Southern Pacific R. Co. Vs. United States

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Appellant : Southern Pacific R. Co.

Respondent : United States

Judgement :

Southern Pacific R. Co. v. United States - 168 U.S. 1 (1897)
U.S. Supreme Court Southern Pacific R. Co. v. United States, 168 U.S. 1 (1897)

Southern Pacific Railroad Company v. United States

No. 71

Argued December 2-3, 1896

Decided October 18, 1897

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APPEAL FROM THE CIRCUIT COURT

OF APPEALS FOR THE NINTH CIRCUIT

SYLLABUS

The cases of *United States v. Southern Pacific Railroad,* 146 U. S. 570 , and *United States v. Colton Marble & Lime Co.* and *United States' v. Southern Pacific Railroad,* 146 U. S. 615 , held to have adjudged, as between the United States and the Southern Pacific Railroad Company:

(1) That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the Act of Congress of July 27, 1866, c. 278, 14 Stat. 292;

(2) That, upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted attached, by relation, as of the date of that act and

(3) That in view of the conditions attached to the grant, and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the Act of July 6, 1886, c. 637, 24 Stat. 123, forfeiting the lands granted to the Atlantic and Pacific Railroad Company, the property of the United States, and by force of that act were restored to the public domain, without the Southern Pacific Railroad Company's having acquired any interest therein that affected the ownership of the United States.

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A right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies, and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified.

The 45th Rule of Equity, providing that "no special replication to any answer shall be filed," and that

"if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without payment of costs, as the court, or a judge thereof may in his discretion direct"

means, at most, that a general replication is always sufficient to put in issue every material allegation of an answer or amended answer unless the rules of pleading imperatively require an amendment of the bill, and such an amendment is not required in order to set out that which may be used simply as evidence to establish any fact or facts put in issue by the pleadings.

Where a former recovery is given in evidence, it is equally conclusive in its effect as if it were specially pleaded by the way of estoppel.

This suit was brought by the United States to quiet its title to a large tract of land in California, acquired under the Treaty of Guadalupe Hidalgo, and now set apart by act of Congress and the President's proclamation, issued thereunder, as part of a public reservation.

The facts involved, and the legislation affecting the rights of the respective parties, do not vary materially from those set forth in *United States v. Southern Pacific Railroad,* 146 U. S. 570 .

In view of the full statement there, and of the still fuller statement in the opinion of the court in this case, it is sufficient, for the purpose of understanding the argument of counsel reported below, to give the following facts

1. By the Act of July 27, 1866, c. 278, 14 Stat. 292, Congress created a corporation called the Atlantic and Pacific Railroad Company, authorized it to construct a railroad from Missouri to the Colorado River, and thence across the State of California to the Pacific, and made a grant of public lands to aid in the construction of that railroad. In the same act, it further authorized the Southern Pacific Railroad Company to connect with the Atlantic and Pacific Railroad at or near the boundary of California, and it made similar grants

to the Southern Pacific Railroad Company to aid in its construction.

2. Under the Act of July 27, 1866, the Atlantic and Pacific Company constructed a part of its road, but did no work west of the Colorado River, the east line of the State of California.

By the Act of March 3, 1871, c. 122, 16 Stat. 573, the Southern Pacific Company was authorized to construct a railroad by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River,

"with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions, as were granted to said Southern Pacific Railroad Company of California by the Act of July 27, 1866, provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company."

4. The Southern Pacific Company constructed such contemplated railroad, and claims in this suit that the lands in dispute passed to it under the act of 1871.

5. By the Act of July 6, 1886, c. 637, 24 Stat. 123, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company," etc., it was enacted

"that all the lands, excepting the right of was and the right, power, and authority given to said corporation to take from the public land adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turntables, and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act of Congress entitled 'An act granting lands to aid in the construction of railroad and telegraph lines from the States of Missouri and Arkansas to the Pacific Coast,' approved July twenty-seventh, eighteen hundred and sixty-six, and subsequent acts and joint resolutions of Congress which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of said act of July twenty-seventh, eighteen hundred and sixty-six, and acts and

joint resolutions subsequent thereto and relating to the construction of said road and telegraph line be, and the same are hereby, declared forfeited and restored to the public domain."

6. On April 3, 1871, the Southern Pacific Company filed a map of its route from Tehachapa Pass to the Texas Pacific Railroad, and proceeded to construct its road, and finished the entire constriction in 1878. The road crossed the line of the Atlantic and Pacific Company as located. The lands in controversy in the cases reported in 146 U.S. 146 U. S. 570 and 146 U. S. 615 were within the granted or place limits of both the Atlantic and Pacific Company and the Southern Pacific Company at the place where the lines crossed each other. The Southern Pacific Company claimed that, as it had constructed its road, and as the other company had not done the same, the lands became its property. It was to test this claim of title and to restrain trespassed by the railroad company and those claiming title under it that the suits reported in 146 U.S. were instituted.

7. The decisions in those cases were adverse to the Southern Pacific Company. This Court held, as stated in the headnote, that the Atlantic and Pacific Railroad Company, having duly filed a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean, which was approved by the Secretary of the Interior, the title to the lands in dispute passed thereby to that company under the grant of July 27, 1866, and remained held by it, subject to a condition subsequent, until the forfeiture under the Act of July 6, 1886, and that by that Act of Forfeiture, the title thereto was retaken by the United States for its own benefit, and not for that of the Southern Pacific Railroad Company, whose grant never attached to the lands so as to give that company any title of any kind to them.

Then this suit was brought, in which the principal contention on the part of the United States was that the in dispute are in the same category in every respect with those in controversy in the cases reported in 146 U.S., and that, so far as the question of title id concerned, the judgments in those cases conclusively

determined, as between the United States and the Southern Pacific Railroad Company

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and its privies, the essential facts upon which the government rests.

9. In the former cases, the United States insisted that the controlling matter was whether the maps of location filed by the Atlantic and Pacific Railroad Company in 1871, and which were accepted by the Land Department as sufficiently designating that company's line of road under the Act of July 27, 1866, were valid as maps of definite location. The United States contended that they were maps of that character. The Southern Pacific Company contended that they were not. The issue so made was determined in favor of the United States. In this case, the United States insisted that, it having been so determined, and the lands here in dispute being within the limits of the line of road so designated, it was not open to the Southern Pacific Company to question the result reached in the suits reported in 146 U.S. Such maps, it was claimed, sufficiently identified the lands granted by Congress to the Atlantic and Pacific Railroad Company by the act of 1866, and were therefore valid maps of definite location.

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MR. JUSTICE HARLAN delivered the opinion of the Court.

This suit was brought to obtain a decree quieting the title of the United States to a large body of lands in California acquired under the Treaty of Guadelupe Hidalgo.

These lands, it is stated by counsel, aggregate about 700,000 acres, 61,939 acres of which have heretofore been patented to the Southern Pacific Railroad Company, and for 72,000 acres of which that company has made application for patents. They are thus described in the bill filed by the United States:

"All the sections of land designated by odd numbers in townships three and four north, ranges five, six, and seven west; township one north, ranges sixteen,

seventeen, and eighteen west; township six and the south three-fourths of township seven north, ranges eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, and nineteen west; all sections designated by odd numbers, as shown by the public surveys, embraced within the townships from number two north to number five north, both numbers included, and ranges from number eight west to number eighteen west, both numbers included, except sections twenty-three and thirty-five in township four north, range fifteen west, and except sections one, eleven, and thirteen in township three north, range fifteen west; also the unsurveyed lands within said area which will be designated as odd-numbered

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sections when the public surveys according to the laws of the United States shall have been extended over such townships -- all of the aforesaid lands being surveyed by San Bernardino base and meridian."

The government suggests that the greater portion of these lands have been set apart under authority of the Act of Congress of March 3, 1891, 26 Stat. 1095, 1103, c. 561, 24, and by the proclamation of the President of the United States of December 20, 1892, 27 Stat. 1049, as a public reservation.

The principal contention of the United States is that the lands in dispute are in the same category in every respect with those in controversy in *United States v. Southern Pacific Railroad,* 146 U. S. 570 , and *United States v. Colton Marble & Lime Co.* and *United States v. Southern Pacific Railroad,* 146 U. S. 615 , and that, so far as the question of title is concerned, the judgments in those cases have conclusively determined, as between the United States and the Southern Pacific Railroad Company and its privies, the essential facts upon which the government rests its present claim.

Stated in another form, the United States insists that in the former cases the controlling matter in issue was whether certain maps filed by the Atlantic & Pacific Railroad Company in 1872, and which were accepted by the Land Department as sufficiently designating that company's line of road under the Act of Congress of

July 27, 1866, 14 Stat. 292, c. 278, were valid maps of *definite location,* the United States contending in those cases that they were and the Southern Pacific Railroad Company contending that they were not, maps of that character; that that issue was determined in favor of the United States, and that, as the lands now in dispute are within the limits of the line of road so designated, it is not open to the Southern Pacific Railroad Company in this proceeding to question the former determination that such maps sufficiently identified the lands granted to the Atlantic and Pacific Railroad Company by the act of 1866, and were therefore valid maps of definite location.

This position of the government makes it necessary to ascertain what was in issue and what was determined in the

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former cases. Did the former adjudication have the scope attributed to it by the United States? If it did, the decision of the present case will not be difficult.

It is necessary to a clear understanding of the question just stated that we should first look at the provisions of the several acts of Congress relating to the Atlantic and Pacific and Southern Pacific Railroad Companies, and which were referred to and construed in the former cases.

