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Letter from the Secretary of the Interior, transmitting, in compliance with law, the report and opinion of the U. S. Surveyor-General of the Territory of Arizona, on private land claim No. 13, known as "Rancho de Otero and House Lot."

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LETTER

FROM THE

SECRETARY OF THE INTERIOR,

TRANSMITTING,

In compliance with law, the report and opinion of the U. S. surveyor-general of the Territory of Arizona, on private land claim No. 13, known as "Rancho de Otero and House Lot."

JANUARY 30, 1882.—Referred to the Committee on Private Land Claims and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, ———, 18—.

SIR: Pursuant to section 8 of the act of July 22, 1854 (10 Stat., 308), as extended by the sundry civil act of July 15, 1870 (16 Stat., 304), I have the honor to transmit herewith the report and opinion of the United States surveyor-general of the Territory of Arizona, on private land claim No. 13, known as "Rancho de Otero and House Lot," heirs of Torreio de Otero, claimants; also a duly authenticated transcript of the title, papers, and testimony in the case, a plat of preliminary survey of the claim, and the report of the Commissioner of the General Land Office as to the validity of the claim, &c.

Very respectfully,

S. J. KIRKWOOD,
Secretary.

The PRESIDENT OF THE SENATE *pro tempore.*

[Extract.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 19, 1882.

SIR: * * * I cannot add anything to what has already been stated in said report concerning the proposed confirmation of said grant, but would suggest, as a general proposition, that in my judgment it would be advisable for Congress, in any acts that may be passed confirming private claims, to omit in such legislation any provision adopting and approving the preliminary surveys thereof, and thus leave all questions affecting the proper location of the boundaries of such claims to this office and the department, as was done in cases of claims confirmed by Congress, where preliminary surveys had not been made.

These surveys form no part of the proceedings had by the surveyor-general of New Mexico under the eighth section of the act of July 22, 1854, which relate to the adjudication of questions of title, but were authorized, out of the appropriation made by the act of March 3, 1877 (19 Stats., p. 348), for the survey of private land claims, and since then Congress has made specific appropriations for them.

They were intended merely for the information of Congress, and have not undergone such examination as to their correctness as would be given to the survey of a confirmed claim before issuing a patent, and some are objected to, and some are evidently incorrect as to the boundaries adopted, and quantity of land included, and the taking of testimony may be necessary to determine correctly the several locations.

Very respectfully, your obedient servant,

N. C. McFARLAND,
Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., January 23, 1882.

SIR: Referring to your letter of the 17th instant returning the papers in certain private land claims in the Territories of New Mexico and Arizona for examination, I have the honor to submit the following in the case of the Rancho de Otero and House Lot.

The papers in this case relate to proceedings had before the surveyor-general of Arizona under the act of July 15, 1870 (16 Stat., p. 304), for the confirmation of said grant, and consist of copies, duly authenticated, of:

1. Petition, in grant to Otero, 1789.
2. Original title same.
3. Translation of same.
4. Petition, in grant to Martinez, 1838.
5. Original title to same.
6. Translation of same.
7. Deed, Martinez to Otero.
8. Testimony.
9. Opinion of Surveyor-General.

I have carefully examined these papers. The translations are substantially correct.

In the deed (No. 7) from Martinez to Otero, dated June 29, 1880, I find that the description of the land conveyed does not agree with the description of the same in the original grant of November 12, 1838. In the grant the cords are described as being of 25 varas, while in the deed they are said to contain 50 varas. This, however, is evidently a mere clerical error and has nothing to do with the validity of the grant.

The surveyor-general has made a clear and lucid statement of this case in his report, and I can only add that I see no reason to doubt the validity of the claim.

With regard to the preliminary survey of this claim made by the said surveyor-general, I respectfully refer to my letter to you of the 18th instant in relation to the claim known as Cañon de Chama, in New Mexico, as my expression of opinion in that matter applies equally to the case in point. (See extract inclosed.)

The papers and plat of survey in the case are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

N. A. McFARLAND,
Commissioner.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

PRIVATE LAND CLAIMS OF RANCHO DE OTERO AND HOUSE LOT, ARIZONA.

DOCKET No. 13.

(Date of Report, March 1, 1881.)

Transcript of proceedings before the United States surveyor-general for Arizona, in case of Rancho de Otero, claimed by heirs of Torreño de Otero.

LIST OF PAPERS.

- Petition, grant to Otero, 1789.
Original title grant, 1789.
Translation.
Petition, grant to Martinez, 1838.
Original title grant, 1838.

Translation.
Deed, Martinez to Otero.
Testimony in case.
Opinion of surveyor-general.

PETITION.

Before John Wasson, United States surveyor-general of Arizona.

In the matter of the application of Sabino Otero and others for confirmation of Spanish grant near Tubac.

Now come Sabino Otero, Fernando Otero, Teofilo Otero, Gabriela Otero, Elena Castro, and Anna M. Cannan, by their attorneys Lindley and Corella, and show in this petition:

I. That in 1798, Nicolas Erran, commander of the presidio of Tubac, then under the jurisdiction of the king of Spain, and being duly empowered by said king and by the sovereignty of Spain, granted as such commander, to Torivio de Otero, a tract of land situated in the jurisdiction of said Presidio and near what is now known as the town of Tubac in said Territory, as will more fully appear by a true copy of said grant correctly translated into English and which is made part of this petition annexed hereto and marked Exhibit A. A true copy in Spanish is also made a part of this petition and annexed hereto and marked Exhibit B.

II. That said grant was duly recorded in the archives of said presidio, but the said archives were many years ago destroyed, or lost, during the Indian incursions, when the presidio and surrounding country were laid waste.

III. That the petitioners are the lineal descendants of the said Torivio Otero, through Atanacio Otero, the son of Torivio Otero, and Manuel Otero, the son of Atanacio Otero, and father of Sabino, Fernando, Teofila, Gabriela Otero, and Elena Castro, and the grandfather of Anna M. Cannan, and they are the only legal heirs and representatives and heirs at law of said Torivio, and they are the exclusive legal owners of said land. Torivio, Atanacio, and Manuel (ancestors) are deceased.

