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United States Vs. Teschmaker

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Decided On : 1859

Appeal No. : 63 U.S. 392

Appellant : United States

Respondent : Teschmaker

Judgement :

United States v. Teschmaker - 63 U.S. 392 (1859)
U.S. Supreme Court United States v. Teschmaker, 63 U.S. 22 How. 392 392 (1859)

United States v. Teschmaker

63 U.S. (22 How.) 392

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

Where none of the preliminary steps required by the act of 1824 and regulations of 1828 have been observed or shown, as there required, previous to the grant, and

no record of the title, as also there required, and but slight evidence of possession, either as to value or permanency, the proof of the genuineness of the official signatures to the grant is not sufficient. Evidence under the circumstances of grants in California should be given so as to make the antedating of the grant irreconcilable with the weight of the proof; otherwise there can be no protection against imposition and fraud.

The record of the title must be shown, or its absence accounted for to the satisfaction of the court.

The state of the title and a brief summary of the evidence are given in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The case involved a claim to sixteen square leagues of land known by the name of "La Laguna de Lup-Yomi," situate north of Sonoma, in the County of Napa, California. It was presented to the board of land commissioners on behalf of the appellees, who derived their title from the two brothers, Salvador and Juan Antonio Vallejo, claiming to be the original grantees of the Mexican government. The board rejected the claim, but, on appeal to the district court and the production of further evidence, that court affirmed it.

The first document produced is a petition of the two brothers, S. & R. J. A. Vallejo, to the senior commandant general and director of the colonization of the frontiers, for a grant of eight leagues of land each, reciting that they were desirous of establishing a ranch in the Laguna de Lup-Yomi, situate twenty leagues north of this place, Sonoma, which tract is uncultivated and in the power of a multitude of savage Indians who have committed and are daily committing many depredations, and being satisfied that the tract does not belong to any corporation or individuals, they earnestly ask the grant, offering to domesticate the Indians and convert them by gentle means, if possible, to a better system of life. Salvador Vallejo adds that

being in actual service in quality of captain of cavalry, and not having received his pay, he proposes to apply $2,500 out of his pay for his portion of the

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land. This petition was dated at Sonoma, October 11, 1838.

Under date of March 15, 1839, the senior commandant general, M. G. Vallejo, a brother of the petitioners, accedes to their petition so far as to permit them to occupy the tract, but, for the accomplishment of the object they must hasten to ask a confirmation from the departmental government, which will issue the customary titles, and at the same time they must endeavor to reduce the wild nature of the Indians, assuring them that the government wishes a treaty and friendship with them.

The next document is a title, in form, granted by the governor, Micheltorena, dated Monterey, 5 September, 1844. At the foot of the grant is a memorandum as follows:

"Note has been made of this decree in the proper book, on folio 4."

"In the absence of the commandante,"

"FRANCIS. C. ARCE"

The signatures of M. G. Vallejo to the permit of occupation, and of Micheltorena and F. C. Arce, the governor and acting secretary, are genuine, if three witnesses are to be believed -- Castenada, W. D. M. Howard, and Salvador Vallejo, one of the original grantees. The proof of possession and occupation is slight and not entitled to much consideration in passing upon the equity or justice of the title or even upon its *bona fides.*

This proof rests mainly upon the testimony of S. Vallejo. He was examined twice on the subject -- once when the case was before the board of commissioners and again when on appeal before the district judge. In his first examination, he states that immediately after permission was given to occupy the ranch (March, 1839), he

placed on the land about one thousand head of cattle, between three and four hundred head of horses, and from eight hundred to one thousand head of hogs; that he built a house on the land the same year, and also corrals, and left an overseer and servants in charge of the place.

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In his second examination, he states that in the year 1842 or 1843 he placed cattle on the ranch, built a house and corrals, and in the year 1843 or 1844 received a title for the land; that he then lived on it, but was frequently absent visiting his house and lot in Sonoma, and his other farms, but always left a mayor domo on the ranch, and during this time he cultivated beans, corn, pumpkins, watermelons &c.; The last house he built on the place was about the time the country was invaded by the Americans. That during the time mentioned, he had on the place from 1,500 to 2,000 head of cattle, 500 to 600 head of horses, and from 1,500 to 2,000 head of hogs. He further states that most of his stock was subsequently stolen and driven off by the Indians and emigrants. This evidence is slightly corroborated by the testimony of Castenada and Carillo.