The Atlantic and Pacific Railroad Company was incorporated by the Act of Congress approved July 27, 1866, 14 Stat. 292, c. 278, with authority to construct and maintain a line of railroad and telegraph from a point at or near Springfield, Missouri, to the western boundary line of that state; thence by the most eligible railroad route, to be determined by the company, to the Canadian River; thence to Albuquerque, on the River Del Norte; thence, by way of Agua Frio or other suitable pass, to the headwaters of the Colorado Chiquito; thence along the thirty-fifth parallel of latitude, as near as might be found most suitable for a railroad route, to the Colorado River at such point as might be selected by the company for crossing, and "thence, by the most practical and eligible route, to the Pacific." 1. In aid of the construction of that line, Congress granted every odd-numbered section

of public land (not mineral) to the amount of twenty alternate sections per mile on each side of such line as the company might adopt through any territory of the United States, and ten alternate sections per mile on each side of the line through any state, to which the United States had full title, and not reserved, sold, granted or otherwise appropriated, and free from preemption or other claims or rights, " *at the time* the line of said road *is designated by a plat thereof* filed in the office of the Commissioner of the General Land Office." 3.

Section 4 made provision for patents to be issued to the company for lands opposite to and coterminous with each section of twenty-five miles of road, completed in a good, substantial, and workmanlike manner.

It was also provided that the President of the United States should cause the lands to be surveyed for forty miles in width

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on both sides of the entire line after the general route was fixed and as fast as the construction of the railroad required; that the grants, rights, and privileges specified in the act of Congress were given and accepted subject to the conditions that the company would commence work within two years from the approval of the act, complete not less than fifty miles per year after the second year; construct, equip, furnish, and complete its main line by July 4, 1878, and if the company made any breach of the conditions imposed, and allowed the same to continue for upward of one year, then at any time thereafter, the United States could do any and all acts and things needful and necessary to insure a speedy completion of the road. 6, 8, and 9.

By the eighteenth section of the act, the Southern Pacific Railroad Company, a California corporation, was authorized to connect with the Atlantic and Pacific Railroad at such point, near the boundary line of the state as it deemed most suitable for a railroad line to San Francisco, and to have a uniform gauge and rate of freight or fare with that road; and, in consideration thereof, to aid in its construction,

"shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for."

The twentieth section provided that, the better to accomplish the object of the act,

"namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times, but particularly in time of war, the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard to the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend or repeal this act."

The Legislature of California, by an act approved April 4, 1870, authorized the Southern Pacific Railroad Company to change the line of its road so as to reach the eastern boundary of the state by such route as the company should determine to be the most practicable. And by joint resolution passed

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June 28, 1870, Congress declared that that company might construct its road and telegraph line, as near as might be, on the route indicated by the map filed by that company in the Department of the Interior on the 3d day of January, 1867, and

"upon the construction of each section of said road in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July 27th, 1866, and upon the report of the commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said Act of July 27th, 1866, expressly saving and reserving all the rights of actual settlers,

together with the other conditions and restrictions provided for in the third section of said act."

16 Stat. 382.

By an act approved March 3, 1871, Congress incorporated the Texas Pacific Railroad Company and made to it a grant of public lands. And by the 23d section of that act, it was provided

"that, for the purpose of connecting the Texas Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California by the Act of July twenty-seven, eighteen hundred and sixty-six: *provided, however,* that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

16 Stat. 572, 579.

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The Southern Pacific Railroad Company constructed the road thus contemplated, and claims that the lands here in dispute passed to it under the above act of 1871.

The Atlantic and Pacific Railroad Company built part of its road east of Colorado River, but did not construct any line west of that river or in California.

In consequence of such failure, Congress, by the Act of July 6, 1886, 24 Stat. 123, c. 637, provided

"that all the lands, excepting the right of way and the right, power and authority given to said corporation to take from the public lands adjacent to the line of said

road material of earth, stone, timber and so forth, for the construction thereof, including all necessary grounds for station buildings, workshops, depots, machine shops, switches, side tracks, turntables and water stations, heretofore granted to the Atlantic and Pacific Railroad Company by an act of Congress entitled 'An act granting lands to aid in the construction of railroad and telegraph lines from the states of Missouri and Arkansas to the Pacific Coast,' approved July 27th, 1866, and subsequent acts and joint resolutions of Congress, which are adjacent to and coterminous with the uncompleted portions of the main line of said road, embraced within both the granted and the indemnity limits, as contemplated to be constructed under and by the provisions of the said act of July 27th, 1866, and acts and joint resolutions subsequent thereto and relating to the construction of said road and telegraph, be, and the same are hereby, declared *forfeited* and *restored to the public domain.* "

In execution of that act, the United States, in 1889, commenced suits in the Circuit Court of the United States for the Southern District of California, for the purpose of quieting its title to various tracts of land, aggregating about 5,342 acres, and claimed by the Southern Pacific Railroad Company and by other corporations and individuals asserting title under that company. In one of those suits, the Southern Pacific Railroad Company and D. O. Mills and Garrett L. Lansing, trustees under a mortgage executed by that company on the 1st day of April, 1875, and Joseph Youngblood, were made

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defendants. In the other, the same company and trustees, together with the City Brick Company, Thomas Goss, Edward Simmons, and A. A. Hubbard, were defendants.

These are the cases reported in 146 U.S. 146 U. S. 570 , 146 U. S. 615 .

The issues presented by the government in the former suits are fully shown by an amended bill filed therein November 22, 1889. After referring to the organization of the Southern Pacific Railroad Company and to the Act of Congress of July 27,

1866, it proceeds:

"Your orator alleges that, by and pursuant to said act of Congress, the Atlantic and Pacific Railroad Company was created and duly organized, and on November 23, 1866, within the time and in the manner provided in said act, accepted said grant, and did *designate the line of its route* from Springfield, Missouri, to the Pacific, by maps and plates thereof, which it filed in the office of the Commissioner of the General Land Office in manner following, to-wit: on or about March 9, 1872, said company filed in the office of the Commissioner of the General Land Office maps *designating the line of its route,* and showing the general features of the country and vicinity, as follows: first, from San Francisco to San Miguel Mission, in California; second, map of its route from San Miguel Mission, via Santa Barbara and San Buenaventura, to a point in township 2 south, range 17 west, San Bernardino base and meridian, in California; third, map of its route from said point last mentioned to a point in township 7 north, range 7 east, San Bernardino base and meridian, in California; fourth, map of its route from said point last named to the Colorado River. And thereafter, on or about March, 1872, said company filed in said office, as aforesaid, its several other maps, designating its route from said point last named to Springfield, in the State of Missouri, making altogether a continuous line, designating its entire route, and showing the general features of the country from said Town of Springfield, Missouri, by way of the points named in said Act of Congress of July 27, 1866, to the Pacific at San Buenaventura, and from there to San Francisco, and in the manner provided in said act, and such designation was accepted by the United States.

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Your orator alleges that *said several parts of its map, filed as aforesaid, made and constituted the entire route or line of said Atlantic and Pacific Railroad Company, fully designating the whole thereof.* "

It was further averred that

"on March 9, 1872, and on April 22, 1872, the Secretary of the Interior and the Commissioner of the General Land Office, respectively, ordered all the odd sections of land within thirty miles on each side of said designated route of said Atlantic and Pacific Railroad Company reserved from sale and withdrawn;"

that said Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or complete any railroad west of the Colorado River, and that, by the Act of Congress approved July 6, 1886,

"all the lands and rights to lands theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to entry for noncompletion of that portion of said railroad to have been constructed in California."

After alleging that the Southern Pacific Railroad Company was not the company of that name organized under certain articles of amalgamation and consolidation, dated October 11, 1870, and amended April 11, 1871, but was the now existing company of that name, and after setting out the twenty-third section of the Act of Congress of March 3, 1871, incorporating the Texas and Pacific Railroad Company, 16 Stat. 573, and granting lands to the Southern Pacific Railroad Company for the line therein described, the amended bill in the former suits proceeded:

"Said Southern Pacific Railroad Company, the corporation which existed on April 3, 1871, as heretofore shown, pretended to accept said grant on April 3, 1871, and did on that day designate the line of its road by a plat thereof, which it filed in the office of the Commissioner of the General Land Office, and thereupon the Secretary of the Interior ordered all the public lands in odd sections within thirty miles of such route to which no right or claim had attached to be withdrawn from market, and reserved. And your orator

alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth, did construct and complete a railroad from Tehachapi Pass, by way of Los Angeles, to the Colorado River in the manner and within the time prescribed in said act of Congress, in which the Southern Pacific Railroad Company, therein named, was authorized and empowered to do. And thereafter the commissioners appointed under said act for that purpose did unlawfully make and file their alleged acceptance of the whole of said railroad by sections. And there was not, and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid."

It was also alleged that

"on the south side of said route of the Atlantic and Pacific Railroad Company, within 30 miles of said route, but also within 20 miles of the pretended designated route of the Southern Pacific Railroad Company, there was not on July 27, 1866, nor on March 12, 1872, nor on April 3, 1871, and is not now, enough public land in the odd sections to equal in amount ten alternate sections per mile of the line of road of said Atlantic and Pacific Railroad Company, within such limits, for that, prior to said date of July 27, 1866, the Mexican government and the United States had sold, granted, reserved, and otherwise disposed of so great a quantity of land in those limits;"

also that

"all of the said lands before described are situated on the south side of the said designated route of the Atlantic and Pacific Railroad Company, more than 20 miles but less than 30 miles therefrom, but are less than 20 miles from the said pretended designated route of said Southern Pacific Railroad Company."

