CASE NO.
147

SOUTHERN DISTRICT

TOPANGO MALIBU VC GRANT

LEON V. PRUDHOMME

CLAIMANT

Land Case # 147
S.D.

Southern Barbarians

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 483

Leon V. Prud'homme CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Topanga, Malibu" &c.

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* twelfth day of November *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 Leon V. Prudhomme, *for the Place named* "Topanga, Malibu &c," *was presented, and ordered to be filed and docketed with No.* 483, *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, November 13th 1852.

In Case No. 483, Leon V. Prudhomme for the place named "Topanga &c," the deposition of José Antonio Carrillo, a witness in behalf of the Claimant, taken before Commissioner Hiland Hall, with documents marked H. H. No. 1, 2, & 3, and translations thereof marked annexed thereto, was filed;

(Vide page 5 of this Transcript)

In the same Case the deposition of Juan Moreno, a witness in behalf of the Claimant, taken before Commissioner Hiland Hall, was filed;

(Vide page 4 of this Transcript)

Los Angeles, November 15th 1852.

In the same Case the deposition of Ramon Ybarra, a witness in behalf of the Claimant, taken before Commissioner Hiram Hall, was filed:

(Vide page 6 of this Transcript.)

In the same Case the deposition of Antonio Valdez, a witness in behalf of the Claimant, taken before Commissioner Hiram Hall, was filed:

(Vide page 7 of this Transcript.)

San Francisco, October 31st 1853.

Case no. 483 was submitted on Briefs and taken under advisement by the Board.

San Francisco, March 21st 1854.

In the same Case Commissioner Alpheus Felch delivered the opinion of the Majority of the Board rejecting the Claim:

(Vide page 32 of this Transcript.)

In the same Case Commissioner R. Aug. Thompson delivered his dissenting opinion:

(Vide page 35 of this Transcript.)

San Francisco, Aug. 15th 1854.

In the same Case, on motion of the United States Law Agent, the following Order was made, to wit:

(Vide page 35 of this Transcript.)

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Petition

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To the Honorable
The United States
Commissioners for ascertaining and settling
private land claims in California —
Your petitioner Leon Victor
Prudhomme resident of the County of Los
Angeles and State of California respectfully
represents, That he claims to own in fee
simple of the lands situate in the County of
Los Angeles and known by the name of Topanga
Malibu, Sumo, Sequit", That said lands
were granted in fee as Your petitioner is infor=
med and believes by one Arillaga (whose
Christian name is unknown to your petitioner)
who was Governor of the Californias and as such
fully empowered in the premises to José
Bartolomo Tapia about the year 1804. But the
document conferring the said grant is lost.
In the year 1805 the said Governor ordered
said Grantee to be put into peaceable possession
of said lands by the Commandant of the
Garrison at Santa Barbara. From which
date the said Grantee or his legal representatives
have been in quiet and undisturbed occu=
pation thereof. That the said Tapia died
about the year 1828 and by his last will and
testament left the said lands to his widow
Maria Francisca Marcela Villalobos who
sold the same to Your petitioner by deed of con=
veyance dated January 24th A.D. 1848. Said
lands are bounded by the South by the Sea
North by a range of Mountains, East by the
creek of Topanga and West by the Canada
de las Encinas, & contain three leagues more or
less natural boundaries —

Your petitioner relies upon the
following documentary Evidence filed herewith
to support his claim. 1st Copy of a petition and
decree marked A. accompanied by a translation
marked B. 2d And such other documentary
& parol Evidence as may be thought necessary
And he states there is no interfering claim
that the lands have not been surveyed by the
United States Surveyor General for California.
Your petitioner prays for confirmation

of his Claim and as in duty bound &c.
Scott & Sanger
Attys for Petitioner

Nov. 12th 1852.
Filed in Office Nov 12th 1852.
(Signed) Geo Fisher Secy.

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Deposition of Juan Moreno

Los Angeles Nov 13th 1852.
On this day before Comr Roland Hall came Juan Moreno a witness in behalf of the Claimant. Leon Pandhomme interpreter No 283, and was duly sworn his Evidence being interpreted by the Secretary.
The U. S. Associate Law Agent was present.

In answer to Enquiries by Counsel for the Claimant the witness testified as follows.
My name Juan Moreno my age is Seventy four years & I resided in Los Angeles I am a native of this place.
I knew Jose Bartolome Tapia. I first knew him in this place many years ago probably fifty - He lived on the place called Malaga, on the Sea Coast. I cannot tell the distance. He lived there about fifty years ago. I cannot tell how long he was there. He had stock there. He had a cabin there - He occupied the land during his life time & afterwards his children occupied it. He had a thousand head of cattle or more & a number of horses. I knew Pio Pico Zuniga. He had a rancho which is the land the Machadas now occupy - I knew of a dispute between Zuniga & Tapia about the rancho Malaga, but Tapia kept it -

his
Juan + Moreno
mark

Sworn & Subscribed
before me
Roland Hall Comr.
Filed in Office Nov 13. 1852.
(Signed) Geo Fisher Secy.

Deposition of Jose Antonio Carrillo

Las Angeles Nov 13th 1852.

On this day before Comr Hollands Hall came Jose Antonio Carrillo a witness in behalf of the Claimant Leon V. Prudhomme petition No 183 and was duly sworn his evidence being given in Spanish was interpreted by the Secretary.

The U.S. Associate Law Agent was present.

In answer to Enquiries by Counsel for the Claimant the witness testified as follows –

My name is Jose Antonio Carrillo My age is fifty seven years & I resided in Las Angeles.

A paper is now shown me purporting to be a petition of Jose Bartolomo Tapia with a decree thereon dated 12th July 1845. I am acquainted with the signatures of Jose Joaquin Arellaga & Jose Bartolomo Tapia

The signature of Arellaga & that of said Tapia on said paper I believe to be their genuine signatures. Said Arellaga was at the date of said decree governor of both the Californias. Said paper is here annexed & marked H. H. No 1.

A paper is now shown me purporting to be a conveyance from the widow of said Tapia to Leon Victor Prudhomme dated 24 of Jany 1848.

I am acquainted with the signatures of Stephen C Foster & believe his signature to said paper to be genuine. He was an acting Justice of the Peace at the date of said paper – It is here annexed & marked H. H. No 2. The persons named in said paper were the children & heirs of said Tapia –

A paper is now shown me purporting to be the last will & testament of Jose B Tapia dated April 18. 1824. The signatures of said Tapia to said testament & also those of Guillermo Cortes, Jose Palomares, Pedrincio Tapia, Jose Antonio Tapia & Antonio M Ocio – I believe to be genuine. I am acquainted

with their Signatures. My own genuine Signature is also found in two places on said paper. They were placed there at the time they purport to have been. - I was at the time acting as Alcalde as stated in said paper. Said paper is here annexed & marked H.H. No 3.

I was never at the Rancho.

Jose Ant. Carrillo

Sworn & Subscribed
Before me
Hiland Hall, Comr.

Filed in Office Nov 13. 1852.
(Signd) Geo Fisher Secy.

Deposition of Ramon Sierra

Los Angeles Nov. 15th 1852.

On this day before Comr Hiland Hall came Ramon Sierra a witness in behalf of the Claimant Leon V Prudhomme petition No 183 and was duly sworn his evidence being interpreted by the Secretary.

The U. S. Associate Law Agent was present.

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

My name is Ramon Sierra. My age is thirty four & I reside in Los Angeles.

I know the Rancho called Malibu & have known it for upwards of twenty years, when I first knew it, it was occupied by Battalo Tapia. It extends from Topanga to the Cañada called Leyjas. It borders on the Sea Coast.

Ramon his mark Sierra.

Sworn & Subscribed
Before me
Hiland Hall Comr.

Filed in Office Nov 15 1852.
(Signd) Geo Fisher Secy.

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Los Angeles Nov 15th 1852.

Deposition of Anto Valdez

On this day before Comr Heland Hall Came Antonio Valdez a witness in behalf of the Claimants Leon & Prudhomme, Petition No 183. and was duly sworn his evidence being interpreted by the Secretary.

The U. S. Associate Law Agent was present.

In answer to Enquiries by Counsel for the Claimant the witness testified as follows.

My name is Antonio Valdez My age is Seventy years & I reside in Los Angeles.

I know the Rancho called Malaga for the last fifty years. when I first knew it Bartolo Tapia occupied it & he continued to occupy it until his death. when his Son Tiburcio occupied during his life time.

Afterwards his relatives occupied it & it is now occupied by Leon Victor Prudhomme.

It is bound seven or Eight Years since Tiburcio died. The land is four or six leagues from this place in a westerly direction. The land is on the Sea Coast.

his
Antonio x Valdez
mark

Sworn & Subscribed
Before me
Heland Hall Comr.

Filed in Office Nov 15th 1852.
Secnd,
Geo. Fisher Secy

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Sor. Gobernador.

José T. Bartolomé Lapia, vecino y residente en el Pueblo de la Reyna de los Angs con toda subordinacion quien
-ante representa á V.S. que habiendolo por orden superior de V.S. dado el parage de Lo Pango lto Matias Sueno jenis, el Señor Capitan Pardo y comandte del Presidio de Sta Barbara. Don Felipe de Guyelvina, para tener Loreto. 12 de Julio de 1805. – Al Comdte del Presidio de Sta Barbara pertenece á la decision de esta demanda el que se Cumplan - dante tuviese que meterse ni menos las años para la dejé Li perjudicar á nadie como ni que justifica posesion perjudiquen otros.

el que representa.

A mi Ruego.

La Piedad de V.S. se le confirio interinte en dos mismos terrenos menos mande el Sor. Dn Felipe se me diere hasta Señor Lejo Dos años y menos que el vecino Ro quinto Sunigo ha echado o cuanto Desocupase el sitio para tener sus bienes, hizo oyda humildes superari aun el Señor teniente Comandte Ahidental del Sta Barbara Dn Flores, Raymondo Carrillo se me dijase solo. Habiendose obedecido la orden expuesta como dejo dicho se presenta el mencionado Sunigo, al repetido Comandte Dn Raymondo informando que para bien es la que tengo del Sor. Dn Felipe subsista en mi referido parage, desocupando lo con una decial para mi mesta y aun balidose de ser tenido dicho sitio otros nombres que como hace constar muy indifferentes que los vidos de aquel parage ablan; pues segun otros informado Sor Gobern -ador en tenga de las Indias de San Gabriel, como igualm -ente tambien expuso estar retirado del sitio que se me confiero, alguna dha Dunyte Sunigo se le dice la hez cuzamos. Su Constante Señor yo no hay otro parage pr este rumbo, si aves el sitio sus alinegue se me tiene concedido, como pueden decir hominues

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comisionados interesan y aun al que solicita como las vemos de este puesto como quiera el señor Gob^or que tuvo queri-mente al Señor Don Felipe para que las le haciendo hacer esta humilde peticion, lo que no haria sino la hiciera por los motivos que expresa, haciendo presente a V.S. no poder sufrir el Gravisimo Daño que me resulta con las testigos de dho. Zuniga por donde se ve precisado de ocurrir (ocurrir) á la Justificacion de V.S. para que me oiga desde Justicia se digne conferirme dho. sitio en los terminos que le sean piedad de V.S. se digne concederme ausiliariamente siempre que V.S. determine dará constancia se le mutatoto lo que pregunto Zuniga expuso á V.S. en un memorial que presentó afin de que se le diese el mencionado parage solicitado por el Juez aun Diego que por la misma licencia que tenia del Sor. Don Felipe habia mandado cupar sus sementeras y echar el Ganado á las Legumbres para que subsisten como subsistir no la que Justicia de V.S. determine de cuya Gracia recibirá bien y merced.

Pueblo de las Angeles. 16 de Abril de 1845.

José Bartolomé Tapia.

Filed in office. Nov. 13th. 1852.

Geo. Fisher.
Secy.

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Translation of Doc N.N. 108.

Mr Governor.

Josef Bartolome Tapia a citizen and resident of the Town of the Queen of Los Angeles humbly represents to V.E. That by Your superorder Captain Graciano and Commandant of the Garrison of Santa Barbara Don Felipe de Goycochea having granted to him the place called "Topanga Malibu Sumo. Sequit." that he might keep there his growing stock which with so much trouble he has acquired for the benefit of his family. He succeeded in having the same given him and even asked that he might be alone and separate, so that no neighbor might be interfered with, much less to injure anybody lest others may not injure me.

V.E. Kindly confirmed it on him provisionally in those same terms. But Don Felipe ordered that it should be given me. Now Sir. This about two years and some months that the neighbor Progdinto Sainiga has brought there his wagons and tame horses. And having gone to have the tract desoccupied so as not to have there his stock as soon as my humble Supplication was heard the Lieutenant accidental Commandant of Santa Barbara. Don Josef Raymondo Carillo gave order that he should leave me alone.

The expressed order having been obeyed the said Sainiga presented himself before the aforesaid Commandant Don Raymundo informing him that by license which he had from Sr Don Felipe he lived on my place refused to thus occupying it with a wagon & cattle and even assuming himself of saying that said tract had other names. that it appeared the Indians of that place called it Sainq indifferently. But as I am informed Mr Governor it is the language of the Indians of San Gabriel as it has been also stated that the place which said Progdinto Sainiga said to have been given to him is separate from the one granted me -

It is evident Sir that there is no other place in this distinction but the aforesaid one which was granted me, as the preceding Commissioners themselves can say and even he who lives there as well as the neighbors of this Town can say. however. Mr Governor. I had to reclamit of

Mr. Don Filipe and with his advise I make this humble petition which I had not made until now but for the reasons I state, and I represent to Your E, that I cannot suffer the severe damage which results to me from the sons of the said Sunga wherefore I saw it was necessary to rely upon the sense of Justice of Your Honor that by means of Your Justice the said tract may be confirmed on me in the same terms in which Your Excellency had previously granted it to me,

Whenever Your E requests it I will make proof to be informed all which Proquinto Sunga explained to Your E in a memorial which he presented in order that the aforesaid place solicited by him might be given him for he even said that by the same licence which he had from Mr Don Filipe he had ordered to drive his stallions and to put a Jackass to the mares that they might subsist as they now subsist and until the Justice of Your Honor determines the matter.

Therefore I ask and pray Your E will decree as I have asked and that I shall receive of Your Grace. Good and mercy.

Town of Los Angeles 16th of April 1845

(Signed) José Bartolomé Pico

(Endorsed)

Loretto 12th of July 1845.

To the Commandant of the Garrison of Santa Barbara belongs the decision of this demand and that his orders may be complied with in order that he who makes representation may be left in peaceable possession thereof.

Amelaga

I hereby certify that the foregoing is a true and correct translation.

Office of the Secretary of the U. S. Land Commission &c. San Francisco March 4th 1854.

Geo Fisher Secy

Filed in Office Nov 12 1852.

(Signed) Geo Fisher Secy

1st copy.
case 583. 95 Jun. 6. 90

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En la ciudad de los Angeles de la Alta California á los veinte y cuatro dias del mes de Enero de mil ochocientos cuarenta y ocho ante mi Stephen C. Foster, Alcalde primero y Juez de Primera Instancia y por ante mi testigos de asistencia los quienes actuo por receptoria, compareció Doña Maria Francisca Mariana Vilaboles en union de sus hijos Doña Tomasa Fernandez, Don José Antonio y León Victor Prudhomme, Depositario Interino de los intereses de su finado hijo Don Eusebio Tapia, todos de esta Ciudad y dijo la primera que en virtud de la representacion echa por su finado esposo José Bartolomé Tapia el dia diez y seis de Abril del año de mil ochocientos y cinco, del Señor Gobernador de Loreto y del decreto del mismo Gobernador del dia doce de Julio del año de mil ochocientos y cinco; Señor Dueño de los parages que se llaman Tampongo, Malibú, Sostenio Sumo y Siguis; tambien en virtud del testamento, testamento de su finado esposo ocho dia diez y ocho de Abril del año de mil ochocientos veinte y veinte y cuatro que me ha dado para su acto testamentario el sitio llamado ó conocido por el nombre de Malibú tambien el ganado que se hallaba aqui que por si ya á nombre de sus herederos, sucesores y de quien ellos tubiere habidos voz y causa en cualquiera manera vende y da en venta real y enagenacion perpetua por juro de heredad al Señor Don León Victor Prudhomme el sitio del Rancho que me dejo mi finado esposo en su testamento y el Ganado que se halla en el dicho rancho con el fierro del mismo finado; y segun la referida representacion los parages siguientes que son Topanga, Malibu Sostenio Sumo y Siguis de las cuatro tomó posesion á la execucion del decreto del Señor Gobernador del año de mil ochocientos y cinco, el mencionado sitio recibi y tiene por linderos al Norte la Sierra nuevas al Sur la mar ó Oceano ó pacifico, al Este el rancho de Santa Maria que se juntan las aguas á la Cañada de Topanga y al Oeste la Cañada hacia dichas nuevas de Buenaventura, siendo la venta en la cantidad de

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cuatro cientos pesos estando la justo precio, de las cuales
ochocientos pesos seran pagados en metalicos en otros plazos
primero ciento pesos el primero de Mayo y el otro ciento al
primero del mes de Junio y los otros cuatro cientos pesos
en efectos al primer de precio corriente los cuales recibi á
su entera satisfacion y pasaná a su poder real y efectivamente
y para la constancia y legalidad de lo recto obliga el otorg-
-ante su persona, bienes, habidos y por haber y renunciando
las privilegios que como reunion lo puedan emparar. Sumet-
-andose á las leyes y Jueces de la nacion para que la cons-
-pelan á su cumplimiento; cuyo testimonio asi lo otorgo
y no firmó por no saber, asi lo otorga con los de mi
asistencia segun derecho. No haber papel sellado
y se sirve del comun las palabras entrenglones primero
y segundo que son veinte cuatro, fueron escritos antes de
firmar este Instrumento, tambien las palabras entre
el ultimo renglon de foja siguiente cuando de los testigos
vale. Stephen C. Foster. Alcalde 1° y Juez de Paz de la
Instancia al. Camilo Lopez = Francisco Gallardo. Ruego
de Dona Fran^ca Lapia por no saber firmar. Camilo
Lopez. = Ruego de Dona Fernanda Lapia para saber
lo hacer lo hizo á su nombre. Jose Vicente Guerrero.
Ger. Antonio Lapia.

