

The Fossat or Quicksilver Mine Case

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The Fossat or Quicksilver Mine Case - 69 U.S. 649 (1864)

U.S. Supreme Court The Fossat or Quicksilver Mine Case, 69 U.S. 2 Wall. 649 649 (1864)

The Fossat or Quicksilver Mine Case

69 U.S. (2 Wall.) 649

APPEAL FROM THE DISTRICT

COURT FOR CALIFORNIA

SYLLABUS

1. An appeal lies to this Court from a decree of the District Court for California, in a proceeding under the act of 14th of June, 1860, 12 Statutes at Large 33, commonly called the Survey Law.

2. If no appeal from such a decree be taken by the United States, they may appear in this Court as appellees, but cannot demand a reversal or change of the decree.
3. If a California land claim has been confirmed by a decree of the district court under the act of 3d of March, 1851, 9 Statutes at Large 631, and the decree of confirmation fixing the boundaries of the tract stands unreversed, a survey under it is the execution of that decree, and must conform to it in all respects.
4. The Survey Law of 14th of June, 1860, gives the district court no power to amend or change the decree of confirmation.
5. When the title papers designate the beginning place of a straight line, and fix its course by requiring that it shall pass a known and ascertained point to its termination at a mountain, such line cannot be varied by the fact that a rough draft (a Mexican *diseno*) on which it is

Page 69 U. S. 650

drawn, was not true at all to scale, and that on it the line strikes two ranges of mountains in such a way as to leave certain unnamed elevations on the draft which, with more or less plausibility, it was conjectured, but only conjectured, were meant to represent certain peaks in nature well known, more to the east or west than by reference to other objects on the draft they in nature hold.

About fifteen miles south from the southern end of the Bay of San Francisco, and separated from it by irregular mountain slopes, lies a vale, called the *Canada de los Capitancillos*, or Valley of the Little Captains. [[Footnote 1](#)] The northern limit of this valley is an elevation called the Pueblo Hills -- hills picturesque enough, with nothing else, however, as yet, specially to mark them. Descending or turning these, the traveler is *in* the vale.

Along the *south* edge of the valley runs a ridge of hills, range of mountains, or *Sierra*; for by each of these terms, as by several others, the elevation might properly or improperly be named. A value different from that of the Pueblo Ridge belongs to these. These are filled with cinnabar of unrivaled purity and richness.

Here is the ALMADEN MINE -- a mine that with others near it, the Enriqueta, San Antonio &c.;, is estimated at \$20,000,000 -- the gem of quicksilver mines in the New World, perhaps of the entire earth. This range we call the *Mining* Range, or *Mining* Ridge. The opposite map may assist a comprehension. [[Footnote 2](#)]

Immediately south of, or behind this Mining Range, and detached from it, for the most part, by a steep, narrow,

Page 69 U. S. 651

broken, and irregular depression, gorge, or valley, rises a ridge, range, or *Sierra*, different, as it was generally regarded,

image:a

from the other, though by some persons regarded as the main part of the same range. This elevation we designate as the *Azul* Range, or *Azul* Ridge. [[Footnote 3](#)]

Page 69 U. S. 652

The *northern* limit of the valley we have said is the Pueblo Hills. The top of these is about 1,000 feet above the level of San Francisco Bay and 400 above the lowest part of the valley immediately south of them.

The Mining Ridge at its greatest elevation rises several hundred feet higher than the Pueblo Hills in front of it, across the valley. The Almaden Peak, one peak of this ridge, at its eastern extremity, is 1,500 feet above this level, but the elevations of the ridge generally, as they extend towards the west, diminish in height and are broken by various depressions, which permit easy access from the valley on the north to the foot of the depression or valley at the base of the Azul Range. The Azul Range, behind, rears its head suddenly up, far above the Mining Range before it, to the height of 4,000 feet above the level of the sea.

The Mining Range extends from east to west, and parallel with the Azul Range. It runs about five miles. On its slopes, as well on that towards the valley on the north as on that which makes one side of the ravine upon the south, the best and most permanent grazing of the region is to be found. At its widest place, it is more than a mile and a half from base to base, measuring directly through, and it slopes off gradually at both ends. It is connected with the Azul Range by a ridge *four hundred feet* lower than itself, and *twenty-four* hundred lower than the Azul Range. This is a watershed, on one side of which are the sources of the Capitancillos and on the other those of the Alamitos. The one stream runs between the two ranges, and turns to the north at the western end of the Mining Range. The other flows eastward, and turning the eastern end of the range as the other had done the western, crosses the valley till its course is arrested by the Pueblo Hills. Here, turning its course to run along *their* base, it runs westward till it meets the other stream, and forming with it the Guadalupe River, the two discharge their waters through its channel into San Francisco Bay.

At the place where the Alamitos strikes the Pueblo Hills,

Page 69 U. S. 653

it is joined by a mountain stream called the *Arroyo Seco*, [[Footnote 4](#)] a point which the reader must observe.

Nearly in the center of this valley stands a little hill -- *Loma*, as it is called in Spanish -- its side or skirt sloping irregularly by a series of graceful undulations towards the plain, its descending curve thus forming that which it required no great imagination to call a "lap."

Such is the valley, its boundaries and its features, as they strike the eye.

In the eastern part of it, an old Mexican, Sergeant Don Jose Reyes Berreyesa, fixed himself, about 1834, by leave of Governor Figueroa. Adjoining him on the west, and holding the western part, was another Mexican, Leandro Galindo. They both built their houses and made their chief improvements at the base of the Pueblo Hills -- that is to say, opposite and away from the Mining and the Azul

Ranges, their exposures to the south. Neither of them had any title but such provisional ones as were usual in California while it yet belonged to Mexico, in anticipation of a final grant. In time, Galindo went away, and was succeeded by Justo Larios, who continued his improvements at the foot of the Pueblo Hills, and granted a small piece of land, at the western extremity of the hills and near the junction of the Capitancillos and Alamitos, far off from the southern ridges, to a certain Foster. [[Footnote 5](#)] Larios and Berreyesa, however, got along less amicably than had done Galindo and his military neighbor. Berreyesa complained to the Governor that Larios claimed land that was his, and had actually removed his house and set it on the dividing line. Larios, he said, had "room to extend himself outside of the *Canada*, " while *he*, Berreyesa, "had absolutely nowhere to enlarge." Larios, about the same time presented *his* petition,

Page 69 U. S. 654

complaining of Berreyesa as overbearing and disposed to be rapacious. The matter disturbed the happy valley and threatened to become a feud. Governor Alvarado referred

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Page 69 U. S. 655

both petitions to the Prefect, the highest judicial officer in his department, and directed him to call the parties before him, to confront them with one another, hear their proofs, and to report the result of his investigation. The Prefect did this. The parties came before him and he succeeded in conciliating them. Berreyesa produced a *diseno*, and with that before them they *agreed* upon a division line as follows:

"A *straight* line (*una recta* &c;), from the angle which the Alamitos forms with the Arroyo Seco, direction southward, passing by the eastern *base* OR over the eastern *skirt*, OR *lap* (the meaning was not clear), of the loma [[Footnote 6](#)] (*rumbo al Sul LA FALDA de la loma*), in the center of the valley TO THE Sierra."

Upon this diseno the Prefect traced a dotted line, which showed what had been agreed upon. He then reported the whole matter to the Governor, and the map, with the dotted line or "L-i-n-d-e-r-o" upon it, went to the archives. A copy is opposite.

The controversy being settled, Larios petitioned the Governor for a grant. Alvarado made it. Thus it ran:

"I declare Justo Larios owner of the tract called 'Los Capitancillos,' bounded by THE Sierra, by the Arroyo Seco on the side of Santa Clara, and by the tract of Berreyesa, which has for boundary a line running from the junction of the Arroyo Seco and the Alamitos, southward to THE Sierra, *passing by the eastern base, OR over the eastern skirt or lap (rumbo al Sul LA FALDA)* of the loma, in the center of the valley."

The grant was subject to these ordinary conditions:

"2d. He shall solicit the proper judge to give him juridical possession in virtue of this decree, *by whom the boundary shall be marked out &c.;*"

"3d. The land herein referred to is *one league* of the larger size, a little more or less. The judge who shall give the possession shall have *it measured* in conformity to law, *leaving the*

Page 69 U. S. 656

surplus which remains to the nation for the purposes which may best suit him."

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Page 69 U. S. 657

The diseno submitted by Larios appears on the page opposite. [[Footnote 7](#)]

About this same time, Berreyesa applied for a grant. His *petition* prays for a grant of two *sitos*, to extend from the dwelling house of Larios up to the *matadero*, [[Footnote 8](#)] "*with all the lomas (hills), that pertain to the Canada.*" The dispute having been in the meantime settled, the Governor (August 20, 1842) made the concession. The grant recites the petition of Berreyesa for a part of the place called the *Canada de los Capitancillos*, bounded on the north by the *lomas bajas* of the Pueblo San Jose; on the south *by the Sierra*; on the west by the rancho of Larios, which has for boundary the angle formed by the Arroyo Seco, and that of the Alamitos course south, the base (or skirt) of the hill situated in the center of the Canada until arriving at the Sierra: (el cual tiene por lindero en angulo que forma el Arroyo Seco y el de los Alamitos, rumbo Sur, la falda de la loma, situada en el centro de la Canada). [[Footnote 9](#)]

To the reader who has been able to get before his mind the topographical nature of this place, it will be obvious that questions might arise on the language of the *grant to Larios*. There were *two* ridges, or two parts of *one* ridge, either of which ridges, or parts of a ridge, might be styled a *Sierra*. *Sierra* means a saw, and is a term applicable, in some sense, to any range or ridge of hills, serrated as every one naturally is. In certain aspects -- geologically, perhaps, or possibly, topographically maybe as well -- the Mining Range was part of the Azul Range. Was it so within the meaning of the Governor and grant? And bearing on this question

Page 69 U. S. 658

of philology would come perhaps another like it: "What meant in law the word *Canada*? " Los Capitancillos was a canada. But did this mean a valley so pure and simple that no elevation whatever could break its plain? or might it hold the Mining Ridge and let the *vaster* Azul Heights overtop the whole, and leave both plain and mine to insignificance below? These were questions which the United States might have to litigate against Berreyesa and Larios both united.

Then assuming the Mining Ridge to be part of the valley, and the United States to be thus disposed of, there might come another question -- a question for Larios

and Berreyesa, after disposing of the government, to litigate between themselves. What did "*falda*" truly mean? It was a term the very favorite of poetry, and with a sense elegantly answered -- answered with truth as well -- by our English "lap," or "skirt," or "fold." Was this the sense in which the old Mexican soldier and his lately litigious neighbor understood it, when making peace for themselves, they made one of the greatest lawsuits which the world has seen for others?