The amended bill concludes by alleging that the defendants and either of them have no title or interest in or to the lands described,

"for that said pretended patents under which defendants solely claim title were issued inadvertently, without authority, and were at their inception, and still are, each void and inoperative to pass title, and that said lands were never granted to said Southern Pacific Railroad Company,

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defendant herein, but are still owned by the plaintiff,"

and that the Secretary of the Interior, on the 16th day of August, 1887, on behalf of the government and in accordance with law, demanded of said company the relinquishment of its claim to all of the lands described in such patents, and a return of the patents, all of which that company refused to do.

The relief asked was a decree cancelling the patents issued to the Southern Pacific Railroad Company, quieting the title of the government to the lands described therein, and enjoining that company from asserting or claiming any right or title thereto adversely to the United States.

The answer of the Southern Pacific Railroad Company, filed in the former suits December 30, 1889, shows its understanding as to what were the issues tendered by the government. From that answer these extracts are made:

"The defendant admits that, by and under said last-mentioned act of Congress [July 27, 1866], the Atlantic and Pacific Railroad Company was created and organized, and did duly accept the provisions of the said law within the time and in the manner provided in said act; but it denies that said Atlantic and Pacific Railroad Company *did designate the line of its route from Springfield, in the State of Missouri, to the Pacific Coast, as required by said act.* "

"This defendant denies that, on the 9th March, 1872, or at or about any such time, the Atlantic and Pacific Railroad Company filed in the office of the Commissioner of the General Land Office maps designating the line of its route, or otherwise in accordance with the law, and denies that, on or about the 9th March, 1872, said Atlantic and Pacific Railroad Company filed four maps in the office of the

Commissioner of the General Land Office, as stated in said bill. Said company filed two maps, and claimed that they were filed for the purpose of locating parts or fragments of a line for its road in the State of California; but the defendant *denies that said maps constituted a valid location of said road in California.* Certified copies of said maps are annexed to the answer heretofore filed in this suit by this defendant, and marked 'Exhibit A, Nos. 1 and 2,' which, with the endorsements

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thereon, are now herein referred to and made part of this answer, and this defendant says that said railroad was not located or attempted to be located on or about March 9, 1872, or at any such time, in California, either in whole or in part, otherwise than as aforesaid by said maps. This defendant denies that the Atlantic and Pacific Railroad Company, *by or through the filing of said maps, acquired the right to any lands of the United States lying opposite to the lines or route marked on said maps,* and denies that said company acquired the right to select any public lands along said routes or lines as 'other lands' in lieu of sections within twenty miles that had been granted, sold, 'reserved, occupied by homestead settlers, or preempted, or otherwise disposed of' by the United States. These maps were sent to the General Land Office by the Secretary of the Interior, with a letter dated March 9, 1872, of which a certified copy is annexed to said answer heretofore filed, marked 'Exhibit B.'"

"This defendant says that the lands mentioned in the amended bill herein lie opposite to the line of route marked on the said map, designated in said letter as 'No. 2' of a portion of the proposed road of the Atlantic and Pacific Railroad Company -- that is, a piece of road within the State of California"

"from a point on the western boundary line of Los Angeles County, California, to a point in township seven north, range seven east of San Bernardino meridian, in said state."

"Neither when filed in March, 1872, nor at any such time did it appear that said map represented any part of a line that was, or was intended to be, conjoined to

any other part located before that time for the Atlantic and Pacific Railroad."

"Further answering, this defendant says that the Atlantic and Pacific Railroad Company afterwards, *viz.,* on the 13th day of August, 1872, filed in the Department of the Interior two other maps which it claimed were intended to designate the line of other fragments or portions of its railroad in California. Certified copies of said maps, and of the letter of the Secretary of the Interior of April 16, 1874, in respect thereto, are annexed to the answer filed heretofore in this suit by

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this defendant, marked 'Exhibit C, Nos. 1 and 2,' and *are now herein referred to and made part of this answer.* And this defendant *denies that said maps constituted a valid location of the parts or fractions of road therein described, and denies that the four maps hereinbefore mentioned of four several parts of the road constituted a valid location of the said Atlantic and Pacific Railroad in California.* And it denies that the said Atlantic and Pacific Railroad was ever in any otherwise lawfully located in the State of California. . . . And the defendant says that *there is nothing in or upon said maps to identify the same as the line of road mentioned in the said act of Congress.* "

After referring to the eighteenth section of the Act of July 27, 1866, and alleging that the construction of a railroad from the Colorado River to San Francisco was "expressly relegated and appropriated to this defendant," and that the Atlantic and Pacific Railroad Company was never authorized to construct any such line of railroad, or to acquire any lands by reason of or in respect of the construction or proposed construction of any such line, the answer of the Southern Pacific Railroad Company denied that

"on or about March, 1872, the Atlantic and Pacific Company filed in the office of the Commissioner of the General Land Office maps designating its route from the Colorado River to Springfield, in the State of Missouri,"

or that

"said maps made altogether the line of railroad from Springfield, in the State of Missouri, to the Pacific Coast, which was provided for and required by said Act of Congress of July 27, 1866, to be constructed and completed by the said Atlantic and Pacific Railroad Company,"

or "that the several parts of its map filed made and constituted the whole of its line as provided for in said act of Congress;" that the parts of its map, "when taken together, showed a line terminating at San Francisco, which was not the terminus provided for by said act of Congress." The answer also denied that, on March 9, 1872, and April 22, 1872, or at any such times, the Secretary of the Interior and the Commissioner of the General Land Office ordered all the odd sections of land within thirty miles on each side of the designated

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route of the said Atlantic and Pacific Railroad Company reserved from sale and withdrawn; that about April 22, 1872, the Commissioner of the General Land Office ordered lands withdrawn for thirty miles on each side of the parts of lines of route attempted to be located March 9, 1872, by the two maps hereinbefore mentioned as filed March 9, 1872, his orders being addressed to the register and receiver of the United States land office at San Bernardino, Los Angeles, and Visalia, and were substantially as shown by the certified copy of the commissioner's letter of said date to the officers at Los Angeles, but the defendant denied that the orders of April 22, 1872, had any effect whatever upon its rights and grants, and were intended only to take effect upon public lands not reserved, sold, granted, or otherwise appropriated at the time of filing said maps, March 9, 1872.

The defendant averred that

"the lands involved in this suit had previously, on the 3d April, 1871, by the filing of the map of definite location of the defendant's railroad, been duly reserved from sale by and under the said 23d section of the Act of Congress of March 3, 1871, and the 6th section of the Act of Congress of July 27, 1866, which said sections are quoted in the bill of complaint herein, and avers also that said lands had been

duly withdrawn from market, and appropriated for the use of this defendant by the order of the Commissioner of the General Land Office to the register and receiver of the U.S. land office at Los Angeles, issued April 21, 1871, a copy of which is hereto annexed, marked 'R,' and made a part of this answer."

Admitting that the Atlantic and Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but averring that that company did not at any time construct or complete any railroad west of the Colorado River, the defendant averred that

"on the 3d April, 1871, it designated the line of its said railroad, as described in said section 23, by a map thereof, filed in the office of the Commissioner of the General Land Office, and thereupon the said commissioner ordered all the public lands in odd sections

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within thirty miles of such route to be withdrawn from market (certified copy of the map filed by this defendant in the office of the Commissioner of the General Land Office is annexed to the answer heretofore filed by this defendant marked 'Exhibit D,' and the same is now referred to and made part of this answer);"

that

"it is the same railroad company that constructed the railroad provided for in the 23d section of said Act of Congress of March 3, 1871, and that it fully constructed and completed its road according to said act, and the construction thereof has been accepted and approved by the President of the United States, construction of the last mile of said road having been accepted by President Hayes on the 23d of January, 1878."

The Southern Pacific Railroad Company admitted in its answer that the line which the Atlantic and Pacific Railroad claimed to have located in California " *crosses the line of the Southern Pacific Railroad located under the Act of March 3, 1871,* " but alleged

"that under and by virtue of said Act of March 3, 1871, and the map of location filed on the 3d day of April, 1871, the lands described in said patent were reserved for and appropriated to this defendant, whose title thereto has become perfect and complete by the construction of its road as prescribed in said act,"

and that

"the said Atlantic and Pacific Railroad Company's pretended line was not located until subsequent to the year 1871; that, when sought or pretended to be located, it was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or affecting said Atlantic and Pacific Railroad Company."

The answer of the Southern Pacific Railroad Company, in the former cases, also contained these paragraphs:

"This defendant admits that, on the south side of the pretended location of the Atlantic and Pacific road, and within 30 miles thereof, but also within 20 miles of the location of the Southern Pacific Railroad, there was not on April 3, 1871, and is not now, enough public lands in the odd sections to equal ten alternate sections per mile on each side of the pretended location of the line of the said Atlantic and Pacific

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Railroad Company within such limits, and this defendant admits that the above-described tracts of land are situated more than 20 miles and less than 30 miles from the line of the pretended location of the Atlantic and Pacific Railroad, and less than 20 miles from the said located line of the Southern Pacific Railroad."

"This defendant avers that said tracts of land have been granted by the 23d section of the Act of March 3, 1871, to it, the Southern Pacific Railroad Company. . . ."

"This defendant admits that, under date of March 29, 1876, April 4, 1879, and December 27, 1883, the patents were issued to this defendant for the lands

hereinabove described, but denied that such patents were issued inadvertently or without authority. On the contrary, this defendant avers that said patents were issued with due deliberation, and in strict conformity with the law, and that the signatures of the President of the United States and the recorder of the General Land Office thereto were affixed fairly and properly and under the authority of law. This defendant here refers to the Exhibit 1, Nos. 1 and 2, annexed to its answer heretofore filed, and makes the same part of this answer."