Filed in Office. Nov. 18th. 1852.

Ed. Fisher.

Secy.

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Translation of Doc. A.A. No 2

At the City of Las Angeles in Upper California on the twenty fourth day of the month of January of the year One thousand Eight hundred and forty Eight Doña Maria Francisca Mauricia Velez Lobas in union with her Children, Doña Tomasa, Doña Fernanda, Don José Ant. and Leon Victor Prudhomme. Depositing administration of the Estate of her deceased son Don Joaquin Tapia, all of this place appeared before me Stephen Foster 1st Alcalde & Judge of the 1st Instance & by assisting witnesses & the first declared that by virtue of the Representation made on the Seventh of April of the year One thousand Eight hundred and five by her deceased husband Don José Bartolomé Tapia to the Señor Governor of Loreto and of the Diego of the said Governor on the twelfth day of July of the year One thousand Eight hundred and five they is the owners of the places which are called Topanga Malibu, Lastomo, Sumo and Legaris. Also by virtue of the will of her deceased husband made on the Eighteenth day of April of the year One thousand Eight hundred and twenty four that he has given to her by testamentary act the place called or known by the name of Maligo. Also the Stock which has thereon. That for himself and in the name of her heirs and successors and of whomsoever of them might have title, cause in any manner whatsoever, She does sell and gives in actual sale and perpetual alienation by right of inheritance to Señor Don Leon Victor Prudhomme the said Rancho which her deceased husband left to her in his will and also the Stock which exists on the said Rancho with the Crome of the said deceased and according to said representation the following places which are Topanga, Malibu, Lastomo, Sumo and Legaris whereof he took possession upon the receipt of the Diego of the Señor Governor of Loreto in the Year One thousand Eight hundred and five. The said place is bounded on the

North, by the Sierra Mayor on the South by the Sea or Pacific Ocean on the East by the Ranchos of Santa Monica, that the two intersect each other at the Canada de Topanga and on the West by the Boca del Rio de San Buenaventura or Canada de las Encinas, the said being for the sum of Four thousand Hundred dollars which is its just value of which sum Two Hundred dollars will be paid in Metallic Currency in two installments, first one Hundred dollars, on the first of March and the remaining hundred dollars on the last day of the month of May and the remaining two hundred dollars in goods at the current prices thereof, which she receives to her entire satisfaction and have been newly and effectively delivered to her, and for the evidence and legality of the sale, she binds her person and her present and future property renouncing the privileges which may protect her as a Widow, submitting herself to the Laws and Judges of this nation for them to compel her to the fulfilment thereof. In testimony whereof she thus declared it and did not sign it because she does not know how to write, and thus I with the assisting witness dictated it according to law.

There being no stamped paper, common is used.

Note – The words "twenty four" between the 1st and 2d lines were written before the signing of this instrument also the words "Canada de las Encinas" between the last line on the 2d page and the 1st line on the 3d page are valid.

(signed) Stephen C Foster
1st Alcalde and Judge of
the 1st instance.

Asst Witns.
(Signed) Casimiro Laras
Francisco Ballestro.
At the solicitation of Dona Fernanda Tapia
not knowing how to write it was signed in her
name by

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(Signed) Jose Vicente Geano
(Signed) José Antonio Tapia.

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I George Fisher Secretary to the U. S Land Commission to ascertain and settle the Private Land claims in the State of California hereby certify that the foregoing is a true and correct and faithful translation of a Spanish Document in Case No 483 wherein Leon V Prudhomme claims the places called Topanga, Malibo &c now on file in this Office —

In testimony whereof I have hereunto signed my name. Office of the Secretary of the Board Land Commission — San Francisco this 10th day of March A.D. 1852.
(Signed) Geo Fisher Secy.

Filed in Office Nov 13th 1852.
(Signed) Geo Fisher Secy.

Testamento del finado Bartolomé Lapia.

En el nombre de Dios, todo poderoso y de la Siempre Virgen María N.S. se pase por esta Carta como yo Bartolomé Lapia, natural de la Villa de Cubiñas y cabo de artillería que fué del real Presidio de San Diego y vecino en el Pueblo de los Angeles, llamandose Confesmo en cama por estar sano juicio y memoria, natural y despesado del enfermedad crehiendo como fiel mente, creo en el misterio de la Santa Trinidad, Padre, Hijo y Espiritu Santo, tres personas distintas y un solo Dios verdadero llen todo lo demas que cree y confiesa la Santa Sta Yglesia R. A. B. en cuya fee he bivido y protesto vivir y morir. Teniendome de la muerte que es Casa natural y deseando salbar mi alma, otorgo mi testamento en la forma siguiente. Primermante mando y encomiendo mi alma á Dios nuestro Señor que la creó con la mas barata precio de su precioso sangre y bapticó de la Magestad su Hebo con lijo es gozar de su gloria para que Ousado y en mismo mando á la tierra que guardó Dios ntro Señor fuere sabido llebanme dho pesente cuerpo sea sepultado en donde los R. R. P. P. Ministros de la Mision de San Gabriel gustare item. Declaro que debo á la Mision de San Gabriel treinta ps. y es el pa perpetuando Dios que mas no es lo cual pd. Item. Declaro que se debe al Sr José María Salbidu, ochenta ps y tres libras de azucar, quero el precio es todo que quanto tubo á los mismos habitaciones y demas de mis posesiones. Item declaro que este se pague lo mejor esto que obiere con mi Casa y del dinero que oy en la deliberacion de San Diego que son mas de Dos mil pesos para que sea mejor lo que obiere el Sor Don Capitan Dn Francisco María Ruyes hel del Sr D. Santiago Argüello porque ambos Señores tienen vistos mis mentas. Debe Lescuta ochenta pesos. Item. Declaro que el S. Antonio María Ortega aquedaba con migo al pagarme pr su difunto pre lo que se lo ha Sabiendo. Item. Declaro que el Sr Alferes Zelgado me debe diez y ocho pesos en rrs. Son 12 ps. Item

Declaro que Peña me debe quatro pesos. Item. Declaro que el Soldado Chaseas Obando me deve 3 pesos. Item. Declaro que Sabatita me debe quince pesos. Item. Declaro mayor Ciento Cincuenta Cabezas de todo calibre llaguanas mas que aj as de otro Caballos ocho. Condu Cajonera para la una legua menos con Con catorce Mulas todas de media leda ajaulas legate y Cuatro y demidos dos Lazuetas de rs. quatro maitres de ganoche Veinte Guichas Surparia hn gana, un alambique un caro de chiquito de Coluio, dos pijas tres barriles de quatro ochos de Cuchillas dos ciento un guarnicio de plata un caro de hierro dos mil balas de aclaguer hueras una Acero blanco, una Carretta un par de Cuchorritas, dos barras i cuatro azolones dos pires dos puertas dos sellos de matar i cabuyo, Siete casas con sus llaves una pezebrera Santida un Santo Cristo, tiene Santas, dos hasguenas sus dos. tres machetes dos uno, pudradas una Sierrita de mano quatro puntos descansado tres Ilantos de bueyes mansos, Dos Sarchas Ten nastillas, una picadera un molino de mulas, quatro mil pesos, quatro peroles dos mañanas Sierra que Sabira pow dole boneras un par de Venosos dos con pasacaua ganados un mulino, arrando media arroba de clavos una media fanega de medir quatro docenas de cepas quatro docenas medianas y hasas sus limites de lindero tres metates una casa y tres Cuahos. Item Declaró gabier me deni tres Ciento pesos. Declaro me deve Ant-onio Orriones, una maquina Sehu y gis mucho mano de otro malvis lo cual aut. Item. Declaro que me Sere Sico ps de un de par Lotes. Declaro que me debe Bacio Pari de que quedo Deudor me por Antonio Ignacio A. Bs la el año de 1823. Item. declaro que por la extension de la que tolanó cada uno de los erederos mano de cabi José Liborio Lapia mi legitimo mujer Francisca Mariana Lito lo que ni medi alguno porque es mano en entrejo ante los presentes estas Cantidades que esto con estos terminos de que doy apareces dejo à tomure à dos Casas Cuatro i la madre, Cien Caballos decimos.

cien ganados de diez bacas bueyes con llegan á la cuadra
ó aun con ganado de todo lo demas de lo que campo
y puertas ó Dentro de casa en cuanto al dinero que cuadre
en sus obligaciones, mil cuatrocientos ocho las en manos y
de mil que quedan despues en Dios resultará mas de otra
Sitio ó Ht.s que digo tomenan la asta el completo de
cientos pesos y ademas con lo que es tocado á tu cuadre
las otras dos cuentas pa atendiendome pa las mi cosas para bien
de mi alma. en mis as. Ruego y mando qualquiera testamento
que antes de esto ahora echo pues quien quiera no valga este
por ser a ser mi ultima voluntad en testimonio lo firmo.
Yo José Lopez. oy a la de la fecha quince de Abril de
1824. A Ruego del Presente. Vecino. Lopez. no firmar
ou- bulna para no saber firmar este cuerpo. Puesto el
obligado que cuando. Hem. Declaro que a cio mi voluntad
que á mi esposa le quiere para que lo mantuviera libre
con la tierra de Diembre le de Donde estar Labrado este
la Sauco del Difunto Mariano Rodrigas para el largo
de su bina el alambique del caro y Dos llantas de bueyes
y dos pipas y tres barriles que Don las Santas todo Son
para mi tierra el molino y la casa. Bartolome Lopez.
y el Sitio de Ganado. todo es de dicha Muger Religioso
el Jnfrancisco Ser escrito todo lo expresado en este
testamento. Puebla de Hta Sria de la Reina de los
Angl. 18 de abril de 1824.

Guillermo Cota.

Jnventario de los Muebles de mi finado hablo. A saber.
1. alambique. 1. caro grande. 1 caro de Casuco. 2 pipas. 1 fogo
una armada. y la otra de Sauco. 3 barriles. 2 hochas.
2. hachetas de Sauta. 1 fable gurbado. 1 hurga. 3 cuchillos.
2. azargas. 1 cuerda blanca. 1. Cachetera. 1. Catrito. 2.
Varras. 1. asadores. 2 panes despuedas. 1 Silla de montar
á caballo de hombre. 1. de Muger. 5. carras. 1. papelera.
1. A.S. Santo Cristo. 200 balas. y Sautas. 1 francisco.
Santiola. 1 idem. con 8 frascos. 1 petaca de cuero

1 de Zapatería toda de novada. 2. Mochetes. alemanos
2. pavlazadas. 3 Escopetas. - 1. Perucho. 1 Lierrita alemana
3 Ventas de bueyes. 1. Martillo. 1 Labuelta. 1. Pirámida
1. Molinis 12. Barrenas. 1. par de tenazas 1. Campana hizo.
1. Molenizones. Nadie de Labor. 1 Cuchilla fuerza - 2 Copas
1. limeritas. 2 Arbolitas. 24. agarrazas. 2 Ventas de
quinzoche. 19. Sacchas. 6 cejaradas nuevas Las llenas.
3 Casas. 1 pistonete 1 gallopa. 1. Lepis. 2. Sengetas.
1. Mulas con caponera. 36. yeguas. 7. Caballos con
su caponera.

Pueblo de los Angeles. 8 de Octubre de 1828. Ebarcio Lapia.
José Antonio Carillo, Alcalde Constitucional del Pueblo
de los Angeles en la alta California. Certifico que las
herederos del finado Bartolomé Lapia han quedado
conforme con el antecedente Inventario que hoy ha
presentado el Alvacea. Ebarcio Lapia. Pueblo de
Los Angeles 8 de Abril de 1828 José Ant.º Carillo.

En el Pueblo de los Angeles del 8
de Abril del 1828. El Alcalde Constitucional Cuiº José
Antonio Carillo asociado de los Ayuntamiento pasó á la
casa del Ciudº Ebarcio Lapia esposo hijo como Albacea
legítimo que es del finado Bartolomé Lapia, con
el fin de concluir la cuenta testamentaria, que al fin
otorgado otro finado y al efecto hizo comparecer
á los herederos funzanes antes quienes hizo en voz alta
el testamento en todo, presentado juramento en el hizo
una que resultó ya las existencias que hay es decir
las ovejas que tiene Cabradas y el pago total de las
que dejó pertenecientes á para pagar el respectivo finado
y habiendo sido interrogados los herederos sobre
si tenían conformes con los elementos precisos que
presentó el Alvacea Comandº General que constan y con
acción de reclamo alguno. Inmediatº se procedió
á pasado de uno de los herederos la parte correspondiente
de los intereses que resultaron después que no de hecha

la cuanto proceda del caso y pago las deudas que en este testamento constan de la operacion que demas con formalidades respectivas y herederos como lo acreditan las respectivas firmas que á continuacion se manifiestan, autorizando yo el suscrito Alcalde Constitucional de este pueblo haberse hecho en toda forma. Concluye, enseguida este legado del finado Bartolomé Lapiza, testificando el acto todo el Sthe. ciudadano del cual que al efecto comparece con las personas, y para las fincas que le han consecuentes á los interesados. firmé y para constar las personas y parentes en el antecedente documento que se pasó en papel comun por no haber del sellado. Duna una copia igual certificada en otra á estender y el original que da archivado en la Secretaría de este Juzgado. José Antonio Carrillo. Como Alcalde. Ceferino Lapiza. Como hijo y heredero. María Guadalupe Villa Lobos. Como heredero. Tomasa Lapiza. Como yo. María Fernando Lapiza. Como yo. José Antonio Lapiza Como testigo. de asistencia. Samuel Domínguez. Como yo. Estaban Lopez. Como yo Dereno Yorbala Como yo. Francisco. Sepulveda. Como Juan Bartolomé. Como Secretario. José Palomares.

Es copia fiel de su original de que certifico.

José Palomares.

Secretario.

En el Pueblo de Santa Maria de los Angeles de la California á los treinta y un dias del mes de Enero de mil ochocientos treinta y tres, el Alcalde Constitucional de dicho Pueblo, Ciudano José Antonio Carrillo, actuando por receptoría á falta de Escribano publico y con las testigos de asistencia Ciudano Antonio María Ortiz y Mariano Domínguez, pasó á la casa en que vivió y murió el testador Bartolomé Lapiza y con arreglo al respectivo testamento y leyes de la materia para proveer á su entierro y hizo saber á sus hijos mayores y primer alvacea se procedió á inventariar una viña ubicada y procedió á autorizar en este pueblo de la pertenencia de dicho

cuya escritura es la ultima de cuatro testamentaria y en efecto se convino la operacion en los terminos siguientes. En presencia de los herederos Liberio, Dionisio Lopez, Fernando y herencia Mª Villar. Cada una de la especulado venia de tres mil quinientos veinte y ocho pesos de buen fruto. 3.528.

Se saco la tercera parte de la especulado cantidad que corresponde á la viuda como se manifiesta en la venta siguiente.

1174.

Quedo Repartir. 2348

Siendo los herederos en el numero de quatro se to canon al primero Liberio Papia. 587.

Item A José Antonio Papia. 587.

Sta. 1174.

Suma de la Vuelta. 1174.

Item Tomasa Papia. 587.

Item. Fernando Papia. 587.

Suma. 2387.

Segun queda demostrada por la antecedente operacion correspondiente á la viuda Mª Villabos la cantidad de un mil ciento setenta y cuatro pesos y es cada uno de las quatro tres tantos herederos la de quinientos ochenta y siete cuyo resumen de tres mil quinientos veinte y ocho es igual al numero en que consiste la repetida misa y de la que se verificado este inventario y procedido quedando las partes quietas y conformes hice agregado el presente al inventario que con fha 8 de abril de 1828 ante el especulado alcalde Liberio Papia. Asi lo firmé y firmaron con migo los dos testigos asistentes y los interesados enterados en el parte, presente en el papel comun por no haberse mas que lo sello en la provincia.

José Ant.º Carrasco. Liberio Papia.

Fran.co de Mª Villabos. Antonio Mª Olivo.

José Antonio Papia. A ruego de Fernando Papia. por no saber escribir y

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José Antonio Navarro Geo. Jno. A. Navarro.
Mariano Domínguez.

Retired in office Nov. 13th 1852.

Geo. Fisher.

Secretary.

In the name of the Almighty God & of our Lady Our Virgin Mary.

