CASE NO.

41

SOUTHERN DISTRICT

SAN BERNARDO GRANT

VICENTE CANE

CLAIMANT

LAND CASE 41 SD PAGES68

123

TRANSCRIPT

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PAGE 1

OF THE

PROCEEDINGS

IN CASE

NO. 123

Vicente Cané CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"San Bernardo."

123

1

Office of the Board of Commissioners,

To ascertain and settle the Private Land Claims

IN THE STATE OF CALIFORNIA.

Be it Remembered, *that on this* twenty third day of March, *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 Vicente Cané *for the Place named* "San Bernardo" *was presented, and ordered to be filed and docketed with No.* 123 *and is as follows, to wit;*

(Vide page 3 *of this Transcript.)*

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

Los Angeles September 2d 1852.
In Case No. 123 Vicente Cané for the place named "San Bernardo," the deposition of Pablo de la Guerra, a witness in behalf of the Claimant taken before Commissioner Edward Hall, was filed;

(Vide page 4 of this Transcript)

Los Angeles October 8th 1852.
In the same Case the deposition of Wm R. Sutton, a witness in behalf of the Claimant taken before Commissioner James Watson, was filed;

(Vide page 5 of this Transcript)

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San Francisco Dec. 31 1852.

In the same Case the deposition of Jose Maria Covarrubias, a witness in behalf of the claimant, taken before Commissioner Roland Hall, was filed;

(vide page 6 of the Transcript)

San Francisco Aug 12th 1853.

Case No. 123, called; the Counsel fixed the Evidence; argued, submitted and taken under advisement.

San Francisco Nov. 22 1853.

In the same Case Commissioner Alpheus Felch, delivered the opinion of the Board confirming the claim;

(vide page 30 of the Transcript)

3.

To the Honorable Commissioners to settle private land Claims in California.

Petition

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The petitioner, Vicente Cano, respectfully shows: That on the 1st day of December A.D. 1839, he applied through the Prefect of the first District of California, for the tract of land known by the name of San Bernardo situate in the Mission partido of San Luis Obispo, & being from a league to a league & a half square; that said application was approved by the Prefect & other local authorities; That on the 11th day of February A.D. 1840, Juan B Alvarado, Governor of California by virtue of authority in him vested granted to the petitioner the said tract of land with the boundaries described in the said grant & set forth in the respective map: That on the 19th day of May A.D. 1840, the Departmental Junta of California, approved the said grant in due form, all of which is shown in the Expediente an exact copy of which is submitted herewith marked "A" with a translation marked "B"; as also a copy of the title & map given him marked "C" with a translation marked "D".

And the petitioner further shows that on the 27th day of December A.D. 1845 the said tract of land was duly surveyed & the juridical possession of it given to the petitioner by the proper authority; a copy of which juridical act is submitted herewith marked "E", with a translation marked "F".

That the said land has not been surveyed by the Surveyor General of the United States, but that it was surveyed by the proper authority at the time of giving the juridical possession & has been surveyed since by the Surveyor of the County of San Luis Obispo; & that its boundaries are definite & well known.

That the petitioner for some 13 years has been & now is in the quiet peaceful & undisputed possession occupation & cultivation of the said tract of land.

That he knows of no conflicting claim:

The petitioner asks for confirmation of title upon the original papers, copies of which are submitted herewith; upon the documents & minutes in the archives now under the charge of the Surveyor General: & upon such other & further

proofs as he may be advised are necessary.

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

By his Attorneys.
Halleck, Peachy & Billings

Filed in Office March 23rd 1852.
Geo: Fisher. Secy.

Office of the Board of Commissioners
of California Land Claims.
Los Angeles. Sept 2nd 1852.

Deposition of Pablo de la Guerra.

On this day before Holand Hall one of the Commissioners to ascertain & settle the private land claims in California, came Pablo de la Guerra a witness produced in behalf of the claimant Vicente Cané, whose petition is No 123 in the docket of the Board, & was duly sworn. His evidence was interpreted by the Secretary, it being given in Spanish.

The Law Agent was notified & attended.

In answer to questions put by the Counsel for the claimant the witness testified as follows.

My name is Pablo de la Guerra, my age thirty two, residence at Santa Barbara. I am a native of California.

I am acquainted with the handwriting & signature of Juan B. Alvarado, Manuel Jimeno, Joaquin Estrada, Julian Estrada & Mariano Pacheco.

The signatures of these several persons appearing upon a paper now shown me, purporting to be the title papers, map & judicial possession to the claimant of the rancho San Bernardo, I have no doubt are their genuine signatures. The said paper is hereto annexed & marked No 1. The claimant has been living on the land & occupying it, as I have understood, for several years, say five or six years.

Pablo de la Guerra.

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Sworn & subscribed
Before me
Roland Hall. Comr.
Filed in Office Sept 2nd 1852.
Geo: Fisher. Secy.

No 123. Office of the U.S. Land Commission
Los Angeles Oct 8th 1852.

Deposition of Wm R. Hutton.

On this day before James Wilson one of the Commissioners for ascertaining & settling private land claims in California, came Wm R. Hutton, a witness produced in behalf of the claimant Nicanda Cané whose petition is No 123 on the docket of the Board, & was duly sworn, his evidence being given in English.

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The Law Agent by R. Ewinkore Esqr was present & did not object.

1st Quest. What is your name, age & place of residence?
Answ. My name is William R. Hutton, my age is 25 years & I have resided in California since April 1847.
2nd Question. Say what you know about occupation of the rancho of San Bernarde, claimed by Nicanda Cané.
Answ. I have known the rancho of San Bernarde since 1849, at which time it was occupied by the claimant. It is situated in the County of San Luis Obispo. In 1851 as County Surveyor of that county I surveyed it for the claimant. He had a house on it, & about twelve or fifteen hundred head of cattle & horses, & cultivated about one hundred acres.

Wm R. Hutton.

Oct 8 1852.
Subscribed & sworn to
Before me
James Wilson. Comr.

Filed in Office Oct 8th 1852.
Geo: Fisher. Secy.

San Francisco Decr 31st 1852.

On this day before Comr Hoeland Hall, came José Maria Covarrubias a witness in behalf of the claimant Vicente Cané, Solicitor No 123, & was duly sworn, his evidence being interpreted by the Secretary.

The U. S. Associate Law Agent was present.

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Deposition of José Maria Covarrubias.

In answer to inquiries by Counsel for the claimant the witness testified as follows.

My name is José Maria Covarrubias; my age is 44 years; I reside in Santa Barbara, & have lived in California 18 years.

I know the Rancho called San Bernardo, claimed by Vicente Cané; it is situated in the County of San Luis Obispo; Cané has occupied it since 1844 with a house, cattle & horses, & cultivating a considerable portion of the land; he still lives on it with his family.

José Mª Covarrubias.

Sworn & Subscribed
Before me
Hoeland Hall.
Comr.

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

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1.A.D.K

1839.

"A"

Espediente promovido por
Vicente Canè en pretencion
del terreno que espresa

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2. S. D. R.

