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# The No Fence Law Of 1874

## VICTORY FOR SAN JOAQUIN VALLEY FARMERS



The 1874 “No-Fence” law passed by the California legislature signaled a victory for the farmer over the cattleman and stands as a symbol of economic change in the San Joaquin Valley from cattle grazing to cultivation of the soil. The cattleman had arrived in the valley first, in the 1840s, but as settlement began in the 1850s and increased in the 1860s, he found himself in conflict with the rights of the farmer. The ever-increasing farm population meant that local newspapers tended to support the farmer’s position, and, moreover, his numerical superiority meant that he would dominate in politics as well. Finally, because the cattleman generally did not own the land his animals grazed upon, he had little legal recourse in any attempt to remove the farmer, whose claim to his 160 acre farm was quite legal. The battle between the two economic interests spanned nearly two decades, climaxed by a series of court cases and laws passed in the 1870s that protected the farmer by obliging the cattlemen to fence in their grazing animals.

**T**he earliest recorded economic activity in Kern County resulted from the establishment of five Spanish ranchos from 1842-1846, located generally in the foothills and mountains on the southern rim of the valley. An unknown, but probably small, number of Mexican longhorns were grazed on those ranchos prior to the American conquest of 1846. Though one government gave way to another, the pastoral economy endured throughout much of southern California well into the 1870s. Just as the Spanish had before them, the American cattlemen used the San Joaquin as a grazing area, taking advantage of the free water and grass as well as of the land itself. Typically, the vaqueros located their camps at

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the base of the foothills, permitting the animals to graze in the valley in winter and in the foothills and mountains in summer. This pattern continued through the 1850s and well into the 1860s with little interference from farmers in the early years. Large herds were driven from Los Angeles over the Tehachapis to the mines in northern California. As early as 1847, Benjamin David Wilson tells us that: “I moved up all my stock, about two thousand head of cattle, passed through the Tulare Valley by way of Cajon de los Uvas; there was not a white man living on that route, from San Fernando Mission to Sutter’s Fort.”<sup>1</sup> During the height of the gold rush, in the early 1850s, several herds were moved north, sometimes losing beef and even vaqueros to the marauding Indians.<sup>2</sup> Some cattle were deliberately left behind to stock the herds kept in the valley. The year 1850 saw the San Joaquin Valley economically dominated by cattle interests with no record of a permanent white settler in all of what is now Kern County.

The dominance of cattle interests was evident in most of California and permitted the passage of the Trespass Act of 1850. This law described in great detail what is a “lawful fence” and placed the burden upon the farmer by stating that unless a lawful fence was erected by the farmer he had no legal protection against stray grazing animals. The law even provided that owners of grazing animals could sue the farmer for any damage done to the stock. The difficulty for the farmer was the cost of building a legal fence. Barbed wire fences were not yet known, and proper wooden or stone fences were prohibitive in cost. The cost of post-and-board fences, “the cheapest good fence that can be built,” was estimated by one to be as high as \$700 a mile and by another to equal the annual value of a farmer’s crop.<sup>3</sup> It was the passage of this law, often called the “Fence-Law” by contemporaries, that led the farmer in the 1860s and 1870s to lobby for a “No-Fence Law.” The term “no-fence” meant to the farmer that he would not be obliged by

*Haymaking on the Jackson Ranch. The two rakers are windrowing and cocking the hay and the derrick fork is just lifting its load of several hundred pounds upon the stack.*



law to build a fence around his property in order to protect his crops from damage by stray animals.

Tulare County was formed by legislative act in 1852 and at that time included what is now Kern County. There were but three white habitations in the entire area: the Wood cabin at Four Creeks (near present-day Visalia), the Pool and Campbell ferry and trading post on the Kings river (near present-day Centerville), and the Tejon ranch in the Tehachapis. There were no more than a dozen bona fide white residents of the entire county.<sup>4</sup> In 1853, a party of the Corps of Topographical Engineers, led by Lt. Robert S. Williamson, surveyed for a railroad and reached the southern end of the San Joaquin Valley. Traveling from Poso Creek to the Kern River and on south to the Tehachapis, they reported no settlement until reaching Beale's Indian Reservation.<sup>5</sup> But within a

few years the scene changed dramatically. Edward F. Beale acquired the Tejon Ranch and in 1853 established the Sebastian Indian Reservation, which had the effect of placating the Indians and making raids less likely. In the same year, the national government established Fort Tejon in the Tehachapis, which provided a rest stop for travelers and rendered the journey less hazardous. Several businessmen who located near the fort took up cattle raising as a part-time venture.<sup>6</sup> The cattle raised at that time were most often the Mexican longhorn, an animal which was scrawny but tough and well-suited to survival on the open range. More important, the longhorn could be a fierce and aggressive animal, which portended even greater danger to the farmer and his crops.

The first settlers in Kern County chose to live in the mountains generally east and south of present-

*Outsized crops, such as this field of 12 foot high corn, were sufficient testimony that the rich alluvial fan of the Kern River would more profitably support crops than grazing cattle.*

day Bakersfield rather than in the valley itself. The Kern River flowed freely into the valley, depositing water in sloughs and lakes scattered throughout the southern end of the valley. The resulting wet ground conditions gave growth to numerous trees, brush, and “tules” that harbored malaria-infested insects. It was in part to avoid the chills and fever of malaria that settlers at first avoided the valley floor.<sup>7</sup> Some of the first permanent settlers in the county were attracted to the high mountain valleys: John Moore Brite settled in Tehachapi in 1853; William Weldon arrived in South Fork Valley in 1857; A. T. Lightner commenced farming in Walker’s Basin in 1858; and William P. Lynn settled in the valley that bears his name before moving to a farm on the Panama slough in the late 1850s. As if to emphasize the dangers of even traveling in the valley, the Butterfield Stage chose in 1858 a route along the eastern rim of the valley whenever possible.

