia; y lo firmó conmigo y los de mi asistencia de q. doy fé.

Raym.do Carrillo

asista
J. Carrillo

asista
Antonio Rodriguez

Certifico q. en la poss.n q. antecede y q. presencie como Ministro de estos neofitos, no fueron perjudicadas las huertas de los indigenas; y aunq. la medic.n se hizo pr. donde pasan los regadios de las siembras y huertas del Oeste, po. pr. la condic.n 2.a del titulo

328
5 of Doc. 18

14

de concess.n quedan asegurados los dhos. ind.s del "libre aprovechamto. del agua p.a el riego de sus siembras y huertas y demas usos q.e ella puedan hacer"

Sta. Barb.a fha. ut supra
Fr. Antonio Jimeno.

20 SD
PAGE 13

Filed in Office Sep.r 9.th 1852.
Geo. Fisher
Secy.

16 360

"B"

Translation of Title & Possession

20 SD
PAGE 14

Pio Pico Senior Member of the Departmental Assembly and Ex Officio Provisional Governor of the Californias.

Whereas Don Anastasio Cardo has for his own benefit and that of his Family asked for a Piece (suerte) of land in the "Cienegitas" near the Mission of Santa Barbara which was formerly occupied by the deceased Indian Juan Pablo of the aforesaid (Mission) the necessary examinations being previously made in use of the powers which are conferred on me in the name of the Mexican Nation I have by decree of this day granted him the aforesaid "Suerte" of land, declaring to him the ownership of it by the present letters in conformity with the law of Aug 18th 1824 and legislation of Nov 21. 1828 and under the following conditions.

1st. The land of which donation is made him is of the extent of four hundred varas square a little more or less, he may enclose it without prejudice to the crossings, roads and servitudes. he may enjoy it freely and exclusively making of it such use and benefit as may best suit him but he will keep it cultivated to prevent its being denounced.

2nd. He may not in any manner prejudice the Indians of the Mission of Santa Barbara who are settled or may settle in the "Cienegitas" in the free benefit of the water for the irrigation of their plantings and garden lots and other uses which they may make of it.

3rd. He shall request the proper Magistrate to give him Juridical possession in virtue of this title by whom the boundaries will be marked out with the necessary bounds.

In consequence I order that this present title being held as firm and valid note be made of it in the proper book, and it be delivered to the person interested for his security and other purposes.

Given in the City of Los Angeles on this common paper for want of the stamped which corresponds, on the 6th of October one thousand eight hundred and forty five.

(Signed) Pio Pico

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(Signd) José Mª Covarrubias
Secretary.

Note has been made of this title in the proper book
Angeles - date as above.

(Sgd) - Covarrubias.

To the Alcalde of the Port of Santa Barbara

I Anastasio Cardo a resident of and settled in this place before your Justification as I must may in law, appear and say that there having been granted to my four brothers and sisters square in the land of las Genegaitas near the Mission of Santa Barbara by a superior title of the Government of the Department dated Oct 10th 1845 which I duly transmit herewith. I request you will be pleased to give me the Juridical possession of the aforesaid land.

Wherefore, and in virtue of the foregoing I Expect from your just integrity (if you think it right) to comply with this my petition of which I will receive grace and favor. receiving this on common paper for want of the corresponding stamped.

Santa Barbara, August 2d 1849.

(Signd) Anastasio Cardo.

Santa Barbara, August 4th 1849.

In virtue of the foregoing request I the present Magistrate will proceed to the measurement, designation of boundaries and Juridical possession of the lands of land which the person interested in this Expediente asks for in conformity with the documents which he transmitted, designating for the purpose of verifying them, the sixth day of the present month for which day, the Issues of the Establishment the Rev. Father Minister and Alcalde of the same will be summoned in writing. Thus I the Judge of 1st Instance of the District of Santa Barbara ordered acted and signed acting in virtue of my Office with assisting witnesses for want of a National and public Notary, to which I certify.

20 SD
PAGE 15

(Sgd) Raymundo Carillo
Assisting Witnesses
(Signd) J. Carillo
(Signd) Antonio Rodriguez.

In Continuation and before me the said Magistrate the Measurers who were the Indians Guillermo and Canuto, took a hand rope and with a Common Mexican vara measure, the measurements referred to in the date mentioned in the previous Acte, and in testimony I sign it in unione.

Rubric of Raymundo Carillo.

In the place known by the name of "La Cienegita" on the 26th day of August in the year of our Lord one thousand eight hundred and forty nine about three O'clock in the afternoon. I the aforesaid Judge the persons summoned in the Acte of this same date being present in order to proceed to the measurement of the land granted by the Superior Government to Don Anastasio Carillo according to the title which he presents, situated on the Northern margin of the present main road which goes to Santa Inez and in a right line with the fence which is on the North east of the Garden of the Indian Benemeto the Cordel was begun to be drawn Northwest and four cordels were measured which are two hundred varas the which ended in top of a little hill where a bound was ordered to be placed. From this point course East quarter North nine Cordels were measured which are four hundred and fifty varas and there also a bound was ordered to be placed, thence course, North East, three Cordels were measured, which are one hundred and fifty varas in which point also a bound should be placed from this point and with course South East, there were measured six Cordels, that is three hundred varas, which measurement ended exactly at the main road referred to, from which with course West, one quarter South following said road twelve Cordels were measured which are six hundred varas to a point where as the road turned the direction was also changed in order to arrive at the point where the measurement of the land was commenced

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20 SD
PAGE 16

19 330

20 SD
PAGE 17

and so placing there another Corner and with course South West, three Cordels or one hundred and fifty varas were measured, the measurement ending as has been said in the point of Beginning, the land of which Judicial possession is given to Don Anastasio Cardelo forming Consequently an irregular figure of six sides containing by an approximate Calculation an area of Seventy Nine thousand five hundred square varas, observing also that the Courses here given are those shown by the Sketch. not the true or Corrected, and in Testimony I sign it Officially, the Witnesses being present of this Judicial possession being Don Miguel de la Guerra and Don Rafael Leyba and besides those of my ordinary assistance, to which I Certify.

(Signd) Romualdo Cardello

Assisting Witnesses.
(Sgd) D. Cardelo
(") Antonio Rodriguez.

