

United States Vs. Gomez

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Court : US Supreme Court

Decided On : 1863

Appeal No. : 68 U.S. 690

Appellant : United States

Respondent : Gomez

Judgement :

United States v. Gomez - 68 U.S. 690 (1863)

U.S. Supreme Court United States v. Gomez, 68 U.S. 1 Wall. 690 690 (1863)

United States v. Gomez

68 U.S. (1 Wall.) 690

APPEAL FROM THE DISTRICT COURT FOR

THE SOUTHERN DISTRICT OF CALIFORNIA

SYLLABUS

1. Where the question was whether a party should be heard on appeal, and the effect of refusal to hear him would have left in full force a decree that the court was "not prepared to sanction," it was *held*:

That an order to enter up a decree was not to be taken as the date of a decree entered subsequently "*now for then*," but that the date was the day of the actual and formal entry.

That the object of a citation on appeal being notice, no citation was necessary in a case where in point of fact, by agreement of parties, actual and full knowledge by the party appellee of the other side's intention to appeal appeared on the record, and where, moreover, by such a construction as the court was inclined to put on part of the case, the appeal was taken in the same term when the decree was made.

2. That a certificate that a transcript of a record was a

"full, true, and correct copy of *all* the proceedings, entries, and files in the District Court

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for the Southern District of California, except the transcript sent up from the Board of Land Commissioners in the case"

was so far good that the party alleging it to be bad was referred, if dissatisfied with the transcript, to his remedy of a suggestion of diminution and motion for certiorari.

Motion to dismiss an appeal from the decision of the District Court for the Southern District of California as not having been taken in time -- that is to say, within five years -- as having been made without citation and as not founded on a properly certified transcript. The case was thus:

Gomez had presented a petition to the board appointed by the Act of Congress of March 3, 1851, to settle private land claims in California, praying for confirmation of a tract called the *Panoche Grande*, and which, he alleged, had been granted to him in 1844 by Governor Micheltorena. The board rejected his claim, and he appealed to the district court accordingly. The case came on to be heard in that court *June 5, 1857*, and the record proceeds:

"Whereupon the court, being fully advised in the premises, delivered its *opinion*, confirming the claim to the extent called for in the transcript and papers, three leagues, and a *decree was ordered to be entered up in conformity to said opinion*. "

This entry is dated *June 5, 1857*, the same day the cause was heard. On the *7th of January, 1858*, a decree *in extenso* was filed, making the usual recitals of form, describing the land "confirmed" as

" *three* leagues, more or less, situate in the County of Monterey, state of California; bounded on the north by lands of Julian Usura, on the south by the hills, on the east by the Valley of the Julares, and on the west by lands of Francisco Arias."

The decree ended thus:

"And it appearing to the court that on the 5th June, A.D. 1857, the lands in this case had been confirmed by the court to the said claimant and appellant, and it having been *omitted to sign and enter a decree therefor at the date last aforesaid*, *it is ordered that the same be done now for then*. "

On the *4th of February* of this same year, the court "ordered

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that the appellant have leave to *amend the decree filed in the case, by substituting another in its stead*. " Gomez did accordingly, on the day following, to-wit, the 5th of February, 1858, procure another decree to be entered in form and *in extenso*. It was much like the former decree, except that it described the tract by name, "*Panoche Grande*," giving the boundaries as before, describing it as containing *four leagues*. This decree ended thus:

"It appearing to this court that heretofore, to-wit, on the 5th day of June, 1857, at a regular term of this court, the claim of the appellant in this case had been confirmed by this court, but that it had been omitted by this court to sign the decree of confirmation at the time the same was made; it is therefore further

ordered by this court that the same be signed *now as far then.* "

Subsequently to this entry the United States obtained a rule to open the decree and reinstate the case, with leave to take testimony, assigning, as reason, that the decree had been improvidently entered; that new evidence, now discovered, would show the claim to be fraudulent, and that the decree itself had been fraudulently procured. Evidence was accordingly taken tending to show that the District Attorney of the United States himself -- one P. Ord -- had been a party interested in the claim. The court (Ogier, J) thereupon, on the 21st March, 1861, made this order:

"Whereas it has come to the knowledge of this Court that a decree heretofore rendered by this court in this case, was *fraudulently obtained* by misrepresentations of the then district attorney, P. Ord, and other counsel in the case, and it appearing to the satisfaction of the court, from testimony on record in the case, that the then district attorney, counsel for the United States was, at the time of making said decree, interested in the land claimed in said cause, adversely to the United States, and representing to the court that there was no objection to the confirmation of the claim aforesaid on the part of the United States, a decree was entered without an examination by the court into the merits of said claim, thus deceiving the court and obtaining a decree in his own favor under the false pretense of representing

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the interest of United States. It is therefore *ordered that all proceedings heretofore had in said cause be set aside, and the cause be put on the calendar and set for trial de novo according to law.* "

Another judge having afterwards been appointed to the bench of the district court, a motion was now made to vacate this order of March 21, just before recited, and on the 4th of August, 1862 -- June Term of that year -- the new judge remarking that he was not surprised that his predecessor, on learning the facts, "should have been indignant and set the whole aside," yet conceiving that after the lapse of a

term the court could not alter, change or modify a decree unless to correct some clerical error, "with great reluctance" *vacated* the last order which that said former judge had made, and by which the proceedings had been set aside and the case placed on the calendar for trial *de novo*.

At this same term, on the 25th August, 1862, on motion in open court -- no citation, however, having been issued -- an appeal was allowed the United States to the Supreme Court of the United States "from the decision and decree of this Court confirming the claim of the claimant herein, " and on the 6th October following, the district attorney, by writing filed, reciting that the claimant was "desirous of moving the court to set aside" the order for an appeal, agreed that all proceedings should be stayed till the next term, "so as to give the claimant an opportunity to make such motion." The counsel of the claimant, on the 24th of November following, gave notice that on the opening of the court, on the 1st December, 1862, he would make a motion to vacate the order granting the appeal, and the motion was accordingly heard, and the order for appeal subsequently vacated.

The transcript of the record in the case was certified (under the Act of Congress of 6 August, 1861, 2), by Mr. B. C. Whiting, "United States District Attorney for the Southern District of California," and certified

"that the foregoing one hundred and seven pages are a full, true, and correct copy of *all* the proceedings, entries, and files in the District Court of the United States for the Southern District of California

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except the transcript sent up from the late Board of Land Commissioners in the case of *United States v. Vincente Gomez*, No. 393, on the docket of the said court, for the claim called '*Panoche Grande*.' "

The motion to dismiss the appeal as already indicated was on three grounds:

1. Because no appeal had been taken until more than five years after the decree had been entered in the case, and not taken within the time therefor, which this Court had decided to be the limit.

2. Because there had been no citation to the opposite party.

3. Because what purported to be the transcript was not made and certified according to law, and was defective both for omissions and additions, and contained matters forming no portion of the record.

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MR. JUSTICE CLIFFORD, reciting the facts, delivered the opinion of the Court to the following effect.

Claimant assumes that the entry made in the minutes on that day is the final decree, and consequently that the appeal was too late. But the proposition cannot be sustained, as is evident from a moment's inspection of the record. Entry is that a decree was ordered to be entered up in conformity to such opinion. No decree of any kind, however, was drawn up, entered, or filed on that day. On the contrary, the record shows that on the seventh day of January, 1858, a