IV. That the land contained in and claimed under said grant, and the possession given thereunder, consists of about four hundred acres, more or less, and is the same that is now and for a great period has been marked, inclosed, and known as "Otero's Ranch," which includes the old ditch and ruins of the house built by said Torivio, and known as "Casa de Alto," and referred to in the grant. The land lies on both sides of the Santa Cruz, about one mile north of the center of the town of Tubac. The possession of said lands by Torivio and his heirs has been uninterrupted from the date of said grant till the present time, except at short intervals when the hostile Indians overran and laid waste the country, and drove the inhabitants from their lands and houses.

V. That the said Torivio was placed in possession of said tract of land by the said commander at the time of making said grant, and that he and his heirs and descendants have always occupied and cultivated said land, and your petitioners now occupy and cultivate the same. The extent of the possession given to said Torivio, and continued through the generation to your petitioners, is the same as now marked by the inclosure.

VI. That said Torivio occupied said lands for about fifty years, and fully performed all the conditions and requirements contained in said grant, wherefore your petitioners pray that said grant may be confirmed in equal parts to your petitioners as equal heirs, or to the legal heirs and representatives of Torivio Otero, the original grantee.

LINDLEY & CORELLA,
Attorneys for the Petitioners.

Filed December, 1879.

JOHN WASSON,
United States Surveyor-General.

ORIGINAL TITLE.

Dos reales. Sello tercero, dos reales, años de mil setecientos nonenta y ocho, y nonenta y nueve.

[L. S.] Dn. Nicolas de la Erran, The. Comte. de la Compa. de Pimas de Tubac.

Por quanto, hauendo seme presentado el becino Torrivio de Otero, solar, y tierra para abicindarse en este presidio, y travajar en su afecio de labrador; atendiendo á la vtilidad qe. resulta con la radicacion de vecinos lavorios, como el suplicante qe. cultinen sus tierras, y lo abastescan de ganados, que en diferentes estancias, ha sido preciso solicitar los á largas distancias. Por tanto, vsando de la facultad, que El Rey

me tieno concedido, merceno al espresado Torrvio de Otero, y le endono como **primer** poblador, perpetuamente, para siempre jaras, y por juro de heridad, para si; sus higos, y dependientes, un solar para fabricar su casa, en el lado de habajo de este presidio, á la parte del sur, con el frente al norte, de 20 vs. de causera, y la labor, como medio cuarto de legua distante del presidio, por solo de ay, pender la poca aqua qe. ba en el rio, y aberecho de por si, la toma de aqua, y le merceno igualmente, á nombre de S. M. (Q. D. G.) quatro suertes de tierra, que se comensaron de medir, por la parte del sur, al norte y de oriente á poniente, quatro cientos varas; cuyo espacio, en circunferencia consiste en 3 mil y quatrocientas varas, bien entendido qe. el espresado Torrvio de Otero, ha de mantener armas, y cauallos, y estar pronto á defender el pais de los enemigos qe. le ostilisan, y á salir contra ellos, siempre qe. se le mando, que en el espacio de 4 años contando desde esta fha. no prede bender; enagenar; hipotecar, ni ynponer gravamen alguno sobre dho. solar, y tierra avuque sea con motibo piadoso; que en el termino presiso de dos años, á de tener echa su casa, y familia en este presidio, por el termino de quatro años para adquirir verdedero, dominio y propiedad de las tierras; solaras y ediiicios, que hubien labido en el y que pasado este tiempo tendrá facultad, para poder henderlas, enagenarlas, y hacer de ellas á su boluntad libremente, como de cosa propia; pero, con la condicion, de que, nunca podra venderlas á Yqa.; monasterio; persona eclesiastica; comunidra, ó manos muertas, vajo la misma pena indicada arriba y enterado de todo, y de plantar arboles frutales ú otros, que sean vtiles, slué al espresado Torrvio de Otero de la mano al citado solar y tierra, en donde le di posesion vsando de las formalidades acostuntrados, de desboser tirar piedra y arrancar beno, ó racate, y pa. su constancia, le doy la presente de que queda copia en el protocolo del archivo de este presidio, que firmé con testigos de assa. á los diez dia del mes de enero, de mil setecentos ochenta y nueve.

NICOLAS DE ERRAN.

RAMON GUATE. DE ERIENS

Asa.

YGO. BORGH.,

Asa.

[Translation.]

[SEAL.] Third seal, twenty-five cents. Years one thousand seven hundred and ninety-eight and ninety-nine.

{ 1802 } Don Nicolas de la Erran, Lieut. Commandant of the Company of Pimas of
 { SEAL } Tubac.
 { 1803 } .

{ 1806 } Whereas, the resident, Torrvio de Otero, has presented himself to me, peti-
 { SEAL } tioning for a house lot (solar) on which to establish himself in this presidio,
 { 1807 } for the purpose of pursuing his calling as an agriculturist, and in considera-
 tion of the utility resulting from the establishment of industrious settlers, such as the peti-
 tioner, who will cultivate the soil, thereby furnishing a supply of grain which, in some
 seasons, has to be brought a long distance, I, therefore, in the exercise of the faculties
 conferred on me by the king, grant to the said Torrvio de Otero, and donate to him,
 as a first settler, perpetually, forever, and with right of inheritance to him and his
 children and descendants, a lot on which to build his house, on the lower side of this
 presidio, in the direction of the south, with a front to the north of twenty varas; and
 a tract of land for cultivation, distant from the presidio about one-eighth of a league,
 since only at that point is found the little water that runs in the river, and he having
 made there his irrigating ditch; I grant him also, in the name of the king (whom
 God preserve), four "suertes" (farming lots) of land, the measurement of the same to
 be made from south to north, and from east to west four hundred varas, which tract
 is embraced in a circumference of three thousand, four hundred varas; it being well
 understood that the said Torrvio de Otero is required to keep arms and horses, and to be ever
 ready to defend the country against the enemies thereof, when he is called upon so to do;
 it being also understood that until the term of four years shall have passed, counting from
 the present date, the grantee cannot sell, alienate, or mortgage the said land, nor can he
 impose any incumbrance on the said house, lot, or tract of land, although it should be
 for pious purposes; that within the precise time of two years he shall have built his
 house, and that he shall have resided with his family in this presidio, for the term of
 four years, before he can acquire the full dominion of property in the lands and solar
 (house lot), and the improvements he may have made thereon; and that when this
 time shall have passed, he shall have power to sell or alienate said lands and house
 lot, and to make such use thereof as he may see fit, as of a thing belonging to himself,
 under the condition that he shall never be permitted to sell the same to the church,
 or to any monastery, ecclesiastical person or community, nor convey them in mortmain,
 under the penalty above mentioned, the grantee being also required to plant upon
 said land fruit trees, or other kinds that may be of some utility. And the said Tor-
 rvio de Otero being informed of the foregoing, I took him by the hand and gave him