(Signd) Miguel de la Guerra
(Signd) Rafael Leyba
(Signd) Fr. Antonio Jimeno.

In the aforesaid place of la Canejita and on the same day month and year, Don Anastasio Cardello a resident of Santa Barbara, accompanied by the 1st Alcalde and witnesses of assistance of these acts said, that the land which corresponds to him having been measured as appears by the foregoing act he was taking and took the true and Corporal possession of said land measured as it belongs to him by Just title which he has by the grant of it made to him by the Superior Government of the Department he entered a bow and walked over it, pulled up grass, scattered handfull of Earth, broke branches of trees, and made other demonstrations and acts of possession in sign of that which he said was taking of said land and said Alcalde ordered that from thenceforth he should be held and recognised as true owner and possessor of them.

20 320

Of all which or the forgoing said Don Anastasio Carillo prayed that for a future testimony and the preservation of his rights a testimony should be issued to him by me the aforesaid Alcalde and he signed it with me and of those of my assistance to which I certify.

(Signed) Ramondo Carillo

Assisting witnesses.
(Signed) D. Carillo
(Signed) Antonio Rodriguez.

I Certify that in the preceding possession which I witnessed as the Minister of those Neophytes, the gardens of the Indians were not prejudiced and although the measurement was made where passes the waters for the sowing and gardens on the west, yet by the 2nd Condition of the title of grant said Indians have insured to them "the free benefit of the water for the irrigation of their plantings and gardens lots and other uses which they make of it".

Santa Barbara, Oct 22 1850.
(Signed) Fr. Antonio Jimeno

I Certify the foregoing to be a true and correct translation from the Original Spanish document on file in this Office in Case No 328, Anastasio Carillo Annexed to the Opposition of Pablo de la Guerra.

(Signed)
Geo. Fisher Secy.

Filed in Office Sept 7. 1852.
(Signed)
Geo. Fisher Secy

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U. S. Land Commission for California
Session at San Francisco.

Anastasio Carrillo
vs.
The United States

No 328. "Cangueitas"
Opinion by H. I. Thornton.

Opinion

20 SD
PAGE 19

This claim is founded upon a grant made by Governor Pio Pico on the 18th of October 1845 to the Claimant for a suerte or lot of ground of four hundred varas square a little more or less. The grant recites, that the necessary examinations had been previously made, and in the name of the Mexican Government, declares the ownership in the grantee of the said ground in conformity with the decree of the 18th of August 1824 and of the ordinance of the 21st November 1828 of the Mexican Nation. There does not appear to be any approval of the grant obtained by the Governor from the Departmental Assembly nor any official measurement and judicial possession had during the existence of the former government, which however did not continue for a year after the making of the grant. But the actual occupation and use of the said place are proved to have been enjoyed by the grantee from the date of the grant to the present time. The land is within the ten leagues, all the objections to the confirmation of this claim have been considered and overruled by this Board in the case of Cruz Cervantes, and of others heretofore decided. The archives of the former government according to the statement of their Custodian, admitted as evidence in the case shows that such a grant was made and although there has not been found an expediente of the title among them, yet the original grant is introduced and its genuineness fully established.

The only question of any consideration in this case is that of the delineation or segregation of the land from the remainder of the public domain. The identification must be ascertained by the grant itself, or be capable of being ascertained by extraneous testimony 15th Peters 313 &c. The grant describes the land as a suerte or lot in the marshes, contiguous to the

Mission of Santa Barbara which was formerly occupied by the aforesaid Indian Juan Pablo of the aforesaid Mission, and is for the quantity of four hundred varas I gave a little more or less. The facts stated of the existence and location by proof well lead to the place, so as to enable the Surveyor General to locate it without any difficulty. It was so designated and plotted off as appears by the map in evidence. And although that was done subsequent to the change of government, yet as a means of identifying the land granted and as evidence in connection with the possession of its segregation from the Public domain it may well be considered.

In the adjudication of this claim it is necessary to determine whether the intention of the grantor was to convey a specific lot or parcel of land or merely to convey a given quantity at the place indicated. If a quantity merely and not a specific and known piece of land as a unit was the subject of the grant, then the words a little more or less, according to our previous decisions are mere redundant expressions or terms having no effect whatever neither avoiding the grant for uncertainty, nor increasing or diminishing the quantity expressly named. In large rural grants in a sparsely inhabited and wild country, where the quantity grantable is limited by law, where the map or diseno referred to in the grant is made by conjecture, without any survey and more especially where there is an express reservation of the sobrante or overplus within the map, which may result from the survey of the granted quantity, the construction above stated seems altogether reasonable. But when the grant is of a piece of ground in language embracing the whole of it, which is noticed land out in the midst of a settlement and which may as reasonably supposed to be known as containing a grantable quantity, then the words more or less are not insignificant but apt and appropriate terms implying, as they always do except when overcome by circumstances which may be lawfully regarded

400
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214

20 SD
PAGE 21

or by Conveyance, ceems a grant of a specific tract or parcel of land. In the Case now presented I think the grant is of this specific character. It is of a small parcel contiguous to the Mission of Santa Barbara, without the almost the universal reservation of a Sobrante. the place had been occupied in Severalty before its grant, and above all the grant is of a Suerte de tierra which means a lot of ground already separated from others by its own boundaries, being synonomous with the Greek ἀρέλλας single not all this distinctive, of the Romans. The question is one of great interest if of any at all to the parties in this Case, for if the grant be considered as one for the quantity of four hundred varas square it must be of that quantity within the bounds of the place designated, if it contains so much and since those boundaries appear not to contain the quantity of four hundred varas square, the result would be the same no matter how the grant may be ~~construed~~ construed in this particular.

In accordance with the principles laid down for our government in the decision of the claim presented in the 11th Section of the Act of the 3rd of March 1851, This claim is valid and ought to be confirmed, Commissioner Hall concurs in the result.

Harry S Thornton.

Decree

This Board upon full consideration of the various grounds affecting the validity of the said claim, having come to the conclusion that the same is valid therefore now proceed to make, and does hereby make the following decree or report of final confirmation to wit. It is decreed that the said claim be confirmed to the claimant to the Suerte of ground described in the said grant (to the Suerte of ground described in the said grant) to the extent of the bounds thereof, being the same lot of ground of which the grantee has had possession ever since the date of and under the said grant with the express proviso, nevertheless inserted herein, out of abundant caution, that the land hereby confirmed shall not in any event exceed the grantable quantity of Eleven Square leagues.

