

Luco Vs. United States

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Appellant : Luco

Respondent : United States

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Luco v. United States

64 U.S. (23 How.) 515

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

A grant of land in California, purporting to have been made to one Jose de la Rosa, dated 4th of December, 1845, and purporting to be signed by Pio Pico as acting governor and countersigned by Jose Maria Covarrubias, secretary,

adjudged to be false and forged.

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The case is stated in the opinion of the Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

The appellants, Juan Manuel Luco and Jose Leandro Luco, filed their petition with the board of commissioners for ascertaining and settling land claims in California on the 13th of September, 1854. This was after the time limited by the act of Congress of 1851. But, on their application, Congress passed a Special Act July 17, 1854 authorizing the presentation of their claim.

They claim under a grant made to one Jose de la Rosa, dated 4th of December, 1845, and purporting to be signed by Pio Pico, as acting governor, and countersigned by Jose Maria Covarrubias, secretary. This document was deposited in the Surveyor General's office on the 25th of October, 1853, and had attached to it a paper, purporting to be a petition, by Jose de la Rosa to the governor, setting forth that the government was indebted to him in the sum of \$4,650 for services as printer, and praying for the sobrante, or lands remaining between certain ranches of Vallejo and others.

The boundaries of the land prayed for are set forth very distinctly,

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but without any limitation as to the quantity of land contained therein. On the margin of this petition is the usual order for title, purporting to be signed by Pio Pico on 8th of November, 1845.

There is also attached a paper, purporting to be a certificate of approval by the departmental assembly, certified by the signatures of Pio Pico and Jose M.

Covarrubias and dated 18th of December, 1845.

This grant is for land within certain boundaries, and unrestricted as to quantity. Its confirmation was vigorously opposed by the counsel for the government. They alleged that the documents produced to support the claim were forgeries, supported by perjuries of persons who had conspired to defraud the government of an immense body of valuable land. Upon this issue the parties went to trial before the commissioners, who found in favor of the United States. The case went by appeal to the district court, where much additional testimony was taken, a thorough investigation made, and these documents were again adjudged to be forgeries.

The appeal to this Court compels us, however unpleasant the task may be, to pass upon this issue of fact, in which the character and conduct of others besides the parties will necessarily be made the subjects of discussion.

The claim first made its public appearance in 1853, after the lands had been surveyed by the United States government as vacant. Previous to such survey, the public officers had used every diligence to discover whether any person possessed any title or claim to these lands, but the inhabitants of the district, and the owners of adjoining lands, were all ignorant of any claim, by possession, grant, or otherwise.

The lands within the boundaries of this alleged grant amount to 270,000 acres or thereabouts.

The person to whom the grant purports to be made was almost a pauper, and though not actually a servant, yet a dependant of General Vallejo, residing in Sonoma, gaining a precarious livelihood by making and mending clothes and tin ware, acting as alcalde, printer, gardener, surveyor, music teacher, and attending to a grocery and billiard table for Vallejo,

and during all this time, from the date till the public appearance of this title, wholly unaware of his wealth and immense possessions, and always representing himself as a poor man, while he had in his possession a title to 270,000 acres of valuable land.

The archives of the Mexican government furnish not the slightest trace of any such grant, although all the other grants made in the same year and month and on the same day are carefully recorded and registered, and the expedientes found on file.

These facts might well justify the government officers in questioning the authenticity of this grant, whatever the character and standing of the parties might be who pretend to establish it by their testimony.

The claimants, in order to establish their title, examined Jose M. Covarrubias, who was secretary of the governor, Pio Pico, at the time the grant purports to have been signed. He testifies that

"it is in his handwriting, and the attestation is his signature; that he does not remember to have seen Pio Pico sign it; but that his signature appears to be genuine, and he believes he signed it."

We shall have occasion to notice the testimony of this witness more particularly hereafter. At present we only say that there is no reason to doubt the truth of his statement so far as he attests his own acts, but that he wrote and signed it on the day it bears date needs confirmation, for if it was so written and signed by him on that day, he should be able to give some reason why it does not appear on the register with the other grants made on the same day. It is true he attempts to do this by alleging that he registered it in some other book not found in the archives, but he cannot give a reason why all other grants were on the book found, and this one alone in some unknown register. If it was so written and signed by him on the 4th of December, 1845, it is incumbent on the claimants to give some account of it -- to show why it was kept secret till 1853. If in possession of the grantee, why it was not produced and laid before the commissioners; why the petition and marginal order forming part of the expediente, if

there was one, is found in the possession of the grantee, and where and when the certificate of approval was found and kept.