Know ye by these presents that I Bartolome Pasico native of the Village of Calizon lately a Corporal of Artillery of the Royal Port of S^n Diego & resident in the Town of Los Angeles being sick & confined to bed but with my sound mind & memory & perfect understanding believing as I firmly do the mystery of the Most Holy Trinity, Father Son & the Holy Ghost, three distinct persons & one true God, as well as other mysteries which our Holy Mother the Roman Catholic & Apostolic Church believes & confesses in her faith I have lived & I protest to live & die in the same.

Apprehending death as natural & sure & being desirous to save my soul I do make my Testament in the following manner.

In the first place I commit my soul to God our Lord who created it an inestimable cost of his most precious blood, I pray him to let it attain salvation & enjoy his glory for which it was created & my corpse be sent to Earth of which it was formed.

Also I order that when it may please God our Lord to take my from this present life my corpse be buried where the Revd Fathers Ministers of the Mission of San Gabriel please.

And I declare that I am indebted to the Mission of S^n Diego in 300 dollars and if the Priest Fernando say that it is more it is as Priest says.

Also I declare that I am indebted to the Priest José Mariano Salbidea in 500 dollars & 3 p^a of sugar. I do not know what they are charged that is all I owe to the Missions, Paymasters (Habilitaciones) & my other neighbors.

Also I declare that this be paid with whatever valuable there may be in my house & out of the money existing in the possession of the Paymaster (habilitacion) of San Diego being upwards of Two Thousand Dollars but better let it go as Capt Don F^co Maria Ruis & Don Santiago Argüello may say for both of them

have seen my account.

Also I declare that Lieut. Don Joaquin Maritorna owes me 185 dollrs.

Also I declare that Corporal Antonio Marier Ortiga oweth to pay me for his tato of cattle what the tattle owed me.

Also declare that Lieut Delgado owes me 18 dolls. in reals - 4 is 12

Also I declare that Peña owes me 4 dolls.

Also I declare that priest Marco Osallo owes me 3 dollrs in reals.

Also Erpra owes me 2 dollrs.

Also Tatalta owes me 15 dollors.

Also regarding black cattle, upwards of 150 head of all kind existing on the place 8 horses & a bell mare with colt, a tamed mare & 14 mules all of half age, 20 harnesses & 4 already destroyed 2 sold leathers 4 blankets 20 disarranged girths. 1 steel 1 box of a hundred weight 1 do of like weight, 1 small cooking boiler. 2 pipes. 3 casks. 4 hatchets, 2 belt knives 1 cutlass set in silver. 1 lance, 3 pikes. 2000 bullets. 2 leather shields in good order 1 white leather jacket. 1 cartridge box, 1 pair of small pocket pistols. 2 iron crows 4 spades. 2 pairs of spurs. 2 common saddles. 9 chests with their keys. 1 writing desk 1 crucifix 13 saints images. 2 bottle cases. 1 travelling leather bag 1 do for shoemaking business. 3 chopping knives. 6 pruning do. 9 tucks. 3 chisels 1 hand saw 1 do 4 collars. 3 yoke of tanned oxen 2 sold leathers 1 hammer. 1 block (on which meat is chopped) 1 bell (turned by mules) 6000 pieces of club headed sticks 4 plantains. 2 apple trees a small piece of cattivado land. 12 lances 1 pair of pincers. 2 compasses 9 chamois leathers, 1 large grind stone. complete, about 12 pounds nails. 1 half fanega measure. 6 dz cups 12 do of medium size & vessels 1 large glass phial. three mats, 1 dwelling house with three rooms.

Also I declare that Gabriel Sosto owes me 36 dollrs in reals. which I paid

for him to the Priest Sandas in the year 1881.

Also I declare that Don Jose Antonio Angelo is indebted to me for a lot of timber which he pulled himself. Also I declare that Antonio Briones is indebted to me for 1 tamo riding the mule & I do he mule & this he has found.

Also I declare that he owes me 5 dolls for a pair of boots.

Also I declare that he is indebted to me for 1 cow with calf which he took from me for Ignacio Abeita in 1823.

Also I order that for better distribution of what appertains to each of my heirs Corporal Jose Tiburcio Papia my legitimate son & my legitimate wife Maria Francisca Maricia Bellalobo do forthwith examine and distribute amongst the heirs these few things herein mentioned but these terms that is out of the harnesses ten for four months, out of the chests 4 for four months, out of the horses 2 or 3 with a mare for four months out of the mules 3 or 4 with a mare for four months & if there is cattle out of them you shall give her five and so on in respect to my personal chattels with regard to the money which the king owes me as his paymasters out of it you shall distribute 1000 dollars amongst your brothers & sisters & the remaining 1000 with I trust in God it will much more than that for four months out of which you shall take the sum of 300 dollars inclusive of what may have appertained to you of the 1000 dollars so to be distributed. I request & enchorge for that out of what may appertain to you mother you shall give 50 Dollars to Francisco Josefa Rocha & I enchorge that both of you shall give 150 to the Missions that they may say masses for the benefit of my soul.

And I hereby annul & revoke any other testaments which I might have heretofore made for I do wish that this one be valid it being my last will.

In testimony I subscribe my name unto

Jose Bartolomo Papia

This 15th day of April 1821

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Witness. Don Ramon Paulsa
& not being able to sign he
made a mark of cross +.

At the request of
the Testator —
Mariano Tapia

P. S. — I having forgot it — Also I declare that it is my last will that the vineyard together with the sowed field shall remain to my wife for her subsistence & is from which it is excluded to the child of the late Mariano Tordinez & for that purpose the stills the boiler & two jupes & 3 casks shall remain there also the images of saints all shall be for my old woman, the mill & the house.

Bartolo Tapia

And the tract of land & cattle is of my said wife —

The undersigned hereby certifies to be true all & every the statements within instrument.

Town of our Lady the Queen of the Angels the 18th day of April 1844.

Guillermo Cotes.

— " —

Inventory of the personal chattels of my late Father.
viz —

1 Still.
1 Boiler
1 large do
1 cooking boiler
2 pipes 1 in order & the other in bad order.
3 casks
2 hatches
2 butt knives
1 cutlass
1 lance
3 pikes
2 leather shields
1 white leather jacket
1 cartridge box.
1 small pocket pistol
2 Iron crows.

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4 Spits
2 pairs of spurs
1 common saddle
1 side do
5 Chests
1 writing desk
1 crucifix
200 balls
9 saints images
1 Bottle Cask
1 do with 8 bottles
1 travelling leather bag
1 do for shoemaking tools
2 chopping knives
4 pruning do
3 Chisels
1 hand saw
1 do
3 yokes of oxen
1 hammer
1 block (on which meat is chopped)
1 mill
12 augers
1 pair of pincers
1 compass
1 large grind stone
12 pounds of nails
1 half fanega measure
4 ladles
2 cups
1 pail
2 mats
24 harnesses
4 blankets
19 girths
6 new harnesses
30 sickles
1 mazzlo
1 plane
2 guns
7 mules with a bell one
3600 pieces Club headed sticks
7 horses with a bell do.

Pueblo of Los Angeles April 8th 1828.

(290) Tibercio Tapia

I José Antonio Carrillo Constitutional Alcalde of the Pueblo of Los Angeles in the Upper California do hereby certify that the heirs of the late Bartolomé Tapia have agreed to the forgoing Inventory which the Executor Tiberio Tapia has this day produced.

Pueblo de las Angelis April 8. 1828

(Signed) José Antonio Carrillo

At the Pueblo of Los Angeles the 8th day of April 1828. I Citizen José Ant. Carrillo Constitutional Alcalde & Associate of the Ayuntamiento called at the house of Citizen Tiberio Tapia at his request as Executor of the late Bartolomé Tapia for the purpose of making a distribution pursuant to the Testament made by the said late B. T & consequently I caused the heirs apparent to be present before whom the said testament was read in viva voce. The Executor then produced an Inventory of the personal chattels in existence the debts collected & the full payment of all debts which the said B. T had left pending or to be paid & the heirs having been asked whether they were conformable with the vouchers presented by the Executor they replied in general that they were & without any objection.

Immediately the distribution proceeded & to each of the heirs the corresponding portion of the chattels was given after having made an Exact account of the collections & payments of the debts as specified in said Testament with which operation the said heirs were conformable as proved by their respective signatures at the foot hereof, & I as Constitutional Alcalde of this Town attest that the same was done according to law, whereupon the Expressed of the late B. Tapia Executed the actual Honorable Ayuntamiento testifying the second act & for the purpose they subscribe herewith their names and for the ends that may be convenient to the parties

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interested & signed & also the persons men-
tioned in the foregoing document which was
made on common paper there being no proper
stamped for this matter. A certified copy was
given to the said Executor the original remain
ing of record in the Office of the Secretary of this
Court — José Antonio Carrillo, as Executor
Ignacio Tapia, Com Executor & her Maria
Mainicia Villa Lobos, as heirs Tomasa Tapia
as heiress; Maria Simonda Tapia, as heir
José Antonio Tapia, as witness, Manuel
Domingo, as witness. Esteban Lobos, as wit-
ness Nicolas Olvera, as witness Francº
Sepulveda, as witness. Juan Ballobero, as
Secretary — José Palomares.

I Certify this to be a true copy.
José Palomares
Secretary

At the Town of our Lady of the Angels
Upper California, on the 31 day of the Month
of January 1833. I the Constitutional Alcalde
of so Town, Citizen José Antonio Carrillo acting
by Commission for want of a Notary Public
together with the assistant witnesses Citizens
Antonio Maria Osio & Mariano Domingues called
at the Dwelling House where the testator Bartolo
Tapia lived & died & in accordance with the
testament & laws on the subject at the request
of the first Alcalde son & Executor proceeded to make
an inventory of a vineyard situated in this
Town pertaining to the deceased which vineyard
is mentioned in the last clause of the testament
The operation was made in the following
manner & in the presence of the heirs Ignacio
José Antonio, Tomasa Fernandez & the widow
Ma Villalobos —

The said vineyard consists of three thousand five hundred & twenty two good stocks — 3522

One third was deducted from the 2d number as pertaining to the widow — 1174

To be divided as following — 2348

The heirs being four in number
there appertained to the first Ty 5.87
Do Josi Antonio Tapia 5.87
11.74
Do to Tomasia Tapia 587
Do to Fernando Tapia 587
Total 23.48

According to the foregoing division there appertained to the Widow Ma Villalobo the number of one thousand one hundred & twenty four stocks & to each of the four other heirs five hundred & eighty seven & the total number of three thousand five hundred & twenty two is equal to the number of which the said vineyard consisted.

And this Inventory & partition having thus been done the parties were satisfied & conformable & caused this present document to be attached to the Inventory which the Executor Tiburcio Tapia produced bearing date the 8 day of April 1828. Thus & the witness & the parties interested subscribed our names hereunto. This being made on common paper there being no stamped paper in this Town.

Tiburcio Tapia
Josi Antonio Tapia
at the request
of Fernandez Tapia
Jose Perez
Inocencio Dominguez +

Jose Anto Carillo
at the request of Ma
Villalobo Antonia Ma Osio
at the request of Ma Tomasia Tapia.
Juan B Alvarado
Anto Ma Osio.

Filed in Office
I Lyons Geo Fisher Secy

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Leon v Prudhomme
vs
The United States

For the place called "Topanga" Malibu, Simo Ri-goit "in" Los Angeles County, containing three Square leagues of land.

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Opinion

The petitioner claims a right to the land in question under a conveyance of the same made to him by the widow and heirs of Jose Bartolomo Tapia deceased on the 27th day of January 1848. The testimony shows occupation of the premises by Tapia in his life time and by his heirs and the present Claimant since his decease.

Two objections however are presented to a confirmation of the petitioners claim to the land both of which relate to the well title of Tapia and show a want of any interest in the premises in him which could be the subject of conveyance by him or his heirs to the claimant in this case.

First there is no grant proved in the case which could confer either a legal or equitable title to him. The Evidence relied upon for the proof of title is a petition made by said Tapia to the Governor of California and a marginal order or decree written thereon by the latter, Jose Joaquin Arrillaga. The former is dated April 16. 1805, and the latter July 12. in the same year. The petition is anomolous in its character and its precise object not easily gathered from its contents.

It represents however that the signer of it was in possession of the land under Don Felipe de Goycochea, Commandant of the garrison of Santa Barbara and that he was disturbed in that possession by one Sinega that he had applied to the Commandant ad interim who ordered that he should be left undisturbed that Sinega had then made his claim to the premises to the Commandant and afterwards petitioned the Governor for the land.

The petitioner does not state that he had any grant of the premises from the Governor

He claimed all his rights in the premises to have been derived from Don Filipe the Commandant of the garrison to whom he alleges that the premises were granted by the Governor provisionally. It is not very clear whether he intends to claim that the Governor had granted the land provisionally to Don Filipe and that the latter had as the proprietor given him some right to its occupation or whether it is intended to be alleged that the Governor had given to Don Filipe as Commandant some limited authority to give a provisional right to parties who desired to occupy specified portions of the National domain and that the alleged concession to him was of this character. It is perhaps not important to determine this matter. If Don Filipe was himself a grantee and held the land from the concession of the Governor and Tapia held under him the proof does not establish the fact for there is no evidence either of a concession to Don Filipe or that Tapia held under the latter. If it is claimed that the Commandant Don Filipe had authority from any source to concede either provisionally or otherwise the National domain the case then equally fails on the proofs for no grant or concession by him to said Tapia is proved.

The order of Governor Arellaga written on the margin of Tapia's petition is neither a grant nor a decree of concession. It is the answer that to the Commandante of the garrison of Santa Barbara belongs the decision of the demand made by Tapia and refers the matter to him for the execution of his own order to have the party in possession. I cannot understand this brief marginal note as containing a concession of the land or as creating any new rights in Tapia or as laying the foundation of a title to the premises and this is all the claimant has presented on which to rest his claim of a grant by the Government.

No application to any of the Mexican authorities appears to have been made and no recognition by any representative of the government

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of any right to the property in Papia as shown. The act of 1851 limits the power of this Commission to claims founded on some right or title derived from the Spanish or Mexican Government." The documents in this case do not show any such concession by authority of either as can bring the case within this rule. He has shown nothing emanating from either of these governments or any of their agents which gave any equitable claim to receive a legal title to the land.

Secondly — If the oral or decree of Amillaga above mentioned should be regarded as a concession or grant there are no sufficient boundaries or other discription of the premises given to define and segregate the land. The place is described in Papeles petition as that called "Topanga", Malibu, Lomas, Sigualo, but no discription, bounds, marks, monuments or quantity is stated either in the petition or the Governors order upon it. There is nothing in fact to locate, identify or define the limits of the granted premises and none of the testimony throws any aid in this respect.

For these reasons the application for a confirmation must be refused.

Rejected —

Filed in Office March 21. 1854.
(Signed) Geo Fisher
Secy.

Case No 2483.

Leon V Prudhomme
vs.
The United States

Dissenting Opinion

In this case I am not prepared to give my approval to the positions assumed or the principles affirmed by the majority of the Commission in the first proposition discussed in their opinion delivered this morning. I therefore reserve my opinion upon that point.

Upon the second question pertinent to wit the entire absence of any location description by which the said claimed could be identified or its boundaries ascertained there is in my opinion sufficient to justify the conclusion to which they have arrived in the rejection of the claim.

R. Aug. Thompson.

Filed in Office March 21. 1854.
(Signed)
Geo Fisher Secy.

Leon V Prudhomme
vs.
The United States

Decree

In this case on hearing the proofs and allegations it is adjudged by the Commission that the said claim of the petitioner is not valid and his application for a confirmation thereof is therefore denied.

Alpheus Felch
Thompson Campbell
R. Aug. Thompson
Commissioners

Filed in Office March 21 1854.
(Signed)
Geo Fisher Secy

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And it appearing to the satisfaction of this Board, that the land hereby adjudicated is situated in the Southern District of California it is hereby

Ordered, that two Transcripts of the proceedings and of the Decisions in this Case and of the papers and Evidence upon which the same are founded, be made out and duly certified by the Secretary, one of which Transcripts shall be filed with the Clerk of the United States District Court for the Southern District of California, and the other be transmitted to the Attorney General of the United States).

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 five pages, numbered from 1 to 35, 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 Witnesses, upon which the same is founded, on file in this Office in Case No. 483 on the Docket of the said Board, wherein Leon V. Prud'homme is the Claimant against the United States, for the place known by the name of "Topanga", "Malibu", &c.

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

Geo: Fisher.

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U. S. DISTRICT COURT,

South District of California.

No. 147. Docket

THE UNITED STATES,

S. D.

vs.

Leon V. Prudhomme.

Tojanga Malibu, etc.

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TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 483.

Filed, November 8th, 1854.

J. E. Carr
Clerk

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Clerks office of the District Court of the United States for the Southern District of California.

Whereas the Commissioners constituted for the purpose of ascertaining and settling private land claims in the State of California by the act of congress of the U. S. of America, approved on the 3d of March 1851, entitled: "An act to ascertain and settle the private land claims in the State of California," did on the twenty first of March eighteen hundred fifty four, by their decision of that date decide against the claim presented by the undersigned to the said Commissioners, which claim is for land lying in the said Southern District, and is Number Four hundred eighty three (483) on the docket of claims before said board — and the said claimant being desirous that the said District Court should review the said decision, — Now hereby files this notice in the said Clerks office of his intention to prosecute an appeal, as is provided by the 12th Section of an act entitled: "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30eth of June 1853, and for other purposes," which said act was approved on the 31s of August 1852.

