

CASE No.

67

SOUTHERN DISTRICT

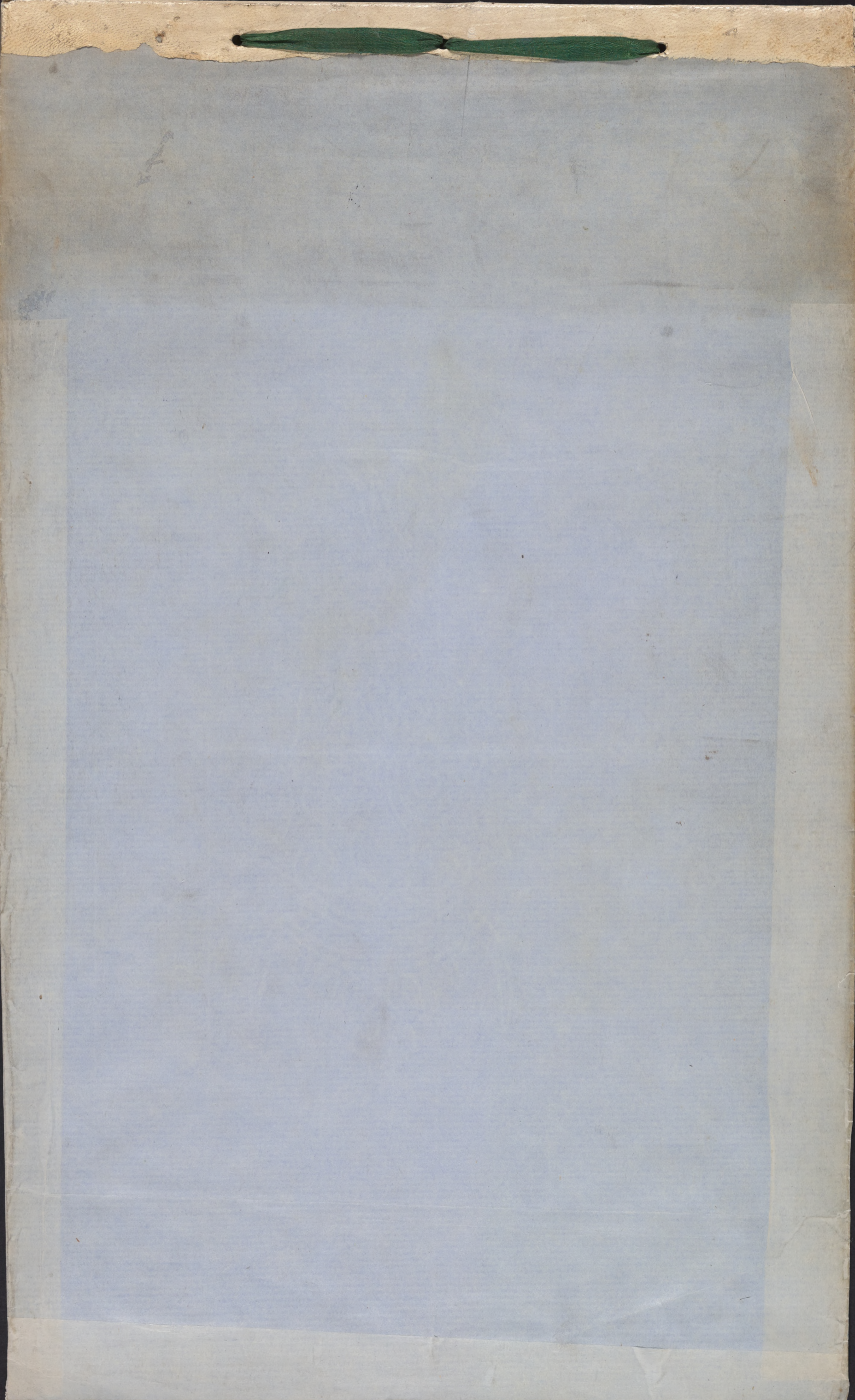
BOLSA DE LOS ESCARPINOS GRANT

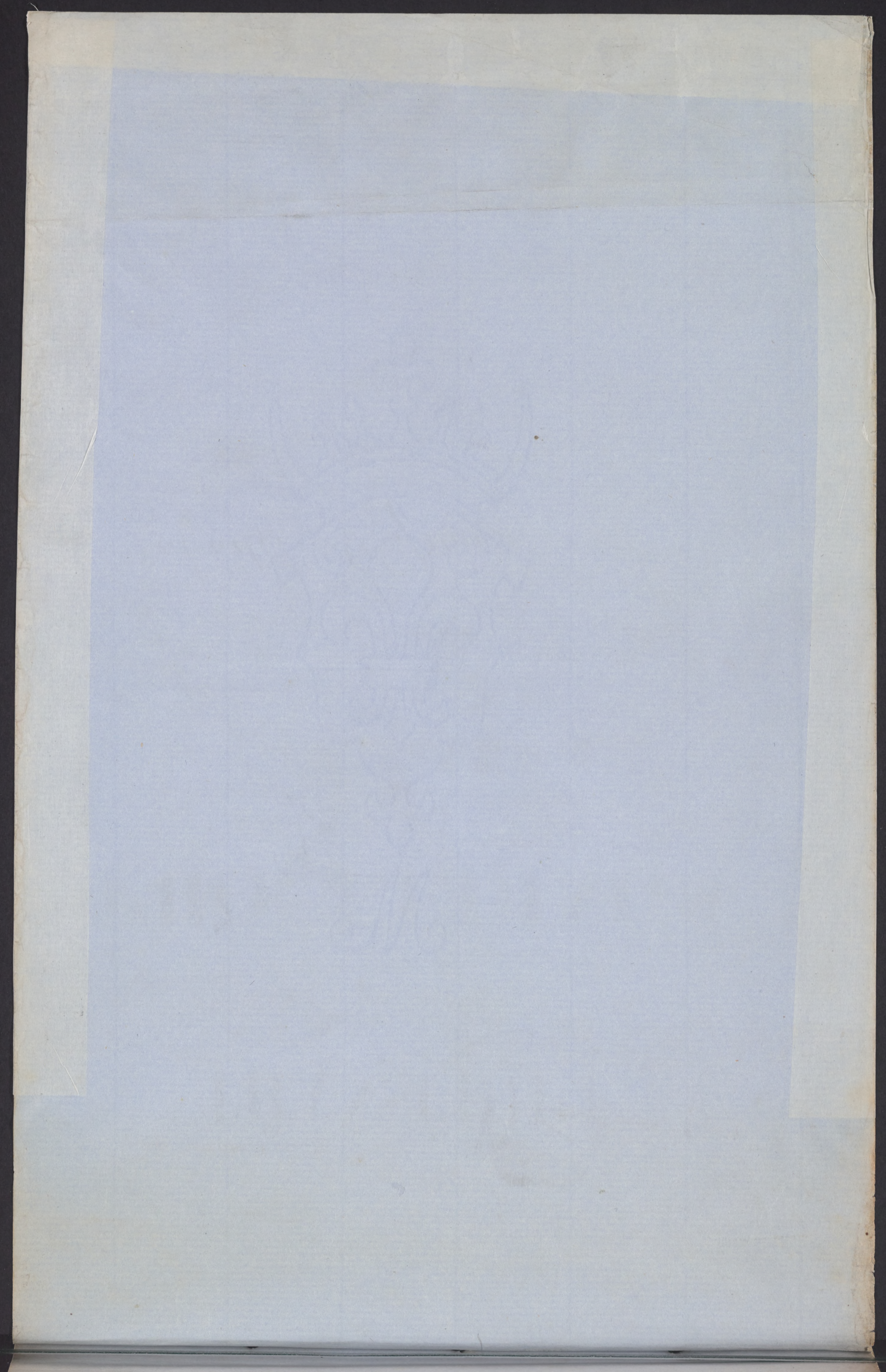
SALVADOR ESPINOSA

CLAIMANT

FEB 17 1968

NEW
SECTION 113
BROOK BOND
BANK





TRANSCRIPT

67 SD
PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 3535

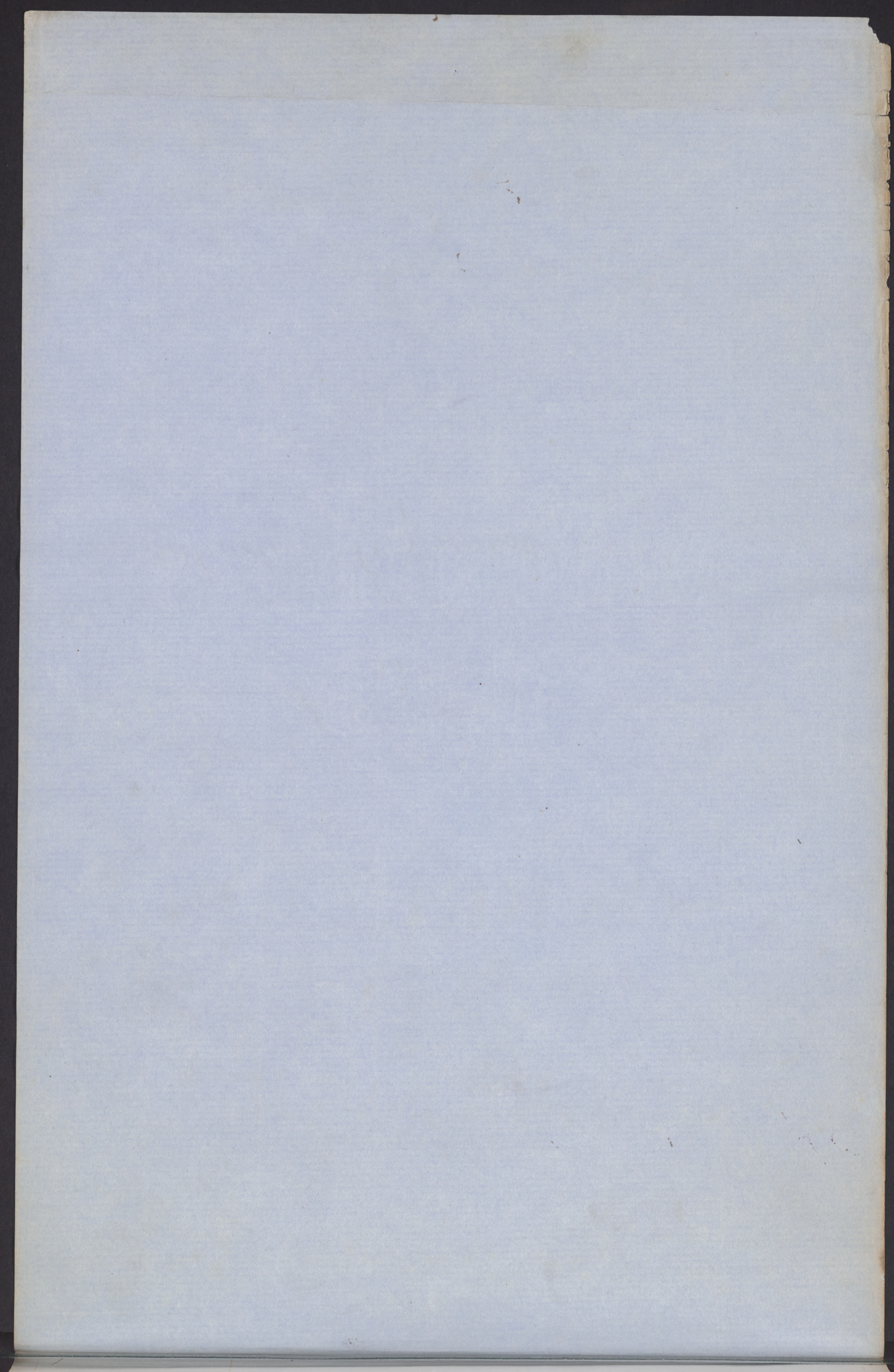
Salvador Espinosa CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

Balsa de los Escarpinos.



Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

67 SD
PAGE 2

Be it Remembered, that on this twenty second day of September 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 *Sacraor Espinosa* for the Place named "*Bolsa de los Escarpinos*" was presented, and ordered to be filed and docketed with No. 355 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. 118 *Sacraor Espinosa* for the place named *Bolsa de los Escarpinos*, the deposition of *Severo Gonzalez*, a witness in behalf of the claimant, taken before Commissioner *Henry J. Thornton* with documents marked *H. J. T. No. 1* annexed thereto was filed;
(Vide page 3 of the Transcript)

San Francisco March 23rd 1853
In the same case the deposition of *Jose Abrego* a witness in behalf of the claimant taken before Commissioner *Richard Hall* was filed;
(Vide page 4 of the Transcript)

San Francisco August 10th 1853.
In motion of the United States Law Agent
Case no. 355 was ordered to be placed on the
Trial Docket.

San Francisco Aug. 11th 1853.

Case no. 355 called; submitted on Briefs
on both sides and taken under advisement
ment by the Board.

San Francisco Decemr. 20th 1853.

In the same case Commissioner Thompson Campbell
declined the opinion of the Board
concerning the claim;

(See page 2B of the Transcript)

67 SD
PAGE 3

To the U. S. Board of Land Commissioners for the ascertainment & settlement of Land Claims in California.

Your petitioner Salvador Espinoza, a native of Mexico & citizen of California respectfully shows:

Petition.

67 SD
PAGE 4

That on the seventh of October A. D. 1837, he presented his petition to Juan B. Alvarado, then Governor of Alta California praying for a grant of the tract of land known as La Bolca de los Escosponos.

That thereupon the said Governor, having obtained the requisite information in regard to the subject & object of said petition by a decree dated on the 7th of October A. D. 1837, declaring your petitioner the owner of the said tract of land, duly granted the same to your petitioner in full ownership.

That said decree was written upon the margin of said petition, & was returned to your petitioner.

That in pursuance of a direction contained in said decree, your petitioner in due form applied for judicial possession & measurement of said tract to the proper Alcalde, viz. to Teodoro Gonzalez, to that & duly empowered, who on the 22nd of November A. D. 1837, in due form of law, gave to your petitioner judicial possession & measurement of said land, and made an official record thereof.

That said petition & decree the said record of judicial possession & measurement, with division of said tract, all attached together were thereupon given by said Alcalde to your petitioner to serve him as monuments of title to said land.

That your petitioner had been the owner of said tract of land by virtue of a grant from the Mexican Government, & had held quiet & exclusive possession of the same, for fourteen years previous to his said petition to Alvarado, & that this having been made so to appear, & having been so official declared by

4

said Alcarado, so being Governor of California, the said decree was given & the said proceedings & about the judicial possession were had, more for the purpose of furnishing to your petitioner, additional monuments of title to said land, than to constitute an initiate and original title thereto.

67 SD
PAGE 5

That the said tract is situate in the County of Monterey, that it contains two square leagues & that the location & boundaries of the same are fully set forth & described in the said record of judicial possession, which is herewith filed, with a translation thereof.

That your petitioner have been in quiet possession of said land for the last twenty nine years & that he knows of no conflicting claim thereto.

Your petitioner therefore, presenting the said monuments of title, with translations, herewith, respectfully prays that his said claim & title to said tract of land may be confirmed by your honorable board.

Clarke, Taylor, & Beckwith.
Atts for Petitioner.

Filed in Office Sept 22nd 1852.
Geo. Fisher
Secy.

Deposition of
Jose Albrigo

San Francisco, March 23 1853

On this day before Court Hiland Hall, came Jose Albrigo, a witness in behalf of the claimant Salvador Espinosa, petition No 355, & was duly sworn, his evidence being interpreted by the Secretary.

The U.S. Associate Law. Agent was present.

Questions by Claimant.

5

Quest. 1st. What is your name, age & place of residence?
Ans. My name is José Abrego, my age forty years, & I reside at Monterey.

Quest. State what you know in regard to the possession & occupancy of the land petitioned for by Salvador Espinosa called *Finca de las Escarpines*.

Ans. I have been acquainted with the land petitioned for during the last 18 years; during all that time it has been in the exclusive possession & occupation of the petitioner & his family, they having lived upon it during all that time, cultivated & improved it for the usual purposes of a rancho -

Sworn & subscribed *José Abrego.*
Before me *Richard Hall.*

Filed in Office March 23rd 1853. *Comr.*
Geo. Fisher.
Secy.

Deposition of
Tedoro Gonzalez.

San Francisco, Decr 30th 1852.

On this day before Comr. Henry J. Thornton, came *Tedoro Gonzalez*, a witness in behalf of the claimant *Salvador Espinosa*, petition No 355, and was duly sworn, his evidence being indisputed by the Secretary.

The U. S. Associate Law Agent was present.

Questions by Claimants.

Quest 1st. What is your name, age & place of residence.
Ans. My name is *Tedoro Gonzalez*, my age forty nine years, my residence is the city of Monterey.

Quest 2nd. Look at the original document now shown

67 SD
PAGE 6

67 SD
PAGE 7

you, purporting to be an original petition for the grant of the land called Bolca de los Escarpines made by Salvador Espinosa, dated Monterey 7th October 1837 - on the margin of said petition the original grant made by Alvarado, dated the same day & place, - a record of judicial possession & map thereto attached - which said original document marked Exhibit 1, is attached to your deposition & now filed in this cause. State what you know concerning the said document, & the signatures & whether they are genuine.

Answer. I know the signatures to this document, I know them to be genuine. I was the Alcalde, who gave judicial possession of the land called Bolca de Escarpines to Salvador Espinosa. I have seen this document at the very time when I gave said judicial possession - it was then presented to me by the same Salvador Espinosa.

The device of Alvarado, on the margin of the first page of said document was already there at the time, when it was first presented to me.

The map is the original map, made when judicial possession was given.

U.S. Law Agent present. *Tedoro Gonzalez.*

Sworn to & subscribed before me this
30th of Dec 1852.

