

The Sutter Case

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The Sutter Case - 69 U.S. 562 (1864)

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The Sutter Case

69 U.S. (2 Wall.) 562

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

1. On the 18th of June, 1841, Juan B. Alvarado, then Governor of California, issued to John A. Sutter, for himself and colonists, a grant of land designated as New Helvetia, of the extent of eleven square leagues, as exhibited on the map annexed to the petition for the grant, "*without including the lands overflown by the swellings and currents of the rivers,*" and bounded as follows: on the north, by

Los Tres Picos (The Three Summits), and 3941'45" north latitude; on the east, *by the borders [or margins]* of the *Rio de las Plumas* (Feather River); on the south by the parallel of 3849'31" of north latitude; and on the west by the river Sacramento. This grant was adjudged valid and confirmed, and a survey of the eleven leagues was made by a deputy surveyor under instructions of the Surveyor General of California, locating the land in *two parcels* -- one of two leagues and the other of nine leagues, separated from each other several miles, and the latter parcel embracing land situated *on each side* of the Feather River, the location, in both of these particulars, conforming to a survey made previously to the petition of Sutter for the grant. Each parcel was located in a compact form, and in conformity to the lines of the public survey. The district court, under the Act of June 14, 1860, set this survey aside, and by its direction a new survey was made locating the eleven - leagues in thirteen tracts of different dimensions and forms, some of which were separated from each other. In directing the location in this manner, the district court intended that the several selections, which the grantee himself was considered to have made by settlement, or by lease, or sale, or other acts of ownership, should be adopted, and in the order in which they were made, until the whole quantity of the eleven leagues was exhausted. On appeal, this Court "fully appreciating the difficulties and embarrassments that surrounded the case," set aside this latter survey and directed the district court to confirm the first survey as the more correct location of the grant.

2. By the terms in the grant, "lands overflown by the swelling and currents of the rivers" were meant *tule* or swamp lands.

3. *Seemle* that in locating land in California claimed under confirmed Mexican grants, compactness of form and conformity to the lines of the public surveys must be preserved to the exclusion, if necessary, of selections of the grantee as indicated by his settlement, or by his sale or lease of parcels of the property.

4. *Seemle also* that land claimed under a confirmed Mexican grant may be located in two parcels where, from the character of the country, the entire quantity granted cannot be located in one tract.

This case, which involved immense interests in California and questions greatly agitated in a particular portion of that

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state, was an appeal from the decree of the District Court of the United States for the Northern District of the same approving and confirming the survey and location of a claim to land under a Mexican grant to a certain John A. Sutter, a name abundantly known in the valley of the Sacramento, and which has left traces of some depth in the history of land titles in that region.

Sutter himself, as described by another pen, [[Footnote 1](#)] was a native of Switzerland who came to the Department of California about the year 1839 -- long, of course, before the incorporation of that region with the United States. He was a man of a romantic cast of character, and having naturalized himself as a citizen of Mexico, formed, with the leave of its government, a settlement near the junction of the Sacramento and American Rivers. In honor of his native country he designated it New Helvetia. The country at that time was uninhabited except by bands of warlike Indians, who made frequent predatory incursions upon the undefended settlements to the south and east of this place. In two or three years after his arrival, Sutter was commissioned by the Governor of California to guard the northern frontier and to represent the government in affording security and protection to its inhabitants against the invasion of the Indians and marauding bands of hunters and trappers who occasionally visited the valley for plunder. In the year 1841, he commenced the erection of a fort at New Helvetia at his own expense. [[Footnote 2](#)] It was surrounded by a high wall, and was defended by cannon. Within this fort there were dwelling houses for his servants and workmen and workshops for the manufacture of various articles of necessity. There was a grist-mill, tannery, and distillery attached to the establishment. A number of Indians were domesticated by him, and contributed to cultivate his fields of grain and to defend the settlement from more savage tribes. He was possessed of several thousands of horses and neat cattle,

