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Maxwell Land Grant Case

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SooperKanoon Citation : sooperkanoon.com/85648

Court : US Supreme Court

Decided On : Apr-18-1887

Appeal No. : 121 U.S. 325

Appellant : Maxwell Land Grant Case

Judgement :

Maxwell Land Grant Case - 121 U.S. 325 (1887)
U.S. Supreme Court Maxwell Land Grant Case, 121 U.S. 325 (1887)

Maxwell Land Grant Case

Argued March 8-11, 1881

Decided April 18, 1887

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLORADO

SYLLABUS

It does not satisfactorily appear that the grant of Governor Armijo of 1841 to Beaubien and Miranda, since ascertained to amount to 1,414,164.94 acres, was of that character which, by the decree of the Mexican Congress of 1824, was limited to eleven square leagues of laud for each grantee.

It does appear that, though the attention of Congress was turned to this question, it confirmed the grant in the Act of June 21, 1860, to the full extent of the boundaries as described in the petition of claimants.

In such case, the courts have no jurisdiction to limit the grant, as the Constitution, by Article IV, 1, vests the control of the public lands in Congress. *Tameling v. United States Freehold Co.,* 93 U. S. 644 .

While courts of equity have the power to set aside, cancel, or correct patents or other evidences of title obtained from the United States by fraud or mistake and to correct under proper circumstances such mistakes, this can only be done on specific averments of the mistake or the fraud, supported by clear and satisfactory proof.

The general doctrine on this subject is that when in a court of equity it is proposed to set aside, to annul, or correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt.

Where the purpose is to annul a patent, a grant, or other formal evidence of title from the United States, the respect due to such an instrument, the presumption that all the preceding steps required by law had been observed, the importance and necessity of the stability of titles dependent on these official instruments, demand that the effort to set them aside should be successful only when the allegations on which this attempt is made are clearly stated and fully proved.

In this case, the evidence produces no conviction in the judicial mind of the mistakes or frauds alleged in the bill, and the decree of the circuit court dismissing it is affirmed.

The United States filed this bill in equity to set aside a patent dated May 19, 1879, granting to Charles Beaubien and Guadalupe Miranda, 1,714,764.94 acres of land in New Mexico and Colorado. The location of the land is shown on Map

No. 2 in the opinion of the Court. After the taking of proof by complainant, an amended bill was filed December 5, 1883. The respondents demurred, and, the demurrer being overruled, answered, and, after hearing, the bill was dismissed. From this decree the United States appealed.

The Republic of Mexico in 1841 made a grant of land to Beaubien and Miranda, accompanied by juridical possession, according to the forms of Mexican law. A sketch of the official diseno, forming part of the giving of possession is in the opinion of the Court, Map No. 1. The description will be found in the opinion of the Court, *post,* 121 U. S. 361 .

On the 15th of September, 1857, the Surveyor General of New Mexico, pursuant to 8 of the Act of Congress of July 22, 1854, establishing the office of Surveyor General of New Mexico, &c.;, reported the grant to Congress for confirmation as

"a good and valid grant according to the laws and customs of the government of the Republic of Mexico and the decisions of the Supreme Court of the United States, as well as the Treaty of Guadalupe Hidalgo."

The grant was accordingly confirmed, as recommended by the Surveyor General, June 21, 1860, 12 Stat. 71.

In 1869, having previously become the proprietor of the grant, Maxwell applied to the Land Department for its survey, claiming that it comprised about 2,000,000 acres lying partly in Colorado but mainly in New Mexico. The matter of the survey was in due course taken to the Secretary of the Interior, and on the 31st of December, 1869, Secretary Cox decided that the confirmed grant was limited to two tracts of eleven square leagues each. In 1871, the Maxwell Land Grant and Railway Company, having meantime become the owner of the grant, renewed the

application for a survey and patent under the claim as put forth by Maxwell in 1869; this application was refused by Secretary Delano upon the ground that the decision of Secretary Cox was final as to the extent of the grant so far as the Executive Departments were concerned. In March, 1877, the Maxwell Land Grant and Railway Company made another application for a patent upon the claim of locality and extent as theretofore. A survey was

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ordered and executed the same year, and the patent issued under the survey May 19, 1879.

These were the facts as claimed by the United States, and in this Court their counsel maintained that the decree dismissing the bill was erroneous in the following respects:

" *First.* The grant of the Republic of Mexico could not under Mexican laws exceed altogether twenty-two square leagues, equivalent to 97,424.8 acres of land, to be found within the out-boundaries designated."

" *Second.* The report of the Surveyor General of September 17, 1857, recommended the grant for confirmation for no greater quantity of land than twenty-two square leagues."

" *Third.* The confirmatory act of June 21, 1860, did not operate as a grant *de novo* for the land in excess of twenty-two square leagues."

" *Fourth.* The survey under which the patent issued and the patent itself included, in addition to the twenty-two square leagues, many hundred thousand acres within the out-boundaries designated in the grant proceedings, not included in the grant as confirmed, and also several hundred thousand acres (about 400,000) lying upon the outside of the eastern and northern out-boundaries, also not included in the confirmed grant."