Sello tercero Dos Reales
Habilitado por la administracion de la Adu=ana Maritima del puerto de Monterey de la Alta California, para los años de mil ocho cientos treinta y seis y mil ocho cientos treinta y siete.
Gutierrez — Angel Ramirez
Balga para los años de 1839 y 1840.
Alvarado — Antonio Mª Pico

Sor Refecto del 1er Distrito
Vicente Canè naturalizado en la Re=publica Mejicana casado con hija del pais y vecino de este Pueblo ante la justificacion de V. S. paresco y digo que siendo dueño de un numero de cien Cabezas de Ganado Mayor, de trescientos de ganado lanar y treinta Cabezas de Caballar. Ocurro de un terreno en que fomentar es=tos bienes de cuyo producto nece=sito para la subsistencia de mi crecida familia que he proc=urado indagar un terreno proprio es mi intento que solicito me sea concedido por el Gobierno. Este terreno es de un sitio de Gana=do Mayor poco mas o menos y esta situado à una distancia de cinco leguas de la Mision de San Luis Obispo entre tierras de Martin Olivera, arrego de S. Luisito la Sierra Madre y el Estero. Por tanto muy respetuosamente su=plico se sirva proveer en justicia q. imploro bajo las protestas de estilo. Sn Juan de Castro.
Diciembre 1º de 1839.
No sabe firmar.

Sr. D. R.

Dicemb.re 3 de 1839. Informe el administrador de S. Luis Obispo sobre lo que respecta al establecimiento de su Cargo.
Castro.
Con arreglo al decreto del Sor Prefecto p.a que el admn.r de este establec.mto informe si se puede dar el terreno q. en la adjunta instancia solicita. Digo q. el mismo dia de la fha se cum à los Alcaldes y demas neofitos de este establecimiento a quienes impuse del terreno q. solicita el Sor Ca=me

9.

y todos unanime conbienen en que se le de
pues tiene los requisitos q.e el presa en su So-
=licitud. En dho terreno en el supuesto q.e se
le conceda jamas podra evitar que el ganado
alsado q.e pastea en el, se impida q.e se corra
se aga el uso del) q. convenga à la Mission

4. S. D. R

Sello Tercero Dos Reales.
Habilitado por la administracion de la
Aduana Maritima del puerto de Monterey
de la Alta California para los años de mil
ochocientos treinta y seis y mil ochocientos
treinta y siete
Gutierrez Angel Ramirez
Balga para los años de 1839 y 1840.
Alvarado Antonio M.a Osio

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Luis Obp.o Enero
15 de 1840
Juan P. Agala

S.r Juan de Castro Enero 20 de 1840
Con el informe de esta Prefectura eleve se
al Excmo Sor Gobernador del Departmt.o
Castro.

Excmo Sor Gobernador.
La Prefectura se ha impuesto de la Solisitud
que hace Vicente Cane en pretencion del
terreno q.e cita como tambien del informe del
admin.r de San Luis Obispo, y no encuentra
dificultad ninguna en que el Gobierno con
=ceda al interesado la propiedad de dicho
terreno maxime cuando el Establiemt.o a
que pertenesen no lo necesita y la parte su
=plicante es acreedora por sus servicios
à las benevolencia de V. E.
S.n Juan de Castro Enero 27 de 1840
Jose Castro.

5. S. D. R

6. S. D. R.

Monterey Febrero 11 de 1840.
Vista la peticion con que dà principio este
expediemt.o el informe del Sor Prefecto.

y el del Admin.r de la Mision de San Luis Obis=
=po y todo lo demas que se tuvo presente y ver
convino de conformidad con las leyes y reglam.
tos. de la Materia: declaro à D.n Vicente Canè
dueño en propiedad del terreno que se halle
colindante con el Rancho del C.no Martin
Olivera con la Sierra madre con los terrenos
conocidos pertenecer al parage conocido con
el nombre de San Lucito y el Mar. Estiendase
el correspondiente despacho y entreguesele
al interesado bajo las condiciones que se es
tipularen. El Sor D.n Juan B. Alvarado
Gob.or Constitucional del Departam.to
de las Californias, asi lo mandò decretò
y firmò de que doy fee.

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Alvarado

y. S. D. R. Monterey 12 de Mayo de 1840
Dada cuenta à la E. Junta Departamental
acordo en sesion de este dia q.e pasè à la Co=
=mision de Agricultura.

Jose. L. Fernando Srio

En diez y nueve del mismo lo devolbio la
Comision con el dictamen que se acompa
=na

Fernando.

Monterey 12 de Junio de 1840.
En Vista de la aprobacion otorgada en
Diez y nueve del mes p.o p.o p.r la E. Junta
Departamental, librese testimonio de ella
à la parte de D. Vicente Canè en confirma=
=cion del terreno que pretendio y obtuvo en
once de Febrero del presente año. El Sr.
D.n Juan B. Alvarado Gobernador Constitu=
=cional del Departamento de las Cali
=fornias. Asi lo proveyò y firmò de que doy fè

Alvarado

8. S. D. R.

Here follows Map

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9. S. D. R.

Excmo Sor

La Comision de Agricultura encargada de Dictaminar sobre la concesion hecha en la persona del Ciud.no Vicente Cane del terreno concedido p.r el Excmo Sor Gobernador D. Juan B. Alvarado con fha 11 de Febrero del presente año. en vista de los Actuales informes y demas q.e Ver se ha podido. pone à la deli=beracion de V. E los Articulos siguientes Art.o 1.o Se aprueba la concesion hecha p.r el Excmo Sor Gobernador D. Juan B. Alvarado en los terminos q.e se espresa el titulo en fha 11 de Febrero del presente año en la persona de Vicente Cane. 2.o El Gobierno Departam.to tendra à bien mandar espedir copia de esta Superior Aprovacion asiendo se le conza al interesado p.a su satisfaccion y conocimien=to. Monterey Mayo 16 de 1840.

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10. S. D. R

Jose Rafael Gonzalez. Monterey 19 de Mayo de 1840
En sesion de este dia aprobó la Excmo Junta Departamental el dictamen anterior refor=mado en 2.o Articulo en los terminos siguien=tes. Art.o 2.o Que el presente espediente vuelva al Excmo S.r Gobernador para los fines que corresponda.

vuelva

Man.l Jimeno Pres.te Jose Y. Fernandez Sec.io

11. S. D. R

Juan B Alvarado Gobernador Consti=cional del departamento de las California
Por cuanto D.n Vicente Cane ha pretendido para su beneficio personal y el de su fami=lia el parage que esta entre las tierras del Vecino Martin Olvera, Arroyo de San Luis=to, la Sierra Madre y el El Toro: practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas à nombre de la Na=cion Mejicana, he venido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras.

sugetandose à la aprobacion de la Exma Junta Departamental y à las condiciones siguientes. 1ª Podra cercarlo sin perjudicar las travesias caminos y servidumbres lo disfrutara à libre y esclusivamte. destinandolo al uso o cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada. 2ª Solicitara del Juez respectivo que le de posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad. 3ª El terreno de que se hace donacion es de un sitio de Ganado Mayor poco mas o menos segun esplica el diseño que corre en el espediente. El Juez que diese la posesion lo hara medir conforme à Ordenanza, quedando el sobrante que resulte à la nacion para los usos convenientes. 4ª Si contravinese à estas condiciones perderà su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tomera razon de el en el Libro à que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à once de Febrero de mil ochocientos cuarenta.

12. S. D. K

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Office of the Surveyor General of the United States for California. I, Samuel D. King Surveyor General of the United States for the State of California, and as such now having in my Office and under my charge and custody a portion of the Archives of the former Spanish and Mexican Territory or Department of Upper California. do hereby certify that the twelve preceeding and hereunto pages of tracing paper numbered from one to twelve inclusive and each of which is verified by my initials (S. D. K) exhibit true and accurate copies of certain do-

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=cuments on file or part of the said Archives in this Office.