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which were under the care of his servants. There were collected, at different times, from twenty to fifty families, and there were, in the course of years, some hundreds of persons connected with this settlement. He is described as having been hospitable and generous to strangers, and the Governors of California bear testimony to the vigor with which he performed the duties of his civil and military commission. Being a man of schemes, and of an adventurous turn, he sought, after a certain time, to extend his settlements and influence upward along the river, and did so, examining and fixing upon lands for miles up the *Rio de las Plumas*, a large tributary of the Sacramento. His ideas and acts were somewhat visionary, his habits of business not good, and, relying on titles possessed or *to be obtained* and confirmed from the government, he made very numerous grants to great numbers of persons, grants of vastly more land, as it turned out, than he owned. When, therefore, after the cession of California, our government acknowledged his right, under Mexican grant, to a *certain quantity* of land -- the *exact location* of which remained to be practically fixed -- the fact that he had made deeds for much more than the quantity admitted as his raised a great question among his various grantees as to where exactly his admitted land was situated. Each wished that which Sutter had granted to *him* to come within the limits, and the government also had its interests in the location.

The matter, as in mode and form it now came before this Court, was thus:

In 1852, Sutter presented to the Board of Commissioners, created by Congress under the Act of March 3, 1851, to ascertain and settle private land claims in California, a petition asking for the confirmation of a claim asserted by him to eleven square leagues of land under a grant alleged to have been issued to him on the 18th of June, 1841, by Juan B. Alvarado, then Governor of the Department of California. The grant gave the extent and boundaries of the land thus:

image:a

"It is of the extent of eleven square leagues, as exhibited in

the sketch annexed to the expediente, without including the lands overflowed (*las tierras senigadas*) by the swelling and current of the rivers. It is bounded on the north by The Three Summits (*Los Tres Picos*) and 3941'45' north latitude; on the east, by the borders [or margins] of the Feather River, on the south, by the parallel of 3849'32' of north latitude, and on the west, by the river Sacramento. [[Footnote 3](#)]"

In 1853 he amended his petition, and claimed an additional quantity of *twenty-two* leagues under a grant alleged to have been issued to him and to his son on the 5th of February, 1845, by Micheltorena, at that time Governor of California, this quantity being the surplus (*sobrante*) embraced within the exterior limits from which the eleven leagues first granted were to be taken.

The board by its decree confirmed the claim under both grants. On appeal to the district court of the United States, the decree of the board was affirmed. But on appeal to this Court, [[Footnote 4](#)] the claim under the first grant alone was adjudged valid, it being held that the second grant, from the circumstances under which it was issued, was not entitled to recognition by the United States under the treaty of cession.

The decrees of the board of commissioners and of the district court are substantially in the same language. In the description of the land they are identical. The description is as follows:

"The land of which confirmation is made is situated on the American, Sacramento, and Feather Rivers, [[Footnote 5](#)] and is known by the name of New Helvetia, being the same which was granted to the said John A. Sutter, by grant duly executed by Governor Juan B. Alvarado on the 18th of June, 1841, and by a grant from

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Governor Manuel Micheltorena to the said John A. Sutter, and his son John A. Sutter, Jr., dated February 5, 1845, the first for eleven square leagues of land, as exhibited on the sketch annexed to the proceedings, and the second for twenty-

two square leagues of the *sobrante*, or surplus of land within his rancho, named New Helvetia, as laid down on the map which accompanies the grant, the said land to be located according to the calls of the respective grants, as described and explained in the depositions of John J. Vioget, filed in the case, and within the following limits, to-wit: on the south, by a line drawn due east from the Sacramento River so as to touch the most southerly point of a pond or laguna situated near said river, and about five miles south of the American River, as represented on the map filed in the case, and marked 'B.P.L.' (facing page <69 U.S. 564|>564), exhibit to deposition of Juan B. Alvarado, March 15, 1855, which is also marked on said map *Lindero latitud norte 3849'3'*; on the north by a line drawn due east from Sacramento River to the southern base of the mountains known as the Buttes, and represented on the said map by the name of *Los Tres Picos*, and from thence until it intersects the eastern boundary of the tract as represented on said map and described in the grant, and in the depositions of the said Vioget; on the west by the said river Sacramento, and on the east by the margins of Feather River, inclusive. For more particular description, reference to be had to the copies of the grants filed and proved in the case, bearing date the 18 of June, 1841, and the 5th of February, 1845, to the said map marked 'B.P.L.', exhibit to deposition of Juan B. Alvarado, March 15, 1855, and to the deposition of John J. Vioget and Juan B. Alvarado, all of which are filed among the papers in the case."

