CASE NO.

27

SOUTHERN DISTRICT

SAN LORENZO GRANT

FELICIANO SOBERANES

CLAIMANT

LAND CASE 27 SD PAGES 85

FEB 12 1963

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 505

Feliciano Soberanes CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

San Lorenzo,

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* , *Anno Domini One Thousand Eight Hundred and Fifty=* , *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 Feliciano Soberanes, *for the Place named* San Lorenzo *was presented, and ordered to be filed and docketed with No.* 505 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

San Francisco December 31st 1852.

In case No. 505 Feliciano Soberanes for the place named San Lorenzo, the deposition of Jose Abrego a witness in behalf of the claimant taken before Commissioner Henry I. Thornton, with document marked H. J. T. No. 1, annexed thereto, was filed;

(Vide page 5 of the Transcript)

March 23d 1853.

In the same case the deposition of Jose Abrego a witness in behalf of the claimant, taken before Commissioner Roland Hale, was filed;

(Vide page 7 of the Transcript)

August 10th 1853

On Motion of the United States Law Agent

Case No. 505, was ordered to be placed on the Trial Docket.

Aug. 11th 1853.

Case No. 505 called; The Counsel read the Evidence; submitted an argument and taken under Advisement.

October 28th 1853.

In the same Case Commissioner Thompson Campbell delivered the Opinion of the Board rejecting the claim.

(See page 25 of this Transcript)

To the Honorable the U. S. Land Commissioners for the ascertaining & settling of private land claims in the State of California.

The petition of Feliciano Soberanes a Mexican by birth, respectfully showeth unto your Honorable body, that on the 24th of May 1841 (1841) he made & presented his petition in writing to the Prefect of the first district, soliciting for the benefit of himself & his family the grant of a certain tract of land, an accurate description of which will be given hereafter; & that said Prefect transmitted said petition to Governor Alvarado, together with his own report in favor of your petitioner. That said Governor referred the subject to the first Alcalde of the municipality of Monterey, to report thereon, & on the 27th of May 1845 blamed his, the said Alcaldes report, stating that the tract petitioned for, was free & unoccupied & liable to be granted. That said Alvarado thereupon to wit, on the 2d of August 1841, by virtue of the authority vested in him as Constitutional Governor of California declared said lands to be the property of your petitioner, & directed the proper documents conferring title, to be executed, & delivered to him.—

That this was done accordingly, and a proper grant issued on the 9th of August 1841, with all the formalities then required by law. And your petitioner further saith, that all the documents above referred to, & petition, references, reports, a certified copy of the original grant & map are now on file in the archives of California; in the possession of the U. S. Surveyor General for the State of California, & that duly certified copies & translations thereof are herewith submitted, & prayed to be made a part of this petition. That the original grant & map

are in the hands of your petitioner & ready to be produced, whenever required.

That the lands above referred to are situate in the County of Monterey, & known by the name of San Lorenzo, & bounded as follows, on the West & South by the Rio San Lorenzo, on the East by the creek which issues from said river & on the North by the Sierra; containing altogether five spanish square leagues.

And your petitioner further saith that he has been in the quiet & peaceable possession of said land ever since said grant was made to him, exercising full & undisputed ownership over the same, & is not aware of the existence of any title paramount or superior to his own.

Wherefore he claims to be the owner of said land & prays, that your Hon body will confirm & validate his claim & title thereto.

Clarke, Taylor, & Beckh.
Attys at Law.

Filed in Office Decbr 31st 1852.
Geo: Fisher,
Secy.

San Francisco Decbr 31st 1852.

Deposition of José Abrego.

On this day before Comr Harry I. Thornton, came José Abrego, a witness in behalf of the claimant Feliciano Soberanes, petition No 505, & was duly sworn, his evidence being interpreted by the Secy.

The U. S. Associate Law Agent was present.

Question 1st By Claimant.
What is your name, age and place of residence?

Answer. My name is José Abrego, my age forty years, & I reside in California.
Quest 2nd. Look at the original document now shown you marked Exhibit 1. & now attached to your deposition, the said document purporting to be a grant of the tract of land called San Lorenzo. made by John B. Alvarado to Feliciano Soberanes, dated January 9th A. D. 1842. State if you are acquainted with the hand writing of the persons whose signatures purport to appear upon said document, & if so, whether the said signatures are genuine.
Ans – I am well acquainted with the hand writing of Juan B. Alvarado, Manuel Jimino, of José R. Estrada & José Maria Castanares having known them for many years & having often seen them write. The signatures upon said document are the genuine signatures of those persons respectively.

José Abrego.

Service acknowledged
R. Gunnison U. S. Law Agent.
Taken & sworn to before me this 30th of Decr 1852.

Harry S. Thornton.
Comr &c

Filed in Office Decr 30th 1852
Geo: Fisher.
Secy

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Deposition of José Abrego

San Francisco March 23 1853.

On this day before Conor Hiland Hall came José Abrego a witness in behalf of the claimant Feliciano Soberanes petition No 505. & was duly sworn. his evidence being interpreted by the Secretary.

The U. S. Associate Law Agent was present.

Questions by Claimant.

Quest 1st. What is your name, age and place of residence?
Ans. My name is José Abrego, my age forty years, & I reside at Monterey.
Quest 2nd. State what you know in regard to the land petitioned for by Feliciano Soberanes called San Lorenzo.
Ans. I have been acquainted with the same about ten years. it has been in the exclusive possession & occupation of the petitioner, who has lived upon it during all that time, cultivating it & using it for grazing purposes & otherwise improving it.

José Abrego.

Sworn & subscribed
Before me
Hiland Hall.
Conor.

Filed in Office March 23rd 1853.
Geo: Fisher.
Secy.

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Monday

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{Jurisdicion de Monterey}

{año de 1841}

Espediente
Promovido por D.n Feliciano Soberanes en solicitud del parage conocido con el nombre de S.n Lorenzo.

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A.

Espediente

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Sello tercero. Dos reales.

Habilitado provisionalmente por la Aduana maritima del puerto de Monterey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

Ximeno. Antonio Maria Osio.

(Seul) Sor. Prefecto del 1er distrito.

Exmo. Sor.

En la presente instancia solicita D. Feliciano Soberanes se le agrade fijar un pedazo de tierra en el terreno conocido con el nombre de S.n Lorenzo perteneciente al establecimiento de la Soledad. Esta Prefectura no omite Lorenzo segun aparece del diseño que en su opinion pr. q. tengo el honor de acompañar las noticias q. pudieran darse le fundarle obs. q. sian Debian ser por todos sus hijos estamos obligados al Estado. de la Soledad y como lo sea el solicitante lo deja a la sup.r deliberacion de V. E.

Jose F. Castro.

Feliciano Soberanes ante V.E. respectuosamente manifiesta que, encontrandose con bienes suficientes para fundar una finca de campo, y con muchos hijos varones que en propiedad el y le cultiven, me veo en el caso de ocurrir a la bondad de V.E. a la bondad de dar el consuelo de conceder me la propiedad del terreno nombrado S.n Lorenzo segun aparece del diseño que acompañar.

No hace merito de los servicios q. tengo prestados à la nacion pr. q. estamos obligados a ellos mucho mas cuando pr. verificar à los Ciud.s no tiene presente aquellos el Superior Gobierno pues que solo distingue el q. pr. sus cantidades y virtudes es digno de ello.

Asi es q. si V.E. me considera en el numero de los Ciud.s utiles y laboriosos le suplico eleve con su informe, esta mi solicitud en lo que recibiré el mayor beneficio.

Monterrey. Mayo 24. de 1841.

Feliciano Soberanes.

Monterrey. Mayo 26 de 1841.

Informe el Juez de Paz de esta municipalidad como es de costumbre con los datos que pueda adquirir sobre esta pretencion.

Alvarado.

Sello tercero. Dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterrey, en el Departamento de las Californias, para los años de mil ochocientos cuarenta

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cuarenta y mil ochocientos cuarenta y uno.

Ximeno. Antonio María Osio.

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(Seal) Excmo. Sor.

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En cumpliendo con el Superior decreto de V.E. que antecede digo que el terreno que solicita el Ciudno Felicianos Soberanes en esta instancia, se haga en la actualidad baldio y por tener el mismo Sor. los requisitos necesarios para ser atendido, soy de opinion que se le adjudique cuyo sitio si V.E. lo creyere de Justicia.

Monterey. Mayo. 27. de 1841.

Simeon Castro.

Monterey. 9. de Agosto de 1841.

(Seal) Vista la peticion con que da principio este Espediente el informe del Prefecto de Primer Distrito y el del Juez de Paz de este lugar con todo lo Demas que se tuvo presente y ver Comvino de conformidad con las leyes y reglamtos de la materia Declaro á Ds. Feliciano Soberanes dueño en propiedad del parage conocido con el nombre de San Lorenzo, colindante al Ote con el arroyo que sale de San Lorenzo al Pte y al Sur con el Rio y al Norte con la Sierra. Librese el despacho correspondiente, tomese razon en el libro respectivo y dirijase este Espediente á la Secrá. Junta Departamental para su aprobacion. El Sr Dn Juan B. Alvarado Gobernador Constitucional Del Departamento de las California asi lo mando, Decretó y firmó de que Doy fe.