Harry J. Thornton.

Filed in Office Dec 30th 1852.

Comr &c
Geo. Fisher
Secy.

Salvador Espinosa.

En veinte y dos de noviembre de mil ochocientos
 treinta y siete se dio posesion juridica al Ciudadano
 Salvador Espinoza del terreno nombrado Polca de
 Acahuatl y los Escarpines constante de poco menos de dos sitios
 of a Record from de Curado Mayor y p^a constancia se toma rason
 the Archives of en este libro y lo firmé con los de as^a —
 Monterey. Theodore Gonzalez.

De as^a Francisco Serrano. De as^a Esteban Munras.

67 SD
 PAGE 8

Translation

Salvador Espinosa.

On the twenty second of November one thousand
 eight hundred & thirty seven juridical possession
 was given to the citizen Salvador Espinoza of the
 land named Polca de los Escarpines, containing
 a little less than two square leagues, & for security
 account is taken in this book & I signed it with
 those of assistance.

Theodore Gonzalez.
 Wit. Francisco Serrano. — Esteban Munras.

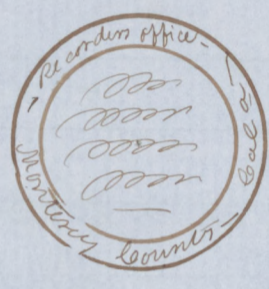
Office of County Recorder
 Monterey County State of California
 I James H. Gleason, County Recorder of the
 County & State before written & as much having in
 my office & in my charge & custody a portion of the
 Archives of the former Spanish & Mexican Territory
 of Department of Upper California by virtue of the

8

2/355

power vested on me by law, do hereby certify that the writing on this sheet in the Spanish language exhibits a true copy of a page of writing in a stitched pamphlet entitled & bearing on its cover - "1855 Libro de posesiones de 1835 y sigue 1837 y del año 1840 y sigue en el año de 1842" - the same being now on file & forming a part of the records of this office.

67 SD
PAGE 9

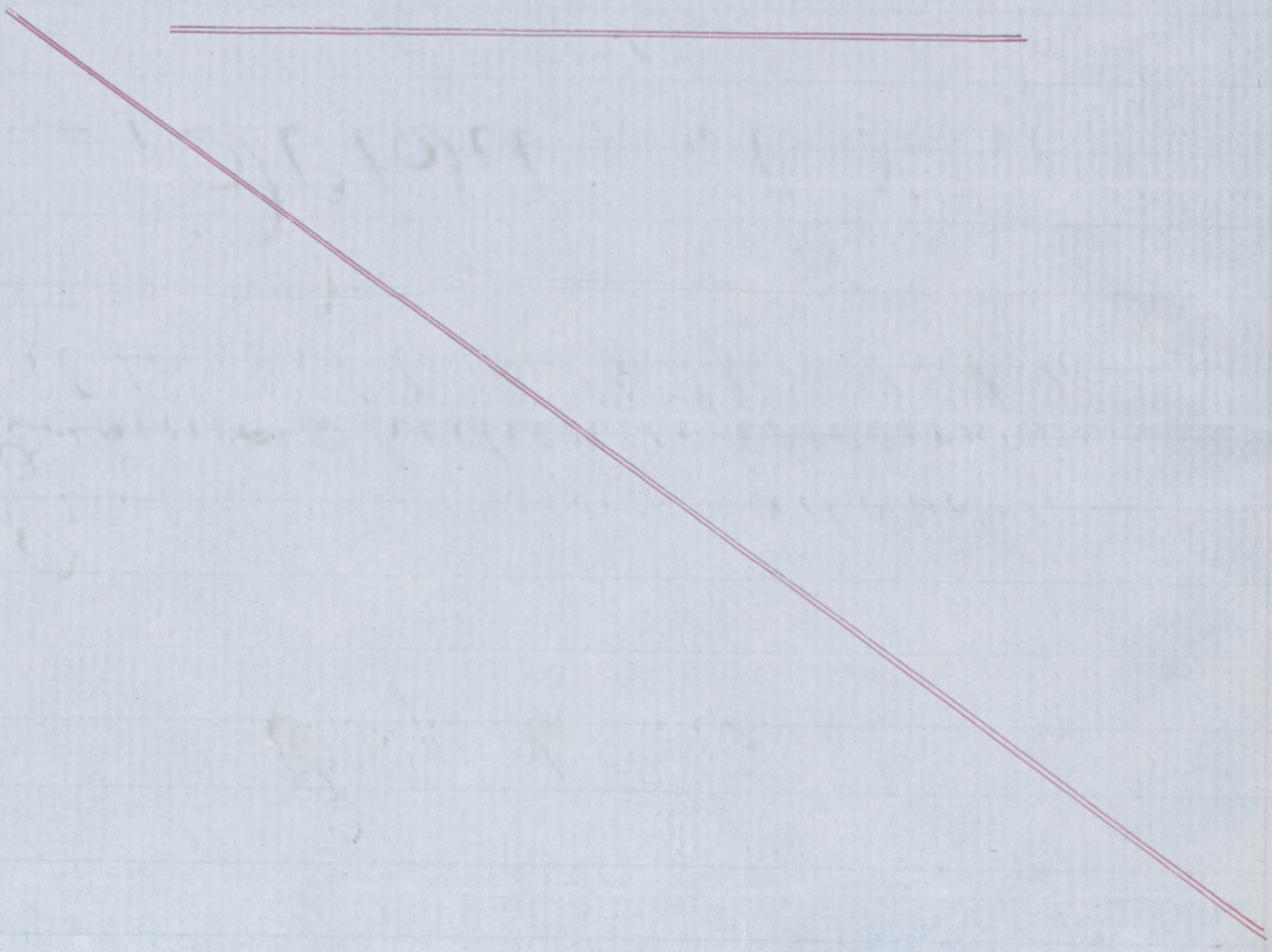


In testimony whereof I have hereunto signed my name officially & caused my seal of Office to be affixed at the city of Monterey this thirty first day of October 1853.

J. H. Gleason
County Recorder
Monterey County

Filed in Nov 26th 1853.

Geo. Fisher
Sey.



9

Expediente

67 SD
PAGE 10

Promovido por el ciudadano Salvador
Espinosa pidiendo posesion juridica
al terreno de su propiedad llamado

Bolsa de los Escarpines

1857

Gov. Gobernador.

Monterey Octbr. y Salvador Espinosa vecino de la
 de 1834 y jurisdiccion de este puerto ante
 Por cuanto a que el Q. E. conforme haya lugar en dere
 interesado en estare. cho digo: que hace el termino de
 presentacion ha pu serca de catorce años que me fue
 seido, quieto y pacif= concedido por el antiguo gobierni
 camento p. el termino el parage conocido con el nombre
 de cerca de catorce de la bolsa de los Escarpines el
 años el terreno conoci que se halla colindante al que
 do con el nombre de posee mi hermano Trinidad de
 la bolsa de los escarpi= mado la Sierega de las rabas am
 nes con fuertes titulos. bos en iguales circunstancias he
 y conocimiento de los. mos fomentado unidos con nuestros
 antiguos Gobernadores propiedades nuestras posesiones
 en esta California euy. y como hallamos ocurrido varios
 documentos indica veces a la Oficina del Gob: por
 haberse establecido. nuestras constancias para mantener
 en la Oficina respa en nuestro poder los documentos
 tivay que por tales necesarios y no se han encontrado
 motivos o conveniencia en los archivos suplico a Q. E. se
 sin las seguridades suya mandar se me de posesion
 convenientes para per en dicha forma del dicho terreno
 manecer en su propi que es la parte que me pertenece
 edad he venido p. d. a cuyo efecto acompaño el dicho
 presente accedo a su correspondiente. Por tanto
 pretencion a cuyo efecto. A. Q. E. suplico se sirva pro=
 dicho interesado cum= veer como pido en que recurri
 ploria las condiciones gracia disimulando que no hay
 siguientes. 1.ª se esta en papel sellado p. no haber
 presentara con este. lo en la poblacion. Loro no ser
 decretos ay juez civil p. de malicia T.
 chendo la posesion qu Monterey Octbr. y de 1834
 ridica del enunciado Salvador Espinosa

67 SD
PAGE 11

Expediente

11

67 SD
PAGE 12

parage. 2.^o. Dicha autoridad con
 anuencia de los co-
 lindantes respee-
 tivos har a medir y como mas aya lugar, hace presente
 el terreno conforme que segun lo dispuesto, p.^o el Gob.
 à Ordenanza y lo pedido en esta mi Policitud
 al dicens expresa p.^o que por sus sabias disposiciones
 de el numero de reses se le de el curso convenientemente
 Varas que resulten a su favor.
 1.^o Concluida esta operacion p.^o su plena satisfacion del que
 volvera este ef.
 pendiente al Gob.
 para que la parte
 interesada escriba
 el titulo correspondiente y se archiven
 los documentos.
 Alvarado
 Ciudadano Salvador Espinosa
 para su verificacion el dia 22, del presente
 y para lo cual se citaran con volutas de comparecido à los colindantes. Asi yo el Alcalde
 1.^o en turno de esta donacion lo providenciè
 mandè y firmè con los de asistencia.
 Deasa
 D. Serrano
 En la fha se le notifico el antecedente auto al
 Ciudadano Salvador Espinosa y de el entendido dijo. lo oye que se da por citado y lo firmo
 con miso y los de Asistencia.

Señor Alcalde Constitucional
 de 1.^o Instancia
 Salvador Espinosa ante la
 Notaria Justificacion de R. S.
 y como mas aya lugar, hace presente
 que segun lo dispuesto, p.^o el Gob.
 lo pedido en esta mi Policitud
 que por sus sabias disposiciones
 se le de el curso convenientemente
 con el debido respeto, suplico haga o tomen las
 providencias q.^o sean necesarias
 su plena satisfacion del que
 represento.
 Monterey 8 de Octubre de 1837
 Salvador Espinosa
 Monterey el dia 21. de 1837
 Por presentado y admitido pro
 cedase por mi el presente Al-
 calde a la medicion, señalando
 miento de linderos y judicial
 que solicita el Ciudadano
 Salvador Espinosa señalando e
 del presente
 de com-
 Asistencia).

Teodoro Gonzales. Deasa.
 Esteban Murcia

me Teodoro Gonzalez

Deasa. Te Serrano # Deas.^a Esteban Munxa

En la misma fha celebraron las Coletas y se
mencian en auto anterior y para constancia
lo onoto y rubrico

R. Rancho de los Escarpines. N.^o 22 de 1834
Presente los colindantes D. Trinidad Espinosa
y D.ⁿ Amemon Castro, nombre por medidores a
los ciudadanos Juan Capistrano Lopez y Do-
se Antonio Abria para la medida, señal a-
miento de linderos y posesion del Ciudadano
Salvador Espinosa quienes previa la a-
ceptacion y juramento procedan al des em-
peño de su encargo. Asi yo el Alcalde. 1.^o en
turno de Monterey y su Jurisdiccion lo decreté
mandé y firmé con los de asistencia

De. Deasa

Teodoro Gonzalez. Deasa

Te Serrano

Esteban Munxa

En la misma fha presentes los Ciudadanos
Juan Capistrano Lopez y Jose Antonio Abria
se les notifico su nombramiento en auto y de
el entendidas dijeron lo oyen que aceptaban
y aceptaron jurando por Dios nuestro Señor y
la señal de la Santa Cruz conforme a derecho
de usarlo fiel y legalmente a todo su leal sa-
ber y entender sin fraude contra persona
alguna y no firmaron por no saber. y lo hice
yo con los de asistencia.

Mi. Deasa

Teodoro Gonzalez.

Te Serrano

Esteban Munxa
Deasa.

En el mismo paraje dia mes y año siendo las
nueve de la mañana yo el presente Alcalde
primero en turno mando a los medidores nom-
brados se dispongan para la medida de las

tierras que se le a de hacer al Ciudadano Sal-
 vador Espinosa y puestos en el Rincon de la
 Bolsa de los Escarpines que queda al P. se
 comensaron las medidas tirando el Cordel
 para el N. hasta los linderos de D. Nicolas
 Alvisi y se midieron doscientos treinta y tres
 cordeles; y despues puestos en los linderos
 de D.ⁿ Trinidad Espinosa, hacia el Sur se
 tiro el Cordel para el S. hasta el primer
 Cauzalito a la Entrada de la Cañada de
 San Miguel y se midieron setenta cordeles
 de cincuenta varas; en cuyos mediciones
 mande se pusieran las mojoneras a costum-
 bradas para señalar los linderos que le
 pertenesen. El terreno medido ^{correspondiente} dos sitios de
 Lana de Mayor y lo firmaron conmigo los co-
 lindantes el interesado y los de asistencia

67 SD
 PAGE 14

J.

Teodoro Gonzalez

José Trinidad Espinosa. # Dimeon Castro.

^{De aco.}
 Ge. Serrano.

^{De aco.}
 Esteban Muro.

En el rancho de los Escarpines a los veinte
 y dos dias del mes de Noviembre de mil
 ochocientos treinta y siete yo el Alcalde pi-
 mero interino de la municipalidad de
 Monterrey y en jurisdiccion despues de
 practicadas las medidas del mencionado
 rancho por los que resulto tener poco mas
 o menos de un sitio de Lana de Mayor
 y presentes los Colindantes D. Trinidad
 Espinosa y D.ⁿ Dimeon Castro siendo esto
 conforme con lo demas que consta de auto
 mande q. se entrase en posesion del mencion-
 ado rancho el ciudadano Salvador Espi-
 nosa a baj. de las medidas citadas. y

formalidades acostumbradas en estos ca-
-sos, lo que verifico inmediatamente, arran-
-cando yerbas, toriendo piedras y haciendo
otras demostraciones como dueño y unico
poseedor del terreno del que se le ha dado po-
-sesion juridica cuya validacion autoriza
firmando con los colindantes, el interesado
y los de asistencia.

67 SD
PAGE 15

L. Teodoro Gonzalez
Jose Trinidad Espinosa. Dimeon Basto
^{usq} L. Serrano ^{usq} Esteban Munros
Gomese Rayon en el Libro de posesiones y de-
-vuelvase este Expediente original al in-
-teresado para que le pida de titulo. Asi
yo el Alcalde primero interino lo decreté
mandé y firmé con los de asistencia.

De as^a. Teodoro Gonzalez.
L. Serrano Esteban ^{de as^a} Munros
Se tomo rason de este expediente en el libro
de posesiones a fajas diecinueve. en Camo-
-ma y se devolvió el Expediente original
al ciudadano Salvador Espinosa en el
fajas utiles en cumplimiento de lo manda-
-do en el antecedente auto y p^a constancia
lo puse por nota q^d rubrique.

Filed in Office Dec. 30th 1852
Geo. Fisher Secy

Here follows

map

17

Espediente at the instance of the citizen Salvador Espinoza, asking judicial possession of the tract of land which he owns, called Bolsa de los Encarpines.

(1837)

355

Monterey Oct. 7. 1837. To His Honor The Governor. Salvador Espinoza, a subject of the

A Translation of Espediente.

When as the party jurisdiction of this part, come before to this petition, has your honor in due form & way; that occupied quietly & it is now about fourteen years since peacefully for the there was ceded to me by the ancient space of fourteen years, Government, the place known by the the land known by the name of La Bolsa de los Encarpines, name of La Bolsa de which is bounded in that which my los Encarpines, with brother Trinidad possesses called its fruits under title La Sonaja de los valas. We two with the knowledge have lived together, in service of the ancient Govern- circumstances with our predecessors, -ors of California, the our possessions, & as we have several documentary proofs times gone to the office of the Govern- of which he shows have ment, through our anxiety to get been mislaid in the into our possession the necessary proper office, & therefore documents, & as they have not been he finds himself with found in the archives. I supplicate -cut the protection Your Honor to order that possession necessary to continue of said land, that is, the part which him in his property. pertains to me be given me in due I have thought fit by form, to which I the corresponding these presents to map accompanies this. Wherefore accede to his petition may it please your Honor to grant Wherefore said petitioner my request: by which I shall receive will comply with grace: excusing the fact that this the following condition, is not on stamped paper for the 1st. He will present reason that there is none in this himself, with this settlement. I swear that I am not decee to the Justice moved by malice &c. of the Peace asking Monterey, Oct 7th 1837

67 SD
PAGE 16

judicial possession of
said place.

2^d Said Authority with
the assistance of the
respective border owners
will have the land
measured according
to ordinance & the
map, expressing the
number of varas, which
result to the party.

4th This operation
being concluded he
will return this espi-
diente to the Govern-
ment, that the party
interested may receive
the title that he asks
for; & that the docu-
ments may be
concluded —

Alvarado —

Salvador Espinoza
(Flourish).

To the Constitutional Alcalde of 1st Instance.

Salvador Espinoza before your Honor well known
justice & as may be most proper presents, according to
the direction of the Government the prayer of this his petition
to which may there be given me according to your Honor
wisdom the most appropriate dispositions. Therefore
with due respect, he supplicates that the necessary action
will be taken by which full satisfaction will result to
him who humbly petitions —

Montreay, 8th of October 1837

Salvador Espinoza.

Montreay Nov 21st 1837

For presented & admitted - Proceedings will be had by me the present Alcalde for the formal measurement of boundaries & juridical possession, solicited by the citizen Salvador Espinoza, indicating for the performance of this the 22nd day of the present month to which end the bordering land owners will be duly summoned.

Thus I, 1st Alcalde of this Jurisdiction, provide, order & sign with the attesting witnesses.

Diego Gonzalez.

Attest.

Attest.

J. Lenant.

Esteban Munras.

On this day I made this order known to citizen Salvador Espinoza. He understood it, & acknowledged himself cited & I sign this with my attesting witnesses

Diego Gonzalez.