Even conceding "*falda*" to mean the base of the hill, and that the parties had meant to pass it, another question might still arise upon the very *lindero* and map which at first seemed so plain as to render question impossible. The line was to pass the base, but did the *diseno* of Berreyesa, on which it was traced, not show that it also meant to pass the Mining Ridge (on this map plainly marked, and bearing the name of *lomas bajas*), so as to leave much its greater part with *him*. In nature, could any line drawn from the junction of the creeks south, past the base, do this? Then on his *diseno* certain elevations were marked, both on the Mining Ridge and on the Azul Ridge behind. One on the Mining Ridge was especially prominent at its eastern end. Were there any known peaks, in nature, on these ridges? If so, could any line drawn as we have mentioned be made and leave them in that relative position where the *diseno* seemed to place them? The difficulty may be comprehended by any

Page 69 U. S. 659

reader who compares the map at p. <69 U.S. 651|>651, a map of the actual related topography, with the *diseno* of Berreyesa, which gives the parts, but in positions less relatively true.

On these niceties of language -- on such constructions of rude drafts -- depended in part the question whether this Mine of the Almaden -- the glory of the *Cuchilla de la Mina*, or *Cuchilla de la Mina de Luis Chabolla* -- should belong to a few citizens or to a whole republic; to the representatives of Justo Larios, to those of "the sergeant Berreyesa," or to the United States as national domain.

The grant was of the valley. The point of departure was confessedly the junction of the creeks Alamitos and Arroyo Seco. A line running "southward" "to the Sierra Azul," ended the rights of the United States in the matter. A line running "southward" at the *base* of the loma, as distinguished from one which should be sustained in its curving folds, ended Berreyesa's also. If, therefore, the line was to be run *to* the Sierra Azul, and *at* the base of the loma, south and straight from the union of the creeks, the mine belonged to Larios or to whoever might be his fortunate successor.

The questions were worth a controversy.

By 1852, California was a state of the American Union, and three-quarters of the property granted to Larios had become vested in one Fossat; the remaining fourth (which was in the direction of the mission property of Santa Clara, and at the extreme west of the valley) being owned by the Guadalupe Mining Company. [[Footnote 10](#)] Fossat now presented his petition to the land commissioners appointed by the Act of Congress of March 3, 1851, to settle the respective rights of the United States and claimants under the former government to lands in California, for a confirmation of his claims derived from Larios. The board decided in favor of it, and the United States appealed to the district court; Berreyesa, however, being no party to the specific proceedings.

Page 69 U. S. 660

That court, saying nothing whatever in its *opinion* on the question of *where* the line meant to be fixed on by Larios and Berreyesa would strike the Azul Range (if prolonged to that extent) as respected the Almaden Mine, and as respected the now known and actual topography, went into an argument to show that it must at least come somewhere *to* that range, and over the Mining Range; in other words, that the west portion of the Mining Range, whatever that portion might be, did not belong to the United States.

The court accordingly decided that the grant was good for the place known as *Los Capitancillos*, bounded and described on the south by the Azul Range, as

distinguished from the lower hills or Mining Ridge; on the west (about which there was no question) by Arroyo Seco on the side of Santa Clara. The *decree*, then, went thus as respected the eastern line:

"On the east by a line running from the junction of a certain other rivulet, called *Arroyo Seco*, and the *Arroyo de los Alamitos*, southward to the aforesaid main Sierra, passing by the point or part of the small hill situated in the center of the Canada, which is designated in the expedientes and grants of Justo Larios and Jose Reyes Berreyesa as '*la falda de la loma*,' and crossing the range of hills designated above as the *Cuchilla de la Mina*, or *Cuchilla de la Mina de Luis Chabolla*, and in which are situated the said Guadalupe, San Antonio, and New Almaden Mines, and which is the same range of hills designated '*Lomas Bajas*' on the diseno or map in the aforesaid expediente of Jose Reyes Berreyesa, the said eastern line herein described being intended to be the same line agreed upon as the line of division between the lands of Justo Larios and Jose Reyes Berreyesa, as expressed in the respective expedientes and grants of said Justo Larios and Jose Reyes Berreyesa, and delineated by the dotted line on the said diseno or map in the expediente of Jose Reyes Berreyesa; in the location of the said line reference to be made to the description thereof in the said expedientes and grants, and the delineation thereof on the said diseno or map in the expediente of Jose Reyes Berreyesa, which expedientes, grants, and diseno, or map, are on file and in evidence in this case. "

Page 69 U. S. 661

The northern boundary of the tract was declared to be that shown in the diseno or map of Larios; which was in effect the stream, marked on his draft as the Arroyo Capitancillos, but on the map styled the Alamitos.

Confirmation was thus made of the *whole* tract granted to Larios, with the exception of the two adjacent parcels thereof lying on the westerly end of said tract, and claimed by the Guadalupe Mining Company. This gave him a tract of about a league and three quarters.

The court in its opinion noted, indeed, that only three of the boundaries were designated in the grant, the southern, the western, and the eastern, but inclined to think that the description of the tract by name, as *Los Capitancillos*, a known valley, and the delineation on the *diseno* of Larios of the two ranges of hills within which it was contained, sufficiently indicated the location of the northern boundary, the mention of which was omitted in the grant; especially as the call was for a league *pocos mas o minas* -- a league more or less.

From this decree the United States appealed to this Court. [[Footnote 11](#)] This Court considered that there was more weight in the last point which the court had noted than the court itself gave to it, and reversed that decree; Campbell J., who gave the opinion, remarking in different parts of it as follows:

"The district court confirmed the claim of the appellee to land limited by specific boundaries, and ascertained those boundaries, as they exist on the land, with precision. Under this decree the grant to Larios includes *seven thousand five hundred and eighty-eight 90/100 acres*. [[Footnote 12](#)]"

"We concur in the opinion of the Board of Commissioners and of the district court, that affirms the validity of the grant of the Governor of California to Justo Larios, and the regularity of the conveyances through which the claimant deduces his title."

The court here gave an account of the dispute between Larios and Berreyesa, and of the settlement of it, and went on:

"The Governor granted the land to Larios, to be his property,

Page 69 U. S. 662

subject to the approval of the Departmental Assembly, and *to the performance of conditions*. [[Footnote 13](#)]"

"The *southern, western, and eastern* boundaries of the land granted to Larios are *well* defined, and the objects exist by which those limits can be ascertained. There is no call in the grant for a *northern* boundary, nor is there any reference to

the diseno for any natural object or other descriptive call to ascertain *it*. The grant itself furnishes no other criterion for determining that boundary than the *limitation of the quantity*, as is expressed in the third condition. *This is a controlling condition in the grant*. The delivery of juridical possession, an essential ceremony to perfect the title in the land system of Mexico, was to be accommodated to it. The diseno presented by the donee to the Governor to inform him of his wants represents the quantity to be *one* league, a little more or less. This representation is assumed to be true by the Governor, and *it forms the basis* on which his consent to the petition is yielded."

"He prescribes to the officer to whom he confided the duty of completing the title to measure a specified quantity, leaving the surplus that remains to the nation as preparatory to the delivery of judicial possession to the grantee. The obligation of the United States to this grantee will be fulfilled by the performance of the executive acts which are devolved in the grant on the local authority, and which are declared in the two conditions before cited. We regard these conditions to contain a description of the thing granted, and in connection with the other calls of the grant they enable us to define it. *We reject* the words, 'a little more or less,' *as having no meaning* in a system of location and survey like that of the United States, and that the claim of the grantee is valid for the quantity clearly expressed. *If the limitation of the quantity had not been so explicitly declared*, it might have been proper to refer to the petition and the diseno, or to have inquired if the name, Capitancillos, had any significance as connected with the limits of the tract, in order to give effect to the grant. *But there is no necessity for additional inquiries*. *The grant is not affected with any ambiguity*. The intention of the government of California is distinctly declared, and there is no rule of law to authorize us to depart from the grant to obtain evidence to contradict, vary, or limit its import. "

Page 69 U. S. 663

"The grant to Larios is for *one* league of land, to be taken *within the southern, western, and eastern boundaries* designated therein, and which is to be located, at the election of the grantee or his assigns, under the restrictions established for the location and survey of private land claims in California, by the executive

department of this government. The external boundaries designated in the grant may be declared by the district court from the evidence on file, and such other evidence as may be produced before it, and the claim of an interest equal to three-fourths of the land granted is confirmed to the appellee."

"The decree of the district court is reversed, and the cause is remanded to that court with directions to *enter a decree conforming to this opinion.* "

The case was again heard below, and on new evidence, tending, most of it, to the subject of the southern boundary. On the 18th of October, 1858, the district court again gave an opinion and again made a decree. The opinion was a further argument on the evidence, new and old alike, to show that the Azul Range was the true south boundary -- "the most important, if not the only point discussed," the court said, "on the hearing," and which the court treats as "the question to be determined." Nothing is argued about the eastern boundary. The decree again decreed that the grant was a valid one. Its southern and western boundaries were in substance as already above set forth. The eastern boundary was thus again disposed of.

"The eastern boundary is a straight line commencing at the junction of a certain rivulet called Arroyo Seco, with the Arroyo de los Alamitos, and thence running southward to the aforesaid main sierra or mountain range, passing by the point or part of the small hill situated in the center of the Canada, which is designated in the expedientes and grants of Justo Larios and Jose Reyes Berreyesa as '*la falda de la loma,*' and crossing the range of hills designated above as the '*Cuchilla de la Mina,*' or '*Cuchilla de la Mina de Luis Chabolla,*' in which are situated the said Guadalupe and New Almaden mines, and which is the same range of hills designated '*Lomas Bajas,*' on the *diseno* or map in the *expediente* of Jose Reyes Berreyesa on

Page 69 U. S. 664

file in the case, the said eastern line crossing, also, the said Arroyo de los Alamitos and terminating at the base of said main sierra; and the said eastern line

herein described, being intended to be the same line agreed upon as the line of division between the lands of Justo Larios and Jose Reyes Berreyesa, as expressed in the respective expedientes and grants of said Justo Larios and Jose Reyes Berreyesa, and delineated by the dotted line on the said diseno or map in the expediente of Jose Reyes Berreyesa; and in the location of said line, reference is to be made to the description thereof in the said expedientes and grants and the delineation thereof on the said diseno or map in the expediente of Jose Reyes Berreyesa, which expedientes, grants, and diseno or map are on file and in evidence in this case."

It was ordered that the fourth line should be run so as to include one league only; and the title was confirmed on that basis.

The United States *again* appealed to the Supreme Court, [[Footnote 14](#)] but a motion was made to dismiss the appeal because the decree below was interlocutory. The court did dismiss the appeal, and in the opinion say as follows:

"The court determined (when the case was here before),"

"that a grant under which the plaintiff claimed land in California, was valid for one league, to be taken within the southern, western, and eastern boundaries designated therein, at the election of the grantee and his assigns, under the restrictions established for the location and survey of private land claims in California by the executive department of the government. The external boundaries of the grant may be declared by the district court from the evidence on file, and such other evidence as may be produced before it; and the claim of an interest equal to three-fourths of the land granted is confirmed to the appellee."