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Sere fallan a mapa en plan!

El sitio q. manifiesta en el diseño se compone de cinco sitios.

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Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto Dn. Féliciano Soberanes ha pretendido para su beneficio personal y el de su familia el paraje conocido con el nombre de San Lorenzo, colindante al Oriente con el Arroyo que sale de San Lorenzo, al Poniente y Sur con el Rio y al Norte con la Sierra, practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la Nacion mexicana he venido en concederle el terreno mencionado declarandole la propiedad de él por las presentes letras, sujetandose á la aprobacion de la Junta Departamental y á las condiciones siguientes.

1a Podrá cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutará libre y exclusivamente destinandolo al uso ó cultivo que mas le acomode pero dentro de un año fabricará casa y estará habitado.

2a Cuando se le confirme la propiedad de el solicitará del Juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcarán las lindeas en cuyos limites, podrá á mas de las mohoneras algunos arboles frutales ó retoches de alguna utilidad.

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3a El terreno de que se hace mencion es de sitio Sitios de ganado mayor poco mas ó menos segun esplica el dictamen que obra agregado en el espediente respectivo.

El Juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

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

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro respectivo y se entregue al interesado para su resguardo y demas fines.

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Dado en Monterey á nueve de Agosto de mil ochocientos cuarenta y una.

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

I, Samuel D. King Surveyor General of the United States for the State of California and as such

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now having in my office and under my custody a portion of the archives of the former Spanish and Mexican territory in Departament of Upper California, do hereby certify that the eight preceding and hereunto attached pages of tracing paper, numbered from one to eight 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. In testimony whereof I have hereunto signed my name officially and affixed my private seal not having a seal of office for the City of San Francisco Cal. this twenty third day of December 1852.

Saml D. King.
Surv.r G. Cal.

Filed in office. December 31st 1852.

Geo. Fisher.
Reg.

15. Folios.

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Jurisdiction of Monterey. Year 1841. Expediente of Feliciano Soberanes petitioning for the tract of land known by the name of San Lorenzo.

(248)

Mr Prefect of the 1st District –

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B.
Translation of
A.

Feliciano Soberanes before your honor respectfully exposeth, that possessing the means to develope the resources of a rural property with nine male children, I deem proper to apply through your Honor to the Superior Government of this Department with the object that he may have the goodness of granting me the ownership of the tract of land known by the name of San Lorenzo as it is shown by the drawing or diseno that I have the honor to accompany.

I will not praise the services that I have rendered to the nation because all her children are duly bound to do so, specially when those services are seldom considered by the Supreme Government who only remunerates those whose qualities & virtues make deserving of it.

So, if your honor numbers me among the useful & laborious citizens I beg of you, to address with your information this petition, conferring by so doing upon me the greatest benefit.

Monterey May 24 1841.

Feliciano Soberanes.

Most Excellent Sir.

In the present petition, D. Feliciano Soberanes requests the adjudication of the tract of land known by the name of San Lorenzo belonging to the Establishment of la Soledad. The Prefect does not give his opinion because the information he could give must come from the Administrator of la Soledad, & as the petitioner is acting in that capacity I leave it to the superior deliberation of your

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Excellency.

José T. Castro.

Monterey May 26th 1841.

Let the Justice of the Peace of this municipality give information as it is customary, with statement of facts that he may acquire regarding this petition.

Alvarado.

Most Excellent Sir.

In fulfilment of the superior decree of your Excellency I say, that the land solicited by the Citizen Feliciano Sobranes in this petition is vacant at present, & as said indicated has the necessary requirements to have the grant, I am of opinion, that your Excellency may adjudicate to him if deemed just.

Monterey 27 May 1841.

Simeon Castro.

Monterey 9 August 1841.

Having examined the petition with which this Expediente begins, the information of the Prefect of the 1st district & that of the Justice of the Peace of this place with all that it has been deemed necessary to examine, in conformity with the laws & regulations upon this matter, I do declare Feliciano Sobranes legitimate owner of the tract of land known by the name of San Lorenzo, bounded on the East by the creek that issues from San Lorenzo, on the West & South by the River, on the North with the Ridge. Give the corresponding patent, record it in the respective & address this Expediente to the Most Excellent Departmental Assembly for its approval.

Sr D Juan Bautista Alvarado, Constitutional Governor of the Department of both Californias so ordered, decreed & signed it, to which I certify.

Mas

Juan B. Alvarado, Constitutional Governor of the Department of the California.

Whereas D. Feliciano Soberanes has solicited for his personal benefit & that of his family, the place known by the name of San Lorenzo, bounded on the East by the creek which runs from San Lorenzo, on the West & South by the River & on the North by the mountains, the necessary steps & investigations having been previously taken & made in conformity with laws & regulations, I have by virtue of the power conferred upon me, granted unto him in the name of the Mexican Nation, the land mentioned, declaring unto him the ownership thereof by these present letters & subject to the approval of the Most Excellent Departmental Assembly & to the following conditions.

1st. He may fence it in without prejudice to the crossings, roads & privileges; he shall enjoy it freely & exclusively, destining it to the use or cultivation which may best suit him but within one year he shall build a house & it must be inhabited.

2. When the ownership thereof is conferred unto him he shall request the respective Justice to give him juridical possession in virtue of this title & said Magistrate shall designate the boundaries at the limits whereof he shall besides placing landmarks, plant some fruit trees or wild ones of some utility.

3. The land whereof mention is made is of the extent of Five Square leagues (sitios de ganado mayor) a little more or less, as appears by the plot which accompanies the expediente. The Justice who gives possession shall cause it to be measured according to law, leaving the surplus which may result to the Nation for the necessary uses.

I consequently command that this present being held as firm and valid, a record thereof be made in the respective book,

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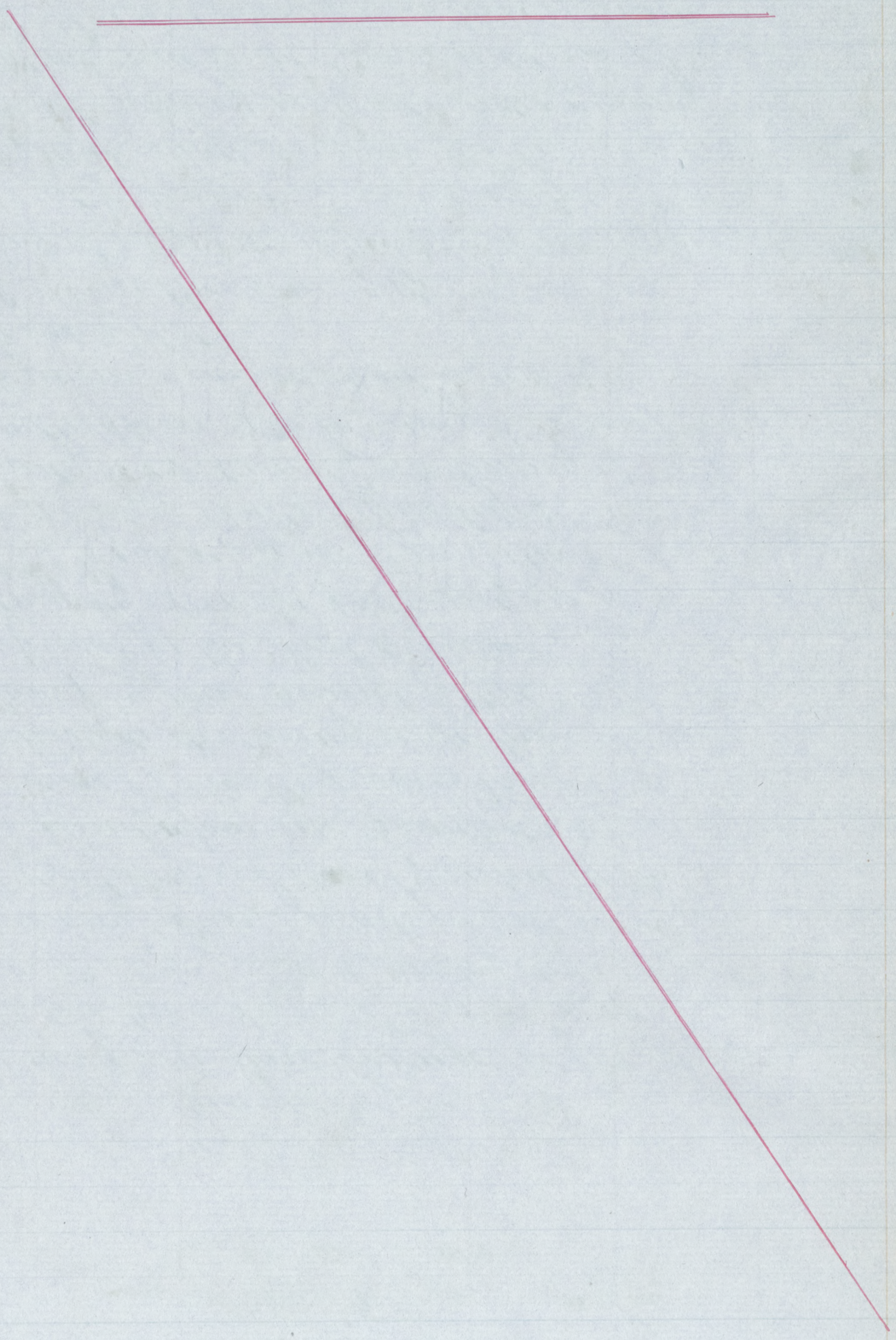
and that this title be delivered to the party interested for his security & further ends.