possession of said lands, he, according to custom, scattering earth and stone sand, pulling up herbage.

In testimony of which I give him the present document, which remains, copied, in the protocol of the archives of this presidio, signing the same, with the assisting witnesses, on the tenth day of the month of January, 1789.

NICOLAS DE LA ERRAN.

RAMERO GARA.,
Assistant.

IGO BORGR.,
Assistant.

PETITION, GRANT TO MARTINEZ, 1838.

Before John Wasson, United States surveyor-general for Arizona.

In the matter of the petition of Sabino Otero and others, for the confirmation of a pueblo land grant in the town of Tubac.

Now come Sabino Otero, Fernando Otero, Gabriela Otero, Elena Castro, and Anna M. Cannen, by their attorneys, Lindley & Corella, and show in this petition:

I. That in the year 1838, the town of Tubac, situated in Arizona, was a pueblo under the laws of Mexico, and it continued to exist as an important frontier town at the time possession was taken of New Mexico by the United States, and was in that condition at the date of the act of July 22, 1854.

II. That said pueblo by the laws of Mexico and from the fact of being a pueblo, became vested with nine square leagues of land in which was included the town, and which was held by said pueblo for distribution to the inhabitants thereof.

III. That in the said year of 1838 the said pueblo granted, through its proper officers, a tract of pueblo lands to José M. Martinez, then an inhabitant and head of a family in said pueblo, as more fully appears by the original grant which is presented and filed herewith, as proof and reference in this case.

IV. That a proper petition was made and presented by said Martinez to the proper officers of said pueblo, showing all facts necessary to give such officers jurisdiction to make said grant, and in all things and proceedings touching the making of said grant, the said officers acted regularly and legally and by and within the powers and jurisdiction conferred upon them by law, as will more fully appear by the proceedings recited in said grant.

V. The land included in and claimed under the grant is situated in the then pueblo, now town of Tubac, and is the same that is now occupied by Otero's store. The tract is rectangular, 700 varas long, from north to south, and 175 varas wide, from east to west, and is more fully described in the grant presented herewith. Possession of said tract was duly given and measured to said Martinez by the proper officers of said pueblo. A copy of said grant and a translation thereof are annexed, and marked Exhibits A & B.

VI. That on the 2d day of March, 1859, the said Martinez sold and conveyed said tract of land by written conveyance to Manuel Otero, the father of said Sabino.

VII. That your petitioners being the heirs at law of said Manuel, who died intestate, are now the exclusive owners, by inheritance, of said tract of land.

VIII. That the said Martinez, and after him the said Manuel Otero, now deceased, have been in continuous possession of said tract from the date of the grant to the present time.

Whereupon the petitioners pray that the said grant be confirmed to them in equal parts, or to the legal representatives of Manuel Otero, deceased.

LINDLEY & CORELLA,
Attorneys for Petitioners.

Filed December 1, 1879.

JOHN WASSON,
United States Surveyor-General.

ORIGINAL TITLE GRANT.

PRESIDIO DE TUBAC, AÑO DE 1838.

Testimonio de diligencias practicadas de mensura de tierras de pan llevar á favor del ciudadano José Ma. Martinez desta banda del rio camino real, nombrado las Galeas, por el juez de paz, Dn. Trinidad Yrigoyen.

Sor. Juez de Paz, D. TRINIDAD YRIGOYEN:

José Ma. Martinez, vecino de este presidio, ante V. con la mayor forma de derecho, paresco y digo: que habiendo mercado una suerte de tierra de pan llevar al Co. Trini-

dad Yrigoyen cuya tierra se me entregó sin ninguna constancia de medidas, por que este Sor. Carcalla de ellas por no haberseles dado el Sor. Comte. D. José Ma. Villavacencia, quien fué él que permitió abitarles, por donde este hasta el día se balla situado de mercea, y que siendo que en mi poder existan documentos, que acaditan que es mia, suplico á V. se serva, si lo tiene á bien, tome nuevas medidas, como tambien esten derme las pruebas de ella, para su seguridad.

Por tanto suplico á V. aministre la justicia, que V. ante cede, si lo hallase de justicia admitiendome mi solicitud en este pepal pr. la ynopia del ge. corresponde, pagando su ymporte. Juro no ser de malicia de que doy feó.

JOSÉ MA. MARTINEZ.

Por presentado y admitido, procedase por mi, yo el juez de paz de este presidio, y conforme á la solicitud del vecino ciudadano José Ma. Martinez, nombré pa. oficiales medidores acompañando estos el interesado y testigos de asistencia, con las colindantes pasa la mensura de dhas. medidas el juez de este puesto militar, ciudadano Trinidad Yrigoyen, asi lo determino, mandó y formó.

TRINIDAD YRIGOYEN.

Nombramiento de oficiales medidores.