In testimony whereof I have hereunto subscribed my name officially not having a seal and affixed my private seal of Office at the City of San Francisco Cal. this twenty fourth day of February 1852

Sam. D. King
Survy. Genl. Cal.

Filed in Office March 23rd 1852

Geo Fisher Secy

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"B"

Translation of Expediente

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Stamp Third, Two Reals.

Authorized by the Administration of the Maritime Custom House of the Port of Monterey in Alta California for the years 1836 & 1837.

(Signed) Gutierrez

Good for the years 1839 & 1840.

(Signed) Angel Ramirez.

(Signed) Alvarado.

San Juan de Castro,
December 8th 1839.

The administrator of San Luis Obispo will report on so much as respects the establishment under his charge.

(Signed) Castro.

In accordance with the decree of the Prefect that the administrator of this establishment report whether the land asked for in this petition can be granted, I say; that on the day of this date I called together the Alcalde & other "Neofitos" of this Establishment to whom I informed of the land asked for by Señor Cané & they all unanimously agreed that it be given, since he had the requisites set forth in his petition. Upon said land in the supposition that it be granted to him he ought never to prevent the ralle which are accustomed to pasture there from running there or making use of it as it may be convenient to the Mission San Luis Obispo January

(Signed) Antonio Maria Osio

To the Prefect of the 1st District.

Vicente Cané, naturalized in the Republic of Mexico, married to a woman of the country & a resident of this Pueblo before the publication of your Honor appears & says: That being owner of a hundred head of ralle three hundred sheep, & thirty head of horses, he desires a piece of land in which to grow this property the produce of which is required for the subsistence of his large family; that he has found a piece of land suited for his purpose, which he requests the Government to grant him. This land is about a league square a little more or less, & is situate at the distance of five leagues from the Mission of San Luis Obispo, between the lands of Marlen Olivera, the arroyo of San Luisito, the Sierra Madre, & the Estero.

Wherefore he very respectfully prays your Excellency to be pleased to grant in justice what he solicits for is due form.

San Juan de Castro, December 8th 1839.

The solicitor cannot sign.

15th 1840.
(Signed) Juan B. Alvarado

San Juan de Castro, January 26th 1840.

With the report of this Prefecture this is sent up to his Excellency the Governor of the Department.

(Signed) Castro.

To His Excellency the Governor.

The Prefecture has considered the petition of Nicanor Cané in application for the land referred to, as also the report of the Administrator of San Luis Obispo, & find no difficulty in the Government's granting to the party interested the ownership of the said land, especially as the establishment to which it pertains does not need it, & as the petitioner is deserving, by his services, of the benevolence of your Excellency.

San Juan de Castro, January 27th 1840

(Signed) José Castro.

Monterey February 11th 1840.

Having seen the petition at the beginning of this Expediente, the report of the Prefect & the Administrator of the Mission of San Luis Obispo, & all other information presented; in accordance with the laws & regulations relating to the matter; I declare Don Nicanor Cané owner in fee of the land which is bordering on the Rancho of citizen Martin Olivera, on the Sierra Madre, on the lands pertaining to the place known by the name of San Luisito, & on the sea. Let the corresponding title be made out & delivered to the party interested under the stipulated conditions. Señor Don Juan B. Alvarado, Constitutional Governor of the Department of the California, thus ordered, decreed & signed of which I certify.

(Signed) Alvarado.

Monterey, May 12th 1840.

Submitted to the Most Excellent Departmental Junta, considered in session to day, & passed to the Committee on Agriculture.

(Signed) José Z. Fernandez.
Secretary.

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On the 19th of the same month the Committee returned the Expediente with the accompanying report.

Signed/ Fernandez.

Monterey June 12th 1840.

In view of the approval passed on the 19th of the last past month by the Most Excellent Departmental Junta, let a certificate of it be issued to the party, Don Vicente Cané, in confirmation of the land to which he pretended & claimed on the 21st day of February of the present year. Senor Don Juan B. Alvarado, Constitutional Governor of the Department of the California thus approved & signed, of which I certify.

Signed/ Alvarado.

Excellent Sir

The Committee on Agriculture charged with the consideration of the grant made to the person of Cabezas Vicente Cané of the land made by his Excellency the Governor Don Juan B. Alvarado on the 21st day of February of the present year: having examined the reports & whatever else was submitted to them, submits to the deliberation of your honorable body, the following articles:

Article 1st. They approve the grant made by His Excellency the Governor Don Juan B. Alvarado in the terms expressed in the letter dated February 21st of the present year to Vicente Cané.

Article 2d. The Departmental Government will be pleased to order a copy of this superior approbation to be sent to the party interested for his satisfaction & information.

Monterey May 16th 1840.

Signed/ José Rafael Gonzales.

Monterey May 19 1840.

In session this day, the Most Excellent Departmental Junta approved the foregoing report amending the 2d article in the following manner. Article 2d, That the present Expediente be returned to his Excellency the Governor

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for the ends corresponding.

(Signed) Manuel Zamino.
President.

(Signed) José L. Fernandez.
Secretary.

(Here follows a copy of title, the same as translated in Exhibit D.)

E. G.
D. P.

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Filed in Office March 23rd 1852.

Geo: Fisher. Secy.

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"C"
No 1. annexed to deposition of Pablo de la Guerra

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Sello 1º Seis Pesos
Habilitado provisional mente por la Aduana maritima de Monterey pª los años de 183 9 y 1840. Alvarado # Antonio Mª Osio

Juan B. Alvarado Gobernador Constitucional del departamtº de las California. Por cuanto Dn Vicente Sanchez ha pretendido para su beneficio personal y el de su familia, el terreno que se halla colindante con el Rancho del Cnº Martin Olivera con las tierras conocidas pertenecientes à Don Luisito con la Sierra y el Mar. practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre de la Nacion Mejicana declarandole la propriedad de el por las presentes letras sugetandose à la aprovacion de la Excma Junta Departamental y à las condiciones siguientes 1ª Podra cercarlo sin perjudicar las travesias caminos y servidumbres: lo disfrutara libre y esclusivamente destinandolo al uso ò cultivo que mas le comode, pero dentro de un año fabricara casa y estara habitada. 2ª Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra à mas de las mojoneras algunos arboles frutales ò silvestres de alguna utilidad. 3ª El terreno de que se hace mencion es de un sitio de ganado mayor poco mas o menos segun esplica el dicho que corre en el espediente El juez que diese la posision lo hara medir conforme à Ordenanza quedandose el sobrante à la nacion para los usos convenientes. 4ª Si contraviniese à estas condiciones perderà su derecho al terreno y sera denunciable por otro. En consecuencia mando que teniendose por firme y valedero

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este titulo se tome razon de el en el Libro que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterey à once del Febrero de mil ocho cientos cuarenta.

Juan B. Alvarado

Manuel Jimeno Srio.

Queda tomada razon de este despacho en el Libro de acientos sobre adjudicion de terrenos Baldios @ fo. 1. Vuelta.

Jimeno

Dello tercero Dos Reales. Habilitado provisionalmte. por la Aduana Maritima del puerto de Monterey en el Departamento de las Californias para los años de mil ocho cientos cuarenta y mil ocho cientos cuarenta y uno

Ximeno Antonio Mª Osio

Revalidado por los años de 1842 y 1843

Alvarado. Antonio Mª Osio.

El que subscribe Srio del Gobierno del departmte. de las Californias Certifica. Que el diseno que le acompana. Sellado y rubricado por la Secria es igual al Original que existe en la Secria de mi Cargo.