The mandate of this Court, which, on its decision, was remitted to the district court, to be there executed, recites the decree appealed from entire, and, after mentioning the argument of the case, proceeds as follows:

"On consideration whereof, it is now here ordered, adjudged, and decreed by this court that so much of the decree of the said district court as confirms the claim of John A. Sutter to the eleven square leagues of land situated on the American, Sacramento, and Feather Rivers, known by the name of New Helvetia,

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and which was granted to the said John A. Sutter by Governor Juan B. Alvarado, on the 18th of June, 1841, as set forth and described in said decree, be, and the

same is hereby affirmed. And it is further ordered, adjudged, and decreed by this Court, that the residue of the said decree, insofar as it confirms a grant for *twenty-two* square leagues of land, purporting to have been made to the said John A. Sutter by Governor Manuel Micheltoarena, on the 5th of February, 1845, be, and the same is hereby *reversed and annulled*, and that this cause be, and the same is hereby remanded to the said district court, for further proceedings to be had therein, in conformity to the opinion of this Court."

Under this mandate a survey was made, in 1859, by one A. W. Von Schmidt, deputy surveyor, under J. W. Mandeville, the Surveyor General of the United States for California. The survey was made under the instructions of the Surveyor General, and was approved by him on the 18th of February, 1860, and a certified copy was filed in the district court, on the 27th of the same month, under the order of the court. This survey includes two leagues of land, situated *south* of the American River (within the present County of Sacramento), and nine leagues, situated on the banks of *Feather River*, portions *on each side* commencing at a place formerly known as the Canadian Ford, and extending up the river. [[Footnote 6](#)] The two parcels were *separated from each other several miles*. Each parcel was located in a compact form, and in conformity with the lines of the public surveys. The location will appear by reference to the map on the next page, where it is indicated with sufficient correctness to give an idea, by the light dotted lines forming the top of the map, as to one part, and on the south of the American River, as distinguished from heavier dark ones in those same parts of the map, and all *along the river between*.

John J. Vioget, whose name is mentioned in the decree of the district court, was an engineer and surveyor, and

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made a survey of the eleven square leagues in 1840 or 1841, and also the map referred to in the grant to Sutter, and in

image:b

his depositions filed in the case he testified that in his survey *two leagues* were located, at the request of Sutter, *south of the American River*, and that the remaining nine leagues were located on the banks of the Feather River, *on each side*, commencing at the Canadian Ford and extending up the river. Von Schmidt testified that in making his survey, he had with him the map referred to, and the depositions of Vioget; also another map marked "A.P.L.," which, except that it has not the dotted lines marked in the latter, is similar to the map facing page <69 U.S. 564|>564, and marked "B.P.L.;" and that he found no difficulty in locating two leagues below the American River, and nine on the margins of the Feather River; and that he ran the lines so as to conform as near as practicable to Vioget's survey. The two surveys varied somewhat, as Von Schmidt was obliged to run the lines in accordance with the subdivision lines of the public surveys presented by the established regulations of the land department of the government.

This survey and location of Von Schmidt, the district court set aside, and under its direction a new survey and location were made, and on the 11th of May, 1863, was approved by the Surveyor General of California, and a plot of the same, duly certified, was returned into court. On the same day, the district court, by its decree, approved and confirmed the new survey and location, marking it, "Approved, May 11, 1863; Ogden Hoffman, District Judge," and from the decree the present appeal is taken.

By this new survey, the eleven leagues were located *in a long line of tracts, several of them very narrow, all along the Feather River, above its junction with the Sacramento, and on the Sacramento afterwards* to where it meets the American River, with a large tract, as before, *south* of the last-named stream. This broke up the eleven leagues into thirteen tracts of different dimensions and forms, but the cessation of the continuity was nowhere large. The matter will be explained, perhaps, by reference to the map opposite, where this location is indicated by a heavy continuous line all along the Sacramento and Feather Rivers, and south of the American

River, as distinguished from the lighter dotted one on the same map, at its top and bottom only.