En el sitado de Tubac, dicho dia, mes y año, siendo presentes los enunciados Pablo Contreras y Franco Usarraga, se les hizé saber abian sidos nombrados de medidores del terreno que se ba de mercenar, quienes aceptaron dho. encargo ofiando cumplir con sus oficios fiel y legalmente, sin fraude, dolo ni encubierto y para constancia, se paso estas diligencias que firmaron con migo dichos oficiales nombrados y los testigos de mi asistencia á falta de escribano, segun derecho.

TRINIDAD YRIGOYEN.
FRANCISCO USARRAGA.
PABLO CONTRERAS.

Medidas.

En doce dias del mes de noviembre de mil ochocientos treinta y ocho, yo el ciudadano Trinidad Yrigoyen, juez de paz de este presidio de Tubac, con arreglo al título 11 del Reglamento particular de presidios, estando de esta banda del rio, rumbo al poniente, camino real, al Tucson, á las inmediaciones del presidio, acompañados de los oficiales medidores, les entregó estas un cordel, bien torcido y estirada y una vara castellana, los cuales se medieron á su satisfaccion, y la del interesado José Ma. Martinez, treinta y cinco varas, y concluidas estas operaciones, amarados á las puntas del citado cordel, dos palos, se comensó las medidas de la cerca de Don Atanacio Otero, desde cuya punta, se fueron mediendo y contando, rumbo al sur, hasta veinte y ocho cordeles que remataron al pie de una mesita frente á un mesquite prieto, el cual quedó por lindero, estando concluida la medida de norte á sur, se bobrió á tender el cordel, y se midieron, de oriente á poniente, siete cordeles por cuyo veinte, esto es (por el onente)* remataron al pie de una loma en donde esta ubicada una casa, ó galera, rumbo al poniente; por el poniente sirbe de lindero, la oria del rio, resultan que la medida sur á norte sete sientas varas, y de oriente á poniente, siento selenta y cinco varas con cuella medida á quedado conforme el interesado, quedando advertido, que estos linderos le serven por conocimiento y sujesion, y en estos terminos, se concluyeren estas medidas y firmaron con migo el interesado y los dos testigos de mi asistencia á falta de escribano, segun derecho.

TRINIDAD YRIGOYEN.
JOSÉ MA. MARTINEZ.
FRANCO. USARRAGA.
PABLO CONTERAS.

Acto pa. qe. le notifiquen al interesado los condiciones que deve preceder para adquirir derecho al terreno medido.

En siete dias del mes de noviembre de mil ochocientos treinta y ocho, estando concluida la medida del terreno, que soliciten, José Ma. Martinez, notifiquesele, que para que pueda adquirir la propiedad y señoria á nombre de la nacion mejicana, perpetuamente para siempre jamas por juro de beridad, para si, sus hijos y descendentes, deve forzosamente sujetarso á las condiciones siguientes; que permitiendoselo sus proporeiones, á de ser su principal atencion; mantener armas y caballas, para defender el

* Words (por el onente) partially obliterated.

pais con teson; es fuerso, fidelidad en los incursiones de los enemigos que la hostilisan y salir contra eyos, siempre que la necesidad lo esija; así como tambien á ser el servicio que por falta de tropa le corresponde, que precisamente á de mantener su fija residencia y la de su familia en este puesto militar por espacio de cuatro años, que durante este termino no á de poder anagenar, ipotegar, graban alguno al terreno mersenado aunque sea con motivo piadosa; que dentro del preciso termino de dos años, deberá tener cultivadas [en labor la enunciada tierra bajo la pena de perderlas siempre que las abandonose dentre del termino prefijado, pues en este caso sele adjudicará á otro vecino mas aplicada, que cumplidas los espuestos condiciones, y verificada su fija resi. dencia, y la de su familia el tiempo de los cuatro años señalados, adquirirá el verdadero dominio de la mencionada tierra, y desde entonces, en adalante tendrá facultad, para poder enagenar y usar de *eya*, á su boluntad como de cosa propia segun lo espuesto por las leyes de la recapilacion Mejicana; pero, con la restriccion de que, en ningun tiempo á de poder bendorlos á yglesia; monasterio; persona eclesiastica, comunidad ni otros de los que yaman manos muertos como lo disponen las mismas leyes, bajo la pena alque la contravienende perder dha. tierra, y finalmente, dentro de tres meses contados desde la ficha tendra precisa obligacion, de tomar posesion de la enunciada tierra, y de plantar todos los linderos de arboles frutales, ú otros que sean utiles al abasto de la poblacion, por cuya medida gosará su distrito de buena y aprobable disposicion, y podrá aprovecharlo de frutos, leña y madera, que produzcan para su uso domestico y para los utencilios de labranza que indispensablemente necesitan; y por este auto asi lo probáy y mandé, y firmé con testigos de asistencia á falta de escribano, segun derecho.

TRINIDAD YRIGOYEN.
FRANCISCO USARRAGA.
PABLO CONTRERAS.

Notificacion.

En el mismo puesto militar de Tubac, dicho dia, mes y año á efecto de lo mandado en el auto que autendo compareció José Ma. Martinez en su persona. Se le notificó y iso saber su contiendo de cuyo espreso enterado dijo: Que conformandose con lo resultado y determinado por el sor. juez, esta pronta á cumplir cuanto se le previene, y para ello y su resguardo pide se le dé el correspondiente testimonio asi respondió y los testigos de mi asistencia, con quienes actuo á falta de escribano, segun derecho.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

Auto de conclusion.

En el mismo puesto, dicho dia, mes y año, yo el presente juez dije que en besta de la conformidad de la parte ynteresada que preceden y mandé que al cholandose estos autos originales, se livre al interesado Martinez el testimonio que solicita el que scriverá de título, y por esto auto basi lo prováy, mandé y firmé con los testigos de mi asistencia con quienes actuo en la forma ordinaria á falta de escribano, segun derecho.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

Razon.