"This motion to dismiss the present appeal is resisted, because the inquiries and decrees of the Board of Commissioners for the settlement of Private Land Claims in California, by the Act of 3d of March, 1851, in the first instance, and of the courts of the United States, on appeal, relate only to the question of

the validity of the claim, and by validity is meant its authenticity, legality, and in some cases interpretation, but does not include any question of location, extent, or boundary -- and that the district court has gone to the full limit of its jurisdiction in the decree under consideration, if it has not already exceeded it."

The court then examining this matter and declaring what the admitted duties of the district court were, adds:

"But in addition to these questions upon the vitality of the title, there may arise questions of extent, quantity, location, boundary, and legal operation, that are equally essential in determining the validity of the claim. In affirming a claim to land under a Spanish or Mexican grant, to be valid within the law of nations, the stipulations of the Treaty of Guadalupe Hidalgo, and the usages of those governments, we imply something more than that certain papers are genuine, legal, and translativ of property. We affirm that ownership and possession of land of definite boundaries rightfully attach to the grantee."

And this Court concludes its opinion thus:

"But after the authenticity of the grant is ascertained in this Court, and a reference has been made to the district court, to determine the external bounds of the grant, in order that the final confirmation may be made, we cannot understand upon what principle an appeal can be claimed until the whole of the directions of this Court are complied with, and that decree made. It would lead to vexatious and unjust delays to sanction such a practice. It is the opinion of the court that this appeal was improvidently taken and allowed, and must be dismissed; and that the district court proceed to ascertain the external lines of the land confirmed to the appellee, and enter a final decree of confirmation of that land."

On the filing of this mandate of dismissal, the Surveyor General of California was ordered to survey the land confirmed in conformity with the decision of the district court, made 18th October. He made the survey, which was approved by the Surveyor General, 18th December, 1860, and

filed it, with a map, in the court below, 22d January, 1861. The survey and map, as was testified by the deputy surveyor Hays, and one Conway, a clerk in his office, who assisted in making it, was made in conformity with the decree which they had before them. That survey is indicated on the map, at page <69 U.S. 651|>651, by a heavy connected line.

It appeared also that Berreyesa had at one time caused a private survey to be made of his tract, and this survey showed that the line lay essentially as marked by this heavy connected line. Another made for the Guadalupe Mining Company located it in the same way. A public survey, made by Surveyor General Hays, in 1855, located it also thus.

Not long before the above-mentioned order of the district court was made, Congress passed the act of June 14, 1860, [[Footnote 15](#)] commonly called the "Survey Act," which authorizes the district court to allow persons *not parties to the record* to intervene in matters of the survey and location of confirmed private land claims, and to show the true location of the claim. For that purpose they may produce evidence before the court, and on such proof and allegations the court shall render judgment. In regard to appeals, the whole language is simply, "And no appeal shall be allowed from the order or decree as aforesaid of the district court unless applied for within six months."

The survey was accordingly ordered into court. It made the Azul Range, as distinguished from the Mining Range, the southern boundary. The *eastern* line was drawn, as the reporter supposes -- for he never saw the plat -- from the junction of the two creeks Seco and Alamitos south, past the *base* of the loma; so leaving the mine on the land of Larios.

Berreyesa, Foster and others, who had not been parties to any of the immediate previous proceedings, now excepted to it.

Berreyesa excepted because the western boundary of *his* land constituted the eastern of that of Larios,

"to-wit, a line beginning at the junction of the Creeks Alamitos and Seco,

and running southerly to the main Sierra and Sierra Azul, crossing the *Lomas Bajas in the manner shown by the diseno* of the land granted to said Berreyesa; whereas the survey confirmed in this case locates the eastern line so as to include a tract of land within the exterior lines of the land granted to Berreyesa, and not granted to the said Larios."

Foster excepted because the tract being carried over far to the south, and being confined to *one* league, his small tract was left out. So, on similar grounds, did other parties who subsequently abandoned their exceptions.

The United States, by the district attorney, entered a formal appearance, but made no objection to the survey at any stage of the hearing, suggested no argument, and offered no evidence against it.

Fossat, who represented Larios, came in to protect the survey, averring that it was right, and should stand.

The district court -- considering that no decision had ever yet been made by it as to the *eastern* boundary, not understanding, apparently, that any supposed decision with regard to that line had been passed on by the Supreme Court in either of the decisions quoted in the preceding part of this statement; conceiving further, it would seem, that under the new act of 1860 (the "Survey Act," passed *after* the second decision in this Court was made), the court below might, on the intervention of Berreyesa, then for the first time heard in this particular cause, determine the eastern line, irrespective of any decree obtained by either party in a proceeding which it considered as a proceeding between himself only and the United States -- proceeded to settle the eastern line, and in some degree, it was argued, to treat all things *de novo*. A great deal of new evidence was taken in regard to this eastern line, evidence bearing also on the southern line. The scope of much of the former was to show entire error of scale in Berreyesa's diseno, and that regulating the eastern line by certain objects, clearly enough indicated on this diseno, *other than the loma*, the line could not be drawn south from the junction

of the creeks past the loma to the point where that diseno showed that it meant to

Page 69 U. S. 668

come. The matter will be understood better further on in the case. The result of the whole was that, affirming the Mining Range as the south boundary -- that is to say, carrying the tract to the Azul Range, as being the true Sierra, the district court now made an east line, somewhat such as is exhibited by the light dotted line on the map at p. <69 U.S. 651|>651. The line began at the junction of the two creeks, thence ran south to the eastern base of the loma; thence south 55 west to a point where another angle was made; thence south 34 west to the Azul Range. The effect was that while Larios or his representative got *some* part of the Mining Ridge, the eastern line was made to reach that ridge at a point so far west that the ALMANDEN MINE, the great object of contest, and the largest portion of the ridge, fell into the tract of Berreyesa.

From this decree the claimants under Larios appealed to this Court. So did Foster. *The United States took no appeal*, and the representatives of Berreyesa, of course, were desirous to maintain the decree.

The whole case was now before this Court -- the case as it was presented by all the evidence taken in all the proceedings below. This was the case viewed as an original case.

But on this occasion it was here also, of course, as it might be affected by what had been decided in it on the two different occasions when it was here before on appeal, and when the court had expressed itself, and had given mandates, such as have been previously stated in this report. The effect of the district court's *own* two decisions on its power to decide further was also to be considered; its power, perhaps, under the Survey Law of 1860, to change the decree of confirmation.

As an original case -- the detached parts in which it presented itself below, and on the three different hearings being brought together, and all presented in sequence -- the matter was essentially thus: the *disenos* of both Larios and Berreyesa, the last with the *L-i-n-d-e-r-o* upon it, being, of course, parts of the case everywhere.

1. *As to the southern boundary:* witnesses were brought to

Page 69 U. S. 669

show that the ranges were one sierra, and so that the tract did not include any part of the Mining Ridge. Mr. Veach, a geologist, swore thus:

"The Mining Ridge is detached from the main mountain by a stream that runs from east to west, making a sharp hill between the higher mountain and the plain; but *I* look upon this as only a bench-like portion of the mountain, which has been separated from it by the gorge cut down by the stream. The reason why *I* so consider it is the *gorge* -like character of the valley of the little stream, and the sharpness of the ridge, and the elevation of the bottom of the gorge so considerably above the level of the valley; it is, *I* should judge, 300 feet above it. From *geological* considerations, also, *I* should consider this ridge clearly and distinctly a portion of the mountain. The ridge does not present the spur-like character which would show its detachment from the mountain, for it runs parallel with the general course of the latter."

Mr. Matheson, engaged in the public surveys of the United States, testified in the same way:

"*I* do not consider that there is a main sierra separate from any other portion of the sierra. The Mine Ridge is merely a spur, and connected by a ridge with the main sierra. You can travel from the valley *right up* to the highest point of the ridge."

Referring to the diseno of Larios (p. <69 U.S. 656|>656), it will be noted that his tract, as there indicated, came to a range of hills called *Sierra del Encino* ("range of *the* live-oak," or, less accurately, perhaps, in a grammatical point of view, "live-oak range"). [[Footnote 16](#)]

Oaks, it was shown, grew everywhere about here. "There are a considerable number of them," said one witness,

"on the mountains back of the Mine Ridge and also on the plains north of it. *There are also a considerable number of them found generally on the northern slope of*

the ridge, and presenting a very beautiful green appearance. "

Page 69 U. S. 670

Then there was on this diseno but one sierra indicated. The tract did not include it by passing over to any other behind it. No second range was marked. No streams of any kind answering to any in nature ran on this diseno at the foot of the range, though streams did, in fact, run at the foot of the Azul Range. At the foot of the Pueblo Hills, where a stream ran, in fact, one ran also on the diseno.

Moreover, the residence of Larios -- that in which he had succeeded Galindo -- was, like the home of Berreyesa, on the *north* edge of the tract, at the foot of the Pueblo Hills. [[Footnote 17](#)] Larios was living in this part of the valley. No tract of *one* league, not very irregular in shape, could include the Mining Ridge without excluding nearly all the land along the base of the Pueblo Hills. The maps, moreover, reversed the ordinary law which governs the construction of maps and make the top represent the south, the bottom the north, the right the west, and the left the east; hence, an inference that the point from which everything was viewed was the north edge of the valley. An experiment showed also that the disenos of Berreyesa and of Larios were much the same in size, and taking the two and putting them edge to edge in the manner of "Indentures" -- fitting the edge which indicated the western side of Berreyesa's tract against that which indicated the eastern side of that of Larios, the Pueblo Hills, as marked on each, being fitted and made the starting-point -- that the *Sierra del Encino* of the draft of Larios ranged itself opposite to the *Lomas Bajas* (the Mining Ridge, undoubtedly) of Berreyesa's, and not against the *Sierra Azul*, so plainly, on the draft of Berreyesa, distinguished from it. [[Footnote 18](#)]

On the other hand, witnesses showed that in many respects

Page 69 U. S. 671

the two ridges might be considered different, and by many were so; that the separation, if sometimes called a gorge or ravine, was as often or oftener called a valley. Then one witness, an American who had lived since about 1835 in

California and near the place, testified that the Mining Ridge had been known by the name of *Cuchilla de la Mina*, and as a thing separate from the Azul Range, often known by the name of *Sierra Santa Cruz*, the former being *connected* with the latter only by a ridge at one place. It was shown also, too, that Larios was quite illiterate, "unable to handle a pen," and that his *diseno* had been made for him by a friend of his named Rios, from oral description given him at Monterey, away from the land, Rios himself never having been on the land nor knowing anything about it. He had not, however, drawn that of Berreyesa. The testimony -- that of photography included -- showed, moreover, and this past any question, that while the elevations hereabouts, and the plain also were fruitful in oaks, there was upon the Azul Range one umbrageous oak of venerable years and extraordinary size, standing on a spur of the mountain, projecting boldly from the mass of the range and presenting so clear an outline to an observer in certain directions as to be visible for fifteen miles -- a prominent feature in the landscape. It was testified, in fact, to be so well known to the people of the neighborhood as to have acquired the name of "*Encino Coposo de la Sierra Azul.*" Further, on the *diseno* of Berreyesa, the Mining Ridge was styled *Lomas Bajas*, which means "Low Hills," and the term Sierra was given to the Azul Range -- "Sierra Azul." Hence, ground for an inference that the term "Sierra," in the parlance of that place and time, had become appropriated to the Azul Range, and that "Lomas Bajas," or Low Hills, was the common title of the Mining Range.