25

Hiram Hall
Henry I Thornton } Commissioners

Filed in Office March 14. 1853.
(signed)
Geo Fisher Secy.

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 twenty five pages, numbered from 1 to 25, 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. 328 on the Docket of the said Board, wherein Anastacio Carrillo is the Claimant against the United States, for the place known by the name of Cieneguita

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this twenty first day of June A. D. 1854, and of the Independence of the United States of America the seventy-eighth

Geo: Fisher

Sec.

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Office of the Attorney General of the United States,

Washington, 11th September 1854.

Anastasio Carillo
vs.
The United States.

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 30th day of June 1854 the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Cushing

Attorney General.

No 20.

U. S. District Court.
Southern District of California

The United States,

vs.

Anastasio Carrillo.

Notice of appeal from Atty Gen.

Filed Nov 7th 1854.

C. E. Fan.
Clerk.

20 SD
PAGE 25

In the District Court of the United States for the Southern District of California.
Los Angeles County.

Anastasio Carrillo
vs
The United States

No 328.

To the Honorable Isaac S K Ogier Judge of the District Court of the United States for the Southern District of California.

The petition of Pacificus Ord (of Monterey County) Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court in his proper person, in the name and behalf of the United States, represents as follows.

That heretofore, to wit, on or about the 17th day of September AD 1852, Anastasio Carillo presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, in the words and figures following, to wit." The "petitioner, Anastasio Carrillo respectfully shows "that on the 10th day of October AD 1845 Pio Pico Gover= "nor of California by virtue of authority in him "vested granted to the petitioner the tract of land "called "El Parage de la Cienequita" in the present "County of Santa Barbara containing 400 varas "square, a little more or less as is more particularly "described in the title which with the map and "act of possession, are submitted herewith marked "A" "with translations marked "B". That he has "ever since been and now is in the occupation

"and possession of said tract of land That he
"Knows of no conflicting claims. That he relies for
"Confirmation of title upon the Original papers
"submitted herewith, upon the minutes and records
"in the Office of the Surveyor General and upon
"such other and further proofs as he may be ad=
"vised are necessary. Wherefore he prays the Com=
"missioners to confirm to him the aforesaid tract
"of land."

You petitioner further represents that thereafter
to wit, on the 14th day of March AD 1853, the said Com=
missioners confirmed by final decree the said
Claim of the said Anastasio Carrillo, in the words
and figures following, to wit, "This Board upon
"full Consideration of the various grounds affecting
"the validity of the said claim, having come to
"the Conclusion that the same is valid. Therefore
"now proceed to make, and does hereby make the
"following decree or report of final confirmation
"viz. It is decreed that the said claim be con=
"firmed to the claimant to the sevrte of ground,
"described in the said grant to the extent of the
"bounds thereof, being the same lot of ground
"of which the grantee has had possession ever
"since, the date of, and under the said grant with
"the Express Proviso, Nevertheless inserted herein, out
"of abundant caution, that the land hereby confirmed
"shall not in any event exceed the grantable quantity
"of Eleven square leagues."

(Signed) "Hiland Hall } Commis="
" "Harry I Thorton } sioners."

"Filed in Office March 14. 1853."

(Signed) "Geo Fisher Secy."

That thereafter, to wit, on the 27th day of June AD

That thereafter, to wit, on the 27th day of June AD 1854 a duly certified transcript of the said decree and proceedings, and the papers and evidence on which it was founded, in said Cause, was filed in the Office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 328, reference to which it is prayed may be had and made a part of this petition.

That on the 30th day of June AD 1854 the Honorable Caleb Cushing Attorney General of the United States, received a duly certified duplicate of said transcript of said final decree, and proceedings, of said Commissioners in said Cause, (No 328) and the papers and evidence on which said decree was founded.

That thereafter, to wit, on the 7th day of November AD 1854, the said Attorney General of the United States, filed, or caused to be filed, on behalf of the United States, a Notice with the said Clerk of said District Court for the Southern District of California, that the Appeal in said Cause of Anastasio Carillo vs the United States, from the decision of the said Commissioners to ascertain and settle the private land claims in the State of California, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States.

Your petitioner further represents that the said land claimed as aforesaid, is within the Jurisdiction of this Honorable Court.

And your petitioner further represents and insists that the said decree of said Commissioners is erroneous, and ought to be reviewed, reversed and set aside, for many errors and imperfections, of law and evidence apparent in said certified transcript

of said cause now on Appeal from said Commis=
sioners to this Honorable Court.

And your petitioner further represents that the said claim is invalid, and said decree erroneous, on the following grounds.

1. That the said Anastasio Carillo shows no valid title to the said land claimed by him as aforesaid, And it is denied that he has any.

2. That the said alleged grant of Governor Pio Pico was made in violation of the 4th Article of the Coloni=zation law of Mexico of the 18th of August AD1824, in this, that the land granted, as alleged by claimant was within ten leagues of the sea Coast, there being no evidence by claimant that the Supreme General Executive Power of Mexico previously approved of the Colonization of the lands of California, within ten leagues of the Coast, and it is denied that such previous consent of said Su=preme General Executive power of Mexico in such case was ever had.

3. That at the date of the said alleged grant, the said land claimed as aforesaid, was occupied by the Missions of California, and particularly by the Mission of Santa Barbara, or the Indians of said Mission.

4. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the law of Mexico of the 18th of August AD1824, and the regulations of the 21st of November AD1828.

5. That the said alleged grant of land claimed, is not on stamped paper; that it is not made subject to the approval of the Territorial Deputation or De=partmental Assembly of California, as required by law; that it has not the conditions requiring the

grantee to build a house and have it occupied

grantee to build a house and have it occupied, and to cultivate the said land within a proportionate time, as required by law; that there is no description in said grant of the said land by which it can be identified; that there is no map referred to in said grant to aid the description or identification of said land; that the said alleged grant of said land is void for uncertainty.

6. That there is no evidence of the approval by the Territorial Deputation or Departmental Asembly of California, of said grant of said land. And it is denied that there ever was any approval of said grant, as required by law.