En dho. dia del mes de abril de 1838 se espedio al interesado al testimonio correspondiente y para constancia, lo firmé, señalada con una rubrica concuenda con su original, que queda en el archivo de mi cargo, á que mi remito ba fiel y legalmente sacado en estos cuatro fojas utiles en papel comun, por no haberlo del sello necesario, pues [several words here obliterated] y se saco á pedimiento del C. José Ma. Martinez, en el puesto militar de Tubac, en dicho dia del mes de novembre, de mil ochocientos treinta y ocho, autorizado y firmado de mi mano, con los testigos de mi asistencia, con quienes actuo yo el primer juez de paz del citado puesto militar, Don Trinidad Yrigoyen, por falta de escribano, que no lo hay.

TRINIDAD YRIGOYEN.

[Translation.]

PRESIDIO OF TUBAC, YEAR 1838.

Testimony of the proceedings in the measurement of the sowing lands of the citizen José Ma. Martinez, on this side of the river on the high road named Los Galeros by the justice of the peace Don Trinidad Yrigoyen.

To the Señor Justice of the Peace, Don Trinidad Yrigoyen :

I, José Ma. Martinez, a resident of this presidio, before your honor, in due form of law, appear and say: That, having purchased a lot of sowing ground from the citizen Trinidad Yrigoyen, which land was delivered to me without any evidence of the

measurement of the same, because this gentleman had not the same in his possession, it not having been given him by the Señor Commandante Don José Ma. Villavacencia, who was the officer who gave him permission to inhabit the place he now occupies, and where he has received a grant, and since I have in my possession documents showing that the land belongs to me, I pray your honor to be pleased to measure said lands for me, and to give me the necessary testimony for my security. Wherefore I pray your honor to admit this, my petition, on this paper, since I have none of the corresponding quality, obligating myself to pay the corresponding cost, swearing that I ask this in good faith, &c.

JOSE MA. MARTINEZ.

The foregoing petition having been presented and admitted, I, the justice of the peace of this presidio, in compliance with the petition of the citizen José Ma. Martinez, appointed the official measurers, and, accompanied by these, the interested party, the assisting witnesses, together with the colindantes, I, the judge of this military post, the citizen Trinidad Yrigoyen, thus ordered and signed.

TRINIDAD YRIGOYEN.

At the said place of Tubac, on the said day, month, and year, present the citizens Pablo Contreras and Francisco Usarraga, I notified them of their appointment, whereupon they appeared to discharge their official duty legally and faithfully and without fraud or deceit.

In witness whereof they signed with me and the assisting witnesses, in the absence of a notary public.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

On the second day of the month of November, 1838, I, the citizen Trinidad Yrigoyen, justice of the peace of this presidio of Tubac, in accordance with title 33 of the special regulations of presidios, being on this side of the river in the direction of the west, on the high road from Tucson in the immediate neighborhood of the presidio, in company with the official measurers, I delivered to them a cord well twisted and stretched and a Castilian vara, with which they measured the cord to the length of twenty-five varas to the satisfaction of the interested party, José Ma. Martinez; the ends of the cord being attached to stakes, the measurement was commenced at the inclosure of Atanasio Otero, from which point there were measured and counted towards the south twenty-five cords, the line terminating at the foot of the little table land (mesita) in front of the black mesquite, which was made a landmark, and the measurement from south to north being concluded, the measurement was made from east to west seven cords, the line in this direction terminating at the foot of a hill (loma) where there is a house or "galera" (house of correction) on the side of the west; in the direction of the east, the river bank serves as a boundary, the tract measured being from north to south seven hundred varas, and from east to west one hundred and seventy-five varas; with which measurement the interested party was satisfied, it being understood that these boundaries shall serve as a notice to all persons; whereupon the said measurements were concluded, the interested party signing with me and the assisting witnesses, in the absence of a notary public, according to law.

TRINIDAD YRIGOYEN.
JOSE MA. MARTINEZ.
FRANCISCO USARRAGA.
PABLO CONTRERAS.

On the 7th day of the month of November, 1838, the measurements being concluded of the land petitioned for by Jose Ma. Martinez, he was notified that in order to acquire the ownership and dominion of the land in the name of the Mexican nation, perpetually and forever, and with right of inheritance to himself, his children and descendants, he shall comply with the following conditions: That if his means permit him, he shall keep arms and horses to be used with fidelity in defending the country against hostile incursions, and shall always be ready to march against the enemy when notified so to do, and also to give such military services as may be required of him on account of the scarcity of regular soldiers. He is also to have a fixed residence for himself and family at this military post for the term of four years, and during this time he cannot alienate, mortgage, or incumber, in any manner, the land above mentioned, even for pious purposes; and that within the precise time of two years, he must have the said land in cultivation, under the penalty of losing the same should he abandon the same within said time, in which case it may be given to a more industrious applicant.

The foregoing conditions being complied with, and having established his residence

and that of his family, and having continued the same for the term of four years, he shall thereby acquire the true dominion and ownership of the mentioned land; and, from that time forward, he will have power to alienate or use the same at his will, as of a thing belonging to himself, as is explained by the Recapilacion de Indies of the Mexican Republic, but with this restriction: That at no time shall he be able to sell the same to any church, monastery, ecclesiastical person or community, or convey it in mortmain as provided in the same laws, under the penalty of losing said land; and finally, within three months, counting from the present date, he shall be obliged to take possession of said land, and to plant, upon the boundaries thereof, fruit trees or others that may be of use to the settlement and which will promote the prosperity of the district, furnishing fruits, timber and fuel for domestic use, and farming utensils which are so indispensably necessary. Thus I provided, ordered and signed, with the assisting witness, in the absence of a notary public.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

At the same military post of Tubac, on the said day, month, and year, in obedience to the foregoing decree, Don José Ma. Martinez personally appeared, whereupon he was made acquainted with the contents thereof, to which he responded that he would comply with what was ordered by the señor judge; that he would comply with said order at once, asking that the corresponding testimony be given to him. Thus he answered, signing with me and the assisting witnesses with whom I act in the absence of a notary public.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

At the same place, on the same day, month, and year, I, the present judge, said that in view of the fact that the interested party was satisfied with the foregoing proceedings, let a testimony thereof be given to the interested party, Martinez, for his security. Thus I provided, ordered, and signed with the assisting witnesses with whom I act in the ordinary form according to law.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

On the same day of the month of April, 1838, there was issued to the interested party the corresponding testimony.

