United States Vs. Billing

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 444

Appellant : United States

Respondent : Billing

Judgement :

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SYLLABUS

1. The doctrine of *United States v. Halleck,* 1 Wall. 439, that the decrees of the district court on California land surveys under the acts of Congress are final not only as to the questions of title, but as to the boundaries which it specifies, redeclared, and the remedy, if erroneous, stated to be by appeal.

2. Appeals on frivolous grounds from decrees in cases of California surveys, in the name of the United States, acting for intervenors, under the Act of June 14, 1860,

discouraged as being liable to abuse, since, on the one hand, the party wronged by the appeal gets no costs from the government, while on the other the government is made to pay the expenses of a suit promoted under its name by persons who may be litigious intervenors merely.

The Board of Land Commissioners, established by Act of Congress of March 3, 1851, to settle private land claims in California, confirmed, in 1851, to Billing and others, a tract of land granted in 1839 by the Mexican government to one Felis.

The decree set forth the boundaries of the land essentially as follows:

"Commencing at the mouth of the creek Avichi, emptying into the Petaluma marsh, and running up said creek ten thousand varas to a point called Palos Colorados; thence in a northerly direction five thousand varas, to a place marked by a pile of stones; thence in an easterly direction to a place called Olympali, five thousand varas; *from thence with the estuary, around the Punta del Potrero, on the estuary, to the place of beginning, containing two square leagues, a little more or less.* "

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The diagram below will illustrate the general position of things enough to give an idea.

image:a

It was admitted that no difficulty existed in ascertaining the boundaries described in this decree.

A survey was made according to these boundaries, but, thus surveyed, the tract included nearly *three* leagues, and the United States excepted to the survey on that ground.

While the case was pending in the district court on that exception, one of the deputies of the Surveyor General of the United States -- not acting under immediate direction of his superior -- acting, indeed, without his knowledge at the time, though the principal afterwards issued instructions in execution of what his

deputy had done -- made a survey which excluded one league on the western side of the Novato tract, including it within another called Nicasio, now patented by the United States, the patent of the government, however, by its terms, being declared not to "affect the interests of third persons." The district court confirmed the survey for the tract as it stood, including the Potrero, and excluding the league on the west. This made a tract of about *two* leagues. From this decree the claimants made no appeal.

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[The part of the land confirmed which was thus excluded from the Novato tract and included in the Nicasio lies in shade in the left of the diagram.] In both the Nicasio and the Novato tract, the names of the same persons, either as owners or as attorneys or as agents or assignees, appeared to have been in some way connected.

In accordance with the Mexican custom, what is called juridical possession -- a species of livery of seizin [Footnote 1] -- was delivered to Felis in 1842 by the Mexican alcalde, of the tract in question, either with the Potrero included or without the Potrero, but whether it was *with* or whether it was *without* was not clear. The alcalde in this record declares:

"Being in the fields, in the creek of Avichi, a boundary of Novato, November 13, 1842, I, the magistrate, with two assisting witnesses, coterminous resident neighbors, proceeded to see and reconnoiter the lands of said rancho, and for the better understanding, being on horseback, ['procedi a ver y reconoces las tierras de d'ho rancho, *y para mayor claridad puesto a caballo* '] in company with all the parties and witnesses before mentioned, I ordered the aforesaid witnesses to point out the places, limits, and boundaries of the land as they described them in their depositions. They did so, and I, the magistrate, and those of my assistance, saw and examined them and the documents presented, and in testimony I made official note of it &c.;"

This officer then goes on to give some account of the measurement, which, he says, was made with a rope of hemp with measures stamped on it; and he concludes that by this rope, well twisted and stretched, it resulted that the rancho has five thousand "varas" in length and ten thousand in breadth. After which conclusion the owner having

"been made to know the lands which belong to him, for a sign of true possession and customary form, pulled up grass and stones, and threw to the four winds of heaven in manifestation of the legal and legitimate possession which he for himself took. "

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This Mexican record, the judge below (Hoffman, J.), after careful examination, thought so inaccurate and incomplete that he considered himself free entirely to discard it as hopelessly confused and unintelligible, and his honor confirmed to Billing and the others the tract as marked out by the second survey -- that is to say, the tract with the western league excluded and the Potrero included. The correctness of his action was the point on appeal here.

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MR. JUSTICE GRIER delivered the opinion of the Court:

In the case of *United States v. Halleck,* [Footnote 2] it is said that "the decree is a finality, not only as to the question of title, but as to the boundaries which it specifies." If erroneous in either particular, the remedy was by appeal, but the appeal having been withdrawn by the government, the question of its correctness is forever closed. In *The Fossat Case,* [Footnote 3] the same doctrine was fully established.

The final decree in this case sets forth the specific boundaries of the land granted, and it is admitted that the surveyor found no difficulty in finding the monuments and boundaries described in this decree. But as these boundaries included about three leagues, the surveyor general, assuming that the grant was confined to two

leagues, excluded a league of land within these boundaries on the western side and included it in the survey of the Nicasio rancho, which adjoins.

As the owners of the Novato tract now in question did not appeal from that survey and are content to take this survey of two leagues, we are not bound now to decide whether, according to the decree, they were not entitled to have all the land included within the boundaries mentioned in the decree, and whether the words "containing two leagues, a little more or less," should be construed merely as a conjectural estimate of the quantity contained within the boundaries described. But one thing is certain -- that if the United States have taken a league on the western side of the Novato and given it to the Nicasio rancho, it is with an ill grace that they who use their name now seek to take another league on the east.

The Punto del Potrero, a peninsula almost entirely surrounded by a salt marsh, is as clearly within the decree as language can make it. The decree being itself clear and precise, does not refer to the rough daubs called disenos, or to the record of juridical possession for the purpose of rendering uncertain that which the decree made certain. The

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formula of this delivery of possession, or livery of seizin, did not require a survey of the estate. Perhaps the province of California at that time could not furnish a man capable of making an accurate survey. In the present case, the alcalde proceeded *"to see and reconnoiter"* the monuments claimed as corners in company of the witnesses, *"being himself on horseback for the better understanding;"* and after divers measurements made with a rope, he "concluded that it results that the rancho had five thousand varas in length and ten thousand in breadth." That would constitute a rectangular figure, whose contents would be easy of calculation, and avoid the difficulty of calculating the area of an irregular one made by lines running from one monument or corner to another. The court below were fully justified in "entirely discarding" this document from consideration, whether it was *"hopelessly confused and unintelligible"* or not. We need not, therefore, further examine the argument of the learned counsel of the appellants whether the opinion of that court

was correct or not on the construction of that document.

Another objection was made, though not much urged, that the survey in question was void because not made by the surveyor general in person, and because he had no *"lawful authority"* to approve a survey made by a deputy. This objection requires no further remark than merely to observe that the permission given by the act of 1860 to private intervenors to prosecute appeals to this Court, in the name of the United States, may be much abused in cases where the Mexican grantee is compelled to defend himself even a second time in this Court, and to answer frivolous objections to his title or his survey at the suggestion of any litigious intruder or secret intervenor. The party wronged by the appeal receives no costs from the government, while the government itself is made to pay the expenses of the oppressive and unjust litigation in which it has been made the actor by this class of persons.

Decree affirmed.

[Footnote 1]

See it described, *Malarin v. United States,* 1 Wall. 284.

[Footnote 2]

68 U. S. 1 Wall. 439.

[Footnote 3]

Infra, p. <69 U.S. 649|>649.