CASE NO.
151
SOUTHERN DISTRICT

LLANO DE BUENA VISTA GRANT

DAVID SPENCE

CLAIMANT

3-18

Sentler Dem

TRANSCRIPT

OF THE

PROCEEDINGS

IN CASE

NO. 518

David Spence CLAIMANT

VS.

THE UNITED STATES, DEFENDANT,

FOR THE PLACE NAMED

"Llano de Buena Vista."

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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* eighteenth day of January, *Anno Domini One Thousand Eight Hundred and Fifty=*Three, *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 David Spence, *for the Place named* "Llano de Buena Vista", *was presented, and ordered to be filed and docketed with No.* 518, *and is as follows, to wit;*

(Vide page 3 of this Transcript.)

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

San Francisco, March 22d 1853.

In Case no. 518, David Spence for the place named "Llano de Buena Vista" the deposition of Guadalupe Cantua, a witness in behalf of the Claimant, taken before Commissioner Hiram Wace was filed;

(Vide page 5 of this Transcript.)

San Francisco, March 23d 1853.

In the same Case the deposition of José de Jesus Vallejo, a witness in behalf of the Claimant, taken before Commissioner Hiram Wace, with document marked H. H. no. 1, and translation thereof, annexed thereto was filed;

(Vide page 7 of this Transcript.)

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San Francisco, March 31st 1853.

In the same case the deposition of Mariano Soberanes, a witness in behalf of the claimant, taken before Commissioner Juan Wall was filed.

(Vide page 9 of this Transcript)

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San Francisco, April 2d 1853.

In the same case the deposition of David Spence, the claimant a witness in his own behalf was filed.

(Vide page 11 of this Transcript)

San Francisco Oct. 26th 1853.

In the same case the deposition of Juan B. R. Cooper, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with document marked A. F. No. 1, annexed thereto, was filed.

(Vide page 14 of this Transcript)

San Francisco, November 8 1853.

Case No. 518 was argued, and submitted and taken under advisement by the Board.

San Francisco, March 14 1854.

In the same case Commissioner Thompson Campbell delivered the opinion of the Board confirming the claim.

(Vide page 35 of this Transcript)

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San Francisco, Aug. 15 1854.

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

(Vide page 48 of this Transcript)

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Petition

To the Honorable the Board of Commissioners to ascertain and settle Private Land Claims in the State of California

Dona Spence of Monterey in the State of California would respectfully represent to your Hon Board that he claims a certain tract or parcel of land known and called the "Llano or Buen vista" in the County of Monterey and State aforesaid under a Mexican Grant, that the same was granted to Don Jose Mariano Estrada in the year 1823, and has been ever since occupied with stock up to this date,

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Your Petitioner would represent that about the time the US Forces took possession of California some of some parties committed outrages on the farms in consequence whereof said Estrada and family were obliged to abandon their home on a sudden taking with them merely their wearing apparel, during this absence a native of California named Bonifacio Olivas escaped from the Prison of Monterey and passing said farm he forced open one of the doors and stole from a chest some articles as was proved in the cause formed against him by Mr Colton then Alcalde of Monterey

A short time after Estrada sold said Land to Don Manuel Diaz in exchange for cattle, but before the fixed time of delivery he the said Estrada died leaving your Petitioner his executor and on the examination of his papers the Title of said land of the Llano de Buen vista with some other documents were missing The Purchaser then refused to comply unless your Petitioner would give him some security instead of the lost Title consequently the Alcalde of Monterey through a Petitioner was requested to take the affidavit of some old disinterested Citizens to prove the fact of Estradas long possession and occupation of the land alluded to and that said Proceedings should be in writing that they might serve as a Title of Protection in lieu of the original

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Title, a copy of said document your Petitioner has now the honor to accompany and the same testifies that it is now nearly thirty years since said Don José Narciso Estrada was put in peaceable possession of the Llano or Buenavista, that there is no conflicting claim to the said lands or any controversy about the boundaries thereof and they always been respected by the Governors and neighbors (colindantes) when any other lands were granted or Petitioned for as can be seen by the titles of Buena Esperanza and San Vicente alias Rancho Nacional

Your Petitioner would further represent that the sale of said land was made to Don Manuel Diaz by Don José M Estrada on the 14th of July 1844 and conveyed by Diaz to your Petitioner on the 7th day of September 1850, The original title was issued by Governor Don Luis Antonio Argüello in 1823, The land consists of two leagues (dos sitios or Suertes) Ranchos or situated in the Salinas Plain County of Monterey not regularly surveyed but measured according to the custom of the country and its lines clearly defined and is bounded as follows (viz) From the large Oak tree at the Paso del Zanjon Northward to the Positas at the Large Lagoon from said Lagoon Eastward to a bunch of willows in the middle of the Plain from thence to the banks of the River where the House and the house of Old Gabriel was from thence down the River to the said Oak tree the place of beginning containing two leagues or sitios more or less, Your Petitioner files herewith full copies of his papers and translation of the same to which he invites respectfully of the same before your Honors, and states that he will present his proofs when required, Wherefore your Petitioner respectfully prays your Hon Board to confirm his grant to said Llano or Buenavista and to decree his title to be valid, and as in duty bound will ever pray

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Filed in Office
January 18th 1853
Geo Fisher
Secy

By his Attorney Jas Wilson

David Spence

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San Francisco March 22d 1853

Deposition of Guadalupe Cantua

On this day before Com Hiram Hall came Guadalupe Cantua, a witness in behalf of the claimant Dona Spence Petition No 518 and was duly sworn his evidence being interpreted by the Sentry

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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 Guadalupe Cantua, my age is sixty eight years and I reside in San Luis Obispo
I know the Ranch called Llano de Buenavista I was Mayor Domo of it when Don Francisco Estrada occupied it in 1823, it is about big leagues to the Southward from Monterey, it was granted to Don Estrada by Luis Arguello Governor in 1823 as I always understood, the Governor deputed Francisco de Haro to give him the possession I was present at the giving of the possession and was one of the Measurers and saw the Ropes which they had, but I do not read writing, the boundaries of the land as then measured are as follows viz Beginning at an Oak tree at the ford of the Monterey River called the Paso del Zinito thence in a straight line to a Lagoon called the Pasitas thence Eastward to a little grove of willows thence to the banks of the river to where the house & ranchos of Buena Esperanza were from thence following the River to the Oak tree begun at,
Estrada as soon as he received the possession of the land and immediately after the grant from Arguello took possession of the land put cattle on it and built houses and he continued to occupy it until his death

I was his Mayor Domo for three years from the time he took possession and I lived in the vicinity of it until 1841, when I left and went to live at San Luis Obispo During all that time Estrada occupied the land with cattle and horses and cultivated a portion of it Since the grant to Estrada before mentioned grants have been made by the Governors of adjoining Ranchos one to my brother Vicente Cantua of the Rancho Nacional, one of Buena Esperanza to David Spence and Felicano Johnson and the Rancho of Alisal before the grant to Estrada which Rancho he afterwards took to Hartnell,

The Rancho of Sobrevinas was measured at the same time with that of Estrada

his
Guadalupe x Cantua
mark

Sworn and subscribed
Before me
Edward Hall
Comm

Filed in Office March 22d 1853
Geo Fisher
Secy

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San Francisco March 23 1853

On this day before Com Pierce Hall came Jose de Jesus Vallejo a witness in behalf of the claimant David Spence Petition No 518 and was duly sworn his evidence being interpreted by the Interpreter

Deposition of Jose de Jesus Vallejo

The U S State Law Agent was present

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

My name is Jose de Jesus Vallejo my age is fifty two years and I reside at the Mission of San Jose in the County of Santa Clara,

I knew the late Mariano Estrada and knew that he received a grant from Governor Alvarado in 1833, of the tract of land called Llano de Buen vista, I was living in Monterey and knew the land at the time of the grant, I had been acquainted with the land ever since and knew that said Estrada occupied the land for many years from that time with cattle and by cultivation, The place is about six leagues from Monterey, It is bounded as follows beginning at a ford on the Monterey River called the Paso del Zanjo thence northwest to some little pools in the plain of Monterey thence East round to a little bunch of Trees thence to the river southwardly where there are some old corrals, thence along the head of the river to the place of beginning, The quantity of land I think is between three & four leagues, I do not know who are now the adjoining neighbors, true for only on the North was the Rancho Alisal belonging to Sobranes, I understand it now belongs to Mr Hartnell on the West was the Rancho Nacional then belonging to the Government now I think to Castro, On the East was a Rancho

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occupied by the Mission of San Luis, which was called Zanjones, on the other side was the River, a part of the Ranch Zanjones now forms as I understand a ranch called Esperance belonging to David Spence, I have not been on the land since the year 1834

In answer to enquiries by the Associate Land Agent the witness says that he never heard the title of Estrada called in question, it has always been regarded as good

J. J. Vallejo

Sworn and Subscribed before me
Benard Hall
Comm

A Paper is now shown me purporting to be an instrument of transfer from Jose M. Estrada to Manuel Diaz, dated September 17th 1845 which paper is hereto attached and marked B H No 1
I am acquainted with the handwriting and signatures of Jose M Estrada and David Spence and believe the signatures to said paper to be genuine