Monterey 14 de Octre de 1843

Mdo. Jimeno

Here follows

Map

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"E"
No 1. annexed to deposition of Pablo de la Guerra

725-2

Sello tercero
Para los años de
y mil ochocientos
Revalidado p.r los años de 1842 y 1843.
Alvarado

Dos Reales
mil ochocientos cuarenta
cuarenta y cinco.

Antonio Mª Osio

Por alcalde 1.º de San Luis Obispo
El Ciudadano Bicente Canè. Becino del pueblo de San San Luis Obispo
Ante V. como mas haya lugar. Digo q.e en Bertud del titulo y diseño q.e acompana à V. suplico se dirne darme posision Judi-brda q.e espresa el mencionado Titolo Gracia q.e
Espero de la generosidad de V.
San Luis Obispo Noviembre 5 de 1845.

Bicente Cane. +

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San Luis Obispo Novmb.re 6 de 1845
Por presentado y admitida para el Juzgado 16 del entrante prebia situacion de los colindantes se da a verificando las medidas del terreno q.e se le ha concedido. Yo el alcalde 1.º de esta demarcacion hasi lo decreto y firme
Joaq.n Estrada

San Luis Obispo Diciembre 20 de 1845.
Citese à los colindantes D.n Juan Nuilso D.n Guadalupe Cantua, D.n Martin holibera para q.e concurresen el dia 24 Al rancho de D.n Bicente Canet Yo Alcalde 1.º de esta demarcacion.

hasi lo decreto y firme
Joaq.n Estrada

San Luis Diciembre 26. de 1845
Con esta fecha resitaron à D.n Martin holibera à D.n Guadalupe Cantua à D.n Juan Nuilso para q.e concurrieren el dia 24 del presente al Rancho de D.n Bicente Canet à las ocho de la mañana y se asento por diligencia

Joaq.n Estrada

En el Rancho de San Bernardo à las 24 dias del mes de Diciembre de 1845 à las ocho de la mañana siendo yo el Alcalde 1.º de la demarcacion de San Luis Obispo. Siendo presente en la casa de habitacion de D.n Bicente Canet y llegaran à ella D.n Guadalupe Cantua

y Dn Mariano Pacheco y Dn Pedro Holibera
Por la citacion q. se les hizo como colindantes
y lo hasente por diligencia q. forme
Joaqn Estrada

El incontinente en el mismo parage dia mes
y año siendo presentes Dn Bicente Canet
yo el alcalde de 1o acompañado de los de mi
asistencia hize me dio un Cordel con el objeto
de proceder à las medidas de el terreno y
al efecto se me dio fielmente un Cordel de
Cincuenta Varas Castellanas y para su
constancia asente esta por diligencia q.
forme con los de asistencia. — Joaqn Estrada
De asistencia de assistencia
Julian Estrada Faustino Garcia

Seguida en el mismo parage dia mes y año. Yo
el alcalde 1o de la demarcacion de San Luis
Obispo con los de asistencia. Siendo presente
el no haber un perito agrimensor dispuse nom
-brar de los concurrentes dos fieles medidores
Cordeleros y al efecto nombre à Dn Mariano
Pacheco y à Dn Pedro Holibera los cuales ha
ciendo este encargo se hobligaron bajo
el Juramento q. prestaron hadesempeñarlo
fielmente asentandolo por diligencia q.
firmaron los de Asistencia conmigo y los
nombrados.

Asistencia Joaquin Estrada. Assistencia
Julian Estrada Faustino Garcia
Pedro Olibera X Mariano Pacheco

A continuacion en el mismo parage dia mes
y año à las hocho de la mañana yo Alcalde 1o
de la demarcacion de San Luis Obispo acompa
-ñado de los de mi asistencia y concurrentes
ya citados: salimos de la habitacion de Dn
Bicente Canet y nos hencaminamos al lugar
en donde segun su Diseño señala sus
linderos con Dn Martin Holibera en el cual
para dar principio à las medidas nos paramos
en la boca del Arroyo del morro y de hallí

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tomando los medidores el Cordel por sus extremos y afijos se comenzo medir por la playa y Costa. Rumbo al Sur asta llegar à una loma q.e esta pegada al Zerro Alto q.e esta al pie de las tierras de Don Luisito hasta llegar à los linderos de D.n Juan Nulso y de D.n Gaudalupe Cantua habiendo medido hasta dicho punto ciento y cincuenta Cordeles de Cincuenta Baras hasta dich.o lugar de halli en seguida setiro el Cordel por el Arroyo arriba por haber Conbenido ante mi y los testigos de asistencia de q.e se partieron las tierras de siembra de Don Luisito y igualmente se conformaron habos dos el tener igual Derech.o en el agua del Copresado Arroyo y asi es q.e tirando el Cordel por el Arroyo arriba. Rumbo al Oriente hasta llegar al camino Real rumbo al Sur este asta llegar à la Orilla de la lomita y de alli se tiro por la hoilla de la loma Rumbo al Oriente asta Atabazar la meta de las tierras referidas de alli se tiro el Cordel rumbo al Oriente asta una lomita asta donde se midieron Ciento Beinte y cinco señalando el termino con una peña Grande se continuaron las medidas por la Sierra y lomeria en linea paralela Rumbo al Norneste asta el harroyo del Morro q.e se señalo por termino y lindero con D.n Martin Olivera y se midieron Ciento Beinte y cinco y de halle para concluir las medidas se tiro el Cordel todo el Arroyo abajo del Moro asta donde se commenzo à medir y se contaron ciento Beinte y cinco Cordeles con lo q.e quedo comprendido. Bajo la circunferencia Bajo la circunferencia de quinientos Beinte y cinco Cordeles de a cincuenta Baras Castellanas concluidas de este modo las referidas medidas y siendo conformes los colindantes tome por la mano a

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Dn. Bicente Canet y en Voz clara le dije en nombre de la Nacion Mejicana doy á D. posecion de el terreno q. se ha medido y respondiendo q. la tomava para manifestar q. avendo adquerido el dominio util y Directo hera Dueño y S. absoluto de aquel terreno. Escarbo la tierra arranco Zarbas y tiro piedras por los cuatro Bientos con lo q. se concluyo el acto y firme con los de asistencia y uno de los Colindantes.

Julian Estrada // Joaquin Estrada // Faustino Garcia
Guadalupe Cantua. +

San Luis Obispo 28 de Diciembre de 1845
Devuelvase esta diligencias Originales al interesado para testimonio de la hajudicacion de propriedad y el uso que les convenga.

Joq.n Estrada

San Luis Obispo 29 de Diciembre de 1845
Atendido el acto precedente se devolbio á Dn. Bicente Canet este espediente en 6 Resos utiles y lo hasente por diligencia

Joaq.n Estrada

Queda tomado razon de estas diligencias en el libro Corresponciente. A fojas dos y tres

Joaq.n Estrada

Fojas dos. tres y cuatro
Filed in Office Septbr. 2nd 1852

Geo Fisher Recr

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"D"
Translation of Title.

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Stamp First, Six Dollars.
Provisionally authorized by the maritime Custom House of Monterey for the years 1839 & 1840.
(Signed) Alvarado. (Signed) Antonio Maria Osio

Maritime Custom House of Monterey

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

Whereas Don Vicente Canet has, for his own personal benefit & that of his family, petitioned for the land which is bounded by the Ranchos of citizen Martin Olveria, by the land belonging to San Luisito, by the Sierra & the sea, the proper measurement & examinations being previously made as required by laws & regulations, using the faculties which are conferred on me in the name of the Mexican Nation I have granted him the aforesaid land, declaring it to him the ownership of it by these presents, subject to the approval of the Most Excellent Departmental Junta & to the following conditions viz.