Leon V. Prudhomme.
by E. O. Crosby
of Counsel.

To the Clerk of the U. S. District Court of the Southern District of California. 29th of March 1854.

No 147.

U. S. District Court
Southern District

No. 483.

Leon V. Prudhomme
Appellant
vs
The United States
Appellee.

Notice of Appeal.

No. 11.

Filed Apl. 1/54
A. S. Taylor
Clk

X 9.

E. Overley
of Counsel.

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

Leon V. Prudhomme, Appellant
vs.
The United States, Appellee

Case No. 147
Transcript 483
"Topanga, Malibu etc"

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

The petition of the above named Appellant Leon V. Prudhomme respectfully represents, that one Arrelaga, whose Christian name is unknown, being Governor of the Californias, and by virtue of the powers vested in him by law as such Governor, did, about the year 1804 grant unto Bartolome Tapia the lands known as "Topanga, Malibu, Sumo & Siguit", situate in the present County of Los Angeles & in the Southern District of the State of California more particularly described in the Petition filed by said Appellant before the United States Board of Land Commissioners to ascertain & settle the private land claims in California, and the papers thereupon had, and proceedings thereupon had, all of which are hereby made a part of his petition.

That at the time of said Grant the said Grantee entered into possession of said lands, and that from that

date until the present time said Grantee his heirs and successors have been in constant occupation and possession of the same.

Your petitioner further says that he filed before the aforesaid Commissioners while sitting as a Board, on the 12th day of November 1852, his petition praying for a confirmation of the lands aforesaid to him, together with documentary evidence and the testimony of witnesses.

That afterwards to wit on the 21st March 1854 the said Board proceeded to decide on the said claim of Petitioner & rejected the same

That on the 8th November 1854 an appeal was taken from said decision of said Board, by the Secretary thereof filing in the Office of the Clerk of Your Hon. Court a certified transcript of the Record of the proceedings and decision of said Board, and of the documents & testimony on which the same was founded, to all of which Transcript this petitioner hereby refers.

That on the 1st day of April A.D 1855 this petitioner filed in the Office of said Clerk, his notice of appeal, to the effect that he would prosecute the appeal taken herein as aforesaid

Wherefore Petitioner prays that Your Hon Court will review the proceedings heretofore had, & on a hearing of this Case will reverse said decision of said Board of Commissioners, and confirm the claim of Petitioner to said lands and

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decree the claim of this Petitioner to the land claimed in this Case to be good & valid and for his Costs herein expended & for such other & further relief as Equity & good Conscience may demand

J R Scott
Attorney for Appellee

Cole County Mo Jan

Case No. 147

In the U. S. Dist Court
South^n Dist California

Leon V. Bouthonne
Appellant

vs

The U. States
Appellee

Petition for Review.

Filed this 8th day
of Dec 1854

C Sims
Clk

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J. R. Scott

UNITED STATES OF AMERICA, } SS.
Southern District of California,

The President of the United States,

TO

P. Ord U S Attorney

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Greeting:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against the United States in the District Court of the United States, in and for the Southern District of California, on the 8th day of December, in the year of our Lord one thousand eight hundred and fifty-six, at the City and County of Los Angeles, in said District, by

Leon V. Prudhomme praying said Court to review the decision of the United States Land Commissioners of 21st March 1854 rejecting his claim to the lands called Topanga Malibra etc

and that 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 the Petitioner will apply to the Court for the relief demanded therein.

In Witness whereof, I have hereunto set my hand, and affixed the Seal of said Court, at the City of Los Angeles, this 12th day of December A. D. 1856.

C Sims CLERK.

By James H Coleman
Dep

No. 147

UNITED STATES OF AMERICA,

Southern District of California,

U. S. District Court.

Leon V. Proudhomme

vs

The United States

Filed on Return this 12th Dec 1856

C Sims Clk

J. H Colingsworth

Dep

SUMMONS.

Received December 12th 1856

Edward Hunter

U. S. MARSHAL.

R. McGoodman

Deputy

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Marshals Cost

Copying Summons 60

Serving do 3.—

" Petition 3.

$ 6.60

I served this Summons, together with a certified copy of the Petition, upon M. S. Ottinger by delivering to him personally a true copy of the same

at Los Angeles in the Southern District of California, on the 12th day of December A. D. 1856

Sworn to and subscribed before me, this 12th December 1856

CLERK.

Edward Hunter

U. S. MARSHAL.

R. McGoodman

Deputy

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

Leon V. Pendhomme
Appellant
vs.
The United States.

Case No. 147.
Docket No. 438.
Injunction Malebon &c

The Answer of Pacificus Ord Attorney of the United States for the Southern District of California, to the petition for review of Leon V Pendhomme, for and in behalf of the United States.

Said Respondent denies generally all and singular each and every allegation in said petition for review contained. And Respondent further denies generally the validity of the alleged title of the said petitioner, and claimant; And prays that the Court will affirm the decision of the Board of Land Commissioners; and deem the said title to be invalid.

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

No 147

Leon V Pradhomme
appelt
vs
The United States

Answer

Filed Dec 13th 1864
Chas
Clerk

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

Leon Victor Prudhomme Appellant vs The United States Appellees.	Case No. 147 Transcript 483 - "Topanga, Malibu etc.

On motion of Jonathan R. Scott, Counsel for Appellant, it is by the Court

Ordered,

That further testimony may be taken by either party in the above entitled Cause.

Case No 147.
U.S. Dist. Court, Southern
District of California

Leon V. Pendhomme
Appellant
vs
The United States
Appellees.

Order for further testimony.

Filed Oct 24th 1855.
C. E. Carr clk
By J. W. Ramsey

Leon V. Prudhomme, Applt.,
vs
The U. States, Respondent

Case No. 147.

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Deposition of Tomas Salamantes

taken before C. SIMS, United States Commissioner for the District of California, at the United States Court House, in the City of Los Angeles, on ——, the 11 day of December A. D. 185 8, at 12 o'clock M., on said day, on behalf of the Appellant by the Consent of the Parties to be used as testimony in a certain cause now pending in the U. S. Dist. Court for the South. Dist. of California being Case No. 147, on the Docket of said Court, wherein Leon V. Prudhomme is ~~are~~ appellant, and The United States are appellees.

Present Scott & Saunders Attorney in behalf of the appellant and J. H. Lightfoot U. S. Dist. Atty in behalf of appellees.

Quest What is your name — age and place of Residence

Ans My name is Tomas Talamantes My age is 25 years — Reside in the County of Los Angeles and resided in Los Angeles County about fifty years —

Quest Do you know the Rancho Called Topanga Malibu

Ans I do, I have known it for forty five years and is situated North West from the City of Los Angeles in the County of Los Angeles, about six leagues from said City —

Quest Do you know any natural land marks that constitute the limits of said Rancho. of so State ~~from~~ them commencing from one certain point giving them regularly as they surround it?

Ans I do know that there are such — The first is Santa Monica — Las Virgenes — El Principio — Cinifo — la laguna — Aqua Boque Moque along the Seashore bounts Monica —

Quest State whether all these points that you have named are ancient & well known land marks

Ans Yes, they are ancient and well known points

Quest What is the name of the point that

divided this Rancho from the Santa Magnea and on which side of it does the Santa Monica lie?

Ans A place called Topanga and it is on the East side of it

Quest Give a description of the place called Topanga and state if it is a well known point?

Ans It is a valley that comes out of the mountains and at times water runs in it and it is an ancient & well known point

Quest State the name of the point that divides this Rancho from the La Puente if there is any, and also state if it is an ancient & well known point, giving ~~and~~ at the same time a description of the place?

Ans There is no particular mark, except that of a mountain on the top of which is a ridge of stones. But the mountain is not the line, but the Laguna is a small lake in Topanga which is the line, on ~~that~~ the South East side of it

Quest When is Mogu situated

Ans At the North West point of the Rancho

Quest Mthg Sea Shore
Give a description of it?

Ans It is a very high mountain with a ridge of Rocks on the top running out from the sea shore on the north west side of the Ranch

Quest What is the name of the Ranch adjoining (Quill Ranch) on the point north to Mogus?

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Ans The Ranch of the Laguna or Punta Isabel

Quest State any other well known natural objects that constitute the limits of this Ranch besides the place of Papanos and Mogus?

Ans The Comis Ranch is on point also there is a large mountain which is called the Sierra Madre with a ridge of Rocks on the top of it — this ridge of Rocks is on the northly side of this Ranch it runs almost the entire length of the Ranch, coming down near to las Orjenes?

Quest State whether or not you ever lived on that Ranch if so when & how long?

Ans I have resided on the Ranch from eight to fifteen days

Ans. Yes sir I have taking off Cattle, and this has been from about the years of 1817 & 18 or upwards —
I was going & coming to & from said Ranch for many years in that way.

Quest. Did you ever attend any Rodeos on said Ranch?

Ans. Very few. When I commenced going there, the Cattle at that time had become very wild —

Quest. Did you ever hear any old persons state what the limits of said Ranch were & so state who they were, and whether they are dead or alive
Objected to by Dist atty of the State

Ans. I have. One was a deceased Bartolo Tapia — also my Father Felipe Palamantes who are now dead

Quest. State whether or not they pointed out the same lines of said Ranch which you have above given

Ans. They did

Quest. Did your Father ever live on said Ranch, & so when?

Ans. Yes, he after went there backwards & forwards to bring away Cattle. When Bartolo Tapia was

although it was the business of my Father to furnish the Herds of Pepin with meat on that Ranch

Quest Is your Father dead, if so when did he die and of what age was he?

Ans He is & died at the age of about 94 years of age

Quest Is Pepin dead if so, when did he die?

Ans He is now dead and died about 32 years ago

Quest Have you within the last year pointed out the limits of this Ranch, if so, to whom?

Ans Yes I have ~~—~~ pointed them out to some persons and among them was the County Surveyor of Los Angeles County whose name is William Moore

Quest State whether or not the points that you pointed out to him were the points always known as the limits of said Ranch?

Ans Yes they are

Cross Examination by the U. States Dist Atty

Quest When it was, and at whose request that you pointed out the lines that you have above mentioned and name who was present at the time?

Ans It is now about four or five months — it was at the request of Mateo Keller — There was present Lewis Valenzuela — Ignacio Machado — José Rubio — Pedro Reyes, Mateo Keller — E R Scott and the two Surveyors that were there also José Piña the Mayordomo of the Ranch — also Andrew A Boyle —

his
Manuel Talamantes
mark

I, C. Sims, of the City and County of Los Angeles, and State of California, Commissioner to take Affidavits and Bail, in civil case pending in the Courts of the United States, and Depositions under the Acts of Congress, approved September 24th, A. D. 1789; February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and circuit of California, do hereby certify that the foregoing Depositions of Thos Talamantes was taken before me on the 11 day of Dec, A. D. 1858, according to the a Gramatt of the said Bailes at the United States District Court House, in the City of Los Angeles, and State of California, in behalf of the appellants

That the said Thos Talamantes was by me duly sworn according to law as a Witness in said cause in the caption of this Deposition mentioned, and after being so sworn, his Testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private Seal, (having no Seal of Office,) this 11 day of Dec, A. D. 1858.

C Sims
United States Commissioner.

No. 147.

United States District Court for the
Southern District of California.

Deposition of Tomas Valamar

Filed this 21st Dec. 1888,
S. Sims, Clk.,
per W. W. Stetson.

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Leon V Prudhomme
as appelt
vs
The United States
Respt

Case No. 147

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Deposition of Ignacio Machado

taken before C. SIMS, United States Commissioner for the District of California, at the United States Court House, in the City of Los Angeles, on Tuesday, the 11 day of November A. D. 185 8, at 10 o'clock A M., on said day, on behalf of the appellants by the Consul of the States to be used as testimony in a certain cause now pending in the United States Dist Court for the Southern Dist of Cal being Case No. 147, on the Docket of said Court, wherein Leon V Prudhomme ~~is~~ are appellants, and The United States are appellees.

Present P R Foote Attorney in behalf of the appellants and S R Ritchie in behalf of appellees. and W S Ogden Interpreter —

Question What is your name — age and place of Residence

Ans My name is Ignacio Machado I am fifty seven years of age, and I reside in the County of Los Angeles

Quest How long have you resided in Los Angeles

Ans I have lived in Los Angeles since infancy

Quest Do you know the Rancho of Topanga Malibu if so where is it situated & how long have you known it

Ans I do, and have known it for seven teen thirty nine years

It is situated in the County of Los Angeles, to the North of Los Angeles City & distant about four leagues

Quest State whether you know, if said Rancho was occupied, during the time you have known the same, if so by whom, occupied and who first occupied it and ~~at~~ the names of all the subsequent occupants and how long by each

Ans It has always been occupied first by the deceased Bartolo Tapia, I know him to have occupied the same up to the time of his death — In the next place Tiburcio Tapia his son, occupied the same, the latter occupied it until his death, the next person who occupied it was Leon V Prudhomme I do not remember how many years Prudhomme occupied the same He occupied it up to within the last ~~two~~ two or three years

Quest In what manner did Bartolo Tapia occupy the said Rancho

Ans He occupied with horses & cattle the horses were gentle as also a drove of Pack Mules — he had upwards of four or five thousand head of cattle upon the same, He also had a temporary wood house, He also

had corrals upon the same and a small portion of land under cultivation and Bartola Papia occupied the Rancho when I first knew it

Quest In what manner did Pburcio Papia occupy the said Rancho

Ans With Cattle & gentle horses

Quest In what manner did Prudhomme occupy the same

Ans He occupied it with the same cattle up to the time he removed them from the Rancho

Quest State any natural land marks which surround and designate the lines of said Rancho.

Ans On the West are the sea shore and a mountain, the mountain being a well known point and is called Mogu
On the northerly side is an open plain of San Buenaventura, this plain being a point well known
On the East is the Rancho of the "Las Virgines" — ~~On the southerly side~~
The place called "Las Virgines" is an ~~ac~~ ancient and a well known point — On the southerly side, at the extreme point is Posango, a well known point — Between Posango

and the Las Virgenes there is a very rugged mountain, Gp has the name of the adjoining points of "Ropangi" & "Santa Monica"

Quest State whether or not in the last year you have pointed out the lines of the Rancho or natural objects that surrounded the said Rancho, & to to whom?

Ans I did, about 2 y months ago I showed them to the County Surveyor of Las Angelos County, who was an American by the name of Moore.

Quest Were you ever in that Rancho during the times of making Rodeos in ancient times if so what were the Rodeo limits of it respected by the adjoining Ranchos?

Ans I never was present at any Rodeo upon that Rancho

Quest In ancient times, did you ever hear any old people say what were the limits of said Rancho, if so who were they, are they dead or living and when did you hear them ~~say~~ mention it?

~~Ans~~ Question objected to by Dist Atty

Ans I have heard ~~them~~ some old people speak of the limits of said Rancho -, I have heard Felipe

Palamantes, a man who worked a great length of time upon said Rancho, I heard him speak of the natural objects more than thirty years ago. He is now dead He died about three years or upwards ago, He was about seventy years of age at the time of death

Quest State whether Philipe Palamantes stated to you the natural objects of said Rancho as you have related them here

Ans He did

Quest What other old persons told you of the limits of said Rancho

Ans Antonio Briones a man who had been placed on the Rancho by Bartolo Tapia about thirty nine years ago, Briones told me of the limits when he took me there to work upon the Rancho He pointed out to me at that time the very limits which I have above given, particularly pointing out to me the point of the Mesa, He has been dead about twenty years — At his death he was about forty-six years of age

(Quest Objected by Dist Atty)

Quest State what ranchos surround this Rancho?

Ans West — Santa Monica which is on the South East side of it, on the

north of East is the "Las Virgenes" and also the Rancho of the Triumpho the next is the Rancho of Conejo on the north of it this latter being a very ancient Rancho. There is also a new Ranch called Doña Isabel which is also on the northern side and the point of Mugo which is immediately on the ocean, — the sea being on the point west side of it —

Quest: State any well known points within the boundaries that you have already described;

Ans: The First point is the Mugu, also "La Hoya" — Segues — the four ravines or Creeks — Las Vaneas — Sumo — Sosto — Maligo, — Posrango — and the Mesitanos which encloses the Ranch

Quest State whether or not you have ever lived on such Rancho — if so, when and how long,

Ans: Thirty nine years ago, I went there to work, I would work a short time and then return, — many years I was going on this way — about ten or twelve years I was thus occupied, going & coming, working on the Rancho

Quest During all this time did you ever know any dispute about the Boundaries or limits of the Rancho

Ans: I never did. The Boundaries

Ans I never did — The Boundaries were known and acknowledged by every person

Quest Have you ever known of the possessions of said Ranch within the boundaries named by you to be adjudicated ~~if so~~ by the authorities of Los Angeles ~~County~~ if so when and between whom?