" *Fifth.* The patent was issued by the officers of the Land Department to include the lands within the out-boundaries set down in the grant proceedings, in excess

of twenty-two square leagues, inadvertently and by mistake caused by ignorance of the law and of their authority in the premises, and to include the lands outside the out-boundaries, inadvertently and by mistake produced by the frauds and deceits practiced upon the Commissioner of the General Land Office by the owners of the grant and their agents, and by Surveyor General Spencer, and the deputy United States surveyors Elkins and Marmon in the interest of such owners. "

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MR. JUSTICE MILLER delivered the opinion of the Court.

The case before us is an appeal from the Circuit Court of the United States for the District of Colorado.

The decree from which this appeal is taken dismissed a bill brought in that court by the United States against the Maxwell Land Grant Company, the Denver and Rio Grande Railway Company, the Pueblo and Arkansas Valley Railroad Company, and the Atchison, Topeka and Santa Fe Railroad Company. It was brought by the Attorney General of the United States, and its purpose was to have a decree setting aside and declaring void a patent from the United States granting to Charles Beaubien and Guadalupe Miranda, their heirs and assigns, a tract of land described in a very extensive survey, which is made a part of the patent. It is stated in the brief of the assistant attorney general in this Court that the patent conveys 1,714,764.94 acres of land, lying partly in the Territory of New Mexico and partly in the State of Colorado. This patent is dated May 19, 1879, and seems to be regular on its face in every particular. The bill to set this patent aside was filed in the Colorado Circuit Court on August 25, 1882, which was a little over three years after the patent was issued. By virtue of certain mesne conveyances and other transactions not necessary to be recited here, it may be stated that the title conveyed by the patent to Beaubien and Miranda inured, immediately upon its being issued, to the benefit of the Maxwell Land Grant Company, a corporation which has the beneficial interest in the grant, so far as appears in this record, and the contest is mainly, if not exclusively, between the United States and that

company.

The original bill filed in the case assailed the grant mainly upon the ground that the patent was issued by the Executive Department of the government upon the false representations of the defendant the Maxwell Land Grant Company, and those whose estate the company has in the land, and of whose fraudulent actings and doings in the premises the company had notice at the time it acquired the title. This bill recites the original grant of January 10, 1841, by the Republic of Mexico, which it declares was in due form of law, made to Beaubien and Miranda, citizens of said republic, and it gives the description of the land and its boundaries which is here the subject of controversy. The bill also declares that said grant and the proceedings had in regard thereto were in due form of law and in accordance with the usages and customs of that country, as more fully appeared by reference to the grant and act of possession, copies of which were annexed thereto, and that it was duly accepted by the grantees, who immediately thereupon entered into possession of the premises, and that they, and those holding under them, have ever since been in the quiet, peaceable, and exclusive possession thereof.

The bill then declares that the Surveyor General of the Territory of New Mexico, under the act of 1854, made a report in favor of this grant; that on June 21, 1860, the Congress of the United States confirmed and ratified it as recommended, and that the patent was afterwards issued upon a survey made by order of the government under the instructions of the Surveyor General of New Mexico, approved by the Commissioner of the General Land Office, which patent is made an exhibit to the bill. This original bill then goes on to charge that the survey on which this patent was issued was falsely and fraudulently made, and that the Maxwell Land Grant Company, and certain parties who made this survey under a contract with the government, conspired to cheat and defraud the government of the United States by including a larger amount of land than was intended to be embraced by the original grant of the Republic of Mexico, and it especially charged that about 265,000 acres, to-wit,

all the lands lying and being in the County of Las Animas in the State of Colorado, were fraudulently included in this survey and were of the value of two millions of dollars. The main purpose of the bill, and the only specific prayer for relief, is that the survey may be declared void so far as it includes lands within the State of Colorado, though it concludes by praying for general relief.

It is quite obvious that the ground of relief set out in this bill is that the excess of 265,000 acres lying within the present State of Colorado was included within the survey by fraud, and that this fraud should be remedied. No attempt is made in the bill to assail the remainder of the grant or to point out any reason why the patent should not be good for all the lands in New Mexico. After answers had been filed to this bill and a large amount of testimony taken, there was filed on the 5th day of December, 1883, an amended bill, which it is now insisted is substituted for the original bill. In this amended bill, for the first time it is set up as a ground for setting aside the patent and survey on which it was made, and having them declared void, that under the laws of Mexico at the time it was made, no such grant could exceed eleven square leagues to each individual, and that by virtue of those laws, therefore, the grant to Beaubien and Miranda could not exceed twenty-two leagues, the equivalent of which is 97,424 acres. The bill then sets out with something more of particularity the errors supposed to exist in the survey on which the patent from the United States was based, and the frauds connected with that survey by which the officers of the government were imposed upon and induced to issue the patent. Much of the testimony, and perhaps most of it, was taken before this amendment was filed, and it is strongly insisted in the brief of the appellees that the reason for filing it was that the testimony taken in regard to the frauds, and in regard to the mistake of the officer of the government in running the boundaries of the grant, had failed to establish such fraud and mistake. Answers and replications were filed in due time, and a large amount of testimony taken, which, with the pleadings,

documents, and proceedings of the court and other public bodies, constitute a printed record of nearly nine hundred pages.

The questions which are presented by this record and which demand our consideration may be divided into three:

First. Do the colonization laws of Mexico in force at the time the grant was made to Beaubien and Miranda, namely the decree of the Mexican Congress of August 18, 1824, and the general rules and regulations for the colonization of the territories of the Republic of Mexico of November 21, 1828, render this grant void notwithstanding its confirmation by the Congress of the United States?