Given at Monterey on the ninth of August Eighteen hundred & forty one.

Filed in Office Decbr 31st 1852.
Geo: Fisher
Secy.



Copia

Habilitado provisionalmte por la Aduana marítima de

Cas. 25 pag.

Sello 1º Seis Pesos.

Habilitado provisionalmte por la Aduana marítima de Monterrey para los años de 1839 y 1840.

Alvarado. Antonio Mª Osio.

Valga para el año de 1841.

Alvarado. Antº Mª Osio.

Doc. H. 57 No. 1 annexed to the Defs. & Jur. Abrogo

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Nos. Juan B. Alvarado, Gobernador constitucional del Departamento de las Californias.

1. Por cuanto Dn Feliciano Soberanes ha presentado para su beneficio personal y el de su familia, el paraje conocido con el nombre de San Lorenza, colindante al Oriente con el arroyo que sale de San Lorenza, al Poniente y Sur con el Rio y al Norte con la Sierra; practicadas previamente las diligencias y averiguaciones convenientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas á nombre de la nacion Mejicana he bien de concederle el terreno mencionado declarandole la propiedad de el por las presentes letras y sujeto á las condiciones y aprobacion de la Excma Junta Departamental y á las condiciones siguientes.

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

2. 2ª Cuando se le confirme la propiedad de el solicitará del Juez respectivo que le de posesion Judicial en virtud de este despacho por el cual se determinarán los linderos en cuyos limites pondrá á mas de las mencionadas algunos arboles frutales ó silvestres de alguna utilidad.

3ª El terreno de que se hace mencion es de cinco sitios de Ganado mayor poco mas ó menos segun explicará el diseño que corre en el expediente. El Juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á nuevos para los usos convenientes.

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

3. En consecuencia mando que teniendose por firme y valedero el presente, se tome razon de el en

libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en Monterey a nueve de Enero de mil ochocientos cuarenta y dos.

Juan B. Alvarado. Man.l Jimeno Srio.

Queda tomada razon de este titulo en el libro de acientos sobre adjudicacion de terrenos baldios a fs. 9. 1.er

Jimeno.

El Excmo. Sr. Gobernador ha dispuesto se tome razon de esta concesion en la Prefectura del 1.er Distrito.

Tomese razon. Jimeno.

Estrada.

Queda tomada razon de este Sup.r titulo en el cuaderno respectivo de esta Prefectura a fs. 5. frente.

Monterey. Abril 2. de 1842.

Srio. Int.o

José M.a Castañares.

Filed in Office. Dec.r 31 de 1852.

Geo. Fisher.

Secretry.

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Seal of the first class, Six Dollars.
Authorized provisionally by the Maritime Custom House of Monterey, for the years 1839. & 1840.
(Signed) Alvarado. (Signed) Antonio Mª. Osio.
Made valid for the year 1842.
(Signed) Alvarado. (Signed) Antonio Mª. Osio.

Custom House Seal

Juan B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas Don Feliciano Soberanes has solicited for his personal benefit & that of his family the place known by the name of San Lorenzo, bounded on the East by the creek which issues from San Lorenzo, on the West & South by the river, & on the North by the mountains; the necessary steps & investigations having been previously taken & made in conformity with laws & regulations, I have by virtue of the powers conferred upon me, granted unto him in the name of the Mexican nation, the land mentioned, declaring unto him the ownership thereof by these present letters, & subject to the approval of the Most Excellent Departmental Junta, & to the following conditions.

1st. He may fence it in without prejudice to the crossings, roads & privileges; he shall enjoy it fully & exclusively, destining it to the use or cultivation which may best suit him, but within one year he shall build a house & it must be inhabited.

2d. When the ownership thereof is confirmed unto him, he shall request the respective Justice to give him juridical possession in virtue of this title, & said magistrate will designate the boundaries, at the limits whereof he shall besides placing the land marks, plant some fruit trees or wild ones of some utility.

3d. The land whereof mention is made is of the extent of five square leagues, sitios de

Translation of C.

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ganado mayor/ a little more or less as appears by the plot which accompanies the expediente. The Justice who gives possession shall cause it to be measured according to law, leaving the surplus which may revert to the Nation for the necessary uses.

4th. If he should transgress these conditions he shall forfeit his right to the land, & it may be denounced by another.

Consequently command that these presents being held as firm & valid, a record thereof be made in the respective book, & that this title be delivered to the party interested for his security & further ends.

Given at Monterey, on the ninth of January eighteen hundred & forty two.

(Signed) Juan B. Alvarado

(Signed) Manuel Jimeno – Secretary.

A record of this title has been made in the book of entries respecting the adjudication of vacant lands at folio 9, second page.

(Signed) Jimeno

His Excellency the Governor has commanded a record of this grant to be made in the office of the Prefect of the first district.

(Signed) Jimeno.

Let it be recorded.

(Signed) Estrada.

A record of this original title has made in the respective book of this Prefect's office at folio 5 on the front page. Monterey April 2nd 1842.

(Signed) José Maria Castañares. Secty ad interim.

I the undersigned do hereby certify the foregoing to be a true & faithful translation of the original, in possession of Don Feliciano Solorzano. Monterey 11th October 1842. W. E. P. Hartnell. State Translator.

290 Filed in Office Dec 31 1852.

Feliciano Soberanes. vs The United States. } "San Lorenzo." For 5 Square Leagues.

Opinion delivered by Conner. Thompson & Campbell.

The claimant in this case represents in his petition that, on the 9th day of August A.D. 1841, he obtained from Governor Alvarado a grant in due form for the place called "San Lorenzo", containing five square leagues, & bounded as follows, to wit: on the West & South by the Rio San Lorenzo, on the East by the creek which issues from said river, & on the North by the Sierra. The claimant further represents in his petition that he has continued to enjoy the quiet & peaceable possession of said land, from the date of his said grant up to the time of filing his said petition. There is no proof of any approval by the Departmental Assembly & no proof of juridical possession having been given to the claimant of the premises described in his grant. The right, therefore, of the claimant to a confirmation of his claim rests altogether in equity. The claimant in support of the allegations contained in his petition, has filed the original grant signed by Governor Alvarado, whose signature is proved to be in his hand writing. The grant bears date the 9th of January A.D. 1842. The date I think is clearly an error, all the other papers, together with the expediente on file shows that, the proceedings took place in 1841, & the copy of the grant, & the expediente, bears date the 9th of August, A.D. 1841, this the claimant has admitted in his petition. It is proved by the deposition of José Abrego, that he had been acquainted with the ranch called San Lorenzo, about ten years, that the same had been in the exclusive possession of the claimant, & that he had lived on it during all that time, cultivating it & using it for grazing purposes, & otherwise improving it. The deposition contains

all the evidence in regard to the inhabitancy of the claimant, filed in the case. As there is another insuperable objection to the confirmation asked for, it is unnecessary to enter into a critical examination of the evidence offered by the claimant to prove his inhabitancy of the tract of land mentioned in his grant, but I will here take occasion to say that, all such evidence is of the most unsatisfactory character. The two points to be proved were, - first the building of a house on the land within a year from the date of the grant, & second, its actual inhabitancy by the grantee. Instead of proving these two plain & simple facts in language which the witness understood himself, & could make every other person understand, he commences by stating that, he had known the land about ten years, a most indefinite mode of expressing the precise time when his knowledge first began. The deposition was taken in March 1853. The grant was made in August 1841, so that giving him the benefit of the full ten years, he knew nothing of the ranch about which he was testifying until seven months after the date of the grant. The deposition contains no direct statement, that any house was built on the land within the time prescribed by law, or at any other time, but instead of stating the fact either affirmatively or negatively, if it was within his knowledge, he uses the general terms "possession" "occupation" "improvement" &c. all of which have a technical meaning in in law, the precise meaning which the witness himself attached to them, is unknown to this board. The whole deposition would seem to be an artfully drawn form, made up of set phrases, intended to evade the true points at issue. Occupation is the result produced by certain acts of the party, what those acts were, the witness should have stated, & then the Commissioners could have decided,

whether such acts constituted the kind of occupation required by the law. The grant is for five leagues of land, a little less or more, & the Officer authorized to give the juridical possession, is, required by the terms of the conditions attached to the grant, to measure & designate by proper land marks the quantity located, leaving the surplus to the nation for its common use. It does not appear that any such designation & measurement were made by the officer, or that the party made any request for the same, as required by the expressed conditions of his grant. The description of the boundaries out of which the grant was to be satisfied is of the most general character to wit; On the East by a creek, on the West & South by the river, & on the North by the mountains, & this general description is in no way aided by the map to which reference is made in the grant. The limits here marked out might contain only five leagues, & they might embrace fifty leagues, we have no means of ascertaining anything near the quantity. The Governor who made the grant, it is evident, did not know the precise quantity contained within the boundaries described in his grant, & for that reason, he directed the grantee to have the five leagues, which his grant called for, measured & defined by the usual land marks, leaving the surplus, if there should be any, to the nation to be disposed of as other public lands. If the limits as described in the grant, do not contain more than five square leagues, that is a fact which is susceptible of proof, & the burthen of making the proof devolved upon the claimant. If the limits contain a much greater quantity, than is called for in the grant, it is clear that the claimant is not entitled to confirmation. The grant in my judgment, can be construed in no other light, than as a new order of survey, which

has never been executed, an authority to locate five square leagues of land within a certain re-gion of country, which location the party has failed to make. The land remains precisely in the same condition it was at the date of the grant in 1841, & according to the principles heretofore decided by this Commission passed to the United States unaffected by any vested equitable interest. For these reasons we are of the opinion that the claim in this case should be rejected.