**B**y the late 1850s, several settlers had established farms at or near present-day Bakersfield. They were attracted by the excellent soil and available water from the Kern River. Regarding the prospects for farming, Samuel A. Bishop wrote:

I lived at or near Fort Tejon from the year 1853 to 1866, and can say from personal experience that I know of no county in the State that is more susceptible of being made one of the most flourishing and beautiful on the face of the earth, if settled by an industrious people. There is a belt of land lying along the foothills of the Sierras, commencing from where Kern River enters the valley or plains, extending southeast and south, and thence west or northwest, forming a semi-circle of at least 75 miles, said belt of land ranging from one to six miles in width, making an average of three miles, which would contain 225 sections or 144,000 acres of the finest grain land I ever saw and the other half medium.<sup>8</sup>

The “belt of land” Bishop referred to became known as Kern Island, the alluvial fan created by the Kern River as its drainage reached into the San Joaquin Valley. Historically, the water of the Kern River has moved in many directions once it entered the floor of the valley. It always carried with it river sand which it deposited in the valley to await those “industrious people” who would cultivate it. Kern Island, then, was the name given to the land enclosed by the major channels of the Kern River and, because of slightly higher elevation and the option of channeling river water for irrigation, it proved to be the first choice of settlers coming into the valley.

Kern Island in the 1860s was a relatively isolated area in a state whose population was booming. All that was needed to attract large numbers of settlers was a man of vision and energy. For Kern Island, that man was Colonel Thomas Baker. Baker had been most recently a resident of Visalia and a state Senator familiar with ways and means of acquiring large amounts of land. In 1850, the national government had granted to the state of Arkansas the right to reclaim “swamp lands” and to pass the title to private ownership and had provided at the same time for other states to make similar application. Using the Arkansas Act as a basis, the California legislature in 1857 awarded to William F. and Joseph Montgomery the right to reclaim swamp land in the San Joaquin Valley. A further requirement imposed upon the Montgomerys was to build a canal between the Kern and San Joaquin Rivers large enough to carry vessels of eighty ton burden.<sup>9</sup> Unable to attract sufficient capital for such a large endeavor, the Montgomerys sold their rights to Colonel Baker and Harvey S. Brown of San Francisco. By an act of the legislature of 1863, Baker was exempted from building navigational canals. Baker hired Indians to build a dam to block water from draining into the South Fork in an effort to reclaim the land along the slough flowing north out of Buena Vista Lake. The cost of this effort

was greater than Baker could easily handle, and he sought to recover his expenses by selling the reclaimed land to newly-arrived settlers.<sup>10</sup>

Baker was aided by nature in his reclamation efforts. According to law, to “reclaim” swamp land meant to drain it sufficiently to make the land “susceptible to cultivation.”<sup>11</sup> A great drought in 1864 dried out his land far better than he could have with drainage ditches, and the surveyor general pronounced the land reclaimed. The patent of 1867 conveyed to Baker a total of 87,120 acres of land in Kern and Fresno Counties.<sup>12</sup> He promptly sold most of the land to both ordinary settlers and large land purchasers, such as Horatio P. Livermore of San Francisco and his resident agent in Kern County, Julius Chester. Baker had long been a strong advocate of the agricultural prospects of Kern Island:

Why this country has elicited so little attention on the part of agriculturalists I will endeavor to explain. Quite recently, stock-raisers have given it all the attention it deserves. The dry season has caused a failure of grass in other parts of the country, and cattle and horses have been driven here in vast numbers. I estimate there are now in the vicinity not less than 50,000 or 60,000 head. It is situated so far in the interior that, for agricultural purposes, until the recent discovery of rich mines across the Sierra Nevada mountains due east, it was too far to a market; besides, our swamp land grant covers nearly all the desirable land for farming and could not be reclaimed except on the large scale we are about to undertake.<sup>13</sup>

Soon Baker was advertising that he was ready to sell reclaimed swamp land “to cultivators of the soil on the most liberal terms.”<sup>14</sup> And the settlers did come, planting a surprising variety of crops in an attempt to determine what would grow best in the distinctive geography and climate of the San Joaquin Valley. As early as 1865, cotton was grown by Solomon Jewett on a 140 acre farm. Jewett imported a ton of seed from Tennessee and a ton from Mexico, the latter faring better.<sup>15</sup> Other crops tried were al-

falfa, apples, grapes, wheat, barley, and sweet potatoes, as well as cattle, horses, and sheep.