Second. If the grant be valid, is there such a mistake in the survey, on which the patent of the United States was issued as justifies the Court in setting aside both patent and survey?

Third. Was there such actual fraud in procuring this survey to be made, and the patent to be issued upon it as requires that the patent be set aside and annulled?

As regards the first of these propositions, it is undoubtedly true that the decree of the Mexican Congress of 1824 in regard to grants of the public lands declared by Article 12 that

"It shall not be permitted to unite in the same hands with the right of property more than one league square of land suitable for irrigation, four square leagues in superficies of arable land without the facilities of irrigation, and six square leagues in superficies of grazing land."

It has been repeatedly decided by this Court that it was the practice of the government of Mexico under that article to limit its grants of public lands in the territories to eleven square leagues for each individual.

But Article 14 of the same decree speaks of "the contracts which the empresarios make with the families which they bring at their own expense, provided they are not contrary to the laws," and Article 7 of the rules and regulations of 1828 speaks of "grants made to empresarios, for them to colonize with many families." It is a

well known matter of Mexican history that by reason of there being vast quantities of unoccupied and unprofitable public land owned by that government

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in its territories, contracts were made with individuals, called "empresarios," by which they were given very large bodies of land without any regard at all to the eleven-league limitation, in consideration that they should bring emigrants into the country and settle them upon these lands with a view of increasing the population and securing the protection thus afforded against the wild Indian tribes on the Mexican borders.

There are many things in the history of this grant to Beaubien and Miranda which would seem to indicate that it was understood by the Mexican authorities to be a grant of the class just described.

In the petition of Beaubien and Miranda to Governor Armijo on which the grant was founded, dated January 8, 1841, there is a very animated description of the condition of the Territory of New Mexico and its natural advantages, which were undeveloped for want of an industrious population. It also contains a description of the land, by its boundaries, which was granted by the governor in compliance with this petition, and as this description and its true construction is the foundation of the controversy in this suit with regard to the accuracy of the surveys, it is given here:

"The tract of land we petition for to be divided equally between us commences below the junction of the Rayado River with the Colorado, and in a direct line toward the east to the first hills, and from there running parallel with said River Colorado in a northerly direction to opposite the point of the Una de Gato, following the same river along the same hills to continue to the east of said Una de Gato River to the summit of the table land [mesa], from whence, turning northwest, to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running toward the east from those running toward the west, and from thence following the line of said mountain in a southwardly

direction until it intersects the first hills south of the Rayado River, and following the summit of said hills toward the east to the place of beginning."

The authoritative grant of Governor Armijo, dated three days later, is in the following language:

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"SANTA FE, January 11, 1841"

"In view of the request of the petitioners, and what they state therein being apparent, this government, in conformity with law, has seen proper to grant and donate to the individuals subscribed the land therein expressed in order that they may make the proper use of it which the law allows."

"ARMIJO"

Looking to this question of the nature of the grant, as to whether it was an ordinary grant, it appears by the record that Beaubien made application in April, 1844, to the governor of the department, stating that a curate named Martinez was seeking to invade and dispute the rights of the said Beaubien and Miranda in a part of the lands included in their grant. In this petition, remonstrating against a recognition of the claim of Martinez which had been made by the territorial government, he says:

"And not only does the suspension of labor on those lands injure us for the reason of having incurred heavy expenses, but also a considerable number of families and industrious men, who are willing and ready to settle upon those lands and to whom we have given lands, a list of which individuals I accompany in order that your Excellency, seeing their number, may determine what may be proper."

This shows that the grantees were engaged in settling families within the boundaries of their grant.

This matter was referred to the departmental assembly, who made a report upon the subject confirming the grant of the governor to Beaubien and Miranda and

deciding against the claim of Martinez and his associates. The assembly, in making their report upon this subject, declare the statements by which Martinez and his associates had obtained certain privileges within the boundaries of the grant to have been false, and proceed as follows:

"And in view of the documents which accredit the legitimate possession of Miranda and Beaubien and their desires that their colony shall increase in prosperity and industry, for which purpose he has presented a long list of persons to whom they have offered land for cultivation,

and who shall enjoy the same rights as the owners of the lands; that the government, having dictated the step for the sole object of ascertaining the truth; that the truth having been ascertained, and the right of the party established, is of the opinion that the aforesaid superior decree be declared null and void, and that Miranda and Beaubien be protected in their property as having been asked for and obtained according to law."

To this the governor ordered the response to be made that, in accordance with the opinion of the departmental assembly thus certified to him,

"the order of the 27th of February, issued by this government, forbidding the free use of the land in question, is repealed, and Messrs. Beaubien and Miranda are fully authorized to establish their colony according to the offers made by them when they petitioned for the land which has been granted to them."

It would seem from these orders, decrees, and resolutions of the Governor and Departmental Assembly of the Territory of New Mexico that they must have supposed that the grant was intended for families to be settled upon, and was not one of those in which an individual could only receive a definite quantity of land for the purpose of his own settlement and cultivation. There would have been little cause for the frequent use of the words "colony" and "colonization," and such expressions as "settling families" in the colony, unless such was the view which the granting power took of the nature of the grant. The effect of the action of the

departmental assembly in regard to these grants of land within the territories over which they had jurisdiction is one which has been frequently considered in this Court, and the importance of their action fully stated. *Hornsby v. United States,* 10 Wall. 224; *United States v. Osio,* 23 How. 273.