The *L-i-n-d-e-r-o*, it will be observed, crosses the Mining Ridge and goes to the Azul Mountains, here designated Sierra Azul.

2. *Then as to the eastern boundary.* In favor of the claim

Page 69 U. S. 672

of Larios, there of course was the *L-i-n-d-e-r-o* and its history.

On the other hand, and in favor of Berreyesa and of the line as settled by the decree below, the testimony of Mr. W. J. Lewis, an acute-minded and well educated surveyor, went to prove that the compass on the *diseno* of Berreyesa

was erroneous to the extent of 45, the north point being represented that much to the eastward; that the actual position of the loma was much more to the east, and near to the junction of the *Alamitos* and *Seco* than that diseno indicates; that standing at the junction of the creek, and looking south, the range of the Azul did present one peak at the west, Mount Umunhum, higher than any near it, and one peak at the east, Mount Bache, much higher than any near it, and higher even than Mount Umunhum. [[Footnote 19](#)] Two elevations, answering or not answering this character, are presented, it will be seen, on the diseno of Berreyesa. So in nature at the Mine, which is near the eastern end of the Mining Ridge, there is a peak known as the Mine Peak, and from that peak there is a continuous descent to the *Alamitos* Creek. On the diseno of Berreyesa, at the eastern edge of the *Lomas Bajas*, or Low Hills (meant confessedly to represent the Mining Ridge, in some part, or to some extent), there was or was not, at its east end, such an elevation and descent. Then it was shown by Mr. Lewis -- who had spent months here, and made surveys and observations of every natural feature of the region -- that while indicating different objects very well, the diseno was drawn without any reference to scale whatever, relative position being wholly misrepresented. The house of Larios, for example, which was in fact thirty feet wide, was made to cover a fifth of the width of the valley, there a mile wide.

Mr. Lewis accordingly thought that he could see in the diseno an intent to represent the three peaks, especially the

Page 69 U. S. 673

two former. [[Footnote 20](#)] *Assuming this to be so*, and comparing the diseno with nature, there would be a great error. In nature, less than one mile in length lay eastward of the division based on the L-i-n-d-e-r-o, and over four and a half miles lay to the westward, whereas the part of the ridge represented on Berreyesa's diseno as lying to the westward of the line would be but five-sixths of a mile, and all the rest was east, on Berreyesa's own land. Hence, the loma or lomita, not being shown in a position true to scale, an inference that Mount Umunhum -- an unmistakable object, and the Mining Peak another -- should govern the location in preference to the lomita, nearer the starting point and less definite, *as this*

surveyor conceived. The difficulty was that by the terms of the grant, the line was to be drawn at the *falda de la loma*, which the interests of Larios interpreted "base of the hill." If the line could cross the hill, going over its "skirt" or "lap" to a *perfectly ascertained point* at the other side of the valley, a decree fixing the eastern line as Lewis fixed it could be supported. The case as to the meaning of "*falda*" was thus: one witness being Mr. Hopkins,

"keeper of the Spanish archives in the office of the Surveyor of the United States for California, well acquainted with the Spanish language and in the habit of translating documents,"

who had in fact made one translation of this grant.

"Q. You have translated the word '*falda*' by the word 'skirt;' have you considered well the exact definition of the word '*falda*,' and is it exactly expressed by the word used in your translation?"

"A. I have carefully examined the definition of the word '*falda*' as laid down in the standard lexicons of the Spanish tongue. I have examined the word as used by ancient and modern writers of the Spanish language, and I can think of no word in the English language which more clearly or legitimately

Page 69 U. S. 674

expresses the meaning than the word 'skirt.' I arrive at this conclusion from the definitions that I find given to the word in the Spanish lexicons and from its use by celebrated Spanish writers."

"Q. In the sense in which you use the word 'skirt,' to what part of a hill or loma is it to be applied?"

"A. It is to be applied to the lower or inferior part of the hill, or *loma*. "

"Q. Have you made any translation of the definition of the word '*falda*' given in any lexicon? if yea, please produce that translation."

"A. I have made a translation of the definition of the word '*falda*,' as laid down in the Royal Dictionary of the Spanish Academy, dedicated to Don Felipe V, and printed at Madrid in the year 1732. Here it is:"

" *Falda*. That part of the long dress from the waist down, as the skirt or blouse of women."

" 'Queen Mary promptly dismounted, and, raising the edges of her skirt (*falda*) and the sleeves of her dress, drew a hunting-knife from her belt, and with her own hands opened the stag.'"

" 'The great queen was riding on a small ass, with the boy-god (*nino dios*) in her lap (*falda*) .'"

" *Falda*. It is very commonly applied to that which drags from the afterpart of a dress worn either by a person holding high office or as a symbol of sorrow by mourners accompanying a funeral."

" He carried the train (*falda*) of Mary, Queen of Scots, the bride of the Dauphin Francis."

" *Falda*. By allusion, or metaphorically, is called that part of the hill or mountain which falls or descends from the middle down. LAT. *Montis Radix*. "

" 'They reached the skirt (*falda*) of a small hill. Naim was a small city situated on the skirt (*falda*) of Mount Hermon.'"

" *Perrillo de falda* (lap dog). The small pet dog, so called because women are so much attached to them that they usually keep them in their laps (*faldas*) that they may not hurt themselves."

" 'I wager that you do not know why Apelles painted Ceres, the goddess of corn, with a lap dog (*parillo de faldas*) .'"

"Q. Please give such examples of the use of the word '*falda*' by Spanish writers as occur to you, and give the translation into English of those passages in which

the word is used. "

Page 69 U. S. 675

"A. The following I found some years ago:"

"The first is from Martin, a Spanish poet."

Iba congi endo flores

Y quard ando en la *falda*

Mi ninfa para hacer una Guirnalda,

&c.;

The translation of which is:

"My love was gathering flowers, and keeping them in her lap (*falda*) to make a garden."

"The second is from Jose de Cadalso, a celebrated Spanish scholar and poet:"

Con pecho humilde y reverente paso

Llegue a la sacra *falda* del Parnaso;

Y como en sue nos vi que llamaban

Desde la sacra cumbre, y me alentaban

Ovidio y Taso, a cuyo docto influjo

Mi numen estos versos me produjo.

"The translation of which is:"

" With humble breast and reverent step I reached the sacred *foot (falda)* of Parnassus, and, as in dreams, heard calling me from the sacred summit, Ovid and

Tasso, who inspired me, and under whose wise influence my muse produced these verses."

"The third is a translation made by Juan de Janrequi, I think in the sixteenth century, from an Italian play. The following is an explanation of these four lines:"

"A romantic young shepherd was very much enamored of a beautiful shepherdess, who, perhaps from a spirit of coquetry, treated him with scorn; the young man took the disappointment so much to heart that he madly threw himself from a neighboring precipice, and the lines of the poet are a description given by an old hermit of the condition and place in which he found the young man:"

" Yo me estaba junto a mi cueva, que vecina al valle, y casi al pie del gran col lado yace, do forma *falda* su ladera enhiesta."

"The translation of which is:"

" I was at my cave, which lies near the valley and almost at the foot of the great hill where its steep side forms a (*falda*) skirt. "

"The fourth is from Jovellanos, a poet of the eighteenth century:"

De la Siniestra orrilla un bosque ombrio

Hasta la *falda* del vecino monte

Se extiende; tan ameno y delicioso

Que le hubiera jazgado el gentilísimo

Morada de algun dios, o a los misterios

De las Silvanas Driadas guadado.

"The translation of which is:"

" From the left shore shady wood extends as far as the *skirt* of the neighboring mountain, so pleasant and delicious that the pagan world might have devoted it as the dwelling of some God, or to the mysteries of the sylvan Dryads."

"The fifth is from a geological report made by Antonio del Castillo, one of the professors in the Mining College of Mexico, in relation to the quicksilver mine of Pedernal, and is as follows:"

" La loma del Durazo esta unida por la parte del sur a otros de la misma formacion que ella separadas por hondonadas o bajos de corta estension, y limitadas al oriente por el mismo arroyo que pasa por la *falda* norte de la primera."

"The translation of which is:"

" The hill of Durazo is united on the part of the south to others of the same formation with it, separated by ravines of short extent, and limited on the east by the same arroyo which flows by the northern skirt of the first."

" *Cross-examination* "

"Q. Have you any reason for supposing that the Spanish dictionary mentioned by you -- the Royal Dictionary of the Spanish Academy, dedicated to Don Felipe V, and printed at Madrid in the year 1732 -- is the *identical dictionary from which the native Californians obtained their definition of* the word '*falda*,' or any other words in use by them?"

"A. I have no reason for so supposing."

On the other hand, evidence from other poets, other dictionaries, and other prose writers tended to prove that if *falda* meant skirt, it meant the edge of the skirt, its extremity as well as its higher folds.

In addition to all this evidence on both sides, of geologists, surveyors, scholars &c.;, photography and landscape painting both were largely invoked for the cause

of justice, and the judges of this Court being unable, of course, to visit the place, three thousand miles away, which the judge below had actually done, sworn representations, the artists' oaths accompanying their work were laid before this bench. To exhibit these photographs and landscapes as part of the "case"

Page 69 U. S. 677

is beyond a reporter's art, as attained to up to this day. The list below, if not giving to the reader an idea of the topography as it existed in nature, will give him some idea of the very special features of the case as it was exhibited in this Court, and bring excuse to the reporter if, without the reader's having them before him, the narrator has failed to present the "case" in its truest and clearest form; and with those impressions from it which, after all, may have influenced the decision. Here they are, photograph and landscape alike -- the landscapes without their colors:

PHOTOGRAPHS

Exhibit No. 1, Photographic View, taken near the junction of the two creeks, looking westerly.

Exhibit No. 2, Photographic View, taken one-quarter of a mile below the junction, looking southwesterly.

Exhibit No. 3, Photographic View of the eastern hill of the Lomita, taken near the junction of the two creeks.

Exhibit No. 4, Photographic View, showing part of the valley and Pueblo Hills.