Filed in Office Oct 25 1853.

Geo: Fisher.
Secy.

Decree.

Feliciano Soloranes
vs
The United States. } San Lorenzo.

In this case on hearing the proofs and allegations, it is adjudged by the Com-mission that the said claim of the petitioner is not valid, and his application for con-firmation thereof, is therefore denied.

Alpheus Felch.
Thompson Campbell.
R. Aug. Thompson. } Commissioners

Filed in Office Oct 25th 1853.

Geo: Fisher.
Secy

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No 505. Feliciano Soberanes, of the tract of land called San Lorenzo.

To the U. S. Board of Land Commissioners for the State of California.

27 SD
PAGE 25

Petition for Rehearing.

The petition of Feliciano Soberanes, the Claimant above named respectfully sheweth that within three months after the date of the grant filed in this case petitioner had completed the erection of an adobe house upon the tract of land described in said grant — that said house was of large size being twenty varas in length & containing five rooms — that he took up his residence upon said land with said three months & has resided there ever since with his wife & fourteen children — that from the date of said grant up to the present time, he has every year had in cultivation at least a half league square of said land — that he had in his employment during all of said time living on buildings erected by petitioner upon said land, from twenty to fifty Indians & other servants — that during all of said time he has had upon said land from 300 to 2000. cattle, from 100 to 300 horses & from 70 to 1500 sheep.

Petitioner further shows that the boundaries of said land are perfectly well known by all the adjoining & neighboring proprietors — that the location thereof is matter of such public notoriety that it has been designated by name upon the map of the State lately published by the Surveyor General of California — that petitioner is prepared to prove all of the above recited facts by numerous witnesses to the satisfaction of this board, & that he would have done so before submitting his case to the decision of the board, if he had for a moment supposed that such minuteness of evidence would be held to be necessary —

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2/505

27 SD
PAGE 26

Petitioner further shows that if his claim is not so considered by this board — if he is compelled to resort to another tribunal for the establishment of his rights, he has great reason to fear & does fear, that such depredations will be made upon his property, as well movable as fixed by persons acting upon the encouragement derived to be derived from the late decision of the board, that he will be immediately despoiled of the possessions he has so long enjoyed, dispossessed of the house he had built for his wife & children & driven from his home is his declining years to seek his subsistence among a people whose language he does not know & upon whose tender sympathies he could not very confidently count.

He therefore respectfully prays that this board would order a scheaning of this case & that the same may be awarded for further proofs.

J. Clarke
Atty for Claimant.

Feliciano Soberanes being duly sworn deposeth & saith that the matters & things set forth in the foregoing petition are true.

Feliciano Soberanes.

Subscribed & sworn to before me this 4th day of October A. D. 1853.

Alphens Felch
Commissioner.

Filed in Office Nov 8th 1853.
Geo: Fisher
Secy.

2 vs

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Feliciano Ibenunes
vs
The United States.

Application for a Rehearing.

27 SD
PAGE 27

Opinion of the Board on motion for rehearing denied, delivered by Commr Thompson Campbell.

This is an application for a rehearing of this case, and for leave to file additional proofs. The record shows that the case was submitted to the Commission, a decision rendered, a final decree entered, before the filing of the petition, upon which the application under consideration is based. The petitioner represents that upon a rehearing of the case he would be able to make the following additional proofs, to wit, that within three months after the date of the grant, he had completed the erection of an adobe house on the tract of land described in the grant; that he had taken up his residence on said land within said three months & that he has resided there ever since with his wife & fourteen children. He further states that he would be able to show that from the date of the grant to the present time, he has cultivated every year, a half league square of said land, & that he had in his employment, during all that time from twenty to fifty Indians & other servants; that he had from 300 to 2000 head of cattle, besides other stock, on said tract of land. The petitioner also states that he would be able to show by additional evidence that the boundaries of said tract are well known by the adjoining neighboring proprietors — that the location thereof is of such public notoriety that it has been designated by name upon the map of the State lately published by the Surveyor General of California. And the petitioner further avers that he would have established by proof all the foregoing facts & circumstances before his case was submitted for decision, if he had for a moment supposed that such minuteness of evidence would have been held to be necessary. It is also alleged in said petition that he is in danger of suffering great & inseparable loss & damage, by persons

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acting on the encouragement which they derive from the decision of this Commission, & he therefore prays that a a rehearing may be awarded, to him for the reasons above set forth. This petition is verified by the affidavit of the Claimant.

The causes assigned for a rehearing in this case are novel in their character, & so far as I have been able to investigate authorities, are without precedent. The position assumed by the Counsel in his argument, if I understood him correctly, admitted, or in other words, did not question the correctness of the result arrived at by the Commission on the pleadings & proofs of the case, as it was submitted to them, but based his application solely on the ground, of the want of knowledge of the particular kind of proof which the Commission might deem necessary to make out his case. The application for a rehearing of a case after it has been decided by this Commission & the final decree entered, must be governed by the rules as laid down by the courts of chancery in cases where applications of a similar character have been made. The following rules may be relied upon as the settled doctrine which governs all applications for rehearing.

1st. It is a rule that a new trial will not be granted upon the production of new evidence, unless in case of surprise or fraud upon the party applying; still less will it be granted when the party is in possession of the evidence but either from the exercise of discretion or negligence does not produce it at the trial. 1. Barbour Ch. Pr 457. 10 Vz pr 133.

2nd. A rehearing will not be allowed when the newly discovered evidence is merely cumulative, upon the litigated facts already in issue. 1st Story C. C. 218. 2 Paige 24; 3 Story C. C. R 299. 310. 311.

3d A mistake of Counsel as to the pertinency or

force of evidence furnishes no ground for a re-hearing. 1st Story C. C. 299. 316. 1 Paige 574.
4th. Nor will a rehearing be granted on account of the discovery of new evidence or new matter, nor because the importance of the testimony has only been ascertained since the decision, if the party had it in his power to ascertain its importance before the hearing & has neglected to do so, although the justice of the case might be promoted by it. 1 Pet. C. C.
5th. Where the cause of not producing the evidence was from the inattention or misjudgement of the defendants, a rehearing would be denied. 1 Pet. C. C. 379.
6th. If the facts proposed to be proved were known to the parties, or to their attorney or solicitor, or agents, it is sufficient to reject such an application. 3 Atk. R. 36.
7th. A rehearing is not a matter of course but rests in the discretion of the Chancellor. 1 John Ch. R. 48.
8th. After a decree in a cause, it must be a very special case, which will justify the court in opening the proofs, in to establish a new fact, which the party has neglected to prove through inadvertance. 2 Paige. 27.
9th. The offer to produce additional or new discovered testimony, which would make a point clear that was doubtful, has never been made the ground for allowing a rehearing. 3 Vermont R. 148.
In cases where a rehearing has been allowed, they have generally been on the pleadings & proofs, as they were submitted to the Court, & where it was alleged the Chancellor had arrived at a wrong conclusion, or had made a misapplication of the law to the facts.
I now propose to test the causes assigned in the application under consideration for a re-hearing in this case, by the foregoing rules, as laid down in the several authorities referred to.