The final confirmation of this grant by the Congress of the United States in 1860 affords strong ground to believe that that body viewed it as one of this character, and not one governed by the limitation of eleven square leagues to each grantee. The act by which that was done was approved

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June 21, 1860, and is entitled "An act to confirm certain private land claims in the Territory of New Mexico." 12 Stat. 71. These claims, having been reported favorably to Congress for confirmation by the Surveyor General of the Territory of New Mexico, were numbered in consecutive order, and referred to in that act by their numbers. The one now under consideration was No. 15. The first section of that act reads as follows:

"That the private land claims in the Territory of New Mexico as recommended for confirmation by the surveyor general of the territory, and in his letter to the Commissioner of the General Land Office of the twelfth of January, eighteen hundred and fifty-eight, designated as numbers one, three, four, six, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen, and the claim of E. W. Eaton, not entered on the corrected list of numbers, but standing on the original docket and abstract returns of the surveyor general as number sixteen, be, and they are hereby, confirmed, provided that the claim number nine, in the name of John Scolley and others, shall not be confirmed for more than five square leagues, and that the claim number seventeen, in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each of said claimants."

It will be clearly perceived by the proviso of this act that the attention of the framers of the statute was turned to the law of Mexico which limited the ordinary

grant of land to each individual to eleven square leagues, for in regard to claim No. 17 it was expressly provided that it should not be confirmed for more than eleven square leagues to each of the claimants. As the claim of Beaubien and Miranda was, like that of Vigil and St. Vrain in No. 17, a grant to two persons, it must be obvious that the attention of the framers of the act was called to the fact that in the one instance, however large the claim might be, it should only be confirmed for eleven square leagues to each grantee, according to the law of 1824, while in regard to the other, in a like grant to two persons, which the surveyor general

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and the Commissioner of the General Land Office, as well as the Congress of the United States, must have known included many times eleven square leagues, they made no such restriction.

The second section of the act of 1860 declares:

"That, in surveying the claim of said John Scolly, it shall be lawful for him to locate the five square leagues confirmed to him in a square body in any part of the tract of twenty-five square leagues claimed by him, and that, in surveying the claims of said Cornelio Vigil and Ceran St. Vrain, the location shall be made as follows, namely, the survey shall first be made of all tracts occupied by actual settlers holding possession under titles or promises to settle, which have heretofore been given by said Vigil and St. Vrain, in the tracts claimed by them, and, after deducting the area of all such tracts from the area embraced in twenty-two square leagues, the remainder shall be located in two equal tracts, each of square form, in any part of the tract claimed by the said Vigil and St. Vrain selected by them, and it shall be the duty of the Surveyor General of New Mexico immediately to proceed to make the surveys and locations authorized and required by the terms of this section."

The fair inference from all this is that Congress, in passing this statute considered some of the grants as being of the character to which the limitation applied, and did not so consider others, though they included immense areas.

But whether as a matter of fact this was a grant not limited in quantity by the Mexican decree of 1824, or whether it was a grant which in strict law would have been held by the Mexican government, if it had continued in the ownership of the property, to have been subject to that limitation it is not necessary to decide at this time. By the Treaty of Guadalupe Hidalgo, under which the United States acquired the right of property in all the public lands of that portion of New Mexico which was ceded to this country, it became its right, it had the authority, and it engaged itself by that treaty, to confirm valid Mexican grants. If therefore the great surplus which it is claimed was conveyed by its patent to Beaubien

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and Miranda was the property of the United States, and Congress, acting in its sovereign capacity upon the question of the validity of the grant, chose to treat it as valid for the boundaries given to it by the Mexican governor, it is not for the judicial department of this government to controvert their power to do so. *Tameling v. United States Freehold Co.,* 93 U. S. 644 .

This case of *Tameling,* while it cannot be said to be conclusive of the one now before us, for the reason that that was an action of ejectment founded upon a title confirmed by an act of Congress, in which the title could not be collaterally assailed for fraud or mistake, and the present is a suit attacking the patent, and the survey upon which it issued, directly by a bill in chancery to set them aside for such fraud and mistake, still the opinion announces principles which, as applicable to this case and as regards the question of the extent of the grant, it would seem should govern it. The title in that case was confirmed to Tameling's predecessor in interest by the same act which confirmed the grant now in question to Beaubien and Miranda, the one being No. 14 and the other No. 15, as enumerated in the section of the statute already recited. In regard to that statute, and its effect upon the title confirmed by it, this Court (p, 93 U. S. 662) says:

"No jurisdiction over such claims in New Mexico was conferred upon the courts, but the Surveyor General, in the exercise of the authority with which he was invested, decides them in the first instance. The final action on each claim

reserved to Congress is, of course, conclusive, and therefore not subject to review in this or any other forum. It is obviously not the duty of this Court to sit in judgment upon either the recital of matters of fact by the Surveyor General, or his decision declaring the validity of the grant. They are embodied in his report, which was laid before Congress for its consideration and action. . . . Congress acted upon the claim 'as recommended for confirmation by the Surveyor General.'"