J. J. Vallejo

Sworn and Subscribed
Before me
Benard Hall
Comm

Filed in Office March 23 1853
Geo Fisher
Secy

Deposition of Mariano Soberanes

San Francisco March 31st 1853

On this day before Colonel Hetman Hall came Mariano Soberanes a witness on behalf of the claimant David Spence Petition No 518 and was duly sworn his evidence being interpreted by the Interpreter

The U S Assistant Land Agent was present

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

My name is Mariano Soberanes my age is 54 years and I reside in the County of Monterey

I know the Rancho called Llano de Buena vista where I have known it all my lifetime, it adjoins a Ranch formerly belonging to me called Alisal, The Rancho Llano de Buena vista was granted in 1823 by Governor Arguello to Mariano Estrada, Immediate Possession was given of the land to Estrada in 1823, I was present as an adjoining neighbour having been summoned to attend as such Estrada immediately occupied it with cattle having a small house and a corral on it and cultivating a small portion of the land, Estrada occupied the land until his death, though he had a short time before sold it to Manuel Dias who afterwards occupied it, Dias sold to David Spence who has occupied it from that time to the present

I have never heard that any other person has at any time claimed the land, the boundaries of the land are well known and respected by all the adjoining proprietors

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Wm Sobrems

Sworn and subscribed

Before me

Edmund Hall

Com

Filed in Office March 31st 1853

Geo Fisher

Clerk

San Francisco April 2d 1853

Deposition of David Spence

On this day before Lorin Ashley I Thornton come David Spence a witness on behalf of the Claimant David Spence Petition No 318 and was duly sworn his testimony being given in English.

I David Spence of Monterey in the State of California depose and say that I came to reside in the then Territory of California in the year 1824, That I then became acquainted with Don Jose Maria Estrada, At that time the said Estrada occupied the Rancho called La Ma de Buenavista on the North side of the Salinas or Monterey River He then had to my knowledge a large stock of cattle and horses which he kept on said Rancho and he also had a corral on it I understood that the Rancho La Ma de Buenavista had been granted to the said Jose Maria Estrada by Don Luis Arguello Governor of Upper California in the year 1823 and that the said Estrada had been put in possession of the same by the process of Law that same year, From my knowledge of the Customs and Laws which prevailed in California before the Colonization Law of August 1824 and the Regulations relating to the same of November 1828 I know that said Estrada could not have obtained juridical possession without the grant of the Governor for the land Such a thing was never known in California at that time The said Jose Maria Estrada ever after said Rancho the Rancho La Ma de Buenavista continued to occupy the said Rancho and kept his stock upon it until the time of his decease although he had made a bargain of sale of the same to Manuel Diaz a short time before his decease I cannot say that I ever saw the title papers of Don Jose Maria Estrada to that Rancho, He was

however a competent and fine diligent man of business and very exact and correct in all his business habits I have not the least doubt but what he had full and proper title papers from Gov Alvarado to said Rancho which he received in 1823,

I further say that the said Don Jose Maria Estrada was living near to and occupying said Rancho Llano de Buenavista with his stock in the Summer of 1846 when the United States forces took possession of this Territory, A Party of the troops under the command of Lt J C Fremont came down from Monterey to the Ranchos about time to take horses saddles arms &c from the Californians for the use of the United States Troops, That Party went to the Rancho of Estrada and to the house where he then lived with his family The evening one afternoon at about three o'clock in the morning The troops took all the horses, saddles arms &c which they could find and Don Jose Maria Estrada with all of his family left their house at daylight in the morning in an Ox cart no other mode of conveyance being left to them, They brought away with them only their wearing apparel, Estrada with his family went to Monterey leaving their house shut up and he with his family continued to reside at Monterey until the existing troubles of the country should have subsided, While the said Estrada with his family were residing at Monterey his house in which he had before resided was broken open and robbed his chests were broken open his papers stolen the wearing apparel and bed clothing were stolen and a Party General plundering of whatever was in the house, A man named Bonifacio Alvarez was charged with the Robbery and convicted among other things stolen was some tobacco and the papers

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Probably as weapons for the making of Legantos,
Not long after this Robbery of Estrandas house he died
Don Jose Marrin, and leaving this affiant his
Executor, I further depose and say that I have made
thorough and diligent search for the original title papers
to the said Rancho de Llano de Buenavista and
I have been unable to find them among the effects of
the said Estrada, I do not believe they are now in ex
istence but on the contrary from the best knowledge
and information I can get in regard to them I believe
they are stolen from Estradas Chest by said Olivas
who destroyed them,

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I further depose and say that the occupation of the
said Rancho de Llano de Buenavista by the said Don
Jose Marrin from the time I first knew it in the
year 1824 was constant peaceable quiet and undisturb
ed while he lived and that it has been quietly
and peacably occupied by those claiming under him up to this date

The Right of property in the said
Rancho to said Don Jose Marrin Estrada was
perfectly recognized by the former Government,
this right too was universally conceded by all the
owners of adjoining lands and there has not been
a doubt or question of it made either by the Gov
ernment of the country or by the adjoining land
owners for the twenty nine years to my knowledge

D. Spence

Sworn and Subscribed
Before me this 20 day of
April 1853

Henry I Thornton
Comr &c

14 Filed in Office April 20 1853
Geo Fisher Clerk

Office of the Board of Commissioners

Deposition of Hon B R Cooper

This day before Com Alphens Fitch came Hon B R Cooper a witness in behalf of of Claimant David Spence No 518 who after being duly sworn deposed as follows

Questions by Genl James Wilson attorney for the Claimant

1 Question What are your name age and place of residence?

Answer My name is Hon B R Cooper my age is sixty years and I reside at Monterey in California that has been my home since 1823

2 Question Did you become acquainted with Don Jose Noriano Estrada? if so when?

Answer I became acquainted with him in May 1823, He was at that time commandante at Monterey and also acted as Commissary

3 Question Do you know any thing of the Rancho de Buenavista and of the Rancho Llano de Buenavista? If so please to state where they are situated and what the relative position one to the other

Answer I know them The Ranchos of Buenavista is about fifteen miles from Monterey, It is situated on the South and West or hilly side of the Monterey or Salinas River The Rancho called Llano de Buenavista is on the other side of the River directly opposite to it,

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4 Question Please state what you know in regard to there being a dwelling house on either of those Ranchos by whom built and by whom occupied when you first knew the Ranchos

Answer I was there in the Summer of 1823 The house was there then but I do not know who it was built by

The house was on the west or hilly side of the River and on the Buenavista Rancho, It was at that time occupied by Don Jose Maximo Estrada and his family, He had also a Mayor Domo and servants there The house was an adobe house about twenty five or thirty long roofed with tile, He had also there a Mill house for grinding wheat, He had also an orchard of fruit trees on the Place and corrals with fences, He had a vineyard there at that time or very soon after

When I first saw the place there were fields which were tilled on the side of the River opposite the house and on the Llano de Buenavista

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5 Question Did Don Jose Maximo Estrada propose to sell you that estate, consisting of the Buenavista with the house and improvements on it and also the Llano Buenavista with the stock and cattle on it and what was the extent of the stock

Answer He offered to sell me the whole place and the stock &c on the Ranchos for nine thousand Dollars, He had nine hundred head of cattle besides horses mares mules and sheep I did not purchase them This was in the year 1823

6 Question Was you intimately acquainted with Don Jose Maximo Estrada from the year 1823 until the time of his death, If you state where he resided with his family and when and where did he die,

Answer I was intimately acquainted with him during the whole of that time He was frequently on the Place where he resided and did a good deal of business with him, He resided part of the time at Monterey and part of the time on the Place above mentioned His family resided during every summer on the farm and he was a part of the time with them there, In the winter they were in Monterey This was so in the early part of my knowledge of the

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family and continued until the death of Mrs Estenaga, after her death Estenaga remained a while in Monterey and then went on the farm before mentioned where he continued to reside until his last sickness, I recollect when he was brought into Monterey after he was taken sick, he died about four years ago as near as I can see

Q Question Please to state what you know either of your own knowledge or from information in regard to the grants of the Ranchos of Buenavista and of La Ana de Buenavista,

Answer I understood that the grant of the Ranchos of Buenavista was given by Don Pablo Vicente de Sola to Don Jose Mariano Estenaga for his two oldest children, and that the other part that is the La Ana de Buenavista was granted to said Estenaga by Don Luis Argüello, This was the general understanding about the time above mentioned

Q Question Look on the paper now handed you purporting to be a true copy of a document found in the Archives at Monterey dated on the 20 September AD 1830 and purporting to be signed by Echeandia which is certified by Thomas A Gleason County Recorder by his seal and signature and note attached marked Exhibit No 1 with the initials A F and state whether you have ever seen the original of said true copy in said Recorders Office, if yes in whose handwriting is the body of said original and the signature thereto

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Answer I have looked on the paper presented I have seen the original in the Recorders Office at Monterey The body of it is in the handwriting of Juan Araujo who was the Secretary of the Governor, It has the signature of Echeandia to it which is his genuine

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signature I know both Eschenden and Zamorano and will and have seen both of them write Eschenden was Governor of California in 1830

Questions by Mr Freeman Associated Land Agent

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1 Question What has been so far as you know the usage in California as to the rights of the wife to lands which have been granted to the husband by the Government