Settlement on Kern Island and the growth of the mining towns in the mountains caused sufficient population growth to create Kern County in 1866, with Havilah as the county seat. Oddly enough, Kern Island was thought of as “out of the way” in the 1860s in relation to Havilah. That was due to the fact that the stage coach line from Los Angeles north passed through the mountains to the east of the valley, from Tehachapi Valley to Havilah, Keyesville, and Linn’s Valley before moving north to Visalia. With the intention of linking up with this principal north-south artery, Baker financed the construction of a road from Kern Island to Bena, and twisting up the mountain, on to Havilah. The opening of this “turnpike” in 1867 gave hope to the Kern Island farmer that he could more easily market his produce in the mining camps and towns around Havilah. Further progress was shown with the opening of a Post Office in 1867 in what by then was known as Bakersfield with service to Havilah.<sup>16</sup>

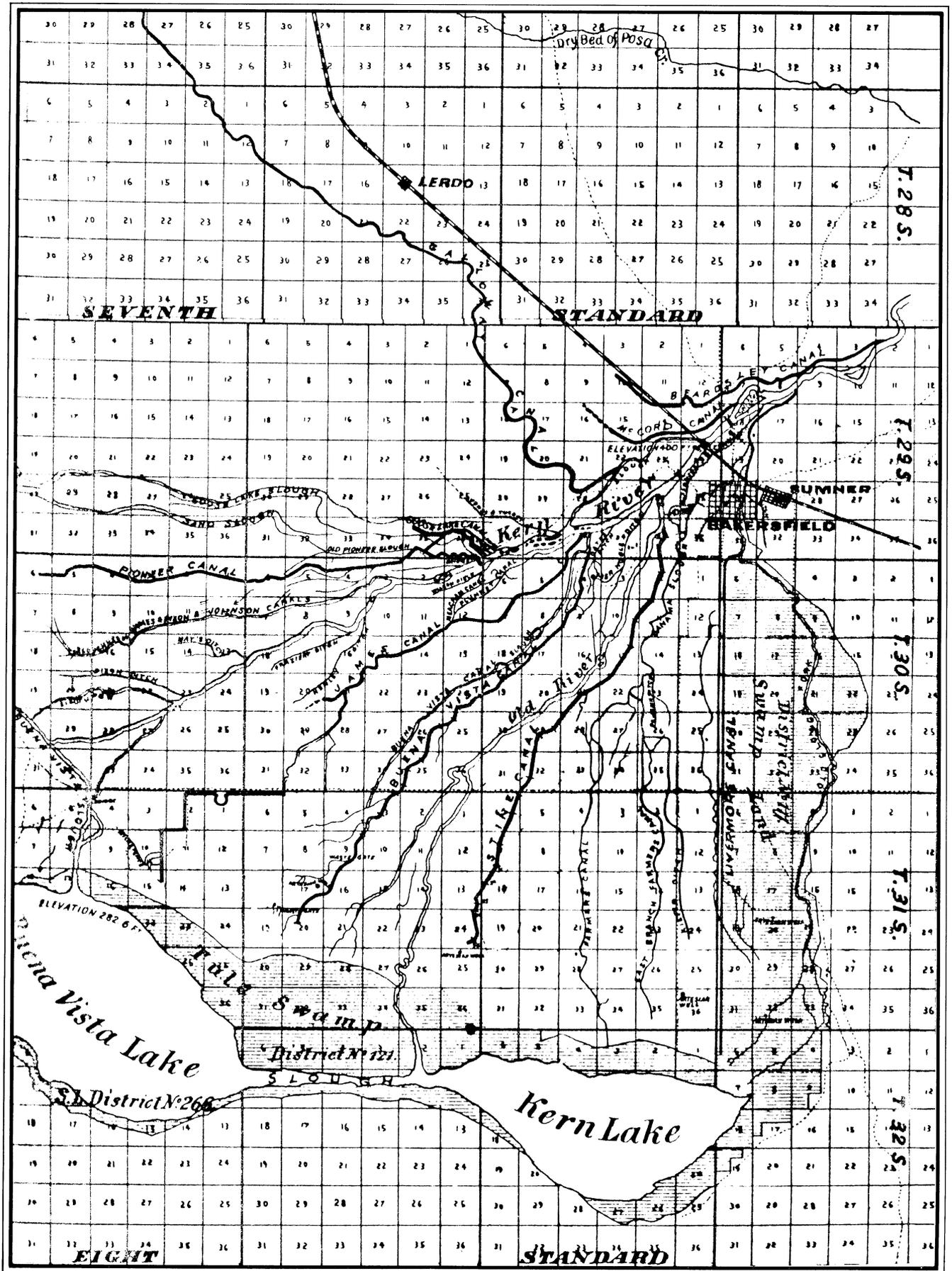
As permanent settlers found their way to the Kern Island area in the 1860s, the cattle business remained active throughout the valley and surrounding foothills. Many if not most of the herds were “outsiders” in the sense that their owners were not residents of Kern County and the herds had been driven in from ranges quite distant from Kern Island. In testifying in a case heard before the California Supreme Court, John P. Murray tells us:

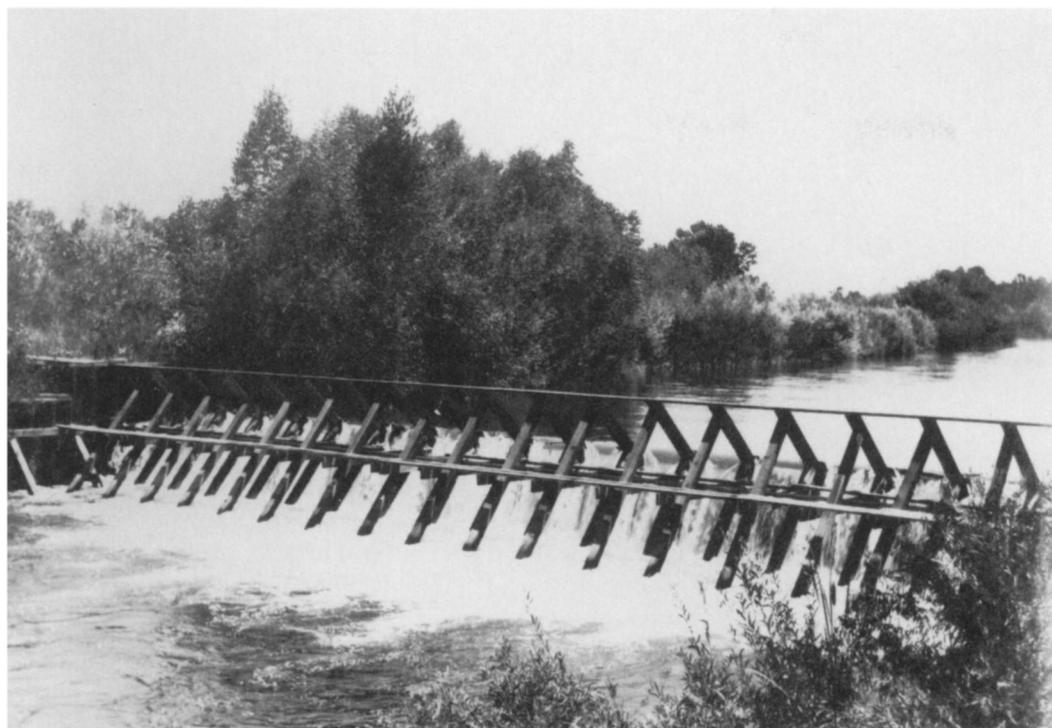
I have been in the stock business, in what is now Kern County, from Tulare Lake south. My cattle ranged all over the island there, and around Kern and Buena Vista Lakes, and from Tulare Lake to those points I brought cattle here first in 1864. It was a year of great drought. I came here from Tulare and brought cattle with me, somewhere in the neighborhood of a 1000 to 1200.

There were a lot of cattle there. The country seemed full of them. They drove them in from Santa Barbara and San

*The Kern River, looking westward and downstream, with the Kern Island at the left.*







*Weirs, or small dams, such as this McCaffrey Weir along the Calloway Canal served to drop water elevation as well as to divert water into a series of irrigation ditches.*

Luis Obispo, and all over the country from Santa Clara and Tulare, every place they had cattle they drove them in onto these tules and salt grass to save them, because it was a very dry year.<sup>17</sup>

Murray estimated seeing 40,000 head of cattle in the southern San Joaquin Valley that year, driven there from nearly every direction of the compass. He also makes it clear that he thought of the valley as a refuge during dry years, but other cattlemen ran cattle there on a regular basis so the settlers were continually vexed by the problem of wandering cattle. During the height of the spring roundup, rodeos were held with great frequency throughout the valley and in the mountain valleys. The rodeo marked the climax of the year for the cattlemen and served as a time for celebration as well as for the business of “cutting out” the unmarked cattle and branding. Early reports tell of the fearsome nature of the Mexican Longhorn:

The Spanish cattle, light red, brindle, lemon colored, and sometimes with a dark stripe down the spine, were well suited to early California. They were as fierce as modern Brahmas, well able to take care of themselves and their young in the tough company of coyotes, wolves, lions, and grizzlies. Spanish cattle were leggy, speedy and inclined to produce tough beef. They were dangerous to a man on foot.<sup>18</sup>

*Late nineteenth century map showing the irrigation system about Bakersfield.*

It is no wonder that the settlers feared these animals freely roaming the plains, and it is no surprise that the American stockman attempted to upgrade the quality of his herd for better acceptance at the market.

In spite of both flood and drought during the 1860s, the settlers of Kern Island held on and prospered. The slow but certain progress of the Kern Island agricultural settlement already offered better prospects for growth than did the county seat at Havilah, which relied heavily upon the mining industry. By 1869, the editor of the Havilah *Courier* had taken a trip to the “Island:”

We went no farther than Bakersfield, in the upper portion of the Island. Here we found an exceedingly rich soil, capable of producing in the greatest all the products of the temperate zone . . . climate is delightful . . . The settlers on the Island indulge (and justly too) high hopes of the future of their settlement. The Southern Pacific Railroad is certain to run near what is now known as Bakersfield.<sup>19</sup>

Within one month, the editor was again extolling the virtues of Bakersfield, remarking on the large number of persons daily visiting the Island “in pursuit of farms.” He pointed out to his readers that “thousands of acres of superior land near the River are still open to pre-emption at the railroad price of

\$2.50 per acre.”<sup>20</sup> By the end of that same year, the editor was so convinced of the superiority of “the Island’s” prospects that he moved the *Courier* to Bakersfield. A newspaper that had focused on mining news now shifted its attention to agriculture and became a major spokesman for the interests of the farmer.

As if to mark the correctness of the editor’s decision to move to Bakersfield, the very next year the farmers of the Island joined in forming the Kern County Agricultural Society, the constitution stating in part:

Its objects shall be to promote agriculture, horticulture, and stock raising, and to aid in the early settlement and development of this portion of the valley.<sup>21</sup>

The motivation behind the formation of the Society came from a combination of several factors. The large land owners, such as Baker, were eager to attract land purchasers and intended to employ the Society as a vehicle to trumpet the virtues of Kern Island; the local businessmen were naturally interested in community growth which would increase their market; and the small as well as the large farmers were anxious to unite their strength in their struggle over the Trespass Act of 1850.