The petitioner does not pretend that his application is based on any error of judgment, on the evidence submitted in the case, but on the contrary expressly disavows it, but proposes to offer additional testimony in regard to the litigated facts already in issue. The new evidence which the claimant proposes to introduce on the rehearing of his case, is not only cumulative upon the litigated facts already in issue, but it is oral testimony. In cases where rehearings have been granted for the purpose of introducing new evidence, the new evidence has almost always been in writing & affected the very foundation of the decree. Courts of Chancery make a marked distinction between opening a cause for the introduction of new testimony by witnesses, & of new documentary evidence. They place the distinction on the ground that written evidence cannot be so easily corrupted, & although new witnesses may be discovered without information, they may be procured with it, & the dangers of admitting them makes it highly improbable. Here the evidence is merely cumulative to the same point, upon which the party adduced evidence on the first hearing of the case. The evidence which is proposed to be given has not been discovered since the trial, but as appears from the petition, was well known both to the party & to his Counsel. There is no allegation even, that he was taken by surprise, or that there was fraud of any kind practiced upon him. The point to which the new evidence is merely directed, is not the point upon which the case was decided, & if the Counsel had turned to the opinion on file, he would have discovered that if he had even introduced the new evidence at the hearing of his case, it would not have changed the result. It is however true that the evidence adduced on the trial in

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regard to the question of inhabitancy was of the most unsatisfactory character, & what makes it still more strange is, that the party should have select a case, of the magnitude which he now represents this case to be, on such loose evidence, when he states in his petition, on oath, facts, which go to show that he had complied strictly with the conditions of his grant, & that those facts have not been disclosed to him since the trial, but were well known when his case was submitted for final decision. We have seen that when it was in the power of a party to ascertain the importance of the evidence at the first hearing which he proposes to offer on a rehearing, & had neglected to do so, it would not be allowed although the justice of the case might be promoted by it. This is precisely what the claimant now proposes to do, he desires to open the whole case anew, to adduce new testimony, to the main points involved, & to supply the defect & omissions in his former evidence, & upon that evidence have the whole case regridged, not on documentary testimony, but on the testimony, either of the same witnesses, or of others since discovered, & that too merely cumulative to what is now in the cause. This would be a novel practice in Courts of equity, & would subvert all the old rules, as to the admissibility of new evidence. The evidence adduced on the trial in regard to the performance of that condition of the grant which required a home to be built within a year, was not only uncertain & doubtful, but the knowledge of the witness did not reach the time, within which the performance was required to be made by a year & a half, if the new evidence to be produced is entitled to make the former evidence certain, or to make that clear which before was doubtful, according to the rule laid down in 3d Vermont Reports, 448, it furnishes no ground for a rehearing. The new

evidence is not for the purpose of establishing any new fact which the party had neglected to prove through inadvertence, but is intended as additional evidence, of a fact already litigated, which instead of furnishing a cause for a rehearing would not be admitted upon a rehearing granted for any other reason. The new testimony which the party proposes to introduce in regard to the boundaries of the tract claimed, is subject to the same objections, & comes within the same rules, which we have seen is applicable to the testimony in regard to the occupancy & cultivation of the land; besides the evidence if admitted, would in no way obviate the difficulty in this case. The claim was decided to be invalid on the ground that it was a grant for a specific quantity of land, to be located within certain exterior boundaries which location was not proved to have been made by a competent authority, anterior to the session of the country to the United States. The new evidence, which the petitioner says, he is now prepared to produce, would not, if admitted supply the deficiency; a record of juridical measurement made by the proper officer, could alone furnish such proof & this the party does not propose to introduce. The petitioner alleges by way of excuse for not having furnished all the testimony which was in his power to produce at the trial, that he did not suppose such minuteness of evidence would have been held to be necessary & for this reason he insists upon his right for a rehearing. The Counsel in his argument advanced the proposition that the evidence was prepared in this case in conformity with the decisions, made by the former members of this Commission & was intended to meet their views of the law;

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but that the views of the present incumbents differed so widely & essentially from those advanced by their predecessors, that he was at a loss to know the kind of proof they would deem necessary to establish the validity of his client's claim & for that reason the claimant was entitled to a rehearing. This proposition he did not pretend to support or fortify by a single authority, but contented himself, with advancing some general views upon the equity powers with which the law had clothed this Commission. This Commission is essentially a judicial tribunal and possessing none other than judicial attributes, & notwithstanding it members might change every month or every day, it would remain the same, & the decisions rendered, would have precisely the same force & effect, & the same relation to each other & though its members had never changed; in contemplation of law they are the same persons, I have never before heard it, sincerely asserted, that because one judge differed from his predecessor on the bench, on a question of a law, or the construction of a statute, that it was a good cause for a new trial in a court of law, or for a rehearing in a court of Chancery. The same reason would apply with equal force to the lotte first decisions rendered by this Commission, if it had happened to be adverse to the claimant, his attorney in that case could have assigned the same reason which has been urged in this, viz. that he did not know what the decision of the Court would be before it was pronounced, & having failed to make a case to suit views of the Commission, he was entitled to a rehearing, in order that he might make the requisite proof. The consequences to which a course of this kind would lead, are not difficult to forsee. It would open a door not only to the grossest frauds, but would present the strongest motive for perjury & subornation of perjury.

Counsel are not employed by their clients, to wait until a decision is rendered in their case, in order to fill the kind of evidence which they should have introduced, & then ask for a new trial for the purpose of enabling them to bring their case within the decision of the Court. The evil consequences to which such a practice would eventually lead are well expressed in the case of Jones & Penfoy 1 Vernon 47. This was a case where a rehearing had been granted & new proof was received by the Chancellor, Finch who it is said took notice of what dangerous consequences it would be, that after publication passed & people knew where a cause pinched they should be at liberty to look up witnesses to bolster up the faulty part of their cause". The very state of circumstances which the learned Judge characterizes, as leading to the most dangerous consequences are to be found where the "cause pinches" & he now asks the liberty to "bolster up the faulty part," by the introduction of new witnesses & new testimony. I believe the whole course of proceeding both in law & chancery is opposed to such a course, & as no precedent has been furnished, I am satisfied none can be found. In courts of law new trials are rarely granted on the ground of newly discovered testimony & in no case, I believe, has a rehearing in chancery been allowed for that cause, still less would it be allowed, where the party admits, as he does in this case, that he would have introduced the very evidence, which he now proposes to offer, if a rehearing should be granted, but which he did not offer at the former hearing, because he did not know it was necessary. Not only the practice in courts of equity, which this commission as at present constituted announced at an early day would be strictly adhered to, but the intricate and

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important questions involved, & the great interests at stake, require in the first instance on the part of Counsel a thorough examination & preparation for the hearing, & on the part of the Commission a most careful & exact study of the whole cause before judgment is pronounced. An able & learned Chancellor in commenting on this very question has said that the other course, to the one suggested "would encourage inattention or indifference & induce the Counsel as well as the parties to speculate upon contingencies, & to argue the case at large only when the court had delivered the result of its opinion." If Counsel do not fully appreciate the merits of their cause, or do not clearly comprehend the law of their case, it furnishes no reason for a rehearing. Justice Story in his opinion delivered on the Circuit in the case of Baker & Ux. vs Whiting et al. 1st Story C. C. R. 236. announces the same doctrine in the strongest & most explicit terms, he says; "But then it was said, that Whiting was misled by the language of his counsel, & that he might not be be made to suffer therefor. But I apprehend that no court of Equity has ever felt itself at liberty to grant an application of this sort, upon the suggestion of an error of judgment or a mistake of law by counsel, as to the pertinency or force of evidence to be used in a cause." And in the same case, which was an application for a rehearing, he insists in his opinion, the views delivered by another learned Judge which will be found in 3 Wh. R. 36. & which is as follows; "How many parties are there, who know not the merits of their own cause, but rely on the skill of their counsel or solicitor; & therefore what counseler or solicitor know, must be allowed to be the knowledge of the parties, & certainly it would not do to allow clients to have a rehearing or review of a cause, simply because their counsel have not appreciated the merits of their cause, or even have overlooked the importance of certain points of evidence, & therefore have omitted to have it taken

for the cause". The very reason which the learned Judge, in the language just quoted, illustrates with so much force, as furnishing no ground whatever for a rehearing, is urged in support of the present application, viz. that the counsel had overlooked the importance of certain points of evidence, & therefore had omitted to have it taken at the first hearing of the cause. Counsel in preparing cases for trial consult their own judgment, as to the law & although their views may not agree with the views of the court, they may be right & the court wrong, but I have yet to learn that such disagreement has ever been considered as furnishing a sufficient reason for a rehearing of a cause after the Judge had pronounced the result of his opinion. The decisions of this Commission can be reviewed, & that too by the highest judicial tribunal, but the party before his case passes to this court of last resort, will have an opportunity of perfecting his testimony, this privilege the law allows him, & that which he seeks to accomplish by a rehearing here, he can claim as a matter of right, when his case reaches the District Court of the United States, he will then have an opportunity of shaping his testimony to suit the law as he understands it. In regard to the averment in the petition, that the claimant anticipates that great loss & damage may be sustained, if the present decision of the Commission is permitted to stand, I can only say that the fears of the petitioner furnishes no legal reason for a rehearing of his case. This is a country of laws, & they should afford an adequate remedy for every injury, & those who rely upon the law alone for protection are seldom disappointed. I have treated this application by the rules which courts of chancery have applied to similar proceedings, & in doing so I have carried out, what I conceived

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to be the true intent & meaning of that provision of the law of the 3d of March 1851, which requires the Commissioners to adopt the "principles of Equity", as one of the rules, by which their decisions must be governed. An imperfect notion of their terms, & of the power they confer upon this Commission, seem to be entertained, & are by some supposed to be urged in their most general sense. We are accustomed to call that equity, which in human transactions, is founded in natural justice, in honesty & right, & which properly arises ex æquo et bono. The Supreme Court of the United States, in the adjudication of similar questions, under the law of 1824, which required that tribunal to be governed by the same rules of equity, which have been prescribed for this Commission, did not assume a jurisdiction so wide & extensive, as that which would arise, from the broad principle of natural justice above stated. That court in giving a construction to the words "principles of equity" say, that they are to be understood as those rules, which govern proceedings in all courts of Chancery, & this Commission adopting the same construction, have been governed in their decisions by those rules, as far as they were understood to be applicable. It is said, "there are certain principles upon which courts of Equity act, which are very well settled. The cases which occur, are various; but they are decided upon fixed principles. Courts of equity have in this respect, no more discretionary power, than courts of law" (See 1st Story's Equity Jurisprudence Sec 20) The decisions of this Commission will be tested & tried by fixed principles, & not by the arbitrary notions of arbitrary Judges. While it is true that our government assumed all the obligations incumbent upon the former government, in regard to private property, &

by her treaty stipulations agreed to do all that the Mexican government was, in good conscience bound to do; it is not true that this Commission has been clothed with the same general powers, or that it occupies the same position. Many of the obligations assumed by our government, are of a political character, & to be discharged, require an exercise of political power, which the constitution has confided to Congress alone. I have deemed it fit on this occasion to state explicitly the principles & rules, which have governed the Commission in their consideration of this application, & to make a full collection of the authorities upon which they base the result at which they have arrived. In our opinion the petition contains no sufficient reason for a rehearing of this case, the motion is therefore denied.