From the numerous cases that have already been before us, as well as from our own inquiries into the customs and usages of the inhabitants of California, especially those engaged in the business of raising cattle and other stock, this mode of occupation furnishes very unsatisfactory evidence of possession and cultivation of the land in the sense of the colonization laws of Mexico. Any unappropriated portion of the public lands was open to similar possession and occupation without objection from the public authorities. Indeed, according to the laws of the Indies, the pastures, mountains, and waters in the provinces were made common to all the inhabitants, with liberty to establish their corrals and herdsmen's huts thereon and freely to enjoy the use thereof, and a penalty of five thousand ounces of gold was imposed on every person who should interrupt this common right. 2 White's Recop. 56

There is also a fact stated by the witness Vallejo himself, that is calculated to excite distrust as to the extent of the possession and occupation, and for the purpose stated. He says that there were constant revolutions among the Indians at the time; that it was unsafe for families to live there, and that the alcalde at Sonoma refused to deliver him judicial possession in 1845, on account of the danger.

It is quite apparent also from the testimony of this witness that the huts built for the herdsmen of the cattle were of a most unsubstantial and temporary character. No possession of any kind is shown since the cattle and other stock were carried off by the Indians and emigrants. When that took place does not appear, but doubtless as early as the first disturbances in the country in the fore part of the year 1846.

The possession and occupation, therefore, even in the loose and general way stated, was only for a comparatively short time.

We have said that the signatures of the officers to the documentary evidence of the title are genuine if we can believe the witnesses -- Castenada, How. and Vallejo, but as all of these officials were living after the United States had taken possession of the country during the war and even after the cession by Mexico, and, with the exception of the governor, resided in California, these signatures may be genuine and still the title invalid. It was practicable to have made the grant in form genuine, but antedated.

The permit to take possession of the tract, in connection with the short and unsubstantial character of the possession, is not of much importance in making out the claim. Vallejo had no power to dispose of the public lands. We do not understand that his permission to occupy, as director of colonization on the frontiers, laid the governor or Mexican government under any obligations to grant the title. If followed by valuable and permanent improvements, considerations might arise in favor of a claimant that should influence a government when called

upon to grant the property to another. We think, therefore, that the claim rests chiefly, if not entirely, upon the grant of the title by the governor of the 4th September, 1844.

This grant stands alone. None of the usual preliminary steps prescribed by the regulations of 1828, such as the petition, marginal reference for a report as to the situation and condition of the land, report of the proper officers and minute of concession, was observed. These, with satisfactory proof of the signatures to the papers, give some character to the grant and

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tend to the establishment of its genuineness. Even the permit of Vallejo is not noticed by the governor, nor any present occupation of the premises by the grantees.

So far, therefore, as respects the title or even any rightful claim to the tract, it depends mainly upon proof of the signatures of Micheltorena and of F. C. Arce, the acting secretary. There is no record of the title in the proper book shown in the case nor exists in fact, as it is understood this book of records exists for the years 1844, 1845, and no record is there found. The memorandum, therefore, at the foot of the grant, by Arce, the secretary, "Note has been made of this decree in the proper book, on folio 4," is untrue. Nor has there been found any approval of the grant by the departmental assembly, for those records are extant, as found in the Mexican archives. These archives are public documents which the court has a right to consult, even if no made formal proof in the case. The absence of any record evidence is remarkable, if the title is genuine, as one of the grantees, Juan Antonio Vallejo, resided at the time in Monterey, where these records were kept and where all the formalities of a regular Mexican grant might readily have been complied with. The parties also were men of more than ordinary intelligence, and belong to one of the most influential Mexican families of the territory, and doubtless well understood the regulations concerning grants of the public domain.

The nonproduction of this record evidence of the title, under the circumstances, is calculated to excite well grounded suspicions as to its validity, and throws upon the claimant the burden of producing the fullest proof of which the party is capable of the genuineness of the grant. We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title, but it should be produced or its absence accounted for to the satisfaction of the court.

We have already said that the genuineness of the official signatures to the paper title might be established and yet the title forged, and stated our reasons. Proof of the genuineness of these alone can never be regarded as satisfactory. It must be carried farther by the claimant. The record proof is, generally

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speaking, the highest. Possession and occupation of some duration, permanency, and value are next entitled to weight.

At least satisfactory evidence should be required, under the circumstances in which most of these Mexican grants were made, as to make the antedating of any given grant irreconcilable with the proof; otherwise there can be no protection against imposition and fraud in these cases.

The decree of the court below reversed and the case remanded for further evidence and examination.

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