These and many other questions, which demand a solution, the claimants have not endeavored to answer. But they endeavor to prove 1st, that this grant was seen about the time it bears date, and 2d, that Rosa had a ranch on this tract of land, with a stock of cattle and horses, and resided on it, for a time at least, with his wife and family, up to 1849, claiming it as his own.

The chief witnesses to establish these facts, besides numerous others called to prove the possession, are Jose de la Rosa, Mariano G. Vallejo, and his brother, Salvador Vallejo. More than twenty witnesses have been called to prove that the character for veracity of these persons is so bad that they should not be believed on their oaths. As many testify to their good character, and especially to that Mariano G. Vallejo.

There is proof also of declarations of Rosa that Vallejo was indebted to him or his false swearing for the property he possesses: "That the only right way of swearing was by the priest, with the Catholic cross," and that "he was not afraid of the laws from the way the Americans swore witnesses."

Such testimony of admissions is of very little value, and is generally not worthy of regard, and the testimony as to character is so equally balanced that we do not feel at liberty to reject any portion of it for that reason. There are many more satisfactory tests of the truth of parol testimony than that of character of the witnesses. Where the facts sworn to are capable of contradiction, they may be proved by others not to be true; and when they are not, the internal evidence is often more convincing than any other. A shrewd witness who is swearing falsely to something which cannot be disproved by direct testimony will confine his recollection wholly to that single fact, professing a want of recollection of all the facts and circumstances attending it. An inexperienced witness whose willingness to oblige his friend exceeds his judgment will endeavor to give verisimilitude to his

tale by a recital of imaginary circumstances. A stringent cross-examination

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will generally involve the latter in a web of contradictions, which will be in a measure evaded by the other, with the answer that he "*does not recollect.*" Where many witnesses are produced to the same facts, and they contradict one another in material circumstances, they prove themselves unworthy of credit.

It would be a tedious and we believe an unnecessary task to examine severally the testimony of the 120 witnesses examined in this case and test their respective credibility on the principles we have stated. With the exception of a few remarks on the testimony of the witness already alluded to, we shall therefore content ourselves with stating the result of our examination, without an attempt to vindicate its correctness by exhibiting the process by which it has been attained.

Jose de la Rosa was called by the claimants and examined. Having sold to the claimants without general warranty, he was a competent witness. He was the person who might elucidate and explain the many difficulties and suspicious circumstances connected with this transaction, if they were capable of explanation. But, instead of it, we find his examination in chief exceedingly brief. He is asked to prove the signatures of Pico and Covarrubias from his knowledge of their signatures. He is then asked if he ever had in his possession this grant, and when and where he received it. To which he answers, that "he received it from Don Mariano G. Vallejo, in Sonoma, in the latter part of December, 1845."

He is then asked if he ever had in his possession the certificate of approval, and when and where he received it. To which he answers, that it was delivered to him by Vallejo in the beginning of the year 1846.

With this meager statement of matters, impossible to be contradicted except by Vallejo himself, the claimants conclude their examination in chief. The cross-examination fully confirms the wise caution of the claimant's counsel in not troubling the witness with too many questions.

When asked to explain his circumstances since 1846, he answers, that

"he is rich; that his wealth consists in money at present; formerly in horses, cows, oxen, houses, and land, and

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a house in Sonoma. Of mares and horses he says I have probably had five hundred, but not all at one time. From 1846 to 1847, I had 500 head of cattle; that in 1846 he had four hundred upon the rancho of Julpines."

Now all this has been proved by numerous witnesses to be utterly false. It would be tedious to notice all the absurdities and contradictions of himself, to be found in this cross-examination, as to the mode in which he has disposed of his wealth.

With regard to the existence of this grant, Mariano G. Vallejo testifies that he received it by a courier from the governor in December, 1845; that he handed it to Rosa, "and he was much pleased." That this was the only paper received by him, and that is all. On cross-examination, he said he had seen the petition before he saw it on the files of the land office, but not the approval.

Again, in answer to another question, he denies ever having seen any paper but the grant at the time he received it, or afterwards, till he found the three papers connected together in the land office. In this he contradicts not only himself but Rosa, who says he received the certificate of approval from him.

This testimony, instead of solving the difficulty as to the origin and history of this grant, leaves it in greater obscurity than it was before.