Answer So far as I know the husband has a right to sell such land if he saw fit without the consent of the wife: but when she died she was entitled to half the land which he possessed at the time of the death,

Question by Geo Wilson

1 Question Do you know if Dona Apolonia the Petitioner in this case Manuela Daughter of said Jose Maria Estrada

Answer He did

John B R Cooper

Subscribed and Sworn to before me at San Francisco this twenty fifth day of October 1853

Alpheus Felch
Commissioner

Filed in Office Oct 26th 1853
Geo Fisher
Secy

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Por Alcalde 1º de Monterey. David Spence como Albacea de Dn. José Mariano Estrada ante Vm. se presenta y dice: Que en las ultimas revoluciones en este paiz tuvieron D. José de la Estrada y su familia que abandonar repentinamente el Rancho de Buena Vista sin poder llevar consigo mas q. la ropa de su uso. Es publico y notorio que al tiempo que se fugo de la posecion Bonifacio Olvarez, y algunos otros, al pasar por el referido Rancho rompieron una puerta y robaron varias cosas de importancia. segun consta por las diligencias practicadas por Vm. en el juzgado de su Cargo. y en el mismo tiempo falto el Titulo de la parte del Rancho llamado el Llano de Buenavista concedido à Dn. Estrada en el año de mil ocho cientos vrente y tres, por el Gobernador Dn. Luis A. Arguello y desde aquella fha ha gozado el pacifico posecion como los Archivos antiguios estan en una manera destruidos y faltan muchos documentos probablemente, no existe copia de tal titulo por consiguiente. Suplica a Vm. tenga la bondad de citar algunos residentes antiguos de este lugar tomar una informacion sobre el particular y concluido que sea me las entregue para el resguardo de los interesados quienes vivean agradecidos. Monterey Julio 27 de 1848.

David Spence.

David Spence

Llano de Buena vista.

Por presentado y admitido citase à los señores D. Guadalupe Cantua, Dn. José de Amesti D. Esteban Munras, y D. Antonio Mª Osio siendo todos residentes antiguos de este lugar y que declaren bajo juramento lo que saben del mencionado Rancho, asi yo el 1º Alcalde de Monterey mandè y firmè con los testigos de asistencia. Walter Colton.

de asà. Talbot. H. Greene # Milton Little
En el mismo dia se presento D. Guadalupe
Cantua vecino de este lugar de edad de sesen
ta y tres años. y despues de aver prestado el ju=
ramento de Estilo. Se preguntaba que es lo que
sabe respeto la posesion y el tiempo que lo ha te
nido Dn. Josè M. Estrada del Rancho llamado
llano de Buenavista. Dijo que en el año de
mil ocho cientos veinte y tres fueron el y Don
Sebastian Rodriguez nombrados medidores
y testigos de la posesion dada à Dn. Josè M. Estrada
del terreno mencionado. y que las medidas co=
menzaron en el paso de Quinto donde esta una
Encina grande, enfrente y inmidiata. la casa
ahora fabricada por su hermano Vicente desde
alli travesaron. el llano derecho pa el punto
de la Sierra de Gavilan hasta la Laguna gran
=de quedando la mitad de ella entre la medi
=da despues tiramos pa arriba hasta un Paiso
lito y de alli para el rumbo del Rio hasta llegar
al parage despues llamado Esperanza respondan
hay señales de Casa y Corral, volviendo otra
vez toda la Orilla del Rio hasta llegar el paso
de Quinto ya mencionado. y resultaron as de dos
citios de ganado Mayor. Es cuanto tiene que
decir sobre lo particular. y por no saber firmar
lo hizè Yo con los testigos de asistencia.
De Asa. (firmado) Walter Colton.
Talbot H. Green # Milton Little.
En seguida se presento D. Josè de Arrestinaturas
de España, de edad de Sesenta años residente
en Monterey por Veinte y Siete años y despues de
haber prestado juramento fue: i preguntado si
tenia algun conocimiento de la posesion dado
à Dn. Josè M. Estrada del Rancho llamado
Rancho de Buenavista. Dijo. Que cuando el

llego à California, Dn. Josè M. Estrada tenia
ganado puesto ya en este mismo lugar y en el
año de mil ocho cientos veinte y tres por orden
del Gobernador Dn. Luis Arguello le dieron posesion
con todas las formalidades necesarias, que
al mismo tiempo que me pusieron à mi en
posesion del Rancho de los Covalitos; y desde
aquel tiempo lo ha tenido siempre ocupado.
y siempre considerado como propiedad suyo
no teniendo mas qe. decir firmo conmigo y los de
asistencia en el mismo dia arriba espresado.
Talbot H. Green } as. (firmado) Walter Colton.
Milton Little } Josè di Ameste

De presento D. Esteban Munras natural de
España de edad de sesenta años residente
en California por mas de Veinte y seis años
y despues de aver prestado juramento. Le pre-
guntaron si tenia algun conocimiento del
tiempo qe. Dn. Josè M. Estrada haria ocupado el
Rancho llamado el llano de Buenavista. Dijo
que cuando el llego à California vivia en la
casa de Dn. Josè M. Estrada y bien se acuerda
que en el año de mil ocho cientos Veinte y tres
estava ya en posecion del referido Rancho.
y siempre ha sido considerado como propiedad
suyo, nunca ha sabido su estencion pero si
sabe que mantienen en ella mas de dos mil
Reses. Es cuanto tiene qe decir y firmo con
migo y los de Asistencia. Walter Colton
de Abs. / Talbot H. Green
Milton Little Esteban Munras.

En seguida presento Dn. Antn. Mª. Osio de
edad de cuarenta y cuatro años natural de
la baja California y residente en Monterey
veinte y tres años y despues de aver tomado ju-
ramento fue preguntado si sabia cuanto

tiempo Dn. José Ma. Estrada para tenido posesion del Rancho llamado Llano de Buenavista Contesto. Que cuando el llego à California en el año de mil ocho cientos veinte y cinco que el referido Dn. Estrada estaba y à gozando pacifica posesion del terreno ya mencionado y siempre lo ha tenido por propiedad suyo. Preguntava si sabia cuantos sitios tenia Dijo. Que no sabia exactamente su estension pero si sabia que mantenia en ella cerca de tres mil cabezas entre Ganado y Caballada Y cuanto tenia q. decir en contestacion de las preguntas echas y firmo conmigo y los de asistencia en el mismo dia arriba espresado de As. Talbot H. Green, Walter Colton.

Milton Little } Antonio Ma. Osio

En la fha habiendose concluido los anteriores diligencias y constando por ellas la propiedad del llano de Buenavista, y constando este Juzgado del robo que hizo Bonifacio Olivares segun se menciona en el anterior Escrito; devuelvas à el interesado estas diligencias originales para que sirvan de titulos amparo del Rancho del Titulo original que se estavo. Asi yo Walter Colton Alcalde primero mandè y firme con los testigos de asistencia Talbot H. Green,

Milton Little } Walter Colton

Filed in Office Jany 28th 1853

Geo: Fisher Secy

B Translation of A.

Señor First Alcalde of Monterey

Daniel Spence, as Executor of Don Jose Mariano Estrada before Your Honor appears and says that during the late revolutions in this country, Don Jose Mariano Estrada and his family had to abandon and leave the Rancho of Buenavista without being able to carry away with them anything more than their wearing apparel. It is public and notorious that when Bonifacio Alvarez and some others fled from the Prison on passing through said Rancho they broke open a door and robbed several articles of importance as appears by the proceedings taken by Your Honor in Your Court and at the same time the title of that part of the Rancho called the Plain of Buenavista pointed to Señor Estrada in the year eighteen hundred and twenty three by Governor Don Luis Antonio Argüello and of which since that date he has enjoyed peaceable possession became missing, as the old Archives are in a manner unknown & many documents are wanting it is probable that no copy of said title is in existence I consequently request that Your Honor would have the goodness to summon some of the old residents of this place and make an investigation of the matter and when the proceedings are concluded that you deliver them to me for the Security of the Parties interested, who will be thankful therefor

Monterey July 27th 1848
(Signed) Daniel Spence

Considered as presented and as asked let Don Simeon Cantua Don Jose de Arrieta, Don Esteban Munras and Don Antonio Maria Lugo (being all old residents of this place) be summoned and let them decline under oath what they know as putting said Rancho. Thus I the First Alcalde of Monterey do command and sign with the assisting witnesses

(Signed) Walter Colton
(signed) Talbot H Green
(") Milton Little } assisting witnesses

On the same day appeared Don Guadalupe Cantua a resident of this place, aged sixty three years and after having taken the customary oath, he was asked what he knows respecting the possession and the time that Don Jose Narciso Estrada has had the Rancho called Rincon of Buenavista, He answered that in the year one thousand eight hundred and twenty three he saw Senor Sebastian Rodriguez and approved measures and witnessed the possession given to Don Jose Narciso Estrada of the land mentioned and that the measurement commenced at the Paso de Jimeno where there is a large Oak tree opposite and close to the house now built by his brother Vicente, Thence he crossed the Rincon straight towards the point of the Gaviota Mountain where the great Lagoon, half of which Rincon remained within the measurement they afterwards continued upwards to a small hollow place (Sanjalito) and thence in the direction of the river until arriving at the place called afterwards Espinosa a vieja where there are signs of a house and corral returning again all along the banks of the river until arriving at the Paso de Jimeno already mentioned and that there resulted more than two square leagues (Sitios de Ganado Mayor) This is all that he has to say on the subject and not knowing how to sign his name, I did so with the assisting witnesses