1. He may enclose it without prejudice to the roads, cross roads & servitudes, & enjoy it freely & exclusively, making such use or cultivation of it as he may see fit, but within one year he shall build a house on it & inhabit it.

2nd. He shall ask the proper Magistrate to give him judicial possession in virtue of this order, for which purpose the boundaries shall be marked out, & he shall place in them besides the bounds, some fruit or forest trees of a useful character.

3. The land here mentioned contains one sitio de ganado mayor (one square league for grazing cattle) or little more or less as is shown by the map which goes with the expediente. The Magistrate who may give the possession will cause it to be measured in conformity with the ordinance, leaving the surplus which may result to the Nation for its convenient uses.

4. If he shall contravene these conditions he will lose his right & it may be denounced by another.

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

purpose.

Given at Monterey, the eleventh day of February one thousand eight hundred & forty.

(Signed) Juan B. Alvarado.

(Signed) Manuel Jimeno.

Note has been taken of this order in the book of entries of grants of vacant lands on page 1, over.

(Signed) Jimeno.

Filed in Office March 23rd 1852.

Geo: Fisher

Secy.

To the Alcalde of San Luis Obispo.

Citizen Vicente Canet vecino of the pueblo of San Luis Obispo respectfully appears before you & represents that in virtue of the accompanying title & map, he prays that you will be so good as to give him the juridical possession referred to in the aforesaid title; a favor which he expects from your generosity.

San Luis Obispo, November 5th 1845.

(Signed) Vicente Canet

F.
Translation of Survey & possession.

San Luis Obispo November 6th 1845.

Presented & admitted on Thursday the 6th of said month, the colindantes being previously cited, the possession will be given, verifying the measurements of the land which has been granted, I, the first Alcalde of this demarcation thus decreed & signed.

(Signed) Joaqn Estrada

San Luis Obispo December 20th 1845.

Let the colindantes be cited, Don Juan Ubilen, Don Guadalupe Cantua, Don Martin Oliveira, to appear on the 27th at the ranche of Don Vicente Canet. I, the First Alcalde of this demarcation thus decreed & signed.

(Signed) Joaquin Estrada

San Luis Obispo 26th of December 1845, On this day the colindantes Don Juan Ubilen, Don Martin Oliveira, Don Guadalupe Cantua, were cited to appear in the ranche of Don Vicente Canet at 8 o'clock on the morning of the 27 inst & it was officially noted.

(Signed) Joaquin Estrada.

In the ranche of San Bernardo on the 27th day of the month of December 1845, at 8 o'clock in the morning, I the first Alcalde of the demarcation of San Luis Obispo being present in the dwelling house of Don Vicente Canet, there arrived Don Guadalupe Cantua, Don Mariano Pachuca, & Don Pedro Oliveira, summoned as colindantes, & I made official note of it which I signed.

(Signed) Joaquin Estrada.

In continuation in the same place, day, month & year, Don Vicente Canet being present, I, the first Alcalde, accompanied by those of my assistance, caused to be measured a rope, for the purpose of proceeding to the measurement of the land, & a rope was faithfully measured

fifty Spanish varas long, & in testimony I make offi-
-cial note of it which I signed with my assisting wit-
-nesses.
Assisting Witnesses. (Signed) Joaquin Estrada.
(Signed) Julian Estrada.
(Signed) Faustino Garcia.

Immediately afterwards in the same place, day, month
& year, I, the first Alcalde of the demarcation of San Luis Obispo
with those of my assistance, it appearing that there was no
official surveyor, proceeded to name from those present
two faithful measuring rope bearers, & did appoint Don
Mariano Pacheco & Don Pedro Olivera, who, accepting
the office, obliged themselves by the oath which they
took to perform the duties faithfully, & I made official
note of it the assisting witnesses signing with me &
those appointed.
Assisting Witnesses (Signed) Joaquin Estrada.
(Sgd) Julian Estrada (Signed) Pedro Olivera.
(Sgd) Faustino Garcia (Signed) Mariano Pacheco.

In continuation in the same place, day, month & year,
at eight o'clock in the morning, I, the first Alcalde of
the demarcation of San Luis Obispo, accompanied
by those of my assistance & the persons previously men-
-tioned, left the dwelling house of Don Vicente Comet
& went to the place where commences the boundary
with Don Martin Olivera, as shown by the map, &
placed ourselves at the mouth of the Arroyo del Moro,
& the measurers taking the cordel by its extremities
the measurement was commenced along the beach, in
a southerly direction to a hill which joins the "cerro
alto" at the foot of which are the lands of San Luisito,
being the boundary with Don Juan Wilson & Don
Guadalupe Cantua distant one hundred & fifty cordels
of fifty varas each, thence they (Vicente Comet & Guadalu-
-pe Cantua) having agreed before me & the assisting
witnesses, to divide the planting ground of San
Luisito & also that both should have equal right

to the water of the aforesaid arroyo, therefore the cordel was drawn up the arroyo, in an easterly direction to the main road, north west to the foot of the little hill, thence along the foot of the hill, towards the East, to include the "mesa" of the said lands, thence drawing the cordel easterly to a hill distant one hundred & twenty five (cordels). The end of the line being marked with a large rock, the measurement was continued along the Sierra Hills in a parallel line (to the one first measured) North west to the Arroyo del Moro, which was marked as the boundary with Don Martin Olivera distant one hundred & twenty five (cordels) & then to finish the measurement the cordel was drawn down the Arroyo del Moro to where the measurement was commenced distant one hundred & twenty five cordels, with which the survey was finished, & the land was included within the boundary of five hundred & twenty five cordels of fifty Spanish varas each. Having in this manner completed the measurements & the calindandes having given their assent, I took by the hand Don Vicente Canet & in a loud voice said to him in the name of the Mexican Nation I give you possession of the land which has been measured, he, replying that he left it, in order to show that having acquired the useful & direct dominion of it he was over & absolute lord of that land, dug up earth, pulled up grass, and threw stones towards the four winds: with which the act was finished & signed with those of my assistance and one of the calindandes.

(Signed) Joaquin Estrada.

Assisting Witnesses (Signed) Guadalupe Cantua.
(Sgd) Julian Estrada.
(Sgd) Faustino Garcia.

San Luis Obispo Dec 28th 1845.

Return these original official papers to the party interested in testimony of said judication of ownership, & the use he may think fit.

(Signed) Joaquin Estrada

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San Luis Obispo Dec 29th 1845.

In compliance with the foregoing decra this Espediente was delivered to Don Vicente Romo in six pages & I made official note of it.

(Signed) Joaquin Estrada.

Note has been made of these official papers on the corresponding book on pages two & three.

(Signed) Joaquin Estrada.

Pages two three & four.

Filed in Office March 23d 1852.

Geo: Fisher.
Secy.

30

Vicente Canet
vs
The United States.

For the place called San Bernardo, being one league more or less in quantity.

Opinion by Com. Alpheus Felch.

The claimant presented his petition for the grant to the Prefect of the first district December 1st 1839. After obtaining information on the subject a report was made by that officer to the Governor Juan B. Alvarado, recommending the grant, & an order of concession was thereupon made under date of February 11th 1840. The approval of the Departmental Assembly was obtained, bearing date May 19th 1840 is given in evidence & also the record of proceedings in giving juridical possession of the premises to the claimant, which was done on the 27th day of December, 1845.