Ans I recollect that when I was very small indeed that my Father had some horses & mules on that Ranch and at the same time Bautista Tapia ~~claimed the~~ and my Father claimed the Ranch that whilst my Father was gone to San Diego, the afore said animals disappeared but I do not know how, — I do not know of any judicial proceedings being had about the premises — I heard that Tapia objected to my Father keeping animals on the Ranch

Ignacio his x mark Machado

Sworn & subd to before me this 11th day of Dec 1858

Otis
Notary Commissioner

I, C. Sims, of the City and County of Los Angeles, and State of California, Commissioner to take Affidavits and Bail, in civil case pending in the Courts of the United States, and Depositions under the Acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the Southern District of California, and by special appointment by the United States Circuit Court for the State and circuit of California, do hereby certify that the foregoing Depositions of Ignacio Machado was taken before me on the 11 day of Dec, A. D. 1858, according to the agreement of the said parties at the United States District Court House, in the City of Los Angeles, and State of California, in behalf of the Appellants

That the said Ignacio Machado was by me duly sworn according to law as a Witness in said cause in the caption of this Deposition mentioned, and after being so sworn, his Testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private Seal, (having no Seal of Office,) this 11 day of Dec, A. D. 1858

C. Sims

United States Commissioner.

No. 147.

United States District Court for the
Southern District of California.

Deposition of Yg. Nacho Machado,
Filed this 21st day Decr. 1858
C. Sims. Clerk.
by W. W. Stetson.
Dpty.

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L. C. Prudhomme, Appellt,
vs
The United States, Appellee

Case No. 147

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Deposition of William Moore

taken before C. SIMS, United States Commissioner for the District of California, at the United States Court House, in the City of Los Angeles, on Thursday, the 13th day of ~~March~~ January A. D. 1859, at 1 o'clock P. M., on said day, on behalf of the Appellant by the Consent of parties,

to be used as testimony in a certain cause now pending in the District Court of the U. States for the South. Dist. of Cal. being Case No. 147, on the Docket of said Court, wherein L. C. Prudhomme & ~~are~~ appellant~~s~~, and The United States are appellees.

Present Scott & Landers Attorney in behalf of the appellant~~s~~ and J. R. Gitchell, U. S. Dist. Attorney in behalf of appellees.

No 147

William Moore being duly sworn answered to the interrogatories as follows

Quest ~~Do you know~~ What is your name, age & place of Residence

Ans My name is William Moore and I reside in Los Angeles County and am thirty on years of age and am a ranchero by occupation

Quest Do you know a Ranch called Malabo if so state where the same is situated?

Ans I know a Ranch pointed out to me as the Malabo

Quest By whom & when was this ranch pointed out to you

(objected to by Def atty on the ground that it is Secondary Testimony when the best Evidence can be procured)

Ans It was pointed out to me

by Ignacio Machado and Tomas Palamaites, in the month of March 1858

Quest State whether or not they pointed out the boundary lines of the same — if so whether you surveyed the same and made a plan thereof

Objected to as leading by Mr Dias
Question withdrawn by atty for ~~Counsel~~ Claimant

Quest State in what manner they pointed out the Ranch to you?

Ans When I had arrived at a certain point on the pacific coast Ignacio Machado told me that this is the Potrero and the boundary line of the Potrero. We rode across the ranch or further up the coast he pointed out to me also a place called the Luma — he also pointed out a place called Lotas tuno or Lotono I do not recollect which that is above the "Luma" — he again pointed to the

pointed out

north of that, pointed out a place called Lica or Lecu" near which lived a woman whose name has not been known to me at the time — Still further on to the north he pointed out the mountain called Mogo, the northern line — on this mountain there was a ledge of rock, which he stated to me to be the northern line of this Ranch — Thomas Pelamaules & has present all this time —

Quest State what you did after the limits of this Ranch was pointed out to you, or whether you made a survey or map of the lines of the Ranch —

Ans I did survey the same & make a map of the same

Quest Look upon the map marked No 1 Cf and state whether that is the map that you made

Ans That is the map & the scale is 40 Chains to the inch

Quest ~~What is the scale of that map is it~~
~~No inch~~

Quest State whether or not the map here shown to you contains a true a true plot of the Ranch as pointed out to you by Ignacio Machado as far as you running

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Ans The range of mountains pointed out to me by Machado & Palamares as the northerly or north easterly line ~~from~~ was supposed from appearances impracticable to run a line with a chain Consequently I was only able to run a line in a Cañon near point "Mago" which I did until I arrived at a chain of mountains pointed out to me by Machado I then measured along the sea Coast as shown by the map until I arrived at the "Lieas", I then run a line across the full ridge of mountains which I arrived on the ~~top of the~~ first ridge of mountains I took bearings upon the peaks of the ridge pointed out to me as the boundary of the Ranch I then went back to the point on the sea

shore and meandered the sea shore to the point pointed out to me as the Popango — I followed up the Creek or arroyo, which is the South Easterly boundary as pointed out to me as far as practicable at the time — I closed work and returned to Los Angeles city

At that time I was County Surveyor of Los Angeles County

Cross Examination

Quest — To what quantity of land was embraced in that survey —

Ans — I cannot say — the distances are on the map I cannot recollect them. The front line is between 20 & 30 miles and the average width about 4 miles

William Moore

Sworn & subscribed before me this 13th day of January 1859

J. M. S.
Commissioner

I, C. Sims, of the City and County of Los Angeles, and State of California, Commissioner to take Affidavits and Bail, in civil case pending in the Courts of the United States, and Depositions under the Acts of Congress, approved September 24th, A. D. 1789, February 20th, A. D. 1812, and March 1st, A. D. 1812, by virtue of my office of Clerk of the United States Court of the ~~Southern District of California, and by special appointment~~ by the United States Circuit Court for the State and circuit of California, do hereby certify that the foregoing Depositions of William Moore was taken before me on the 13th day of ~~February~~ January A. D. 1859, according to the Consent of the Parties of the said — at the United States District Court House, in the City of Los Angeles, and State of California, in behalf of the Appellant. That the said William Moore was by me duly sworn according to law as a Witness in said cause in the caption of this Deposition mentioned, and after being so sworn, his Testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private Seal, (having no Seal of Office,) this 13th day of February, A. D. 1859.

C. Sims

United States Commissioner.

No. 147

United States District Court for the
Southern District of California.

Filed Jany 13th 1859
C. Sims
Clk

Deposition of William Moore.

Filed this

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The President of the United States of America
To. William Moore — Greeting:
We command you, that all and singular business and excuses being laid aside, you be and appear before the Judge of the United States District Court for the South=ern District of California, at a regular term of said Court now in session at the Court Room in the City of Los Angeles, on the 13th day of January A.D. 1859, at 11 o'clock A.M. of said day, to testify and give evidence in a certain cause pend=ing in said Court, on the part of Ap=pellant.

And this you in nowise omit under the penalty upon you of Two Hundred and Fifty dollars.

Witness, Hon. Isaac S. K. Ogier, Judge of the District Court of the United States, at the City of Los Angeles, this 10th, day of January, A.D. 1859.

J. Sims, Clerk.
Per. W. W. Stetson, Deputy.

Marshals return

I served a copy of the within Subpoena on Williams Moore personally in the City of Los Angeles on January 12th 1859

James G Pennie
U.S. Marshal

No. 114

The United States
vs
Jose Sepulveda et al

Subpoena

Filed Jan 13th 1859

Subpoena on the part of the defendants

Witness

Filed January 20th 1859

United States of America
Southern Dist of California
Los Angeles County } ss

Jonathan R. Scott being duly sworn deposes and says that he was one of the attorneys who presented to the late Land Commission to ascertain and settle private land claims in California, the claim of Jean V. Prudhomme for lands in Los Angeles County called Topanga, Malibu, Sotomo & Siquit; That said claim was presented to said Commission in 1852 and affiant has ever since had the management of said claim as claimant's attorney both before said Commission and in the United States District Court for the Southern District of California. That about the last of the year 1853 or beginning of 1854 affiant went to the office of the United States Surveyor General for California in the City of San Francisco, and with the assistance of the person having charge of the Spanish & Mexican archives in said office, whose name affiant does not now recollect, but whom affiant had then for some time known as being the person properly in charge of said archives in said office, made diligent search for an original title to Bartolome Tapia of the place called Topanga Malibu Sotomo & Siquit. and was unable to find any such title in said archives, altho search was made through all the Spanish & Mexican documents where such a paper could appear; and that affiant again some time in the year 1857, with the assistance

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of another person whose name applicant does not now recollect, but who was then in charge of the said archives in said Surveyor General's office, which search for such document or title as above stated but without succeeding in finding such. That upon the occasions of said first and second searches and at other times the applicant applied to the several Surveyors General who have had charge of said office, for a certificate under the official seal of the Surveyor General of the non existence of any such title as above mentioned in the old Spanish or Mexican archives under his charge, but never could obtain such certificate, applicant being always told that no certificates of the non existence of documents in said office could be given, but only certificates of the existence of documents or certified copies of documents: so that the claimant is unable to produce in evidence a certificate of the U. States Surveyor General under his seal of office, of the non-existence in said archives of such title. And further applicant says that during the life time of the widow of said Bartolome Tapia, Maria Micaela Villalobos, who died at the city of Los Angeles between two and three years ago, applicant made inquiry of her for any papers that she might have or know of and was by her informed that she knew of none; And applicant further says that he instructed the claimant Bruchonne to make search among his papers for any such title as above mentioned, and has been informed

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~~and~~ by said Prudhomme, and which affiant believes from that he made such search and could find no such paper; and affiant says said Prudhomme is now absent from Los Angeles County.

J R Scott

Sworn and subscribed before me this the 22d day of Dec, 1859

Chas M Wilson
Comm Justice Justice of Peace

Case No 747

In U. States Dist Court
Southern Dist of Cal^a

Leon V. Rondhomme
Appt
vs
The United States
Appellee

Bff^t of J. R. Scott

Filed in office
this 22^d day of Decr 1859
[illegible]
Clk

Mathew Keller
appellant
vs
The United States

No 147

Deposition of Abel Stearns taken in open Court, Abel Stearns being duly sworn answers as follows

Quest What is your name, age and place of Residence

Ans My name is Abel Stearns, my age is 62 and my Residence is the City & County of Los Angeles

Quest Did you know Eduardo Papin in his life time, if so when did he reside and when did he die

Ans I did. he resided in this City and died in the year 1845

Quest Did he have any Children (lightimate) if yes, ~~when are they at this time~~ what are their names and where are they at this time?

Ans He left two one daughter and one son - the daughter was named Meredit and is now the wife of Leon Victor Prudhomme, she was married to him in the year 1848 - The sons' name I do not recollect he has been dead for several years

Quest Did he leave any Sons or Children

Ans No - He was quite a youth - he was not married

Quest When did the Wife of Tabaneo die

Ans She much later died about the year 1845 or 3 - (She was the mother of those Children) to the best of my recollection

Abel Stearns

Sworn and subscribed before me this the 12th March 1860

O Sims
Ass Dist Clerk
Southern Dist Cala

No 1217

M Keller

vs

U States

Deposition of
Abel Stearns

Filed 12th March
1860

C Sinnock

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

Leon V. Prudhomme
Appellant
vs
The United States
Appellee.

Case 147
Malibu, Topanga &c.

Now comes the appellant by J. R. Scott his attorney, and moves the Court for an order to substitute the name of Matthew Keller, in place of said Prudhomme as party appellant on the record of this cause, — and said Keller shows to the Court in support of said motion the deed of conveyance of said Prudhomme and wife to him of the lands claimed in this case.

J. R. Scott
Atty for Apt Prudhomme

Southern District of California } ss.

Having heard and considered the motion of Appellant for an order to substitute the name of Matthew Keller on the Record of this case as party appellant, in place of said Prudhomme together with the deed of conveyance of said Prudhomme and wife to said Keller; and it appearing therefrom satisfactorily that said Keller is the party now

in interest, and motion is granted.

And it is ordered,

That the name of Matthew Keller be substituted on the Record in this case as party appellant, in place of that of Leon V. Rudhouse: and that future proceedings in this case be accordingly entitled and conducted, ~~and that any decree of confirmation which may hereafter be obtained by the ap~~

U. S. Dist. Courts

144

U. S. Supreme
v.
The United States

Order Substituting
Parties as Appellee

Filed in Office
this 12th March 1860
Clerk

State of California,
City & County of San Francisco } S.S.

R. C. Hopkins, being duly sworn deposes and says; that he is the Keeper of the Archives in the Office of the Surveyor General of the United States for the State of California, that it is not customary or usual in the said Office to give a Certificate of the non existence of documents in the Mexican Archives therein, but only certified copies of existing papers or Certificates of their existence

Subscribed & sworn to before me this 31st day of October A. D. 1859.

R. C. Hopkins.

Jas. C. Germain
Notary Public

147

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

L. V. Rundhouse

vs

The United States

affidt of R. C. Hopkins

Filed in Office this
12th March 1860
J. M. Ellis
Clk

Printed and Sold at the "Southern Californian" Office, Los Angeles.

This Indenture, made the Fifth. day of November in the year one thousand eight hundred and fifty Seven BETWEEN Leon V. Fredhomme, and Maria Perfecta Tapia, his wife, Residents of Los Angeles County, State of California, of the first part, and Matthew Keller, also resident as aforesaid of the second part, **Witnesseth**, That the said parties of the first part, in consideration of the sum of One Thousand Four Hundred ($1400.) Dollars to them duly paid before the delivery hereof, have bargained, sold, and quit-claimed, and by these presents do bargain, sell, and quit claim to the said party of the second part, his heirs and assigns, for ever, *ALL* their right, title, interest, claim and demand, both at law and in equity, as well in possession as in expectancy, of, in, and to a certain peice or parcel of Land, situate and being in the County of Los Angeles, State of California, commonly known as the Rancho of "Ipalaga", being the same lands claimed by the said Leon V. Fredhomme, before the United States Board of Land Commissioners to ascertain and settle the private land claims in the State of California, in case numbered on the Docket of said Board, and in the District Court of the United States for the Southern District of California, in Case No. 147, on the Docket of said Court; claimed under a grant from Governor Arellaga, to one José Bartolome Tapia, in or about the year 1805; by the name of Topanga, Malibu, Sini and Liguit.

with all and singular the hereditaments and the appurtenances thereunto belonging or in anywise appertaining.

In Witness whereof, the said parties of the first part, have hereunto set their hand & and seal s the day and year first above written.

Sealed and delivered in presence of

Chas. R. Johnson

L. V. Fredhomme

Mrs. Maria Tapia
her
X
mark

STATE OF CALIFORNIA,
County of Los Angeles } SS.

On this Fifth day of November in the year of our Lord, one thousand eight hundred and fifty-Seven personally appeared before me

Leon V. Prudhomme & Maria Merced Tapia, his wife

known to me to be the persons described in, and who executed the foregoing Instrument, who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

and the said Maria Merced Tapia, having been by me first made acquainted with the contents of said Instrument, acknowledged to me, upon an examination separate & apart, and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion, or undue influence of her husband and that she did not wish to retract the execution of the same; the said Maria Merced, being personally known to me to be the person whose name is subscribed to said Instrument as a party thereto.

In Witness whereof, I have hereunto set my hand and affixed my Official Seal, the day and year first above written.

Chas R. Johnson
Co. Clerk.

Recorded this 11th day of November AD 1857 at 10 hrs & 5 minutes. A.M. on pages 767 & 768 of Book B of Deeds at request of M Keller

Chas R. Johnson: Co. Recorder
per W. Brinley. Deputy

147

Deed.

L. B. Prudhomme & wife

to

Matthew Keller.

Filed this 12th March 1860 Jno S Clark

~~Filed for record this 5th day. Nov. 1857 at 11 o'clk, 15 mins A. M. at request of L. B. Prudhomme~~

Filed for record this 11th day. Nov. 1857 at 10 o'clk & 5 mins, at request of M. Keller -

147 SD

PAGE 92

Dec 2. 1857 Chas. Keller

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

L. V. Prudhomme
Appellant
vs
The United States
Appellee

No 147
Affidavit &c

Southern District of California
County of Los Angeles } ss.