"When the grant of lands was made to this defendant, March 3, 1871, and its grant was located, April 3, 1871, all the lands involved in this case were public lands of the United States."

To this answer a general replication was filed.

The pleadings in the former suits show that the government based its claim to relief upon certain grounds that were distinctly controverted by the Southern Pacific Railroad Company. Those grounds were:

That the grant by Congress of public lands to the Atlantic and Pacific Railroad Company was before the grant to the Southern Pacific Railroad Company;

That when the Atlantic and Pacific Railroad Company designated its line by a plat thereof filed in the office of the Commissioner of the General Land Office, as required by Congress, it acquired an inchoate title to the lands granted,

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that is, a right to earn them and to obtain a complete title by construction of its road;

That the Atlantic and Pacific Railroad Company, by certain maps and plats filed in the office of the Commissioner of the General Land Office in 1872, and fully identified both in the bill and answer (which maps were accepted by the Interior Department as adequate and valid), sufficiently designated, as required by the act of 1866, an entire line from San Francisco, via San Miguel Mission, Santa Barbara, San Buenaventura, and the Colorado River, to Springfield, Missouri, so

as to become entitled, as of the date of the grant of July 27, 1866, to earn the lands appertaining to the line so designated;

That the lands then in controversy appertained to the line of road, and were within the exterior lines of the route, so designated; were among the lands granted to the Atlantic and Pacific Railroad Company; and, in consequence of such designation, were withdrawn by the Secretary of the Interior from sale or preemption for the benefit of that company, and

That, the Atlantic and Pacific Railroad Company having failed to meet the conditions of the grant by constructing its road in California, the lands to which it had acquired an inchoate title by means of the accepted map designating its line were "restored to the public domain" under the above Act of July 6, 1886, 24 Stat. 123, c. 637, and were not left, upon such statutory forfeiture, to be earned by the Southern Pacific Railroad Company under the junior grant.

The Southern Pacific Railroad Company controverted the material allegations of the government's bill and amended bill, and made defense upon these among other grounds:

That the only designation of a line or route ever made by the Atlantic and Pacific Railroad Company was one of an entire line from Springfield to San Francisco, and that it had no authority to establish, designate, or locate any such extended line;

That the maps of 1872 filed by the Atlantic and Pacific Railroad Company, which were referred to in the bill, and also made *parts of the company's answer,* were *not sufficient*

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to identify any specific lands west of the Colorado River; were not therefore maps of definite location, and that that company never made any sufficient location or designation of a line in California, so that it could claim the lands in dispute under the grant made by the act of 1866;

That the lands in question were covered by the location made by the Southern Pacific Railroad Company under the act of Congress granting lands to it, and were part of those withdrawn from sale and in its favor by the Secretary of the Interior; and

That, in any view, the right of the Southern Pacific Railroad Company to those lands attached and became complete upon the forfeiture of the lands and rights granted to the Atlantic and Pacific Railroad Company, such forfeiture, it was claimed, not affecting the rights previously acquired by the Southern Pacific Railroad under the accepted maps of the definite location of its line and under the withdrawal from sale of the lands appertaining to that line.

In the former suits, it was conceded that if the maps filed by the Atlantic and Pacific Railroad Company in 1872 were valid maps of *definite location,* sufficiently identifying the lands granted to it, then the lands involved in those suits were within the overlapping limits of the two grants.

The learned counsel for the railroad company in those cases contended that in order to show a conflict between the claims of the two companies to the particular lands then in controversy, the United States must show that the Atlantic and Pacific Railroad Company designated its route under the act of 1866, and that there was no proof of that fact

"except that the Atlantic and Pacific Company from time to time filed certain fragmentary maps pretending to designate routes, and which, if connected, would not constitute a route such as the act of 1866 authorized it to select."

This general point, counsel argued, resolved itself into three subsidiary questions, namely:

"1. Whether the Atlantic and Pacific Railroad Company *ever designated its route;* 2. whether such a designation, if made, *operated,* from the mere circumstance that the grant to that company was prior in time to that made to the

Southern Pacific Company, *to exclude the lands in the overlapping limits at the place of crossing from the latter grant;* 3. whether, if such designation was made, the proviso in the 23d section of the above Act of March 3, 1871, protecting the rights, 'present and prospective,' of the Atlantic and Pacific Company, was designed for any other purpose than to save to it any lands which it might eventually earn by a full performance of its undertaking."

Manifestly the fundamental question in the former cases was whether the Atlantic and Pacific Railroad Company ever filed any such maps as the act of 1866 contemplated when declaring that the odd-numbered sections granted should be those on the line of the road to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, "at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office."

In those cases, the circuit court denied the relief asked and dismissed the bills filed by the United States. 39 F. 132; 40 F. 611; 45 F. 596; 46 F. 683. But this Court reversed the judgment so rendered, holding:

That the grants to the Atlantic and Pacific and the Southern Pacific Railroad Companies were *in praesenti* -- that is to say, the route not being at the time determined, the grant was in the nature of a float, no title attaching to any specific sections until they were capable of identification;

That when the granted lands were once identified by approved maps of definite location, the grants severally took effect by relation as of the dates of the respective acts of Congress, the grant to the Atlantic and Pacific Railroad Company being prior in time to that made to the Southern Pacific Railroad Company;

That the Atlantic and Pacific Railroad Company did file maps of definite location in 1872, which were "received and approved by the Land Department *as maps of definite location;* " that *then* "the specific tracts were designated, and

to them the title of the Atlantic and Pacific attached *as of July 27, 1866;* " that

"in fact, the line of definite location of the Atlantic and Pacific was established, and maps thereof filed and approved, before any action in that respect was taken by the Southern Pacific Company;"

and that

"there was never a time therefore at which the grant of the Southern Pacific could be said to have attached to these lands, and the plausible argument based thereon, made by counsel for the Southern Pacific Company, falls to the ground;"

That the map filed by the Southern Pacific Railroad Company April 3, 1871, could not have been a map of definite location, but was "only of the general route, and there was then no designation of lands *to which the Southern Pacific Company's title could attach* ";

That it was immaterial whether the map of definite location of the Southern Pacific road was filed and approved before or after April 11, 1872,

"for, when filed, the grant could take effect by relation only as of March 3, 1871 [the date of the grant to it], and *at that time, and for nearly five years theretofore,* the title to these lands had been in the Atlantic and Pacific;"

nor was it material that the act of 1871 "in terms purports to bestow the same rights, grants, and privileges as were granted to the Southern Pacific Railroad Company by the act of 1866," for that merely defined "the extent of the grant and the character of the rights and privileges" given, and did

"not operate to make the latter grant take effect by relation as of the date of the prior grant and thus subject the grants to the two companies to the rule controlling contemporaneous grants, as established by *St. Paul and Sioux City Railroad v. Winona and St. Peter Railroad,* 112 U. S. 720 , and *Sioux City and St. Paul Railroad v. Chicago, Milwaukee &c.; Railway,* 117 U. S. 406 ;"

that

"even if Congress had in terms expressed an intent to that effect in a subsequent act, it was not competent by such legislation to divest the rights already vested in the Atlantic and Pacific Company;"

that the case, stating it in the best way for the railroad company, was one "of two companies with conflicting grants, each of whose lines of definite location has been

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approved by the Land Department;" and that "unquestionably the grant older in date takes the land;"

That whatever right or title was acquired by the Southern Pacific Railroad Company by its map filed April 3, 1871, was *"absolutely displaced when the Atlantic and Pacific Company's map was filed;"* that Congress intended

"no scramble between companies for the grasping of titles by priority of location, but that it is to be regarded as though title passes as of the date of the act, and to the company having priority of grant, and therefore that, in the eye of the law, it is now as though there never was a period of time during which any title to these lands was in the Southern Pacific,"

so that,

"whatever may have been the dates of the filing by the respective companies, the case stands as though the lands granted to the Atlantic and Pacific had been identified in 1866, and title had then passed, and *there never was a title of any kind vested in the Southern Pacific Company;* "

and

That, upon the forfeiture by Congress of the rights granted to the Atlantic and Pacific Railroad Company, the lands to which its grant had attached upon the filing and acceptance of its map of definite location in 1872 *did not inure to the benefit of the Southern Pacific Railroad Company;* that

"if the Act of Forfeiture had not been passed by Congress, the Atlantic and Pacific could yet construct the road, and that, constructing it, its title to these lands would become perfect;"

that "no power but Congress could interfere with this right of the Atlantic and Pacific;" that "Congress, by the Act of Forfeiture of July 6, 1886, determined what should become of the lands forfeited;" that "it enacted that they be restored to the public domain;" that "the forfeiture was not for the benefit of the Southern Pacific, it was not to enlarge its grant as it stood prior to the Act of Forfeiture," but was for the benefit of the United States, as shown by the act of Congress declaring that the lands be restored to the public domain; consequently, that by the Act of Forfeiture, "the title of the Atlantic and Pacific was retaken by the general government, and retaken for its own benefit, and not that of the Southern Pacific Company;" and that the lands belonged to the

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United States, and the Southern Pacific Railroad Company had "no title of any kind" to them. *United States v. Southern Pacific Railroad,* 146 U. S. 570 , 146 U. S. 607 .