Two objections have been raised to the confirmation of this claim to wit, that the proof of possession & the building of a house, was insufficient & secondly, that the boundaries of the premises were too indefinite & the quantity of the land included in the juridical survey larger than that called for by the grant. On the first point the proofs shows that "the claimant has occupied it since 1840 with a house, cattle & horses, & cultivated considerable portion of the land, he still lives on it with his family". These expressions of the witness are certainly not as definite & explicit as could be desired, but we think the proof must be regarded as sufficient to establish a compliance with the conditions of the grant on that subject.

The only evidence given in the case as to the location, boundaries or extent of the premises is found in the official documents above mentioned. The grant describes the land which the petitioner solicited "as the land which is bounded by the Rancho of citizen Martin Olivera, by the lands belonging to San Luisito, by the Lagunita, & the sea" & the land declared to be granted is one square league a little more or less as is shown by the map which accompanies the Expediente. The party was required to obtain juridical possession & the marking out of his boundaries the surplus of the land

to remain the property of the Nation. The original official documents relative to the juridical possession are given in evidence. The return shows that the extension lines of the land set apart to satisfy the grant were run & measured & they are defined by reference to such natural & artificial objects as would seem to be abundantly sufficient to define & separate the premises from the surrounding lands. The line on the east side of the premises seems the only portion of the description which can present any difficulty. This line is stated in the return commences at or near the mouth of the Arroyo de San Lizario & from thence "the cordel was drawn up the arroyo in an easterly direction to the main road; thence following the main road Southwesterly to the foot of the little hill, thence along the foot of the hill, towards the east to include the "mesa" of the said lands thence drawing the cordel easterly distant one hundred & twenty five cordels" where a monument is called for. The objection of the Law Agent as to the want of definiteness in this description & a discrepancy between the quantity of land embraced in the survey, as described in the return, & that conceded seems to be founded on the supposition that the distance of one hundred & twenty five cordels last mentioned was intended for the distance run after making the angle last above described. If this line were continued that distance eastwardly from the foot of the little hill (being so drawn as to include the mesa) it would undoubtedly cause the premises measured & described in the juridical survey to contain a larger quantity of land that that granted. It would also certainly make the description of the land measured, incongruous, if not impracticable. But I think the distance of one hundred & twenty five cordels is not intended for the length of the line between the little hill above mentioned & the end of the line at the next angle which is described in the document, but it embraces more of the survey. The premises measured are nearly in the form of a parallelogram, & the distance of each side is given by itself.

The first line measured was along the sea coast - 150 cordels - the next measured was the line on which this question arises & which constitutes the south side of the premises. This is not a straight line but is run up the creek of San Luisito eastwardly to a road - thence making an angle & running along the road to an object called for in the description, thence again to the east at the point of termination. The distance of the several portions of this boundary from angle to angle is not given but at the end of the description of them the whole measurement of the line from the mouth of the creek to its termination at the hills is given as 125 cordels. That this is is the true meaning of the section we think there can be no doubt, & with it, the difficulty vanishes. The land thus measured & located is in compact form having three sides of 125 cordels each & the remaining side of 150 cordels in length. The description & calls for the boundaries are such, with the aid of the map at would seem to obviate any difficulty in the survey.

The claimant is entitled to a confirmation.

Filed in Office Nov 22nd 1853.

Geo: Fisher Secy.

Decree

Vicente Cané vs The United States. } For the place called San Bernardo, being one square league of land in San Luis Obispo County.

In this case on hearing the proofs & allegations it is adjudged by the Commission that the said claim of the petitioner is valid & it is therefore hereby decreed that the same be confirmed to him. The land of which confirmation is hereby made is the place known by the name of San Bernardo & is situated in San Luis Obispo County & is the property on which the said claimant resides: bounded & described as follows, to wit: commencing in the line of land known as the lands

of Martin Olivera, at the mouth of the Arroyo del Moro running thence in a Southerly direction to a hill which joins the "Cerro Alto" at the foot of which are the lands of San Luisito being the boundary with Don Juan Wilson & Don Guadalupe Cantua distant seven thousand five hundred varas – thence up the Arroyo de San Luisito, by the middle of the stream in an easterly direction to the main road, thence following the main road South Westerly to the foot of the little hill, thence along the foot of the hill towards the east to include the "mesa" of the said lands & thence easterly to a hill distant six thousand two hundred & fifty varas by the line as above described from the point of first intersection with said arroyo, the eastern termination of said line being marked by a large rock. – thence running along the Sierra Hills in a line parallel to that first above described north-west, six thousand two hundred & fifty varas to the Arroyo del Moro which is the boundary with Don Martin Olivera – thence down the Arroyo del Moro six thousand two hundred & fifty varas to the place of beginning at the mouth of the same – containing one square league, more or less – reference for more particular description thereof to be had to the original grant of the same & the report of the acts of juridical possession & the map attached to the same, which are on file in this case.

Alphens Felch.
Thompson Campbell.
R. Aug. Thompson.
Commissioners

Filed in Office Nov 22nd 1853

Geo: Fisher.
Secy.

485-3 = 481/2 folios

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Office of the Board of Commissioners,

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

I, George Fisher, Secretary to the Board of Commissioners to ascertain and settle the Private Land Claims in the State of California, do hereby certify the foregoing thirty three pages, numbered from 1 to 33, 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. 123 on the Docket of the said Board, wherein Vicente Cané is the Claimant against the United States, for the place known by the name of "San Bernardo"

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

Geo: Fisher.

41.

U. S. DISTRICT COURT,

Southern District of California.

No. ~~[illegible]~~ 41. Docket

THE UNITED STATES, apllt.

vs.

41

Vicente Cane

For Sant Bernardo

1½ League in S. Luis Obispo Co

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 123.

Rec 25 Aug. 1854

Filed 26 Aug 1854

A. S. Taylor

Dp. Clk.

41

41.

Office of the Attorney General of the United States,

Washington, 30th November 1854.

Vicente Cané
vs.
The United States } 123.

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 18th 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. 41.

U. S. District Court

Southern District

The United States
vs.
Vicente Cané.

Appeal Notice.

Filed Jany 10th 1855.
C. E. Carr
Clk.

41

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PAGE Dup.

Office of the Attorney General of the United States,

Washington, 30th November 1854.

Vicente Cano
vs.
The United States. } 123.

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 18th 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.

Appeal

123.

41-A

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

Vicente Caré ads. The United States	No. 41 (Transcript No. 123)

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

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

That heretofore, to wit, on or about the 23rd day of March A.D. 1852 Vicente Caré presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, claiming the tract of land called San Bernardo in the County of San Luis Obispo in the words and figures following, viz.

"The petitioner, Vicente Caré, respectfully shows:

"That on the 1st day of December A.D. 1839, he ap-

"-plied through the Prefect of the first District "of California, for the tract of land known by the "name of San Bernardo situate in the then "partido of San Luis Obispo, & being from a league "to a league & a half square; that said applica-"-tion was approved by the Prefect & other local au-"-thorities: That on the 11th day of February A.D. "1840, Juan B. Alvarado, Governor of California "by virtue of authority in him vested granted to "the petitioner the said tract of land with the "boundaries described in the said grant & set "forth in the respective map: That on the "19th day of May A.D. 1840, the Departmental "Junta of California, approved the said grant "in due form, all of which is shown in the Es-"-pediente an exact copy of which is submitted "herewith marked "A" with a translation marked "B"; as also a copy of the title & map given "him marked "C" with a translation marked "D".