Leon V. Prudhomme being duly sworn deposes and says, That Tiburcio Tapia now deceased was the Executor of the will & Testament of José Bartolomé Tapia, the alleged ~~original~~ Grantee of the lands claimed in this case; That after the decease of said Tiburcio Tapia, the applicant in the month of November 1847 was appointed Administrator of said Tiburcio's Estate, and as such took possession of all the papers of said deceased - That applicant was also the son in law of said Tiburcio, having intermarried with Mrs Mercedes his only daughter, and who became his sole heir; and applicant says that neither has he found among the papers which have come into his hands as such administrator, any title paper or grant of the lands claimed in this case dated previous to the order of Governor Arnellaga on file in the case; nor any paper or document whatsoever, touching upon or relating to

any Grant of said lands except the papers which are already on file in the case; although he has, as he avers made diligent and thorough search therefor and affiant further says that he has never heard the existence of such Grant mentioned by any of the family; and affiant verily believes that the title papers of said lands have for many years been lost

S. Vendhomme

Sworn and subscribed to before me this the 1st day of March A.D. 1867

C. Ford
US Commissioner
for Cala

No 147

U.S. Dist Court

L. V. Roudhomme

vs

The United States

Aff't for Roudhomme

Filed in Office
this 12th March
1860

Sims
Clk

I hereby certify that an examination of the Spanish Archives of the Office of the U. S. Surv. Genl, shows the following facts in relation to the grant to Juan Bandini of a place called "Jurupa":—

On the Journals of the Departmental Assembly for the 22d day of May 1840, is found the following entry:— "No 196, the Concession made by the Departmental Government on the 16th day of April 1839, to Juan Bandini of the place called Jurupa, is approved"— On the "Simple Index" of Expedientes is found the following entry, "No 196, Jurupa, concedido á Juan Bandini"— The Expediente which now bears the number "196", is not the Jurupa Expediente, but one of a grant made to Indian Blas in 1845, the endorsement and number on which appear to be in the handwriting of Ramon De Valdo former Keeper of the Archives—

On the 21st of January 1839, Juan Bandini in a petition to the Gov. sets forth:— That having obtained possession of the place of Jurupa by virtue of a title issued to him by the Gov. on the 28th of September 1838, and this grant not being of sufficient extent to include his fields &c, he prays for a grant of one league more upon the margin of the River— He appears to have obtained a decree of Concession for this addition on the 28th of April 1839, and the approval of the Departmental Assembly on the 26th of May 1840— See Expediente No 203—

And I further certify that in relation to the case of Prudhomme No 483, I have been unable to find in the Archives any provisional or other Concession to Bartolome Tapia of the place called Tapanga Malibu Sortenio & Tiquit, or under this modern and

including name of Malaga — The above and foregoing is all I have been able to ascertain from an examination of the Archives pertaining to the former Mexican Government of California in relation to the grants therein mentioned —

San Francisco
Oct. 31st 1859

R. C. Hopkins
Keeper of Archives.

Sworn to before me this
31st day of October AD 1859
F. J. Thibault
Notary Public

147

U. S. Dist Court
2nd Dist. of Cal.

L. V. Prudhomme
vs
The United States

Affidt of R. C. Hopkins

Filed in office
this 5th March 1860
C. Sims
Clk

147 SD
PAGE 98

J R Scott

In the District Court of the United States, in & for the Southern District of California.

Matthew Keller
Appellant
vs
The United States
Appellee

Case No 147
"Malabu" etc.

In this case the original Petitioner Leon Victor Prudhomme sought for confirmation to him of a tract of land lying in Los Angeles County, containing about 33 leagues of land, extending from a place called "Topanga", the dividing line between these lands and the Rancho of "Santa Monica", on the South East, along the Pacific ocean a distance of about 25 miles to a point called Mogu on the North-west, and bounded on the North-East by a ledge of rocks, on the top of, and extending the whole length of, a range of Mountains; and it is also surrounded by other Ranchos, establishing the boundaries; viz, "Las Virgenes", "Triunfo", "Santa Isabel", and "Conejo"; thus clearly establishing the boundaries, sufficiently to enable the lands claimed to be segregated from the public domain. The fact of the lands here claimed having been a well-known and recognized Rancho, is further shown by the mention made of them in the several acts of the Legislature of the State of California, establishing the boundaries of said County of Los Angeles. (See Cal.a Comp. Laws, p. 828. — Cal.a Statutes of 1850, p. 53.)

2

It is submitted that by these limits the tract of land now claimed has been known for considerably more than half a century; as see the testimony of Domingo Talamantes & Ignacio Machado, in their depositions filed in District Court.

1

It is submitted that José Bartolomé Papia in 1805 presented his petition to José Joaquin Arrillaga, then Governor of the Californias (see testimony of José Ant° Carrillo Transcript pages 5 and 6.) stating that at some time anteriorly, which date does not precisely appear, the Commandante of Santa Barbara, Felipe Goycochea, had granted him the place called Topanga, Malibu, Sumo & Siguit, for the purpose of grazing his cattle, which permission or grant of the Commandante had afterwards been confirmed and ratified by a grant from the Governor himself. That some two years before the date of the petition, one Proquinto Zuñiga had driven his tame horses and mares on to the place and thus disturbed him in his possession; that he applied to the authorities complaining of the intrusion, and Zuñiga receives orders from the temporary Commandante at Santa Barbara, José Raymundo Carrillo, to leave Papia alone, which order is confirmed by the Governor in the marginal order of July 12, 1805, appearing on the document H. H. N° 1. (Transcript pages 8 and 9.)

It is submitted that this proves the following facts, That some time previous to the year 1803, (being the year in which Papia was disturbed in his possession) the place now claimed had been granted to Papia; first by the Commandante; and afterwards by the Governor himself confirmed. How long previous this grant was made does not appear, but it is only reasonable to presume that it was several years before, probable previous to 1800, as the Rancho, at the time of Zuñiga's entry, appears to have been founded and stocked by Papia, to such an extent that the bringing in of a few tame animals by Zuñiga caused him serious injury & ~~reason~~ for complaint. Be that as it may, the truth of Papia's recitals in his petition; viz, that there had been previous grants

is conceded by Governor Arrellaga, by his making the marginal order before mentioned granting the petition. This previous grant made to Tapia nowhere appears, its non-appearance is sufficiently accounted for by the loose way in which the Spanish archives were kept at that day; - the wonder is, not that so many documents have been lost, but rather that so many have been preserved, sufficient, as in this case, to show the course and nature of other antecedent proceedings in the matters to which they relate. Its non-existence has been amply proven, (see affidavits of R. C. Hopkins, Leon V. Prudhomme, and Jonathan R. Scott, filed in the district Court.) - No certificate of its non-existence in the archives of the present office of the United States Surveyor General could be obtained under his official seal, the rules of that office not allowing the issue of such certificates. So that the non existence of a paper among the files there deposited, is only to be proved by affidavits of parties making a search. The affidavit of Prudhomme proves the non-existence of such paper among the family papers of the Tapias, to the possession of which he succeeded, as administrator of Piburcio Tapia, son & Executor of José Bartolome; he further testifying to his intimate relations with the family, by intermarriage with one of its female members, and the fact that in family conversations he never heard mention made of the existence of such paper.

It is submitted, that the document of April 10, 1805 proves not only that a previous Grant existed or had been made, as therein recited; but also shows that Bartolome Tapia held the lands, claiming to be owner by virtue of a title, adversely not only to the Government, but to all the world, and had so claimed them for some years previous, - He continued so to hold and

claim up to the time of his death, about 1828; as appears from the Inventory annexed to the Writ. (Trans. pp. 19-20) After his death the lands remained in the continued & uninterrupted possession of his family, they always holding adversely, (See testimony of Juan Moreno, Trans. page 4 - of Ramon Ybarra, id. p. 6. & of Antonio Valdez, id. p. 7. & Deposition of Ignacio Machado, filed in District Court.)

And thus it is submitted, that for a period of at least 50 years, José Bartolome Tapia and those claiming under him, from whom the Claimant at bar derives title held possession of the lands, claiming the same adversely to the Spanish and Mexican Governments and to all the world, holding actual possession, the metes and bounds of the lands being always well known and defined.

To constitute an actual possession under color of title, no enclosure is necessary. The possession should be such as the land is susceptible of:

Jackson vs Lamm. 3. John. Cases 115.
Ewing vs Burnett 11 Peters 52
and 10 " 442.

where it was decided that where visible and notorious acts ownership were exercised over the premises for a term of twenty one years after an entry under color and claim of title, it was sufficient to hold adversely, and enough to constitute a title. It is well settled that in order to constitute an adverse title there need not be a fence, building or other improvement made; so much depends on the nature & situation of the property, the uses to which it may be applied, or the uses to which the claimant or owner may choose to apply it, that it is difficult to lay down any precise rule adapted to all cases. The whole doctrine has been examined and reaffirmed by the California Supreme Court. (4 Cal. 95 & 97. Dunne vs Leonard) -

approved by the California Supreme Court. (4 Cal.

95 & 97. Dunne vs Leonard) -

There are many decisions illustrating this doctrine but none so rich and copious as the case of La Frombroise vs. Jackson 8 Cowen 590.

Six members of the Court delivered opinions elaborately discussing the doctrine now in question and announcing a unanimous judgment of the Court.

La Frombroise claimed against the Lessee of Smith et al. a tract of land and relied on adverse possession under color of title, upon the trial the document under which he claimed was produced, and it is certainly more defective than the title under which the lands in this case are claimed.

All these cases referred to are based upon the presumption, arising from long continued adverse possession, that when the claimant entered, he entered under good title; but in this case it is submitted that it is sufficiently & satisfactorily shown by the Evidence that Papia entered under title, irrespective of this presumption arising from the subsequent and continued adverse possession of himself and those claiming under him.

In Louisiana, (Bernard vs Shaw et al. 9 Martin 49.) the Courts have gone further; deciding that claim of title is sufficient to color the possession even though it was based upon a deed absolutely void, and this decision establishes the identity of the doctrine of adverse possession in the Civil and Common Law.

And so in Maryland, (Getting lessee vs Hall, 1 Gear & John. 14-18) (See also 9 Cowen 252 Jackson vs Ribets)

It is submitted that the amount of land contained in the lines shown, is no objection to a confirmation in this case; the Grant having been made under the Spanish and not under the Mexican Government, and when no limitation as to quantity was fixed by law, and at a time

when even larger grants than this were made which have since received the confirmation of the present Government; as, for instance, the "Prieto Tract" in Los Angeles County, the extent of which was some 35 square leagues.

The chain of title of claimant from José Bartolome Papia is complete. The will purports to give the lands claimed to the widow (Transcript page 17 & 20: clause at end of Will) and it is submitted that the fact that the clause in which this devise appears is not subscribed by the testator is immaterial, as it is sufficient if his signature appears subscribed to the body of the instrument. (4 Kent 515.)

But in this case the validity of this devise is immaterial as the deed filed, from Maria Mauricia Villalobos and others who are shown by the deposition of Carillo, (Trans. pp. 50.) to have been the heirs of the deceased José Bartolome Papia, vests all the title derived from him by the parties thereto in the Party Prudhomme. - If it is objected that in this deed the heirs of Tiburcio Papia, whose name appears elsewhere in the Record as a son of the deceased José Bartolome Papia, do not join, so as to vest their claim in the lands in Prudhomme, the objection is removed by the deposition of Abel Stearns, which shows the death of the wife of Tiburcio Papia previous to Tiburcio's own decease, the fact that their daughter Maria Merced Papia is the wife of said Leon V. Prudhomme, and by the death of her only brother without issue, became sole heir of said Tiburcio Papia, they being his only legitimate children.

Lastly, the deed of Prudhomme and wife, filed, vests all claim and title under José Bartolome Papia in Matthew Keller who now stands at bar as appellant in the case. All which is respectfully submitted.

J. P. Scott

Attorney for Appellant.

Case No 147
United States Dist. Court.
Southn Dist. of California

Matthew Kellen, Grantee
of Leon V. Prudhomme
Appellant.
vs
The United States
Appellees.

Brief of Appellant.

Filed this 15th
Mar 1856
Chas Ch

Jonathan R. Scott.

In Dist Court

147

L. C. Pondhomme
Mr Kelley substituted
vs
The United States

Lapanga
Malita

Now on this day the Court having this case under advisement delivers its opinion rejecting the same. It is therefore ordered by the Court that the same be held invalid and void and the same is hereby rejected –

Isaac L. Ogden
U S Dist Judge

No 147

(Decree)

Filed in Office
this 2nd June 1860
C Sims
CR

No

Matthew Keller
vs
United States

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

Matthew Keller being duly sworn deposes & says that he is the claimant herein and applicant petitioner says that he purchased said claim in good faith & paid a large & valuable consideration therefor and applicant petitioner says that he inadvertently failed to offer all the evidence in the former hearing of this cause showing the equities thereof & more particularly showing its boundaries; that said inadvertence in part arose from the following circumstances to wit previous to the hearing of said cause he was engaged in producing testimony showing the boundaries of the tract of land claimed & that when he had finished with the witnesses whose depositions were taken in the former trial, he was ready to produce & had present before the commissioner other witnesses to be examined petitioner since specifically showing the said boundaries, when Joseph R. Geiches for the U. S.

Deceased, Attorney for said point remarked that it was useless to produce any more testimony upon the subject of boundaries as they seemed to be satisfactorily proven, whereupon trusting & inadvertently confiding in the correctness of the statement of said District Attorney no other testimony was upon the subject of boundaries was produced.

Affiant further says that the claim in this cause is founded upon an undisturbed possession of more than ~~forty~~ fifty years continuous to the present day, commencing & continuing under a claim of ownership & that affiant is informed & believes that upon a new hearing of this cause he will be able to produce testimony upon this point, showing that possession, & showing more clearly & particularly the boundaries of the lands of said called by Rubio Lopez Lopez & the other points mentioned in the ancient petition of Marcelo Lopez.

And affiant further says that on the hearing of said cause he was surprised by the objections made by the said District Attorney to the proof

of the boundaries of the tract of land claimed in such has appeared a his J. R. Scott his counsel has been understood the same Attorney to say that he would make no objections to the proof of boundaries.

Matthew Keller

Sworn and subscribed before me this 23rd day of November AD 1860

[illegible]
U S Commissioner
for the Dist of Cala

State of California
County of Los Angeles } J. R. Scott being duly sworn deposes & says that he is counsel for Matthew Keller the claimant herein & that he the said counsel understood the United States Attorney in the same manner & to the same effect as set out in the preceding affidavit of said claimant.

J R Scott

Sworn to & subscribed before me this 23rd day of November AD 1860
Myer J Newmark
Notary Public

No 147

Matthew Keller
vs
United States

appellants motion for New Hearing

Filed according to stipulation and order of Court this 23d day of Nov 1866 for Dec 2d, 1866

O Stones
Clk

M C Keller
vs
The United States

U S District Court
Southern Dist of California
No 147

On the 12th of Nov 1852 L. C. Prudhomme filed his petition before the U S Board of Land Commissioners appointed under the Act of 1851 - asking at their hands a confirmation of this claim - containing three Leagues more or less. bounded on the South by the Sea. North by the range of Mountains East by the Lopanga West by the Cañada de las Encinas

The present Claimant has been substituted for Prudhomme.

It is contended upon the part of the Government that this claim is invalid and should be rejected, upon the following grounds to wit.

1st That no definite or valid grant ever issued for the lands herein claimed either from the Spanish or Mexican Authorities, and that the Claimant has not produced neither does he possess a any legal title to the same.

2nd That there are no equities existing upon the part of the Claimant sufficient to entitle him to a decree

of confirmation.

3d That if equities exist, there ~~has not~~ no segregation of the lands claimed has ever been made. neither can a segregation take place there being no metes or bounds proven. and it should be rejected.

1st That no valid or legal titles ever issued from the Spanish or Mexican Governments for the lands claimed, to Tapia or others, is clearly shown by the transcript and testimony introduced by the Claimant, and is also virtually acknowledged in Claimants Brief — No loss of grant has been proven — and as to the non-existence of any such document see affidavits filed Scott, Prudhomme and Hopkins also the petition presented by Tapia to Gov Arrillaga — and the Governors reference thereof to the commandante of St Barbara. The Spanish Governors previous to 1824 were the proper persons to make grants, and the mere permission given by an inferior officer such as the Commandante of St Barbara, to occupy lands for grazing purposes did not and could not confer any legal title to the lands thus occupied.

2nd That there are no equities existing upon the part of the claimants sufficient to entitle him to a decree of confirmation. Equity like law is governed by fixed rules, and none more certain or firmly established, than that which would require the claimant to show that he or those under whom he claims, entered and took possession of the lands under the color of a title. In this case although it is claimed that a title existed, the proof is clear that none was ever issued and that Lapia (under whom the present claimant asks confirmation) entered as the tenant of Don Felipe de Lay cochea commandante of Santa Barbara, see petition of Lapia page 18 of Transcript wherein he claims all his rights to have been derived from the commandante of Santa Barbara - an inferior officer who had no power to concede or dispose of the public domain in any manner.

Even had the power existed in the commandante, no proof is made that a grant ever issued either provisionally or otherwise. and the mere fact of a long continued occupancy by Lapia and those claiming under him under such circumstances as are shown in this case can not raise a presumption of title against

the Government. In the case of Lindsey et al vs the Lessee of Miller. 6th Peters 672 the Supreme Court says "it is a well settled principle that the Statutes of Limitation cannot run against a State" thus no title existed in Sapia or his heirs that could be transferred.

3d Should the Court think that equities exist in this case, we then claim upon the part of the Government that the lands claimed never have been seggregated from the public domain, neither are there any definite boundaries proven by which a seggregation could be made, as to bounds the only testimony is that of Machado and Palamires who only testify upon the hearsay of others. This testimony is objected to upon the part of the Government, which objection I submit is well taken and fully sustained by the Supreme Court in the case of Elliott vs Pearl 10th Peters 436 The general rule that evidence to be admissible should be given under the sanction of an oath in a proceeding between the parties 1st

Greenleaf

Discarding then the testimony of these two witnesses no boundaries are shown or location given and the claim must fail for want of ability to segregate

Lastly should the court overrule the exceptions taken to these two witnesses it is submitted that the claimant can but receive a decree for three Leagues within the exterior boundaries. It is all that was sought for by their original Petition before the Board of Land Commissioners. It is fairly to be presumed that the then claimant knew the extent of his claim and he cannot be permitted now to take his decree for thirty three Leagues under a claim for three.