7. That the said alleged grant of Pio Pico, of said date, was not a definitive grant, such as is required by law.

8. That the alleged act of Juridical survey and posesion of said land by Raymundo Carrillo dated August the 6th AD 1849 was made after the 7th of July AD 1846, and after the change of sovereignity of the Territory of California; and that said act was therefore void; that said act of survey and posesion, was not made according to the Ordinance, or law; that it was not made according to the said grant of Pio Pico; that the said Raymundo Carrillo had no lawful authority to make a survey and give Juridical posesion of the said land, until after the issuance, by the Governor of California, of the definitive grant, wherein it should be stated that the grant was made in exact conformity with the provisions of the law, and with the approval of the Deputation or Departmental Asembly of California; that the said survey and Juridical posesion

of said land are vague and indefinite; that there is no evidence that the said Raymundo Carillo was at the date of the said act (August the 6th A.D. 1849.) a magistrate or first Alcalde of Santa Barbara, with lawful authority to make such survey and give Juridical possession of said land. And it is denied that he was at said date a magistrate or first Alcalde of Santa Barbara, and that he had lawful authority to perform said alleged Judicial acts.

9. That there is no evidence that the map shown in the record, is the original map belonging to the original expediente, or that it is an authentic copy thereof.

10. That there is no evidence that the said alleged grantee and claimant, built a house on the said land, within one year from the date of the said grant, and that it was occupied, and that the land was cultivated, as required by law. And it is denied that he ever built a house on said land within a year from the date of said grant, and that it was occupied, and the land cultivated.

And no proof having been made by said claimant of the allegations of his said petition, or in support of his said claim filed as aforesaid, no decree ought to have been made or grounded thereon; but the said petition, ought to have been dismissed and said claim rejected by said Commissioners, upon the grounds aforesaid.

Wherefore the said Pacificus Ord Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and the laws and Statutes in such case made and provided, prays that the said Anastasio

Carillo or his Attorney may be served with a copy

Carrillo, or his Attorney, may be served with a copy of this petition, and that this Honorable Court will review the said decision or final decree of Confirmation of said Commissioners to ascertain and settle the private land claims in the State of California, and decide on the validity of the said claim of said Anastasio Carrillo for said land claimed and confirmed as aforesaid, and that the same may be decreed invalid. And all such other Orders, Judgments or decrees as may be just. With Costs, and general relief.

P. Ord

Attorney of the United States
for the Southern Dist of Calª.

20.

No. 20
(No. 328, Transcript)

Anastacio Carrillo
Adts.
The United States.

Petition of Adts. of Ptff for Injunctn.

Filed Dec. 21. 1854.
J. E. Carr
Clk.

United States of America,
Southern District of California. } SS.

TO **The President of the United States,**

Anastacio Carrillo

20 SD
PAGE 34

GREETING:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, ~~and each of you~~, in the District Court of the United States, in and for the Southern District of California, on the Twenty first day of December in the year of our Lord one thousand eight hundred and fifty-four at the City and County of Los Angeles, in said District, by Pacificus Ord, Attorney of the United States for the Southern District of California, in behalf of the United States, praying the said Court to review, upon the grounds therein set forth, the decision of final confirmation, of the Commissioners to ascertain and settle the private land claims in the State of California, of the claim of Anastacio Carrillo, for the tract of land called El Paraje de la Cienequita, in the County of Santa Barbara, California to the extent of about four hundred varas square; which said claim was presented, by your petitioner, to said Commissioners, on or about the 17th of September A.D. 1852, and by them confirmed on or about the 14th of March A.D. 1853.

and that you, ~~and each of you~~, are required to appear at said Court, in said City, within ten days after the service hereof, if served on you within the County of Los Angeles, and within twenty days if served on you in the County of San Diego or San Bernardino, and within forty days if served on you in any other County of said State, exclusive of the day of service, and answer said petition, or that ~~judgment by default will be taken against you, and each of you, and the prayer of the said petitioner will be granted, with costs.~~ the plaintiff will apply to the court for the relief demanded therein

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of the said Court, this Second day of February in the year of our Lord one thousand eight hundred and fifty-five at Los Angeles aforesaid.

J. E. Carr
Clerk.

No. 20

Served on the 15th March

United States of America,

Southern District of California,

U. S. District Court.

Anastacio Carrillo

ads

The United States.

SUMMONS.

Received February 2-1855
Lawrence Thurston
U.S. Marshal

20 SD
PAGE 35

Marshals cost —

Copying summons	,90
Serving Petition	3,00
Serving summons	3,00
actual traveling expenses	60,00
	$66,90

I served this summons along with the proper copy of the petition upon Anastacio Carrillo the defendant by delivering unto personally a true copy of the summons and petition.

at the town of Santa Barbara in the Southern District of California on the Fifth day of March A. D. 1855.

Sworn to and subscribed before me, this 10th day of March, 1855.

C. E. Isaac Clerk.

Lawrence Thurston
U.S. Marshal.
by
R. A. Thos.

In the District Court of the United States, for the Southern District of California.
County of Los Angeles.

Anastasio Carrillo
Appellee
vs
The United States
Appellants
} No. 328.

The Answer of Anastasio Carrillo to the petition of U. S. District Attorney, respectfully shows -

That on the 10th of October A.D. 1845, Pio Pico Governor of California, by virtue of authority in him vested, granted to the said Carrillo, the tract of land called "El parage de la Cienegita" being 400 varas square, a little more or less - situated in the present County of Santa Barbara - and the said Carrillo on or about the 6th August 1849, was put in possession of the said land by a duly authorized officer of the mexican government, who marked out the boundaries of the same. That ever since the date of the aforesaid grant, the said Carrillo has been and now is, in the occupation and possession of the said land, and that he duly fulfilled all the conditions of the grant.

Wherefore he prays this Honorable Court to decide upon the validity of the said claim, and to confirm the same.

Halleck Peachy & Billings
Attorneys for Appellee.

19. April 1855.

I served this answer on T. Ord US District Atty in the Southern District of Cali. by delivering to him in person a certified copy hereof this Aug 16th 1855

Edward Hunter
U. S. Marshal

Sworn to and subscribed before me, this 16th of Aug. 1855

C. C. Lan
Clk

No. 20.