"And the petitioner further shows that on "the 27th day of December A.D. 1845 the said tract "of land was duly surveyed & the juridical "possession of it given to the petitioner by the "proper authority; a copy of which juridical "act is submitted herewith marked "E," with "a translation marked "F."

"That the said land has not been surveyed "by the Surveyor General of the United States, "but that it was surveyed by the proper author-"-ity at the time of giving the juridical posses-"-sion & has been surveyed since by the Surveyor "of the County of San Luis Obispo; & that its boun-"-daries are definite & well known."

"That the petitioner for some 13 "years has been & now is in the quiet peace-"-ful & undisputed possession occupation & cul-"-tivation of the said tract of land."

"That he knows of no conflicting claims: "The petitioner relies for confirmation of title "upon the original papers, copies of which are "submitted herewith; upon the documents & "minutes in the archives now under the charge "of the Surveyor General: & upon such other & "further proofs as he may be advised are nec-"-sary".

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

Your petitioner further represents that there-after, to wit on the 22nd day of November A.D. 1853 the said Commissioners confirmed, by final decree, the said claim of the said Vicen-te Cané in the words, and figures following, to wit,

"In this case on hearing the proofs & allega-
"-tions it is adjudged by the Commission that
"the said claim of the petitioner is valid & it is
"therefore hereby decreed that the same be con-
"-firmed to him. The land of which confirmation
"is hereby made is the place known by the name
"of San Bernardo & is situated in San Luis O-
"-bispo County & is the property on which the said
"claimant resides: bounded and described as fol-
"-lows, to wit; commencing in the line of land
"known as the land of Martin Olivera, at the
"mouth of the Arroyo del Moro & running
"thence in a Southerly direction to a hill which
"joins the "Cerro Alto" at the foot of which are
"the lands of San Luisito being the boundary
"with Don Juan Wilson & Don Gaudalupe Cantua
"distant seven thousand five hundred varas-
"thence up the arroyo de San Luisito, by the
"middle of the stream in an easterly direction
"to the main road, thence following the main
"road South Westerly to the foot of the little hill,
"thence along the foot of the hill towards the
"east to include the "mesa" of the said lands
"& thence easterly to a hill distant six thou-
"-sand two hundred & fifty varas by the line
"as above described from the point of first
"intersection with ~~the~~ said arroyo, the eastern

"termination of said line being marked by a
"large rock.— thence running along the Sierra
"& hills in a line parallel to that first above
"described northwest, six thousand two hundred
"& fifty varas to the arroyo del Morro which is
"the boundary with Don Martin Olivera— thence
"down the Arroyo del Morro six thousand two
"hundred & fifty varas to the place of beginning
"at the mouth of the same— containing one
"square league, more or less— reference for more
"particular description thereof to be had to the
"original grant of the same & the report of
"the acts of juridical possession & the map
"attached to the same, which are on file in this
"case."

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

"Filed in Office Nov. 22nd 1853"

"Geo. Fisher"
"Secy."

That thereafter, to wit, on the 26th day of August
A.D. 1854 a duly certified transcript of the said
decree, and proceedings, and the papers and
evidence on which it was founded in said cause,
was filed in the Office of the Clerk of the District
Court of the United States for the Southern Dis-

-trict of California and marked No. 41 (Transcript No. 123) reference to which it is prayed may be had and made a part of this petition.

That on the 18th day of August A.D. 1854 the Honorable Caleb Cushing Attorney General of the United States received a duly certified duplicate of said transcript of said final decree and proceedings of said Commissioners in said cause (No. 123) and the papers and evidence on which said decree 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 Vicente Cané, vs. the United States, from the decision of the said Commissioners to ascertain and settle the private land claims in the State of California, in the District Court of the United States for the Southern District of California would be prosecuted by the United States.

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

And your petitioner further represents, and insists that the said decree of said Commis-

-sioners is erroneous, and ought to be reviewed, re-
-versed, and set aside, for many errors and
imperfections of law and evidence apparent in
said certified transcript of said cause, now in ap-
-peal 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 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 suf-
-ficient evidence of the validity of the said
Claim.

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 day of August AD. 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 San Luis Obispo; 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. 1824, and the regulations for the colonization of the Territories of Mexico of the 21st day of November A.D. 1828.

V. That the said claimant shows no definitive grant for the said land claimed by him.

VI. That the said alleged grant of said Governor Alvarado, of said date does not sufficiently describe the land claimed, so that it can be identified and surveyed. And it is vague and uncertain.

VII. That the survey and juridical possession alleged to have been made by the proper

authority on the 27th day of December A.D. 1845, was not made in conformity with the said alleged grant and map refered to therein; Nor according to the ordinance, or law. And it is vague and indefinite.

VIII. That there is no evidence that Joaquin Estrada was First Alcalde of San Luis Obispo on the said 27th day of December A.D. 1845, and that he then had lawful authority to make the survey and give juridical possession to said Vicente Cané of said land. And it is denied that he was First Alcalde of said place at said time & had then lawful authority to perform said acts of survey and possession.

IX. That there is no sufficient evidence that the said Vicente Cannó built a house upon the said land within one year from the date of the said alleged grant, and that it was occupied; as required by the first condition of the said alleged grant. And it is denied that the said claimant built a house upon the said tract of land, alleged to have been granted & claimed as aforesaid, within one year from the date of the said grant; and that it was occupied.

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 Commissioners 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 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 2nd 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 A.D. 1851, and the laws and statutes in such case made and provided, prays that the said Vicente Cané 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 Vicente Cani, for said land claimed and confirmed as aforesaid; and that the same may be decreed invalid. And all such other orders, judgements, or decrees, as may be just. With costs, and general relief.

P. M.

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

No. 41

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

Vicente Cané
ads
The United States

Petition of the U. States
for Review

Filed Aug. 13 1855
C. E. Carr
Clk.

41 SD
PAGE 49

C. Ord Deputy

No 41.

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

The United States, appellants, vs Vicente Cané, appellee	Answer of appellee.

Vicente Cané, appellee, appears by his attorneys and for answer to the petition of the United States filed herein, says:

That his title to the land called "San Bernardo", as set forth and described in his petition to the United States Board of Commissioners, and in the documentary and other evidence in this case, is a good and valid title; and he prays this Honorable court to affirm the decision of the Board of Commissioners and to decree his title to be valid.

Hallett Beachy & Billings
Attys for appellee

Los Angeles Sept 22d. 1855.

No 41

The United States appellant
vs
Vicente Canet, appellee

Answer of appellee

Filed Sept. 24th 1855.
J. E. Carr clk
By John C. Rob'ts

No 41.

The United States vs. Vicente Cané.

The Transcript contains:

I. Petition to Commissioners filed March 23d 1852. p 3.

II. Deposition of Pablo de la Guerra, p 4. proves the signatures to original grant, & juridical possession.

III. Deposition of W. R. Hutton p 5. proves extent of occupation in 1851

IV. Deposition of J. M. Covarrubias p 6. proves occupation of this land by Grantee since 1840 with a house, cattle, horses, and cultivation of a considerable portion of the land; he still lives on it with his family.

V. Expediente from Surveyor General's office p p 7. to 13. This contains petition and proceedings thereon, map, decree of concession and approval of the Departmental junta.