W L Stitzwell
U S Dist atty

No 1219

District Court

M Keller
vs
The United States

Brief

Filed in office
March 26th 1866
C Ginis
CR

J R Ritchie
U S Atty

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

Matthew Keller
Appellant
vs
United States
Appellee.

147

It is hereby stipulated and agreed in the above case, that the appellant may have leave to file and bring to hearing a motion for a new trial herein in the above Court, at the present Special term of August 1860, as of the last regular Los Angeles Term of December 1859

J R Mitchell
U. S. Dist Atty

J R Scott
Atty for Appellant

No. 147

M Keller
vs
The U States

Stipulation to file
Motion for New
Trial

Filed in Office
this 6th August 1861
Chas
CR

No.

Matthew Keller } In the District Court
vs. } of the U.S. for the
United States } Southern District of
} California

Claim for Malaga

And now comes Matthew Keller the Claimant herein & moves the Court for a new hearing herein and the said Claimant ~~[illegible]~~ will rely on the hearing of this motion on the records in said cause the affidavits of himself & Dr. Scott Gay filed herein & upon such other affidavits as the Court may permit to be filed —

J. L. Brent —

Atty for Claimant

No 147

Matthew Kelly
vs
United States

Motion for
New trial

Filed according to stipulation and order of Court
this 23d day of Nov
1860 for Term 2d
1860

C Sims
Clk

Matthew Heller
vs
The United States

District Court of the United States Southern District of California

J P Mitchell United States District Attorney for the Southern District of California being duly sworn says that in the Month of December 1858 at the conclusion of the taking of the depositions of Tomas Talamantes and Ignacio Machado, on behalf of the Claimant, Affiant asked R Scatte Counsel for Claimant if the other witnesses he then had present, knew or could testify to any new facts, in this cause Deed. Scott remarked, that the ballance of the witnesses, knew the same facts and could testify only the same as the preceding witnesses

Affiant then remarked that he should deem it unnecessary to take more testimony of the same character for if good at all the testimony of the two would be as good as that of a dozen. Affiant farther says that he never did waive his objections to the testimony

but on the contrary took his exceptions to the testimony at the time it was taken, and now hold the said exceptions as well taken and so argued upon the final hearing of this cause

J P Mitchell
U S Dist Atty

Filed & published before me this 6th day of December A D 1866

J. Long Clk. Dist. Ct. Louis
Jno O Wheeler Deputy

No 147

In Dist Court of U.S.
South^n Dist of Cal^a

Matthew Keller
vs
United States

Affd Dist Atty

Filed Dec 8th 1860
L. Sys Clk
By John D Wheaton Dep

J. Lancaster Brent

Los Angeles

C.O.D. 75.

H 76 No 1

Sor Governador

Jose Bartolome Tapia Vecino, y Habitante en el Pueblo de la Reyna de los Angs. con todo Subordinacion y Vendim.to representa a V.S. Que haviendole por orn. Supor de V.S. dado el parage de Topomgamalibu, y u mosiquet. al Sor. Capn. Frad. Felipe de Goycochea, para tener alli su tenencia la decision bienes de campo, y.c con tanto trabajo de esta Demanda ha adquirido para beneficio de su familia y el qe. se cumpla y logro la felicidad el qe se le diese y aun sus ohns pa se le como lo pidio, para estar solo y separdese en pacifica posesion al qe. representa xado para qe. ningun colindante tubiese qe meterse, ni menos el perjudicar a nadie como ni qe. me perjudiquen otros.

Xoreto 12 de Junio de 1805.

Al Comte. del Pres.o y Comand.te del Pres.o de Sta. Barb.a Sr. de S. Barbara por

Su Piedad de V.S. se lo confirio interinam.te en esos mismos terminos mando el Sor. Dn. Felipe se me diese: hacia Senor haze dos años y meses qe el Decimo Proquinto Sumiga

Amillaga

ha echado sus Eleguas, y Cavallos
Manzos hay; y havendo ocurrido
desocuparen el Sitio para tener sus
vienes. luego oyda su humilde Supe
mandó orn. el Sor. Ten.te Comand.te
Ministerial de Sta. Barb.a D.n Josef
Raym.do Carrillo, se me desase solo-

Havendose obedesido la orn.
expuesta como desa dho. se precento
el mencionado Zanga, al Herido-
Comand.te D.n Raym.do informando q.
p.r Ruensia, q.e tenia del Sor. D.n Fe
lipe, subsistia en mi Herido para-
se, ocupandolo con una disculpa in
sierta y aun valiendose de decir ten.te
dho. Sitio otros nombres, q.e como ha-
re constar muy indiferentes q.e los
Indios de aquel parase ablan; pues se
gun estoy informado Sor. Governador, es
lengua de los Indios de San Xaviel, co
mo igualm.te tambien expuso estar
retirado del Sitio q.e se me consi-
rio, alque dho. Proquinto Sumiga, se
gun dize le mezenaron.

Es constante Señor, q.e no hay otro
parase p.r ese rumbo. si no en. el su
so dicho q.e se me tiene consedido

como pueden decirlos los mismos Co
micionados ateceso, y aun el q.e Sobrei
te como los Vezinos de este Pueblo.
como quiera Señor Gov.or q.e se bo
Helamar al Señor Dn Felipe, para
con su havizo hacer esta humilde
peticion la q.e no havia echola hta ho
ora p.r los motibos q.e expresa, haci
endo presente â V.S. no poder su-
frir el oravicimo daño q.e me resul
ta con los hijos de dho. Zuniga, p.r
donde bee presuade de ocurrir (de
ocurrir) ala Justificacion de V.S. para
q.e p.r medio de su Justicia se dig-
ne Comferirme dho Sitio en los ter
minos q.e la Gran Piedad de V.S. se
diono conederme anteriormente.

Siempre q.e V.S. determine da
re constancia ser nulo todo lo q.
Ploquinto Zuniga expuso a V.S. en
con Memorial q.e presento afin de
q.e se le diese el mencionado para
se Solicitado por el. pues aun dis
q.e p.r la misma Licencia q.e tenia
del Sor Dn Felipe havia manda
do capar sus Garañones y echarle

4.

Buxo alas Elcomo para q. Subca
Reconocer como Subditos ha q. c. c
Substituia de D. S. Determine. p.r Tan.r

U. S.

Pido y Suplico se sirva como
Pueblo poblado, de cuia gracia Recibire
Frei, y merced.

Pueblo de los Angs. 16 de Nb.
de 1805.

José Dax Tolmatapia

No. 483

Leon V. Prudhomme

Tapanga, Malibu &c

Doc. H & C No. 1 and
to the Depo of Jose Ant.o
Carrello, taken before
Com.r Hiland Hall

Filed in Office Nov 13th
1852

Geo. Fisher
Secy

Recorded in Book
of Rec of Gr. Vol XIV
pages 50, 51 & 52.

147 SD
PAGE 129

Office of the Surveyor General,
Of the United States, for California.

I, J. W. MANDEVILLE, Surveyor General of the United States for the District of California, and as such, having in my office, and in my charge and custody, a portion of the Archives of the former Spanish and Mexican Territory, or Department of Upper California, as also the papers of the late Board of Commissioners to ascertain and settle the private land claims in California; by virtue of the power vested in me by law, Do Hereby Certify, that the four preceding, and hereunto annexed pages, of tracing paper, numbered from one to four inclusive, exhibit a true, full, and correct copy, of an original document filed in case No. 483 on the Docket of said Board, together with the endorsement thereon; as the same now appears on file among the Archives of said Board in my office and in my charge and custody.

EXAMINED AND FOUND CORRECT.
R C Hopkins
Keeper of Archives.

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 twenty fourth day of January 1861.

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

No 147

In U. S. Dist Court
South^n Dist of Cal^a

Matthew Keller
ads
The United State

Filed in open Court this
16th day of April AD 1861.
G. L. Mix
Clerk

#147
15 pictures

To the Hon: Fletcher M. Haight
United States District Judge for
the United States District Court
of the Southern District of the State
of California.

Your petitioners Leon V. Pendhomme
and Matthew Keller respectfully
represent, that, said Pendhomme
on the 12th of November 1852, filed
his petition before the United States
Commissioners appointed under the
act of third of March 1851, to ascertain
and settle land titles for the State
of California, in which he prayed
confirmation of a ranch, known
and described as Topanga,
Malibu, Simi & Sequit, situated
in the County of Los Angeles, district
aforesaid, and bounded, as
described in said petition, on
the South by the Sea, North by a
range of mountains, East by the Creek of
Topanga, and West by the Cañada
de las Encinas, and containing three
leagues, more or less.

The said Pendhomme on
information and belief alleged in his
said petition that said

rancho about the year 1804, was granted by the Governor of California to José Bartolome Tapia, but that, said grant was subsequently lost. That said Governor had legal power to grant said land to said Tapia. That in the year 1805, the same Governor ordered said grantee to be put into peaceable possession of said lands by the Commandante of the garrison of Santa Barbara, which order together with the petition on which it is founded is on file as part of the transcript in this case. That from that period to the present time, said Tapia, his heirs, and their vendees have been in the continued and undisturbed possession of said lands, living on, or occupying said rancho for grazing, and agricultural, and that, the same has uniformly been respected as their property, as alleged by the petition in said case and by the proof taken and contained in the records. That about the year 1848 the legatees and heirs at law

of said Papin sold and transferred said rancho to said Prudhomme; that on the 8th day of November 1857, said Prudhomme and wife for a valuable consideration sold and conveyed said rancho to Matthew Keller, the other petitioner. That such proceedings were subsequently had in said case, being No 483, on the docket of said Land Commission, that, the said claim was rejected by decree of said Commissioners filed March 21, 1854, and afterwards an appeal was regularly prosecuted to the United States District of said District for the Southern District of California, and in case No. 147, on the Docket of said Court. That, such proceedings were subsequently had in said District Court, that, on or about the seconds day of June A. D. 1860, an opinion or order of said District Court was filed, declaring said claim for the confirmation of the title to said rancho to be rejected. That subsequently, at the last term of said District Court holden

at Los Angeles in said District, said Court granted leave to file a bill of review, or petition for rehearing at the present term of this Court. Petitioners allege, that, there is error in law appearing on the face of said decree or order in this:

1. The whole of said supposed decree is in the following language: "Now on this day, the Court having this case under advisement, delivers its opinion rejecting the same. It is therefore ordered by the Court that the same be held invalid and void and that the same is hereby rejected"

Signed, Isaac S.K. Ogden
U.S. Dist Judge.

and endorsed: "Filed in office this 2d June 1866, C. Sims C.K."

Petitioners on ~~[illegible]~~ sworn by the present Clerk of said Court and believe, that, said order or decree was never recorded as a decree of said Court in the decree book or any book of entries, and they are advised, that, it amounts to no more, than a statement of an opinion, that, said claim ought to

be rejected, and is not a

be rejected, and is not a judgment of the Court from which an appeal can be prosecuted. That it does not pursuit either to affirm or reverse the judgment of the Lands Commission, the Court below.

2. Petitioner further alleges, that, if said order or opinion of Judge Ogier is to be construed as a decree or judgment, rejecting said claim, they are advised, that, there is error on the face of it in this: It appears from the petition of said Tapia to the Governor of California, dated the 12th July 1805, that, the Commandante of the Post had granted to him the place called Topanga, Malibu, Simi and Sequit. In addressing himself to the Governor he adds, "Your excellency kindly confirmed it in him provisionally, in the same terms, that Sr. Don Hilipe ordered that, it should be given me" &c. Upon this petition the Governor ordered the following decree: "To the Commandante of the Garrison of Santa Barbara belongs the decision of this demand and that his orders may be

complied with in order that he who makes representation may be left in peaceable possession thereof. (Signed) Apollago"

Petitioner is advised, that, the representations of the petition of Papia, thus acted upon by the Governor should be taken as true, and that, together with the order of the Governor, they establish a right in Papia to the lands. That if these documents do not show a grant of the lands, they at least show an equitable claim to it, which the Governor, the then granting power acted on as sufficient to change the conscience of the King.

They are advised that this document is conclusive evidence of a provisional grant, which with long possession has been held to entitle the owner to confirmation under the treaty between the United States and Mexico, and the act of Congress of 3d March 1851.

Petitioner is further informed, advised and believe that, the proof in this case establishes

the fact of a continuous possession in Tapia, his heirs and grantees for more than half a century, and that during that time, the land was always recognized by the government of Spain and Mexico, and the neighbors as the property of Tapia.

Petitioners are advised, that, the said rancho has been thus held for a sufficient time to confer title by prescription under the laws of Spain and Mexico, and also, to authorize presumption of a grant in fee property from the past governments.

Petitioners are further advised, that, the boundaries of said land as set out in the petition to the Board of Commissioners, and established by proof in the case are well defined by natural objects, showing what now the boundaries of the lands by the name of the rancho given by the

by the Spanish documents.
They further allege that the boundaries as given in the petition filed before the board of Commissioners alleged in the same to be three leagues more or less. That the tract of which confirmation is sought is that contained between the Ocean and the mountains and contains about three and a half or four leagues, as they are informed and believe. That the rendone or mountains contained in the survey and map presented to this Court although sometimes occupied by Tapia for grazing are nearly valueless, and claimants seek confirmation only of that portion of which the occupation of said Tapia and his heirs was continuous, and the boundary of which are well defined by the Ocean on one side and the mountains and high hills on the other, and are willing that the confirmation should be limited to that quantity.

Petitioners further allege that

Petitioners further allege that on the 15th March A.D. 1860, said M. Keller was substituted, as Claimant under said Court. Wherefore petitioners in this case pray, that, said order, or decree of 22d June A.D. 1860, may be reversed, annulled vacated, and set aside, and for a rehearing of this case; and that, the title in the case presented may be held good and valid, and confirmed. And that, the judgment of the Board of Land Commissioners be reversed and set aside, and for all such other and further relief as the Equity of the case may require.

V. E. Howard
Atty for Petitioners

State of California, }
}

Personally appeared V. E. Howard, Attorney for the petitioners in the foregoing petition, who being duly sworn makes oath and says, that, the allegations of the foregoing petition, made of the knowledge of the petitioners are true, that those made on information and belief

he believes to be true. That, this affidavit is not made by petitioners because they reside in Los Angeles. And because the allegations of the petition relate mostly to matters of record which are more fully within the knowledge of affiant, than of petitioners.

V. E. Howard

Sworn to & subscribed before me this 25th day of July 1861

John S. Wheeler
Clerk Dist Ct Los Angeles

No 147
W. S. Dist Court
South'n Dist Iowa

M Keller Sub for
Prudhomme
vs
United States

Petition for Review

Filed July 25 1864
John S Wheeler
Clk

United States of America
State of California -

United States District Court Southern District of California

M. Keller
Substituted for
Leon V. Prudhomme
vs
The United States

Answer to Bill of Review

To the Honorable Ferdinand M. Haight U.S. District Judge for the Southern District of California -

Now comes the United States, Respondent, by R.L. Whiting United States Attorney, and files herein his answer to the Plffs Bill of Review and for answer shows to the Court that he denies each and every material allegation set forth in said Bill of Review -

Respondent further answering ~~shows~~ admits that Leon V. Prudhomme filed his claim & petitioned for a confirmation thereof as stated in said Bill of Review, and that such proceedings were had before the

late board of U.S. Land Commissioners & that said claim was by them rejected -

Respondent further admits that an appeal from the decision of said board of land commissioners was taken as set forth, but he denies that about the year 1804, the said tract of land described in said bill of Review & called "Tapanga Malibá Sino & Sequito was granted by the Governor of California to one Barlolome Tapia; or that it was at any other time, before or since the said year 1804 granted to said Tapia, and he denies that at that time the Governor of California had any power or authority so to grant the said tract of land - Respondent further denies that in 1804 the said Governor ordered said Tapia, the said alleged grantee, to be put into peaceable possession of said land by the Commandante of the Garrison of Santa Barbara Respondent admits that said Tapia & others claiming under him were for a long time in possession of said tract of land, but he alleges

that such possession was given

that such possession was given by the Military Commandant of the Garrison of Santa Barbara, and not by any officer of the government authorized to grant the fee to the land - and that it was upon specific conditions & tending only to a leasehold estate, the land to be used only to keep horses & mules upon during the pleasure of the then existing government =

Respondent admits that in the year 1857 the said tract of land was conveyed (so far as the said Prudhomme had power to convey) to Mathew Keller as stated in said Bill of Review - and that subsequently to wit, about the 2d day June 1860 the District Judge of the U. S. District Court for the Southern District of California delivered an opinion rejecting said claim - and that afterwards, to wit at the December Term of said Court held at Los Angeles in the year 1863 & 1864 the said Court granted the claimant leave to file a Bill of Review at the June Term 1864 at Monterey -

Respondent denies that

there was any Error Committed by the Said Court in rendering its decree or decision rejecting said claim and avers that the Entry or decision of the Court as set forth in Said Bill of Review amounts to a judgment & Decree rejecting the claim of Claimants to the tract of land Called "Tapanga Malibu Sumo" & Sequit" and confirming the decision of the late board of land Commissioners -

Respondent denies that the order of the Governor set forth in said Bill of Review ~~dated~~ in answer to the Petition of Tapia dated July 12, 1804 - amounts to a decree or concession of the land, and avers that the true intent & meaning of Said order was to submit the simple question as to right of occupancy back to the Military Commandant at Santa Barbara from whom Tapia obtained his first permission to occupy the land; that it was not intended as such a concession of the land, or the fee, as could by any possible construction of language, change the concession of the King of Spain,

in whom the title to the

in whom the title then existed -

Respondent denies that the government of Spain or Mexico ever recognized any legal or equitable title in Sepúlveda to the land in question, or that it is such a claim as was contemplated by the act of Congress of the United States passed 3d of March 1851 to provide for the settlement of private land claims in California.

