

United States Vs. Perot

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Appellant : United States

Respondent : Perot

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United States v. Perot - 98 U.S. 428 (1878)

U.S. Supreme Court United States v. Perot, 98 U.S. 428 (1878)

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98 U.S. 428

APPEAL FROM THE DISTRICT COURT OF THE UNITED

STATES FOR THE DISTRICT OF LOUISIANA

SYLLABUS

1. Spanish grants made in Texas for lands in the "Neutral Ground," east of the Sabine, from 1790 to 1800, are valid.

2. The Mexican league applicable to grants of such lands, being a square of 5000 varas on each side, has always been estimated at 4428.4 acres, the vara being considered 33 1/3 American inches.
3. The true Mexican vara is slightly less than 33 American inches, but by use in California it is estimated at 33 inches, and in Texas at 33 1/3 inches.
4. The common usage of a country in reference to its measures should be followed in estimating them when mentioned in grants taking effect there.
5. Where countries have been acquired by the United States, its courts take judicial notice of the laws which prevailed there up to the title of such acquisition. Such laws are not foreign, but those of an antecedent government.

The facts are stated in the opinion of the Court.

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MR. JUSTICE BRADLEY delivered the opinion of the Court.

The claim in this case is for four leagues of land granted by Bernardo Fernandez, commandant of the post of Nacogdoches, under the Spanish government, in the Province of Texas, to Pedro Dolet, on the 27th of December, 1795, and extended in possession on the 14th of January, 1796. The land was situated on the bayou of the Adoise, in the settlement of Bayou Pierre, and in what is known as the Neutral Ground, lying east of the Sabine River, and west of the arroyo Hondo, the Kisachey, and the Calcasieu. This territory was then claimed as belonging to Texas, and was occupied and settled by the Spanish authorities of that province, though claimed by the Province of Louisiana -- the Spanish settlements in Texas having been pushed forward easterly across the Sabine. After the cession of Louisiana to the United States, it became a subject of dispute between our government and Spain, and the Sabine was finally acquiesced in as the boundary line. But as Spain owned both provinces at the time of this grant, there can be no question as to its validity. Such a grant for a large tract of over 200,000 acres of land in the same district was confirmed by this court in [United States v.](#)

[Davenport's Heirs](#), 15 How. 1. The grant in that case was made in the same year as the grant in this case, 1795. The Court, by Mr. Justice Campbell, said:

"The land comprehended in these grants at their respective dates was within the unquestioned dominions of the crown of Spain. The evidence clearly established that the commandants of the posts at Nacogdoches, before and subsequently, were accustomed to make concessions to lands in the neutral territory. This was not at all times an unquestioned jurisdiction, but between the years 1790 and 1800 it seems to have been generally acquiesced in."

We think, therefore, that the grant must be sustained. The evidence produced to authenticate it is, under the circumstances, all that the claimants could be expected to produce.

But the grant is for four leagues only. The claimants obtained a decree below for four American or English leagues, and such leagues may have been inadvertently allowed in some previous cases. But it is evident that no such leagues were in the minds of the parties. The leagues intended were Spanish

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leagues, such as were used in land measures and grants in Mexico and Texas at that period. Now we are bound to take judicial notice that the Mexican league was not the same as the American league. The laws of Mexico, of force in Texas previous to the Texan revolution, were the laws not of a foreign, but of an antecedent government, to which the government of the United States, through the medium of the Republic of Texas, is the direct successor. Its laws are not deemed foreign laws, for as to that portion of our territory they are domestic laws, and we take judicial notice of them. [Fremont v. United States](#), 17 How. 542, [58 U. S. 557](#) .

If any doubt existed as to the extent of the Mexican league, an inquiry might be necessary to ascertain it. But no such doubt exists. The old legal league, by the laws of Spain, and which was adopted in Mexico, consisted of 5,000 varas, and a vara in Texas has always been regarded as equivalent to 33 1/3 English inches --

making the league equal to a little more than 2.63 miles, and the square league equal to 4,428 $\frac{4}{10}$ acres. This is perfectly well understood in Texas, where controversies respecting Spanish titles are constantly brought before the courts.