Attest - J. Lenant. Attest. Esteban Munras.

On the same day the summonses directed by the preceding decree, were served, & as evidence I attest and sign.

(Gonzales Flourish).

Rancho of Los Escarpines Nov 22nd 1837.

Present the bordering landowners, Trinidad Espinoza, & Simon Castro, I named for measurers, citizens Juan Capistrano Lopez & Jose Antonio Alvera for the measurement, indication of boundaries & possession of citizen Salvador Espinoza; who after acceptance & oath proceeded to the performance of their duty. Thus I, 1st Alcalde of Montreay & its Jurisdiction's decree

order & sign with the collecting witnesses.

Jedro Gonzalez.

Attest. F. Leonard Attest Esteban Munro.

On the same day present Citizens Juan Capistrano Lopez & Jose Antonio Alora, I notified them of their nomination in the decree, & understanding it they said that they heard it - that they had accepted & would accept swearing by God our Lord & the sign of the holy cross, conformably to what they act faithfully & legally according to their real knowledge & understanding without fraud towards any person, & they did not sign because they did not know how, & I did this with the witnesses.

Jedro Gonzalez.

Attest. F. Leonard. Attest. Esteban. Munro.

Therefore, I said Alcalde commanded to be brought into my presence the cord with which the land was to be measured, & the said measure took it & with a vara of usual Mexican measure, they measured fifty varas to make a measuring cord for the land, & I attested with the witnesses.

Jedro Gonzalez.

Attest. F. Leonard. Attest. Esteban Munro.

In the same place, day, month & year at nine o'clock in the morning, I the present Alcalde first in rank, commanded the appointed measure that they should address themselves to the measurement of the land which they were to mark for the citizen Salvador Espinoza, & Chauson in the corner of the Bolso de los Escarpines which is situated to the West, they commenced their measurement, extending the cord towards the East as far as the boundaries of Nicolas Alora & then were

21

measured Two hundred & thirty three cords, & after that standing in the border of Trinidad Espinoza at the South, the cord was carried towards the North as far as the first "Sanulito", at the entrance of the Cañada de San Miguel, & there were measured seventy cords of fifty varas: in which measurements I commanded that they should place the accustomed land markers, to indicate the boundaries appertaining to the land. The land measured amounts to a little less than two square leagues, & was attested by the bordering land owners, the party & witnesses & myself.

Judoro Gonzalez.
 José Trinidad Espinoza.
 Simón Castro.
 Wt. F. Lurana. Wt. Esteban. Munro.

In the Rancho de los Escarpures on the twenty second day of the month of November eighteen hundred and thirty seven, I, the first Alcalde in the land of the Municipality of Monterey & its jurisdiction, after having accomplished the measurement of the rancho, from which it resulted that it contains a little more than one square league, & there being present the bordering land owners, Trinidad Espinoza, Simón Castro, & then having conformed with all the decrees required, I commanded that Citizen Salvador Espinoza, should enter into possession of said rancho, pursuant to the measurements, rites & formalities accustomed in such cases, which he immediately did, pulling up grass, throwing stones & making other demonstrations as owner & sole possessor of the land of which judicial possession had been given him, whose validity I attested, signing with the bordering owners, the party & the assistants.

Judoro Gonzalez.
 José Trinidad Espinoza.

Simon Castro.

ass.
F. Loranot.

ass.
Esteban Munro.

Let an entry be made in the book of possessions & let the original expediente be returned to the interested party that it may serve him for a little — Thus, the first Alcalde, on the land, decree, order & sign with the assistants.

67 SD
PAGE 21

Fedoro Gonzales.

ass.
F. Loranot.

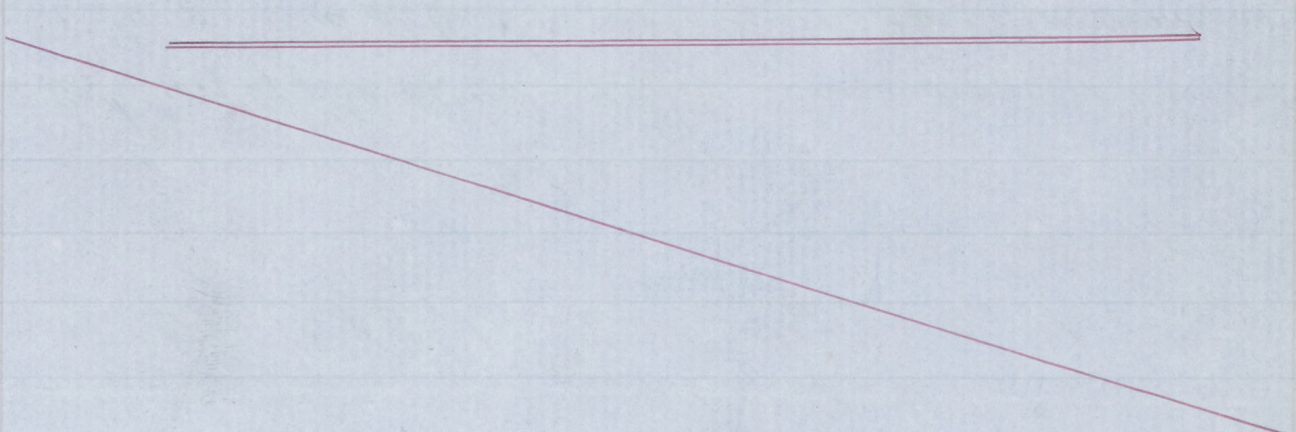
ass.
Esteban Munro.

This expediente has been entered in the book of possessions at folio 100. front, on the same day I returned the original expediente to Sr. Salvador Espinosa on 6 folios used in compliance with the requirements of the antecedent order, & for certainty, I make it known & subjoin my flourish. (Flourish of Gonzales.)

(Ducos of Permises)

Filed in Office Sept 22 1852.

Geo. Fisher,
Secy.



Salvador Espinoza vs Polca de Escarpines
The United States. A little less than two leagues.

The claim in this case is founded on a petition of the claimant made to Governor Alvarado Opinion of the on the 7th day of October 1837, & a marginal concession Board by Comor made by said Governor on the same day.
Campbell.

67 SD
PAGE 22

The petitioner represents in his said petition that about fourteen years before that time the Ancient Government had ceded to him a certain place known by the name of La Polca de los Escarpines which bordered on his brother's tract, that he had gone to the office of the Government several times for the purpose of obtaining the necessary documents, or evidences of his title, but that they could not be found in the Archives, he therefore prayed that the possession of the part which pertained to him be given to him in due form. The Governor in his concession recites, that as the party had enjoyed the fruits of said place, for the space of fourteen years with the knowledge of the ancient Governors of California, & inasmuch as his title papers had been mislaid, & could not be found, he thought fit to concede to his petition, with the understanding that he would comply with the conditions which were annexed. The first condition required him to solicit the proper Justice for judicial possession of the premises. The second condition required the Officer making the measurement, to express the number of varas which it contained. The third condition required the Officer to return the expedite in order that it might be Archived.

The record of judicial measurement, duly proved, has been placed on file as evidence in the cause.

The party has also proved by competent

testimony that, the petitioner with his family, has for the last eighteen years, occupied, improved & lived upon the land in question, & that he used it for the usual purposes of a rancho.

There is no proof that any approval was ever made by the departmental Assembly.

67 SD
PAGE 23

This case presents some new features & although the proceedings are in conformity with the regulations of 1828, the Governor has not adopted the usual form. The facts recited by the Governor in his Commission, show merits of the very strongest character. The party had not only obtained a title from the Spanish Government, but he had occupied without interruption for the space of forty years, the same land. The Governor under these circumstances conceded his petition which was merely that possession might be given him. This concession was delivered to the party, & in obedience to the requirements of the first condition the petitioner presented his petition to the proper Magistrate, soliciting the possession of the premises, which was duly given, & the proper measurement made. This was all the party on interest was required to do. Actual residence upon the land, cultivation & improvement, is proved, to have continued for the last eighteen years, a more meritorious case could not be presented for the consideration of this Commission. The juridical measurement does not define with great accuracy the boundaries, but with the aid of the map on file, taken in consideration with the long & notorious possession of the claimant, I think the premises can be located without much difficulty. - We are therefore of opinion that the claim in this case should be confirmed.

Filed in Office Dec 20 '28 53.

Geo. Fisher.
S. G.

25

Salvador Espinoza
vs
The United States.

Decree of
Confirmation

In this case on hearing the proofs & allegations, it is adjudged that the claim of the said petitioner is valid, & it is therefore decreed that the same be confirmed. The lands of which confirmation are hereby made, are known by the name of Bola de Escarpence, & are the same now occupied by Salvador Espinoza, & are bounded & described as follows, to wit:—

67 SD
PAGE 24

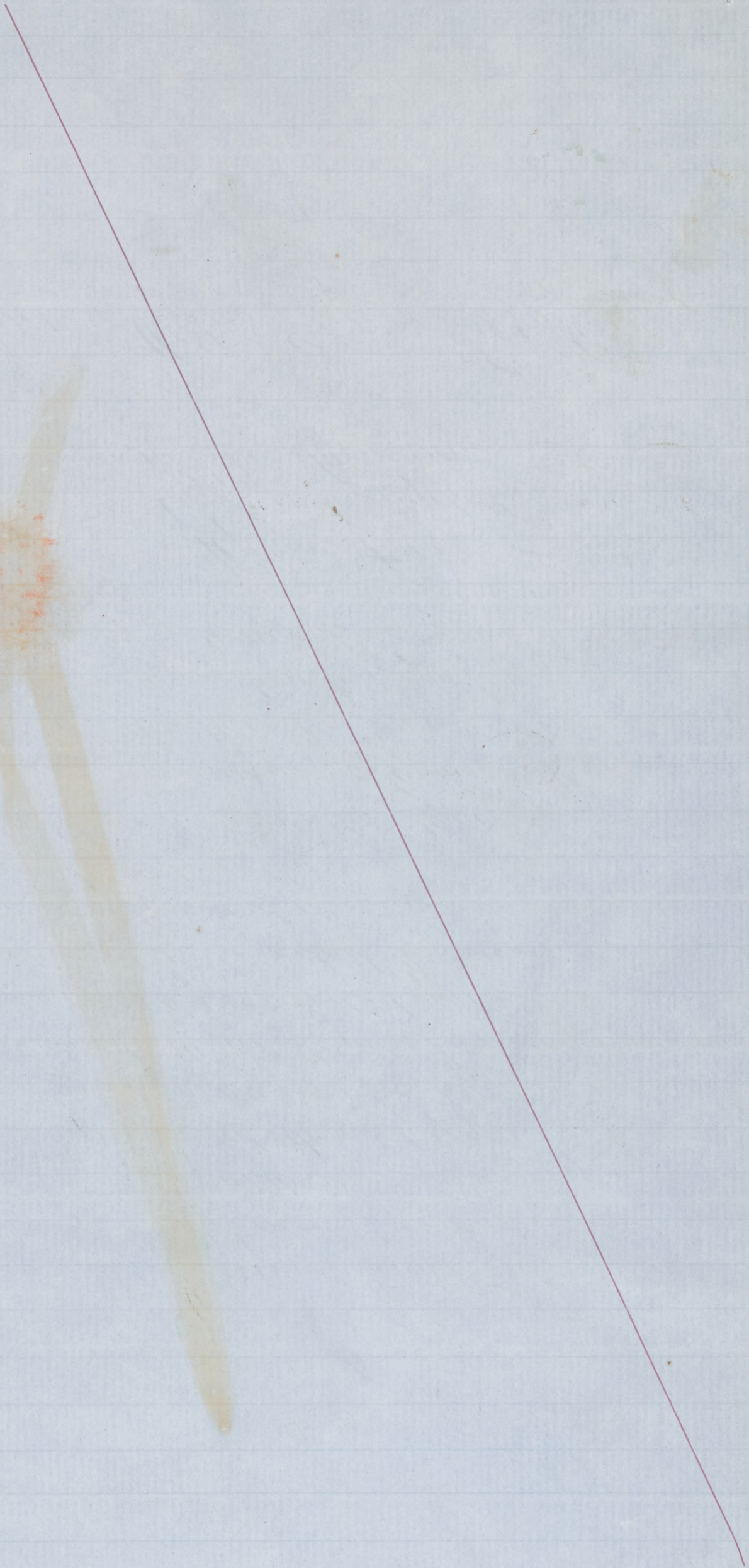
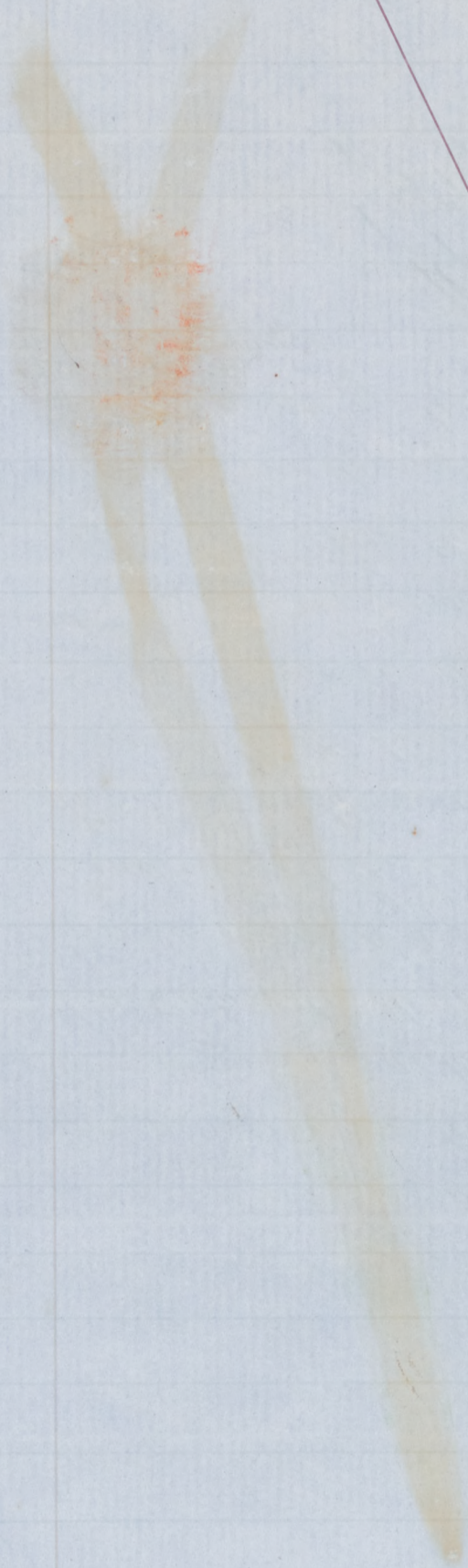
Commencing at the first landmark, at the entrance of the Canada de San Miguel, & running thence South three thousand five hundred varas, to the border of the land owned by Trinidad Espinoza; thence running West eleven thousand six hundred varas, thence running North three thousand five hundred varas, thence running East to the place of beginning eleven thousand six hundred & fifty varas. Containing in all a little less than two square leagues. — Reference for further description to be had to a map, which is made a part of document "Do. N. S. T. No. 1." filed in this case.

Alphus Felch.
Thompson Campbell.
W. Aug. Thompson. Commissioners.

Filed in Office Dec 20' 1853.

Geo. Fisher.
Secy.

50 folios



67 SD
PAGE 25

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 six* pages, numbered from 1 to *26*, 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. *355* on the Docket of the said Board, wherein

Salvador Espinosa is

the Claimant against the United States, for the place known by name of "*Bolsa de los Escarpinos*"

In Testimony Whereof, I hereunto set my hand and affix my private Seal (not having a Seal of Office) at San Francisco, California, this *twelfth* day of September A. D. 185*7*, and of the Independence of the United States of America the seventy-*seventh*

G. Fisher
Secy.





67

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

No. ~~66~~ 67. *Docket*

THE UNITED STATES, *appt.*

vs.

67

Salvador Espinosa
de los
fr. Bolsa Escarpinas
2 1/4 Leagues in Monterey Co.

TRANSCRIPT OF THE RECORD

FROM THE
BOARD OF U. S. LAND COMMISSIONERS,

In Case No. *355*

Rec^d 15 Sept. /52
Filed, 15 Sept. /54 185

A. S. Taylor
Ap. Clk.

67

No 355

67.

67 SD
PAGE 26

Office of the Attorney General of the United States,

Washington, 30th November 1854.

Salvador Espinoza }
vs. } 355.
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 August 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 67.

U. S. District Court

Southern District

The United States

vs

Salvador Espinoza

Appeal Notice

Filed Aug 10th 1855.

C. P. Carr
clerk

67 SD
PAGE 27

Vertical handwritten notes on the left margin, including the number '23' and other illegible characters.

67.

67 SD
PAGE Dup.

Office of the Attorney General of the United States,
Washington, 30th November 1854.

Salvador Espinosa }
vs. } 355.
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 August 1854 the appeal in the district court of the United States for the Southern district of California will be prosecuted by the United States.

Conning

Attorney General.

67
97

Duplicate
355

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

Salvador Espinoza }

ads. }

The United States }

N^o 67 (Transcript N^o 355)

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

The petition of Pacificus Ord (of Los Angeles County)
Attorney of the United States for the Southern Dis-
trict 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 22nd
day of September A.D. 1852, Salvador Espinoza
presented a petition to the Commissioners to ascer-
tain and settle the private land claims in the
State of California, claiming the tract of land
called La Bolsa de los Escarpinos in the County
of Monterey in the words and figures following,
viz,

"Your petitioner Salvador Espinoza,
"a native of Mexico & citizen of California re-
spectfully shows:

67 SD

PAGE 28

2
"That on the ~~sixth~~ seventh of October A.D. 1837,
"he presented his petition to Juan B. Alvarado,
"then Governor of Alta California praying for a
"grant of the tract of land known as La Bolsa
"de los Escopinos.