Respondent denies that there can be any prescription, or presumption of a grant in full property, to Sepúlveda, in the absence of any proof that he ever applied for it in full property under either of the former governments, and especially when the papers produced show upon their face that whatever interest or Estate Sepúlveda had was simply a leasehold Estate with specific conditions -

Respondent admits that Mathew Keller was substituted on the 16th day of March 1860 as claimant in place of Prudhomme and prays that said decision of the said Court rendered on the 22d day of June 1860 rejecting

the said claim may be confirmed and the claimants Bill of Review may be dismissed with costs, and that a final decree may be entered by this Court confirming the decree of the late board of land Commissioners and rejecting the said claim —

B. C. Whiting U.S.
District Attorney
for the Southern Dist
of California for
Respondents

State of California
County of Monterey } ss. B. C. Whiting
U. S. District Attorney
for the Southern District of California
acting for the Respondents in the
foregoing action being duly sworn
says that he has read the above
& foregoing answer to the claimants
Bill of Review & that he knows
the contents thereof that the allegations
& statements therein are true of
his own knowledge, Except as to those
matters stated on information & belief

& as to those matters he believes it

and as to those matters he believes it to be true - that this affidavit & answer are made by deponent because he is more familiar with all the facts stated than any other person & because he has charge of the case on behalf of the United States -

B. C. Whiting

Sworn to & subscribed before me this 30th day of July A.D. 1864

John O Wheeler
Clk U S Dist Court

No 147

U.S. Dist - Court
South^n Dist of California

M. Keller Subst
for Bridhamm

vs.

The United States

Answer to Bill of Review

Filed July 30th, 1864
John D Wheler
Clk

R. A. Whiting U.S.
Dist. Attorney

United States District Court. Southern District California
Regular October Term A.D. 1864
Monterey

Hon. Fletcher M Waight Judge

Mathew Keller,
Substituted for
Leon V. Prudhomme, Appellant
vs
The United States Appellee

No # 142

This cause coming on to be heard upon a Bill of Review filed by the appellant and allowed by the Court, and upon the appeal from the final decision of the United States Board of Land Commissioners to ascertain and settle private land claims in California under an act of Congress approved March 3d 1851, On a transcript of the proceedings and decision of said Board, and of the papers and evidence upon which said decision was founded, and additional evidence taken in this Court and filed in this cause And it appearing that the said transcript has been regularly filed according to law, and Mathew Keller having been substituted upon the record as appellant, in place of Leon V Prudhomme, and Counsel for the respective parties having been heard, It is Ordered adjudged and decreed by the Court, that the former decision of this Court confirming the decree of said Board of U.S. Land Commissioners rejecting the claim of appellant herein be and the same is hereby overruled and set aside, and it is further ordered, adjudged and decreed that the said decree of said Commissioners be reversed, And it is further ordered adjudged and decreed that the claim of the said appellant is good and valid, and the same is hereby confirmed to him. The land of which confir-

-mation is hereby made is situated in the County of Los Angeles and State of California and is known by the name of Topanga, Malibu Sequit, extending from a place named "Topanga" the dividing line between these lands and the Rancho of "Santa Monica" on the South East along the Pacific Ocean to a point called Mogu on the North West, and bounded on the North East by a ledge of rocks on the top of and extending the whole length of a range of mountains; and adjoining the lines of the Ranchos of "Las Virgenes", "Triunfo", "Santa Ysabel", "and "Conejo".

Said Confirmation being hereby made to the extent of Three Sequare leagues within said mentioned boundaries.

Thus done & entered in open Court this 24th day of October AD 1864

Fletcher M. Haight
Judge of Dist Court Fourth Dist Cala

Filed Oct. 24, 1864
John Wheeler
Clk

147 SD
Recorded PAGE 151

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the District Court of the United States, for the Southern District of California

Greeting:

Whereas, lately, in the District Court of the United States, for the Southern District of California before you, in a cause between Mathew Keller substituted for Leon V. Prudhomme, appellant, and The United States appellees, (No. 147 for the place called "Topanga Malibu") wherein the decree of the said District Court was in favor of the said appellant, and against the said appellees.

as by the inspection of the transcript of the record _____

_____ of the said District

Court, which was brought into the Supreme Court of the United States, by virtue of an appeal

agreeably to the act of Congress, _____

_____ in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and sixty four the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and ~~was argued by counsel. On consideration whereof,~~ on the motion of Mr Attorney General Speed of Counsel for the appellants it is now here ordered, adjudged and decreed by this Court that this cause be and the same is hereby dismissed. 10 March

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PAGE 154

You, therefore, are hereby commanded that such _____ proceedings be had in said cause, _____

as according to right and justice, and the laws of the United States ought to be had, the said appeal notwithstanding:

Witness the Honorable Salmon P. Chase Chief Justice of said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and fifty four

COSTS OF
Clerk..... $
Attorney... $

$

~~Taxed by~~ D. W. Middleton

Clerk of the Supreme Court of the United States.

No 147
No. 386. December Term, 1864.

MANDATE

SUPREME COURT UNITED STATES.

U. States
vs.
Keller Auditor &c for Pendleton

Mandate
Filed Dec. 4. 1865
John A. Clarke
Clerk

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

Leon V. Rudhomme
Appellant
vs
The United States
Appellee.

Case No. 147
Transcript No. 483.
"Topanga, Malibu" etc

No	Days	
1	3.4.	Petition to Commission
2	4.	Deposition of Juan Moreno
3	5.6.	do Jose Ant.o Carrillo
4	6.	do Ramon Ybarra.
5	7.	do Ant.o Valdez.
6	8.9.	Petition of Jose Bartolome Tapia to Gov.r with marginal order of Reference to Commandante at Santa Barbara by Gov.r Arrellaga, July 12/05 — H.H.No.1.
7	10.11.	Translation of Petition & Order. No. 6
8	12.13.	Deed of Francisca Mariana Villalobos and children to Claimant, January 24./48. — H.H.No.2.
9	14.15.	Translation of Deed. No. 8.
10.	17.18.19.	Will of Bartolome Tapia
11.	19.20.	Inventory " "
12.	20.	Certificate of Alcalde
13.	20.21.	Distribution of Estate
14.	21.22.	do " Vineyard — H.H.No.3.
15	24 & 27	Translation of Will No. 10
16	27 & 29.	do Inventory & Cert. " 11.12
17	29.30.	do Distribution " 13
18	30.31.	do " do Vineyard " 14
19	32 & 34	Opinion
20	35	do Dissenting of Com.r Thompson
21	35	Decree of Rejection
22	36.	Order to file Transcript.

Additional evidence

Affidavit of D R Scott

" " R. C. Hopkins

" " "

Deposition of F. Balcomantes

" " Ignacio Machado

" " Wm Moore

Map

Copy of Deed to Bruchamme.

Case No 1147.

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

R. B. Buchanan

Appellant

vs

The United States

Appellee.

Suit of Grant No 4883.

Mathew Keller } No. U. S. Dist.
vs } Court for the South.
United States } District of Pennsylvania

And now comes Mathew Keller Claimant herein & renews his application for a New hearing herein by leave of the Court first had & obtained — He will rely upon the hearing herein upon the amended document & opinion upon his former opinions & upon the papers & evidence already on file —

D. A. Brent —
I. R. Scott
Atys for Claimant

M. Keller
vs
United States

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

Nathan Keller being duly sworn
deposes & says that he is the claim-
ant herein & that he herewith
presents a true copy from the
Office of the U. S. Surveyor General
for California of the original petition
of Josef Bartolome Zapien —
~~Nathan~~ Affiant further says
that he came to the County of Los
Angeles in the year 1851 & that
from the time he first knew
the premises claimed they were
in possession of the original
claimants & that from all infor-
=mation he could obtain ~~same~~ possession
under this title
=sion, could be traced as far back as
human testimony could go accom-
panied by a claim of ownership & taxes
upon the portion of such long possession
& the respect & trust it had received
-ed the same —
Affiant further states that the
map made by W. J. Moore was inadvertently
filed without explanation such as names
of Encantilas & that affiant believes

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that the withdrawing of said petition may or its amendment so as to more distinctly represent a explain because this would more clearly show the exterior limits within which the compensation is prayed

Whereupon opponent prays that a new hearing herein may be granted him & that three leagues within the limits as proven may be conceded to him — Matthew Keller

Sworn to & subscribed before me
this 15th day of April A.D. 1861
G. L. Mixer Clerk

1. By acting on the petition of Tapia, the Governor admitted the truth of his allegations. U. S. v. Sutter 21. Cal: 173, that, a provisional title had been issued by the Govr.

2. The Commission erred in deciding that, a provisional title, accompanied with by possession was not entitled to confirmation. It gives a right of present possession and under the Spanish and Mexican laws a contract, that, party shall be entitled to a grant on complying with the regulations in relation to settlement. Such titles have been repeatedly confirmed in California.

The present is a much stronger case than that of Alviso, confirmed by the Supreme Court of the United States 23. Howard 318.

3. The Supreme Court regards as part of the possessory entitling claimant to confirmation, that, which has been had since the change of Flags. United States v De Haro 22 Cal Rep: 293. In this case it is conclusively proved, that, the

grantee and those claiming under him have been in possession more than sixty years. A period more than sufficient to give title by prescription under the Spanish law, and by presumption of grant against the government under the common law.

"A bill of review is proper after a decree is enrolled, and a supplemental bill, in the nature of a bill of review, before the enrolment of the decree" Wiser v. Blachly 2 J. Ch. R. 488. It is immaterial whether the bill in this case is regarded as a bill of review or a supplemental bill.

In this case there is error on the face of the decree, if a provisional title should be confirmed, which has been repeatedly held by the District Court, and by the Supreme Court in the case of Alviso. It is apparent, that the governor regarded the title of Tapia as giving him a right to the land, & he directed the Commandant to maintain him in the possession.

There is no doubt, that, under the Spanish law Papice would have had a right to demand a grant in form, and that, the Mexican Government always respected this class of rights. It is certainly a much older and better equity than most of the titles confirmed.

V. E. Howard
for Appellants.

No
147
Keller
v.
United States

Brief

W. E. Howard

United States District Court for the 2d District California

Matthew Kelly. Cal. for
L. V. Prudhomme. &
" Appellants
The United States
Appellee

I, John O Wheeler Clerk of the U S District Court for the 2d Dist Cal do hereby Certify that the Decree of said Court rendered and filed therein on the 2d June 1860 has never been recorded in the Book of Decrees appertaining to said Court.

That on the 23d day of Nov 1860, appellants attorney presented and filed motion and affidavit praying the Court to grant a rehearing. which motion by Consent of parties and order of the Court, made as of the 2d day of June 1860

That said motion was finally overruled and denied on the 26th October 1863.

Witness my hand & the Seal of said Court at the City of Monterey this the 26th day of July 1864

John O Wheeler
Clk U S Dist Ct

Office of the Attorney General of the United States,

Washington, 17th January 1855.

Leon V. Prudhomme
vs.
The United States. } 483.

You will please take notice that in the above case, decided by the Commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 30th day of October 1854, the appeal in the district court of the United States for the district of California will be prosecuted by the United States.

Caushing

Attorney General.

In the Southern Division of the

147 SD
PAGE 166

UNITED STATES DISTRICT COURT

for the Northern Division of California.

PRUDHOMME, Plaintiff vs UNITED STATES of AMERICA, Defendant	No. 147, S.D. Order transferring Documents.

Good cause appearing therefor, on application of Richard N. Mather, of the firm of McGee, Robnett and Mather, San Francisco, California, the clerk of the United States District Court in the Southern Division of the Northern District of California is hereby ordered and directed to transmit all of the papers and documents in the above entitled and numbered cause to the Clerk of the United District Court for the Southern District of California, at Los Angeles, California, said papers and documents to be held by said Clerk of the United States District Court for said Southern District for a period of ten days from the day he receives the same, and then returned by him to this court.

Said papers and documents shall be held by the said Clerk of the United States District Court for the Southern District of California as a public documents, subject to the inspections of all persons, but the same shall not be permitted to leave his office, save and except under the express orders of this court.

Said papers and documents shall be transmitted by said clerks by American Express or Registered Mail at the expense of the applicant.

Dated= November 1, 1928.

Presiding Judge.

All Returned
Nov 10/1928

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No. 147, S. D.

IN THE SOUTHERN DIVISION OF THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DIVISION OF
CALIFORNIA.

PRUDHOMME,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ORDER TRANSFERRING DOCUMENTS

FILED

NOV 1 1926

WALTER B. MALING, Clerk

By W. Calnatt

DEPUTY CLERK

MCGEE, ROBNETT & MATHER
RUSS BUILDING
SAN FRANCISCO, CALIFORNIA

147 SD

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56886

(POSTMARK OF)

Receipt for Registered Article No. _____

Registered at the Post Office indicated in Postmark

Fee paid _____ *cents* *Class postage* _____

Return Receipt fee _____ Spl. Del'y fee _____

Delivery restricted to addressee:

in person _____, or order _____

Accepting employee will place his *initials* in space indicating restricted delivery.

POSTMASTER, per _____ (MAILING OFFICE)

Complete record of registered mail is kept at the post office, but the sender should write the name of the addressee on back hereof as an identification. Preserve and submit this receipt in case of inquiry or application for indemnity.

Registry Fees and Indemnity.—Domestic letters and sealed parcels indemnified for $50 or less, 15 cents; for over $50 and not in excess of $100, 20 cents; domestic second-class, not indemnified, 15 cents; domestic third-class, indemnified up to $25, 15 cents; articles addressed to foreign countries, regardless of class or indemnity, 15 cents. Claims must be filed with postmasters within one year from date of mailing.

c 5—6852

Form 3806

GOVERNMENT PRINTING OFFICE

Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

REGISTERED ARTICLE

No. 56886

INSURED PARCEL

No.

LOS ANGELES NOV 2 5 30PM 1928 CALIF.

POSTMARK OF DELIVERING OFFICE

AND DATE OF DELIVERY

Return to U. S. Dist Court

(NAME OF SENDER)

Street and Number, or Post Office Box, Box 707

SAN FRANCISCO,

CALIFORNIA.

RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signature or name of addressee.)

(Signature of addressee's agent.)

Date of delivery, 11-2, 1928

Form 3811

GOVERNMENT PRINTING OFFICE

5—6116

San Francisco
November 1, 1928

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All Returned Nov 10/1928 [illegible]

R. S. Zimmerman, Esquire
Clerk, U. S. District Court
Post Office Building
Los Angeles, California

Dear Mr. Zimmerman:

In accordance with an Order signed by Judge Kerrigan, a certified copy of which is enclosed, I am sending the following papers in land Case No. 147, S. D., United States Vs. Leon V. Prudhomme:

1. Transcript of the Record from Board of U. S. Land Commissioners (Roll)
2. Brief
3. Brief - filed Mar 26, 1860
4. Brief of Appellant - Filed Oct 15, 1860
5. Affd of Prudhomme - Filed Mar 12, 1860
6. Deposition of Abel Stearns - Filed Mar 13, 1860
7. Deposition of Y. Machada - Filed Dec 21, 1858
8. Deposition of T. Talaman - Filed Dec 21, 1858
9. Deposition of William Moore - Filed Jan 13, 1857
10. Index of Transcript 483
11. Petition for Review - Filed Dec 8, 1856
12. Summons - Filed Dec 12, 1856
13. Notice of Appeal - Filed Apr 1, /54
14. Petition for Review - Filed July 25, 1863
15. Decree - Filed June 2, 1860
16. Certificate of Clerk
17. Document - Filed Apr 16, 1861
18. Notice for next hearing - Filed Nov 23, 1860
19. Deed - Filed Nov 11, 1857
20. Answer to Bill of Review - Filed July 30, 1864
21. Affdv. of Dist. Attorney - Filed Dec 6, 1860
22. Affidavit on Motion for new hearing - Filed Nov 23, 1860

23. Stipulation to file Motion for New Trial - filed August 6, 1860
24. Answer - filed Dec 13, 1856
25. Order for further testimony - filed Oct 24, 1858
26. Subpoena on the part of Appellant - filed Jany 18, 1859
27. Affdv of I. R. Scott - filed Dec 22, 1859
28. Affidvait of R. C. Hopkins - Filed Mar 12, 1860
29. Affidavit of R. C. Hopkins - Filed Mar 12, 1860
30. Order substituting Veller as Appell't - filed Mar 12, 1860
31. Decree of Confirmation - filed Oct 24, 1864
32. Mandate - filed Dec 4, 1865.

I am also sending you herewith 18¢ in postage stamps to pay for the Registry fee when returning these papers to this office, upon the completion of the time allowed in the order.

I understand that these Documents were sent to you at the request of Los Angeles Attorneys, who desired to inspect them and the Judge felt that you would be willing to co-operate and see that they were safely returned.

With kindest regards, I remain

Yours respectfully,

ENC:
CWC:T

CLERK.