Sutter, as already mentioned, was a man of undefined ideas, with habits of business not the best. And having made grants of much more land than he had, it was plain that whatever decision was made as to their respective precedence, many persons would be losers, under circumstances of much hardship as respected some of them. The district court, in directing a location in the manner just mentioned, intended that the several selections which Sutter himself was considered to have made by settlement, or by lease or sale, or other acts of ownership, should be adopted, and in the order in which they were made, until the whole quantity of eleven leagues was exhausted. His Honor, the district judge, however, after a very able exposition of the grounds of the decree, acknowledged the difficulties of a "most embarrassing case."

"With no clear rules of law to guide me, unable to discern accurately what even equity and justice demanded, embarrassed by the careless improvidence which has led Sutter to convey away more land than he even supposed he possessed, and far more than the quantity to which by the unexpected decision of the Supreme Court, he has been restricted, with the external boundaries of the tract vague and undefined, and even the original papers, in some respects, ambiguous and contradictory, I have been compelled,"

he said,

"to content myself with endeavoring to settle the case as fairly as was practicable under the circumstances and to renounce the hope of obviating every objection or avoiding the infliction of much hardship. The case is one rather for the '*arbitrium boni viri*' than the subject of a judicial determination proceeding upon fixed and absolute rules."

Numerous objections were taken in the court below and were urged in this Court to the survey thus ordered by purchasers under Sutter and by persons claiming

rights by settlement under the United States. The objections were not all consistent with each other. One of the intervenors (Gelston), contended that a greater quantity than the amount

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given, two leagues or more, should have been located south of the American River.

The United States not objecting to the location south of the American River, contended that the eleven leagues could not be located in separate and distinct parcels, but should be located in one body, and in a compact form, and therefore that the nine leagues should be taken immediately adjoining the other two and on the north of the American River or that the two leagues should be selected from land adjoining the nine on Feather River.

The parties claiming an interest in the premises by settlement under the United States contended that the whole quantity granted should be located between the Sacramento and Feather Rivers -- that is to say in the forks of these rivers below the Three Buttes -- and that the land upon which the city of Sacramento is situated should be excluded from location as *overflowed land*, reserved by the terms of the grant.

Two intervenors (Packard and Woodruff) contended that the survey made by A. W. Von Schmidt and filed February 27, 1860, was the correct survey of the eleven leagues.

A vast variety of testimony was taken in the case, and numerous documents of different kinds, including grants by Sutter, up and down the rivers and elsewhere, were offered in evidence -- the whole bearing more or less directly upon the matters in controversy. The printed record contained nine hundred and eighty octavo pages, and there were maps in number indefinite. It is sufficient for the proper understanding of the opinion of the Court to state generally that the evidence showed the settlement and occupation by Sutter of the land below the American River, as already stated above; the settlement of colonists under Sutter,

soon after he obtained his grant on the *east bank* of the Feather River (or as was asserted and contended in the argument, *before*); a subsequent selection and occupation by him of the tract known as Hock Farm, on the *west bank* of the *Feather River*; [[Footnote 7](#)] that the whole country embraced within

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the exterior limits of the grant, with the exception of small portions, insufficient to satisfy the eleven leagues granted, is sometimes, every two or three years, overflowed by water, and in many places to the depth of several feet; that the greater part of the tract embraced in the survey made by Von Schmidt, and also in the survey approved by the district court, is thus sometimes overflowed; that within the exterior limits there are also immense tracts of marsh or *tule* lands, which are covered with water every year during the entire winter, and during the greater part of the summer months, and which were unfit for either cultivation or pasturage without draining; and that neither of the surveys mentioned include any portion of those marsh or *tule* lands.

This grant gives the extent and boundaries of the land, as already mentioned -- that is to say as follows:

"It is of the extent of eleven square leagues, as exhibited in the sketch annexed to the expediente, without including the lands overflowed (*las tierras senigadas*) by the swelling and current of the rivers. It is bounded on the north by (*los Tres Picos*) the Three Summits, and 3941'45' north latitude; on the east by the borders (or margins) of the Feather River; on the south by the parallel of 3849'32' of north latitude, and on the west by the River Sacramento."