The confirmation being absolute and unconditional, without any limitation as to quantity, we must regard it as effectual and operative for the entire tract. The plaintiff in error insists

that, under the Mexican colonization laws in force when the grant was made, not more than eleven square leagues for each petitioner could be lawfully granted. As there were in the present instance but two petitioners, and the land within the boundaries in question is largely in excess of that quantity, the invalidity of the grant has been earnestly and elaborately pressed upon our attention. This was a matter for the consideration of Congress, and we deem ourselves concluded by the action of that body. The phraseology of the confirmatory act is, in our opinion, explicit and unequivocal.

It will be seen that the same question was raised in that case as in this in regard to the effect of the decree of the Mexican Congress of 1824 in limiting the extent of the grant, which by its boundaries very largely exceeded the quantity which the two petitioners in that case, as in this, would be entitled to. The cases were Nos. fourteen and fifteen out of a series of eighteen or twenty. They were confirmed by the same section of the same statute, and were in immediate contiguity in the context. In both there were two claimants under the same grant, who would have been entitled, under the decree of 1824, if applicable to the case, to twenty-two square leagues -- that is, to eleven square leagues each. They were recommended for confirmation by the same surveyor general, who had investigated the titles and who was authorized by the statute which created his office to pass upon the extent as well as the validity of the grants. The question

was therefore in the *Tameling* case precisely the same as in the present, and it is not perceived how the questions of reforming the grant by a direct proceeding in chancery, and giving a construction to it in an action of ejectment, can be decided upon any different principles. If the Mexican government had no power to grant anything beyond twenty-two square leagues in either case, the excess of the grant beyond that was void. This objection could as well be taken in an action of ejectment, where no particular twenty-two leagues had been set apart out of the much larger grant covered by the boundaries, as it could by a bill in chancery to set aside or correct the patent. The principles of law applicable to the

issue are the same in both cases, and the declaration of the court in the *Tameling* case, that this was matter for the consideration of Congress, and it deemed itself concluded by the action of that body, is as applicable to the present case as it was to that.

The argument is here much pressed that the power of the Surveyor General of New Mexico in investigating and reporting upon these Mexican grants was limited to ascertaining the validity of the claim as a grant by the Mexican government, and not to its extent, and that the act of Congress confirming the report of that officer and confirming the grant was not intended to be conclusive in regard to the boundaries or the quantity. But 8 of the Act of July 22, 1854, 10 Stat. 308, under which the report of the Surveyor General was made in regard to these claims, directs him to ascertain the extent, as well as other elements of the claims to be referred to him. The language of that section is as follows:

"That it shall be the duty of the Surveyor General, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and *extent* of all claims to lands under the laws, usages, and customs of Spain and Mexico, and for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hidalgo, of eighteen

hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States."

In the present case, the Surveyor General had before him not only the original grant of Armijo to Beaubien and Miranda, but he had the record of the juridical possession delivered to the grantees, according to the laws of Mexico on that subject, made by the justice of the peace Cornelio Vigil, accompanied by a map or diseno laying down with at least

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attempted particularity and precision the complete boundaries of this tract of land. So that the Surveyor General not only had the authority to determine the extent of the grant as well as its validity, but he had the means of ascertaining it. Upon what argument, therefore, it can be held that the Surveyor General, with this entire matter before him and with the means of ascertaining or describing with precision the extent of the grant to these parties, should be held not to have passed upon it, but simply upon the validity of the original transaction with Armijo, is not readily to be perceived. The Surveyor General was not certainly of the class of officers to whom would have been confided by law the mere question of the legal validity of a grant made by a Mexican governor to a Mexican citizen. Others could do that as well as he when the facts were laid before them. But as his office was a surveying office, and was designed to ascertain the location and the extent of grants by an examination of the maps and surveys, and making new surveys if necessary, a function preeminently appurtenant to his office, he must be supposed to have reported upon all that was proper for consideration in its confirmation. And when the Congress of the United States, after a full investigation and elaborate reports by its committees, confirmed these grants "as recommended for confirmation by the surveyor general" of the territory, we must suppose that it was intended to be a full and complete confirmation as regards the legal validity, fairness, and honesty of the grant, as well as its extent. This is made the more emphatic by the two or three cases in which the extent and location of the grant are specially limited in the very act of confirmation included in the same section and the same sentence.

It is observable that in the argument of the counsel for the United States in this case, the boundaries of this tract of land are constantly spoken of as out-boundaries, within which a smaller quantity of land may be located, as the real grant in this case. This phrase, "out-boundary," has its proper use in regard to certain classes of Mexican grants, but it is wholly inapplicable and misleading as referring to the one now under

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consideration. There were grants made by officers of the Mexican government which were limited in quantity by the terms of the grant, and which the grantee might locate at any place he chose inside of a much larger quantity of land, the limits of which were correctly described as "out-boundaries." In such cases, the use of the term, as describing the larger and greater tract within which the smaller and more limited quantity might be selected by the grantee, had its just and well understood meaning. Grants of that class were quite numerous, and sometimes half a dozen grants to different individuals would be made within the same out-boundaries, and occasionally there are cases where these smaller portions must include a dwelling or some improvement held by the grantee at the time. The whole of this subject is very well considered and explained by MR. JUSTICE

FIELD in the opinion of this Court in the case of *Hornsby v. United States,* 10 Wall. 224. He says:

"As we have had occasion to observe in several instances [referring to *Higueras v. United States,* 5 Wall. 828; *Alviso v. United States,* 8 Wall. 339], grants of the public domain of Mexico, made by governors of the Department of California, were of three kinds: 1st, grants by specific boundaries, where the donee was entitled to the entire tract described; 2d, grants by quantity, as of one or more leagues situated at some designated place, or within a larger tract described by out-boundaries, where the donee was entitled out of the general tract only to the quantity specified, and 3d, grants of places by name, where the donee was entitled to the tract named according to the limits as shown by its settlement and possession or other competent evidence."