Exhibit No. 5, Photographic View, showing continuation of valley and Pueblo Hills, and part of Mine Ridge.

Exhibit No. 6, Photographic View, taken near the hacienda, looking towards the southwest.

Exhibit No. 7, Photographic View, taken near the hacienda, looking towards the northeast.

LANDSCAPES

Exhibit No. 1, Landscape View, showing Mine Ridge, a portion of the Pueblo Hills, and the valley between, looking towards the east.

Exhibit No. 2, Landscape View, showing Mine Ridge, a portion of the Pueblo Hills, and the valley between, looking to the west.

Exhibit No. 3, Landscape View, taken from the west bank of the Alamitos, south of the hacienda, looking southerly up the gorge through which the Alamitos flows.

Exhibit No. 4, Landscape View, taken from the same point as No. 3, and looking northerly down the gorge through which the Alamitos flows.

Exhibit No. 5, Landscape View, taken from the east bank of the Alamitos, half a mile above the hacienda, looking up the gorge.

Exhibit No. 6, Landscape View, taken from the south bank of the Arroyo Seco, a short distance above the junction of the two creeks, looking southwesterly.

Page 69 U. S. 678

On this long case the following questions, in effect, now came up for discussion:

1. Did any appeal lie from the "Survey Act?"
2. If so, had the United States, which filed no objections to the survey as made by the Surveyor General, nor took any appeal below, a right to ask here for a reversal or any modification of the decree?
3. After the two decrees of the district court itself and the two decisions made in this Court, was the matter of this eastern line open below for such action as was taken on it by the district court the last time?
4. As an original case and on its merits, what and where were the true east and south boundaries of the tract, the west being settled, and the north run for

quantity?

Page 69 U. S. 704

MR. JUSTICE NELSON delivered the opinion of the Court.

This case has already been twice before the court. [[Footnote 21](#)] It was very ably and elaborately argued at the bar on both occasions, and fully considered by the Court. There is very little, if anything, left that is new to be considered or decided upon the present argument.

The main question in contestation in the two preceding arguments, and which has again been ably and elaborately presented, is that involved in the settlement of the southern boundary of the grant, whether or not the foot of the Sierra, the mountain range, or the *Lomas Bajas*, a range of low hills north of it, constituted this southern boundary. The Board

Page 69 U. S. 705

of Commissioners adopted the Sierra, and its decree, in this respect, was confirmed by the district court. On an appeal to this Court, the same line was fully recognized.

The court, after referring to the lines of the grant to Larios, and to the Sierra, as described in the grant to Berreyesa, the west line of which was a line in common between the two ranches, as agreed upon between the parties previous to the issue of either grant by the Governor, said,

"The southern, western, and eastern boundaries of the land granted to Larios are well defined, and the objects exist by which those limits can be ascertained. There is no call in the grant for a northern boundary, nor is there any reference to the diseno for any natural object, or other descriptive call to ascertain it. The grant itself furnishes no other criterion for determining that boundary than the limitation of quantity, as expressed in the third condition."

The decree of the district court was reversed for the reason that it confirmed to the claimant a larger quantity of land than was embraced in the grant, and the cause was remitted to that court to enter a decree in conformity with the opinion. As it became necessary to remand the cause for the purpose of locating upon the ground the quantity as limited by the above decision, authority was given to the district court to fix the boundaries from the evidence on file and such other evidence as might be produced before it. On filing the mandate in the district court, the counsel for the United States applied for liberty to furnish further evidence, which application was granted. Several witnesses were examined accordingly, their testimony relating chiefly to the southern boundary of the tract, as described in the grant. The court had suspended the entry of the decree, in pursuance of the mandate, until after this evidence was furnished. The decree was filed and entered October 18, 1858. It reaffirmed the Sierra, or mountain range, as the southern boundary, and directed the line to be so drawn as to include the bottom and low lands along the base of this Sierra, and declared the eastern line to be a straight line commencing at the junction of the Arroyo Seco and the Arroyo de Alamos, and thence

Page 69 U. S. 706

running southward to the aforesaid Sierra, or mountain range, passing by the eastern point of the small hill situated in the center of the canada, which was designated in the grants to Larios and Berreyesa, being the same line agreed upon between them as a division line, and which is delineated by a dotted line on the diseno or map in the expediente of Berreyesa. It declares also the western boundary to be the Arroyo Seco, which is the continuation of a stream known as the Arroyo Capitancillos, and the northern boundary to be a line or lines located, at the election of the grantee, or his assigns, under the restrictions established for the location and survey of private land claims in California, in such manner that, between the northern, southern, eastern, and western lines, there shall be contained one league of land, and no more.

The decree then fixes the western line of Fossat, which is a line between him and the Guadalupe Mining Company, that owns one-fourth of the league granted to

Larios, and confirms to Fossat the remaining three-fourths within the lines above declared.

This decree was appealed from by the United States to this Court. [[Footnote 22](#)] The court dismissed the appeal as prematurely brought, the decree below not being a final decree.

In the opinion dismissing the appeal, it is said, after referring to the case when previously before us, [[Footnote 23](#)]

"The court had determined that the grant under which the plaintiff claimed land in California was valid for one league, to be taken within the southern, western, and eastern boundaries designated therein, at the election of the grantee and his assigns, and adds, the district court, in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made. From the decree in this form the United States has appealed."

The court then answers the objections taken to the motion

Page 69 U. S. 707

to dismiss, which were that the inquiries and decrees of the Board of Land Commissioners and of the district court could relate only to the question of the validity of the claim, and not to questions of location, extent, and boundary, and that the district court had gone in its decree to the full limit of its jurisdiction. These objections, after a full consideration of the acts of Congress, of adjudged cases, and of the principles upon which the court was bound to proceed, were overruled, and the court observe that, in addition to the questions upon the validity of the title, there may arise questions of extent, quantity, location, boundary, and legal operation, that are equally essential in determining the validity of the claim, and that in affirming a claim to land under the Spanish or Mexican grants to be valid within the law of nations, the stipulations of the Treaty of Guadalupe Hidalgo and the usages of these governments, we imply something more than that certain papers are genuine, legal, and translatives of property. We affirm ownership and

possession of land of definite boundaries rightfully attach to the grantee. And in closing the opinion, it is observed that,

"After the authenticity of the grant is ascertained in this Court, and a reference has been made to the district court to determine the external bounds of the grant, in order that the final confirmation may be made, we cannot understand upon what principle an appeal can be claimed until the whole of the directions of this Court are complied with, and that decree made. It would lead to vexatious and unjust delays to sanction such a practice."

It will be seen from this opinion, that the reasons for the conclusion that the decree of the district court was not a final one were that the land granted had not been located on the ground by fixed and definite boundaries. A survey of the tract was indispensable in order to locate the northern boundary. That boundary was not given in the descriptive calls of the grant, and depended upon the limitation of the quantity; and until the survey of the three lines given -- namely the eastern, southern, and western, and the three-fourths of a league of land located within them -- the northern

Page 69 U. S. 708

boundary could not be ascertained or fixed. The location of this line was an essential step to be taken on the part of the district court in fulfillment of the duty enjoined by the mandate of this Court. In the interpretation of that mandate, this Court, in its opinion, [[Footnote 24](#)] observes,

"The district court, in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made."

That had not been done.

On the filing of the mandate of dismissal of the appeal in the district court, an order was made directing the Surveyor General to proceed and survey the land confirmed in conformity with the decree as entered in that court, and which, as we

have seen, was entered on the 18th October, 1858. That survey was made and is found in the record. It was approved by the Surveyor General 18 December, 1860, and filed in the court below 22 January, 1861. We have also the testimony of Hays, the deputy surveyor, who surveyed the lines on the ground, and constructed the map; also of Conway, a clerk in the office, who assisted him, and of Mandeville, the Surveyor General, who approved of the map, showing that the survey and map were made in strict conformity with the boundaries of the tract as given in the decree, of which they had a copy, and followed as their guide.

This survey having been made in conformity with the decree of the district court, entered in pursuance of our mandate, would, doubtless, have closed this controversy, had it not been for the act of Congress passed 14 June, 1860, after the entry of the decree in the district court, but before the survey of the tract by the Surveyor General. The act purports to be an act to regulate the jurisdiction of the district courts of the United States in California, in regard to the survey and location of confirmed private land claims. It authorizes the court to allow intervenors, not parties to the record, to appear and contest the survey, or in the words

Page 69 U. S. 709

of the act, "to show the true and proper location of the claim," and for that purpose to produce evidence before the court, and directs that, "on the proofs and allegations, the court shall render judgment thereon." Any party dissatisfied with the decision may appeal to this Court within the period of six months.

Under this act, several parties intervened, and much testimony was furnished to the court in relation to the survey and location of the tract by the Surveyor General, and which is found in the record, embracing some two hundred and twenty pages. And on the 16th November, 1861, the court entered an order reforming the survey, as to the eastern line. Instead of adopting the eastern line of the survey, which had been located as directed in its decree, and which was a straight line from the point of beginning to the termination at the Sierra (the southern boundary), passing by the eastern point or base of the low hill in the center of the canada, the court

directed that, from the base of the low hill, the line south should be deflected fifty-five degrees west, until it reached a given point or object, and from thence south thirty-four degrees west till it reached the Sierra, or mountain range. Instead of a straight line for the eastern boundary, three lines were directed to be run, at considerable angles to each other, between the starting point and the termination. This direction of the court not only reformed the survey of the tract as made by the Surveyor General, but reformed the decree itself of the court, entered on the 18th October, 1858, in pursuance of which the survey had been made. The court assumed that the survey and location of the tract was not to be governed by the decree, but, on the contrary, that it was open to the court to revise, alter, and change it at discretion, and to require the Surveyor General to conform his survey and location to any new or amended decree, for certainly if it was competent to change this eastern line from that settled in the decree, it was equally competent for it to change every other line or boundary as there described and fixed.

Now it must be remembered, that this decree of the district

Page 69 U. S. 710

court designating with great exactness this eastern line, with such exactness that the Surveyor General had no difficulty in its location, was entered in pursuance of and in accordance with the mandate of this Court, and by which that court was instructed at the time of the dismissal of the appeal, that the three external lines declared in it were in conformity with the opinion of this Court, and that the other line -- the north line -- only, remained to be completed by a survey to be made, and that this line was to be governed by quantity, which quantity had been previously determined.

This radical change, therefore, of the eastern line of the tract involves something more than a change by the court of its own decree; it is the change of a decree entered in conformity with the mandate of this Court. But we do not intend to place any particular stress upon this view, for we hold that it is not competent for the court to depart from its own decree in the exercise of the power conferred by the act of the 14th June, 1860. The duty enjoined is not a rehearing of the decree on

its merits; it is not execute it, to fix the lines on the ground in conformity with the decree entered in the case. The decree is not only the foundation of the validity of the grant, but of the proceedings in the survey and location of land confirmed. But independently of this view, which we regard as conclusive, and even if the question was an open one, this alternation is wholly unsustainable. Indeed, the learned counsel for the appellees did not undertake to sustain it on the argument. The fact was admitted that the line was a straight one between the two termini.