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decree was filed in the case, and the decree itself, after referring to the fact that the claim had been confirmed on the fifth day of June, 1857, states that "having been omitted to sign and enter a decree therefor at the date last aforesaid, it is ordered that the same be done now for then." Decree, as thus filed, was for three square leagues of land, more or less, situated in the County of Monterey, State of California, and bounded on the north by lands of Julian Ursura, on the south by the hills, on the east by the valley of Tulares, and on the west by lands of Francisco Arias. Donee was not satisfied with the decree, and on the fourth day of February, 1858, obtained leave to amend the same by substituting another in its stead. Pursuant to that leave, on the following day he filed a new decree, enlarging the description of the tract to four square leagues, and the same was entered and

signed by the district judge. Argument can add nothing to the force of this statement, as drawn from the record. Plainly there was no decree of any kind in the case until the seventh of January, 1858, and as that was ordered to be amended by substituting another in its stead, the final decree in the case was that of the fifth of February following. Five years, therefore, had not elapsed after the decree was entered before the appeal was taken, and consequently the first ground assumed in the motion cannot be sustained.

II. Want of citation is the second ground of the motion, and on this point also it becomes necessary to examine the record. Final decree was rendered on the fifth day of February, 1858, but on the twenty-first day of March, 1861, the court entered a decree in the cause that all the proceedings heretofore had in said cause be set aside, and that the cause be put on the calendar and set for trial, *de novo*, according to law. Transcript shows that the order vacating the decree was passed upon the ground that the decree had been fraudulently obtained. [His honor here referred to the particulars as set forth in the order of Ogier, J., *ante*, p. 68 U.S. 692] 692, and to the proceedings in [*United States v. Gomez*](#), 23 How. 326.] Delay ensued, and in the meantime a new appointment of district judge was made. Application was then made by the claimant to set aside the order vacating the original decree, and at the June Term, 1862, held on the fourth of August of the same year, the court ordered that the previous order, made and entered on the twenty-first day of March, 1861, setting aside all proceedings had in the cause and placing the same on the calendar for trial, *de novo*, be and the same is hereby vacated and set aside. United States,

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on the twenty-fifth day of August, in the same year, took the appeal which is under consideration. Appeal was taken in open court, and at the same term in which the order was passed restoring the original decree, or rather vacating the order of the twenty-first of March, 1861, setting it aside and placing the cause on the calendar for trial. Appeal, it is true, purports to be from the decision and decree of the court confirming the claim, but it was taken from that decree not only after it had been vacated, but after the decree directing it to be vacated had itself been stricken out,

and the original decree had been restored. Admitting that the order restoring the original decree was one of any validity, then indeed no citation was necessary, because the appeal was taken in open court, and might well be regarded as taken at the same term in which the decree was entered. But it is unnecessary to place the decision entirely upon that ground. Granting that the appeal is from the original decree, and that the question is wholly unaffected by the subsequent orders, still it is quite clear that no citation was necessary in this case. Claimant at once signified his intention to move the court to set aside the order granting the appeal, and thereupon it was stipulated and agreed between the parties that all further proceedings should be stayed until the next term of the court. Notice in writing was accordingly given by the claimant that he would submit such a motion at the next term at the opening of the court. He did submit it, and the parties were heard, and the court gave an opinion sustaining the motion. Petition for an injunction was afterwards filed to prevent the appeal, and the parties were heard upon that subject, but the injunction was denied. Object of the citation is notice, and under the circumstances of this case that purpose seems to have been fully answered, and the objection is accordingly overruled.

III. Third ground of the motion is that the transcript is incomplete, and that the same is not duly certified. The certificate in this case is certainly made by an officer authorized by law to make it, and we are not able to perceive that it is defective. Remedy of appellee, if the transcript is

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incomplete, is a plain one and one of daily use. He should suggest diminution, and ask for a certiorari, which is readily granted when applied for in season.

In view of the whole case, our conclusion is that the motion to dismiss the appeal must be overruled. Effect of the motion, if granted, would be to leave the decree below in full force and unreversed, which is a result that at present we are not prepared to sanction. When the cause comes up upon the merits, we shall desire to hear the counsel upon the question whether there is any valid decree in the case, and if not, as to what will be the proper directions to be given in the cause.

Those questions are not involved in the motion to dismiss, but they will arise when the merits of the case are examined, and will deserve very careful consideration.

Motion refused.

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