VI. Translation of Expediente p p 14 to 17.

VII. Formal title, dated Feby 11th 1840, with map. p p 18, 19 & 20.

VIII. Juridical possession, p p 20 to 23.

IX. Translation of ~~juridical possession~~ Formal Title p p 24 & 25.

X. Translation of juridical possession p p 26 to 29.

XI. Opinion of Commissioners p p 30 to 32.

XIII. Decree of confirmation p p 32 & 33.

In U. S. Dist Court

1. Transcript filed Aug 26th 1854
2. Notice of appeal Jany 16th 1855
3. Petition on appeal Aug 13th 1855
4. Answer of appellee Sept 24th 1858.

It will be observed

that the map attached to title and that from the office of Surveyor General are the same, the scale only being different.

No 41.

The United States
appellant
vs.
Vicente Cané

Index of Case.

Filed Sept 24th 1855
C. E. Carroll
Clk. No. Dist. Cal.

The United States Appellants
vs
Vicente Cano Appelle

This Claim is based upon a grant from Governor Alvarado in 1840 to the present claimant, a copy of the original grant is on record to gether with the petition of claimant to the Prefect, his report thereon, the decree of concession, and the approval of the departmental deputation, and also the act of judicial possession and the map. One of these documents are proven to be genuine and are not disputed.
The parol evidence shews a substantial compliance with all the conditions of the grant, the land is sufficiently well described in the grant, map, and act of judicial possession to identify and locate it, the claimant is therefore entitled to a confirmation & a decree will be entered affirming the decision of the Commissioners

No. 41

United States
Appellant

vs

Vicente Cano

Opinion. Judge Ogden

Filed Sept 25th 1855
J. E. Carson
By W. Rofsey

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

Vicente Cané adr. appe		No. 41.
vs.		
The United States. Appe		(Transcript No. 123)

On motion of P Ord Attorney of the United States for the Southern District of California, it is Ordered by the Court, that an appeal be granted the United States, to the Supreme Court of the United States, from the judgment of this Court against the United States, in the above entitled cause, rendered on or about the 25th day of September AD 1855.

P. Ord
U S Dist Atty.

No. 411

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

United States, appellee

vs.

Vicente Cané, Appellee

Order of appeal to the Supreme Court on motion of Bond U. S. Atty.

Filed October 18th 1855
A. C. Gano Clk
By Dio Rubio Dep

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

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

Vicente Cané.

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GREETING:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, ~~and each of you~~, in the District Court of the United States, in and for the Southern District of California, on the Thirteenth — day of August in the year of our Lord one thousand eight hundred and fifty-five at the City and County of Los Angeles, in said District, by Pacificus Ord, Attorney of the United States for the Southern District of California, in behalf of the United States praying the said Court to review, upon the grounds therein set forth, the decision of final confirmation of the Board of U. S. Land Commissioners to ascertain and settle the private land claims in the State of California, to the claim of Vicente Cané for a tract of land called San Bernardo in the County of San Luis Obispo California, and presented on or about the 25th day of March A.D. 1852, and by them confirmed on the 22nd day of November A.D. 1853.

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

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

C. E. Carr
Clerk.

No. 41.

Marshals Fees.

Copying summons from folio.	60
Serving summons	3.00
" Petition.	3.00
	$ 6.60

United States of America,

Southern District of California,

U. S. District Court.

Vicente Cané

ads

vs

The United States.

SUMMONS.

Received Sept 12th 1855
Edward Hunter
U. S. Marshal

41 SD

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I served this summons along with the proper copy of the petition upon Hallock & Phelps, by delivering to them a true copy of the same at San Francisco in the Southern District of California on the twenty fourth day of September A. D. 1857.

Sworn to and subscribed before me,

Clerk.

Edward Hunter
U. S. Marshal.
By W. S. Shaw,
Deputy

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

Hon. Isaac S. K. Ogier Judge.

Appeal December Term 1856

The United States
Appellants
vs
Vicente Cane
Appellee

Docket No 41

Transcript from the Board of Land Commissioners No 123.

The Attorney General of the United States having given Notice that the Appeal to the Supreme Court from the decision of this Court in the above entitled Cause will not be prosecuted by the United States, And a Stipulation having been entered into by the United States District Attorney and the Attorneys of the Claimant that the Order granting an appeal to the Supreme Court heretofore made in this Cause be vacated, And that the decree of this Court heretofore rendered in this Cause may by order of the Court be made final it is.

Ordered adjudged and decreed That the Order granting an appeal to the Supreme Court heretofore made in this Cause be and the same is hereby vacated, And that the Claimants have

leave to proceed under the decree of this Court heretofore rendered in this cause as under a final decree.

Geo. W. Ogden
U. S. Dist. Judge

U. S. Circuit Court
South'n Dist. of Cal'a
No. 41

The United States
Appellants
vs
Vicente Cace
Appellee

Order
vacating Appeal

Filed Feb. 3rd 1857
Geo. Pen
Clk

41 SD
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California Land Claims.

Attorney General's Office

10 September 1856

Sir:

In the case of the claim of Vicente Lane, confirmed to the claimant by the Commissioners, Case no. one hundred and twenty-three, (123) 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

Cushing

Pacificus Ord Esq.

U. S. Atty for the

Southern Dist. of California.

41.

icente Cane

123

Oct 21 1836

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

Hon Isaac S K Ogier Judge

December Term 1856

The United States
Appellants
vs
Vicente Cané
Appellee

Docket No 41

Transcript from the Board of Land Commissioners No 123

In pursuance of a letter from the Attorney General of the United States herewith annexed, giving Notice that in the above Cause the appeal in the Supreme Court will Not be prosecuted by the United States; It is hereby stipulated and agreed by and between the parties that the order granting an appeal to the Supreme Court made in the above Cause be vacated, And that the Decree of the Court heretofore rendered in this Cause may by order of the Court be made final

P. Ord Dist Atty.

Hallecks Peck & Billings
Attys of Appellee

U.S. Dist Court
South'n Dist Cal'a
No 41

The United States
Appellant
vs
Vicente Carré
Appellee

Stipulation
to vacate order of
Appeal to Supreme Court

Filed this 5th February
1857 E. Sims Clk
J. H. Coleman
Dep

41 SD
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Office of the Surveyor General of the United States,
FOR CALIFORNIA.

I, J. W. MANDEVILLE, United States Surveyor General, for the State of California, do hereby certify that the Rancho "San Bernardo"

confirmed to Vicente Cane

has been surveyed by this office, and that the survey and plat was approved by the U. S. Surveyor General, on the 19th day of October 1858. ; that I have caused to be published, once a week, for four weeks successively, in two newspapers, to wit: the Santa Barbara Gazette published in the County of Santa Barbara, State of Calⁿ, being the newspaper published nearest to where the said Rancho is located, the first publication being on the 27th day of September 1860, and the last, on the 18th day of October 1860; also, in the Los Angeles Star, a newspaper published in the City and County of Los Angeles, State aforesaid the first publication being on the 29th day of September 1860, and the last on the 20th day of October 1860, a notice that the said land had been surveyed, and a plat made thereof, and the survey and plat approved by me. And I do further certify, that the said survey and plat were retained in my office during all of said four weeks, and until the expiration thereof, subject to inspection; and I further certify, that no order for the return thereof to the U. S. District Court, has been served upon me.

(L.S.)

In Testimony Whereof, I have hereunto signed my name officially, and caused my Seal of office to be affixed, at the City of San Francisco, this 22nd day of January 1861.

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

U. S. Sur Genᵗˡ Office
San Francisco December 18th 1863

I hereby certify the above to be a true full & correct copy

C. F. Beale
U. S. Sur Genl

No 41

U S Dist Court
South Dist Ala

Vicente Cano
vs
The United States

Certificate of Division

Filed Dec 20/68
J M Wheeler
Clk