It is proper to state that, the decision of the Commission on the application of the petitioner, is made upon the pleadings, & the position this case occupies on the record. The petition we have considered as being in the nature of a bill of review, which lies only after a final decree; the questions involved in such an application, are of course different from those that would arise upon an application for a rehearing, where the decree is only interlocutory, or where no decree at all has been entered. The practice in Courts of Chancery recognise this distinction.

Filed in Office November 29th 1853.
Geo: Fisher.
Secy.

275-
8385 = 84 folios

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 two pages, numbered from 1 to 42 both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, and the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office in Case No. 515 on the Docket of the said Board, wherein

Feliciano Soberanes is

the Claimant against the United States, for the place known by the name of "San Lorenzo"

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

Geo: Fisher
Sec'y

27

U. S. DISTRICT COURT,

Southern District of California.

No. 27 Docket

THE UNITED STATES,

vs.

27 Appelt.

Feliciano Soberanez

for San Lorenzo

5 Sq. Leagues in Monterey Co

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 505

Rec'd Aug. 12. 1854

Filed, 19 August 1854

R. S. Taylor

Dep. Clk.

27

U. States District Court
Southern Dist. of California
City and County of Monterey.

Whereas the Commission constituted for the purpose of ascertaining and settling private Land Claims in the State of California by Act of the Congress of the United States, did decide against the right and title of the Undersigned for the place called "San Lorenzo" near the Mission of Soledad in the County of Monterey, State aforesaid and numbered 505 in records of the aforesaid Commission;

You will please therefore take Notice that it is my intention to prosecute an appeal against the aforesaid decision – the said Appeal being taken from the said Board of Land Commissioners to the Hon. District Court of the United States for the Southern District of California.

Witness my hand this fifteenth day of September A.D. 1854.

Felicianos Forbes
his
X
mark

To the Clerk of the United States District Court for the Southern District of California.

No 27.

U. S. Dist. Court

South. Dist. of Cal.

Felipe Soberanes
appellant
vs.
The United States.

Notice of Appeal
in No. 505 15 Sept/54

No 22.

Rec. Sept. 15/54
Filed Sept. 15/54
A. I. Taylor
Dpty. Clk

On appeal from the Board of U. S. Land Commissioners.

Case No. 505. } In the Southern district.

Sir!

Please to take notice, that the claimant in the above case will prosecute the appeal therein. –

Yours respectfully,
Campbell, Taylor & Beckh
Atty.s for Claimant

San Fr.co,
Dec. 8th, 1854.

To the Clerk of the
U. S. District Court,
Southern District of California.

No 27.

U. S. District Court
Southern Dist of Cal.

Feliciano Soberanes.
applt

vs

The United States.
Appellees.

Notice of Appeal.

Filed Dec 12th 1854.
C. E. Carr.
clk.

27.

U. S. District Court
Southern District
of California. —

Case No. 505. —

Notice of appeal
from the Board of
U. S. Land Commissioners.

Filed Dec. 12. 1854.
C. E. Carr
Clk.

On appeal from the Board of U. S. Land Commissioners.

Case No. 505. } In the Southern District.

Sir:

Please to take notice that the claimant in the above case will prosecute the appeal therein.—

Yours respectfully,
Campbell, Taylor & Beckh,
Atty's. for claimant

San Fco.
Dec. 8th, 1854.

To the Clerk of
the U. S. District Court
Southern District of California.

U. S. District Court
Southern District
of California

Case No. 505.

Notice of
appeal from the
Board of U. S.
Land Commissioners.

Filed Dec 18. 1854.

C. E. Carr.
clk.

27 SD
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No. 27. Feliciano Soberanes
appellant
vs.
The United States.

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

Hon Ogden S.R. Ogier, Judge -
Appellee.

The above named Feliciano Soberanes, the appellant in this case, (being no. 505 on the docket of the Board of U.S. Land Commissioners to ascertain and settle private land claims in the State of California) by attorney moves the said Court that leave be granted him to take further testimony in the above entitled suit.

D. S. Gregory
Atty for Appellant

22nd April 1855.

No 27

J. Sobeiraes.
appl.

vs.

The United States

Motion to take further testimony

Filed April 27th 1855.
J. E. Carr.
Clk.

U. S. District Court. Southern Dist. of Cal.

Feliciano Sobrancy
vs
The United States

San Lorenzo No. 27
(Transcript No. 505.

In this cause on motion of claimant in person & Ad. Co. Attorney & Counsel for respondent & appellee present ordered that testimony be taken in this cause by either party

No. 27.

U. S. Dist. Court

Feliciano Sobrevanes

vs

The United States

Mex-to take testimony

Filed June 15th, 1858.

J. H. Carr
Clk.

Feliciano Soberanes, Appl.
vs
The United States Appellee

U. S. District Court
Southern Dist of Cal
No. 27. San Lorenzo.

Deposition of Joaquin de la Torre, a witness on the part of appellant, taken by consent of parties before Charles E. Carr, U. S. commissioner appointed to take testimony in this Case. Present. D. S. Gregory Attorney for Claimant. P. Ord, U. S. Attorney. Joaquin de la Torre being duly sworn deposes and says. Y. Abigo sworn as interpreter.

Quest. 1st. What is your name age, place of residence and present occupation.

Ans. My name is Joaquin de la Torre, my age forty two years. I reside in Monterey, my occupation a farmer.

Quest. 2 Do you know the Rancho of San Lorenzo situate in the county of Monterey, If yea. State whether it has been occupied, by whom, how long, and in what manner.

Ans. I know the Rancho of San Lorenzo. It has been occupied by Feliciano Soberanes since the year 1840. He occupied it in 1840 by permission of the Governor - in 1841 the title to it was given him. Soberanes has on it a house, corals. Cattle and horses, and a portion of it under cultivation.

Ques 3d. Do you know the boundaries of said Rancho of San Lorenzo, if yea, State what they are, and how much land is included within them? (Quest objected to by the U. S. Attorney.)

Ans. I know the boundaries of San Lorenzo. It is bounded on the East by the Arroyo of

San Lorenzo - on the north by the Pinalitos, on the South by the arroyo of the Chalow, on the west by the Salinas River. The Ranch contains about five or six leagues. (Objected to by the U. S. Attorney

Cross examined by the U. S. Attorney.

Ques - How did you obtain a knowledge of the boundaries you have spoken of.

Ans. I asked for the land before Soberanes asked for it. This is all the information I have about the boundaries.

Reexamined by Chief -

Ques. Have you ever since those natural boundaries, and are they well known.

Ans - I have seen them and they are well known.

Sworn to and subscribed at Monterey this 16th day of June 1855. before me

J. C. Ord
Lt Comdg

Joaq.n de la Torre,

No 27.

U. S. Dist Court

South Dist of Cal.

Feliciano Soberanes,
Appt.

vs.

The United States,
Appee.

Deposition of Joaquin
de la Torre.

Filed 16 June 55
C. E. Carr Clk
by A S Taylor
Dep.

Feliciano Soberanes, applt. vs The United States, Appee. } District Court of the United States, Southern District of California. No 27. San Lorenzo.

Deposition of Rafael Pinto, a witness on the part of Appellant, taken by Consent of parties, at Monterey, June 16th 1855. before Chas. E. Cave, U. S. Commissioner, appointed to take testimony in this case. Present, D. S. Gregory, Attorney for Appellant, P. O. C. Ally for the United States.

Rafael Pinto being duly sworn deposes as follows—

Ques 1st What is your name, age, place of residence, and present occupation?

Answer. My name is Rafael Pinto, my age thirty seven years— I reside in Monterey, my occupation that of a Ranchero

Ques 2d. Do you know the Rancho of San Lorenzo situate in Monterey County, If yea, State if it has been occupied— by whom, how long, and in what manner.