By the early 1870s, the *Courier* noted on several occasions the steady increase of the local settler population. Moreover, the editor was pleased with the quality of the immigrants: “. . . we may expect the speedy occupation of all our vacant lands by a superior and well-to-do class of people.”<sup>22</sup> In the fall of 1873, encampments of prospective settlers could be seen dotting the outskirts of Bakersfield, each party looking for the best land to settle upon. One farmer reported six eastern families camped on his land with that object in mind.<sup>23</sup> Many of these immigrants came from such near-by locations as Tulare County and the mountain valleys generally east of Bakersfield. The local editor no doubt reflected the

feelings of the local farmers in asserting the superior nature of the farmer over the cattleman:

It has been found that our vast plains and fertile valleys can be put to a much better use than to merely afford pasturage for droves of wild horses and cattle. Experience has shown that these lands are well adapted to the production of grain, and instead of being the homes of nomadic vaqueros with his band of mustangs, they are fitted for the homes of intelligent and prosperous farmers. Let the neat farm house take the place of the thong-bound corral and thatched-roof cabin; let the plains wave with grain instead of their natural crops of weeds; let the worthless mustang be replaced by Morgans, Blackhawks and Hambletonians; let the slab-sided, long-horned wild cattle be replaced with Devons, Durhams, and Ayrshires.<sup>24</sup>

**T**he emerging dominance of the farmer over the cattleman on Kern Island was but a microcosm of an economic shift that took place throughout the state and, indeed, the nation. Typically the cattleman made first use of grass lands on the advancing frontier, running his cattle on the open range and thus feeding and watering his stock on public land. As the frontier gave way to the permanent settler, the cattleman found himself in conflict over land and water rights, as well as over his marauding cattle. This tale, with few alterations, took place on a grand scale on the Great Plains west of the Mississippi River at roughly the same time in American history. In California, the cattleman had been free to graze his stock in the Central Valley, ranging from Redding in the north to Kern Island in the south. Now, in the 1860s and 1870s, he was forced to give way to the farmer, both in fact and in law. The cattleman was overwhelmed not only by the larger numbers of the farm population, but, equally important, by his lack of a legal right to the land he had used. In arguing his cause, he was wont to fall back on the reason-

*This 1890 scene of downtown Bakersfield's main street (Chester Avenue and 19th Street) shows the office of the Bakersfield Californian as well as an enticing Land Office. A contemporary describes Bakersfield as "being laid out on a liberal scale with large lots and very wide streets" with a population of 1600.*



ing that the land was good for nothing better than grazing. When the farmer came along, settled, raised crops, and proved that assertion false, the cattleman was left with little practical and no legal ground to stand upon. His largest hope was to maintain the status quo by preventing the legislature from passing any law detrimental to his interests.

That hope began to flicker in the early 1870s as the farmer became increasingly exercised on the fence question:

The fence and no-fence question is considerably talked about. The farmers of Kern County, like elsewhere, are becoming very tired of herding stock for a class of people, who have no further interest in the county save to drive

their cattle to eat the grass which they, the actual settlers, need for what little stock they have for themselves.<sup>25</sup>

A particular problem on Kern Island was the large number of so-called "nomads" or cattle driven into the area from distant locations. The settlers were, as a result, bothered not only by the wild cattle but by the fact that the owners did not even pay local taxes. The president of the Agricultural Society, Andrew R. Jackson, expressed the problem well:

The reputation of the great valley of Tulare, as a grazing region, is almost world wide, and herds of cattle are constantly driven into it from every quarter of the state, and even from foreign states; last fall a herd of five thousand head, from Sonora, being driven through Tejon Canyon,

*Essential to any large farming operation was the ditching machine, here drawn by 12 horses and pushed by 4 more, forming a V-shaped irrigation ditch.*



and allowed to scatter over Kern Island to drive out and ruin settlers, and retard and destroy the prosperity of the country, equal to a warlike invasion. Common fences are no defense against wild and starving cattle. As the time of harvest approaches, fields require guarding night and day.<sup>26</sup>

Because the farm population was concentrated on Kern Island proper, the Agricultural Society in 1871-1872 asked for a “no-fence” law that would apply to the island only. But as the logic of the “no-fence” law became apparent, supporters of the law realized that local application would only cause severe hardship on any area not covered by a “no-fence” law. That is, if a “no-fence” law in effect drove cattlemen out of one county, the men would, if permitted, simply drive their herds to an area where unlimited grazing was still permitted. The *Courier* quotes “a gentleman of high social standing” and obviously a prominent cattleman as one who had changed his mind on the fence question:

“. . . it will be found better by cattle owners in the condition to pay rent for their grazing grounds, and be assured of its entire use, than to be subjected to the present unlimited and grasping competition.<sup>27</sup>

A meeting of the Agricultural Society was held in April, 1872 at the Bakersfield town hall in which both farmers and local stockmen agreed that a “no-fence” law was needed:

Our cattle owners have been very generally in favor of a (no-fence) law. Their range is ample, without encroaching upon the tracts held for cultivation, and they manifest a disposition to restrain their stock within those limits where they can do no damage to the farmers.<sup>28</sup>

Farmers and local stockmen alike were determined to no longer permit stock “from abroad” to enter the county. In a series of resolutions, they agreed to form a “Settlers’ Protective Association,” for the purpose of lobbying their cause effectively throughout the state. Further evidence that cattle “from abroad” dominated the valley is to be found in the statement by Jesse O. Cole in 1871:

There are over 60,000 head of cattle in this valley, below the foothills, from the lower edge of the county up to Kern Lake, that have been driven here by men living in other counties. If other counties do not own this valley for pasture, they come so d—d near it, it’s not worth quarreling about.<sup>29</sup>

Because the country was wide open, traveling

about on other than horseback could be unsafe as a person on foot exposed himself to the “vicious cattle” to be encountered anywhere. Parents complained that “these vicious beasts make the attendance of the children at school risky and often dangerous.”<sup>30</sup>