(Signed) Walter Colton
(signed) Talbot H Green
(") Milton Little } assisting witnesses

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Afterwards appeared Don Jose de Arrieta a native of Spain aged sixty years and a resident of Monterey

Owning twenty seven years who after having been sworn was asked if he had any knowledge of the possession given to Don José Maximo Estrada of the Rancho called Plum of Buenavista, He answered that when he arrived in California Don José Maximo Estrada had cattle always on said land and that in the year eighteen hundred and twenty three possession with all the necessary formalities was given to him by order of Governor Don Luis Argüello almost at the same time when witness himself was put in possession of the Ranches of Los Conejitos and that since that time he has constantly kept it occupied and it has always been considered as his property, Having no more to say he signed with me and the assisting witnesses on the same day above mentioned,

(Signed) Walter Colton
(Signed) Talbott H Green } " } José de Arrieta
(") Milton Little } assisting witnesses

Don Esteban Munras a native of Spain aged sixty years and a resident of California for more than twenty six years appeared and having been sworn he was asked if he had any knowledge how long Don José Maximo Estrada had occupied the Rancho called the Plum of Buenavista He answered that when he arrived in California he resided in Don José Maximo's Estradas house, and recollects very well that in the year eighteen hundred and twenty three he was always in possession of said Rancho and has always been considered as the owner thereof that he never knew's extent but does know that he maintained there more than two thousand head of cattle, This is all he has to say and he signed with me and the assisting witnesses

(Signed) Walter Colton
(Signed) Talbot H Green

(signed) Milton Little } assisting witnesses
(signed) Esteban Munras

Immediately afterwards appeared Don Antonio Maria Osio aged forty four years a native of Lower California and resident of Monterey for twenty three years who having been sworn was asked if he knows how long Don Jose Maria Estrada has had possession of the Rancho called Rincon of Buenavista he answered that when he arrived in California in the year eighteen hundred and twenty five said Senor Estrada was enjoying peaceable possession of the aforesaid land and that he has always considered him as the owner thereof being asked if he knew how many (sitios) (square leagues) it contained he said that he did not exactly know its extent but that he knew that he maintained there near three thousand head of animals between cattle and horses, This is all which he has to say in answer to the questions put to him and he signed with me and the assisting witnesses on the same day above mentioned

(signed) Talbot H Green (signed) Walter Colton
(") Milton Little } assisting witnesses ") Antonio Maria Osio

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On the same date having concluded the foregoing proceedings and the ownership of the Rancho of Buenavista being proven thereby and this Court being aware of the robbery committed by Pomposio Alvarez as is mentioned in the foregoing writing let the original proceedings be returned to the party interested in order that they may serve as a title of protection in lieu of the original title which is missing, Thus Walter Colton first alcalde did command sign with the assisting witnesses, (signed) Walter Colton (signed) Talbot H Green (signed) Milton Little,

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Filed in Office
June 18th 1853
Geo Fisher Secy

The undersigned do hereby certify the foregoing to be a true & faithful translation of the original in possession of Mr David Spence

W E P Hartnell State Translator

State Translators office Monterey 25th November 1853

State Commissioners office Monterey 25th November 1850

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Translation of Exhibit No 1 annexed to the Depo of Juan B R Cooper

Office of the Political Chief
Upper California

Relacion that manifiesta the extension of land that corresponds the following individuals according to the quantity of Stock

The Sargt Yg Juan Vallejo	1 sitio 8/5	Caballerias
The Union municipality of Sanct Jose Pica	8/5	Caballerias
The Citizen Antonio Castro	16 2/5	" "
To Cayo Francisco Soto	8/5	" "
To Cayo Juan Castro	20 1/2	" "
To Fumana & Salvador Espinoza	20 1/2	" "
To the Citizens Mariano & Feliciano Soberanos	4 1/10	" "
To the Citizens Miguel & Jose Castro	14 3/4	" "
To the Citizen Jose Mariano Estrada	3 sitios 24 3/4	" "

Monterey September 20th 1850
(Signed) Echeandia

Note,
The sitios are the Grandes Mayor ones in the total concession they were inclusive in proportion the best way possible the living able and temporale lands
Echeandia

Filed in Office October 26th 1853
Geo Fisher
Secy

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Por el presente conste que yo Jose Mariano Estada, de esta vecindad, vendi à D. Manuel Dias, todas las tierras que se reconocen por de mi propiedad del otro lado del Rio de Monterey pertenecientes à Buenavista que seran dos sitios poco mas o menos, en trescientos terneros de año ciento cincuenta mobillos y cincuenta torunos de la misma edad dos rebozos en atro C.a asucar H.a de cros un Jer de Panocha en atro pares zapatos de hombre una B.a chocolate y veinte pesos Labon cuyos efectos tengo recibidos menos el ganado que devera ser entregados en Marzo proximo, para resguardo del interesado doy el presente documento simplemterin se estienda la Escritura publica siendo testigos D. David Spence D. Lucas Malarin y D. Monterey Sept.re 14 de 1845

José M.a Estrada // David Spence // Lucas Malarin

Es condicion de este contracto que yo Manuel Dias, no estorbarè las siembras y dicho D.n Mariano y su hijo D. Santiago hacen en el terreno q.e se vende. Monterey Sept.re 14 1845

Man.l Dias

Filed in Office Jan.y 28th 1853

Geo: Fisher Secy

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Jose Mo Estrada and Transcription

By these presents I Jose Maria Estrada of this vicinity transfer to Don Manuel Diaz all the land that is known to be my property in the other side of the River of Monterey belonging to Buenavista, which consists of two sitios more or less, in three hundred Young Cows of one year one hundred and fifty steers and fifty castrated Bulls of the same age, Two Roosos from Sugar & Coffee Rice one Bale of Panocha from Paris Mens shoes one Chocolate and twenty dollars Soap, Said Goods I have already received but the Cattle ought to be delivered in Riverino Ranch area for the security of the Person interested I give this present simple document until a hereafter deed be given being the witnesses D. David Spence & Juan Malarin of D

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Monterey September 17th 1845.
(Signed) Jose Mo Estrada
(Signed) David Spence
(Signed) Juan Malarin

Its a condition in this Contract that Don Manuel Diaz will not disturbe the Sowing of said Jose Maria or his Son Don Santiago in the land now occupied for that purpose and sold

Monterey September 17th 1845.
(Signed) Manuel Diaz

Filed in Office January 18th 1853
Geo Fisher
Secy

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D. Deed

This Indenture made and entered into at the City of Monterey State of California this seventh day of September AD One thousand Eight hundred and fifty, Between Manuel Dias and Luisa Estrada his wife of the first part and David Spence of the second part all of Monterey aforesaid, Witnesseth that the said parties hereto of the first part for and in consideration of the sum of Five Thousand Dollars of good and lawful money of the United States to them in hand paid by the said David Spence at or before the execution hereof the receipt whereof is hereby acknowledged, have and each of them hath granted bargained sold aliened released and transferred and by these presents do and each of them doth grant bargain sell alien release and transfer unto the said David Spence and unto his heirs and assigns, All that Rancho or Farm known by the name of "el Llano de Buenavista" or "Chalta Bogie" the same being situated in the Valley of the Salinas in the County of Monterey and State aforesaid and consisting of Four leagues in length and four miles in width more or less and being bounded on the North by the Lands of the "Alisal" Rancho, on the West by Lands of Don Vicente Cantua on the South by the River and on the East by Lands or Rancho of the said David Spence which said described Rancho was "denuncied" to the said Manuel Dias from Jose Mariano Estrada by deed bearing date the seventeenth day of September one thousand Eight hundred and forty five and the same was granted to the said Jose Mariano Estrada by Don Luis Arguello, Jefe Politico de las California in the year one thousand eight hundred and twenty three as will more fully appear, reference being had to the Government Archives, Together with all improvements woods waters watercourses rights privileges immunities and appurtenances whatsoever thereunto

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belonging or in any manner appertaining and all the Estate right title interest dower & right of dower property possession claim and demand whatsoever either or both at Law or in Equity as well in possession as in expectancy of them the said Manuel Dias and Louisa Estrada his wife or either of them of in and to the said hereby granted premises or any part or parcel thereof; To Have and To Hold all and singular the said hereinbefore described Rancho or Farm with all and singular the appurtenances thereunto belonging unto the said David Spence his heirs & assigns to the sole and absolute use benefit behoof and disposal of the said David Spence his heirs and assigns forever And the said parties hereto of the first part for themselves their heirs executors and administrators do hereby covenant to and with the said David Spence, his heirs and assigns that they and each of them shall and will warrant and defend the above described and hereby granted premises and every part and parcel thereof in the Title thereto unto the said David Spence his heirs and assigns, from and against the lawful claims or demands of any person claiming or to claim the same, In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first hereinbefore written #

(Signed) Manuel Dias {Seal}
Signed Sealed and " Louisa Dias {Seal}
Delivered in the presence of
(Signed) Wm S Johnson