It is entirely clear that the grant to Beaubien and Miranda was a grant of the first class, a grant by specific boundaries, where the donee was entitled to the entire tract described. There is nothing in the language of the grant, nor in the petition, nor in anything connected with it, nor in the act of juridical possession, to indicate that either Governor Armijo or Beaubien and Miranda, or the officer who delivered the juridical possession to them, had any idea or conception that the grantees were not to have all the land within the boundaries

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established by that juridical possession. Hence, the idea of counsel that there were only twenty-two square leagues, or 97,424.08 acres, granted within this great boundary is entirely unsupported, the case not being one of a grant of a more limited quantity within a large out-boundary. While the argument, whether sound or unsound, that the grant could only be upheld for the twenty-two square leagues may be pressed now against the validity of the grant in excess of that amount, there was evidently no such thought in the minds of the parties when it was made.

It is not inappropriate here to allude to an argument suggested, but not much pressed, by counsel that in the petition of Beaubien against the intrusion of the

priest Martinez, he speaks of his own grant as being only about fifteen leagues. We think a critical examination of that petition will show that he is speaking of the claim of Martinez and his associates as amounting in all to about fifteen leagues, and not of his own claim under the grant.

We are therefore of opinion that the extent of this grant, as confirmed by Congress, is not limited to the twenty-two square leagues, according to the argument of counsel, and that the act of Congress makes valid the title under the patent of the United States unless proved to be otherwise by reason of error or mistake in the survey or fraud in its procurement.

As regards the survey on which the patent was issued, and which is made a part of the patent under the seal of the United States and the signature of the President, it is to be observed that the evidence shows that the General Land Office made every effort to have it accurate. The survey was made by authority of the commissioner of that office, under the supervision of the Surveyor General of New Mexico. A survey had been previously made by W. W. Griffin, who was employed by the claimants to make it because the then Secretary of the Interior had declined to order a survey. This survey was completed during the year 1870, and, though purely a private enterprise and unofficial, the plat and field notes were deposited in the General Land Office by the claimant,

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presumably for the information of the government as to the exact location of the exterior lines as claimed by the owners of the grant. The land office having afterwards, under the influence of the decision of the Supreme Court in *Tameling v. United States Freehold Co., supra,* determined that it was its duty to ascertain the extent of this grant and to issue a patent for it, was about issuing orders to the Surveyor General of New Mexico to have this grant surveyed when it was suggested by the claimants that the Commissioner should adopt the survey of Griffin above referred to. He however declined to pursue this course, first because he did not think it was a proper procedure, and second because he did not think that the eastern and northern boundaries had been correctly located by the Griffin

survey. The Surveyor General thereupon made a contract for the work with Elkins and Marmon, and the Commissioner of the General Land Office, in approving this contract, gave his own directions as to how these boundaries should be located, and furnished for the guidance of the surveyors an explanatory diagram. This survey was made in the autumn of 1877. The map * or plat of it is a part of the record, together with the proofs taken by the surveyors to establish the calls of the grant. Contests were initiated before the Surveyor General upon the validity of this survey by parties who were interested against it, and the case was fully heard on testimony, which testimony was filed with the Commissioner of the General Land Office. He finally approved the survey, and the patent was issued in accordance with it on May 19, 1879.

It is attempted in argument here to point out many errors and mistakes as objections to the accuracy of this survey. There is no reason to doubt that the Surveyor General and the officers employed by him, and the Commissioner of the General Land Office, all of whom gave particular attention to this survey, were well informed on the subject. They knew that it was an immense tract of land, that it would be the subject of grave criticism, and they knew more about it, and were better capable of forming a judgment of the correctness of that survey,

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than this Court can be. We may add that after all the research, industry, and ability of special counsel for the government, when the testimony taken in the case to prove these errors and the record of the juridical possession have been considered with the best judgment that we can bring to them, we are not satisfied that the survey is in any essential particular incorrect, but on the whole we believe that it substantially conforms to the grant originally made by Governor Armijo.

The principal point in dispute to which the argument of counsel has been addressed is that the part of the land included in this survey north of the present line which divides the State of Colorado and the Territory of New Mexico was improperly included within the survey. In other words, it is argued that this northern line of the survey should have been run from the east to the west upon the

summits of the Raton Mountains. This range of hills, rather than mountains, seems to project itself as a spur from the great range running north and south, which divides the waters that flow east from those which flow west. Running almost due east as you ascend along the foot of this range of hills, on their south side is the stream called the Colorado River, which seems to spring from the great mountain range before mentioned. The language descriptive of the land in the petition of Beaubien and Miranda, which was granted and donated to them by Governor Armijo, as "therein expressed," is as follows:

"The tract of land we petition for to be divided equally between us commences below the junction of the Rayado River with the Colorado, and in a direct line toward the east to the first hills [about which there does not seem to be much difficulty], and from there running parallel with said River Colorado in a northerly direction to opposite the point of the Una de Gato, following the same river along the same hills to continue to the east of said Una de Gato River to the summit of the table land [mesa], from whence, turning northwest, to follow along said summit until it reaches the top of the mountain which divides the waters of the rivers running toward the east from those running toward the west, and from thence following the line of said mountain in a southwardly direction

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until it intersects the first hills south of the Rayado River, and following the summit of said hills toward the east to the place of beginning."