**A** major obstacle to the passage of a “no-fence” law was the local state Senator, Thomas Fowler, who was also a prominent cattleman and vigorous opponent of any “no-fence” law. He owned a third interest in some 15,000 or 20,000 cattle and was known to be a violent opponent of settlement, railroads, and cultivation.<sup>31</sup> As the Joint Senator from Tulare and Kern Counties, he openly boasted that he had killed “no-fence” legislation in the past and would do it again at the next legislative session. Fowler paid a private visit to Bakersfield in 1873, just prior to the election, and was accompanied by Henry Miller of the Miller and Lux cattle company. When asked at the local saloon if he would express himself on the fence question, he gracefully waived the subject, protesting that his was a non-political visit, offered the questioner a drink, and thus avoided the topic.<sup>32</sup>

While the farmers were struggling over the fence question, the Southern Pacific Railroad was building a line from Oakland down the San Joaquin Valley to Bakersfield and through the Tehachapi Pass to Mojave and Los Angeles. It was commonly believed that once the railroad reached Bakersfield (and it did in 1874) the “no-fence” law would be inevitable. This conviction was based on the assumption that railroad access would stimulate commerce in Bakersfield and encourage settlement by providing a ready and inexpensive means of transporting farm products to San Francisco. No doubt the railroad did play a major role in the shift from a pastoral to an agricultural

economy in the San Joaquin Valley.

The major reason why the Kern Island farmer did not want to enclose his 160 acre farm was the high cost of fence materials. Protesting that light fences are worse than none at all, a Kern Island farmer posed the problem he and others faced:

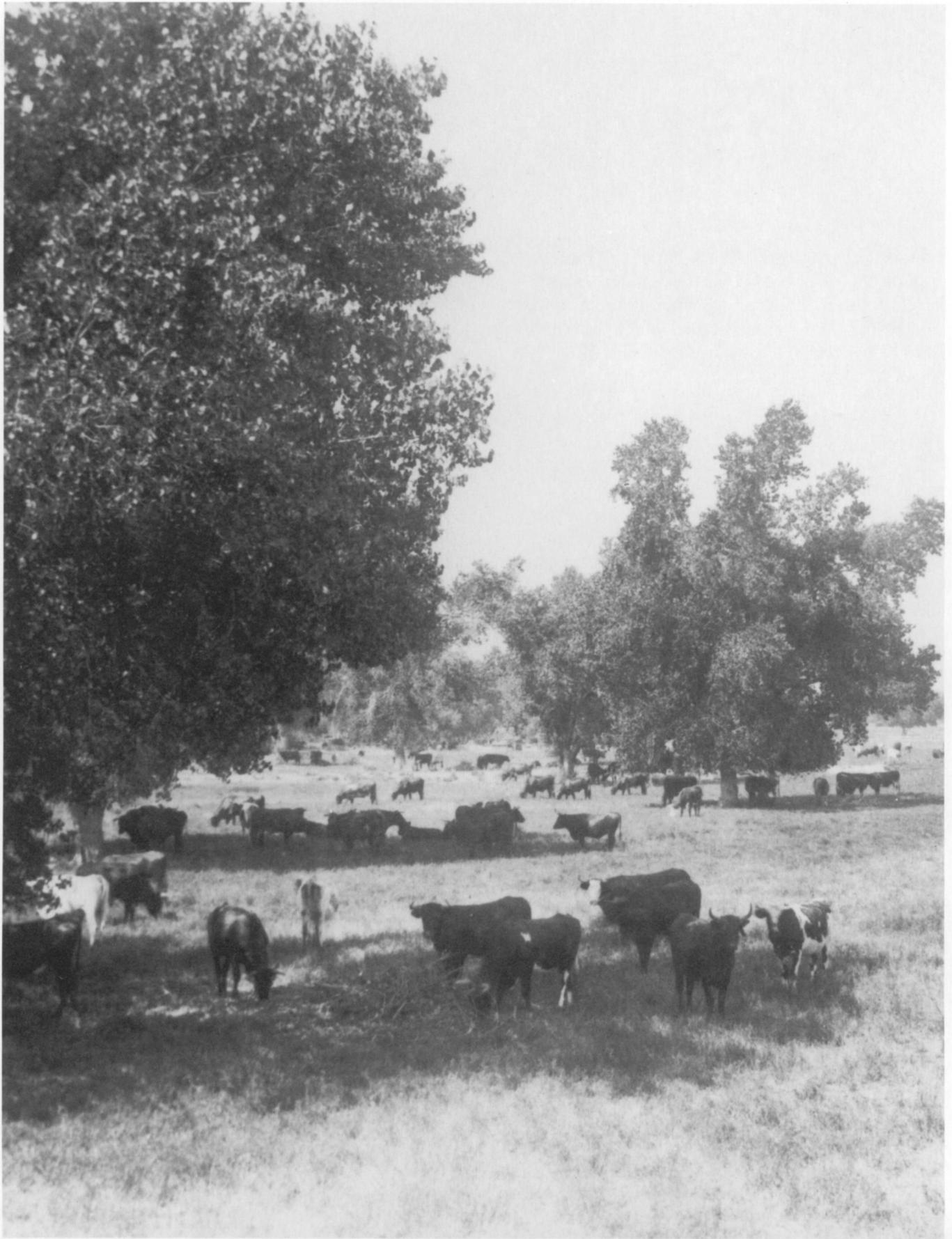
Substantial fences are entirely beyond our means. Just look at the cost and see how hopeless such an undertaking becomes. To fence in this island, in fences of 160 acres each, with the necessary roads and lanes — to say nothing of sub-dividing these farms into fields — will require at least five hundred miles, or 160 rods of fencing. At four posts and five boards to the rod this will require 640,000 posts and twelve million eight hundred thousand feet of boards. Now suppose we could get the posts at five cents a piece, and the boards at but little over half their present cost, say \$30 a thousand, and we have the neat little sum of four hundred and sixteen thousand dollars before we begin to count the nails and labor of construction.<sup>33</sup>