U. S. District Court
Southern District California.

Anastacio Garcia
Appellee
vs
The United States.
Appellants.

Answer

Halleck Peachy & Billings
Attys for Appellee

Filed Aug 17th 1855

C. C. Lan
Clk.

United States
vs
Anastacio Carrillo

In the U. S. Dist. Court for the Southern Dist. of California.

And now comes the Defendant & moves the court to set aside the default entered against him in this cause as improperly taken.

J. Hamilton Brent
Atty for Defd

20 SD
PAGE 38

No 20

United States

vs

Anastacio Portillo

Motion to set aside default

Filed June 12th 1855.

J. E. Carr
Clk.

No 20.

In the United States District court for the Southern District of California.

20 SD
PAGE 40

The United States, appellants
vs.
Anastasio Carrillo, appellee
} Transcript No 328.

On motion of H. W. Halleck, of counsel for appellee

Ordered that additional testimony may be taken by either party in the above entitled cause.

No 20

The United States, appellants
vs.

Anastasio Carrillo, appellee

Order to take further testimony.

Filed Oct 9th 1855
C. S. Fain
Clk

Hallett, Peachy & Billings
Attys for appellee

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

20 SD
PAGE 42

Anastacio Carrillo ads The United States.	No. 20. (Receipt, No 328)

To, Anastacio Carrillo
& his Attorney.

Take Notice that the above entitled Cause will be brought to hearing by the U S States, on Friday the 19th of October A.D. 1855; or as soon thereafter as the Same can be heard by the Court.

Los Angeles
October 13th 1855.

P. Ord
U S Dist Atty

No. 20.

Anastacio Carrillo
ads
The United States

Notice of hearing
by US.

Filed Oct 13th 1855.
J. E. Sam
Clk.

P. Ord atty US.

1845

Expediente promovido por Dn. Anastasio Carrillo en pretension de 400. varas de tierra en el parage de las Semenguites

475.

2

Exmo. Sor.

Anastasio Castillo Alf.z retirado dela Compañia
Angeles Se- de Sta. Barb.a ante la justificacion de V.E. como
Diciembre 20. mejor halla lugar en derecho, comparece y dice. Que
a. 1845. hagandose una suerte de tierra desocupada como
Informe de la de cuatrocientas varas mas ó menos en el parage
Comision de conocido con el nombre de la Cienguita p.r haber
muerto el dueño que la obtenia, con permiso del
Misiones sinado Comand.te General y Gefe politico D.n José
Figueroa, desde el año treinta y cuatro que se se-
Pido
-cularisaron las Misiones, y que por el espo-
-nente se les dio posecion á varios indijenas
en iguales terminos, siendo administrador de la
inmediata Mision del mismo nombre y que hoy
disfrutan excluibam.te; solicita el que suscribe se
V.E. lo tiene á bien, se le concedan las varas
del terreno mencionado, para solo el objeto de ha-
cer anualm.te una corta matanza, y sin puede
una quarta para ortaliza y fruta temporal.
Por Tanto - A V.E rendidam.te suplica se le agracie con
el Solar indicado, por tener la voluntad de sus
herederos y la de la magoria delos neofitos q.e
halli existen y no pertenecer á vecindad ni
corporacion, dispensando esta solicitud en papel

comun por no haber en este lugar del sello que corresponde

Sta. Barba Sbre. 14 de 1845

Anas. Carrillo

Exmo. Sor.

La Comision de Misiones tiene el honor de informar á V. E. que en su sentir puede beneficiar el Gobierno al que representa con el pequeño terreno que pretende, bajo la condicion que no perjudicará en el uso de las aguas á los indios que siembran en las Vienegritas.

Angeles Setiembre 25. de 1845

Andres Pico Juan Manso

Angeles Octubre 10 de 1845.

Se concede la tierra que se pretende; extiendase el titulo respectivo.

Angeles

4

Novembre

Pio Pico Vocal decano de la Asamblea departamental y Gobernador provisional de las California por ministerio constitucional.

Por cuanto Don Anastasio Carrillo ha pretendido para su beneficio personal y el de su familia una suerte de tierra en las inmediatas á la Mision de Sta Barbara, que antes ocupó el indígena Fr. Ignacio de la esposada; por actitudes previamente las averiguaciones necesarias, en uso de las facultades que me son conforme á nombre de la Nacion Mejicana, he venido por decreto de este dia en concederle ~~la propiedad de~~ la expresada suerte ultimamente declarandole la propiedad de ella por las presentes letras, de conformidad con la ley de 18. de Agosto de 1824 y reglamento de 21 de Noviembre de 1828., y bajo las condiciones siguientes, pero mas o menos;

La tierra de que se le hace donacion es de 2 leguas 40 0. varas en cuadro estension, y podrá cercarla sin perjudicar las travesias, caminos y servidumbres, la disfrutará libre y esclusivamente destinandola al uso y ~~utilidad~~ utilidad que mas le acomode; pero la tendrá ~~cultivado~~ cultivada para impedir el

Ceremonio

2.ª No perjudicará en manera alguna á los indígenas del la Mision de Sta. Barbara que se están radicado ó se radicaren en las Cienegitas, en el libre aprovechamiento del agua para el riego de sus siembras y huertos y demas usos que de ella puedan hacer.

3.ª Solicitará del Juez respectivo la dé posesion jurídica en virtud del este despacho, por el cual se demarcaran los linderos con las mojoneras necesarias.

En consecuencia mando que teniendose el presente título por firme y valedero, se tome razón del él en el libro respectivo, 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 que corresponde, á ~~[illegible]~~ diez de Octubre de mil ochocientos cuarenta y cinco.

Queda tomada razon de este título en el libro á que corresponde.

20 SD
PAGE 50

Office of the Surveyor General,

Of the United States, for California.