Touching the point made in the former cases, that the maps filed by the Atlantic and Pacific Railroad Company designating a line from the Colorado River to San Francisco were inoperative by reason of the want of authority to construct a road to the latter city, the Court said:

"But it is urged by counsel for defendant that no map of definite location of line between the Colorado River and the Pacific Ocean was ever filed by the Atlantic and Pacific or approved by the Secretary of the Interior. This contention is based upon these facts: the Atlantic and Pacific Company claimed that, under its charter, it was authorized to build a road from the Colorado River to the Pacific Ocean, and thence along the coast up to San Francisco, and it filed maps thereof in four sections. San Buenaventura was the point where the westward line first touched the Pacific Ocean. One of these maps was of that portion of the line extending

from the western boundary of Los Angeles County, a point east of San Buenaventura, and through that place to San Miguel Mission, in the direction of San Francisco. In other words, San Buenaventura was not the terminus of any line of definite location from the Colorado River westward, whether shown by one or more maps, but only an intermediate point on one sectional map. When the four maps were filed, and in 1872, the Land Department, holding that the Atlantic and Pacific Company was authorized to build not only from the Colorado River directly to the Pacific Ocean, but also thence north to San Francisco, approved them *as establishing the line of definite location.* Subsequently, and while Mr. Justice Lamar was Secretary of the Interior, the matter was reexamined and it was properly held that under the act of 1866, the grant to the Atlantic and Pacific was exhausted when its line reached the Pacific Ocean. San Buenaventura was therefore held to be the western terminus, and the location of the line approved to that point. The fact that its line was located, and maps filed thereof in sections, is immaterial. *St. Paul & Pacific Railroad*

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v. Northern Pacific Railroad, 139 U. S. 1 . Indeed, all the transcontinental roads, it is believed, filed their maps of route in sections. So the question is whether the filing a map of definite location from the Colorado River, through San Buenaventura, to San Francisco, under a claim of right to construct a road the entire distance, is good as a map of definite location from the Colorado River to San Buenaventura, the latter point being the limit of the grant. *We think unquestionably it is.* Though a party claims more than he is legally entitled to, his claim ought not to be rejected for that to which he has a right. The purpose of filing a map of definite location is to enable the Land Department to designate the lands passing under the grant, and when a map of such a line is filed, full information is given, and, so far as that line may legally extend, the law perfects the title. It surely cannot be that a company must determine at its peril the extent to which its grant may go, or that a mistake in such determination works a forfeiture of all its right to lands."

146 U.S. 146 U. S. 570 , 146 U. S. 596 .

The closing paragraph in the opinion in the former cases is in these words:

"Our conclusions, therefore, are that a valid and sufficient map of definite location of its route from the Colorado River to the Pacific Ocean was filed by the Atlantic and Pacific Company and approved by the Secretary of the Interior; that, by such act, the title to these lands passed, under the grant of 1866, to the Atlantic and Pacific Railroad Company, and remained held by it subject to a condition subsequent until the Act of Forfeiture of 1886; that, by that Act of Forfeiture, the title of the Atlantic and Pacific was retaken by the general government, and retaken for its benefit, and not that of the Southern Pacific Company, and *that the latter company has no title of any kind to these lands.* "

146 U.S. 146 U. S. 607 .

In the cases of *United States v. Colton Marble and Lime Company* and *United States v. Southern Pacific Railroad,* 146 U. S. 615 , it was adjudged that the proviso in the Act of March 3, 1871, 16 Stat. 573, c. 122, giving lands in aid of the construction of the Southern Pacific Railroad, that the grant should "in no way affect or impair the rights, present

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or prospective, of the Atlantic and Pacific Railroad Company," operated to except the indemnity lands of the Atlantic and Pacific Company from the grant to the Southern Pacific Company.

The former cases were decided in this Court on the 12th day of December, 1892.

A petition for rehearing was presented to the several members of the court, but a rehearing was not granted. In that petition, the Southern Pacific Railroad Company insisted that this Court had erred in various particulars, among them the following:

In not giving due legal effect to the Forfeiture Act of July 6, 1886, its contention (as on the original hearing) being that the legal operation and effect of that act were to avoid the grant to the Atlantic and Pacific Railroad Company as of the date of the act of 1866, and to restore to the United States, *as of that date,* the title of all the

lands embraced in the forfeiture, leaving nothing in the way of the full enjoyment by the Southern Pacific Railroad Company of the grant made to it; consequently, that all proceedings taken by the Atlantic and Pacific Railroad Company, under the act of 1866 were avoided and defeated as absolutely and effectually as if the grant had never been made, and no proceedings taken in execution of it; and

In respect to the "designation of line under the Atlantic and Pacific Railroad maps and the effect and operation thereof."

The present suit was brought by the United States against the Southern Pacific Railroad Company and D. O. Mills and G.L. Lansing as trustees in a mortgage executed by that company on the 1st day of April, 1875 (the same trustees and mortgage referred to in the former cases), as well as against certain individuals and corporations, to quiet the title of the United States to the lands involved in this suit. It was pending at the time the former cases were decided in this Court. The lands now in controversy are situated opposite to and are coterminous with the first, second, and fourth sections of the Southern Pacific Railroad as constructed between 1873 and

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1877, inclusive, and within the primary and indemnity limits of the grant to the Southern Pacific Railroad Company made by the twenty-third section of the Texas and Pacific Act of March 3, 1871, the 61,939.62 acres patented to that company being opposite to the first and fourth sections of its road. It may be said that the lands here in dispute belong to one or the other of the following classes: lands within the common granted limits of both the Atlantic and Pacific grant of 1866 and the Southern Pacific grant of 1871, lands within the granted limits of the Southern Pacific grant and the indemnity limits of the Atlantic and Pacific grant, lands within the Southern Pacific indemnity limits and the Atlantic and Pacific granted limits, lands within the common indemnity limits of both grants. Of those in dispute, 219,012.93 acres have not been surveyed by the United States.

But all the lands now in dispute are within the limits of the grant to the Atlantic and Pacific Railroad Company, if the maps filed by that company in 1872, and which were approved by the Land Department, are to be regarded as maps of definite location. This is substantially admitted to be a correct statement of the controlling question before the Court, for the defendants, in their very able argument, state that the lands involved in this suit

"are within the limits which would have appertained to the grant to the Atlantic and Pacific upon the 1872 route, *if* that had been an authorized route and *if* a *definite location* had been duly made thereon so as to attach the grant to specific lands."

The contingencies here suggested have been fully met by this Court, for it was distinctly adjudged in the former cases, as between the government and the Southern Pacific Railroad Company, 146 U. S. 146 U.S. 570, 146 U. S. 596 , that the maps filed in 1872 sufficiently identified the lands granted to the Atlantic and Pacific Railroad Company on the contemplated line between the Colorado River and San Buenaventura on the Pacific Coast, although, for want of authority in that company to construct a railroad to San Francisco, they did not secure to the company any lands north of San Buenaventura -- that is, those maps were directly adjudged to be maps adequately

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fixing or locating the line of the road under the act of 1866. The records of those cases having been introduced in the present suit, there is no room for doubt (if those records are competent evidence) as to what was in issue and what was adjudged in the former cases. The maps which in this case are relied upon by the United States as maps of definite location, and which the Southern Pacific Railroad Company denies to be of that character, *are the identical maps which the government relied on in the former cases,* and the same which that company referred to *and made part of its answer in the former litigation,* and which were adjudged by this Court, in conformity with the contention of the government, to be valid maps of definite location, the acceptance of which made it impossible for the

Southern Pacific Railroad Company to acquire any interest in any lands granted to the Atlantic and Pacific Railroad Company that were forfeited to the United States by the act of 1886.

It is said, however, that under the pleadings and evidence in this collateral proceeding, it is open to the Southern Pacific Railroad Company to renew the contest as to the sufficiency of the maps of 1872 filed by the Atlantic and Pacific Railroad Company, and to show that they were not maps of definite location.

Is this position consistent with the settled rule of law as to the conclusiveness, between parties and their privies, of the final determination by a court of competent jurisdiction of matters put in issue by the pleadings?

The importance of this question, independently of the magnitude of the interests to be affected by our decision and of the earnest contention of learned counsel, justifies a reference to some of the adjudged cases showing the grounds upon which this salutary rule rests.

The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue, and directly determined by a court of competent jurisdiction as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies, and, even if the second suit is for a different cause of action, the right, question, or fact

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once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order, for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them.

Among the cases in this Court that illustrate the general rule are *Hopkins v. Lee,* 6 Wheat. 109, 19 U. S. 113 ; *Smith v. Kernochen,* 7 How. 198, 48 U. S. 216 ; *Thompson v. Roberts,* 24 How. 233, 65 U. S. 240 ; *Washington, Alexandria & Georgetown Steam Packet Co. v. Sickles,* 24 How. 333, 65 U. S. 340 -341, 65 U. S. 343 ; *Russell v. Place,* 94 U. S. 606 , 94 U. S. 608 ; *Cromwell v. Sac County,* 94 U. S. 351 ; *Campbell v. Rankin,* 99 U. S. 261 ; *Lumber Co. v. Buchtel,* 101 U. S. 638 ; *Bissell v. Spring Valley Township,* 124 U. S. 225 , 124 U. S. 230 , and *Johnson Co. v. Wharton,* 152 U. S. 253 .