According to one estimate, using the methods available in 1870, it would cost \$2,240 to fence 160 acres. That was an amount of money simply not available to the average farmer. Even had it been economically possible to fence in the farms of Kern Island, the farmer still would have objected to stray cattle:

“Fence” means the old order of things . . . while “no-fence” means that the stock raiser must fence in his cattle and confine them to a stated and, of course, comparatively narrow domain.<sup>34</sup>

So the farmer’s “no-fence” position was formed by a combination of factors: the high cost of fencing, his conviction that Kern Island was best suited for agriculture, a demand that his property (crops) be protected by law, and the special bitterness reserved for “interlopers” or cattle from outside the county.

Even before the actual “no-fence” law was passed in 1874, several prominent cattlemen anticipated its passage and began enclosing their herds. Their will-



## No Fence Law

ingness to do so was undoubtedly helped along by the invention of barbed wire in the early 1870s. This technological advance sharply reduced the cost of fencing and made it possible for the stockman to fence in large areas of land at comparatively low cost. The combined technology of the railroad and barbed wire made it possible for Miller and Lux, owners of an immense tract of land lying between Goose and Tulare Lakes to fence in their agricultural holdings.<sup>35</sup> In a quite literal sense, the incoming railroad brought both the farmer and barbed wire, and the cattleman was obliged to use one to contend with the other.

It should not be supposed that the state legislature that finally enacted the “no-fence” law on February 4, 1874 was a model of decorum and propriety. Historian Robert Glass Cleland has characterized that political body of the 1870s as “dishonest, mediocre, and confused.”<sup>36</sup> The enactment of the no-fence law was in no sense an instance of a legislature seeking reform or consciously pursuing justice. Instead, this body, which was frequently described by newspapers of the day as “extravagant, useless, and corrupt” was reacting largely to political pressure and to what the increasingly numerous farmers called “progress.”

The Southern Pacific Railroad stood to gain greater profits from productive farms and prosperous towns than from any scanty business derived from the open range cattle business. Further, the railroad was anxious to sell to farmers land granted to it by the U.S. government. It follows that any railroad influence on the “fence” question would support the farmer. The 1873 defeat of Senator Thomas Fowler, representing Tulare, Fresno, and Kern Counties, in an election which focused on the “fence” question, certainly gave clear indication of the shifting sentiment in the San Joaquin Valley. The victor in the election was Tipton Lindsey, a Democrat and advocate of the “no-fence” law. The “No-Fence” law itself was introduced in the Senate by Lindsey, and in the Assembly by Fresno’s John W. Ferguson. These legis-

lators reflected well the wishes of the valley’s farmers to close off the open range, fence in destructive stock and thus protect the tiller of the soil.

Neither should one assume that this law captured the attention of the entire state at the time of its consideration and passage. While the “fence” question was of obvious and demonstrable importance to residents of the central valley, the peculiar conditions that gave it importance there simply did not exist in other places. Those necessary ingredients included large amounts of arable public land at first open to cattle and sheep grazing, but later “susceptible” to the homesteading farmer. Outside the central valley, California was largely either mountainous, desert, or, along the coast, privately owned. The central valley was the most likely place for an ordinary farmer, using irrigation, to settle on either public or railroad land and expect to prosper.

A contemporary Senator, William J. Shaw, in describing the session of 1874, barely mentions the No-Fence law in his summary of that year’s legislative accomplishments. Instead, he was irritated by a lengthy laundry list of trivial laws passed, rendering discussion of any serious matter impossible. He off-handedly refers to a law that “prohibited horned cattle from running about in some of the counties.”<sup>37</sup> But indifference and perhaps even corruption at the state level does not detract from the importance of the passage of the law to valley residents.

**T**he “No-Fence” Law of 1874 did not require anyone to either build or tear down his fences. However it strongly favored the farmer’s interests by providing that the “owner of land” may take up and safely keep any stray animal at the expense of the stockman. The law further provided that the farmer need notify the stockman of the possession of stray animals only if he could identify the owner and if he lived within six

*The passage of the No-Fence Law did not eliminate cattle from Kern County, but instead forced their owners to fence them in, as seen on the McClung Ranch around 1880.*

miles. For each head of horned cattle retained by the farmer, he was to be compensated twenty five cents per day by the eventual claimant. The farmer could recover damages done to his property by court suit, filing in the Justice Court if the damages asked were under \$300 and in the District Court if in excess of \$300. If the owners of the stray animals could not be located, the animals would be sold at auction, and any proceeds were used first to settle any damage claim. In the event of an "overplus," the proceeds were given to the proven owner if he could be located within six months and, if not, then to the local school fund. The law made it a felony offense for any person to attempt to "take advantage of this act" by moving stock from a farmer's field if that stock had been identified as trespassing on the farmer's property. The sole requirement placed upon the farmer was to mark his 160 acres "with visible and well defined monuments." The editor of the *Courier* suggested to his readers that they build strong corrals in which to enclose stray animals, as if to anticipate that the problem would continue in spite of the law.<sup>38</sup>