In witness whereof I sign with a rubrica.

The foregoing agrees with the original which remains in the archives under my charge, with which it has been compared and corrected as found on the four written copies of common paper, there being no stamped paper.

Copied at the request of the citizen José Ma. Martinez, at the military post of Tubac, on the said day of the month of November, 1838. Signing with me and the assisting witnesses with whom I act, I, the first justice of the peace of the said military post, Don Trinidad Yrigoyen, in the absence of a notary public, in the terms as required by law.

TRINIDAD YRIGOYEN.
PABLO CONTRERAS.
FRANCISCO USARRAGA.

DEED, MARTINEZ TO OTERO.

This indenture, made the 29th day of June, in the year of our Lord one thousand eight hundred and eighty, between Dario Martinez, of the town of Tubac, county of Pima, Territory of Arizona, party of the first part, and Salimo Otero, of the same place, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of five dollars, lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quit-claimed, and by these presents does remise, release, and forever quit-claim unto the said party of the second part, and to his heirs and assigns, all that certain lot, piece, or parcel of land, situate, lying, and being in the said county of Pima, Territory of Arizona, and bounded and described as follows, to wit:

Commencing at the enclosure of Atenacio Otero, and running thence towards the south twenty-eight cords of fifty varas, to the foot of a mesita, in front of a "mes-

quite prieto," which was made a landmark for the boundary, and the measurement being made from north to south, the measurement was made from east to west, seven cords of fifty varas to the foot of a hill, where is situated a house or galero (granery) on the side of the west; on the east, the boundary being the river of Santa Cruz—said tract of land being situated in the neighborhood of the town of Tubac, and being the same tract of land which on the 12th day of November, 1838, was granted by Trinidad Yrigoyen, justice of the peace, of Tubac, to José Maria Martinez, and of which possession was given.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

It witness whereof, the said party of the first part has hereunto set his hand and seal, the day and year first above written.

[SEAL.]

DARIO MARTINEZ.

Signed, sealed, and delivered in presence of—
SANTIAGO ANISA.

TERRITORY OF ARIZONA,
County of Pima, ss :

On this 29th day of June, A. D. one thousand eight hundred and eighty, before me, Santiago Anisa, a notary public in and for the county of Pima, personally appeared Dario Martinez, whose name is subscribed to the aforesaid instrument as a party thereto, known to me to be the person described in and who executed the said aforesaid instrument as a party thereto, and who duly acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[SEAL.]

SANTIAGO ANISA,
Notary Public.

TESTIMONY IN THE CASE.

JOSÉ MARIA ZOSA being called by the surveyor-general, and by him duly sworn, testified as follows, viz :

1. What is your name, age, occupation, and residence?—Answer. My name is José Maria Zosa; age, 62 years; occupation that of ranchero, and reside in Tucson.

2. Do you know a tract of land situated near the town of Tubac, Pima County, Arizona, known as Otero's rancho, and now occupied by Sabino Otero?—A. I know the said tract or rancho.

3. How long have you known said rancho, and who has had possession thereof during said time?—A. I have known this rancho for more than fifty years. To my certain knowledge the Otero family have occupied the said rancho during the past fifty years.

4. Did you know the grantee, Torreño de Otero?—A. I did; and when he had possession of said rancho. I also knew all the descendants of the said grantee, Torreño Otero, down to the present claimant and occupant and petitioner, Sabino Otero, who is a grandson of said original grantee.

5. Do you remember any time when said rancho was unoccupied?—A. It was unoccupied three or four years, about 1842, in consequence of the hostility of the Indians, at which time about nineteen persons were killed by the Indians.

6. Do you know anything of the occupation of a town lot in Tubac by the said Otero family?—A. Yes; and it was occupied during the same time or years as was the rancho, and by the same family.

7. Do you know anything of the presidential records of Tubac?—A. I know there were presidential archives of Tubac in the town before the Indians came and attacked the place, but I do not know whether the Indians destroyed them or not, and I cannot say whether or not they exist.

his
JOSE MARIA + ZOSA.
mark.

Subscribed and sworn to before me this day, March 23, 1880, as witness my hand and seal of office,

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

Testimony of Nasario Ortiz in the case.

Witness called by the surveyor-general and by him duly sworn.

Questions by the surveyor-general:

1. What is your name, age, occupation, and residence?—Answer. My name is Nasario Ortiz; my age is '64 years; merchant and general business, and my residence is in Tucson.

2. Do you know a tract of land situated near the town of Tubac, Pima County, Arizona, known as the Otero rancho, and now occupied by Sabino Otero?—A. I know said rancho and place, and have known it since 1835.

3. Who has had possession of said rancho during all this time?—A. During all this time, the family of Otero cultivated and possessed this rancho, and lived in Tubac. I knew the grantee, Don Torreio Otero, when he occupied said rancho, and all his descendants down to the present claimant and occupant, Sabino Otero.

4. Do you know whether there was any abandonment of said rancho, and when, and why?—A. It was abandoned a short time in or about the year 1840, because of the hostility of the Indians.

5. Do you know whether the said rancho was ever abandoned for any other cause than that of hostility of the Indians?—A. Not to my knowledge.

6. Do you know if this same Otero family owned a lot in the town of Tubac during the said time?—A. I cannot say as to the ownership of a lot in town, but the same family lived in a house in the town and saved on the rancho.

his
 'NASARIO + ORTIZ.
 mark.

Subscribed and sworn to before me this 23d day of March, 1880, as witness my hand and seal.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

Testimony of Santos Aguirre in the case.

Witness called by the surveyor-general, and by him duly sworn.

Questions by the surveyor-general:

1. What is your name, occupation, age, and residence?—Answer. My name is Santos Aguirre; my occupation is that of farmer; my age is over sixty years, and I reside in Tucson.