I, **JOHN C. HAYS,** *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,** *by virtue of the power vested in me by law,* **Do Hereby Certify,** *that the* Six — *preceding, and hereunto annexed pages of tracing paper numbered from one to* Six — *inclusive, exhibit a true and accurate copy of a Document denominated "(1845) Expediente Promovido Por Dn. Anastacio Carrillo en fortuncion de 400 varas de tierra en el parage de las Siequitas", now on file and forming part of the said archives in this office*

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* Nineteenth *day of* October *1855*

John C. Hays **U. S. Surveyor General for California.**

Extract from the 2nd Section of the Act of Congress "providing for the Survey of Public Lands in California, and for other purposes," Approved, March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official Seal to be prepared for the Office of the said Surveyor General, [California] and any copy or extract from the plats, field notes and other records and documents on file in his office, when attested as such by the said Seal and the signature of the Surveyor General, shall, in all judicial matters, have the same force and effect as the original."

No 21

United States Dist. Court
Southern Dist. of Cala

The United States, appellants.
vs.
Anastasio Carrillo, appellee

Expediente

Filed Dec 28th 1855.
C. E. Lam
Clk

Halleck Peachy & Billings
Attys for appellee

Halleck Peachy & Billings

Translation.

1845

Expediente moved by Don Anastasio Carrillo in application for 400 varas of land in the place of Las Cienegaitas

475.

Most Excellent Señor

Anastasio Carrillo, retired Ensign of the Company of Santa Barbara, before the justification of your Excellency, in legal and and proper manner, appears and says:

Angeles Sept 20th 1845

The Committee on Missions will report. Piov

That there being a piece (suerte) of land unoccupied, of about 400 varas, a little more or less in the place known by the name of "La Cienegita", there having died the owner who obtained it with the permission of the late Comandant General and Political Chief Don José Figueroa, since the year (18)34 when the missions were secularized, of which land this petitioner gave possession to various Indians in equal terms, he being then Administrator of the Mission near by of the same name, and which now they exclusively occupy; the undersigned asks your Excellency to be so good as to grant him the varas of said land for the sole purpose of making annually a small butchering (matanza) and, if he can, a garden

for planting trees and fruit of the season. Wherefore he duly prays Your Excellency to grant him the lot (solar) indicated, as he has the consent of the heirs and of the majority of the Neofitos which exist there and do not belong to town or corporation; pardoning this petition on common paper there being none of the corresponding stamps in this place.

Santa Barbara September 14th 1845.

Anastasio Carrillo.

Most Excellent Senor.

The Commission on Missions have the honor to inform your Excellency that in their opinion the Government can give to the petitioner the small piece of land which he asks for, under the condition that he will not interfere with the use of the waters by the Indians who sow in the Sieneguitos

Angeles September 25th 1845.

Andres Pico
Juan Manso.

Angeles October 10th 1845.

The Land asked for is granted, let the respective title be made out.

Pio Pico, Senior member of the Departmental Assembly, and Provisional Governor of the California by virtue of the Constitution.

Whereas Don Anastasio Carrillo has asked, for his own personal benefit

and that of his family, a lot of land in Los Cienegnitas next to the Mission of Santa Barbara which formerly the deceased F. Gardiam of said mission, occupied; the necessary examinations being previously made, using the powers conferred on me in the name of the Mexican Nation, by decree of this day I have granted to him the said lot of land, declaring to him the ownership of it by these present letters, in conformity with the law of the 18th of August 1824 and the regulations of the 21st of November 1828, and under the following conditions:

1st The land which is granted is in extent 400 varas square; he may enclose it without prejudice to the crossings, roads and easements, enjoy it freely and exclusively, making such use of it as may best suit him, but he will have it cultivated in order to prevent denouncement.

2d He will not prejudice in any manner the Indians of the Mission of Santa Barbara who are or may be established in the Cienegnitas in the free use of the water for irrigating their sowings and gardens and other uses which they may make of it.

3d He will ask the respective magistrate to give him the juridical possession in virtue of this despatch by whom

the boundaries shall be marked out with the necessary bounds.

Wherefore I order that the present title being held as firm and valid, note be taken of it in the respective book, and that it be delivered to the party interested for his security and other ends.

Given in the city of Los Angeles, on this common paper for want of that of the proper stamps, this 10th day of October 1845.

Note is taken of this title in the corresponding book.

No 20

United States Dist Court
Southern Dist of Calif.

The United States, appellants
vs.
Arcadio Carrillo, appellee

Translation of Expediente

Filed Dec 28th 1855
C. E. Carr
Clk.

Halleck Peachy & Billings
Attys for appellee

No. 20

Anastacio Carillo
appellee

vs.

The United States
appellants

The claimants move for a new trial in the above entitled cause - for the purpose of introducing new and further evidence particularly into influence to the identity or capability of the segregation of the land granted, and in support of his said motion refers to the annexed affidavit of Frederick Billings

By his attys
Hallett Kilbourn & Billings

And he further asks for the purpose aforesaid that the cause be continued until the next term of this Court

By his attys

Hallett Kilbourn & Billings

No. 20

Anastasio Carillo Appellee

vs

The United States Appellant.

Dist Ct. So. Dist of
Cal.a U. S. A.

Lorenzo Billings makes oath says that in the above entitled cause, the juridical possession given after the change of sovereignty of California was conducted to at least have the effect to show the identity and capability of segregation of the land granted - and that, for that reason, evidence other than that contained in sd juridical possession, of the identity of the land granted was not introduced - that such other evidence exists, and if a new trial is granted can be introduced making good the claim of the claimant - and showing clearly that a distinct and particular piece of land was granted which distinct and particular piece of land has ever since the grant been occupied by the claimant and is the identical land for which a confirmation is asked.

Lorenzo Billings

Subscribed & sworn to
this 7th day of January AD 1856

Before me. J. E. Carr
Clk

No. 20

The United States
appellant

v

Anastacio Carillo
appellee

Motion for New Trial
& Continuance

with affidavit

Filed March 7th 1856
C Elan
Clk
by Omnga
Depy

20 SD
PAGE 59

Wallacebaugh & Billing
Attys of Claimant

Deposition of Antonio Rodriguez a witness on the part of the appellee, taken before Otis Sims United States Commissioner for the District of California at the United States Dist Atts office for the Southern Dist of California, in the City of Los Angeles on Saturday the 10th day of January AD 1857 at 2 O'clock PM by consent and agreement of the respective attorneys of the parties to be used as testimony on behalf of the claimant and appellee in a certain cause now pending in the United States Dist Court for the Southern Dist of California being case No 20 on the Docket of said Court wherein Anastacio Covillo is claimant and appellee and the United States are appellees

Present Ord N Atty on behalf of the United States and Messrs Ready and Billings Esqrs attorneys on behalf of claimant and appellee —

Anastacio Coxillo
appellee
as
The United States
appellant

No 20

"Las Simeguitas"

20 SD
PAGE 61

Antonio Rodriguez being duly sworn on the part of appellee deposes and answers as follows

Quest What is your name age and place of Residence

Ans My name is Antonio Rodriguez, am 79 years of age and reside in the County of Santa Barbara

Quest Do you know the tract of Land claimed in this case by Anastacio Coxillo called "Las Simeguitas" or "Suerte en Las Simeguitas", If so, How long have you known it and where is it situated?