The passage of the law unquestionably stands as the symbol of change in Kern County from a pastoral to an agricultural economy. The year of its enactment also witnessed the arrival of the railroad, the formation of a brass band, and the dedication of the first church building in Bakersfield.<sup>39</sup> These seemingly unrelated events in fact represent the emergence of a permanent community from what had been a collection of farm settlements. The editor of the local paper sensed the importance of the law's impact upon the community:

The passage of this law, for which the friends of progress in this county have labored arduously, under every sort of rebuff and discouragement for years, marks a new era in our history — one from which will be dated our first real advance in population, improvement and wealth. Hitherto, the herds of wild cattle and the men who owned them, free from all restraints of law, as far as regarded the most

essential rights of property in others, have been too much for the ordinary pioneering forces of civilization.<sup>40</sup>

The passage of the "no-fence" law did not bring an abrupt end to the controversy surrounding stray animals and the respective rights of the farmer and cattleman. The farmer had gained a signal victory in the legislature, but it would be several years before a series of court decisions combined with practical experience would clarify precisely the rights of the farmer as well as those of the stockman. Stock continued to graze on the hills surrounding the southern San Joaquin Valley, and rodeos were held annually. The *Courier* reported in 1875 that the mountains south of Kern Island "are said to be full of cattle, and the grazing and water are unequalled in the country."<sup>41</sup> A year later a rodeo was held at San Emidio with 5000 head of cattle in sight.<sup>42</sup> With such a large number of cattle in the foothills, it was inevitable that some would meander into Kern Island and even Bakersfield:

There is a good deal of complaint about loose stock running in our streets. A few nights ago Mr. Lennox had three fine eucalyptus trees, that were growing in front of his residence, ruined by some vagrant stock. The gardens too, east of town, are frequently invaded; the most substantial fences being insufficient to keep them out. There is but one mode of redress that we are aware of, and that in the trespass law. Cattle have no right to run at large, and any one has a right to corral them and sell them according to law.<sup>43</sup>

While local stockmen in general agreed with the correctness of the "No-Fence" law in its application to Kern Island, they believed that areas chiefly desirable for grazing purposes should have been excluded from the effects of the law. In Kern County, the stockmen of the mountain valleys were particularly convinced that the law adversely affected their interests.

In 1877, the California Supreme Court, in *J. V. N. Young v. Wright* handed down a decision regarding

*By 1880 the larger cattle ranchers had fenced in their grazing animals, and were systematically supplying water from wells and ditches and feed from their own alfalfa and hay fields.*



the “no-fence” law which appeared to weaken the farmer’s position. John Wright, a resident of San Luis Obispo County, in 1876 took up one thousand and fifty sheep and, when the owner, J.V.N Young, refused to pay damages and feeding costs, the plaintiff filed a complaint with the nearest Justice. The Justice,

upon hearing the case, ordered Wright to pay \$25 damages and \$218.75 “cost of keeping.” On appeal, the Supreme Court reversed the decision, arguing that the action was in essence a proceeding in equity to enforce a lien. That is, the case involved a transfer of property (in this instance a fine imposed by the

*Cattle branding at Bellevue Ranch. When cattle were handled entirely in open country, the reata or lasso was the principal means of catching and holding them.*



court to pay damages and the cost of keeping) and could not be settled by a mere Justice Court. Lacking a jury, the defendant would be denied his constitutional right to a jury trial if he chose to contest the Justice's decision. The Supreme Court rendered a similar decision in *Sutherland v. Sweem* a year later by concluding that:

We hold that so much of the Act of February 4, 1874 ("no-fence" law), as attempted to confer upon Justice Courts jurisdiction in the class of cases provided for in the Act, is unconstitutional and void, and were not admissible in evidence for any purpose.

The total effect of these decisions was to make it more difficult, but not impossible, for the farmer to file a complaint in court under the "no-fence" law.

Now he must seek redress in the District Court, usually a more distant jurisdiction and likely to be more expensive. In an article entitled "The No-Fence Law Emasculated," the writer explained:

The evil effects of this decision will be that when the owners are unknown and the damages light, persons suffering from the depredations of roving stock will be debarred a remedy, as the cost and trouble will be too great to allow of prosecution.<sup>44</sup>

In 1878 the state legislature passed an act designed to meet the farmer's objections to the first "no-fence" law. Though it did not apply to either Tulare or Kern County, the law is noteworthy as a political effort to satisfy the farmer's demands state-wide that stock be enclosed by fencing. The 1878 law provided that

## No Fence Law

complaints raised by farmers be filed in District Courts only, thus avoiding the constitutional question raised in *Young v. Wright*. It further provided that the District Court "is always open for the purpose of entering judgment." In other words, the Clerk of the Court could receive any complaint in the resident Judge's absence. Thus, a farmer traveling a great distance could be assured that he could file a complaint during the business hours of the nearest District Court. The 1878 law, though limited in its application to certain counties, would nevertheless have the total effect statewide of the Supreme Court henceforth rendering judgments more favorable to the farmer's position.

The halcyon days of the open range in Kern County were brought to an end by 1878. The cattleman could clearly see that his future lay in enclosing and perhaps even diminishing his herds. The arrival of the railroad in 1874 insured ever greater numbers of settlers in the future. And in any legal contest over land and water rights, the farmer had the enormous advantage of owning the land he operated on. When the farm population had sufficiently grown by 1874 to pass the "no-fence" law, the cattleman had no choice but to make use of the newly-invented barbed wire to contain his stock. The cattleman was not defeated by the farmer in the 1870s; he was simply fenced in.

All of the photographs are by pioneer photographer Carleton E. Watkins and are reproduced here through the courtesy of the Kern County Public Library.

## Notes

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