State of California } On this seventh day of
County of Monterey } September A D 1850 before
me Alexander in and for the County aforesaid
personally came Manuel Dias and Louisa Estrada

his wife to me personally personally known to be the same persons described in and who executed the foregoing conveyance and they severally acknowledged that they had executed the same for the purposes therein expressed; and the said Louisa Catharina having had the contents thereof explained to her by me privately examined touching her consent thereto separate and apart of the hearing of her said husband and she acknowledged that she had executed the same freely and voluntarily without any compulsion or undue influence being exercised towards her by her said husband and that she did not desire to retract the execution thereof ||

Given under my hand and official seal the day and year aforesaid

(Signed) Wm G Johnson
Recorder of Montgomery County

(Seal)

Filed in Office January 18th 1853
Geo Fisher
Secy

Conveyance of Rancho de Buenavista or Strath Bogie in the Salinas Valley

This Indenture made and entered into at the City of Monterey State of California this Seventh day of September A D One Thousand Eight hundred & fifty Between Manuel Dias and Louisa Estrada his wife of the first Part and David Spence of the second Part all of Monterey aforesaid

Witnesseth that the said Parties hereto of the first part for and in consideration of the sum of Five thousand dollars of good and lawful money of the United States to them in hand paid by the said David Spence at or before the execution hereof the receipt whereof is hereby acknowledged have and each of them doth grant bargained "bargained" sold aliened released and transferred and by these presents do and each of them doth grant bargain sell alien release and transfer unto the said David Spence and unto his heirs and assigns All That Rancho or Farm Known by the name of el Llano de Buenavista or Strath Bogie the same being situated in the Valley of the Salinas in the County of Monterey and State aforesaid and consisting of Two leagues in length and four miles in width more or less and being bounded on the North by the lands of the Alisal Rancho: on the West by Lands of Don Vicente Cantua, on the South by the River and on the East by Lands or Ranchos of the said David Spence which said Asiento Rancho was granted to the said Manuel Dias from Don José Maximo Estrada by deed bearing date the seventeenth day of September one thousand Eight hundred and forty five and the same was granted to the said José Maximo Estrada by Don Luis Argüello Gefe Político de las California in the year one thousand eight hundred and twenty three as will more fully appear, reference being had to the Government Archives Together with all

improvements ways waters water courses rights
privileges commonties and appurtenances what
soever thereunto belonging or in any manner app
-ertaining. And all the Estate Right Title interest
dower and right of dower property possession claim
and demand whatsoever either or both at law
or in Equity as well in possession as in expectancy
of them the said Minerve Dias and Louisa Estudillo
his wife or either of them of in and to the said hereby
granted premises or any part or parcel thereof
To Have and To Hold all and singular the
said hereinbefore described Ranche or Farm
with all and every the appurtenances thereunto
belonging unto the said David Spence his heirs
and assigns to the sole and absolute use benefit
behoof and disposal of the said David Spence his heirs
and assigns forever, And the said Parties hereto of the
first Part for themselves their heirs executors and ad
-ministrators do hereby covenant to and with the said
David Spence his heirs and assigns that they and
each of them shall and will warrant and defend
the above described and hereby granted Prem
-ises and every part and parcel thereof in the Title thereto
unto the said David Spence his heirs and assigns from
and against the lawful claims or demands of any per
-son claiming or to claim the same,

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In Testimony whereof the said Parties of the first
Part have hereunto set their hands and affixed their
seals the day and year first written.

Manuel Dias (Seal)
Signed sealed and
delivered in the presence of Louisa Dias (Seal)
Wm G Johnson

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State of California
County of Monterey }

On this seventh day of September A D 1850 before me Recorder in and for the County aforesaid personally came Manuel Dias and Louisa Estrada his wife to me personally personally known to be the same persons described in and who executed the foregoing Conveyance and they severally acknowledged that they had executed the same for the purposes therein expressed and the said Louisa Estrada having been the contents thereof expounded to her, was by me duly examined touching her consent thereto separately and apart of the knowing of her said husband and she acknowledged that she had executed the same freely and voluntarily without any compulsion or undue influence being exercised towards her by her said husband and that she did not desire to retract the execution thereof //

Witness my hand and official seal the day and year aforesaid //

Wm G Johnson
Recorder of
Monterey County

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Received for Record 7th September 1850 at 2,40 PM Recorded in Conveyances A Page 117

Wm G Johnson
Recorder of Monterey Co

Wm G Johnson
Conveyancer

35 Filed in Office January 28th 1853
Geo Fisher Dep

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Opinion of the Board

David Spence
vs
The United States } Llano de Buenavista

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The Claimant in this case avers in his Petition that in the year 1823 a grant was issued by Governor Luis Argüello to one Jose Mariano Estrada for the place called Llano de Buenavista that on the 14th day of July A D 1847 the said Estrada sold and conveyed the said place to one Manuel Dias, and that on the 7th day of September A D 1850 the said Dias by his attorney of Conveyance transferred the said place to the said Claimant,

The said Claimant further avers and states that a short time after the said Estrada had sold said place to said Dias and before the same had been delivered into the possession of him the said Dias, the said Estrada died leaving the said Claimant his executor,

That said Claimant also alleges that after the death of the said Estrada and upon an examination of his papers the title of the said place was missing together with some other documents and the said Claimant further avers that it is ten thirty years since the said Estrada was first in possession of the said place and that his right to the same has always been recognized by the Government and the Ayuntamiento,

The Claimant derives title from the Government of Mexico through the said alleged grant to Estrada and the three conveyances above referred to, The conveyance from Estrada to Dias and from Dias to the Claimant are the only genuine documents which the Party has produced in evidence

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both these conveyances are proved to have been executed according to the laws in force at the respective periods when they purport to have been made. The evidence in regard to the alleged grant is altogether secondary and oral and its sufficiency to supply the place of the missing grant must be tested by those rules by which the introduction of secondary evidence is allowed to take the place of a lost written instrument,

The party has placed on file a long deposition in which he attempts to establish the existence of the original grant issued by Governor Micheltorena together with its loss but the only purpose for which this deposition can be admitted is the latter by the loss of the grant every other part of the deposition must be excluded and considered as stricken out. The proper course would have been for the party to have filed an affidavit showing the loss of the original grant and stating such facts as would show that he had made the necessary examinations and that the same could not be found. The loss of the grant I think is satisfactorily shown by the deposition already referred to and that point may be considered as fully established. The next point to be established is the former existence of the grant, this the party has attempted to prove by the depositions of several witnesses. It is shown by the deposition of Jose de Jesus Valle that a grant was made, that part of his deposition which relates to the existence of the grant is in the following words to wit, "I know the late Francisco Estudillo was known to be owner of a grant from Governor Luis Arguello in 1823 of the tract of land called "Las de Buenavista" was living in Monterey and knew the land at the time of the grant, I have been acquainted with the land ever since and

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Know that the said Estrada occupied the land for many years from that time with cattle and by cultivation. He then proceeds to give the boundaries of the tract with great precision and the quantity which he states it contained is between three and four leagues.

Secundino Cantua and other witnesses testify as follows to wit: I know the Rancho called Llano de Buenavista I was Mayordomo of it when Don Marino Estrada occupied it in 1823. It is about six leagues to the southward from Monterey. It was granted to said Estrada by Luis Arguello Governor in 1823 as I always understood. The Governor appointed Francisco Arce to give him the possession. I was present at the giving of the possession and was one of the bearers, and saw the papers which they had but I do not read writing. He then gives the boundaries of the land as then measured. He further states that immediately after Estrada received the grant and when possession was given him he put cattle on it, built corrals and continued to occupy it until his death. He further states that he was his Mayor for three years from the time Estrada took possession, and that he lived in the vicinity of it until 1841. He then says that during all that time Estrada occupied the land with cattle and horses and cultivated a portion of it.

Marino Soberanes testifies that he knew the land in question that he had known it all his lifetime and that it adjoined a rancho formerly owned by him called "Alisal". He also states that the Rancho de Llano de Buenavista was granted in the year 1823 by Governor Arguello to Marino Estrada and that possession of the same was given to Estrada in 1823 he was present on that occasion as an adjoining neighbor. He further states that Estrada immediately occupied it with cattle

knowing a small house and corral on it and cultivating a small portion of the land and that he continued to occupy it up to the time of his death, John R R Cooper testifies that it was the general understanding that the Rancho of Buenavista was given by Governor Solano to Jose Maximo Estrada for his two Eldest children and that the other part that is the Llano de Buenavista was granted to said Estrada by Don Luis Argüello In corroboration of the foregoing testimony and in regard to the existence of a former grant the claimant has placed on file a traced copy under the certificate and seal of the Recorder of Monterey County, which he certifies is taken from certain archive papers on file in his office as a portion of the archives of the former Government. Said document purports to be a list of lands held by different mayordomos at the time of its date together with the quantity and is signed by Governor Echeandia and bears date September the 20th 1830, The signature of this document is proved to be in the handwriting of Zamorano who was at that time Governor Echeandia's Secretary and the signature is proven to be in the handwriting of Echeandia One of the items in this list is in the following words to wit "To the Citizen Jose Maximo Estrada 3 sitios 24 1/3 "Caballerias" A note at the bottom of the list and to which the Rubric of Echeandia is attached explains the word sitios as used in the above extract to mean the Spanish Mayor that is square leagues,