Ans. I know the said Rancho of San Lorenzo. I know that it has been occupied since the year 1841 (the about ten months ago) by Feliciano Soberanes, with his family— with House, Corals, cattle, horses and mares. ~~a~~ said Rauch belonged formerly to the Mission of La Soledad— When the Governor permission to individuals to ask for ~~said~~ Mission lands San Lorenzo was solicited by Soberanes and granted to him— it was then vacant land.

Ques. 3d. Do you know the boundaries of the Rancho of San Lorenzo. If yea State what they are, and what quantity

of land is embraced within them. (objected to by U.S. Atty)
Ans. I know the boundaries of San Lorenzo. It is bounded on the East by the Arroyo de San Lorenzo on the North by the Hills of Pinalitos, on the North West by the Arroyo de Chalon, on the South of the River Salinas. There are about five or six leagues within these boundaries. (objected to by the U.S. Attorney). These natural boundaries are well known.

Cross Examined by the U.S. Attorney.

Ques. 1 In what manner did you obtain information of the boundaries of the land as above described.

Ans. I obtained my information when visiting said Rancho. I asked the Sons of Soldiers, and the Cohidentes, who told me that the boundaries were those I have before stated. And from information I obtained, while acting as the agent of Vallejo, who has leased the Ranch. This lease was made about ten months ago.

Ques. 2. How far is this Ranch from the Sea Coast.

Ans. About ten or twelve leagues.

Sworn to and subscribed at Monterey this 16th day of June 1855. before me,

C. E. Carr.
U.S. Comr.

Rafael Pinto

No 27.

U. S. Dist Court.
South Dist of Cal.

Feliciano Soberanes.
Appt.

vs

The United States.
Appee.

Deposition of Rafael Pinto.

Filed 16 June 55
Ch. E. Carr Clk
by A. J. Taylor
Dpty. Clk.

Monterey

Feliciano Soberanes
vs
The United States

No 27

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To the Hon. the District Court of the United States for the Southern District of California

The Petition of Feliciano Soberanes, respectfully states, that this Claim is an appeal from the Decision of the Board of U.S. Commissioners for the ascertainment and settlement of private land claims in California, That the claim filed by your petitioner before said Board was for five leagues of land, in the County of Monterey, viz in the Southern district of California, That after hearing said petition and the proofs filed in said case said Commissioners on the 15th of Oct 1853 decided said claim to be invalid - that the transcript of the Record of said proceedings was filed in this Court on the 19th of August 1854, and a notice of appeal filed by claimant on the 15th of September 1854

Your Petitioner prays that the said decision of said Board may be reversed and, and that this Court may confirm his title to said land

J Ord
Atty for Claimant

for a description of which land and your petitioner refers to the petition filed before said Board

No: 27

Feliciano Soberanes
vs
The United States

Petition for
Review

Filed Sept. 19th 1855.
J. E. Carr.
Clk.

J. Clarke Atty

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

The President of the United States,

TO

Pacificus Ord Attorney of the United States for the Southern District of California

27 SD
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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 Sixteenth day of September in the year of our Lord one thousand eight hundred and fifty-five at the City and County of Los Angeles, in said District, by Feliciana Dobreanes praying the said Court to review the decision of the Board of U.S. Land Commrs. for the State of California for a tract of land in the County of Monterey & South Dist of Calif. which claim was rejected on the 25th of October 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.~~ or 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 Twentieth day of Sept in the year of our Lord one thousand eight hundred and fifty-five, at Los Angeles aforesaid.

P. E. Case Clerk.
By John W. Roff Dep

No. 27

Copying Summons. .90
Serving Same 3.00
Serving Petition 3.00
$ 6.90

United States of America,

Southern District of California,

U. S. District Court.

Feliciana Dobranes

vs.

The United States

SUMMONS.

Received Sept. 20th 1855
Edward Hunter
U. S. Marshal

I served this summons along with the proper copy of the petition upon Stats. Dist. Atty. by leaving with him personally at his office in the City of San Diego

at the City of San Diego day of Sept. in the Southern District of California on A. D. 1853.

Sworn to and subscribed before me, this 21st day of Sept. 1855.

J. C. Jan. Clerk.

E. Hunter U. S. Marshal.

By W. P. Dorn. Depy.

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In the District Court of the United States
for the Southern District of California
Hon Isaac S. K. Ogier, Judge.

Feliciano Soberanes,
vs.
The United States

No. 27.
(Transcript No. 505)

The answer of Pacificus Ord, Attorney of the United States for the Southern District of California, to the petition of ~~the~~ Feliciano Soberanes for a review of the decision of the U. States Land Commissioners for the State of California, for and in behalf of the United States, says:

That he denies, generally, all and singular each and every allegation in the said petition contained; and he denies further that the ~~said~~ alleged title of the said petitioner and claimant is valid. And he prays that this Hon.ble Court will affirm the decision of the said Commissioners and decree the said title to be invalid. And general relief.

P. Ord
Atty of the U. States
for the Southern District
of California

No. 27.

Feliciano Soberanes.

vs.

The United States.

Answer to petition for Review.

Filed Sept 21st 1855.

J. E. Carroll

By S. W. Pool

Dep

27 SD

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P. O. Mott of Ms.

Feliciano Sabranes
Appellant
vs
The United States
Appellees.

District Court U. S. for the Southern District of California.

The Appellant predicates his claim upon a grant issued to him by Governor Alvarado which bears date 9 Jany 1842. The date of the year is evidently a mistake — All the other documents on file & which show that the proceedings took place in 1841 and this mistake is admitted in the Petition of the appellant to the Commissioners. There seems to be no controversy about the genuineness of the grant or the authority of the Governor to convey. — The objections raised to the validity of this claim are 1. That there was no approval of the grant by the departmental assembly

2. There had been no segregation of the land by the obtainment by grantee of judicial possession.

3. Failure to build a house in accordance with one of the conditions annexed to the grant

4. Vagueness in the description of the boundaries of the land.

5. That there was no occupancy or inhabitancy of the land established here.

In relation to the first, second, and

third objections it is only necessary to say, they cannot avail to defeat the present claim if in other respects it can be sustained. The decisions in the Supreme Court and in this tribunal settle the doctrine that a failure to obtain the approval of the Departmental Assembly, or to receive Judicial possession, or to build a house within the time limited by the grant will not always operate to forfeit the rights of the grantee, in the absence of any process to effect that object under the Mexican Rule.

The fourth objection is to the vagueness and uncertainty in the description of the property granted.
The land is described as "the place known by the name of San Lorenzo bounded on the East by the creek which issues from San Lorenzo, on the West and South by the river and on the North by the Mountains" and the third clause annexed to the grant states, that the land whereof mention is made is of the extent of Five Square leagues (sitios de ganado mayor) a little more or less as appears by the plot which accompanies the expediente. "The Justice who gives possession shall cause it to be measured according to law

leaving the surplus to the Nation for the necessary uses".

~~Two witnesses have been summoned to state their knowledge of the Rancho San Lorenzo, one of whom was accustomed to visit it in 1840. The witness stated of the boundaries of the Rancho, well known to them. Objection was made to their testimony; but we consider that when a particular Rancho is known by a particular name throughout the neighborhood, that it is sufficient for persons to testify as to their knowledge for years of what was considered the known boundaries of such Rancho. We further instruct, that the extent included in the boundaries to be about five or six leagues.~~ - We do not consider that the description in this grant ~~was~~ is so vague as to render it impracticable for a surveyor to locate the land. But it is unnecessary to dwell on this point, as we think this objection ~~is~~ to the vagueness of description of boundaries in the grant may be disposed of on other grounds. This grant is what is termed in common parlance a "Solitario" - ~~such characteristic~~

These "Sobrante" grants came under con-
-sideration of the District Court U. S. for
the Southern District of California in
the case of Baca and Pena vs U. S.
In relation to them that Court say,
"There are many such grants and they
are out of the peculiar condition of
things in California. Neither the
grantor nor the grantee had the
means of defining quantity by mea-
-surement. No surveys made during
the Mexican rule have come to the
notice of this Court, and we believe
the condition of things as it existed is
truly stated in the instructions of the
Department of the Interior U. S. to the
Board of Commissioners. "That there
are & is believed no Spanish or Mexi-
-can plats of survey of lands in California;
no actual surveys so far as this
Department is advised having ever
been executed during the sovereignty over
the country of either Spain or Mexico."
(Instructions 11 Sep. 1851). Under this state
of affairs the idea of quantity was al-
-most abandoned in the granting sys-
-tem in California. The grantee pre-
-sented a rude ~~map~~ document dig-
-nified with the name of a map or
sketch on which were pencilled cer-
-tain boundaries without regard to
relative distances, and in some in-
-stances

stances without true indication as to their bearings, the prominence of ~~which~~ such objects seeming to be the inducement for calling for them, within these extensive limits, may the land needed, and the petitioner in his application described it as so much land bounded by these extensive limits, and by such description it was granted. The grantee equally ignorant or careless of quantity protected the public interest by reserving any surplus that might be ascertained on subsequent measurement for Government uses. ... These reservations for public uses, are pretty generally introduced into California grants & the effect of such a system of granting has been to render it impracticable under the rules of the common law interpretation applicable to the interpretation of grants to extend to claimants under Mexican concessions the protection afforded to them by the Treaty of Guadalupe Hidalgo. Congress foreseeing this, and in passing the Act of 3 March 1851 with a view to respect those stipulations have given us very different rules of interpretation, and among them "the principles of Equity" and "the laws, usages and customs" of the Mexican Government. It is true, among these rules Congress has enumerated

-vocated the decision of the Supreme Court; but have added with emphasis frequently the reservation "so far as they are applicable". These decisions were predicated upon the act of Congress passed 26 May 1824 and the laws and ordinances of Spain and France. The Chief Justice, in delivering the opinion of the Supreme Court in the case of Freeman v. The United States, has demonstrated the difference which exists between "the mode and manner of granting lands" which prevailed in Louisiana and Florida on the one hand and California on the other, and therefore concludes, that the decisions made upon the one law and "one mode of granting" ~~are inapplicable~~ are inapplicable to the others. It is reasonable to suppose, that it may in view of such considerations or other of like character that the decision in the Freeman grant may be made. The reasoning & authorities in that case apply to the present.