In *Hopkins v. Lee,* which was a suit in equity by the purchaser of land to compel the vendor to remove certain encumbrances upon it, it was held that a fact established therein and made the basis of a decree could not be disputed in a subsequent action of covenant brought by the latter against the former for not conveying certain lands, part of the consideration, the Court saying that the rule on that subject had found its way into every system of jurisprudence, not only from its obvious fitness and propriety, but because without it an end could not be put to litigation; in *Smith v. Kernochen,* which was ejectment by an assignee of a mortgage to recover possession of the mortgaged premises, that a final decree in a previous suit, brought by the mortgagee against the mortgagor to foreclose the mortgage, adjudging the mortgage to be invalid for want of authority in the mortgagor to execute it, concluded the question of title, the Court observing

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that the case came within the general rule that the judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence conclusive between the same parties or their privies upon the same matters, when brought directly in question in another court; in *Thompson v. Roberts,* that the judgment of a court of law, or a decree of a court of equity, directly upon the same point and between the same parties, is good as a plea in bar and conclusive when given in evidence in a subsequent suit; in *Washington, Alexandria & Georgetown Steam Packet Co. v. Sickles,* that, to the end that rights might be secured and the repose of society preserved, and that limits might be imposed upon the faculties of litigation, the presumption had been adopted that the thing adjudged by a court of

competent jurisdiction, under definite conditions, shall be received in evidence "as irrefragable truth," such a presumption being a guaranty of the future efficiency and binding operation of the judgment; in *Cromwell v. Sac County,* that a judgment upon the merits constitutes an absolute bar to a subsequent suit upon the same cause of action in respect to every matter offered and received in evidence or which might have been offered to sustain or defeat the claim in controversy, while, if the second action is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered, the inquiry in such case being "as to the point or question actually litigated and determined in the original action, not what might have been litigated and determined;" in *Russell v. Place,* that

"a judgment of a court of competent jurisdiction upon a question directly involved in one suit is conclusive as to that question in another suit between the same parties;"

in *Campbell v. Rankin,* that in an action to recover damages for trespass upon a mining claim, the record of a former suit between the same parties, involving the same question of interfering mining claims, was admissible as evidence, the Court observing that

"whenever the same question has been in issue and tried, and judgment rendered, it is conclusive of the issue so decided in any subsequent

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suit between the same parties;"

in *Lumber Co. v. Buchtel,* that, in a suit for the amount of the first installment due on a contract for the purchase of timber lands (the defense being that the defendant had been induced to make the contract by false and fraudulent representations), a judgment based upon a finding that no such representations were made was conclusive in respect of that matter in a subsequent action brought on the contract to recover a different installment; in *Bissell v. Spring*

Valley Township, that an adjudication, in an action on coupons of municipal bonds, sustaining the defense that the municipality never executed the bonds, and that the bonds were not its legal obligations, was conclusive in a subsequent action brought by the same party on different coupons of the same bonds, and in *Johnson Co. v. Wharton,* that in an action to recover stipulated royalties for a named period for guard rails constructed according to the specifications of a certain patent, in which judgment was given for the plaintiff, the defendant in a second suit, brought to recover like royalties for a later period, could not make the same defense, although, by reason of the small amount in dispute, he was precluded from having the judgment in the first suit reviewed upon writ of error, this Court stating that it was a general rule, having its foundation in a wise public policy, that the final judgment of a court at least one of superior jurisdiction, competent under the law of its creation to deal with the parties and the subject matter and having acquired jurisdiction of the parties, concludes those parties and their privies in respect of every matter put in issue by the pleadings and determined by such court. *See also* *Lessee of Parrish v. Ferris,* 2 Black 606, 67 U. S. 608 ; *Packet Co. v. Sickles,* 5 Wall. 580, 72 U. S. 592 ; *Dowell v. Applegate,* 152 U. S. 327 , 152 U. S. 342 .

The latest expressions of opinion by this Court on this question are in *Last Chance Mining Co. v. Tyler Mining Co.,* 157 U. S. 683 , 157 U. S. 691 , and *New Orleans v. Citizens' Bank,* 167 U. S. 371 , 167 U. S. 396 . In the first of these cases, it was held that a judgment by default in favor of the Last Chance Mining Company against the Tyler Mining Company for a parcel of land embraced within the boundaries of certain mining claims,

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alleged to have been legally located, and to belong to the former company, precluded the latter company from contending, in a subsequent action for part of a mineral vein not embraced within the former suit, but within the mining claims involved in the first suit, that the mining claims in question had not been legally located, the Court observing that a judgment by default was just as conclusive an adjudication between the parties of what is essential to support the judgment as

one rendered after answer and contest, the essence of estoppel by judgment being that there has been a judicial determination of a fact, and the question always is has there been a determination? and not upon what evidence and by what means was it reached?

In *New Orleans v. Citizens' Bank,* it was held that the final and unreversed judgment of a court in Louisiana of superior jurisdiction upon the issue duly raised by the pleadings whether the bank was exempt by contract with the state from taxes assessed against it for particular years concluded that question, as between the same parties and their representatives, in respect of taxes assessed against it for subsequent years. In that case, the Court said:

"The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has, under identical circumstances and conditions, been previously concluded by a judgment between the parties or their privies."

In view of these adjudications, it would seem that the controlling inquiry is whether, under the pleadings in the former cases, the sufficiency of the Atlantic and Pacific maps of 1872 as maps of definite location was a matter in issue, and determined, as between the United States and the Southern Pacific Railroad Company. That that matter was in issue, and was actually decided, in the former cases is too clear to admit of doubt. That it was material is equally clear, for, upon its determination depended the question whether the grant of public lands to the Atlantic and Pacific Railroad Company attached to any specific lands along its line to which the forfeiture

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act of 1886 could apply. If those maps were valid maps of definite location, then, according to the settled adjudications of this Court, to which reference has often been made, the right of that company to earn the lands appertaining to it line, thus definitely located, attached, by relation, as of the date of the grant to it in 1866,

and in this view the Southern Pacific Railroad Company, holding the junior grant, took none of the lands appertaining to that line by reason of the definite location and construction of its line. Thus also, those lands were in such condition at the date of the Forfeiture Act of 1886 that they could be forfeited as lands in which the Atlantic and Pacific Railroad Company then had an interest, and, in accordance with the act of Congress, be fully restored to the public domain for the exclusive benefit of the United States, unaffected by the later grant made to the Southern Pacific Railroad Company.

The only way in which, in the former cases, the court could have avoided a decision as to the character of those maps was to have held that whether they were maps of definite location or not, the rights of the Southern Pacific Railroad Company attached, upon the declaration of forfeiture, to the lands then in dispute, and that Congress was without power to restore them to the public domain. So far from sustaining that view, the court expressly adjudged that, upon the acceptance of the Atlantic and Pacific maps of 1872, the rights of *that* company in the lands granted attached *as of the date of the grant of 1866,* and that it was not possible for the Southern Pacific Railroad Company, by the location of its road, *whether located before or after the acceptance of the maps of 1872,* to acquire any interest whatever in the lands there in dispute that would prevent Congress, upon forfeiting the rights of the Atlantic and Pacific Railroad Company, from restoring such lands to the public domain to be disposed of by the United States as it saw proper.

It is in effect said that the failure of the government in the former cases to aver in words that the maps of 1872 were maps of "definite location" leaves the question of the sufficiency of those maps open in this case relating to different

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lands. It seems to be forgotten that the amended bill was in exact conformity with the act of 1866, which, in the third section -- the one making the grant -- used the words, "at the time the line of said road is *designated* by a plat thereof filed in the office of the Commissioner of the General Land Office." The word "designated" in

that act meant no more nor less than the words "definitely located" mean. When the Southern Pacific Railroad Company denied that the Atlantic and Pacific line had been sufficiently designated, or that there had been a valid location of it, both litigants, as well as the court, understood, and properly, that the case presented the question whether there had been such a definite location of the Atlantic and Pacific line as the act of Congress required. That that company so understood the word "designated," as used in the third section of the act of 1866, is beyond question, for its answer filed in the former cases on the 30th of December, 1889, in which it claimed the lands then in controversy, refers to the map filed by it on the 3d of April, 1871, as one by which "it *designated* the line of its said railroad." And when it was adjudged that the maps of 1872 indicated a definite location of the line of the Atlantic and Pacific Railroad, the settled rules of law forbid that the defeated party should reopen that question in another suit, relating to other lands appertaining to the line so designated. The matter alleged by the government, and upon which the recovery proceeded, was, we repeat, the sufficiency of the maps of 1872 to entitle the Atlantic and Pacific Railroad Company to earn the lands there in disputed.

It is also said that the decision in the former cases concluded, at most, only the question of title in respect of the lands there in controversy. This cannot be correct when the lands in both suits have a common source of title and the title depends upon the existence or nonexistence of the same fact or facts. If the accepted maps filed by the Atlantic and Pacific Railroad Company in 1872 sufficiently located the line of that company, it could not possibly be that they were valid maps of definite location as to part of the lands appertaining to that line, and not maps of that character in respect of

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other lands embraced by it. Consequently, the former judgment, while unmodified, determined the character of the maps as between the United States and the Southern Pacific Railroad Company. If the court had adjudged in the former cases that those maps were neither filed nor accepted as maps of definite location, but were only maps of general route, could it be doubted that the government would

have been estopped from asserting to the contrary in a subsequent suit involving other lands claimed by the Southern Pacific Railroad Company which were covered by the same maps, and appertained to the same line? Must a different principle be applied because the decision was favorable to the government upon the question whether the maps of 1872 were maps of definite location? Certainly not.

But it is earnestly insisted that a prior judgment cannot operate as an estoppel in a subsequent suit between the same parties unless it be pleaded when there is an opportunity to do so, that such an opportunity existed in this suit, and that, the United States having failed to avail itself of that opportunity, it was open to the court to determine the truth of the matter upon all the evidence now before it.