The testimony offered to prove the possession and improvements is so contradictory as to furnish material evidence of its untruth. One witness describes the house built by Rosa as made of poles; another declares that it was an adobe house, and that Rosa resided in it with his family, and as the house was near the Sacramento road, he had frequently seen them in it, and their cattle, horses &c.;, on the land, up to the year 1849; another, that the house was more than eight leagues from the road. One says that he lent Rosa horses to convey his family to

the rancho; another that he took them in a boat, while Rosa himself ignores the boat, and swears he had horses of his own, and had no need to borrow, and that his family or himself had never resided anywhere but in the Town of Sonoma, forty miles distant from the land -- sometimes visiting his

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rancho for two or three days. Another, after swearing to the fact of residence by Rosa and family on the land, admits on cross-examination that he never saw the land.

The testimony for the United States establishes beyond a doubt that the whole of this testimony is a mere fabrication; that Rosa never resided on the land; that he had no cattle or horses, but lived in the Town of Sonoma, a dependent of General Vallejo, with difficulty gaining a precarious support from his numerous avocations, always declaring to the tax assessors that he had no real property except a small lot in Sonoma and no personalty beyond a cow and a horse.

Thus far the testimony produced by the claimants, instead of dispelling the suspicions attached to this grant, has only increased them -- forcing on our minds the conviction that a grant attempted to be supported by perjury must necessarily itself be false.

The first public appearance of this claim therefore cannot be dated earlier than the 18th of March, 1853, when Jose de la Rosa makes his conveyance to the claimants, reciting this paper of 4th of December, 1845, for the alleged consideration of \$15,000. This deed describes the land by boundaries, and is entirely silent as to quantity.

Now we need not have recourse to the testimony of Rafael Guirado of the conversation overheard in the house of Vallejo between him and the claimants, and the alleged confessions of Vallejo with regard to this grant. Some doubts have been cast upon the character of this witness for veracity, and the testimony of such declarations and admissions is generally worthy of little reliance. Nevertheless his story has an air of probability. when connected with other

evidence in the case, that forbids the conclusion that so great a simpleton as Guirado could ever have invented it.

The United States, in order to support this issue, are not bound to show by whom a scheme of fraud has been concocted or how, when, and where, it was executed. It will be sufficient if they can show facts inconsistent with the allegation that the deed in contest existed on the day or year of its date. It is possible that the officers of the late government

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may execute grants since their power has ceased, and when called to prove their authenticity, may forget to mention the fact that their deeds are antedated. We regret to say that the testimony in this case justifies and demands this assertion.

Three facts tending to prove the authenticity of this grant are proved by claimants -- 1st, that the petition now produced in connection with the grant was signed by Jose de la Rosa; 2d, that the marginal order on the same is in the handwriting of Covarrubias, the secretary, being the only instance in which he has been known to have acted as clerk to make such entry; 3d, the titulo and certificate of approval are in his handwriting, and signed by him.

Admitting these facts to be proved, we must inquire whether there is sufficient evidence to convince us that these documents were not executed at the time of their date, but some seven years thereafter.

I. We have already shown that this grant made its first public appearance in 1853, when it suddenly came forth, as is alleged, from the chest or pocket of Jose de la Rosa, and was immediately transferred to the claimants.

II. That the grantee himself, examined as a witness, can give no consistent or probable history of its origin or why he had always lived in ignorance of it, or, if its existence was known to him, why he kept it a secret, or why a poor and garrulous old man should never mention it to friend or neighbor till about the date of its public appearance, or what possible motive could be found for a millionaire living as a

pauper for so many years and then disposing of his immense estate for a trifle.

III. We have shown also that the testimony of the witnesses called to prove a long possession and claim under this title is a tissue of falsehoods.

These facts alone would be sufficient to condemn this grant and show that it had no existence before 1852, but if any doubts should still exist, that which remains to be stated will certainly dispel them.

IV. It is proved that the counsel to whom the claimants first made application for his services to obtain a confirmation

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of this grant, on examination of the document presented to him as evidence of title, refused to be so employed because the deed produced was a palpable forgery; that it was not the instrument now produced; that it had the signature of the secretary, Covarrubias, forged so badly that his name was twice misspelt in different ways, while the present is written by Covarrubias himself, and is consequently free from such blunders.

It has been argued that this testimony should be rejected as incompetent because counsel has revealed the secrets of his client. To this it is answered, that the relation never existed, the counsel having refused to stand in that relation to the claimants. The right of privilege from examination was neither claimed by the counsel nor by the claimant, and the witness being examined without objection, we are not required to decide how far a counselor who has been requested and refused to be a partaker with persons attempting to defraud the government may plead his privilege, and refuse to answer. Having answered without objection, it cannot affect his credibility that he willing to expose a fraud under these circumstances. As a witness, his testimony is unimpeached and uncontradicted and unwillingly confirmed by Covarrubias.