Alvarado, the governor, who issued the grant, testified that the Spanish words, "*las tierras senigadas*" in the original, which are translated "*the lands overflowed*" in the document in the record, mean *swamp or tule lands overflowed and unfit for cultivation*.

The parallel of latitude (*lindero latitud*) given in the grant as the southern boundary, falls near the junction of the Sacramento and Feather Rivers, as

appears by the map. Alvarado testified that he inserted in the grant the degrees of latitude as they were marked on the map. And Vioget testified that he drew the line across the map a few miles below the American River, and marked it as the southern boundary with the latitude designated, but that the observation taken of the latitude was not correct, owing to his

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inability to procure correct instruments, which he mentioned at the time to Sutter.

Of very numerous documents offered in evidence, aside from the petition of Sutter and grant to him, and deeds to numerous under claimants, in nearly every place now the subject of claim, a grant to W. A. Leidesdorf, issued October 8, 1844, a deed of Sutter to Robinson Gillespie, and others, dated July 1, 1850, and a map, made by John Bidwell, in 1844, were, perhaps, among the most important.

The grant to Leidesdorf, made more than three years after the date of the grant to Sutter, cedes land situated on the south bank of the American River, and describes it as *"bounded by the land granted to the colony of Senor Sutter."* [[Footnote 8](#)]

The deed of Sutter to Robinson Gillespie, and others, conveys land described as follows:

"Commencing on the north of the Three Peaks, or what is commonly called Sutter's Buttes, at a point on the east bank of Sacramento River, in latitude 39°41'45", thence running with the parallel of said latitude to the *Rio de las Plumas*, or Feather River; thence down and along the meanders of said Rio de las Plumas, or Feather River, to its junction with Sacramento River; thence up and along the eastern bank of said Sacramento River to the place or point of beginning, and *which said land is embraced in a grant from the Mexican government bearing date, Monterey, 18th day of June, eighteen hundred and forty-one.* "

The map made by John Bidwell, so far as it showed the land claimed by Sutter, was copied from the map accompanying the petition of Sutter in the archives of

the country.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The appeal is from the decree or order of the court confirming a survey and location of the eleven square leagues of land granted to Sutter by Governor Alvarado, on the 18th June, 1841. This grant was confirmed by the Board of

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Commissioners to Sutter, together with twenty-two other square leagues granted to him by Governor Micheltorena, on the 5th February, 1845. The Board of Commissioners, in their decree, state that "the land of which confirmation is made is situated on the American, Sacramento, and Feather Rivers, and is known as New Helvetia," and to be located as described and explained in the depositions of John I. Vioget, filed in the cause:

"On the south by a line drawn due east from Sacramento River, so as to touch the most southerly point of a pond or laguna situated near said river, and about five miles south of the American River, as represented on the maps filed in the case, marked B. and B.P.L., exhibit to the deposition of Juan B. Alvarado, March 15, 1855, which line is also marked on said map, *Lindero latitud norte* 3849'32'; on the north by a line drawn due east from the Sacramento River to the southern base of the mountains known as the Buttes, and represented on the said map by the name of *Los Tres Picos*, and from thence until it intersects the eastern boundary of the tract, as represented on said map and described in the grant, and in the depositions of said Vioget; on the west by said River Sacramento, and on the east by the margins of the Feather River inclusive. . . . For a more particular description, reference to be had to the copies of the grants A. and C., to the map marked B., and to the depositions of John J. Vioget and Juan B. Alvarado, all of which are filed among the papers in the case."

The United States appealed from this decree to the district court, in which considerable additional testimony was taken on the title and boundaries, and after argument, the court affirmed the decree of the board of commissioners substantially in the words of that decree. From this decree an appeal was taken to this Court, and after argument, the decree of the district court was affirmed as to the grant of eleven square leagues and reversed as to the twenty-two granted by Micheltoarena.