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The foregoing contains the substance of all the proofs upon which the claimant relies for a confirmation of his claim in this case, The first question which presents itself for investigation is has the claimant established the former existence of the original

grant and 2d if the proof establishes such existence has its contents been shown by the best testimony within the power of the party to produce.
It is a well established principle that the loss of a paper is first to be proved and then its execution in the same manner as if the paper itself had been produced and appeared in evidence 1 Stanington 444
As before stated it has been satisfactorily shown by the oath of the party that the original grant is lost according to the rule as above laid down it then devolved upon the party to prove the due execution of the lost instrument, A careful review of all the evidence will show that no attempt has been made to prove the execution of the original grant in the usual mode of making such proof
The witnesses testify that a grant was issued by Governor Arguello in the year 1823 to Jose Maria Estrada for the place called Llano Buenavista they say nothing of the genuineness of the signature attached to said grant and indeed they do not state in terms that they ever saw the paper but merely make the broad and general allegation that such a grant was made by Governor Arguello in the year 1823., If the witnesses were testifying as we are told under the circumstances to presume they were from their own knowledge of the existence of the grant its execution must be considered as proved,
The Agent of the Government cannot by a single question have altered the subject of all doubt but it seems that he did not consider that it was of any importance for the witnesses to state how they knew that such a grant had been issued or whether they had ever seen or examined it, While some of the witnesses testify with absolute certainty in reg and to the existence of the grant others base their statements upon what they understood at the time as what

was the general understanding in the neighborhood concerning the great length of time which has elapsed since the alleged grant was made the rule which requires proof of execution of lost instruments must to a great extent be relaxed. Moreover if the grant itself has been produced the same certainty of proof which in a more recent transaction would be deemed necessary to establish the due execution of an instrument would not be required, time in all such cases raises a presumption favorable to the due execution of the instrument. The supreme court of Alabama has decided that the due execution of a lost deed thirty years old may be presumed and secondary evidence given of its contents 7 Ala 124. The testimony therefore I think when taken in connection with all the other circumstances which appear on the record and particularly the time when the grant was made being thirty years ago sufficiently establishes the existence and due execution of the grant to authorize secondary evidence to be given of its contents.

The next inquiry which arises is has the party proved the contents of the lost instrument by the best evidence within his power to produce. The rule that the best evidence must be produced applies as well to secondary as to primary evidence 1 Black 241.

The existence of the most satisfactory or best evidence secondary as well as primary is most generally disclosed by the nature of the case itself and when such is the case the party is either required to produce it or show some good reason for not producing it. But when such better evidence is not disclosed in the manner above mentioned or when the law does not raise the presumption of the existence of more satisfactory evidence than the party has adduced

it then devolves upon the party objecting to prove its existence and he must also show that it was known to the other party in time to produce it, Does the law in the case under consideration raise such a presumption of the existence of sufficient and better secondary evidence of the contents of the original grant than the party has produced as to throw upon him the onus of rebutting such presumption,

If the law under which the grant in question was made contained the requirement that all grants issued should be recorded in a book kept for that purpose the presumption of law would be that there was such a record of the grant alleged to be lost and that it was within the power of the party to produce it, and he having failed to produce either the record or a transcript taken from it, it would devolve upon him before he could be allowed to introduce inferior evidence to rebut this presumption of law by showing that such record could not be found or that it was not in his power to produce it But in the case before us it has not been shown that the law under which the grant in question was made contained any such provision or that it was the practice of the Mexican Government at the time said grant was issued to make a record of any grant before it was delivered to the Grantee, The practice however subsequently adopted and which was in force at the 9th article of the Regulations of November 21st 1828 required that a correct entry of all grants should be made in a book kept for that purpose The grant in question it will be remembered was made in the year 1823 at which time so far as I have been able to ascertain, It was the

Benitez of the Mexican Government, to deliver to the grantee not only the grant but all the other papers connected with it forming such a title as the Expediente without making any record whatever either of the grant or of any of the other proceedings connected with it. Among the Archives of the former Government now in the custody of the United States Surveyor General for California is a book entitled as follows

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"Book of the Registry of the Sitios Ranchos and Lands which the Citizens of the Territory of New California possess."

This Book contains the Records of about twenty grants made by different Spanish and Mexican Authorities but is principally made up of information concerning the situation boundaries and bounds of the different Missions. There is no regularity in point of time in these entries. From this it is apparent that the records of these grants were not made at the time they were issued but most likely were entered in this book in pursuance of a call made by the Government upon all persons who had received grants to produce the same for the purpose of Registration. The last report to was made by the Government in 1827 which was the year preceding the first entries that are made in this book. It is therefore clear that this book is not such an authentic record as would authorize the presumption to be indulged that the grant in question had been recorded and that a copy of the same might have been produced. But I do think that for the purpose of relieving the case from all suspicion and for the purpose of establishing beyond all question or cavil that the oral testimony to which the party was compelled to resort for the purpose of making

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on his case was the best evidence within his power to produce, he should at best have examined this book and given the result of that examination before this Commission But this he has not seen fit to do, neither did it occur to the opposing party to show that such a book was even existing but the secondary evidence of the contents of the original grant advanced by the party was admitted without objection or even a suggestion that it was possible better and more satisfactory proof might exist, Under these circumstances we are bound to concede that the testimony offered is the best the nature of the case would admit of and the best that was in the power of the party to produce In regard to the sufficiency of oral proof to establish the contents of a lost instrument, Judge Story lays down the following rule He says in regard to proof of contents they may be proved by witnesses who have seen and read it and can speak positively and compare to its tenor and contents 2 Mason 468 If we should make a strict application of this rule, in the case under consideration the testimony adduced for the purpose of proving the contents of the missing grant would be of the most unsatisfactory character Although perhaps it may be inferred that the witnesses did see the grant, and if they had been properly investigated could have spoken positively and clearly to its contents yet they do not state that fact in terms It would be requiring too much of witnesses to expect very precisely what the contents of an instrument were, which they had not seen for thirty years, The genuine tenor and effect of the instrument is all they could be expected to remember and this is what they speak of when they say it was a grant for the place called Llano de Buenavista, They do not

pretend to particularize, neither the meeting nor boundaries are given and if this evidence stood alone unsupported by other prominent facts and circumstances it would fall far short of coming within the most loose rule that was ever applied to secondary proof of any kind. It is in proof that immediately after Governor Reyes made the grant in question he deputed Francisco de Haro to give the Juridical possession of the lands granted to the grantee that this order of the Governor was executed and that the witness (Guadalupe Cordova) was one of the measurers and although he could not write he saw the papers, this witness was the Mayor Domo of the grantee and he gives with great precision the boundaries which are established by the Juridical measurement, he further states that the grantee went into immediate possession of the premises and commenced making improvements. Such a thing as an order for Juridical possession or of Juridical possession having been given without a previous concession or grant of some kind having been made would be without precedent and altogether contrary to the usage and practice of the Mexican Government, the fact therefore that Juridical possession was given and that boundaries were established afford the strongest proof not only that a grant was made but that the boundaries so established were in conformity with the calls of the grant,

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In my judgement no stronger proof of the contents of the original grant in regard to the question of boundary alone could be given in the absence of a sworn copy than is furnished by the testimony of this witness. Another circumstance which is not without weight is to be found in the memorandum of Escandon

already referred to, The quantity of land which he reports as belonging to Jose Maria Estrada in the year 1830 corresponds with the quantity which the boundaries as established by the act of Juridical possession are proved to contain, No proof has been introduced to show that Estrada had received a grant for any other lands at the time Echeandia made this report,

The reasonable presumption therefore is that the three sitios referred to by Echeandia were the same embraced in the grant made by Governor Alvarado in 1833. It is also in proof that the Government in rendering subsequent grants of the adjoining lands, respected the boundaries of the Rancho Llano de Buenavista and that the rights of Estrada were recognized and respected by all the surrounding occupants and owners of adjacent Ranchos,

Taking all these circumstances into consideration together with the long possession of the grantee I am of opinion that the secondary proof of the contents of the lost grant is sufficiently specific to take the place of the original grant and that the rights of the Party stand upon the same basis that they would if the original grant had been produced,

It is a well established principle that rights long enjoyed are not to be defeated by the loss of a document upon which the title depends, every fair presumption arising from such enjoyment and other existing evidence may and ought to be allowed, but failure of proof in a recent transaction is not entitled to the same indulgence,

After a careful examination of all the proofs and

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the law upon which the decision of this Case depends we have arrived at the following results

1st That the former existence of a grant made by Governor Arguello to Jose Narciso in the year 1823 for the place called Llano de Buen Avisto has been established

2nd That the loss of said grant has been satisfactorily shown

3d That its contents have been proved by the best evidence which was within the power of the party to produce and

4th That from the long and continued possession of the original grantee in connection with the fact of cultivation the claimant has established such an equity as entitles him to a patent from the Government of the United States,

The usual decree of confirmation will therefore be entered

Filed in Office March 14th 1854
Geo Fisher
Clerk

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Decree of Confirmation

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David Spence
vs
The United States

151 SD
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In this case on hearing the proofs and allegations it is adjudged by the Commissioners that the claim of the said Petitioner is valid and it is therefore decreed that the same be confirmed The lands of which confirmation are hereby made are known by the name of Loma de Buena vista and are bounded and described as follows to wit

Commencing at an Oak tree at the ford of the Monterey River called the Paso de Tomate thence in a straight line to a lagoon called the "Pasatos" thence running Eastward to a little grove of willows, thence to the banks of the River to a point where the Corral and Rancho of Buena Espiranza are situated and from thence following the River to the place of beginning at the said Oak tree containing in all about three square leagues a little more or less

Alphaeus Felch

Thompson Campbell

R Aug Thompson

Commissioners

Filed in Office March 14th 1854
Geo Fisher
Clk

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 decision 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 forty eight pages, numbered from 1 to 48, both inclusive, to contain a true, correct and full Transcript of the Record of the Proceedings and of the Decision of the said Board, of the Documentary Evidence and of the Testimony of the Witnesses, upon which the same is founded, on file in this Office, in Case No. 518 on the Docket of the said Board, wherein David Spence is the Claimant against the United States, for the place known by the name of "Llano de Buena Vista"

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

Sy!