V. When the application was made to Congress, the petition and certificate of approval do not appear to have been found, and were not annexed to the grant till

it appeared on file in the land office.

VI. There is no attempt to account for the fact that the petition, instead of being annexed to the expediente, is found in the hands of claimants, and not among the archives, where the expedientes of all the authentic grants made in that year are found. To account for this fact, Covarrubias, in his first affidavit, testified "that it was the practice of the office to return the petition with the grant." But when his deposition was taken, with cross-examination, he is forced to confess the untruth of the first statement, and admits what is a well known fact -- that the petition formed part of the expediente always preserved on file among the archives.

VII. No trace of this grant is to be found among the archives of the government; it is not found on the registry of

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grants for that year, while authentic grants made in that year and month, and day of the month, are found on the files and registry.

VIII. The seal on this paper differs from that found on authentic grants of the same date, and Covarrubias himself admits that there was but one seal used in the office while he was secretary. This seal, on careful examination by persons qualified to judge, is proved to be a forgery.

IX. The signature of Pio Pico and his rubric, when compared with a large number of his authentic signatures found in the archives, and those made on the same day in which the grant in question is dated, is found to differ in many particulars from that found on this paper. His official signatures are remarkable for their uniformity. Many excellent judges have carefully scrutinized and compared these signatures, and declare the signatures in question are forgeries. Two of them express the opinion that the person who wrote the body of the instruments made the signatures also.

We have ourselves been able to compare these signatures by means of photographic copies, and fully concur from evidence "*oculis subjecta fidelibus*"

that the seal and the signatures of Pico on this instrument are forgeries, and we are the more confirmed in this opinion by the testimony of Pico himself, found on the record. In a brief affidavit made on the 9th of June, 1853, he swears without hesitation that "the document bearing date December 4, 1845, was signed by him." But in his deposition taken in this cause on 27th of February, 1857, while this issue was pending, he appears to testify with very great caution. He seems to have drawn out a certain formula of words, on which it is clear that a conviction of perjury could never be sustained, whether his testimony was true or false. The answer is in these words, and three times repeated in the very same words:

" *I cannot now remember* in regard to the original document mentioned in said interrogatory, but the signature, as appears in the traced copy, *appears to be my signature*, and *I believe* it was placed there by me at the time the document bears date."

His memory appears to be much weaker than his faith, as it

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might have been supposed that such a sale of territory would have attracted his attention sufficiently to be remembered forever after.

X. This certificate of approval by the departmental assembly bears date at a time when the public records and minutes of that body show that it was not in session. It is dated on the 18th of December, 1845, and the resolution of approval appears to have passed on the 11th of the same month.

The records of the proceedings of the assembly at the close of 1845, and beginning of 1846, are preserved. They show that on the 8th October, 1845:

"The *sessions* of the assembly were suspended for the *rest of the year* in consequence of permission's having been granted to the senores deputies, who reside out of this capital, to retire to the places of their residence, in view of the injuries they must suffer in consequence of their salaries due them respectively, as functionaries, not being paid."

A publication of the foregoing in all the pueblos of the department was ordered to be made October 11, 1845.

The next session of the assembly, as shown by its journals, was on the 2d March, 1846. The journals state that the governor and certain deputies, who are named, had

"assembled for the purpose of reopening the ordinary sessions, which, by a resolution of the body, had been suspended for the balance of last year. Whereupon the proceedings of the 8th day of October of the last year were read and approved,"

&c.;

It is evident that no ordinary session of the assembly was held on the 11th December, the day on which this grant is certified to have been approved.

It is contended, however, that extraordinary sessions were held, of which no record was kept, and the testimony of several witnesses has been taken to establish the fact.

But this attempt to supplement or falsify these records has wholly failed, and more especially as it appears that all the other grants admitted to be genuine, and which are of a date later than the adjournment, were presented and approved after the assembly reassembled on the 2d of March, 1846, and the form of words used in the certificate of approval of this one

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differs from the eleven others, dated between November 22, 1845, and December 19, 1845.

In conclusion, we must say that after a careful examination of the testimony, we entertain no doubt that the title produced by the claimants is false and forged, and that as an inference or corollary from the facts now brought to our notice, it may be received as a general rule of decision that no grant of land purporting to have

issued from the late government of California should be received as genuine by the courts of the United States unless it be found noted in the registers, or the expediente, or some part of it, be found on file among the archives, where other and genuine grants of the same year are found, and that owing to the weakness of memory with regard to the dates of grants signed by them, the testimony of the late officers of that government cannot be received to supply or contradict the public records or establish a title of which there is no trace to be found in the public archives.

Let the judgment of the district court be affirmed.

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