An attempt, however, was made to sustain the termination of the line at the same point on the Sierra, or southern boundary, consistent with the line being run straight from the point of starting. This is sought to be accomplished by disregarding one of the descriptive calls in the line, a natural object, namely, the eastern base of the low hill, an object which must have been visible to the eyes of both Larios and Berreyesa at the time they agreed upon the settlement of the line as their common boundary. But even this departure from the grant will not answer the purpose. There is

Page 69 U. S. 711

still the difficulty of getting at the point of termination at the foot of the Sierra. That point or corner must first be ascertained before a straight line can be extended to it from the junction of the two creeks, the starting-point. The only description in the grant by which this point of termination can be ascertained is by running a line from the junction of the two creeks past the eastern base of the low hill southward to the Sierra. It is the extension of this line in the manner described by which this corner on the Sierra is reached and identified. Anyone seeking to ascertain it without the use of these means will find himself without compass or guide.

Now this corner the learned counsel for the appellees propose to fix arbitrarily or by conjecture, and then by drawing a line from the junction of the two creeks to it, a straight line is obtained, and by this process of ascertaining the corner at the Sierra it is made easy to select the one reached by the crooked line of the court below. But then the line, as is admitted, instead of passing by the eastern base of the low hill, would cut it not far from or even west of its center.

The court below, as is apparent, yielded to this argument so far as respected the arbitrary selection of the corner at the Sierra, but refused to depart from the call in the line for the eastern point of the low hill. Hence, the crooked line between that point and the termination. The crooked line has the advantage over the straight one of the learned counsel, as it observes one of the principal calls in the grant. Theirs observes none of them except the starting point.

There are two objections to this view, either of which is fatal.

The first, the point selected at the foot of the Sierra for a corner, is arbitrary and conjectural, and in contradiction to the clear description in the grant. And second, it disregards one of the principal and most controlling calls in it, the eastern base of the low hill.

Our conclusion upon this branch of the case is first that the court erred in departing from the eastern boundary, as

Page 69 U. S. 712

specifically described and fixed in the decree of the 18th October, 1858. And second, that irrespective of that decree, the line in the survey and location approved by the Surveyor General, 18 December, 1860, is the true eastern line of the land confirmed.

The only party that appealed from this order or decree of the district court, in respect to the survey and location, as appears from the record, is the present claimant. He insists upon the correctness of the first survey by the Surveyor General, and that the alteration by the court of the eastern line, and consequently of the other lines made necessary by this change, are erroneous.

The United States did not appeal. It is, however, a party to the record as appellees, and appeared by counsel on the argument in this Court, and took objections to the survey and location, mainly on the ground that the proceedings under the act of 1860 were not judicial, but purely executive and ministerial, and as a consequence that the appeal from the order or decree of the district court,

regulating the survey and location, ought not to be entertained; that the courts could only determine the validity of the grant, leaving its survey and location to the Executive Department of the government. In other words, that the act of 1860 was unconstitutional and void. We need only refer to the opinion of this Court in the present case the second time it was before us as presenting a conclusive refutation of these several positions. The fundamental error in the argument is in assuming that the survey and location of the land confirmed are not proceedings under the control of the court rendering the decree, and hence not a part of the judicial action of the court. These proceedings are simply in execution of the decree, which execution is as much the duty of the court, and as much within its competency, as the hearing of the cause and the rendition of its judgment; as much so as the execution of any other judgment or decree rendered by the court.

This power has been exercised by the Court ever since the

Page 69 U. S. 713

Spanish and French land claims were placed under its jurisdiction, as may be seen by the cases referred to in the opinion of the Court in this case when last before us, [[Footnote 25](#)] and in many others to be found in the reports. The powers of the Surveyor General under these acts were as extensive and as well defined as under the act of 1851. The act of 1860 did not enlarge or in any way affect his powers. They remained the same as before.

The first Act of Congress, March 2, 1805, [[Footnote 26](#)] amended March 3, 1806, establishing a Board of Commissioners to settle private French and Spanish land claims under the Louisiana Treaty, provided for a survey of the confirmed tract by the Surveyor General, under the direction of the commissioners.

And the Act of 26 March, 1824, the first act which placed these land claims under the jurisdiction of the United States district courts, provided that a copy of the decree of the confirmed claim should be delivered to the Surveyor General, and that he should cause the land specified in the decree to be surveyed, and which survey, being presented to the Commissioner of the Land Office by the claimant,

entitled him to a patent. Under this act and other similar acts, the cases referred to in 21 Howard arose, and in which this Court entertained appeals from decrees in the district courts upon the survey and location of confirmed claims. The 13th section of the act of 1851 corresponds substantially with the above provision of the act of 1824. It makes it the duty of the Surveyor General to cause all confirmed claims to be accurately surveyed, and provides that the claimant, on presenting a copy of the decree of confirmation and a plat of survey to the General Land Office, a patent shall issue. It also confers upon this officer the powers of the registers and receivers, under the 5th section of the act of March 3, 1831, [[Footnote 27](#)] which relates simply to the case of interfering confirmed claims.

Page 69 U. S. 714

The duty of the Surveyor General, under all these acts, is to survey and locate the confirmed tract, in conformity with the decree. It is the only guide which is furnished to him; and one of the first instructions from the Land Office is as follows:

"In the survey of finally confirmed claims you must be strictly governed by the decree of confirmation; and when the terms of such decree are specific, they must be exactly observed in fixing the locality of and surveying the claim."

This instruction was given under the act of 1851, and in relation to the private land claims of California, and it was in accordance with this instruction that the survey of the present claim was made and approved by the Surveyor General 20 December, 1860, and filed in the court below 22 January following, and which was reformed by the court by the alteration of the eastern line, as already explained. Those who are desirous of putting the Land Office above the decrees of the courts should at least be satisfied with this instruction of the department, if not with the decrees.

It has been argued that the lines of the tract as given in the grant were outboundaries, like the case of Fremont and others which have been before the Court, and embraced a larger area of land than the one square league, and that the survey and location should not have been controlled by these lines as specific

boundaries.

The first answer to this objection is, admitting it to be true, it can have no influence upon the judgment to be given by this Court. These lines have been adjudicated and settled and incorporated in the decree of the district court, and which decree was entered in pursuance of the mandate of this Court, and no appeal has been taken from that decree. It is said, however, that the decree was not in conformity with the mandate. If so, the party aggrieved should have appealed, and this Court would have corrected the error. This is common learning, and needs no authority.

The error, it would seem, was not discovered until the survey; but this affords no reason for violating established law. The more natural conclusion, we think, is that the

Page 69 U. S. 715

omission to appeal was the result of a conviction the decree was right. It was entered after much testimony taken in respect to it and full argument on behalf of the very parties who now set up this pretext.

The second answer to the objection is that the lines in the grant are not outboundaries in the sense of the cases referred to.

This Court said when the case was first before it,

"The southern, western, and eastern boundaries of the land granted to Larios are well defined, and the objects exist by which these limits can be ascertained. There is no call in the grant for a northern boundary, nor is there any reference to the diseno for any natural object, or other descriptive call to ascertain it. The grant furnishes no other criterion for determining that boundary than the limitation of the quantity as expressed in the third condition."

And the same opinion is substantially expressed by the Court when before it the second time. The Court said:

"The district court, in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made."

It should be remembered this was said of the decree now in question, which was then before the Court. The observations were made in express reference to it.

But, independently of this and looking at the question as an original one, there can be no reasonable doubt about it. The eastern line was in dispute between the two adjoining rancheros (Larios and Berreyesa), and which was carried before the public authorities for settlement, and there finally adjusted by the agreement of the parties. A line could hardly be made more specific. A boundary settled and fixed after litigation by the adjoining owners. The western boundary is a well known natural object, the Arroyo Seco -- a creek; the southern, the Sierra, or mountain range; and no boundary on the north. The grant was of quantity, and of necessity this boundary must be determined by the limitation of that quantity between the lines given.

Page 69 U. S. 716

It is true, in the second condition of the grant it is said the judge who shall give possession of the land shall have it measured in conformity to law, leaving the *sobrante*, the surplus, to the nation. But this is a formal condition, to be found, for abundant caution, in every Mexican grant. There is no *sobrante* here, nor could the judge have measured the grant according to the law or ordinance in a way to have any. Aside, therefore, from the lines being fixed and specific according to the opinion of this Court, and of the decree of the court below in pursuance of it, there could be no reasonable doubt upon the question if an original one.

Much has been said on the argument in respect to the first locations and residences of the claimants on the low lands outside of this northern boundary, and as to the duty of the court to so locate this boundary as to include these possessions. But the answer to these suggestions is obvious. At the time these claimants took possession of the tract, they supposed they were entitled to a

larger quantity of land than one league -- nearly two leagues -- which would have carried this line over and beyond these possessions. But this Court cut down the quantity to one league, and hence these possessions are, with the exception of the old house of Larios, necessarily excluded. It is also said that sales were made to third persons in the valley outside of the line, and that their title should be protected. But they are not complaining of the survey or location as made in pursuance of the decree. Some of them appeared before the district court, and filed objections to it, but have since withdrawn and abandoned them. We do not refer to these objections as entitled to any particular weight or importance, but because the explanations are at hand, for we place the decision of the case upon the ground that the boundaries of the tract have been settled by the final decree of a court of competent jurisdiction, and until that decision is got rid of, there is an end of the controversy.

Our conclusion is that the order or decree of the court below, of the 16th November, 1861, which set aside the survey

Page 69 U. S. 717

of the tract approved by the Surveyor General, 18 December, 1860, and which order or decree was directed to be filed *nunc pro tunc*, as of the 31st October, 1861, and, also, the order or decree of the 16th November, 1861, confirming the new survey, which was filed in court by the Surveyor General on 11th of that month, be reversed and annulled, and that the cause be remitted to the court below with directions to that court to enter a decree confirming the survey of the Surveyor General, approved 18 December, 1860, and filed in court 22 January following.

The only objection that can be made to this survey is that the tract is not located in a compact body. A comparatively small strip or tongue of land is extended from the main body along the eastern line north to the junction of the two creeks, with a view to reach the starting point of the description in the grant. This was unnecessary, as we have seen, for the cutting down of the quantity to a league necessarily carried the north line further south than originally supposed. This

northern line might have been closed with the eastern direct instead of adopting the divergence north to the junction of the two creeks. But the quantity of land embraced in this strip is unimportant, is of no interest to anyone except the government, and scarcely any to it, as, if corrected, an equal quantity must be taken to make out the quantity in the grant from some other part of the public lands. Besides, the government has not appealed.