This contention is based upon the forty-fifth rule in equity, providing:

"No special replication to any answer shall be filed. But if any matter alleged in the answer shall make it necessary for the plaintiff to amend his bill, he may have leave to amend the same with or without payment of costs, as the court, or a judge thereof, may in his discretion direct."

Under this rule, it is said, the United States had an opportunity to amend its bill, and in that mode to have met the allegations of the amended answer of 1893, but, having failed to ask leave to amend, it lost the benefit of the former judgment.

The part of the amended answer of 1893 to which counsel refer as making an issue or issues not made in the former cases, and which, it is contended, must have been met by an amended bill if the government expected to rely upon the prior judgment, is as follows:

"And the said respondents deny that said Atlantic and Pacific Railroad Company did locate on the ground or designate

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upon a plat or map the whole of said line of railroad, under or in accordance with said act, from Springfield, Missouri, by way of the points or places named in said

act, or otherwise, to the Pacific Ocean, and deny that it ever lawfully located or adopted or designated any part of said line in the State of California, and deny that, on or about the ___ day of _____, 1866, or at any other time, said company did file any such plat in the office of the Commissioner of the General Land Office, and deny that at that or at any such time any such designation or location of said line of railroad was approved by the Secretary of the Interior, and deny that the odd sections of public lands on each side of said road for thirty miles were withdrawn from market or reserved, and deny that the lands in suit herein, or any of them, fell within the twenty-mile limits of any such line, or were ever lawfully withdrawn from market, or reserved for, or for the benefit of, the said Atlantic and Pacific Railroad Company, and deny that the Atlantic and Pacific Railroad Company ever designated a line of railroad between the Colorado River and the Pacific Ocean by a map thereof filed in the office of the Commissioner of the General Land Office, or made or filed a map of definite location of a route from the Colorado River to the Pacific Ocean, whether by the most practical and eligible route or otherwise howsoever. The said respondents aver that the said Atlantic and Pacific Railroad Company never made any actual or definite location of its railroad in California, nor constructed any part of a railroad in said state under or according to the Act of Congress approved July 27, 1866, or any amendments, modifications, or supplements thereto or otherwise howsoever. The pretended location of a route by said Atlantic and Pacific Railroad Company in California never was or became an actual or definite location, or anything else than an attempted or pretended designation of a general route for a railroad from San Francisco to The Needles, and such pretended location or designation of route was a colorable and fraudulent location or designation of an unauthorized and impracticable line. The Secretary of the Interior never undertook to accept such pretended location

or designation as anything else than a designation of a general route, and no right to or interest in any public lands was, or could be, acquired by said railroad company by reason of any such attempted location or designation, or any act of

acceptance thereof."

Undoubtedly there are cases in which a party may lose the benefit of a prior judgment, in respect of matters determined by it, when, having an opportunity to plead such judgment, he fails to do so. But that principle has no application in the present case. Under Equity Rule 45, a general replication to the amended answer of the defendant company sufficed unless that amended answer contained such matter as made it "necessary" that the government should amend the bill. But, when a former recovery is to be relied on by the plaintiff, it can only be necessary to amend the bill when the rules of pleading imperatively require that to be done in order to obtain the benefit of such recovery. No amendment of the bill was necessary in this case, for the reason that the judgment in the prior suit -- the present suit being on a different cause of action -- could not be pleaded as an absolute bar arising upon the face of the record, but could be used as evidence to support the contention that the maps of 1872 sufficiently identified the lands granted by the act of 1866. The contrary is again asserted by the Southern Pacific Railroad Company in this suit. But that precise issue, we have seen, was made in the former suit, and was determined for the United States. And to establish that fact, the United States introduced the former record as evidence in its behalf. To say that the government lost the benefit of its former judgment, covering this issue or question, because it did not amend its bill and plead the judgment as an estoppel is to say that it was required to set out in its pleading what was merely evidence to support its title to the lands in controversy. The forty-fifth equity rule is not to be so interpreted. It means, at most, that a general replication is always sufficient to put in issue every material allegation of an answer or amended answer, unless the rules of pleading imperatively require an amendment of the bill. Besides, Rule 45 must be construed in connection

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with Equity Rule 19, declaring that the plaintiff, at his discretion, may omit from the bill

"what is commonly called the charging part of the bill, setting forth the matters or excuses which the defendant is supposed to intend to set up by way of defense to the bill."

If it was competent for the government in this case to have referred in its bill to the former suit, and, in advance, by appropriate allegations, to have met the objections which it supposed the defendant would urge to the former judgment as fixing the character of the maps of 1872, it was not bound to pursue that course, nor to amend its bill and set out what was only evidence of its title to the particular lands in controversy.

But there is another reason why the United States was not required to amend its bill. Before the amended answer of 1893 was filed, the government, by its pleadings, had distinctly alleged that the maps of 1872 sufficiently designated the line of the Atlantic and Pacific Railroad, and identified the lands granted to it, while the defendant's pleadings with equal distinctness averred that they were not valid maps of definite location. Such was the condition of the record when this Court decided the former case on the 12th day of December, 1892. That decision, as we are informed by the railroad company, instructed it "as to where the real strain of the controversy came," and, having failed "to appreciate the inferences which the court might draw from facts or evidence," leave was obtained in the circuit court to file, and it did file, in this case, the amended answer of 1893, bringing, it is claimed, into view such new issues and such additional facts as deprived the government of the right, unless it amended the bill and formally pleaded such judgment as an estoppel, to rely upon the judgment in the prior cases as conclusive of the matters determined by it. That which is claimed to be new in the amended answer was not such matter as, even prior to Equity Rule 45, would have required a special replication or an amended bill in order to avoid its effect. The amended answer was, at most, only a more extended statement of the grounds of defense previously set forth. The manifest purpose of it was to relieve the strain of the prior

decision, and, under the guise of presenting new issues of a substantial character, to enable the railroad company, by introducing additional evidence on its behalf, to retry, in this collateral proceeding, the question as to the sufficiency of the maps of 1872. The pleadings in the prior cases distinctly averred an adequate designation of the line of the Atlantic and Pacific Railroad and the identification of the lands appertaining to that line. The averment in the amended answer of 1893 that the location by the Atlantic and Pacific Railroad Company of its route in California "never was or became an actual or definite location," but was only "an attempted or pretended designation of a general route for a railroad from San Francisco to The Needles," and that such designation of its route was "a colorable and fraudulent location or designation of an unauthorized and impracticable line," was not at all necessary, because the defendant company, under its original answer, if not estopped by the former judgment, could have introduced any evidence tending to show that there had been no valid definite location of the line of the Atlantic and Pacific Railroad, and that the maps of 1872 were filed and accepted only for the purpose of indicating a general route. So that, if the government was entitled, under the pleadings as they were when the defendant company filed its amended answer of 1893, to introduce in evidence the record and judgment in the former cases, its right in that respect was not lost by its failure to amend its bill and specially set up that record.

That the record and judgment in the former cases were admissible in evidence without being specially pleaded we entertain no doubt. And when before the court as admissible evidence, the only inquiry was whether the sufficiency of the maps of 1872 was a matter in issue and determined between the parties to those cases. There are some cases holding that a judgment, without being specially pleaded, is not conclusive upon the issues to which it relates, but is only persuasive evidence, and that the court is at liberty to find according to the truth as shown by all the evidence before it. But, according to the weight of authority, and upon principle,

the former judgment, if admissible in evidence at all, is conclusive of the matters put in issue and actually determined by it. Mr. Greenleaf correctly says that

"the weight of authority, at least in the United States, is believed to be in favor of the position that where a former recovery is given in evidence, it is equally conclusive in its effect as if it were specially pleaded by the way of estoppel."

1 Greenleaf on Ev. 531. This view is in accord with the decisions of this Court above cited. *See also Marsh v. Pier,* 4 Rawle 272, 288; *Lawrence v. Hunt,* 10 Wend. 80, 83; *Betts v. Stair,* 5 Conn. 550; *Sawyer v. Woodbury,* 7 Gray 499, 502; *Jennison v. Inhabitants,* 13 Gray 544; *Cannon v. Brame,* 45 Ala. 262; *Trayhern v. Colburn,* 66 Md. 277, 278; *Garton v. Botts,* 73 Mo. 274, 278; *Walker v. Chase,* 53 Me. 258, 260; *Lynch v. Swanton,* 53 Me. 100, 102; *Prather v. Owens,* Cheves (Law) 236; *Jones v. Weathersbee,* 4 Strob. (Lawe) 50, 54-55; *Warwick v. Underwood,* 3 Head 238, 240; *Isaacs v. Clark,* 12 Vt. 692, 694.

In the present case, the railroad company has made an elaborate argument in support of the proposition that the necessary legal effect of the Forfeiture Act of July 6, 1886, was to restore the title of all lands affected by that act to the United States as of the date of the grant of July 27, 1866, and to "avoid" and "defeat," as of that date, the grant to the Atlantic and Pacific Railroad Company, with like effect as if it had never existed; that, upon such forfeiture, the United States became seised of its original estate in the lands as of July 27, 1866, with the same effect as if it had never made any grant to the Atlantic and Pacific Railroad Company, and that it could only enter upon the lands for forfeiture as of its former estate in them. In this view, it is contended that the rights of the Southern Pacific Railroad Company attached immediately upon the forfeiture, and before the lands so forfeited were restored to the public domain. It is sufficient to say in reference to this contention that the question as to the effect of the Act of Forfeiture upon the rights of the Southern Pacific Railroad Company was fully considered and determined in the former cases. It was held that it was

not the intention of Congress that these lands should pass conditionally to the Southern Pacific Railroad Company, or to give to it any lands previously granted to the other company, and that the first proviso of section 3 of the act of 1866 imports

that

"Congress was not only not intending to give to one company that which it had already given to another, but intended that lands previously granted should be definitely excepted from the later grant."