The mandate of this Court, sent down to the district court to be executed, recites the decree of that court in *haec verba* and then proceeds:

"On consideration whereof, it is now

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ordered, adjudged and decreed by this Court that so much of the decree of the said district court as confirms the claim of John A. Sutter to the eleven square leagues of land situated on the American, Sacramento and Feather Rivers known by the name of New Helvetia, and which was granted to the said John A. Sutter by Governor Juan B. Alvarado on the 18th of June, 1841, as set forth and described in said decree, be and the same is hereby affirmed,"

and the residue of the decree, insofar as it confirms the twenty-two square leagues to John A. Sutter by Micheltoarena, be reversed,

"and that this cause be and the same is hereby remanded to the said district court for further proceedings to be had therein in conformity to the opinion of this court."

The first survey and location of the eleven leagues in pursuance of the mandate was made by A. W. Von Schmidt in 1859, a deputy surveyor, under the instructions of J. W. Mandeville, the Surveyor General of the United States. This survey was approved by this officer February 18, 1860, and a copy filed in the district court the 27th of the same month in pursuance of an order of the court. Numerous objections were taken to this survey by various persons interested in the location of the grant, and a volume of evidence produced before the court

impeaching and supporting the correctness of the same, and the court, after argument and a very full and elaborate examination, set aside the survey and ordered another to be made by the Surveyor General, in conformity with the opinion expressed.

This second survey was made and approved by this officer on the 11th May, 1863, and was confirmed by the district court on the same day. From this decree or order of confirmation the United States and several intervenors under the act of 1860 have appealed to this Court.

The mandate of this Court must be looked to for the description of the outboundaries of the grant to Sutter within which the eleven square leagues of land are to be located. They are given in the mandate as derived from the calls in the grant, the map B.P.L. annexed to the deposition of

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Juan B. Alvarado, of March 15, 1855, and the depositions of John J. Vioget. Vioget was a practical engineer and surveyor, and made a survey of the eleven leagues and also a map of the same in 1840 or 1841, and before the application by Sutter to Alvarado for the grant, and with a view to that application. The map accompanied it, and was referred to in the grant, and annexed to it. There were two depositions of Vioget taken, together with a cross-examination as to each at a different time, which were before the Board of Commissioners and which are referred to in its decree of confirmation, as well as in the decree of the district court, and in the mandate of this Court, in respect to the location of the grant. According to this survey, two square leagues were located, at the request of Sutter, south of the American River, and the remaining nine were located on each side of the Feather River, extending from what was known as the Canadian Ford on that river up the same.

The survey of Von Schmidt in 1859, and which was approved by the Surveyor General and filed in the district court the 27th February, 1860, was made substantially in conformity with this survey of Vioget, the map of which is referred

to in the grant by Alvarado. Von Schmidt had with him the map B.P.L., and also A.P.L., and the depositions of Vioget, and he found no great difficulty, with these evidences before him of the former survey, in locating the two square leagues below the American River, and the nine on the margins of the Feather River above the Canadian Ford, extending them up to the northern line, as laid down on the maps. The general outlines, the deputy surveyor states, as respects both parcels, were the same, and that he ran the lines so as to conform to Vioget's survey as near as practicable. They varied some, as it was necessary to run them on subdivision lines, according to the standing instructions of the Land Department.

MR. JUSTICE CAMPBELL, in delivering the opinion of the Court in this case [[Footnote 9](#)] when here before, said:

"An engineer

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and surveyor (Vioget) who prepared maps for the claimant testifies that, in January, 1841, he made duplicate maps for the claimant of the establishment of New Helvetia, and surveyed eleven leagues at that place, and that in 1843 he traced a copy from one of these, and that copy is produced and filed with the petition. It is a fair conclusion,"

he observes, "from all the evidence that these maps of Vioget were presented to the Governor and form the basis of the grant, and make part of it." The survey here alluded to, we have seen, located two square leagues of the land south of the American River and the remaining nine on the Feather River. Again, speaking of the error of the line of latitude marked on the map, he says:

"But the map shows that the line of the southern boundary is south of New Helvetia, and is so related to natural objects represented on it as to be easily determined. Vioget accounts for the error in the designation of the line by the imperfection of the instruments, and proves that a starting corner was fixed and the line traced on the ground. This is better evidence of the true location of the southern line, and conforms to the probability of the case. Upon the whole

evidence,"

he observes, "we find that the grant and map filed with the petition in 1852 before the Board of Commissioners have been proved."