Strictly speaking, the standard vara of Mexico is somewhat less than 33 $\frac{1}{3}$ inches. Our engineers, at the close of the Mexican war, brought back with them a copy of that standard found in the Mexican archives, being one of a set prepared for distribution among the Mexican States. This standard is still preserved in the Coast Survey office, and by careful comparison with our standards by Professor Bache, was found to be only 32.9682 inches. This agrees very closely with the public reports of the government of Mexico on the subject, which make their vara 838 millimeters, which are equivalent to 32.9927 inches. Humboldt, in 1803, found it to be 839.16 millimeters, or a slight fraction over 33 inches. But it seems that a vara measure of somewhat larger dimensions obtained in Texas from an early period, and the result is what has been stated above, 32 $\frac{1}{3}$ inches to the vara, and 4,428.4 acres to the league. The cordel, a cord of 50 varas, or about 137 $\frac{1}{2}$ feet in length, was the instrument generally used in measuring large tracts, one hundred of these making a league, and it is

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probable that the cordel originally employed in Texas had become somewhat lengthened by use. See the Constitution and Laws of the Republic of Mexico and of the States of Coahuila and Texas, New York, 1832; also Yoakum's History of Texas, vol. i. p. 217; Rockwell's Spanish and Mexican Laws, p. 664; Halleck's Report, Ex.Doc. No. 17, H.Rep. 1st Sess. 31st Cong. p. 145.

The standard Mexican vara is so near to 33 inches (wanting, according to the best measurements, less than a hundredth of an inch of that quantity), that a standard vara measure laid on an American yard would so nearly correspond with 33 inches, that the difference could not be perceived by the naked eye. Hence, in California, after its acquisition by the United States, a vara came to be considered as exactly equal to 33 inches, and this result was sanctioned by the General Land Office as early as 1852. The United States Surveyor General of California, in a

report to the land office, dated at San Francisco, Nov. 14, 1851, said:

"All the grants, &c., of lots or lands in California, made either by the Spanish government or that of Mexico, refer to the 'vara' of Mexico as the measure of length. By common consent here, that measure is considered as being exactly equivalent to thirty-three American inches."

He then refers to other estimates found in a recent publication, and adds:

"It is important that the relative proportions of their measures should be clearly settled. I therefore have to ask the aid of the department in doing so."

The commissioner, in an answer to this letter, dated Washington, March 5, 1852, said:

"You state that by common consent it [the Mexican vara] is considered in California as exactly equivalent to 33 American inches. I can see no reason why there should be any departure from this ratio, and agree with you that any important change in the length of the 'vara' recognized and acted upon in California would produce confusion."

It is understood that the department has always, since that time, acted upon this standard of value of the vara in respect to surveys in California, which makes the square league of 5,000 varas to the side, equivalent to 4,340.278 acres. In a letter addressed by Mr. Wilson, Commissioner of the General Land Office, to the late Mr. Justice Catron of this Court on

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the 20th of February, 1855, he says that the practice of the land office is to consider and allow the vara in California as equivalent to 33 inches, and the league as equivalent to 4,340.27 acres.

It is important that the uniform practice and usage of a country should be observed in the construction of all grants made therein whilst such usage prevailed.

For this reason, we think that in Texas, and in relation to grants emanating from the Mexican government in that province, before its separation from the parent state, the vara and league recognized in land measures there should be respected.

Allowing the claimant, therefore, at the rate of 4,428.4 acres to the league, according to the rate above referred to, he is entitled to a decree for 17,713 $\frac{6}{10}$ acres, instead of 23,040, as decreed by the court below, requiring a deduction of 5,326 $\frac{4}{10}$ acres. If the claimant will remit this excess, he will be entitled to an affirmance of the decree for the balance, namely, for 17,713 $\frac{6}{10}$.

On filing such remitter, a decree may be entered accordingly; and it is

So ordered.

NOTE -- The following table shows the different values given to the Mexican vara and league by different measurements and authorities:

image:a

Vide Diccionario Universal de Historia y de Geografia, article Medidas y Pesas, and authorities cited in opinion.

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