Now it is this northeastern corner, whence the course turns to the northwest, which is the great subject of controversy, the line following the summit of the mesa, or table land, to the summit of the mountain. This part of the Colorado River is a natural object which could not be mistaken, and which it is now claimed is the true course of the line, except that it is asserted that it should have followed the summit of the Raton Mountains, which are just north of it and running parallel with the river. That range is also a natural object, easily ascertained, and it would seem but reasonable that one or the other of those objects should have been selected by the grantor as descriptive of the place where this northern line should be located.

Instead of this, however, it is said to run to the

"summit of the table land, from whence, turning northwest, to follow along said summit [which evidently means the summit of the table land] until it reaches the top of the mountain."

The longest line of the survey is from the southeast corner, in a northerly direction, parallel with the Colorado River, and, if the line now contended for by appellant was the true east and west line, it need only have been stated in the grant that it should follow the course of that river to its origin, in the same mountain, which separates the waters of the rivers running east and west. But instead of speaking either of that river in its course from west to east or of the Raton Mountains as the natural object which constituted the northerly boundary of the grant, it requires the boundary line to leave the Colorado River at the junction of the Una de Gato River with it, and continuing along a range of hills "to the east of the Una de Gato River to the summit of the table land." This is not only a strong indication that the northern boundary was not where it is claimed to be by counsel for appellant, but that it was somewhere else; that it was not a range of hills nor a river already mentioned in the grant, but that it was something else called the "summit, of the table land," north of both of these. And although there is some contrariety of opinion about this "summit of the table land" which

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is to constitute the northeastern corner of the grant, we are of opinion, upon a consideration of all the evidence before us, that the survey was located as nearly in accordance with the terms of the grant as it is possible now to ascertain them.

Without going into this evidence more minutely, we are content to say that while in favor of the correctness of this survey in the points assailed, it is as strong or stronger than that for any other survey which could be made, or which has been suggested by the counsel for the United States, and we are very clear that it is not the province of this Court to set aside and declare null and void these surveys and patents approved by the officers of the government whose duty it was to consider

them, and who evidently did consider them with great attention, upon the mere possibility or a bare probability that some other survey would more accurately represent the terms of the grant.

The question of fraud in the location of this survey, which is about all the allegation there is of actual fraud in the title of the defendants, is not deserving of much consideration. We are compelled to say that we do not see any satisfactory evidence of an attempt to commit a fraud, and still less of its consummation. As to the principal officers of the government who were connected with that survey, to-wit, the Commissioner of the General Land Office and the Surveyor General of the Territory of New Mexico, there is not the slightest evidence that they were governed by any fraudulent or improper motive in their acts in regard to this survey, or that they displayed any leaning toward the grantees in ascertaining the true boundaries of the grant. Nor is there any serious attack upon the subordinates of those officers, or any of the persons actually engaged in making the survey, in regard to their honesty of purpose or interest in the result. The principal argument of counsel upon this subject is based upon the Griffin survey, already mentioned, which was deposited by the claimants in the Office of the Surveyor General of New Mexico. It is argued in the first place that this survey was

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a very incorrect one, and that it included much more land than was granted by Governor Armijo; secondly, it is insisted that in this respect it was an intentional departure from a correct survey, and thirdly that it was designed and intended by the claimants to impose this incorrect and fraudulent survey upon the Commissioner of the General Land Office, and have him issue a patent for it.

As regards the first element of this allegation of fraud -- the incorrectness of the survey, and that it included more land than the grant authorized -- the only minute and careful survey with which it can be compared is the one upon which the patent finally issued, and we must say, with the light we have upon the subject and the time we have been able to bestow upon its consideration, that it is by no means clear that the Griffin survey in that respect is not the most correct one. The

defendants here are not in a condition to contest the final survey. It is their business and their duty, having accepted the patent upon it, to defend it. But if it were to their interest or to anybody's interest to show that the Griffin survey was the more correct one, it seems to us that arguments in its support would not be wanting.

In the second place, as to any intentional fraud on the part of Griffin or his assistants in the running of these boundary lines there is not the slightest evidence. And lastly, as to the charge that the Maxwell Land Grant Company knew this survey to be a false one and that it included much more land than the company was entitled to, but that they nevertheless endeavored to impose it upon the Commissioner of the General Land Office as a correct survey, there are two emphatic answers: first, there is no evidence that they believed it to be a false survey, and they only asked, or seemed to ask, that this survey might be adopted, because the government had not made, and would not then make, one for itself in order that they might get the patent to which they were entitled; second, the Commissioner was not imposed upon. If they attempted a fraudulent imposition, they were not successful; he rejected their survey altogether, caused another one to be made, and pointed out in his instructions to those who executed

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the final survey the points of departure from that made by Griffin, upon which he insisted. It seems impossible in the face of these circumstances to assume that there was anything in the nature of fraud perpetrated in regard to the Griffin survey and its effect upon the final survey.