2. Do you know anything of a rancho near Tubac now occupied by Sabino Otero, and how long have you known it, and has anybody except the Otero family, which is descended from the original grantee, Torreio de Otero, ever occupied or claimed possession of the said rancho?—A. I know said rancho and have known it all my life, having been raised from a small boy in Tubac. Since I have known the rancho it has ever been occupied by the Otero family, and by no one else. They living in the town or pueblo and sowing or planting on the rancho. This occupation and possession have been continuous except when interrupted by the hostile Apache Indians. I knew Don Torreio Otero very well, and all the family descended from him down to the present claimant, Sabino Otero.

his
 SANTOS + AGUIRE.
 mark.

Subscribed and sworn to before me, this 23d day of March, 1880, as witness my hand and seal of office.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

Testimony of Sabino Otero in the case.

Witness called by the surveyor-general.

Witness being duly sworn, testified as follows to questions put by the surveyor-general:

1. What is your name, age, occupation, and residence?—Answer. My name is Sabino Otero; my age 34 years; occupation that of farmer and stock grower, and reside on my rancho near Tubac.

2. How long have you resided on and cultivated your rancho near Tubac?—A. About sixteen years.

3. Is your said rancho the same as that granted by the presidial authorities of Tubac to your grandfather, Terrevio Otero?—A. Yes, sir.

SABINO OTERO.

Subscribed and sworn to before me this 23d day of March 1880, as witness my hand and official seal.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

Testimony of Juan Elias.

JUAN ELIAS, being first duly sworn, deposed as follows to the questions propounded by the United States surveyor-general:

Question 1. What is your name, age, place of residence, and occupation?—Answer. Juan Elias; 42 years of age; reside in Tucson, and by occupation a farmer.

Q. 2. Did you personally know José Ma. Martinez, the father of Dario Martinez?—A. Yes, sir; I did.

Q. 3. How many children did the said José Ma. Martinez have?—A. Dario Martinez and no other.

Q. 4. Do you know that the said José Ma. Martinez is dead?—A. I do; he died in September, 1862.

JUAN ELIAS.

Subscribed and sworn to before me this 29th day of November, 1880, as witness my hand and official seal.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.

SURVEYOR-GENERAL'S OPINION AND RECOMMENDATION IN THE CASE.

The original title papers filed by claimants in this case show:

1. That on January 10, 1789, Torevio de Otero, ancestor of present claimants, obtained from Nicholas de la Erran, commandant of the presidio of Tubac, a house lot of twenty varas frontage, and four *suertes* of sowing land, each of 400 varas square, and distant about one-eighth of a league from the presidio; also (2) that on the 7th day of April, 1838, the municipal authorities of Tubac granted José Ma. Martinez a tract of 25 by 7 cords (the cords being 25 varas each), adjoining the land granted to Torevio de Otero in 1789, and then occupied by Atanacio Otero.

All the lands described in the titles just mentioned are now claimed by the heirs of Torevio de Otero; the first, by direct descent from the original grantee; and the second, by purchase by the heirs of said Otero from the grantee Martinez, by informal conveyance in 1858, which has since been perfected by a formal deed executed June 29, 1880, by the sole surviving heir of José Ma. Martinez, to Sabino Otero, one of the heirs of Torevio de Otero, and also one of the present petitioners.

Although separate petitions are presented by claimants for the lands originally granted to Otero and Martinez, it is not regarded necessary to make separate reports, inasmuch as the lands adjoin and are now in undisputed possession of and claimed by the same parties.

The grant of 1789 to Torevio de Otero, although it does not refer thereto, was certainly made under the royal decree for the regulation of presidios to be established on the frontier line of New Spain, issued September 10, 1772, which decree declares: "That for the protection of the settlements and of commerce in the frontier countries, and that the population thereof may be increased, I order that the commandants, captains, officials, and all other persons, shall not under any pretext whatever prevent the settlement of persons of good character and habits in the immediate surroundings of presidios; and when this locality may not be sufficient to contain all the families that may desire to make settlements, that the district for such settlement shall be enlarged on one of the sides. I also order that the captains distribute house lots and lands to such settlers, under the condition that they cultivate the same, and that they keep horses, arms, and ammunition, and be ever ready to use them in defense of the country when required to do so," &c.

This decree was followed by the order of Nava in 1791, authorizing captains of presidios to grant lands to settlers within a tract of four square leagues measured from the plaza of the presidio as a center.

The title papers presented of the grant to Torevio de Otero are manifestly copies of the originals, since they are written on sealed paper of the year 1807, although not certified to be copies. The character of the hand-writing and the paper upon which they are written strongly indicate genuineness. A record of this grant doubtless once

existed in the archives of the presidio of Tubac, but these archives have long since been destroyed, as history and the testimony in this case agree in showing; therefore, aside from the title papers presented, there is no existing record of it.

In 1838 the Spanish presidio of Tubac had lost something of its military character, and under the government of Mexico had assumed that of a pueblo governed by municipal officers; hence the grant to Martinez in 1838 was made by municipal officers; however, it was given under the same conditions and restrictions as were those made by captains of presidios under the decrees of 1772 and 1791.

These grants having been made by the officers of the presidio and pueblo of Tubac, no record thereof is found in the archives of the State of Sonora, and for reasons heretofore stated, no archive evidence of them now exists; but I have not the slightest hesitancy in pronouncing the title papers genuine; and aside from the titles given to the original grantees by the Spanish and Mexican governments, their descendants, by long and undisputed possession and actual and useful occupancy, have acquired such a right as ought to be, and doubtless will be, regarded sufficient to vest in the present claimants an absolute title to this property, in part inherited from their ancestors and in part acquired by purchase. The testimony in the case shows that the heirs of the original grantee have held undisputed possession of the premises for the past fifty years, using the house lot as a place of residence and tilling the *suerter* (sowing grounds) granted for cultivation, and which were situated a short distance therefrom.

On these premises several generations of the Otero family were born and lived and died, and present petitioners continue to reside there, deriving their subsistence from the land granted to their ancestor in 1789 and from that purchased from Martinez. Their possession has been continuous down to this day. This long and useful possession, under the laws of Spain and Mexico, would give them title by prescription alone, at least to the land claimed under the grant of 1789.