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U. S. DISTRICT COURT,

Southern District of California.

No. 151. Docket

THE UNITED STATES,

151

David Spence.

"Llano de Buena Vista".

TRANSCRIPT OF THE RECORD

FROM THE

BOARD OF U. S. LAND COMMISSIONERS,

In Case No. 518.

Filed, November 8th 1854.

C. E. Carr,
Clerk.

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No. 518

Office of the Attorney General of the United States,

Washington, 17th January 1855.

David Spence
vs.
The United States. } 518.

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 Southern district of California will be prosecuted by the United States.

Caleb Cushing

Attorney General.

No. 151.

U.S. District Court
Southern District

The United States
vs.
David Spence.

Notice of appeal from Atty. Gen.

Filed Feby 27th. 1855.
C. E. Fan,
Clk.

Office of the Attorney General of the United States,

Washington, 17th January 1855.

David Spence
vs.
The United States. } 518.

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.

Cushing

Attorney General.

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

CITY AND COUNTY OF LOS ANGELES--STATE OF CALIFORNIA.

David Spence, Appt.
vs.
The United States, Appt.

Docket No. 151.

Transcript No. 578.

TO THE HON. ISAAC S. K. OGIER, JUDGE:

The Petition of **Pacificus Ord**, *a resident of said City, County, and State, Attorney of the United States for the Southern District of California, who petitions in this behalf for the United States, and being present here in Court, in the name and behalf of the United States, represents as follows: That heretofore, to wit: on or about the* 18th *day of* January *A. D.* 1853, David Spence

presented a petition to the Commissioners to ascertain and settle the private land claims in the State of California, when sitting as a Board, claiming a tract of land called Llano de Buena Vista situate — in the County of Monterey — State of California, which said petition is referred to for a description of the land claimed, a copy of which appears in the transcript hereafter referred to. That thereafter, to wit: on or about the 14th day of March A. D 1854, the said Commissioners confirmed, by final decision, the said claim of said petitioner. That thereafter, to wit: on or about the 8th — day of November A. D. 1854, a duly certified transcript of the proceedings and decision of the said Commissioners in said cause, and the papers and evidence on which the said decision was founded, was filed in the Office of the Clerk of the District Court of the United States for the Southern District of California, and marked No. 578; reference to which it is prayed may be had and made part of this petition. That on or about the 30th — day of October A. D. 1854, the Honorable Caleb Cushing, Attorney-General of the United States, received a duly certified duplicate of said transcript of the proceedings and decision of said Commissioners in said cause, and the papers and

evidence on which said decision was founded. That thereafter, to wit: on or about the 27th day of February A. D. 1855, the said Attorney-General of the United States filed, or caused to be filed, in behalf of the United States, a notice with the Clerk of said District Court of the United States, that the appeal in said cause from the said decision of the said Commissioners, in the District Court of the United States for the Southern District of California, would be prosecuted by the United States. Your petitioner further represents, that the land claimed, as aforesaid, is situate in the Southern District of California, and within the jurisdiction of this Honorable Court. Your petitioner further represents and insists, that the said claim is invalid; and the said decision of said Commissioners is erroneous, and ought to be reviewed, reversed and set aside, for many errors and imperfections of law and evidence, apparent in said certified transcript of the proceedings and decisions of said Commissioners in said cause, filed and appealed from as aforesaid. And your petitioner denies all and singular, each and every allegation in the said petition of said claimant, presented as aforesaid to said Commissioners. And your petitioner further denies that the said claimant has any valid right or title to said land claimed as aforesaid, or any part thereof.

And no sufficient proof having been made of the allegations in said petition to said Commissioners, or in support of the said claim, no decision confirming the same should have been made by said Commissioners; but the

said claim should have been rejected by them. And the said claimant, having no valid right or title derived from the Spanish or Mexican Governments, to the land claimed as aforesaid, the lawful right and title in and to the said land was acquired by, and it now belongs to the United States, by virtue of conquest, and the Treaty of peace, friendship, limits and settlement, between the United States and the Republic of Mexico, made at the City of Guadalupe Hidalgo, February 2d, A. D. 1848.

Wherefore, the said **Pacificus Ord,** Attorney of the United States for the Southern District of California, for and in behalf of the United States, by reason of the premises, and in pursuance of the Act of Congress, entitled "An Act to ascertain and settle the Private Land "Claims in the State of California," approved March 3d, A. D. 1851, and the laws and statutes in such case made and provided, prays that the said claimant, or his attorney may be served with a copy of this petition; and that this Honorable Court will review the said decision of said Commissioners, and reverse the same; and decide on the validity of the same, and decree the alleged title to be invalid: with costs and general relief.

P. Ord

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

No 151.

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

David Spence. appe

ads.

The United States, apple.

Petition for Review.

Filed Nov 8. 1858.
J. E. Carr
Clk.

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55 PAGE 56

P. Ord. U. S. Atty.

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

TO The President of the United States,

David Spence

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GREETING:

Take Notice, That a Petition, a copy of which is herewith served upon you, has been filed against you, ~~and each of you~~, in the District Court of the United States, in and for the Southern District of California, on the 8th day of November in the year of our Lord one thousand eight hundred and fifty-five at the City and County of Los Angeles, in said District, by P. Ord U.S. atty. praying the Court to review the decision of the U.S. Land Commission confirming your claim to the Rancho called Lando de Buena Vista on about the 14th day of March A.D. 1854 and which was appealed ~~to the~~ Court by the U.S. Atty. Genl. on the 27th day of February 1855

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

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

J. E. Carr, Clerk.

No 151.

Marshal Costs
Copying summons - .60
Serving " 3.00
" Petition 3.00
400 miles on each paper - 72.00
$78.60

United States of America,

Southern District of California,

U. S. District Court.

David Spence
Appee
ads.
The United States, appee.

SUMMONS.

Recd. Nov. 9th 1855
Edward Hunter
U. S. Marshal

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151 SD

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I served this summons along with the proper copy of the petition upon David Spence personally at Monterey Co. Cal. in the Southern District of California on the twenty first day of November A. D. 1855.

Sworn to and subscribed before me,

Clerk. } E. Hunter Marshal.

Per Hutchings Dep.

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

David Spence Apte) Docket No. 151
ad
The United States Apte.) Transcript No. 518

The answer of the said David Spence Apte, to the petition or Bill of Complaint filed on the 8th day of November 1855 in said District Court by Pacificus Ord, Esqr. United States District Attorney for the said Southern District of California and in behalf of the United States.

And now the aforesaid David Spence appearing, and reserving for himself all manner of advantage which may be taken by way of exception to said Bill in the matter and the form thereof, and protesting thereto answery and says, that true it is that heretofore - to wit, on or about the 18th of January 1853 he did present his petition to the Commissioners appointed by the President of the United States, under the act of Congress approved March 3d 1851 to ascertain and settle private land claims in the State of California, that in and by his said petition to said Commissioners he did claim the said tract of land referred

to in the Petition or Bill of complaint of the said Destrict Attorney to this Honble Court. The said David Spence Ap^lt prays that his said petition to said Commissioners together with all and singular the Documents, papers, transcripts, copies, records &c &c may be made taken and considered as a part of this answer.

The said David Spence answering further saith that he believes the proceedings, orders and decrees of the said Commissioners on his said petition to them are correctly set out and truly stated in his petition or Bill of complaint of the said Destrict Attorney to this Hon Court.

And the said David Spence Ap^lt further answering saith that so much of the petition or Bill of complaint of the said Destrict Attorney as relates to the filing of the transcript in said Cause No. 318 with the clerk of this Hon Court, and so much as relates to the action of the Attorney General of the United States Hon Caleb Cushing in reference to notice of appeal therein and the intention of the said Attorney General to prosecute said appeal, he this Ap^lt supposes to be true and correctly stated.

63 The said David Spence Ap^lt further answering says that it is true that the land claimed by him in his said petition to said Commissioners is situated within the Jurisdiction

of the Honble the District Court of the Southern
64 District of California.