67 SD
PAGE 29
"That thereupon the said Governor, having
"obtained the requisite information in regard
"to the subject & object of said petition by a de-
"cree dated on the 7th of October A.D. 1837, declaring
"your petitioner the owner of the said tract of
"land, duly granted the same to your peti-
"tioner in full ownership.

"That said decree was written upon the
"margin of said petition, & was returned to
"your petitioner.

"That in pursuance of a direction con-
"tained in said decree, your petitioner in due
"form applied for juridical possession & meas-
"urement of said tract to the proper Alcalde,
"viz, to Teodoro Gonzalez, to that & duly empow-
"ered, who on the 23rd of November A.D. 1837, in
"due form of law, gave to your petitioner jurid-
"ical possession & measurement of said land,
"and & made an official record thereof.

"That said petition & decree the said
"record of juridical possession & measurement,
"with destino of said tract, all attached to-

"gethru we thereupon given by said Alcalde
 "to your petitioner to serve him as ~~moniments~~
 "of title to said land.

"That your petitioner had been the ow-
 "-ner of said tract of land by virtue of a grant
 "from the Mexican Government, & had held
 "quiet & exclusive possession of the same, for
 "fourteen years previous to his said petition
 "to Alvarado, & that this having been made
 "so to appear, & having been so official declared
 "by said Alvarado, so being Governor of Califor-
 "-nia, the said decree was given & the said pro-
 "-ceedings in & about the judicial possession
 "were had, more for the purpose of furnishing to
 "your petitioner, additional ~~moniments~~ of title
 "to said land, than to constitute an initiate
 "and original title thereto.

"That the said tract is situate in
 "the County of Monterey, that it contains
 "two square leagues & that the location & boun-
 "-daries of the same are fully set forth & des-
 "cribed in the said record of judicial pos-
 "-session, which is herewith filed, with a
 "translation thereof.

"That your petitioner have been in
 "quiet possession of said land for the last
 "twenty nine years & that he knows of no

"conflicting claim thereto.

"Your petitioner therefore, presenting
"the said muniments of title, with translations,
"herewith, respectfully prays that his said
"claim & title to said tract of land may be
"confirmed by your honorable board."

Your petitioner further represents that
"thenceafter, to wit on the 20th day of December A.D.
1853 the said Commissioners confirmed by fi-
-nal decree, the said claim of the said Sal-
-vador Espinoza in the words, and figures fol-
-lowing, to wit,

"In this case on hearing the proofs
" & allegations, it is adjudged, ^{that} ~~by~~ the claim
" of the said petitioner is valid, & it is therefore
" decreed that the same be confirmed. The lands
" of which confirmation are hereby made, are
" known by the name of Bolea de Escarpinos,
" & are the same now occupied by Salvador
" Espinoza, & are bounded & described as follows,
" to wit; - Commencing at the first hincilito,
" at the entrance of the Cañada de San Miguel,
" & running thence south three thousand five
" hundred varas, to the borders of the land ow-
" ned by Trinidad Espinoza; thence running
" west eleven thousand six hundred varas,
" thence running North three thousand five

67 SD
PAGE 31

"hundred varas, thence running East to the
"place of beginning eleven thousand six hun-
"dred & fifty varas. Containing in all a
"little less than two square leagues,- Ref-
"erence for further description to be had to a
"map, which is made a part of document"
"Doc H. S. T. No 14 filed in this case."

67 SD
PAGE 32

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

That thereafter, to wit, on the 16th day of Septem-
ber, ^{1854,} a duly certified transcript of the said
decre, and proceedings, and the papers and ev-
idence 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. ~~67~~ 67,
(Transcript No. 355); reference to which, it is pray-
ed, may be had and made a part of this petition.

That on the 30th day of August A.D. 1854
the Honorable Caleb Cushing Attorney Gen-
eral of the United States received a duly cer-
tified duplicate of said transcript of said
final decre and proceedings of said Com-
missioners in said cause (No. 355) and the pa-
pers and evidence on which said decre was
founded.

That thereafter, to wit, on the 10th

day of January A.D. 1855, 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 Salvador Espinoza, vs. the United States, from the decision of the said Commissioners to ascertain and settle 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.

67 SD
PAGE 33

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 Commissioners to this Honorable Court.

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

I. And the said Attorney denies all and

7.
singular each and every allegation in the said petition of said Claimant, to said Commissioners of said date. And he further denies that any grant for said land was ever made as alleged in said petition. And he denies further that the said Claimant has shown any, or sufficient evidence of the validity of the said claim.

67 SD
PAGE 34

II. That the said alleged grant of Governor Alvarado was made in violation of the 4th Article of the Colonization law of Mexico of the 18th of August A.D. 1824, in this; that the land granted, as alleged by Claimant, was and is within ten leagues of the sea coast; and there is no evidence shown by Claimant, that the Supreme General Executive power of Mexico previously approved of the Colonization of the public lands in Upper California, lying within ten leagues of the sea coast. And it is denied that such previous consent of said Supreme General Executive power of Mexico in such case was ever had.

III. That at the date of the said alleged grant, the said land claimed as aforesaid, was occupied by, and in the possession of the Missions of the territory of Upper California; and it was held and occupied particularly, by the Mission of

and could not therefore be colonized.

IV. That the said alleged grant has not the conditions required by, and is not made in entire conformity with the laws of Mexico of the 18th day of August A.D. 1834, and the regulations for the colonization of the Territories of Mexico of the 21st November A.D. 1828.

V. That there is no sufficient evidence that the said claimant was or is the owner of the land claimed, in virtue of a grant from the Mexican Government, given about fourteen years previous to the date of his petition to the Governor on the 7th of October 1837. And it is denied that the said claimant ever had or received about said time a grant from said government for said land, as alleged by him.

VI. That there is no sufficient evidence that the said claimant has occupied quietly and peaceably the said land for about fourteen years previous to the said 7th of October 1837. And it is denied that he has been in the quiet and peaceable occupation of said land for said length of time, or for twenty nine years as alleged in his said petition to said Commissioners.

VII. That the said claimant wholly fails to show any valid, or definite grant or title,

67 SD
PAGE 35

1704
20

for said tract of land claimed by him as a-
-forsaid; That the document shown by him,
purporting to be signed by "Alvarado" and da-
-ted October 7th 1837 is not a grant; That it is
^{nothing more than} an order of said "Alvarado" directing that the
said claimant should solicit of the proper
civil magistrate the possession of the place
called Bolsa de los Escarpinos, and that it
should be measured according to the map and
the ordinance and the number of varas given
therein; and that thereafter the party intus-
-ted should return the proceedings (*expediente*)
for record, and that the proper titles might
thereupon issue.

VIII. That the said order of said "Alvarado"
of said date contains no description of the
locality, extent, or boundaries of the land;
And it is vague, ~~and~~ indefinite, and void for
uncertainty. That said order is not upon
stamped paper; and no cause ^{is} assigned there-
-in for its being written on common paper.

IX. That there is no evidence that the map
shown by claimant is the same map referred
to in the petition of said claimant to the Go-
-vernor of the date of the 7th October 1837, or that
it is the same one referred to in the said or-
-der of said Alvarado of said date. And it is

denied that the said map shown by Claimant, is the original map referred to in said petition of said Claimant, or order of said "Alvarado".

X. That the said "Alvarado" had no lawful authority to make and deliver to said Claimant, any grant, decree, or order, such as the one alleged and shown by said Claimant.

XI. That the alleged application of said Claimant to the Alcalde for the juridical possession of said land, is not upon stamped paper; and no cause is shown ^{therein} for its being upon common paper.

XII. That the alleged juridical act of Survey and possession of said land, by Leonardo Gonzales, dated 22nd November 1837, is not upon the ^{lawful} stamped paper - and no cause is assigned ^{in said alleged act} therefor; That it is not made according to the said order of said "Alvarado", nor according to the ordinance, or law; That it does not specify the number of varas contained in the land pretended to have been surveyed by him, as required by said order; That it contains no certain description of the locality, extent, or boundaries of the land, so that it can be identified and surveyed; That it is vague, ~~and~~ indefinite, and void for uncertainty.

-ly.

XIII. That there is no evidence that the said claimant complied with the condition of the said order of said "Alvarado" which required him to return the proceedings (expediente) to the office of the Government for record, ^{so} ~~and~~ that the proper title might issue. And it is denied that the said claimant ever complied with the said condition of said order by returning to the Government said proceedings (expediente) as required, - and that by his said refusal or neglect to perform said condition of said order, he abandoned, or lost his right to said land; if he ever had any.

And no sufficient 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 Commissioner, upon the grounds aforesaid.

And the said claimant having no valid right or title derived from the Spanish, or Mexican Government, to the said land claimed by him, as aforesaid, the lawful

67 SD
PAGE 38

right, or title in and to the said land, was acquired by, and it now belongs to the said United States, by virtue of the treaty of peace, friendship, limits, and settlement, with the Republic of Mexico, dated at the City of Guadalupe Hidalgo, February 3rd A.D. 1848.

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 in pursuance of the act of Congress entitled "An act to ascertain, and settle the private land claims in the state of California" Approved March 3rd 1851, and the laws and statutes in such case made and provided, prays that the said Salvador Espinoza 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 Salvador Espinoza, for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid. And all such other orders, judgements, or

67 SD
PAGE 39

20

decrees as may be just. With costs and general relief.

R. D. M.

Attorney of the United States
for the Southern District of
California—

67 SD
PAGE 40

RECEIVED
FEB 11 1880

No 67

U.S. Dist Court
S. Dist of Cal

Salvador Espinosa

vs

The United States

Petition of U.S. for
Remedy

Filed Aug. 13. 1855

J. C. Jan.
at H.

67 SD

PAGE 41

Wm. D. Whitney

District Court of the United States
Southern District of California

Salvador Espinoza

vs

The United States

No 67

67 SD
PAGE 42

Salvador Espinoza the claimant
and appellee in the above entitled
case, in answer to the petition of review
filed by the United States herein
avows that the title of said Claimant
to the tract of land claimed is valid

He therefore prays that the Court
may affirm the decision of the decis-
ion of the Board of Land Commis-
sioners and declare the said title to
be valid

J. Clarke Atty
for Claimant

No 67

Salvador Espinoza
acts
The United States

Answer

Filed Sept 20th 1835

At Council

By W. D. [unclear] for [unclear]

67 SD

PAGE 43

J. [unclear]

The United States
Appellants
vs

Salvador Espinosa
Appellee

vs
Si. Court U. S.
for the District
of California

The claim of Appellee is predicated upon the following documentary & sworn testimony. On 7. October 1837, he presented a petition to Governor Alvarado in which he states, that fourteen years previous to that time, a cession had been made to him of the piece named "La Balsa de los Escupinos" which was bounded on that which his brother ^{line on} called "La Seriaga de los Bula" that he had gone & presented to the office of the Government to procure the papers but they could not be found, and the petition concludes with a prayer that he (the petitioner) may be ordered to be placed in possession of the land in due form & accordance with the map which accompanies the petition. On this petition there is a concession by Governor Alvarado which recites, that the petitioners had occupied quietly & peaceably for the space of fourteen years the land petitioned for, with its fruits & made title

with the knowledge of the ancient
Government of California, the documents
and maps which he shows have
been mislaid in the proper office,
& concludes with the declaration that
he (the petitioner) should be continued
in his property on the following
conditions;

67 SD
PAGE 45

1. That he present himself with this
deed to the Justice of the Peace as being
Judicial possession of said place.
2. Said authority with the assistance
of the respective border owners will
have the land measured accor-
ding to ordinance and the map
of measuring the number of bars
which result to the party.
3. This operation be concluded
he will return the documents to
the Government & that the party
may receive the title that he asks
for and the documents may be
concluded.

In compliance with the ^{and second} first condition
of above conditions the appellee did
appear to the Justice of the Peace,
and all proceedings were had
by that Functionary in presence
of the border owners, ^{as required} ~~therein~~, & a par-
ticular description of the measure

& Survey of the land
 ment given, the whole amount of land
~~amounting to~~ ^{being} a little less than two
 square leagues the judicial possession
 of which was on the 8th day of
 October 1837 delivered to the appellan-
 -tee.

67 SD
 PAGE 46

The testimony of Teodoro Gonzalez has
 been taken in this case. He was the Justice
 of the Peace who gave Judicial Pos-
 session of the land, and established
 the genuineness of the signature
 to the petition, concerning a grant, and
 to the Record of the Judicial Papers.
 There can be no doubt as to the
 genuineness of all the signatures
 to these several documents, ac-
 -cording to the testimony of this
 witness. He swears that the Pe-
 -tition and marginal record were
 handed to him (the witness) before
 he gave the Judicial possession.
 He identifies the map & file as
 the one made when the Judicial
 -case was given.

The testimony of another witness
 proves that he had known the land
 in question during the last (18) eight-
 -teen years, during all which
 time and up to now he has
 it has been in the exclusive pos-
 -session of and occupation of the
 appellee and his family, they
 having lived upon it during all

that two Cultivos and a Rancho for the same purposes of a Rancho.

The foregoing testimony, all that there is in the case, and presents some new features. The proceedings were Substantive testimony with the general Regulations of 1828, but not in the usual form, nor were the proceedings had in the usual order. But the case presents the change made in a Court of Equity.

A residence on the land with the approbation of the Anterior Government of California as stated by Gov. Alvarado of fifteen years, and a subsequent residence and cultivation of the premises of nearly ten years before the Cession of Mexican So-

vereignty in this Country under an ^{which admitted a prescriptive} ~~an~~ ^{Grant} ~~of~~ ^{by} ~~reference~~ ^{of} ~~the~~ ^{vested} ~~conditions~~ annexed, present a case to which "the Principles of Equity" made by the Act of 3 March 1851 a rule of guidance for the Court should be applied. Without pausing to inquire whether a legal title has passed to the appellee, it is sufficient to ascertain that an equitable interest was vested in him at the date of the Mexican Treaty

with this Court. This Court can not doubt that such interest ^{under the circumstances of this case} did exist, and therefore confirm the decision of the Commission in favor of this claim.

67 SD
PAGE 48

The United States } District Court
appellants } U S further down
vs } town set of
Salvador Espinoza } California
Appellee }

This cause coming out to be heard on appeal from the final decision of the Commission to ascertain & settle private land claims in the State of California under the Act of Congress approved 3 March 1857 on a Transcript of the decision and proceedings, and of the papers and evidence on which such final decision was pronounced, and it appearing to the Court that said Transcript had been duly filed according to law and counsel for both parties having been heard, it is ordered, adjudged, and decreed that the said decision be in all things affirmed, and it is further ordered, adjudged, and decreed ^{that the claim of} the appellants ^{to} a certain tract of land known by the name of Bolca de Escarpens, ^{is valid} & ^{said land being} ~~was~~ ^{now} occupied ~~at the~~ ^{at the} present time by the said appellee.

67 SD
PAGE 49

and bounded as follows, viz; commencing at the first ^{Sancelito} at the entrance of the Cañada de San Miguel, thence running thence South three thousand five hundred varas, to the border of the land owned by Trinidad Espinosa, thence running thence eleven thousand six hundred varas, thence running North three thousand four hundred varas, thence running East to the place of beginning eleven thousand six hundred varas, commencing in all a little less than ~~two~~ two square leagues. Reference to further description being had to the original map of file in the Transcript of the record in this case, and it is further ordered adjudged and decreed that the claim of Appellee to said land be hereby confirmed.

The United States

7

Salvador Espinosa

Feliciano Solera

Beant to be filed on 2^o side of 1^o side

67 SD
PAGE 50

SD

No 67
"

The United States
of
Salvador Emancipator

Bolera de la Esca-
-nena

secre

Friday Sept 24th 1855.
Q. E. Carrick
By W. Ross Dep
"

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

Special Term Sept 1853,

Los Angeles,

67 SD

PAGE 52

Salvador Espinosa, app^e } N^o 67.
 ads. } (Transcript N^o 333)
The United States, app^t }

On motion of P Ord attorney of the
United States for the Southern District
of California, it is ^{by the Court} ordered 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
AD 1853,

P. Ord

U.S. Dist. Ct.,

20

No 64

U. S. District Court
Southern Dist. of Cal

The United States Appellate

vs.

Salvador Espinosa. Appellee

Appeal to the Supreme Court
on motion of P. Ord. Ex. U.
S. Atty

67 SD
PAGE 53

Filed. October 18th 1855

C. C. Canwell
By C. W. Rindge

United States of America
District of California:

67 SD
PAGE 54

Salvador Espinoza
Appellee,
— vs. —
The United States
Appellants
In the District Court
of the United States, for the
Southern District of California
No 67
Bolsa de las Escarpinas

To the Hon. District Court of the
United States, for the District of California:

The heirs and legal representatives of the above
named Salvador Espinoza, now deceased, by this,
their Petition, respectfully represent to this Court:
that under the provisions of the Act of Congress,
passed March 3^d 1851, entitled "An Act
to ascertain and settle the private land claims
in the State of California" the said Salvador
Espinoza, then, in his lifetime, on the 22nd^{sed}
day of September A. D. 1852 filed before the
Board of United States Commissioners, ap-
pointed and sitting under said Act, his
petition for confirmation to him by said
Board of a certain tract of land situated
in Monterey County in said State, known by
the name of Bolsa de las Escarpinas

and containing about two square leagues
of land.

That such proceedings were thereafter
had upon said Petition before said Board
of Land Commissioners, and afterwards an
appeal in the District Court of the United
States for the Southern District of California
that by the Decree of said District Court
rendered on the 24th day of September
A. D. 1855, the claim of said Salvador
Espinoza to said tract of land was con-
firmed by said District Court of the United
States, for the Southern District of Cal-
ifornia, and that the United States, having
declined to prosecute any appeal from
the Decree of said District Court to the
Supreme Court of the United States, the
decree of said District Court, has become,
and is final.