An objection has been made that this tract of eleven square leagues has been located in two separate parcels, two leagues below the American and nine on the Feather River. One answer is that the original grant with the map accompanying it thus located it, and which location, as we have seen, has been confirmed by the decree of this Court. In the second place, the grant was made of the tract with general outboundaries, excluding from it lands overflown by the swelling and currents of the rivers -- in other words, *tule* or swamp. According to the evidence of both Vioget and Von Schmidt, the quantity for agricultural or fast land to be contained in the grant could not be obtained within the outboundaries without making the location in two different parcels. The location, by the survey of Von Schmidt, in the

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two parcels, appears to have been made in as compact a form as was practicable, regard being had to the condition of the grant, to the quantity of land granted, and to the character of the district of country or territory in which it was to be located.

Without pursuing the examination of the case further, we are satisfied that this survey and location by Von Schmidt of the eleven square leagues of land granted to Sutter is in conformity with the decree and mandate of this Court, and should have been accepted and confirmed by the court below. We do not say that it is entirely free from objections, and from our examination of the evidence we are satisfied that no survey or location of the tract, under the circumstances attending and surrounding the case, could be made that would be free from objection. We refer to the numerous grants made by Sutter of parcels of land, far exceeding the quantity ultimately awarded to him, which, of course, could not be covered by any location that might be made, and also to the case of preemption settlers, whose possessions may be included and would be included, to a greater or less extent,

by any possible location consistent with the original decree of confirmation by this Court. We fully appreciate the difficulties and embarrassments that surrounded the case upon the evidence in the court below, and the opinions of the learned judge upon the various questions, as they arose, and which appear in the record, furnish abundant evidence of the labor and earnestness with which he endeavored to arrive at right and justice between all parties concerned.

The survey and location, however, which we have felt constrained to adopt, we are inclined to think, will be less disturbing and prejudicial to innocent and *bona fide* occupants under grants from Sutter, or on what was supposed to be public lands, than any other that could be made, from the fact that Sutter's possessions, from his first settlement in the country, were south of the American River, and north on the Feather River. These possessions must have been well known to purchasers under him, and also to settlers on what

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they supposed to be public lands, and in addition to this, the early survey by Vioget, which was made the latter part of 1840 or beginning of 1841, must also have been well known to the settlers in that section of country.

The decree of the court below confirming the survey and location of the eleven square leagues to Sutter, approved by the Surveyor General, May 11, 1863, and filed in court the same day as recited in the said decree, and marked, "Approved, May 11, 1863, Ogden Hoffman, District Judge," must be reversed and set aside, and the survey and location of the grant by A. W. Von Schmidt, United States Deputy Surveyor, approved by the Surveyor General, J. W. Mandeville, February 18, 1860, and a certified copy filed in the district court, 27th of the same month, be substituted in its stead, and that the case be remitted to the court below, with directions to confirm this survey as the location of the said grant.

MR. JUSTICE FIELD did not sit in the case nor take part in its decision.

[[Footnote 1](#)]

Campbell J., of this Court.

[[Footnote 2](#)]

Designated on the map facing p. <69 U.S. 564|>564, as "Establa de Nueva Helvetia."

[[Footnote 3](#)]

See map "B. P. L.," *supra*, facing page <69 U.S. 564|>564.

[[Footnote 4](#)]

[*United States v. Sutter*](#), 21 How. 170.

[[Footnote 5](#)]

These are the rivers designated, on the map facing page <69 U.S. 564|>564, as Rio de los Americanos, Rio del Sacramento, and Rio de las Plumas. On this map no name is given to the river after the junction of the parts marked as Rio del Sacramento and Rio de las Plumas. It is continued, however, in fact, under the name of the Sacramento.

[[Footnote 6](#)]

This "Canadian Ford" is marked on the map facing page <69 U.S. 564|>564 by a small bar across the river.

[[Footnote 7](#)]

The place marked "Rancheria de Hock," on the map B.P.L., facing p. <69 U.S. 564|>564; also, the tract "Hock," on map at p. <69 U.S. 568|>568.

[[Footnote 8](#)]

See [*United States v. Halleck*](#), 1 Wall. 440.

[[Footnote 9](#)]

21 How. p. [62 U. S. 176](#) .

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