The said David Spence further answering negatively and denies the allegation of the said petition or Bill of complaint of the said District Attorney wherein it is stated and alleged as follows to-wit. That the claim of the said David Spence for said land claimed and confirmed by said Commission is invalid and said Confirmation Erroneous. And the said David Spence Appl^e on the contrary avers and affirms that his claim to the said land is good and valid in law and Equity, and that said land was rightfully confirmed to him by the Decree of said Commissioners. and that the confirmation thereof was not Erroneous as alledged in his petition of the said District Attorney in this cause, but on the contrary the said confirmation of the claim was to said land rightfully, just and according to law and Equity.

And the said David Spence further answering negatively and denies the allegation set out by the said Dist^t Attorney in his said petition or Bill of complaint to this Honble Court as follows - to-wit - That the said David Spence shows no valid title to the land claimed by him

and it is denied that he (said Spence) has any valid title to said land, but on the contrary the said David Spence avers that he did in fact prove before the commissioner that a good and valid title did exist and accounted for the loss of the same, and he further avers that he has good and ~~valid documents~~ for said land, and a good and lawfull right and title in law and in Equity to the said land.

All of which is respectfully filed in answer to the petition or Bill of complaint of the said District attorney in the Hon.ble the United States District court aforesaid. Wherefore and by reason of which the said David Spence respectfully submits to the Hon the District Judge now here for the said Southern District of California, praying that upon review of the said proceedings and decree of the Commissioner in said cause No. 137 wherein the said David Spence was claimant, and the United States was defendant. His Hon. will ~~re~~affirm the said decree of the said commissioner and further decree the claim of the said David Spence to the land aforesaid to be good and valid and confirm the same to him

with costs. —

L. Lyons

State of California
Southern District
of the United States
District Court.
Los Angeles December
17th 1855

Marshals Cost
serving Answer $3

3

No 151.

United States District
Court Southern District
of California

David Spence
Appellee

ads

The United States
Appellant

Answer,

Filed Dec 21st 1855.
C. E. Carr
Clk.

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I have served this answer on the
within named Appellee by delivering to him personally
a true copy of the same at Los
Angeles Dec 21st 1855
Edward Hunter
U S Marshal
By A. McGoorkin
Deputy

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

December Term A.D. 1855.

David Spence
Appellee
vs
The United States
Appellant

Case No 151.
"Llano de Buena Vista".

This cause coming on to be heard on appeal from the final decision of the Board of United States Land Commissioners "to ascertain and settle the private land claims in the State of California", under an Act of Congress approved March 3d. 1851, upon the Transcript of the proceedings, papers and evidence had and taken before the said Board — And it appearing that the said Transcript and a notice of the intention of the said appellants to prosecute the said appeal have been duly filed with the clerk of this Court — And counsel for the respective parties having been heard —

It is Ordered, adjudged and decreed by the Court, that the decision of the said Commissioners

be and the same is hereby affirmed, and that the title of the said appellee David Spence, to the lands claimed by him in this case be decreed to be good and valid.

The lands of which confirmation is hereby made are known by the name of "Llano de Buena Vista", and are the same lands now occupied by the said David Spence, and are bounded and described as follows, to wit,

Commencing at an Oak tree at the ford of the Monterey River, called the "Paso del Quinto", thence in a straight line to a Lagoon called the "Positas", thence running eastward to a little grove of willows, thence to the banks of the River to a point where the Corral and Rancho of "Buena Esperanza" were situated, and thence following said River to the place of beginning at said Oak tree.

Ward H Ogier
U S Dist Judge

4

No 151.

U. S. Dist. Court

South. Dist. of Cal.

David Spence

appellee

vs.

The United States

appellant

Decree

151 SD

PAGE 67

Filed July 7th 1856.

J. E. Carr

Clk.

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Recorded in Page 189

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

Los Angeles,.....December Term, 1855.

David Spence.

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APPELLEE,

VS.

UNITED STATES,

APPELLANT.

No. 151.

(No. 518, of Transcript.)

On Appeal from the United States Land Commission.

On motion of P. ORD, Attorney of the United States for the Southern District of California, it is hereby

ORDERED by the Court, that an appeal be granted the United States, to the Supreme Court of the United States, from the judgment of this Court against the said United States in the above entitled cause, rendered on or about the 7th day of January A. D. 1856.

P. Ord
Dist Atty.

No. 151.

United States Dist Court
Southern Dist of California

David Spence
appellee
vs
The United States
appellants

Notice of Appeal
Supreme Court

Filed Mch 7 1858
J. E. Carr clk
by O Morgan Depy

57

California Land Claims.

Attorney General's Office

1 October 1856.

Sir:

In the case of the claim of David Spence, confirmed to the claimant by the Commissioners, case no. five hundred and eighteen, (518), and also confirmed on appeal by the District Court, appeal in the Supreme Court will not be prosecuted by the United States.

I am

Respectfully

Cushing

Pacificus Ord Esq

U. S. Atty for the

Southern Dist. of Cal.

157

vid Spencer
518

Nov 4 1856

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

Hon Isaac S K Ogier Judge

December Term 1857

151 SD
PAGE 72

The United States
Appellant

vs

Docket No 151

David S Spence
Appellee

Transcript from the Board of Land Commissioners

In pursuance of a letter from the Attorney General of the United States herein annexed, giving Notice that in the above Cause the appeal in the Supreme Court will Hable prosecuted by the United States, It is hereby stipulated and agreed by and between the Parties that the order granting an appeal to the Supreme Court heretofore made in the above Cause be vacated. And the decree of the Court heretofore rendered in this Cause may by order of the Court be Made final

F. Ord
Dist Atty.

Myron Norton
Atty for appellee

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U. S. Dist. Court
South. Dist. Calª

No 151

The United States
appellant
vs
David S. Spence
appellee

Filed July 23d 1857
Spies
Clk

Stipulation
to vacate order of
appeal to Supreme Court

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

Hon Isaac S K Ogier Judge

December Term 1856

The United States
Appellant

vs

David S Spence
Appellee

Docket No 151

151 SD
PAGE 74

Transcript from the Board of Land Commissioners &c

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

Ordered, adjudged and decreed, That the order granting an appeal to the Supreme Court heretofore made in this Cause be and the same is hereby vacated and that the Claimant have leave to proceed under the decree of this Court heretofore rendered in this Cause as under a final decree

Isaac S K Ogier

R S Ord Clk

71

No. 151

United States Dist Court
for Southrn Dist California

David Spence
appellee
vs
The United States
appellants

order Vacating order granting appeal

Filed 23d February 1857
A Sims clk
J S Hedeman
Dep

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The United States — appellants
vs
David Spence — appellee.

The claim in this case is founded on an alleged grant from Don Luis Arguello; to one Jose Mariano Estrada some time during the year A.D. 1823; for the land called ~~Guadalupe~~ Llano de Buena Vista —

The Grant is not offered in evidence — and it is alleged to have been lost; which allegation is supported by the evidence of David Spence, the present claimant, who was the executor of the original Grantee & who took possession of his papers soon after his death. his testimony shows that the house of the original Grantee upon the premises was broken open and robbed; and that many other things stolen. therefore was the grant of the premises in question — upon this showing secondary evidence of the existence of the Grant and of its contents, was introduced before the Commission

The Board in deciding the case review at the length the law upon the question of the admissability of the evidence offered with those views as expressed in their

opinion, I readily agree.

~~With regard to~~ And my views upon the subject, will be found at large in the opinions delivered by me while sitting in the Mariposa District, in the cases as then generally known of the Pulgas and the Peralta Grant.

The land in question in this case is proven to have been in possession and occupation of the Original Grantee from 1823. up to the time of his death some time in 1847 and has since that been in the quiet and peaceable possession of his assignees — which of itself is sufficient to raise a presumption of a grant having been issued, it is also in evidence that juridical possession of the land was given by an Officer of the Government which issued the grant, and the boundaries of the land as fixed by that possession are distinctly known by one of the witnesses who swears he was present when the possession was given, we have also the evidence of the neighboring proprietors that these boundaries as described by the witness, have been generally recognized and acknowledged as the boundaries of the tract

in question. Had this been a grant under the Colonization laws of Mexico, the evidence offered would perhaps, have not been admissable, either to prove the existence of the grant or its contents — because under that system of laws — a record of all grants and the expeditiones of all the proceedings had in order to obtain a grant of land were required to be kept in the archives of the government and in the great majority of cases, are to be found there still — The juridical possession was also required to be given in a particular manner, and a record of it was required to be kept by the officer giving the possession & a copy of the record as a testimonial of the possession as it was called was delivered to the ~~[illegible]~~ grantee — And the best evidence ~~of the existence of a grant~~ of the issuing of a grant the loss of the original having been proven would have been the copy from the archives and the expediente, and so as regards the juridical possession, the best evidence of which would have been the testimonial on the original record.

But this grant was made prior

to the existence of these laws, and there seems never to have been kept any record of the grants made under these and record evidence of the judicial possession, if there ever was any such record kept; they have never come to light and we have no evidence that any such records ever were kept —

The sole reliance then in the power of the party to produce, the original being lost, was that which he has introduced, by the testimony of witnesses who were living at the time of the grant, and who were neighboring proprietors —— This testimony is explicit and very satisfactory as to the boundaries of the tract

The present claimant alleges title in himself ~~as the~~ derived from the original grantee by virtue of two deeds of conveyance, which are proved to genuine

He is therefore entitled to a confirmation of his claim and a decree will be entered accordingly ——