The great importance of this case, as regards the immense quantity of land involved and its value, reinforced by the circumstance of the number of cases coming before the courts in which, under the directions of the Attorney General, attempts are made to set aside the decrees of the courts, the patents issued by the government, and, in this case, an act of Congress, seems to call for some remarks as to the nature of the testimony and other circumstances which will justify a court in granting such relief. The cases of this character which have come

to the Supreme Court of the United States have been so few in number that but little has been said in regard to the general principles which should govern their decision. There are decisions enough to guide us in cases where a patent or other title derived directly from the government has been questioned in a collateral proceeding brought to enforce that title, or to assert a defense under it; but the distinction between this class of cases, in which all the presumptions are in favor of the validity of the title, and in regard to which a wise policy has forbidden that they should be thus attacked, and those like the present, in which an action is brought in a court of chancery to vacate, to set aside, or to annul the patent itself, or other evidence of title from the United States, is very obvious. In either case, however, the deliberate action of the tribunals to which the law commits the determination of all preliminary questions, and the control of the processes by which this evidence of title is issued to the grantee, demand that to annul such an instrument and destroy the title claimed under it, the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court, and that the case itself must be within the class of causes for which such an instrument may be avoided. *United States v. Throckmorton,* 98 U. S. 61 .

In the case of *United States v. Stone,* 2 Wall. 525, this Court said:

"A patent is the highest evidence of title, and is conclusive as against the government and all claiming under junior patents or titles until it is set aside or annulled by some judicial proceeding. In England, this was originally done by *scire facias,* but a bill of chancery is found a more convenient remedy."

This was a chancery proceeding to set aside a patent for land.

In the case of *Johnson v. Towsley,* 13 Wall. 72, the Court, considering the force and effect to be given to the actions of the officers of the Land Department of the government, announces the doctrine that their decision, made within the scope of their authority on questions of this kind, is in general conclusive everywhere except when reconsidered by way of appeal within that department, and that as to

the facts on which their decision is based, in the absence of fraud or mistake, that decision is conclusive even in courts of justice when the title afterwards comes in question, but that in this class of cases as in all others, there exists in the courts of equity the jurisdiction to correct mistakes, to relieve against frauds and impositions, and, in cases where it is clear that those officers have by a mistake of the law given to one man the land which on the undisputed facts belongs to another, to give proper relief.

These propositions have been repeatedly reaffirmed in this Court. *Moore v. Robbins,* 96 U. S. 530 ; *Marquez v. Frisbie,* 101 U. S. 473 ; *United States v. Atherton,* 102 U. S. 372 ; *Shepley v. Cowan,* 91 U. S. 330 .

In the case of *Atlantic Delaine Co. v. James,* 94 U. S. 207 , Mr. Justice Strong, in delivering the opinion of the Court, said in regard to the power of courts of equity to cancel private contracts between individuals:

"Canceling an executed contract is an exertion of the most extraordinary power of a court of equity. The power ought not to be exercised except in a clear case, and never for an alleged fraud unless the fraud be made clearly to appear; never for alleged false representations unless their falsity is certainly proved and unless the complainant has been deceived and injured by them."

In

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Story's Equity Jurisprudence, 157, it is said that relief will be granted in cases of written instruments only where there is a plain mistake clearly made out by satisfactory proofs. Chancellor Kent, in the case of *Lyman v. United Ins. Co.,* 2 Johns.Ch. 632, which had reference to reforming a policy of insurance, said:

"The cases which treat of this head of equity jurisdiction require the mistake to be made out in the most clear and decided manner and to the entire satisfaction of the court."

See also Stockbridge Iron Co. v. Hudson Iron Co., 107 Mass. 290.

We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul, or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal, and convincing, and that it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents, and other solemn evidences of title emanating from the government of the United States under its official seal. In this class of cases, the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands

respect and that amount of it which produces conviction shall make such an attempt successful.

The case before us is much stronger than the ordinary case of an attempt to set aside a patent or even the judgment of a court, because it demands of us that we shall disregard or annul the deliberate action of the Congress of the United States. The Constitution declares (Article IV, 3) that

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United

States."

At the time that Congress passed upon the grant to Beaubien and Miranda, whatever interest there was in the land claimed which was not legally or equitably their property was the property of the United States, and Congress having the power to dispose of that property, and having, as we understand it, confirmed this grant, and thereby made such disposition of it, it is not easily to be perceived how the courts of the United States can set aside this action of Congress. Certainly the power of the courts can go no further than to make a construction of what Congress intended to do by the act, which we have already considered, confirming this grant and others.

In regard to the questions concerning the surveys, as to their conformity to the original Mexican grant, and the frauds which are asserted to have had some influence in the making of those surveys, so far from their being established by that satisfactory and conclusive evidence which the rule we have here laid down requires, we are of opinion that if it were an open question, unaffected by the respect due to the official acts of the government upon such a subject, depending upon the bare preponderance of evidence, there is an utter failure to establish either mistake or fraud.

For these reasons,

The decree of the circuit court is affirmed.

The defendant in error filed a petition for a rehearing. The opinion of the Court in denying this motion will be found in Volume 122.

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