To remit the case with directions that a new survey be made in conformity with the decree, and for the purpose of correcting this small error, would occasion delay and expense, and benefit no one.

The truth is, since the determination that the southern boundary of the tract was the Sierra, and not the Lomas Bajas, and that the eastern was a straight line, its direction southward to be controlled by the eastern base of the low hills, there is nothing left of this controversy worth contending for -- scarcely merit enough to make it respectable.

Decree reversed and the cause remitted, with directions

Page 69 U. S. 718

to enter a decree confirming the survey approved by Surveyor General, 18 December, 1860.

[[Footnote 1](#)]

According to Mexican traditions, the valley was occupied in early days by two Indians of very diminutive stature, whose bravery, however, was so noted that each was the chief of his tribe. The name of "Little Captains," came from them.

[[Footnote 2](#)]

The reader must be particular to note that both on this map and on the two more rough topographical sketches given in the case, the ordinary rule of position in regard to maps is reversed. The top of the map as the reader looks at it, or in the cases of the disenos at pp. <69 U.S. 654|>654, <69 U.S. 656|>656, as he turns

the book round to read what is on them, is the south; the bottom north; the right the west, and the left the east. The two rough Mexican disenos were thus originally made, and conforming other maps to them has been found more convenient than to adopt the more usual method. The compass on the sketch at p. <69 U.S. 654|>654 shows the thing.

[[Footnote 3](#)]

The portion *between* these two ranges, marked on the map "Ridge," must be distinguished both from the Azul and the Mining Ridge or Range. *It*, as stated directly, is a low, connecting ridge.

[[Footnote 4](#)]

The meaning is a dry creek, this sort of *arroyo* being common in a country of hills and plains, sometimes filled with water from the mountains and sometimes a mere stony bed or "gulch." In this case we have two *arroyo secos*, one of them, however, always designated as the "*arroyo seco* on the side of Santa Clara."

[[Footnote 5](#)]

Marked F. on the map at p. <69 U.S. 651|>651.

[[Footnote 6](#)]

Called indifferently "*loma*" and "*lomita*."

[[Footnote 7](#)]

The diseno of Berreyesa is a very good one; better than forty-nine in fifty of the Mexican disenos. That of Larios is less good, and justifies the title of "daub" given by Grier, J., *supra*, p. <69 U.S. 448|>448, to Mexican disenos in general. The arroyo, or stream called Alamitos, on the map, at p. <69 U.S. 651|>651, is on this called Capitancillos, as indeed it sometimes was; and the Arroyo Seco, on the side of Santa Clara, called simply "Arroyo Seco," is made the west boundary.

[[Footnote 8](#)]

Slaughterhouse.

[[Footnote 9](#)]

The diseno is *supra* at page <69 U.S. 654|>654.

[[Footnote 10](#)]

The quarter of a league conveyed to the company, is indicated on the map at page <69 U.S. 651|>651, in shade.

[[Footnote 11](#)]

[61 U. S. 20](#) How. 413.

[[Footnote 12](#)]

About a league and three quarters -- REP.

[[Footnote 13](#)]

Given on page <69 U.S. 655|>655.

[[Footnote 14](#)]

[62 U. S. 21](#) How. 445.

[[Footnote 15](#)]

12 Stat. at Large 33.

[[Footnote 16](#)]

The plural would be *Sierra de los Encinos*.

[[Footnote 17](#)]

On Berreyesa's diseno, as the reader will see, these hills marked as "Lomas Bajas, para la parte del plan del Pueblo." On that of Larios they are styled simply

"L-o-m-a-s B-a-j-a-s."

[[Footnote 18](#)]

From the necessity of getting the whole of both disenos in the page, and so of making the scale of Berreyesa small enough to let in the "Sierra Azul," this thing is not so well shown by the two disenos given to the reader. The scale of Berreyesa's is the smaller.

[[Footnote 19](#)]

Mount Umunhum is 3,440 feet above the sea; Mount Bache, 3,780 feet, or 350 feet more. The position of Mount Bache is not, from want of space, accurately indicated on the map at p. <69 U.S. 651|>651. It is sufficiently so, however, to explain things. In nature it stood more to the east and south.

[[Footnote 20](#)]

Mount Bache, as Mr. Lewis supposed, was meant to be designated by the elevation over the letter C in "Cierra," Mount Umunhum being at the right of the same ridge, and the Mine Peak being over the letter L in "Lomas Bajas."

[[Footnote 21](#)]

[United States v. Fossat](#), 20 How. 413; [Same v. Same](#), 21 How. 445.

[[Footnote 22](#)]

[United States v. Fossat](#), 21 How. 445

[[Footnote 23](#)]

Reported [61 U. S. 20](#) How. 413

[[Footnote 24](#)]

[62 U. S. 21](#) How. 447.

[[Footnote 25](#)]

[65 U. S. 21](#) How. 445.

[[Footnote 26](#)]

2 Stat. at Large p. 441; 6, 7.

[[Footnote 27](#)]

4 Stat. at Large 494.

MR. JUSTICE CLIFFORD dissenting.

I concur in the opinion that the true division line between the rancho of Justo Larios and that of Jose Reyes Berreyesa is a straight line, and consequently that the decree in question should be reversed, but I dissent altogether from the directions given to the court below and from the reasons assigned in support of those directions. Some brief reference to the title papers and to the facts and circumstances of the case is indispensable in order to a clear understanding of the nature of the controversy and of the grounds of my dissent from the views expressed in the opinion pronounced in behalf of a majority of the Court.

I. Appellant, in his original petition to the commissioners appointed under the act of the 3d of March, 1851, prayed for the confirmation of his title to an undivided interest of three-fourths in a certain tract of land lying in the County of Santa Clara, in the State of California, and known as the Canada de los Capitancillos, which, as he alleged, was contained within certain natural boundaries. When he presented the petition, he filed with it copies of the expediente and of the original grant under which he claimed, and his representation was that he held the title to the tract through certain mesne conveyances therein mentioned and described. Referring to the expediente, it will be seen that it consists of the petition of Justo Larios, the original donee of the tract, addressed to the Governor, together with the diseno and the usual marginal decree and the concession or vista la peticion and the titulo or original grant. Provisional grant of the land it seems had been made at some early period by the Ayuntamiento of the Pueblo of San Jose Guadalupe to

one Leandro Galindo, who built a house on the premises and lived there for many years prior to the grant of Justo Larios, or to any application by him for the same. House of the occupant was north of the highway and pretty close to the southern base of the Pueblo Hills. Original

Page 69 U. S. 719

claimant, Justo Larios, in his petition to the Governor, dated at Monterey, on the sixteenth day of June, 1842, represented that he had purchased from the owner of the house all the right he had to the land by virtue of that provisional concession. Such provisional concessions, it is known, were often made, and that it frequently became necessary for a subsequent applicant for a grant of the same tract to purchase the improvements made by the occupant as a means of facilitating his own application. Petitioner describes the tract as a place known by the name of the Canada de los Capitancillos, and states that the limits of said tract are from the boundaries of Santa Clara to the corral, called the corral of the deceased Macario. Decree of concession recites that Justo Larios is the owner in full property of a part of the land called Canada de los Capitancillos, bounded by the Sierra, by the Arroyo Seco, on the side of Santa Clara, and by the rancho of the citizen Jose Reyes Berreyesa, which has for boundary a line commencing at the angle formed by the junction of the Arroyo Seco and the Arroyo de los Alamitos, thence southward to the Sierra, passing the eastern base of the small hill situated in the center of the canada.

II. Attention to the description given of the canada, as contained in the concession, will show, especially when it is taken in connection with the language of the petition, that all of the boundaries of that part not previously granted are either expressly given or so clearly indicated as to amount to the same thing, and to leave no room for doubt as to the intention of the granting power. All will agree, I suppose, that the course of the Arroyo Seco, on the side of the church property called Santa Clara, was well known. Properties of that description were usually well defined, and there is not the slightest pretense of evidence in the case to show that this line was ever in dispute. West line of the tract is therefore fixed beyond peradventure. East line of it, as agreed on all sides, is the west line of the

rancho of Jose Reyes Berreyesa. Controversy arose at one time between the original proprietors of those ranchos as to that division line,

Page 69 U. S. 720

but it was duly settled by competent authority. Nothing need be added upon that subject, as I agree that the line should be a straight one, as assumed in the opinion of the Court; but I insist that it commences at the angle formed by the junction of the Arroyo Seco and the Arroyo de los Alamitos, and runs south to the Sierra, wherever that may be. Beginning is at the angle formed by the junction of those two Arroyos, and that angle, as all must agree, is north of the house built by Leandro Galindo, and close to the base of the Pueblo Hills, on the northern side of the canada. Larios purchased that house and the adjacent improvements, and was living in the house when he presented his petition to the Governor and when the grant was made. He asked for the valley, alleging that he had occupied it "since the year 1836," and it was part of the valley which was granted to him, as will presently more fully appear. Rancho of Jose Reyes Berreyesa lies east of this tract, and of course the west line of that rancho is the east line of the claim under consideration. Grant to Jose Reyes Berroyesa is the elder grant, and as the tract in question is bounded on that rancho, it is both proper and necessary to refer to the title papers in that case and to look at the actual location of that grant upon the land to aid in the solution of the present controversy. Grantee, in that case, became possessed of a part of the same canada or valley, in the year 1834, under a grant from Governor Figueroa, and he continued to occupy it with his family until 1842, and perhaps later. During that year, he complained to the Governor that his neighbor, Justo Larios, had disturbed his possessions, and prayed that there might be granted to him two sitios of the valley, extending from the house of Justo Larios to the matadero or slaughterhouse, erected by him at the easterly end of the valley, "with all the hills that belong to the canada." Commissioners confirmed his claim for one league, and on appeal the decree was confirmed by the district court. Appeal was thereupon taken to this Court, and this Court held that the concession and titulo described a parcel of land included within natural boundaries, but that the conditions of the grant confined

it to a single league in quantity, and affirmed the decree of the district court, ordering

"the land to be located according to the description, and *within the boundaries* set out in the original grant, and delineated on the map contained in the expediente. [[Footnote 2/1](#)]"

III. All or nearly all the improvements made by the claimant in that case also were north of the *camino* or highway, and close to the Pueblo Hills on the northern side of the valley. He built two houses, and they were and are both situated nearly as far north as the angle formed by the junction of the before-mentioned arroyos. Northern boundary of the *canada*, therefore, was evidently understood by the grantees of both these ranchos to be what it is in truth and faith -- the southern base of the Pueblo Hills. Southern boundary of the *canada* is described as the Sierra, and much effort is expended in the attempt to prove that by the word "Sierra" is meant the Sierra Azul, or the main Sierra. Be that as it may, still, in my view of the case, the opinion of the Court is clearly founded in error.