The court said:

"Again, there can be no question, under the authorities heretofore cited, that if the Act of Forfeiture had not been passed by Congress, the Atlantic and Pacific could yet construct its road and that, constructing it, its title to these lands would become perfect. No power but that of Congress could interfere with this right of the Atlantic and Pacific. No one but the grantor can raise the question of a breach of a condition subsequent. Congress, by the Act of Forfeiture of July 6, 1886, determined what should become of the lands forfeited. It enacted that they be restored to the public domain. The forfeiture was not for the benefit of the Southern Pacific. It was not to enlarge its grant as it stood prior to the Act of Forfeiture. It had given to the Southern Pacific all that it had agreed to in its original grant, and now, finding that the Atlantic and Pacific was guilty of a breach of a condition subsequent, it elected to enforce a forfeiture for that breach, and a forfeiture for its own benefit."

For the reasons stated, we are of opinion that it must be taken in this case to have been conclusively adjudicated in the former cases as between the United States and the Southern Pacific Railroad Company --

1. That the maps filed by the Atlantic and Pacific Railroad Company in 1872 were sufficient, as maps of definite location, to identify the lands granted to that company by the act of 1866.

2. That upon the acceptance of those maps by the Land Department, the rights of that company in the lands so granted attached, by relation, as of the date of the act of 1866; and

3. That, in view of the conditions attached to the grant,

and of the reservations of power in Congress contained in the act of 1866, such lands became, upon the passage of the Forfeiture Act of 1886, the property of the United States, and by force of that act were restored to the public domain without the Southern Pacific Railroad Company's having acquired any interest therein that affected the power of the United States to forfeit and restore them to the public domain.

These grounds being accepted as the basis of our decision, the law in the present case is clearly for the United States, for, as all the lands here in controversy are embraced by the maps of 1872, and therefore appertain to the line located by such maps, it must be, for the reasons stated in the former decision, that the United States is entitled, as between it and the Southern Pacific Railroad Company, to the relief given by the decree below.

Even if we were prepared, upon a reexamination of the former cases, or upon the showing made by the present record, to hold that the maps of 1872 were not valid maps of definite location, we could not, for that reason, in this proceeding, go behind the former adjudication and deny to the United States the benefit of the rulemaking that adjudication, so long at it was unmodified, conclusive, as between the parties to it, of all matters actually determined under the issues in the prior suits.

One other matter deserves attention. The learned counsel for the railroad company, in their extended comments upon the evidence in the present record, insist that under the proof now before the Court, it is indisputable that the Atlantic and Pacific Railroad Company did nothing more than file in the Interior Department "a map of general or *preliminary* route for the purpose of securing a *preliminary* withdrawal of lands," that the maps of 1872 were neither filed nor accepted as maps of definite location, and that the proof is of such a peculiar character as to demand an examination of it by the court.

In support of this contention reference was made to duly certified copies of certain letters appearing in the records of the Interior Department: (1) A letter to Mr. Delano, Secretary

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of the Interior, from Mr. Hillyer, attorney of the Atlantic and Pacific Railroad Company, under date of March 8, 1872, enclosing "the accompanying maps to be filed in the office of the Commissioner of the General Land Office" -- the the above maps of 1872, four in number -- which letter concludes:

"The Atlantic and Pacific Railroad Company respectfully request that the lands embraced in the grant to the company under the provisions of the Act of July 27, 1866, and coterminous with the portions of the line or route designated by the plats herewith filed or heretofore filed by said company, may be withdrawn from sale, entry, or preemption, and reserved for said railroad company according to the provisions of said act."

2. A letter from Secretary Delano to Mr. Hillyer, under date of March 9, 1872, acknowledging the receipt of the latter's letter, "transmitting four maps of the preliminary location of portions of the Atlantic and Pacific Railroad," and saying that said "maps have today been transmitted to the Commissioner of the General Land Office for appropriate action." 3. A letter from the Secretary of the Interior to the Commissioner of the General Land Office, under date of March 9, 1872, saying, "I transmit herewith, for appropriate action, four maps of the preliminary location of portions of the Atlantic and Pacific Railroad," and that said "maps were received yesterday from C. J. Hillyer, Esq., Atty. of the Co. -- in this city."

From these documents it appears that the attorney of the railroad company described two of the maps as "designating" and the remaining two as "showing" the line or route of the railroad, while the two letters of the secretary describe them as maps of the " *preliminary* location of portions" of the road. It is conceded that in the letters of the secretary, *as originally written,* the maps were referred to as maps of *definite location* of portions of the Atlantic and Pacific Railroad. And it

was shown that the word "preliminary," inserted in place of "definite," in the two letters of the secretary was in the handwriting of a former (now deceased) clerk in the Land and Railroad Division of the Interior Department, who, it is claimed, made the change with the knowledge,

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or in conformity with the directions, of the Secretary; also that corresponding memoranda, in pencil and in the handwriting of that clerk, appear upon those letters and upon the jackets containing them.

Upon the part of the United States, it is contended that there is no evidence whatever tending to show what the Secretary had any knowledge of or directed the word "definite" to be stricken out an "preliminary" inserted; on the contrary, that the department at all times subsequent to March 9, 1872, treated the maps in question as maps of definite location. In support of its position, the government refers to the fact that, in the letterpress copy, as well as in what is called by counsel the permanent record of letters in the department, the letter of the Secretary to the Commissioner of the General Land Office contains the words "definite location," not "preliminary location," and the letter of the Secretary to Mr. Hillyer of March 9, 1872, reads "four maps of the definite location," not "four maps of the preliminary location." The government also refers to the fact that when the Commissioner of the Land Office received the letter from the Secretary of the Interior, the endorsement placed on the back of the map was in these words:

"Map of definite location of the Atlantic and Pacific Railroad through the County of Los Angeles and part of San Bernardino, Cal. Received at the G.L.O. with Secretary's letter of March 9, 1872;"

also to the letter of the Commissioner, dated April 22, 1872, and addressed to the local land officers in California, in which the former said:

"Gentlemen: I transmit herewith a diagram showing the definite location of the Atlantic and Pacific Railroad under the Act of July 27, 1866, Stat. Vol. 14, p. 292, from a point on the western boundary of Los Angeles County to a point in township

7 N., range 7 E. of the San Bernardino, in your district, showing also the twenty- and thirty-mile limits of the land grant under said act,"

etc. It also appears that Assistant Attorney General Smith, in an official communication addressed to the Secretary of the Interior under date of March 16, 1874 -- in which he considered the question of the right of the Atlantic and Pacific Railroad Company to locate its

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line from the Colorado River, by way of Tehachapi Pass, to San Francisco, referred to and treated the maps of 1872 as maps of definite location. And they were so referred to and treated by Secretary Lamar in his opinion of March 23, 1886, holding that that company was not entitled to construct a road from San Buenaventura to San Francisco. 4 D.L.O. 458.

We cannot concur in the view that the evidence upon this branch of this case is of such nature as to compel the Court, in the interest of truth and justice, not only to consider it but to pass again upon the issue made in the former suits as to the character of the maps of 1872. Whatever is new in the evidence now before us touching that matter is simply cumulative on the one side or the other. The application to consider that evidence is practically an application for a rehearing as to things directly determined in the former suits between the same parties, and which adjudication has never been modified. Such a course of procedure is wholly inadmissible under the settled rule of *res judicata.* Without, therefore, expressing any opinion as to the effect of this new evidence relating to matters once finally adjudged, we hold that the Southern Pacific Railroad Company cannot, in this proceeding, question the validity of those maps as maps of definite location.

One of the objects of this suit was to obtain a decree quieting the title of the United States not only to the lands claimed by the Southern Pacific Railroad Company, but to those claimed by numerous individual defendants by purchase from or contract with that company. The decree which was passed declares that it is not to

"affect any right which the defendants, or any of them, other than the Southern Pacific Railroad Company, now have or may hereafter acquire in, to, or respecting any of the lands hereinbefore described in virtue of the act of Congress entitled 'An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes,' approved March 3, 1887."

Instead of leaving undetermined the matters in dispute between the United States and the defendants other than the

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Southern Pacific Railroad Company, the circuit court should have determined by its final decree what rights those defendants have by virtue of the above Act of March 3, 1887, 24 Stat. 556, c. 376, in the lands, or any of them, now in dispute and claimed by the United States. The effect of the decree is to leave undetermined the question whether the defendants who claim under the Southern Pacific Railroad Company are protected by that or any other act of Congress. The government was entitled to a decree quieting its title to all the lands described in its pleadings, except those, if any, that are protected, in the hands of claimants, by acts of Congress. *United States v. Winona & St. Peter Railroad v. United States,* 165 U. S. 463 ; *Winona & St. Peter Railroad v. United States,* 165 U. S. 483 . But, as the government has not appealed, the decree cannot be reversed for the error of the circuit court in not finally disposing of the issues between the United States and the individual defendants who claim under the Southern Pacific Railroad Company.

The result is that the decree must be affirmed in all respects as to the Southern Pacific Railroad Company, as well as to the trustees in the mortgage executed by that company, and affirmed also as to the other defendants, subject, however, to the right of the government to proceed in the circuit court to a final decree as to those defendants, and it is so ordered.