

## Statement of the case.

*This question has been expressly decided by the Supreme Court of Illinois. That court has held,\* "that a judgment for taxes is fatally defective which fails to show the amount of tax for which it was rendered, and that the use of numerals, without some mark indicating for what they stand, is insufficient." The judgment was therefore void, and the court was right in excluding the evidence from the jury.*

Judgment is

AFFIRMED WITH COSTS.

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UNITED STATES v. MORENO.

1. Where there are no subscribing witnesses to a Mexican grant in colonization, the signature of the governor who executed the grant, and of the secretary who attested it, may be proved by any one acquainted with their handwriting. Such evidence is in no sense secondary. *United States v. Auguisola (ante, p. 352)*, approved.
2. The cession of California to the United States did not impair the rights of private property. These rights were consecrated by the law of nations, and protected by the treaty of Guadalupe Hidalgo. The act of March 3d, 1851, to ascertain and settle private land claims in the State of California, was passed to assure to the inhabitants of the ceded territory the benefit of the rights thus secured to them. It recognizes both legal and equitable rights, and should be administered in a liberal spirit.

ON an appeal from the decree of the District Court of the United States for the Southern District of California, the record disclosed the following facts: On the 5th of April, 1845, Moreno submitted to Pio Pico, then Governor of the Department of California, a petition, wherein he set forth that he had "denounced, in due form, a square league of land situate between Temecula and the Lagoon called Santa Rosa, to which, after previous judicial investigation," he prayed "to be awarded the respective title, on the ground that it is absolutely vacant and without any availableness." The governor ordered the petition "to be sent for the report of" the pro-

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\* *Lawrence v. Fast*, 20 Illinois, 340; *Lane v. Bommelmann*, 21 Id., 147.

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per officer. The officer reported that the land was "in an entire vacant state." The governor thereupon ordered the petition to be returned to Moreno, that he might annex a plat of the land,—the application to come again before the government. Moreno was authorized to occupy the land "provisionally," and it was added, "meanwhile the mentioned title-deed is being made out."

On the 31st of January, 1846, Moreno presented the governor a new petition with the required plat. In this petition he says: "In accordance with the decree your excellency thought fit to give in the month of April, in the year 1845, requiring me to present the plat of the land I occupy provisionally, *called Santa Rosa*, I hereby, with the deepest submission, accompany my petition and the plat, that your excellency may have the goodness to make out the title-deed of ownership to me of the land bordering on Temecula, the Lagoon, and Santa Margarita, *not naming the number of leagues*, as I might be mistaken, but I ask that the land which has no owner, and which I demand in due form, be set apart for my individual benefit and that of my family."

The governor ordered "the title-deed to be issued and given to the interested party with obligation to amend the plat." On the day last mentioned, a deed was issued, subject to the approval of the Departmental Assembly. It purported to be subscribed by the governor and secretary, *but there were no subscribing witnesses to it*. It contained with others the following clauses:

"The land donated to him is the same as exhibited in the plat attached to this expediente, and *borders on land of Temecula, on the Lagoon, and on Santa Margarita*.

"The judge who shall possess him of it will cause it to be measured conformable to ordinance, and give notice to the government of the number of leagues (*sitios de ganado mayor*) it may contain.

"Consequently, I order that this title-deed, being held firm and valid, it be entered in the respective book and delivered to the interested party for his security and other purposes."

## Opinion of the court.

The subject was submitted to the Departmental Assembly, and on the 3d June, 1846, that body approved and confirmed the grant.

It appeared by the testimony of one Foster, in early life a justice of the peace, but who had been for many years a "ranchero" in California, that "Santa Rosa" was the name given to a well-known tract; that it adjoined another well-known tract, called "Temecula," on the east, a second, known as "Santa Margarita," on the west, and that a third, called "La Laguna," stood off in a direction northeasterly. This was confirmed by two other witnesses.

Moreno resided upon and cultivated the land from the time he was authorized to occupy it until the acquisition of the country by the United States.