Ans I know the tract of Land and have known the same ever since it was conceded by the Government to Anastacio Coxillo, in 1845 - by Rio Pico - It is on the north side of the main Road that goes from Santa Barbara to Santa "Inez" and distant from ~~two~~ Santa Barbara less than two leagues

Quest Do you know the Garden or "Huerta" of ~~Benidito~~ "Benidito", the Indian

Ans I know both the Garden and the man well

Quest Where is this garden of the Indian situated with reference to the lands claimed in this case?

Ans Going in the direction of Santa Ana, it is on the Right hand, a little to the north of and some short distance from the lands claimed in this case

Quest Is this garden of the Indian a well known locality?

Ans It is well known

Quest Had the Indian a fence about his garden?

Ans Yes, the Indian's garden is fenced and has always been cultivated

Quest Is the "Las Tinajitas" well known

Ans It is a locality well known

Quest Does Anatacio Coronilla live on this tract of land claimed by him, if you, how long has he lived upon it and in what manner has he occupied it—

Ans He does not reside, but he has his Corral ~~&c~~ on it where he slaughters his Cattle every year and lives there during the slaughtering time of the year and during that time he erects a temporary house — He has always had a Corral on it —

Cross Examination by U S Atty

Quest When does Anatacio Coronilla the

Quest When does Anastacio Carrillo the claimant in this case live?

Ans In Santa Barbara — has lived there since 1845 born

Quest Have you any interest in this case

Ans I have not

Antonio Rodriguez

Sworn & Subd to before me this 10th day of January AD 1857

Geo
N Monroe

United States of America
Southern Dist of the State of
California

J. Sims United States Commissioner for the District of California do hereby certify that the foregoing deposition of Antonio Rodriguez was taken before me in accordance with the request & agreement of the said attorneys at the United States District Court Office in the City of Los Angeles, State of California. That the said Antonio Rodriguez was by me duly sworn according to Law as a witness in said cause in the caption of this deposition mentioned and after being so sworn his testimony was by me reduced to writing in his presence and that of the said attys and after having been by me carefully read to him and by him corrected as he desired was by him signed in my presence

In testimony whereof I hereunto set my hand & affix my seal this 10th day of January A.D. 1857

J. Sims
U.S. Com.r

20

U. S. District Court
for Southn. Dist. Cal.a

Anastasio Coullo
appe
ads
The United States
apptee

Deposition of
Antonio Rodriguez

Filed this 10th January
1857
C. Sinnott
J. H. Coleman
Dep

20 SD
PAGE 65

In the District Court of the United States within and for the Southern District of California

Hon. Isaac S. K. Ogier Judge.

December Term 1856

The United States
Appellant

vs

Anastasio Carrillo
Appellee

No. 20.

Transcript from the Board of Land Commissioners No. 328.

This cause coming on to be heard, on appeal from the decision of the Board of Land Commissioners to settle private land claims in California, upon the transcript of the proceedings and decision of said Board and the papers and the documentary and other evidence upon which said decision was founded, and upon other evidence taken and filed in this Court, and counsel for the respective parties having been heard, it is

Ordered adjudged and decreed that the decision of said Board of Land Commissioners confirming unto the above named appellee, Anastasio Carrillo, the land described and set forth in his petition to the said Board

of Land Commissioners and in the documentary and other evidence taken in this case, be and the same is hereby affirmed, and that the title of the said Anastasio Carrillo to the said land is a good and valid one.

The land of which confirmation is hereby made is situated in the County of Santa Barbara, and is known by the name of "Las Cienegitas" or "Suerte en Las Cienegitas", or "El paraje de la Cienegita" being the same which was granted to said Anastasio Carrillo by Gov. Pio Pico on the tenth day of October 1845; it is in quantity equal to the amount of Four Hundred Varas square, and no more, and has the location and boundaries ~~as set forth~~ described in the map, grant and documents of title: reference being ~~also~~ had to the measurements of juridical possession in aid of such description.

Isaac S. K. Ogier
U. S. Dist Judge
for the S. Dist of Cal

No. 20

The United States
appellant
vs.
Ancarico Carrillo
appellee

Decree.
Affirming decision
of Land Commissioners &
confirming Claim.

Recorded in page 139

Filed Jany 14th 1857
J. Pond
Clk.

No 20.

The U. States appellants vs. A. Carrillo, appellee

The Transcript contains

I Petition to Commissioners p 3.

III Deposition of Pablo de la Guerra pp 3 & 4 proves signatures to original grant and to juridical possession, and that Claimant has occupied this land for his "matanzas" or butcherings since 1845.

IIIII Title, juridical possession and map. pp 5 to 14.

IIV Translation of title and juridical possession pp 16 to 20.

V Opinion of Commissioners pp 22 to 24.

VII Decree of Confirmation pp 24 & 25

Proceedings in U.S. Dist Court.

1st Transcript	— — — —	filed June 27th	1854
2d Notice of appeal	"	Nov. 7th	1854
3d Petition of U.S. for Review	"	Dec 21st	1854
4th Answer	"	May 1st	1855.
5th Expediente certified by S. Genl	"	Dec. 28	1855
6th Translation of expediente	"	Dec. 28	1855

The expediente in this case contains the petition, endorsement by the Governor, Report of Committee on Missions, and Copy of Grant, showing the good faith of the grantee and the genuiness of title.