That in and by said Petition of the said
Salvador Espinoza for such confirmation
the land of which confirmation was asked
was described as known by the name
"Bolea de las Escarpinas" as being the land
of which the said Salvador Espinoza, was
then and for the last twenty nine years, pre-
viously had been in quiet possession.

the "location and boundaries of which were set forth and described in the record of juridical possession, which, with a translation thereof was therewith filed.

67 SD
PAGE 56

That in the Record of Juridical possession referred to in said petition, and therewith filed, which juridical possession was given on the 23^d day of November A. D. 1834, the persons who were summoned as bordering land owners are stated to have been Trinidad Espinoza, who then owned and possessed the Rancho which is now known as the "Rancho los Gatos, or Santa Rita" and Simion Castro who then owned and possessed the Rancho known as "Bolsa Nuevo y Moro Cojo" the Rancho of the said Trinidad Espinoza lying to the Southward of said "Bolsa de los Escarpinas" and the Rancho of said Simion Castro to the Northward thereof; and that the measurement of the said Rancho "Bolsa de los Escarpinas" for the purpose of juridical possession was made not by measuring the exterior boundaries thereof but by measuring two straight lines, substantially at right angles to each other the one Eastely and Westely, the other Northely and Southely;

67 SD
PAGE 57

the first mentioned line "Commencing" as it is stated in said record of judicial possession, "in the Corner of the Polesa de las Cocarpinas, which is situated to the West, and extending towards the East as far as the boundaries of Nicholas Alviso, measuring two Hundred and thirty cords of fifty varas each, equal to eleven thousand, six Hundred and fifty varas, and the other line commencing in the border of Trinidad Espinoza at the South, and being "carried toward the North as far as the first Saccelito at the entrance of the Cañada de San Miguel" measuring seventy cords of fifty varas each, equal to three thousand and five hundred varas the land so measured "amounting" as it is stated in said record "to a little less than two square leagues":

That the boundaries of Nicholas Alviso mentioned in said record of judicial possession as being reached on the East" were the boundaries of the Rancho which was then and had for many years previously been, and is likewise now

Known by the name of "Natividad"
the possession of which had been in the
Year 1823 by the Order of the then
Governor of California Don Luis
Antonio Arguello given to Manuel
Butron and the said Nicholas Alviso
jointly: the Western portion of which
adjoining said Polesa de los Escarpinas
being then separately occupied by the said
Alviso and that said Rancho "Polesa
de los Escarpinas" of Salvador Espinoza
was likewise laid down and represented
as the Western Boundary of said
Rancho "Natividad" upon the Plat or
Deseño thereof. (a copy of which constitutes
a part of the record of Confirmation of said
Rancho "Natividad" now remaining
in this Hon. Court) which plat or
Deseño was recognized and adopted
by Governor Alvarado in November 1834
as correctly representing the extent and
boundaries of said Rancho "Natividad"
and said Rancho "Natividad" was
by him ordered to be measured and
its boundaries and possession establish-
ed in accordance therewith; that the
said Salvador Espinoza was likewise
summoned and present as one of

67 SD
PAGE 58

the land since bordering on the
said Rancho "Natividad" at the
measurement thereof commenced and
attempted to be made under said border
of Alvarado. on the 25th day of
December 1838 by Feliciano Sobrante
then Alcalde of the jurisdiction of
Monterey, in which jurisdiction both of
said Ranches were then situated, and
that said Plan or Deseno was likewise
adopted in the final decree of Con-
firmation of said Rancho "Natividad"
for the identification and description
of said last mentioned Ranch, all
of which will more fully appear in
and by the records and proceedings of
such Confirmation now remaining in
this Court to which these Petitioners
refer in proof of these their averments.

That the said Ranchos of "Balsa Nueva
y. Maro Cojo" on the North, "Las
Gatas" or "Santa Rita" on the South
and of "Natividad" on the East of said
"Balsa de las Escarpinas" have all been
finally confirmed by the United States
and been surveyed, and the survey
thereof approved by the United States

Surveyor General for California, and that the location of said three several Ranches as so surveyed, as well as the location of the Rancho "Polsa del Potrero y Moro Cojo as La Sagrada Familia" (finally confirmed, surveyed and patented to John B. Cooper) which adjoins and bounds said "Polsa de los Escarpinas" on the West; is correctly represented and shown upon and by the map and ^{or} diagram herewith exhibited which has been compiled from the records on file in the U. S. Surveyor General's Office of California by "C. Bielawski Draughtsman" in said Office, the correctness of which map is shown by the affidavit of the said Bielawski hereto attached.

These Petitioners further state, that the Rancho "Polsa del Potrero y Moro Cojo as La Sagrada Familia" and the Rancho "Los Gatos or Santa Rita" have each been patented by the United States, according to the surveys thereof above mentioned, and as represented upon said Map made by said Bielawski and herewith exhibited, and that the Survey of said

Rancho "Bolsa Nuevo y Moro Cajo" as represented upon said Map, has been approved by said Surveyor General, and is before the General Land Office at Washington for final approval.

That the land which has always been known as "Bolsa de las Escarpinas" and which was occupied and possessed as such by the said Salvador Espinosa during his lifetime under grant from the Mexican Government and under said judicial possession, and which has always been since the death of the said Salvador Espinosa and is now in the actual possession of these Petitioners under enclosure and upon which they have made and placed permanent and valuable improvements was and is the land lying between the said Ranchos "Bolsa y Nuevo y Moro Cajo" on the North, "Natividad" on the East, "Las Yatas or Santa Rita" on the South and "Bolsa del Potrero y Moro Cajo or Sagrada Familia" on the West.

67 SD

PAGE 61

That the said Decree of the said United States District Court for the Southern District of California confirming to said Salvador Espinoza said land known as "Rancho de los Escarpinas" contains a mistake in a portion of the description of said land, which mistake is manifest upon the record of said proceedings and confirmation, that said mistake consists in that portion of said decree which purports to give the exterior boundaries and measurements of said land, and appears to have arisen from a misapprehension and misunderstanding of the mode in which the measurement of said land was made at the time the juridical possession thereof was given as above mentioned: that said portion of said decree if followed should locate the whole of said Rancho "Rancho de los Escarpinas" to the Westward of the Northernly and Southernly line measured at the time and for the purpose of such juridical possession as before mentioned and would cause about two thirds of said Rancho to pass

lap and he located upon the said
Ranches of "Bolsa del Patroero y Moro
Cajo" or "La Sagrada Familia" and
"Las Gatos" or "Santa Rita", both of
which are older grants than that of
the "Bolsa de los Escarpinos" and
both of which have been patented
by the United States and would
flrat the larger portion of said "Bolsa
de los Escarpinos" outside of the lines
of the juridical possession thereof, and
outside of the boundaries represented
upon the Deseno or Map thereof, and
outside of the possession which has
always been held under said
grant by the said Salvador
Espinosa, and by these Petitioners
claiming under him

That said Deseno clearly shows
the land which was then known
by the name of "Bolsa de los Escarpinos"
and of which juridical possession
was given, and clearly manifests
the mistake and error above
mentioned which was made by
said United States District Court
of the Southern District of California
in attempting to give the exterior

67 SD

PAGE 63

boundaries of said Rancho "Bolsa de los Escarpinos" in its final decree of Confirmation thereof, a copy of which Decree as well as of the record of the judicial possession of said Rancho is contained in the Transcript of the proceedings before said United States Land Commission in this cause which is now on file in this Hon. Court and to which reference is hereby made.

These petitioners therefore pray, that, inasmuch as the error in that portion of the decree of said United States District Court for the Southern District of California herein rendered, is patent and clearly manifested upon the face of the record and proceedings herein, that said decree be amended by Order of this Honorable Court in accordance with said record and proceedings, so as to correct said mistake and error, and so that the description contained therein of the exterior boundaries of said Rancho "Bolsa de los Escarpinos" shall conform to the judicial and actual

possession thereof and to the Decree on
file herein to which reference is, in
said Decree expressly made for a
description of the land thereby confirmed
and that said Decree so amended
be entered inimopro tempo as of the
date of said original Decree.

State of California } James B. Townsend
County of Monterey } Atty. for said Petitioners

67 SD
PAGE 65

Jose Maria Espinosa being duly sworn on his
oath deposes and says that he has heard
the foregoing Petition read, and that he
knows the contents thereof: and that the
same is true of his own knowledge, except
as to the matters which are therein stated on
his information or belief, and as to those
matters, that he believes it to be true.

Subscribed and Sworn to }
before me this 18th } Jose Maria Espinosa
day of January A.D. 1843 } mark
J. A. McEandless
Notary Public



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

Salvador Espinosa

^{vs.}
The United States

To the United States District Attorney for
the District of California:

67 SD
PAGE 66

Sir: You will please take notice that
on Monday, the 27th day of January, A.D. 1873,
at the opening of said Court on that day, or
as soon thereafter as counsel can be heard,
at the Court Room of said Court in the City
& County of San Francisco, the Heirs and legal
representatives of the said Salvador Espinosa,
now deceased, will move said Court for
an order amending the final Decree of
confirmation, entered herein by the late
District Court of the United States for the
Southern District of California, in accordance
with the record herein and so as to correct
a mistake, which is patent and clearly
manifest upon the face of said record, in
that portion of said Decree which purports
to give the exterior boundaries of said Rancho
"Polsa de los Escarpinas", and so that the
description of the exterior boundaries of
said Rancho, contained in said Decree,

shall conform to the juridical and actual possession thereof and to the Desens thereof, on file herein and which constitutes a part of said record, and that the Decree, so amended, be entered herein, nunc pro tunc, and ordered to stand as the Decree in this cause as of the date of said original Decree; and that said motion will be made upon the Petition of said heirs and legal representatives, herewith filed, and the documents therein referred to, and upon the record of the proceedings of said confirmation herein, now on file in this Honorable Court, and upon the grounds, that said mistake in said Decree is patent and clearly manifest upon said record and is amendable and ought, for the ends of justice, to be amended by this Court.

Dated at San Francisco this 21st day of January A.D. 1873.

James B. Townsend
Atty. for said Heirs & legal
representatives

In District Court of the U. S.
for the District of California
No. 67. S. A.

Salvador Espinosa
vs.

The United States

Petition & Notice

Filed Jan'y 21st A.D. 1873.

Edw. B. Potter Clerk

By Wm. Grimwood

Deputy Clerk.

67 SD

PAGE 68

Service of the within notice
is hereby admitted - San
Francisco, January 21st.
1873.

L. D. Latimer

U. S. Attorney -

Salvador Espinoza

²⁵
The United States

No 64

67 SD

PAGE 69

Index to the Record

- pages 9 to 14 Expediente; being an application
by Clement, to the Governor reciting that
he had been granted 14 years before, had
lost his papers, had applied to government
before various times and asking that pos-
session be given him in due form - and
in the margin of the Expediente a conces-
sion by the Governor, prescribing cer-
tain acts on the part of Clement
- " 17 to 22 Translation of the above
- " 5 Dep. of J. Gonzales proving the genui-
ness of the documents, ~~and~~
- " 4 Dep of Jori Abrego showing that the claim
and has acquired the premises as a
homestead for 18 years
- " 23 Opinion of the local confirma-
ry the claim
- 25 Decree of confirmation

J. Belasco

No 67

Salvador Espinoza

The United States

Index to the
Record

67 SD
PAGE 70

California Land Claims.

Attorney General's Office

16 Sept. 1856.

67 SD
PAGE 71

Sir:

In the case of the claim of Salvador Espinosa, confirmed to the claimant by the Commissioners, case no. three hundred and fifty-five, (355), 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

Yours

Pacificus Ord Esq

U.S. Atty Los Angeles

W 67

Salvador Espinosa

333

Filed 24th February 1857
Clerk
J. H. Coleman
Secy

67 SD
PAGE 72

Rec'd Oct 21 1836

In the United States District Court
For the District of California

67 SD
PAGE 73

Salvador Espenosa

vs.

The United States

This is an application for the entry of a decree of confirmation of a grant, which shall be consistent with the grant itself, the judicial possession, the desens and the opinion of the Court; and is made a long time after the lapse of the term at which the claim was adjudged solid

I

It has been the practice of this Court to amend decrees and correct its own judgments, when the record clearly showed that equity and the ends of justice would be promoted thereby - when it was manifest from the record itself that by misapprehension of a clause, or inadvertent mistake of the Court, a litigant was liable to lose a right once existing, unless amendment was allowed and the final decree made to speak the judgment of the Court,

I will not review the cases wherein this Court has exercised jurisdiction after the expiration of the term. The Supreme Court of the U. S. sanctioned this practice in the case of the U. S. vs. Gomey, 1st Wallau, 691. and therein fixed the time at which the five years allowed for appeal commenced to run, at the date of a second, amendatory decree.

If the date of entry of the first decree had been adapted to, the right of Appeal would have been gone.

It is true the Gomey case is an exceptional one on account of its character; but still it recognizes the correctness of the rule contended for.

In *Roussel vs. Doyle*, recently decided by the Supreme Court of the State of California, the facts were these; The Complaint, Verdict and judgment (in ejectment) embraced about 80 acres of land, and on appeal the judgment was affirmed. After the Remittitur came down, application was made to the District Judge Morrison. to amend the judgment so as to restrict the recovery to eight acres; And the deed introduced by the plaintiff on the trial was referred to in support of the application to amend.

The deed called for eight acres, and the Court ordered the amendment: Appeal was taken from this order, and the Supreme

Court affirmed the order. Thus recognizing and enforcing the rule that amendments are allowed at any time, when the record in the case of itself shows that a mistake has been committed, and furnishes the facts to amend by.

II.

The Decree in this case ~~shows~~ is not in accordance with the judgment of the Court, and does not embody its intention.

In 1837 Salvador Espinosa represented to the Governor of California, that he had been 14 years in possession of the tract of land called "Bolsa de los Escopinas," and claimed it as owner in virtue of mislaid title papers and solicited new documentary assurances of his right.

These he obtained, afterwards soliciting and receiving juridical possession of the land, which he or his legal representatives have ever since continuously occupied.

It was customary during Mexican rule, to designate the tract of land granted by name; and it frequently happened that not a single paper which assisted to make up a complete title designated the boundaries by specific calls. Yet no serious difficulties have been encountered in judicially ascertaining the limits of tracts thus indicated. Their extent was well known in the neighborhoods and in

fact formed a part of the history of the Country. The jealousy of colindantes of their rights and the frequency of the rodeos, kept fresh in mind the bounds of each proprietor. The scramble over and the floating of boundaries, are of yankee inventing.

The record evidenced found in the Archivos leaves no room for doubt in respect to the extent and boundaries of the tract of land designated by the name of "Bolsa de los Escorpinos." In 1837 its grantee, stated in his petition that he had occupied it fourteen years and that it bounded the lands of his brother Trinidad. The Governor who made the session, granted it by name. The Alcalde who gave juridical possession commenced the measurement in the "corner of Bolsa de los Escorpinos" which is situated at the West; and from this point they measured towards the East, as far as the boundaries of Nicholas Alvisis, 233 cords of 50 Varas each, and "afterwards standing in the borders of Trinidad Espinosa, at the South the cord was carried towards the North as far as the first Saucilito at the entrance of the "Cañada de San Miguel" and then were measured 70 cords of 50 Varas each.

The measurement then commenced at the extreme Western end of the parcel and the cord was drawn through the middle of the property eastward to the

Rancho Natividad; and afterwards they went to near the middle of the Rancho and measured across it. Neither side nor end lines were run nor attempted to be; and this mode of measuring at the giving of judicial possessions was common in that neighborhood as was done in the case of Los Gatos of Santo Rita.

67 SD

PAGE 77

The average length and the average width were obtained and the approximate area computed therefrom, which the Alcalde estimated at a little less than two square leagues. The chain of the skilled surveyor proves substantially the accuracy of the Alcalde's measurement and computation; and that the line must have been carried Eastward as far as the boundary of the Rancho Natividad. It could not have terminated going East at the point fixed in the decree, because the length of the line, the area found and the Call disprove this. On the other hand they harmonise in showing conclusively that the tract called Bolsa de los Escorpinos extended to the Rancho Natividad lands of Nicholas Aloiso.

But in order to ascertain with absolute certainty the boundaries of the tract called Bolsa de los Escorpinos, I am not left to its record alone!

Claim N. 361 was for Natividad and

the *Desiño*, made in 1837 has along its Western edge the words "Linder con Espinosa" thus showing that the *Natividad* bounded on the West by the *Rancho Bolsa de los Escarpinos* owned by Salvador Espinosa and by the *Sos Gatos* owned by his brother. Juridical possession was given in 1839 and in the records Salvador Espinosa is mentioned in the records as an "adjoining land owner".

67 SD
PAGE 78

A witness before the S. C. in 1854 testified that the *Natividad* was bounded West by the *Rancho Escarpinos*.

Case No 276, was the claim of *Natividad Espinosa* for the "*Sos Gatos y Santa Rita*". A witness in this case testified before the S. C. that "it is bounded on the North by *Rancho of Salvador Espinosa*", and the Commissioners in their decree confirmed the *Sos Gatos* in this language. "Beginning at a point on the East side of the *Laguna de la Media* and running East with the line of the *Rancho of Salvador Espinosa* 5500 Varas to some trees marked with a cross as a corner to this ranch and that of *Salvador Espinosa* and the *Rancho Sansal*".