But I deny that the *canada*, or valley, as described in the title papers, and as understood either by the respective petitioners or by the granting power, extended southwardly beyond what are called the Lomas Bajas, or low hills. Those hills, or certain portions of them, are seventeen hundred feet above the level of the Bay of San Francisco, and might well have been regarded by the petitioners and the governor as the northern base of the main Sierra. Evidence shows that there is no table land between those hills and the main Sierra, which is called the Sierra Azul, and that they are only separated from the higher range by a narrow, broken, irregular gorge, which forms the bed of the Arroyo de los Capitancillos, through which tumble the waters of that stream on their way from their source in the highlands to the southern skirt of the valley below, which takes its name from the name of the arroyo by which it is watered. Party then interested asked for the *sobrante* of the *canada* lying

between the Arroyo Seco, on the side of Santa Clara, and the rancho of Jose Reyes Berreyesa; but the Governor refused to make the grant in that form, but limited it to one *sitio de ganada mayor*, or to one league of a larger size.

IV. Application was for the *sobrante* of the canada, but if the quantity of the table land was insufficient to meet the requirement of the grant, then there would be some show of reason for giving the document a more liberal interpretation, so as to include within the boundaries the quantity granted. No such difficulty, however, arises in the case, because, in any view taken of the subject, the quantity included within the outboundaries is more than double the quantity to which the claimant is entitled.

Stripped of all side issues, therefore, the only question is whether the grant which was for the lands of the valley shall be located there or upon the mountain, which is the southern boundary of the valley where the land lies for which the petitioner asked when he made his application to the Governor.

V. Suppose it were otherwise, and that the main Sierra, or Sierra Azul, is really the southern boundary of the valley, still I maintain that the directions given to the court below to enter a decree confirming the survey of the twentieth of December, 1860, are plainly and clearly erroneous. Operation of those directions, when they are carried into effect, will be to locate the principal portion of the claim upon the *Lomas Bajas* and to exclude all the table lands except the narrow strip called in the opinion of the Court a tongue, which is more than a mile in length and only from twenty to thirty rods in width, and borders on the west line of the adjacent rancho. Survey apparently was commenced at the main Sierra on the line of the rancho of Jose Reyes Berreyesa, and runs northwardly no that line entirely across the valley to the angle formed by the junction of the Arroyo Seco and the Arroyo de los Alamitos, whereas it should have been commenced at the angle formed by those two arroyos, and run south for quantity, so as to have included the valley for which the petitioner asked when he applied to the governor

for the grant. Having determined to commence south and run north for quantity, it became necessary to make that narrow strip or tongue, else one of two things would follow which must be avoided. Either the tract would not include the house of the claimant or it would exceed the quantity of one league if it included the quicksilver mine. Apparently it was a *sine qua non* that it should include the mine, and it was doubtless thought desirable that it should also include the house of the claimant, because it must have been known that the usages and customs of the country required it in the location of such grants.

Besides, the recital of the concession is that the rancho of Jose Reyes Berreyesa has for boundary a line commencing at the angle of the two arroyos before mentioned, and it may be that it was thought proper to have some regard to that recital. But it would not do to take more than a narrow strip of the valley, because if more was taken, either the mine must be excluded or the quantity would be too great, and hence all the residue of the table lands must be excluded. Boundaries in the grant are the same as those given in the concession, and consequently are subject to the same observations. Second condition of the grant is that the donee shall solicit the proper judge to give him juridical possession in virtue of the decree, by whom *the boundaries shall be measured out*, and he shall put on the boundaries, in addition to the landmarks, some fruit trees or useful forest trees. Third condition describes the land as one league of the larger size, and the requirement is that the judge who shall give the possession shall have the land measured in conformity to law, leaving the surplus which remained to the nation. Land commissioners confirmed the claim for one league, but on appeal taken by the claimant to the district court that decree was reversed and a decree entered confirming the claim as one for the whole tract with specific boundaries. Whereupon an appeal was taken to this Court, and this Court reversed that decree and decided that the claim was for one league of land, to be taken within the southern, western, and eastern boundaries designated therein,

and which was to be located at the election of the grantee or his assigns, under the restrictions established for the location and survey of private land claims in California, by the Executive Department of the government. Plainly this Court then decided that the grant in this case was not one by specific boundaries, but was a grant by quantity, to-wit, for one league of land. And the Court went on to say that the external boundaries designated in the grant may be declared by the district court from the evidence on file, and from such other evidence as may be produced before it, and the claim of an interest equal to three-fourths of the land granted is confirmed to the appellee. Nothing can be plainer, I think, than the fact that it was the outboundaries of the canada that this Court authorized the district court to declare. Decree of the district court then under revision declared the grant to be one of specific boundaries, and assumed to fix them, but this Court reversed that decree and declared that the grant was not one of specific boundaries, but a grant for one league of land, and expressly declared that it was to be taken within the three boundaries named, and was to be located at the election of the grantee or his assigns, *under the restrictions established for the location and survey of private land claims in California by the Executive Department of the government.* [[Footnote 2/2](#)]

VI. Where there are no guides in the title papers and the claimant has made no improvement nor done any act, as by sale of a part or otherwise, to influence the decision as to the location, the regulations of the Executive Department, as a general rule, allow the claimant an election as to the location within the external or outboundaries of the tract or place described within the grant, subject to the qualification that he must take the land in a compact form, and as far as practicable leave the residue in the same condition. But where the title papers furnish a guide or where he has built a house or made other improvements on the claim, or where he has sold a part of his claim, very different rules

Page 69 U. S. 725

prevail. Locations under such circumstances are made to conform as near as may be to the intent of the granting power as indicated in the title papers -- always, however, subject to the qualification that it must include the improvements of the

claimant, and, as far as is consistent with the public interest, be made to conform to the parts conveyed, so that the location may be in one body, and leave the public lands in the same condition. Reference undoubtedly was made by the court to these rules, when it is said that the location must be made under the restrictions established by the Executive Department of the government. These suggestions are sufficient, I think, to demonstrate beyond cavil that the boundaries mentioned in the opinion of the court in that case were the external boundaries, and that it was those boundaries which were to be fixed by the district court, and not the specific boundaries of the claim, else there would have been nothing to which the restrictions established by the Executive Department of the government could be applied. Taking this view of the opinion in that case, it is clear and consistent, and if it had been followed, the case would have been free from all embarrassment. Grant of claimant was declared to be a grant by quantity, to be located within certain outboundaries, three of which were already ascertained, and it was left to the district court to ascertain the fourth from the evidence on file and such other evidence as might be taken by the parties, but the survey and location were to be made under the rules and regulations of the land department. Mandate of this Court was that the decree of the district court should be reversed and that the cause be remanded with directions to enter a decree in the case in conformity to the opinion of this Court. Opinion of this Court was, as before stated, that an interest equal to three-fourths of the land granted should be confirmed to the claimant, and that the district court should ascertain the northern boundary of the Canada, and when that was done that the land department should make the survey and location. Cause was remanded, but the district court, instead of following the mandate of this Court, on the

Page 69 U. S. 726

eighteenth of October, 1858, entered a decree defining the specific boundaries of the claim.

VII. Appeal was taken to this Court by the United States, but this Court dismissed the appeal, holding that it was improvidently taken, and remanded the case for further proceedings to be had therein in conformity to the opinion of this Court.

Decision, in effect, was that this Court had no jurisdiction of the case, and hence the opinion of the Court upon any matter connected with the merits of the controversy can hardly be regarded as authority; but it is not necessary to decide that point, as the Court in express terms reaffirm what had been decided in the first case. Both decisions of this Court in this case therefore show that the grant is one by quantity, to be located within the boundaries of the Canada, and I entertain no manner of doubt that such is the true construction of the grant. Such a claim should be surveyed and located under the rules and regulations of the Executive Department, whether it be made by the Land Office or by the courts. Location as decided in the opinion of the court in this case will be in violation of everyone of those rules and regulations, and will also be diametrically opposed to the opinions of this Court in the two cases to which reference has already been made. These propositions, as it seems to me, are not refuted in the opinion just pronounced, even if they are not impliedly admitted; but the suggestion is that the district court, in the decree of the eighteenth of October, 1858, decided that the grant was one with specific boundaries and proceeded to fix them in the decree, and that the decree then entered is in full force and unreversed, and that inasmuch as the appeal taken by the United States was dismissed and no new appeal was taken, the decree is binding on this Court although it was contrary to the mandate of this Court given in the same cause. Considering the peculiar nature of the jurisdiction in this class of cases, I cannot admit that doctrine. Proceedings in this class of cases are very different from the proceedings in suits at common law. Where the grant is of a tract by specific boundaries, there would be some force in the argument, because in

Page 69 U. S. 727

that class of cases it is incumbent upon the court not only to determine the question of confirmation but also, if it be decided to confirm the claim, to determine the boundaries of the grant as a part of the original adjudication.

VIII. Such, however, is not the rule, and never was where the claim is what is called a floating claim, or where the grant is one by quantity, to be located within certain outboundaries, embracing a larger tract than the grant. All the courts have

to do in such cases is to decide the question of confirmation, and leave the location to the Executive Department of the government. Attention, however, is called to the Act of the fourteenth of June, 1860; but the answer to that reference is that the provisions of that act have nothing to do with the decree of the district court, entered on the eighteenth of October, 1858, nearly two years before the act was passed. Opinion of the Court undertakes to vindicate the directions given in the cause, not upon the ground that the provisions of that act apply in the case, but upon the ground that the prior decree of the district court had the effect to determine the controversy, and really that no further survey and location are necessary. Questions of this magnitude cannot be evaded, and ought not to be under any circumstances. Having given the subject all the consideration in my power, I am of the opinion that all that part of the decree of the district court, rendered on the eighteenth of October, 1858, which attempts and professes to fix the boundaries of the claim in this case, was *coram non judice*, and utterly void. Reluctant as I am to differ from the majority of the Court on this occasion, still I have much satisfaction in reaching that conclusion; because if twenty millions of property must pass from the United States to those who have no pretense of title to it, I am not willing to cast the blame of such a monstrous result upon the office of the Attorney General, or to place my decision in such a cause upon a mere technicality. Patient and thorough investigation has convinced me that the title to the quicksilver mine is in the United States, and it shall never pass into other hands by my vote while that conviction

Page 69 U. S. 728

remains, although I may stand alone. If this great wrong must be done, I would that it could have been done upon some other ground; for it seems that, in the opinion of the Court, the case has been pending six years since it was finally and conclusively decided, which is an anomaly, perhaps, never before witnessed in a judicial tribunal. In my view of the case, the decree of the court should be reversed, and the cause remanded with directions to order a new survey under the rules and regulations of the Executive Department of the government.

[[Footnote 2/1](#)]

[United States v. Heirs of Berreyesa](#), 23 How. 499.

[[Footnote 2/2](#)]

[United States v. Fossat](#), 20 How. 427.

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