The only question in this case not already decided by this court, is that of identification, and even this objection arises rather from the opinion and decree of the Commissioners than from anything in the title papers. When the case was before the Commissioners the Archives of the former Government under the

charge of the Surveyor General had not been arranged, and no copy of the Expediente could then be produced; (vide opinion of Com. Thornton); it has since been found and is now of record in the case.

The petition to the Governor taken in connexion with the concession shows that the grant was for quantity, and not for meets and bounds; it is for a suerte or lot of 400 varas square in the Cienequita or little marsh contiguous to the Mission of Santa Barbara, which lot was formerly occupied by the deceased Indian Juan Pablo. If the grant had been for a specific tract without quantity or designation of boundaries, it might be necessary to prove aliunde what are the boundaries of the specific tract so granted, in order to establish its identification. But regarding this grant as conveying only a given quantity of land in the place designated, all difficulty is obviated. The words a little more or less, without the usual reservation of the surplus or sobrante induced the commissioners to make their decree in this case for eleven leagues, whereas in fact the lot granted contains even less than the 400 varas square mentioned in the petition and grant. In their opinion and decree the commissioners construed the grant most favorable for the grantee & against the grantor. This is certainly a correct rule of construction for private grants; but it is understood

that this court has adopted the rule that in a public grant no excep passes to the grantee, and we think the authorities fully sustain this view of the court.

"Every grant," says Wood in his Institutes, "made by the King upon surmise or suit of party shall be taken most beneficially for the King and against the party." x x "His grant shall not be taken to two intents, that is, it shall not inure to any other intent than that which is precisely expressed in the grant." (Wood's Institutes p 21.

"As the Kings grants proceed chiefly from his bounty x x they have in all times been construed most favorably for the King, contrary to grants of common persons." 8 Bacon vol 8. p 149

"Public grants are to be construed most favorable to the grantor, for being made by a trustee for the public, no alienation should be presumed that is not clearly expressed." N. S. Digest 5. p 87 [8. Port. 9]

"Public grants convey nothing by implication; they are construed strictly in favor of the King." Peters 6 p 738.

"Grants of the strongest kind - do not extend beyond the meaning and intent expressed in them, nor by any construed construction, make anything pass against the apt and proper, the common and usual signification and intendment of the grant." Peters 6. p 738.

"The general words of the King's grant shall

never be so construed as to deprive him of a greater amount of Revenue than he intended to grant, or to be deemed to be to his or the prejudice of the Commonwealth." Peters 6 p 738.

"Even where a survey has been made in accordance with a Spanish grant with more land included in the exterior boundaries than called for in the grant, the Supreme Court has ordered a new survey to contain the number of acres granted and no more". Peters 8 p 483

Additional References. Smith's Report of Arredondo cases pp 3 to 7. Jackson vs. Lamphire. Peters 3 p 289. Beaty vs Knowle's Lessee Peters 4 p 168. The P. Bank vs. Billings. Peters 4 p 514, Martin et al vs Waddell Peters 16. p 367.

The rule of construction of a Public Grant is the same in Spanish Law. Even where the land has been measured and the title based on such measurements such title passes no more land than the exact amount mentioned in the grant; no matter whether the excess within the limits mentioned in the grant results from error or dishonesty of the Surveyor. Book 4 Title 12 Law 15 of the "Recopilacion de Indias" directs that such surplus lands within the grants of private ownership may be compounded for. But it is ordered, by Law 19 of the same title and book, that the Proprietors of the lands within which such surplus is found cannot compound for the same unless they have

ten years in the profession. Vide also p. 33 of the Ordenanzas de Tierras y Aguas.

These, and other authorities which might be quoted, prove conclusively that this grant must be construed as a grant for quantity, viz, 400 varas Square, if so much can be found in the place indicated, and for no more.

This view of the question quantity mentioned in California grants, (and which we think is equitable both towards the claimants and the Government), frees this case of all its difficulties, and, under the decision of the Supreme court in the Fremont case, it must be confirmed.

The land was granted in this case for a specific object, viz, for a butchering establishment, and it is in evidence that the claimant has occupied and used it for that purpose ever since the date of the grant.

It has been objected on the part of the United States to the confirmation of this claim, that no proof has been adduced to prove the bounds either of the land formerly occupied by the Indian Juan Pablo, or of the land described as La Cienequita, or little marsh contiguous to the Mission of Santa Barbara, and that therefore there is no identification or segregation.

In the words of the U.S. Supreme

court, land may be severed from the Public domain.

1st "By some grant which gives it locality by its terms, by reference to some description",

or 2d "By a vague general grant with an authority to locate afterwards by surveys, making it definite." 10 Peters 331.

Again in 8th Peters 479. (U.S. vs Moses E. Levi) it was held that a grant made at or near a place where the boundaries are not given in the petition or grant, may be surveyed for quantity after the transfer of sovereignty to the United States.

The same doctrine is held in

U.S. vs Clarke	8 Peters 436.
U.S. vs Richards	8 " 473
U.S. vs Hernandez	8 " 485
U.S. vs J. Huertas	8 " 488
Chuteau's Heirs vs U.S.	9 Peters 147
U.S. vs. A. Huertas	9 " 172
U.S. vs Chaires et al	10 Peters 308
U.S. vs Seton	10 " 309
U.S. vs Sibbald	10 Peters 313
U.S. vs F.M. Arredondo	13 Peters 138
U.S. vs Rodman	15 Peters 130
U.S. vs Delespinasse	15 " 226
U.S. vs Low	16 " 162
U.S. vs Hanson	16 " 196
U.S. vs Heirs of Clarke & Atkinson	16 " 228
U.S. vs Acosta	1 Howard 24.

The claimant in this ~~case~~ had his land surveyed in the usual form soon after the making of the grant, and the quantity of land was found to be less than that mentioned in the grant; but in the mean time the sovereignty had passed to the U.S. and the survey is consequently invalid as a segregation of the land. It, however, is good proof aliunde that the land can be found and identified.

Under the law this segregation must now be made by the U.S. surveyor general after the final confirmation of the claim.

The land in this case is of very little value, and would not sell for the costs already incurred in these proceedings; Nevertheless it was the property of the claimant at the date of the treaty, and the U.S. are bound to restore it as such.

No 20

Index of Case

The United States
appellants
vs
Antonio Carrillo
appellee

Hallett Peachy & Billings
Attys for appellee