Here the Commissioners recognize and establish a common corner for the *Ranchos "Sansal", "Sos Gatos y Santa Rita"* and *Bolsa de los Escarpinos*." And this would be impossible unless the last named tract

extended Eastward to the point contended.
Again take the Case N^o. 190, which was for
the Rancho Sausal. David Spence and
another witness examined before the S. C.
say that the Sausal is bounded North by
the Natividad, North West by the Rancho
of Espinosas. And the Commissioners in
their decree of confirmation, bound the
Sausal on the West by the Mountain of
rodeo, rancho of the Espinosas and Sau-
sol de los Gatos.

It seems to me that these eviden-
ces, deduced from the files of this Court,
found in monuments of titles existing
since 1837 recording the neighborhood un-
derstanding of the extent of the tract, called
Bolsa de los Escarpinos, unmistakably
prove that the Western line of the Rancho
Natividad was the Eastern boundary of
Bolsa de los Escarpinos; that the line of
the juridical possessions ran Eastward
until it touched that boundary; that
Every grantee of land in that vicinity
and every public officer officiating at
any ~~time~~ ceremony of juridical posses-
sions, so understood the fact to be, and
that every witness examined before the
S. C. who made any reference to the
Bolsa de los Escarpinos adds the weight
of his testimony to the correctness of our
position.

It is not often that the limits of a tract designated ~~only~~ by name, can be identified by such reliable, cumulative evidence and what so much documentary proof can be found in the titles of the adjacent ranchos, to establish limits otherwise left to be verified by oral testimony. Here, there is no conflict in the evidence, every diseno, every act of juridical possession, every witness ancient or modern that gives us any information or speaks at all on the subject, concurs in identifying the land as far as the Natividad is called Bolsa de los Escarpinos.

Then passing from the ancient records and proofs to the evidence recently placed on file and we have the sworn statement of Isidore Gonzalez that he acted as Magistrate, at the giving of juridical possession of the Rancho Bolsa de los Escarpinos and that the measurement extended Eastward to the Western boundary of the Rancho Natividad, and that he had known the property since 1830.

Florensis Serrano testifies that he was present at the juridical ~~possession~~ measurement and that the line was run Eastward to Natividad.

J. A. Aloiso swears that he was present, and acted as one of the measurers, and that the Merrill survey includes the lands called Bolsa de los Escarpinos

and conforms to the juridical possession.

Nicholas Alonso, son of one of the grantees of the Rancho Natividad, swears that the Bolsa de los Escarpinos is bounded East by the Rancho Natividad, South by the Los Gatos or Santa Rita rancho, on the West by the Rancho Bolsa de Potrero y Nervo Cojo or la Sagrada Familia and on the North by the Rancho Bolsa Nueva y Nervo Cojo; and that as far back as he can recollect Salvador Espanosa had possession of the tract above described, with his cattle, sheep and horses.

Jose Antonio Espinosa, swears that he lived upon the Rancho Bolsa de los Escarpinos from the time he was a small boy - until recently - that he is now 56 years old - that he acted as vaquero for Salvador Espanosa, that he knew the tract well and its boundaries; that he was present at the making of the Tirrell survey and that said survey embraces the land, always known, and called Bolsa de los Escarpinos and always occupied by Espinosa with his family and stock.

Here then we present an unbroken chain of testimony dated back to 1823 and reaching through the documentary files of 1837-8-9 and through the proceedings before the L. C. in 1853-4-5 and coming forward to the present time,

establishing with certainty the boundaries of the tract called Bolsa de los Escarpinos; that since 1823 to date its grantee and legal representatives have continuously and uninterruptedly occupied it - that in a neighborhood where lands are of great value, its limits are so well known and so generally respected that no intruder has molested its ancient owners.

Having removed all doubts in respect to the identity of the Rancho Bolsa de los Escarpinos, I come now to show that the Land Commission and the Southern District Court respectively confirmed the claim of Salvador Espinosa thereto and that the decree that was signed does not record the judgment of the Court.

The petition of Espinosa to the S. C. sets forth that the Governor of California in 1837 granted to him in full ownership the tract of land known as la Bolsa de los Escarpinos; that judicial measurement was made thereof, that he had been in quiet possession of said land for 29 years, and concludes with a prayer that his "claim and title to said tract of land may be confirmed" &c

The Opinion, and decree of the Commissioners, were doubtless simultaneous acts. The Opinion says "The facts recited by the Governor in his concession show

merits of the very strongest character? The party had not only obtained a title from the Spanish Government but he had occupied without interruptions for the space of fourteen years the same land."

Actual residence upon the land, cultivating and improvement is proved to have continued for the last Eighteen years. A more meritorious case could not be presented for the consideration of his Commission. The juridical measurement does not define with great accuracy the boundaries, but with the aid of the map on file, taken in consideration (connection?) with the long, and notorious possessing of the claimant; I think the premises can be located without much difficulty. We are therefore of opinion that the claim in this case should be confirmed."

The Opinions of the Land Commissioners, and indeed of the Courts in private land cases, were findings of facts and the law. In this case, the facts found were

- 1st The existence of a grant
- 2^d Thirty two years continuous, and notorious occupation and cultivation of the tract of land called Bolsa de los Escarpinos
- 3^d That there had been juridical possessing.
- 4th That the juridical measurement extended

Eastward to the Western line of the
Rancho Natividad

5th From the long and Notorious possession
the premises could be located.
And, as matter of law the claim should be
confirmed.

When the Commissioners were con-
sidering this case, they were giving due
weight to the testimony before them and to the
"merits of the strongest character" that the
case presented. There was the record of
the judicial possession which showed to
them that the line commenced at the ex-
treme Western end of the tract and was
drawn Eastward to the rancho of Nicholas
Alviro and that it was 233 cords of 50
Varas each in length. They find as matter
of fact that that line was so run and
that afterwards, the measurers passed
around to the middle of the tract and
measured across it, and they find that
Espinoza was in possession of this tract of
land because the record says so, and the
Witnesses before the S. C. say so and the
Commissioners pronounce the judicial
measurement good in law and fact.

Never were opinion and decree so at
variance. The opinion, which must be
the best interpretation of the mind of the
Court, presents no difficulties. It pronoun-
ces good our ancient claim, and says it
is for the land so long and so notoriously
possessed by us. It says we present a

is for the land so long and so notoriously
possessed by us. It says we present a
deed that carries us Eastward to the lands
of Nicholas Alviso, that we are in posses-
sion thereof and have been for 32 years
and that our claim thereto is good in law
and Equity, and shall be confirmed to
us.

67 SD
PAGE 85

Confirmed how? certainly not by going
midway of the tract, and drawing a line
across, and saying to us thus far Eastward
shall thou go and no further - not permitting
us by miles to reach the Natividad bound-
ary. Not by reversing our courses, and car-
rying us onto lands to which we never made
any pretensions and which all along
belong to others. The Commissioners said
that our claim was meritorious and that
they confirmed it. Could they have intend-
ed to deprive us of one half of our property
which we had long and notoriously occupied.
In the opinion they undertook to confirm to us
the tract called Bolsa de los Escarpinos contain-
ing a little less than two leagues. Could they
in the same breath have intended to limit us
to a considerable less than one league and
to less than one half the tract.

The decree does not embody the judg-
ment of the Court, It is at war with its
spirit. The judgment of the Court is photo-
graphed in the opinion, which is liberal and
equitable. The decree confiscates one half of
the claimants Estate.

The opinion is in accord with the record and is the natural, logical sequence of the record. There is nothing ambiguous in the opinion; and is fortified at every point by documentary and oral proofs. It was prepared by the Judges who studied the case and shows clearly the judgment at which they had arrived, and intended to pronounce.

The Decree was a wide departure from their judgment, and thus was laid the foundation of the mistake of the District Court.

The Decree of the District Court in matter of specific description is an exact copy of the Commissioners. That they may be compared, I give them in parallel columns.

Extract from Decree of Land Commissioners	Extract from Decree of District Court.
Commencing at the first Saucito at the entrance of the Canada de San Miguel and running thence South three thousand five hundred varas to the borders of the land owned by Trinidad Espinosa; thence running West Eleven thousand six hundred varas; thence running North three thousand five hundred varas; thence running East to the place of beginning Eleven thousand six hundred and fifty varas. Containing in all, a little less than two square leagues.	Commencing at the first Saucito at the entrance of the Canada de San Miguel, and running thence South three thousand five hundred varas to the borders of the land owned by Trinidad Espinosa; thence running West Eleven thousand six hundred varas; thence running North three thousand five hundred varas; thence running East to the place of beginning, Eleven thousand six hundred and fifty varas. Containing in all, a little less than two square leagues.

67 SD
PAGE 86

The District Court filed a written opinion from which I extract as follows

The District Court filed a written opinion from which I extract as follows

"The testimony of Teodoro Gonzales has been taken in the case. He was the Justice of the Peace who gave the juridical possession of the land and establishes the genuineness of the signature to the petition, concession or grant and to the record of juridical possession"

"Another witness proves that he had been over the land in question during the last Eighteen years during all which time and up to present periods it had been in the exclusive possession and occupation of the Appellee and his family. They having lived upon it during all the time, cultivating and improving it for the use and purposes of a ranch."

The facts found by the District Judge are the same as those found by the Commission. That there was a grant, juridical possession, occupation and cultivating of the land called Bolsa de las Escarpinos. That inasmuch as the records of juridical possession state that the rancho went Eastward as far as the lands of Nicholas Alvarez, the District Court held as conclusions of fact that the Bolsa de los Escarpinos was bounded thereby. The records of juridical possession is held good and true and it places all the lands East of the "corner of the Bolsa". But the decree would locate about one half of it west of that point. The juridical possession runs the line 11,650 varas Eastward from the point of commencement.

And the Decree stops it about 5000 Varas short of the juridical possessions in terms gives us the Western boundary of the Lands of Alvariz as our Eastern line - while the Decree assumes an arbitrary line midway.

A Decree to express the judgment of a Court should be consistent with its opinion. This Decree is not consistent with nor can it be harmonised with anything either in the record or the opinion. On the contrary it is irreconcilable with both.

67 SD

PAGE 88

III

Why are we here so late asking for a Decree that shall express the judgment of the Court.

The grantee presented his claim and it was confirmed to him. Reference was made to his diseño and records of juridical possessions for further descriptions. His claim was approved to the tract of land called Bolsa de los Escorpinos, and he knew well its limits and was content

Thus matters rested until 1859 when the Government ordered the land surveyed. A deputy Surveyor went into the field and found no difficulty in locating in loco the tract. He made a survey which was satisfactory to the claimant - it being the identical land he claimed and of which he had been so long in possession. Under the law as it then stood, the plat was filed

in the Office of the Surveyor General and ad-

in the Office of the Surveyor General and advertised and no protests came from any quarter. In 1872 thirteen years after that survey was made, the Surveyor General, acting under some general order from the Commissioners of the General Land Office to forward unfinished business, took up the survey in this case and found that it was not in accordance with the technical terms of the Decree and so notified the parties. And this was the first intimation the parties received that the Decree as rendered, did not fully protect their rights.

67 SD

PAGE 89

20

41
U.S. District Court
California

Salvador Espinosa

The United States

Brief of W W Stow
for Petitioner on motion to
change the Decree

67 SD
PAGE 90
SD

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

Salvador Espinoza }
vs. }
The United States }

67 SD
PAGE 91

The power which we claim this Court possesses and the exercise of which we invoke in the present case, is not that of "modifying" (as the opposing counsel erroneously supposes) the decree of the District Court which was actually pronounced, but the power of correcting a manifest mistake in the drawing up and entering of that decree (so far as the notes and bounds given therein are concerned) by which mistake said decree is made to confirm to the claimant land two thirds of which was never, by the decision pronounced, intended to be, nor ever was in fact, confirmed to said claimant, was never "known by the name of Balsa de los Escarpinas," of which "Juridical possession" was never given him, of which he never had any "actual possession," and

which was never "claimed" by him either before, the Land Commission or the District Court, and made to omit confirmation to him of two thirds of the land which the decision pronounced, intended, to and did in fact confirm to him, and two thirds of the land which as the record shows, was always known by the name "Balsa de los Escarpinas," of which "Juridical possession" was given him, by the Mexican Government of which he always was, to the time of his death, (and his heirs and representatives, since) in the "actual possession," and which he "claimed" before both said Land Commission and said District Court.

Not only does the record of documentary evidence and proceedings before the Land Commission and District Court including especially the Opinion of said Land Commissioners and that of the then presiding Judge of said District Court, show the land to which the confirmation pronounced, applied and was intended to apply, and the consequent error in that portion of the decree which deviates

therefrom, but the decree itself likewise makes manifest said error when, in strict accordance with said record, it at first, "orders adjudges and decrees that the claim of the appellee to a certain tract of land known by the name of Balsa de Escarpinas is valid, the said land being the same now occupied by the said appellee" and afterwards proceeds to give Metes and bounds entirely at variance therewith, leaving out two thirds of the land included under the previous description by name and by then present occupation and including land two thirds of which had no connection whatever with this record, with the claim made and confirmed, nor with the preceding part of the decree.

In passing upon this motion this Court will, as a matter of course, be compelled first to determine what land the decree of the District Court, pronounced in this case, did in fact confirm to the claimant. It will then be a comparatively easy matter to ascertain whether or not there

is in the decree, as drawn and entered, that is, in the portion of it giving matter and bounds, any mistake. That such decree as pronounced, was and was intended to be consistent with itself, we think should be a conclusive intendment by this Court.

If we are correct, in the proposition which, in the foregoing remarks and in our previous more elaborate Argument, we have endeavored to demonstrate, to wit; that the charge which, by the present motion we seek to have made in the form of this decree is only for the purpose of truly, clearly, and consistently expressing what was in fact the conclusion and decision of both the Land Commission and the District Court, (in order that the same may be intelligibly understood and executed,) and not for the purpose of any "modification" amendment or change of that conclusion and judgment, we think the Court will find no real difficulty existing in the granting of our motion and that the numerous authorities cited by the opposing counsel against

the power of this Court to modify its decrees after the lapse of the term at which they were rendered, however sound where they properly apply, have no real application to the present case.

In the case of the Bank of the United States, vs. Moss, 6 How. U.S. R. 38, the Supreme Court of the U.S. say:

"A mere error in law, of any kind, supposed to have been rendered (made) in a judgment of a court at a previous term is never a sufficient justification for reversing and annulling it at a subsequent term, in this summary way, on motion." [Citing Cases]

"We would not be understood by this to deprive a court, at a subsequent term, of power to set right mere forms in its judgments." [Citing Authorities]

"Or power to correct misprisions of its Clerks." [Citing Authorities].

"The right to correct any mere clerical errors, so as to conform the record to the truth, always remains." [Citing Authorities].

What then is a judicial error, and, what

an error in form or clerical error. 3

If a judge in deciding a case arrives at and pronounces a conclusion and judgment not warranted by the facts and law of the case this is undoubtedly a judicial error, and one which cannot be remedied at a term subsequent to that at which it was pronounced.

67 SD
PAGE 96

But if a judge arrives at and pronounces a correct conclusion, one warranted by the facts and law, but in drawing up his decree through misapprehension or mistake of the terms to be used in identifying the thing to which such judgment applies, he falls into an error in a part of his attempted description of that thing by which such description becomes confused, inconsistent with itself, or self-contradictory and the identification of the thing to which the judgment applies is consequently imperfect, incomplete and uncertain, is this error in the description and identification of the thing to which the judgment applies a judicial or a

clerical error, a mistake in the judgment pronounced or one in the moulding of it into its proper form in drawing it up. are all acts of whatever character in fact done by a judge, necessarily judicial acts? Is not the drawing of a decree or order though done by a judge in its nature a clerical act as much as though drawn by an Attorney or Clerk. Is it not the nature of the act and not the person by whom performed that determines its character? If a judge makes a correct and proper order in a cause, but the Clerk of his Court being absent at the time, he himself writes that order in the minute book, and in so doing makes a mistake in the description and identification of the thing to which such order applies, is this a judicial or a merely clerical mistake? Would not the order made by the judge in such case be correct and the only error one occurring in the reduction of that order into its proper written form and its correct and truthful application to the subject matter or purpose intended? So, in the case now before the Court,

67 SD

PAGE 97

the conclusion and decision at which the judges of the Land Commission and the judge of the District Court respectively arrived and which they successively pronounced from the bench in their respective opinions filed herein, to the effect, that the claim of the Petitioner to the land known by the name of Balsade los Escarpinas, (the identity of which land as known by that name is perfect) and which was then "in the claimants' occupation," was valid and was therefore confirmed, is correct and without error or mistake. It is only when the judges (if the decree was drawn up by them,) or some other person, attempt the clerical act of reducing that judgment into a written form and applying it to the subject matter in litigation and only in a part of the terms used in making that application, that the error now sought to be corrected occurs.

This was no error in the conclusion and judgment which the judges arrived at and pronounced in their opinions and which is shown by a portion of the formal decree, but only a clerical mistake in a part of

67 SD
PAGE 98

that decree and in the application of
the judgment pronounced, to the subject matter.

67 SD
PAGE 99

We think the principle now invoked is
substantially, if not precisely, covered by the
case of the United States, vs. Bennett, 1
Hoffman's Repts. 281. in which a similar
mistake in the description of the land con-
firmed occurred, and that mistake had, as
in the present case, passed into a decree
signed by the judge. We do not see how
the means by which, or the person through
whom, the mistake occurred can be material
to the power of the Court to correct what
the record clearly shows is a mistake.

Believing that the reflection of the
Court will more than supply all that
we could suggest by prolonging this brief,
we will close it by a reference to some
authorities.