After the acquisition he presented a petition to the Board of Commissioners, established by the act of Congress of 3d March, 1851, to ascertain and settle private land claims in California, to have his title confirmed, pursuant to the provisions of that statute. The commissioners having confirmed it, an appeal was taken by the United States to the District Court; and that court having affirmed the report of the commissioners, the United States brought the case here by appeal.

It was objected on behalf of the United States to the decree of the District Court:

1. That the "grant is proved, by secondary evidence of handwriting, without the legal basis for its introduction having first been laid;" *this objection being made in the case, however, in this court only.*

2. That the location and quantity of the land are entirely uncertain both in the grant and in the *diseño*.

*Mr. Willes, for the United States.*

Mr. Justice SWAYNE delivered the opinion of the court:

The first objection refers to the proof of the signatures of the governor and secretary to the deed to Moreno, which was made by persons acquainted with their handwriting, without those officers being called or their absence accounted for.

## Opinion of the court.

There are no subscribing witnesses to the deed. It was therefore allowable, according to the common law, to prove the signatures by any one acquainted with their handwriting. Such evidence was as competent and valid as the testimony of the writers themselves. It is in no sense secondary evidence.\* Were the rule otherwise, it is a sufficient answer to the objection, that it does not appear that the evidence was objected to when it was offered and received in the court below. If no objection be made, the existence and contents of a record may be proved by parol evidence, and a court of errors will not for that reason reverse the judgment.† The testimony is found in the record, without any exception, and must have its legitimate effect. In this class of cases, where the documentary proof of title is plenary, and no suspicion is raised as to its genuineness, it is the settled rule of this court to regard such evidence as both competent and sufficient.‡ We have no doubt of the genuineness of all the papers composing this *espediente*. No question was made upon the subject in the court below.

It is further objected to the decree that "the location and quantity of the land are entirely uncertain, both in the grant and the *diseño*."

The tract is described in the *titulo* as known by the name of Santa Rosa, and as bounding upon Temecula, the Lagoon, and Santa Margarita. The petitioner asked for a title to all the vacant land in that locality, and it was conceded to him accordingly.

It is proved by the testimony of three witnesses that Santa Rosa was a well-known rancho; that Temecula, the Lagoon, and San Margarita were well-known contiguous ranchos, and that there was not the least difficulty either in identifying Santa Rosa, or in ascertaining its boundaries. There is no contradictory evidence upon the subject. The District Court held the evidence to be sufficient, and we concur in that opinion.

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\* 2 Phillips on Evidence, 4th American edition, 604.

† Newberry *v.* Lee, 3 Hill, 523.

‡ United States *v.* Auguisola, *ante*, p. 352.

## Opinion of the court.

The record presents every link in the chain of a perfect expediente. There is a petition with a *diseño*, an order of reference, an *informe* by the proper officer, a decree of concession, a *titulo*, and the approval of the Departmental Assembly.\*

The Surveyor-General of California certifies that the expediente is copied from the archives in his possession. It is not necessary to the validity of the title that the land should have been surveyed and the quantity ascertained.†

California belonged to Spain by the rights of discovery and conquest. The government of that country established regulations for transfers of the public domain to individuals. When the sovereignty of Spain was displaced by the revolutionary action of Mexico, the new government established regulations upon the same subject. These two sovereignties are the spring heads of all the land titles in California, existing at the time of the cession of that country to the United States by the treaty of Guadalupe Hidalgo. That cession did not impair the rights of private property. They were consecrated by the law of nations, and protected by the treaty. The treaty stipulation was but a formal recognition of the pre-existing sanction in the law of nations. The act of March 3d, 1851, was passed to assure to the inhabitants of the ceded territory the benefit of the rights of property thus secured to them. It recognizes alike legal and equitable rights, and should be administered in a large and liberal spirit. A right of any validity before the cession was equally valid afterwards, and while it is the duty of the court in the cases which may come before it to guard carefully against claims originating in fraud, it is equally their duty to see that no rightful claim is rejected. No nation can have any higher interest than the right administration of justice.

The decree of the District Court is

AFFIRMED

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\* *United States v. Knight's Adm'r*, 1 Black, 245.

† *Fremont v. United States*, 17 Howard, 542; *United States v. Maca*, 18 *Id.*, 556.