Speaking of the boundaries described in the grant and map in that case the Commissioners say, "The limits here marked out might contain only five leagues, and they might contain fifty leagues. We have no means of ascertaining anything near the quantity" The Freeman

Grant was obliged in to such change to a much greater extent, and yet the vagueness of the description did not prevent the confirmation of it. The Court considered therefore that the grounds taken against this claim on the score of vagueness of description of the lands in question cannot be sustained.

The fifth and last objection urged against the confirmation of this claim is, "that there was no occupancy or inhabitancy of the land granted by the grantee".

If this were true in fact there would be an end of the case, for it would be equal to an abandonment of it, and would show that the grantee had not even so far taken upon himself the performance of the obligations he had assumed as to have anything he could have abandoned.

The testimony before the Commissioners was that of a single witness. José Abrego testified that he was acquainted with the land petitioned for, and had been acquainted with it for about ten years. It had been in the exclusive possession and occupation of the petitioner, who had lived upon it, using it for grazing pur-

-ness and otherwise unfavorable.
The above was all the testimony re-
-lied on before the Commissioner
on this point. They rejected it as vague
and unsatisfactory, particularly
when viewed as the testimony
on which reliance was solely
placed to prove what the Com-
-missioner deemed indispen-
-sably necessary to the validity
of the claim, viz. a strict com-
-pliance with the condition of
the grant which required the
grantee to build a house within
a year from the date of the grant,
and its actual inhabitancy
by the grantee. Commenting up-
-on this testimony, the Commissio-
-ner says, "The two points to be
"proved were, first, the building of
"a house on the land within a year
"from the date of the grant, second
"its actual inhabitancy by the gran-
"-tee. Instead of proving these two
"plain and simple facts in lan-
"guage which the witnesses under-
"-stood, and could make
"every other person understand, he
"commences by stating that he has
"lived on the land about ten years,
"a most indefinite mode of expres-
"-sing the precise time when his

residence

"knowledge first began. The deposi-
"-tion was taken in March 1853, the
"grant was made in August 1841,
"so that giving him the benefit of the
"full ten years he knew nothing of
"the Rancho until seventeen months
"after the date of the grant". These
statements are certainly just, when
the testimony is considered as
relied on to prove the erection of
a house and the occupation of
it within one year from date of
grant, and it may certainly be
a page & generate to establish
such fact, and was very pro-
-perly rejected by the Commis-
-sioners. But certainly, it
establishes the fact that the
grantee had lived on and of clu-
-sively occupied the Rancho for about ten years, & is all
sufficient for that purpose.
But additional testimony has
been taken in this Court upon this point.
Joaquin de la Torre testifies the
appellant was in possession of the
Rancho in 1840 - that he occupied
it that year by permission of the
Governor - that in 1841 the title was
given to him - that he had on it
a house, corral, cattle, & horses
and a portion of it under cultiva-
-tion. Rafael Pinto another

witness

Witness testifies that the Ranch has been occupied by the grantee & his family since the year 1841 till two months before his testimony was taken with house, corrals, cattle &c. About ten months ago the Ranch was leased by grantee to Vallejo.—

The foregoing testimony if it does not establish with precision the erection of a house within one year from the date of the grant abundantly proves the continuous occupancy and habitancy of the premises by the grantee from the date of the grant to the present time.— There is evidence of a substantial compliance on the part of appellant with the object and policy of the colonization law of Mexico, and fulfillment on his part of the consideration of the Grant.—

In view then of the whole case the Court considers this claim to be valid and directs following decree to be entered.

Feliciano Sobranes
Appellant
vs
The United States
appellee

} Dis. Court U.S. for the Southern Dist of California

On this cause coming to

be heard at a stated Term of this Court on appeal from the final decision of the Commission, to ascertain the private land claims in the State of California under the Act of Congress approved 3 March 1851, upon the transcript of the decision and proceedings and the papers and evidence on which such decision was founded, and upon additional evidence given before this Court, and it appearing to the Court that said transcript has been duly filed according to law; And the Counsel for the respective parties ~~being~~ having been heard, it is ordered, adjudged, and decreed that the decision of the said Commission be, and the same is hereby reversed and annulled, and it is further ordered adjudged and decreed that the claim of the appellants, Felicianos Labeau be confirmed to the tract of land known by the name of "San Lorenzo" it being the same land described in the grant a copy of which is of file in this case, and the map accompanying it, and which the appellants claim to have been in possession to the extent of five square leagues and

and no more, Provided the said quantity of five square leagues hereby confirmed be contained within the boundaries mentioned in said grant, and if there be a less quantity within said boundaries than the said five square leagues, then such less quantity is hereby confirmed to the said of-
-fellows.

No. 27.

The U. S.
vs
Feliciano Soberanes

"San Lorenzo"

Focus

Filed Sept 24th 1855.
C. E. Carroll
By J. W. Roff Dep.

In the U States District Court for the Southern District of California,
Special Term Sept 1855.
Los Angeles.

Felicians Soberanes. appe
vs.
The United States. appe.

No. 27.
(Transcript No. 505)

On motion of P Ord Attorney of the United States for the Southern District of California, it is, Ordered by the Court, that an appeal be granted the United States, to the Supreme Court of the United States, from the judgment of this Court against the United States, in the above entitled cause, rendered on or about the 24th day of September A D 1855.

P. Ord
Act Dist Atty.

No 27.

U.S. Dist Court.
South Dist of Cal.

Feliciano Soberanes.
appee.

vs.

The United States.
applt.

Motion & Order of Appeal
to U.S. Supreme Court
on Motion of P. Ord
U.S. Atty

Filed Oct 18th 1855.
J. Ewing
Clk.

California Land Claims.
Attorney General's Office
27 September 1856.

Sir:

In the case of the claim of Feliciano Soberanes, rejected by the Commissioners, Case no. five hundred and five, (505) but confirmed on appeal by the District Court, appeal in the Supreme Court will not be prosecuted by the United States.

I am
Respectfully
Yours
Cushing

Pacificus Ord Esq.
U. S. Atty for the
Southern Dist of Cal.

VV

27

Feliciano Sobranes

505

Filed 24th February 1857
A Lewis clk
J. H. Coleman
Dep

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Rec Nov 4 1856

California Land Claims.

Attorney General's Office

10 September 1856

Sir:

In the case of the claim of Feliciano Soberanes, confirmed to the claimant by the Commissioners, Case no. five hundred and five (505), and also confirmed on appeal by the District Court, appeal in the Supreme Court will not be prosecuted by the United States.

I am
Respectfully
C. Cushing

Pacificus Ord Esq
U. S. Atty for the
Southern Dist. of California

VV

27

Feliciano Sobranez

503

Filed Feb'y 24 1857

de Lima clk

J. H. Coleman

clk

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Rec'd Oct 21 1836

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

Feliciano Soberanes appellant
vs
The United States appellee

Docket No.
Trans. No.
Claim for the Rancho in Monterey County called "San Lorenzo".

Notice having been received from the Attorney General of the United States that it is not the intention of the United States to prosecute further any appeal in this case; and this said Court having heretofore decreed and gave judgment in favor of the title of said Appellant. ——

Now it is hereby stipulated that an order of this Court may be made dismissing any appeal in this cause, and allowing the claimant, said appellant & his legal representatives, to proceed under the decree & judgment of this Court heretofore rendered — as under a final decree.

Feliciano Soberanes

J. R. Betchell
Dist Atty

U.S. Dist. Court
S. Dist. of Cal.a
No. 27

Feliciano Soberanes
vs
The United States

Claim for S. Lorenzo Monterey County.

Stipulation

Feliciano Soberanes
vs
The United States

No 27

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of the petitioner from the time of the Grant to the beginning of the present year.

Page 26 to 28 Opinion of the Board rejecting the claim

29 & 30 Petition for rehearing and affidavit.

31 to 38 Opinion of the Board denying the application

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Antonio Lobano
vs
The United States

Appeal to the Court

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A. Clarke Clk