Cromwell vs Bank of Pittsburg	2 Wallace Jr. 586-7
Balchowsf. vs. Shaw	7 Cushing 282, 284
Bank of Ky. v Westar	3 Pet. 431

Morrison v. Dopman 3 Cal. 257
 Swain v. Taglee 19 " 127
 Seviston v. Swan 33 " 480, 484
 Roupert v. Boyle Cal. Dec. Oct. T. 1872

Ringold v. Brown 4 Harr. + M. H. 498
 Duval v. Wells Id. 163
 Craddock v. Ratford 4 Mod. Rep. 371
 Menzel v. Sodge W. Blac. 747
 Watson v. Cox Id. 1065
 Harr v. Miller 1 Hen. + M. 204
 Bagley v. Brown 3 E. D. Smith 66
 Chamberlin v. Crane 4 N. H. 115
 Cross v. Pead 1 Bos. + Pul. 137
 Pinder v. Meredith 5 Taunt. 661
 Soggin v. Rawlins Barnes 21
 Ring v. Bold Id. 23
 Tarrant v. Randal Id. 22
 Rashleigh v. See 4 Taunt. 855
 Blake v. Saffery 5 Taunt. 624
 Sidney v. Hulme 6 Taunt. 177
 Samba v. Reaston 5 Taunt. 207
 Scilly v. Smith 8 Taunt. 244
 Baxter v. Baxter 4 Taunt. 249
 Frost v. Hale 7 Taunt. 79

67 SD
 PAGE 100

U. S. District Court

20

Salvador Espinosa

vs.

United States

Brief in Reply

67 SD

PAGE 101

U.S. District Court -

Salvador Ceperoza

vs

The United States

I.

The final Decree in this case was entered sixteen years ago -

The Court has no power to modify this Decree because the term has long since expired -

Cameron - vs - McRoberts	3	Wheaton	591
Ex parte Sibbald	12	Peters	491
Bank of U.S. - vs - Ross	6	Howard	31
Leukins - vs - Eldridge	1	Woodbury & M.	61
Brush - vs - Robbins	3	Wheaton	486
Wood - vs - Luce	4	"	254
McMickin - vs - Pirie	18	Howard	507
Figh - vs U.S.	3	Court of claims cases	97
Carpenter - vs - Hunt	5	Wal	406
Shaw - vs - McGregor	8	"	521
Lattimer - vs - Ryan	20	"	629
DeCuster - vs - Richardson	25	"	51
Leasement - vs - Ringold	29	"	337

The only exceptions to the general rule announced

in these cases are; 1st. - where there has been a mistake or misperision of the clerk in not entering or recording the judgment pronounced from the bench, and 2nd where there has been a fraud committed upon the Court -

The case of Gomez vs U. S. Wallace 691 was where a most gross fraud was perpetrated upon the Court -

The case of Ruffet vs Boyle October Term 1842 of Sup. Ct of Cal; is put upon the ground of a conceded mistake in the entry of the judgment - The Court says

" We think that it must be conceded, that under no system of jurisprudence recognized among civilized people has it ever been permitted that a party who has by the mere misperision of the clerk obtained against his adversary, the entry of a judgment never, in fact, pronounced or rendered by the Court, should while substantially admitting the fact of the mistake, retain its fruits" - and further says -

" But where, as here, there is no real controversy upon the fact that the judgment is a mere

misprision or such difficulties can arise"

II

In the case at bar, there is no charge, nor any evidence of fraud committed upon the Board of Land Commissioners or upon the District Court. If the petitioners are entitled to a recovery it must be upon a showing of a ~~misprision~~ mistake in the entry of the judgment; that the judgment entered was not the one pronounced by the Court and the mistake must be apparent upon the face of the record -

De Castro vs Richardson 25 Cal; 53

Roussel vs Boyle - *Supra*

Is there any evidence upon the record of a mistake at the behest of the Board of Land Commissioners and District Court in not putting upon the record the several judgments which were announced from the benches of the two tribunals?

The argument of the learned counsel for the Petitioners, when analyzed, will be found to be substantially to the effect, that from the evidence before it, the District Court should have passed a Decree, describing the boundaries of the Rancho as now claimed

ly him; in other words, that it committed error.
The decree of the rancho Natividad, (Claim No
361) and the evidence of the witness before the
Land Commissioners in 1854 who testified
that the Natividad was bounded West by
the Escopinas, and of the witness in the
case of the "Los Gatos y Santa Rita," and
the decree in that case, and the testimony of
David Spence, Senano, J. A. Aliso, Nicolas Aliso
and Jose Antonio Espinosa are all outside of
the record, and throw no light upon the question
whether the Court pronounced a judgment
different from that now found of record. It
may be conceded, that this testimony would
tend, if the case were *in fieri* to establish
that Los Escopinas extended Eastward to the
Natividad, but it certainly comes too late,
upon the present issue -

III

The record shows that the Decrees of the
Board of Land Commissioners and of the
District Court, confirm to the Petitioner the
precise land called for by the expediente.
The expediente shows
1st. That the Governor of California in 1837

granted Esperanza the tract of land known as "La Bolsa de las Escorpivas" without any designation of boundaries, containing a little less than two square leagues, upon certain conditions, the second one of which, required the officer making the measurement to express the number of varas which it contained -

2nd ~~Judicial~~ ^{Judicial} possession was given by the Alcalde Gonzales, who in his return states that in making the measurement he used the cord of 50 varas, and commencing at the western extremity of the Bolsa continued in the opposite direction (quoting) "extending the cord towards the east as far as the boundaries of Nicholas Alvera and these were measured two hundred and thirty cords" - He then measured North and South seventy cords -

3rd A. Diseños - which does not show any eastern boundary line, but does show well defined lines to the west of the Cañada de San Miguel where the rancho has been finally located -

4th The opinion of the Land Commission, which does not say anything about the

boundary extending east as far as the Natividad, but does refer to the condition which required the officer making the measurement, to express the number of varas which the grant contained -

5th The decree of the Land Commission which locates the grant as commencing at the first San celito at the entrance of the Cañada de San Miguel, and running thence South, 3500 varas, to the borders of the land owned by Trinidad Espinosa; thence running West 11600^{varas}; thence running North 3500 varas; thence East to the place of beginning 11650 varas -

The distance East and West 11650 varas is the equivalent of 233 cords, and the distance North and South 3500 varas, is the equivalent of 70 cords, and the total area, is about two square leagues -

6th An appeal to the District Court, a trial there; and an opinion and draft decree, both drawn up by Judge W. Allister, and nothing will be found in the opinion of the Judge, which finds or intimates that the eastern boundary extends as far as the rancho Natividad -

Particular attention is called to the circumstance that Judge McAllister wrote out the Decree himself in conjunction with the opinion -

67 SD
PAGE 108

Thus it will be seen, that there is nothing whatever upon the face of the record which warrants the assertion that either the Land Commission or the District Court intended any other or different decrees than those respectively entered by them -

The only possible circumstance upon which a contrary view can be based, is the expression in the return of the Alcalde Gonzales, that he extended "the cord towards the east as far as the boundaries of Nicholas Alvera" - but this ^{is} coupled with this ^{other} that "these were measured 233 cords" which as above suggested, corresponds with the measurement allowed by the Decrees -

The case of W. vs Bennett & Coffman 282 in no wise militates against the position

here taken -

There, a certain decree was entered by the Commissioners and upon the appeal the District Attorney stated to the District Court that he had no objection to the affirmance of the decree. Thereupon a decree of affirmance was entered, which was signed by the Judge without examination, relying upon the consent of the District Attorney. Afterwards it was discovered that the decree actually entered was for a larger tract of land than that described in the decree of the Commissioners and upon application of the Cf. the decree was modified, the court proceeding upon the ground of accident and mistake, and in order to make the written decree conform to what was in fact the judgment of the court.

There the record on its face was inconsistent, the decree of the Board was for one tract, but the decree entered in the District Court, which the record showed was merely intended to be an affirmance, was for another. There ^{there} was an apparent mistake. Here, the two decrees are the same -

And to grant this motion we respectfully submit, is to enter a new decree upon testimony outside of the record, sixteen years after the final decree was entered. Will this Court after this lapse of time, where no fraud is charged, consider the question, if the proper decree was entered originally. When will this end?

67 SD
PAGE 110

The definition of a final decree should be changed. "A final decree is one that is not final."

McCullough T Boyd &
W. W. Crane, Jr.
Appearing for the U. S.

P.S. We have not introduced any affidavits in answer to the allegations of the petition filed in this motion, as to the continuous possession of the grantees of the Escarpines, or as to matters outside the record, as we have deemed that the question before the Court must be determined from the record alone. For the same reason have we noticed many of the statements of alleged facts contained in Petitioner's brief.

U. S. District Court
California

Salvador Espinosa

v
The United States

Brief for the U. S. on
motion to change the
Decree

67 SD
PAGE 111

167.

Rockwell

Alba Dor Espinosa

vs

The United States

No. 67
SD

67 SD
PAGE 112

This is an application & motion to amend a final decree of the late District Court of the United States for the Southern District of California entered on the 24th Sept 1855.

It is not of course pretended that this court has ~~now~~ any jurisdiction to review or reverse any decree entered by its predecessor, or by itself after the term has expired or to correct any error of law or fact which may have been committed.

It is not suggested that there has been any fraud upon the Court.

The ground upon which the application is based is that the record dis

2

closes a case of manifest
mistake and that the de-
crees do not express what
the record shows to have
been the real judgment &
sentence of the Court.

67 SD
PAGE 113

To ^{the} properly appreciation ^{of} the
question ^{thus} presented a brief
statement of the facts of
the case is necessary

In October 1837 Salvador
Espinoza presented a pe-
tition to Governor Alvarado
setting forth in substance
that he had for 14 years
occupied the place known
as La Posa de Escorpines-
which had been ceded to
him by the ancient (Spanish)
Government. but that the
record of the grant had
been lost and was not to
be found in the archives
He therefore prayed that

3

the possession of the land
might be given him in due
form and according to the
Desires annexed to his petition
On the same day the
Governor by a marginal de
Crete ~~to~~ acceded to his pe
tion, and directed him to
present himself before the
Alcalde by whom the land
was to be measured ~~with~~
according to the Ordinances
& the Desires, "expressing the
"Number of Varas which a
"Sult, to the party interested"
This being done, the Expe
diente was ~~to~~ returned to
the Government "that the
"Party interested might ^{may} be
"Give the title he asks
"for, and that the Documents
"may be concluded -
The more In pursuance
of this Decree, the measure
ments were effected.
The proceedings of the Alcalde

44

are contained in a word
of Judicial ^{record} ~~measures~~
possession of unquestioned
authority -

67 SD
PAGE 115

These proceedings however
do not appear to have been
returned to ~~the~~ Government
nor was any title formal
title applied for or obtained
from the ~~Government~~ Governor.

This defect was ~~seen~~

It was held both by the
Board of Land Commissioners
and the District Court that
~~notwithstanding~~ this defect,
the claimant was entitled
to confirmation in considera-
tion of the manifest in-
tention of the Governor to
make the grant his acqui-
sition of the title derived
from the ancient Spanish
authorities and the rights
growing out of ^{his} long & un-
interrupted possession -

5

It ~~will~~ is apparent that under these circumstances the judicial measurement afforded the chief means of ascertaining the extent & location of the grant on this point the Board observes "The judicial mea-

67 SD
PAGE 116

" measurement does not define
" with great accuracy the
" boundaries but with the
" aid of the maps on file
" taken in connection with
" the long and notorious pos-
" session of the claimant, the
" premises can be thereby
" located without much
" difficulty."

In the record of the Ju-
dicial measurement the
Alcalde after stating that
a cord was measured
of 50 varas in length
describes the measurement
as follows

" And, thereupon in the

6^a Corner (Pincon) of the Bolsa
de los Escorpines which is
situated to the west, they
commanded their measure-
ment extending the cord
towards the East as far
as the boundaries of Huéscar
Alvora, and there were
measured two hundred
and thirty three cords
and after that, standing
on the borders of Trinidad
Espinoza at the South,
the cord was carried
towards the north, as
far as the first Saucelito
at the entrance of the
Cañada de San Miguel,
and there were measured
seventy cords of fifty
varas" etc etc

In the decree of the
Board the land con-
joined is described as
follows - "The lands of
which confirmation is hereby

Y^e made, are known by the
name of *Potro de los*
Escorpines and are the
same, now occupied by
Salvador Espinosa and
are bounded and descri-
bed as follows to wit
Commencing at the first
Sancho at the Entrance
of the *Cañada de San Mi-
guel*, and running thence
South three thousand
five hundred varas to
the border of the land
owned by *Simón Espinosa*
thence running west eleven
thousand six hundred varas
thence running north three
thousand five hundred
varas thence running East
to the place of *Seguimiento*
eleven thousand six hundred
and fifty varas"

It will be seen that with
the slight necessary surveying

8 ~~Between~~ of 50 varas between
the lengths of the northern
and southern boundaries
(due no doubt to a crucial
mistake) the location of
the track is fixed with
absolute certainty provided
the lancelets or point of
beginning can be found
and of this no question
is made -

It will also be seen that
~~the~~ track is confined
to the claimant the full
quantity measured for him
by the Alcalde viz a
track 233 cords (11650 varas)
in length by 70 cords (3500
varas) in width -

It is urged however that
by the record of Judicial
measurement it appears
that only ~~only~~ two lines
were measured by the
Alcalde, one for running through

Deemay

9 The Rancho from west
East, from the Pincon
of the Potosa to the lands
of Alvera, in length 233
Cords - The other, ~~from~~ from
South to North from the
border of Trinidad Espinosa
to the Sanchito in length
70 Cords - And that
this latter line was run
or through the middle
of the Rancho and did
not form its ~~western~~ Eastern
boundary -

It is therefore argued
that the Board and the
district Court by adopting
the Sanchito as the point
of beginning and directing the
line to be run thence
70 Cords to the lands of
Trinidad Espinosa, and
thence f.e. from its termination
west 233 ^{Cords} ~~varas~~ thence
North 70 ~~varas~~ Cords thence
East 233 ^{Cords} to the place

10 If sequencing has shifted
the location of the track
to the westward of the
track measured by the
Alcalde and has prevented
it from extending toward
the East to the lands of
Alvera as described in the
Record of Judicial measure-
ment, and in conformity
to its ancient and historical
foundations —

67 SD
PAGE 1212

In support of this view
several depositions have
been taken and references
made to other exhibits
in the archives —

These proofs it is claimed
establish beyond doubt
that the ~~the~~ Rancho of
Roba de los Barones &
and ~~of~~ that of La Natividad
were (the lands of
Nicolas Alvera) were uni-
versally recognized as
contiguous —

11

It is apparent that the introduction of these proofs is a recognition of the fact otherwise sufficiently obvious that this application is in effect an attempt to procure after the lapse of 16 years the revision and correction ^{by this Court} of a supposed error of its predecessor and that this correction is to be made not in case the record discloses that a clerical mispision has occurred, but because aided by additional proofs this Court is of opinion that an error has been committed. Such a proceeding is wholly inadmissible and the application might be dismissed on the sole ground that this Court is without power or jurisdiction to make the desired correction.

67 SD

PAGE 122

12

But even if the question
was an open one and
I were ^{now} not at liberty to
make such a location as
might appear to be just
on the proofs recently sub-
mitted, I have failed to find
any certain evidence that
an error has been committed.

The Counsel for the claimant
has assumed in his brief
that the 2^d line run by
the Alcalde was drawn
through the middle of
the Rancho and not at
its Eastern boundary. Of
this I find in the record
no ^{proof} certain evidence —

The Alcalde Record states
that "after that standing
" in the borders of Trinidad
" Espinosa the line was
" drawn at the south,
" the cord was carried
" to the north, as far as
" the first San Celso &c

67 SD

PAGE 123

June

67 SD
PAGE 124

From this we learn that the point ~~of~~ of commencement on the borders of Trinidad, Espinosa was a point to the south of the Sancheito but whether the line so drawn was run through the middle or at the ~~end~~^{end} of the Rancho does not appear. ~~But~~ In recurring to the diseño we find the Sancheito clearly delineated, it and the Cañada de San Miguel are at the extreme North Eastern corner of the tract marked "Polsa de los Escarpines," and their positions show that a line drawn south from the Sancheito would form the Eastern boundary of the tract as delineated on the diseño. It may be presumed that

Howe

14 The Road and the dis-
trict Court was guided
by this indication in fix-
ing the Eastern bounda-
ry of the Tract.

67 SD
PAGE 125

Again - I do not under-
stand it to be ^{alleged} ~~regard~~
that the claimant ~~could~~
~~in any way~~ must be restrict-
ed to ~~the~~ precise quantity
measured off to him by
the Alcalde viz a tract
233 cords in length by
70 in width -

The measurement gave
precision and definiteness
to the tract called "Bohio
de los Escorpiones" It was
accepted by the claimant
and the tract so measured
is the only one which we
can presume the Governor
promised or intended to
grant.

The boundaries of this tract can be ascertained without difficulty - If a line be drawn from the Pinicon of the Rosa 233 cords - and another at right angles to it from the Saucito South 40 cords we have the length and width of the Tract - By drawing at each end of the longitudinal line, two lines parallel to and of equal length with the line drawn from the Saucito, and uniting the extremities of these two lines a tract is enclosed of precisely the required dimensions

If it be contended that these lines mark the line from the Pinicon and that from the Saucito must be run until the lands of Alcora are reached by the one and the borders of Trinidad Espinoza by the other it is suffi

Chow

15 b.

went to say that in the record of measurement these calls are evidently subordinate to the calls for distance or length and that even if this were not so, the adoption by this Court of those boundaries would be the substitution of a new and radically different mode of survey ~~made~~ in place of that finally fixed by ~~said~~ ~~order~~ - ^{upon} - terminated by the Decree of the Board and the District Court.