The time necessary to possess a thing in order to acquire title by prescription, under the former governments, is three years in case of personal or movable property, and in case of real estate ten years, if the owner against whom the prescription runs reside in the same province, but if he reside out of the province twenty years are necessary.

Under this law the title to the tract granted to Martinez in 1838 would vest in present claimants, for their useful and undisturbed occupation of it has far exceeded twenty years.

There is no doubt that by competent officers Spain and Mexico granted all the lands claimed by the present petitioners in this case, and therefore such lands were private property prior to the date of the Gadsden treaty. Present petitioners and their ancestors have usefully, indisputably, and uninterruptedly (save during a short time when driven off by hostile Indians) occupied the said lands from long anterior to the date of said treaty down to this day.

"A right of any validity before the cession was equally valid afterwards" (1 Wallace, p. 404).

The Otero claims are quite similar to one of an Indian in California. The claim under this Indian's title reached the United States Supreme Court, and the case is found in 1 Black, p. 267. In 1842 Governor Alvarado directed the alcalde at San Luis Obispo to distribute lands among the Indians about the mission, and one of the distributions under this direction was a parcel to an Indian named Romualdo.

The alcalde placed him in possession, and he and his assigns continuously remained in possession. July 10, 1846, Governor Pico made a grant of the same land to the same Indian. One Wilson, successor in interest, presented a claim under the Pico grant which was made after the date of the treaty of Guadalupe Hidalgo, and therefore the board of land commissioners rejected it; but as there was evidence that the original grantee and his assigns had long, continuously, and usefully occupied the premises, the United States district judge confirmed the claim, and the United States Supreme Court affirmed the confirmation. In doing so, the court say: "He (the alcalde) gave the possession to the Indian accordingly. A record was kept of the distribution of these lands in a book in his office, as well as the orders from the governor; but this book was lost, with all the archives of his office, in 1846, &c. * * * In the present instance the possession and cultivation were of considerable duration; and, according to the testimony of the alcalde, the distribution and assignment of the governor was intended to be permanent as a home to the occupant. The claim appears to be an honest one, unaccompanied with suspicion, and, under the circumstances, we think was properly confirmed."

Another somewhat analogous case is that of the United States *vs.* De Haro's heirs, found in 22 Howard, pp. 293-298. The board of land commissioners rejected the claim, but the United States district court confirmed it, and in the decision this language occurs:

"It appears that an undisturbed possession of the property claimed has been in the possession of Francisco de Haro and his heirs sixteen years, and it does not appear that any one has claimed or exercised a possession or right of possession over the premises."

On appeal to the United States Supreme Court the judgment of the lower court was affirmed, and the opinion concludes thus:

"Upon the whole we cannot doubt, from the title papers, and especially from the sixteen years' possession which has been enjoyed by De Haro and his heirs—using the property as their own, claiming it under the grant—that the title should be confirmed; and it is hereby confirmed."

ACTION OF CONGRESS IN SUCH CASES.

Congress does not hesitate to do justice in cases of this kind. March 3, 1871, a sub-committee of the Private Land Claims Committee of the House of Representatives reported to the House on the case of Thomas Dowling's claim to Yerba Buena Island. From that report I quote:

"It is a well settled principle in equitable jurisprudence that contracts for the alienation of land, although not valid as law, may be enforced in equity when substantial justice requires it. The court will always have an eye to the substantial justice of the case. * * * But it may be said that government cannot, like an individual, be compelled to submit to the equitable powers of the court; and this is true, but it is the highest attribute of government to do right; and this it may do when this right is perceived, through the action of Congress." (Part III, p. 1435, Senate and House reports, by their Private Land Claims Committees.)

Although the presidial records of Tubac have been destroyed, and the titles to the tracts under consideration are not shown to be strictly and technically deraigned to present claimants, yet I have no doubt of their legal right to every vara of land they claim and ask to be confirmed to them in this case. I regard their title genuine; and even without any title papers, their long, useful, and undisturbed occupation would entitle them to confirmation. Congress has already recognized the right of mere occupants of lands in the Santa Cruz Valley, in front of Tucson, to have confirmation therefor. Such occupants were not required to have title papers; they were only required to prove to the satisfaction of the register and receiver of the proper United States land office that they and their ancestors or grantors had been in the actual, *bona fide* occupancy or possession of such land "for twenty years next preceding the date of the passage of this act," which was February 5, 1875. (1 Stat. at L., part 3, p. 305.)

There is even stronger reasons why Congress should confirm the lands under consideration to Otero *et al.* than in any case contemplated by the act just cited. The Oteros have genuine title papers, and have had useful occupation by themselves and ancestors of the grant of 1789 for nearly one hundred years, and of the one of 1838 for more than twice twenty years.

The boundaries can easily be ascertained, and the quantity is limited by the terms of the title papers.

RECOMMENDATION IN THE CASE.

In view of the foregoing facts, I recommend the confirmation of all the lands petitioned for in this case to Sabino Otero, Teófilo Otero, Gabriela Otero, Elena Castro, and Anna M. Cunnan.

JOHN WASSON,
United States Surveyor-General.

TUCSON, ARIZ., March 1, 1881.

OFFICE OF THE UNITED STATES SURVEYOR-GENERAL FOR THE TERRITORY OF ARIZONA.

I, John Wasson, United States surveyor-general for the Territory of Arizona, hereby certify that the foregoing is a true and correct transcript of the title-papers in the case of the private land claims of which confirmation is asked by petitioners Sabino Otero, Teófilo Otero, Gabriela Otero, Elena Castro, and Anna M. Cunnan, also of the various papers and exhibits filed and testimony taken in support thereof and in connection therewith, and of the opinion and recommendation of the surveyor-general in the premises.

Given under my hand and official seal, at Tucson, this first day of March, A. D. 1881.

[SEAL.]

JOHN WASSON,
United States Surveyor-General.