67 SD
PAGE 127

Neither the record nor the proofs recently taken show that a line drawn from the Poba 233 rods would extend beyond the Eastern boundary as fixed by the Board, or that a line drawn wholly from the Lanchlo line, to the distance of 233 rods would extend

15c

beyond the Pobsa

If then this grant was
now to be located by this
Court the location fixed
by its predecessor would not
certainly appear to be in
error —

To determine that question evi-
dence as to the situation of
the Rincon and its distance
from a line drawn south
from the Saucito would
be necessary; as would also
some proofs identifying
the objects marked "Laguna"
"Isla" and "Arrollo" on the
diseño — the first of which
seems to form the
southern boundary of
the Rancho for more
than half its length
and the others are
represented as situated

67 SD

PAGE 128

How

16 ~~located as being situated~~
towards or at its western
extremity -

The establishment of the
position of these objects
might or might not
show error in the location
fixed by the Board
but the necessity for an
inquiry into their positions
demonstrates that what the
Court is now invited to
do is not to correct an
obvious clerical mistake
manifest by the record but
to relocate the tracks ^{& their} to
~~effect~~ ^{do} which, ^{this} ^{advisedly &}
correctly, additional test
money is indispensable,
the result and effect of
which is doubtful -

It will not be pretended
that the Court has at
this time any such powers

It may be trusted in ad.

Thorn
14

67 SD
PAGE 130

Alton with reference to the supposed clerical mistake that the decree of the Board remained on appeal in the district court from December 1852 until Sept 1855 when the decree of the district court was rendered - that during all this time there was opportunity to procure the correction of the supposed mistake by the district court and that the decree of the latter tribunal is in the precise language of the decision of the Board and wholly in the hand writing of the late Judge McAllister who was then holding the district court for the Southern district of California

The motion must be denied

No. 67 S. D.

U. S. District Court
Dist of Cal

The United States

vs
Salvador Espinosa

Opinion denying
Motion of claimants
to amend decree of
Confirmation.

Filed March 31 st.

Ad 1873

Edw. R. Potter Clerk

Wm. D. Spinnwood
Deputy Clerk

18
Dove
April 5

Since ~~with~~ the foregoing opinion
^{was written}
- ~~on~~ an additional brief has
been filed to which my attention
as well as to the depositions
recently taken my attention
has been earnestly solicited
I see no reason to doubt
the correctness of the conclusions
heretofore reached -

67 SD
PAGE 132

Though not explicitly stated
it is nevertheless clear that
the efforts of the claimant
are directed to the obtaining
from this Court a decree
adopting the survey of
Lawell - in other words ~~to~~
substituting for the final de-
cree in the case a ^{new} decree
fixing the limits ^{of the tract} by
reference exclusively to the
boundaries of the adjoining
ranchos.

It is sufficient to say that
if the case was open for
rejudication this could not

Paragraph

be done - ^{land} The only ~~tract~~ ^{land} to which the claimants can set up any title is the tract measured to him by the Alcalde - This was evidently a parallelogram in length 233 cords and in width 50 cords - To ~~this~~ ^a tract of these dimensions his ^{claim} was confirmed by the Board and the District Court and to it he must now be restricted -

67 SD
PAGE 133

The mode of measuring might unquestionably ^{to} have been that adopted by the Alcalde viz By drawing from the Puicon ~~ark~~ ^{ark} in an Eastwardly direction a line 233 cords in length and by drawing from a point 50 cords south of the Lanchto a line north to that object - The tract would then be inclosed by lines passing through

20 3

the extremities of the
~~these~~ lines just mentioned
 lines in a direction perpen-
 dicular to their course
 It appears from the map
 of Bielawski to which my
 attention had not been direct-
 ed when the former opinion
 was written, that the line
 drawn south from the Savello
 and established by the decree
 as the eastern boundary
 will not pass through
 the end of a longitudinal
 line drawn from the River
 eastward 233 cords - but
 will cut that line at a
 considerable distance from
 its extremity -

I think therefore that the
 decree is erroneous in this
 particular. But that the
 Board and District Court
 mistook it may be by the
 design as already suggested
 intended to adopt and
 establish the line ^{running south} from the

67 SD
 PAGE 134
 gal

24
4 Sanchezito as the Eastern boundary cannot I think be for ~~an~~ moment doubted. The language of the decree is explicit and unequivocal. Nothing in the record ~~shows~~ ~~been~~ tends to show such a location to be incorrect. It was done with much apparent support from the indications of the decree. The error is disclosed only on the production of the evidence ~~recently~~ contained in Mr. Bielawski's deposition and map.

From I can see no reason whatever for attributing this error to a clerical mistake. It is plainly a case of error arising from want of evidence as to the real facts of the case. It is supposed, and could now be corrected only by the production of additional proofs. This Court has now

22
Dove

No firm's action to take or
consider those proofs or to
correct the error.

67 SD
PAGE 136

No 67 S. D.

U.S. District Court
Dist of Cal

Salvador Espinosa

vs

The United States

Opinion, and
Supplemental
Opinion on the ^{secret} ~~same~~

Opinion filed March 31 /73

Supplemental Opinion
filed this 5th day
of April A.D. 1873.

Edw W. Cotter Clerk

Prof W. G. Greenwood
Deputy Clerk

L. D. Latimer +

W. W. Crane Jr
+ McCullough for U.S.

W. W. Stow +

J. B. Lounsbury

Atty for Claimant

Hon Ogden Hoffman

IN THE DISTRICT COURT
OF THE
UNITED STATES OF AMERICA,
IN AND FOR THE
DISTRICT OF CALIFORNIA.

Land Case, No. 67, S. D., Rancho "Bolsa de los Escorpines."

Salvador Espinosa,
VS.
The United States.

Opinion of OGDEN HOFFMAN, Judge, on Motion to Modify Decree.

For Motion,
W. W. STOW.

Against Motion,
L. D. LATIMER,
McCULLOUGH & BOYD,
W. W. CRANE, Jr.



IN THE DISTRICT COURT

OF THE

United States of America,

IN AND FOR THE

DISTRICT OF CALIFORNIA

SALVADOR ESPINOSA,

vs.

THE UNITED STATES.

No. 67.

This is a motion to amend a final decree of the late District Court of the United States for the southern district of California, entered on the 24th day of September, 1855.

It is not, of course, pretended that this Court has any jurisdiction to review or reverse any decree entered by its predecessor, or by itself, after the term has expired, or to correct any errors of law or fact which may have been committed.

It is not suggested that there has been any fraud upon the Court.

The ground upon which the application is based, is that the record discloses a case of manifest mistake, and that the decree does not express what the record shows to have been the real judgment and sentence of the Court.

To the proper appreciation of the question thus presented, a brief statement of the facts of the case is necessary.

In October, 1837, Salvador Espinosa presented a petition to Governor Alvarado, setting forth, in substance, that he had for fourteen years occupied the place known as La Bolsa de Escorpines, which had been ceded to him by the ancient (Spanish) government ; but that the record of the grant had been lost, and was not to be found in the archives. He therefore prayed that the possession of the land might be given him in due form, and, according to the *diseño*, annexed to his petition. On the same day the Governor, by a marginal decree, acceded to his petition, and directed him to present himself before the Alcalde by whom the land was to be measured, according to the ordinances and the *diseño*, "expressing the number "of varas which result, to the party interested." This being done, the expediente was to be returned to the government, "that the party interested may receive the title he asks for, and "that the documents may be concluded." In pursuance of this decree the measurements were ef-

fect. The proceedings of the Alcalde are contained in a record of juridical possession of unquestioned authenticity. These proceedings, however, do not appear to have been returned to the government, nor was any formal title applied for or obtained from the Governor.

It was held, both by the Board of Land Commissioners and the District Court that, notwithstanding this defect, the claimant was entitled to confirmation in consideration of the manifest intention of the Governor to make the grant—his recognition of the title, derived from the ancient Spanish authorities, and the equities growing out of a long and uninterrupted possession.

It is apparent that under these circumstances the juridical measurement afforded the chief means of ascertaining the extent and location of the grant. On this point the Board observes: "The juridical measurement does not define with great accuracy the boundaries; but, with the aid of the map on file, taken in connection with the long and notorious possession of the claimant, the premises can, we think, be located without much difficulty."

In the record of juridical measurement, the Alcalde, after stating that a cord was measured of 50 varas in length, describes the measurement as follows: "And thereupon, in the corner (rincon)

“ of the Bolsa de los Escorpines, which is situated
“ to the west, they commenced their measurement,
“ extending the cord towards the east as far as the
“ boundaries of Nicolas Alvera, and there were
“ measured 233 cords ; and after that, standing on
“ the borders of Trinidad Espinosa at the south,
“ the cord was carried towards the north as far as
“ the first saucelito at the entrance of the Cañada
“ de San Miguel, and there were measured 70
“ cords of 50 varas,” etc., etc.

In the decree of the Board, the land confirmed
is described as follows: “ The lands, of which
“ confirmation is hereby made, are known by the
“ name of Bolsa de los Escorpines, and are the
“ same now occupied by Salvador Espinosa, and
“ are bounded and described as follows, to wit :
“ Commencing at the first saucelito at the entrance
“ of the Cañada de San Miguel, and running thence
“ south 3,500 varas to the borders of the land
“ owned by Trinidad Espinosa ; thence running west
“ 11,600 varas ; thence running north 3,500 varas ;
“ thence running east to the place of beginning
“ 11,650 varas.”

It will be seen that with the slight discrepancy
of 50 varas between the lengths of the northern
and southern boundaries (due, no doubt, to a cler-
ical mistake), the location of the tract is fixed with
absolute certainty, provided the saucelito or point

of beginning can be found ; and of this no question is made.

It will also be seen that there is confirmed to the claimant the full quantity measured for him by the Alcalde, viz., a tract 233 cords (11,650 varas) in length, by 70 cords (3,500 varas) in width.

It is urged, however, that, by the record of juridical measurement, it appears that only two lines were measured by the Alcalde, one running through the rancho from west to east, from the rincon of the Bolsa to the lands of Alvera, in length 233 cords. The other, from south to north, from the borders of Trinidad Espinosa to the Saucelito, in length 70 cords—and that this latter line was run through the middle of the rancho, and did not form its eastern boundary.

It is therefore argued that the Board and the District Court, by adopting the Saucelito as the point of beginning, and directing the line to be run thence 70 cords to the lands of Trinidad Espinosa, and *thence* (i. e., *from its termination*) west 233 cords ; thence north 70 cords ; thence east 233 cords, to the place of beginning, have shifted the location of the tract to the westward of the tract measured by the Alcalde, and have prevented it from extending toward the east to the lands of Alvera, as described in the record of juridical measurement, and in conformity to its ancient and notorious boundaries.

In support of this view, several depositions have been taken, and references made to other expedientes in the archives.

These proofs, it is claimed, establish beyond doubt that the Rancho of Bolsa de los Escorpines and that of La Natividad (the lands of Nicolas Alvera) were universally recognized as coterminous.

It is apparent that the introduction of these proofs is a recognition of the fact, otherwise sufficiently obvious, that this application is in effect an attempt to procure, after the lapse of sixteen years, the revision and correction by this Court of a supposed error of its predecessor, and that this correction is to be made, not because the record discloses that a clerical misprision has occurred, but because, aided by additional proofs, this Court is of opinion that an error has been committed.

Such a proceeding is wholly inadmissible, and the application might be dismissed on the sole ground that this Court is without power or jurisdiction to make the desired correction.

But even if the question were an open one, and I were now at liberty to make such a location as might appear to be just; on the proofs recently submitted, I have failed to find any certain evidence that an error has been committed. The counsel for the claimant has assumed in his brief

that the second line run by the Alcalde was drawn through the middle of the rancho, and not at its eastern boundary. Of this, I find in the record no proof.

The record states that "after that, standing in the borders of Trinidad Espinosa, at the south, the cord was carried to the north, as far as the first Saucelito," etc.

From this we learn that the point of commencement on the borders of Trinidad Espinosa, was a point to the south of the Saucelito ; but whether the line so drawn was run through the middle or at the end of the rancho, does not appear.

On recurring to the diseño, we find the Saucelito clearly delineated. It and the Cañada de San Miguel are at the extreme north eastern corner of the tract marked "Bolsa de los Escorpines," and their positions show that a line drawn south from the Saucelito would form the eastern boundary of the tract as delineated on the diseño.

It may be presumed that the Board and the District Court were guided by this indication in fixing the eastern boundary of the tract.

Again, I do not understand it to be denied that the claimant must be restricted to the precise quantity measured off to him by the Alcalde, viz., a tract 233 cords in length, by 70 in width. The measure-

ment gave precision and definiteness to the tract called "Bolsa de los Escorpines." It was accepted by the claimant, and the tract so measured is the only one which we can presume the Governor promised or intended to grant.

The boundaries of this tract can be ascertained without difficulty. If a line be drawn from the Rincon of the Bolsa, east 233 cords, and another at right anglesto it from the Saucelito, south 70 cords, we have the length and width of the tract. By drawing at each end of the longitudinal line, two lines parallel to and of equal length with the line drawn from the Saucelito, and connecting the extremes of these two lines, a tract is enclosed of precisely the required dimensions.

If it be contended that the line from the Rincon and that from the Saucelito must be run until the lands of Alvera are reached by the one, and the borders of Trinidad Espinosa by the other, it is sufficient to say, that in the record of measurement these calls are evidently subordinate to the calls for distance or length, and that even if this were not so, the adoption by this Court of those boundaries would be the substitution of a new and radically different mode of survey in place of that finally fixed and determined upon by the decrees of the Board and the District Court.

Neither the record nor the proofs recently taken

show that a line drawn from the Bolsa, 233 cords, would extend beyond the eastern boundary, as fixed by the Board, or that a line drawn westerly from the Saucelito line to the distance of 233 cords, would extend beyond the Bolsa.

If, then, this grant were now to be located by this Court, the location fixed by its predecessor would not certainly appear to be incorrect. To determine that question, evidence as to the situation of the Rincon and its distance from a line drawn south from the Saucelito, would be necessary ; as would also some proof identifying the objects marked "laguna," "isla," and "arrollo," on the diseño—the first of which seems to form the southerly boundary of the Rancho for more than half its length, and the others are represented as situated towards, or at its western extremity.

The establishment of the position of these objects might or might not show error in the location fixed by the Board; but the necessity for an inquiry into their positions demonstrates that what the Court is now invited to do, is not to correct an obvious clerical mistake manifest by the record, but to re-locate the tract; and that to do this advisedly and correctly additional testimony is indispensable—the result and effect of which is doubtful. It will not be pretended that the Court has at this time any such power.

67 SD
PAGE 142

It may be observed, in addition, with reference to the supposed clerical mistake, that the decree of the Board remained on appeal to the District Court from December, 1852, until September, 1855, when the decree of the District Court was rendered. That, during all this time, there was opportunity to procure the correction of the supposed mistake by the District Court, and that the decree of the latter tribunal is in the precise language of the decision of the Board, and wholly in the handwriting of the late Judge McAllister, who was then holding the District Court for the southern district of California.

The motion must be denied.

APRIL 5th.

Since the foregoing opinion was written, an additional brief has been filed, to which as well as to the depositions recently taken, my attention has been earnestly solicited.

I see no reason to doubt the correctness of the conclusions heretofore reached.

Though not explicitly stated, it is, nevertheless, clear that the efforts of the claimant are directed to the obtaining from this Court a decree adopting the survey of Turrell. In other words, substituting for the final decree in the case a new decree, fixing the limits of the tract by reference exclusively to the boundaries of the adjoining ranchos.

It is sufficient to say, that if the case were open for adjudication, this could not be done.

The only land to which the claimant can set up any title, is the tract measured to him by the Alcalde. This was evidently a parallelogram, in length 233 cords, and in width 50 cords. To a tract of those dimensions his claim was confirmed by the Board and the District Court, and to it he must now be restricted.

The mode of measuring ought unquestionably to have been that adopted by the Alcalde, viz., by drawing from the rincon in an eastwardly direction a line 233 cords in length, and by drawing from a point 50 cords south of the Saucelito a line north to that object. The tract would then be inclosed by lines passing through the extremities of the first mentioned lines in a direction perpendicular to their course.

It appears from the map of Bielawski, to which my attention had not been directed when the former opinion was written, that the line drawn south from the Saucelito and established by the decree as the eastern boundary will not pass through the end of a longitudinal line drawn from the Rincon eastward 233 cords, but will cut that line at a considerable distance from its extremity.

I think, therefore, that the decree is erroneous

67 SD
PAGE 144

in this particular. But that the Board and District Court misled, it may be, by the diseño, as already suggested, intended to adopt and establish the line running south from the Saucelito as the eastern boundary, cannot, I think, be for a moment doubted. The language of the decree is explicit and unequivocal. Nothing in the record tends to show such a location to be incorrect. It even derives much apparent support from the indications of the diseño. The error is disclosed only on the production of the evidence contained in Mr. Bielawski's deposition and map.

I can see no reason whatever for attributing this error to a clerical mistake. It is plainly a case of error arising from want of evidence as to the real facts of the case. It is exposed, and could now be corrected only by the production of additional proofs. This Court has no jurisdiction to take or consider those proofs, or to correct the error.

At a stated term of the District Court of the United States of America, for the District of California, held at the Court Room, in the City of San Francisco, on Monday, the thirty-first day of March, in the year of our Lord, one thousand eight hundred and seventy-three.

Present :

The Honorable OGDEN HOFFMAN, Judge.

THE UNITED STATES,	} Land Case No. 67, S.D.
vs.	
SALVADOR ESPINOSA.	

In this case, the claimant's motion to modify and amend the Decree of Confirmation herein, having been heretofore submitted for consideration and decision, and due consideration having been thereon had, the Court now renders its written opinion herein, and orders that the said motion be, and the same is hereby denied.

I hereby certify that the foregoing is a full, true and correct copy of an original order made and entered in the above entitled case.

Attest my hand and seal of said District Court, this seventh day of April, A. D. 1873.

EDW. B. COTTER, Clerk.

[SEAL.]

By A. D. GRIMWOOD, Deputy Clerk.