advance of the regular call, directed notice to be given to him or his counsel, and required proof that it was served long enough before the motion is heard to give him an opportunity of contesting the motion if he desires to do so. And the time required must depend upon the distance of the counsel or the party from the place of holding the court, and must be sufficient not only to enable him to make the journey, but to arrange business in which he may be engaged when he receives the notice. For, when a case stands so late on the docket of this court as to give no reasonable hope of reaching it during the term, it cannot be expected that distant counsel will leave their usual place of business, and attend here to guard against the possibility of a motion to dismiss.

The motions in these two cases were made about three weeks before the close of the term, but as soon as it could be conveniently made after they were docketed, and the court directed the usual notice to be given. We are satisfied that the counsel for the defendant in error has used every means in his power to comply with the order. But he has no proof that it was actually served. The counsel and client both reside in Mississippi, and the cases stand so late on the docket that a trial could not be expected at this term. Nor could they anticipate that there would be any reason for their attendance. Under these circumstances the court order that the motion be continued, to be heard on the first Friday in next term, provided notice of the motions and the day of hearing be served on the party or his counsel, thirty days before the commencement of the next term.

So ordered.

Mr. R. J. Brent in support of motions. No one opposing.

MIRAMONTES *v.* UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 120. December Term, 1863. — Decided February 15, 1864.

A petition to the Mexican government for a surplus of land which was not granted, is no foundation for an equitable claim against the United States.

The case is stated in the opinion.

Mr. Justice Grier delivered the opinion of the court.

The appellant had a valid grant from Alvarado in January, 1841,

for a square league of land to be surveyed within certain boundaries. Soon after this grant was obtained, he procured judicial possession to be given him by an alcalde, and a survey to be made to his satisfaction at the time.

But the line, as fixed by the alcalde, left a strip of land between it and one of the streams called for in his petition and *diseño*, as a boundary.

This became a subject of dispute between Miramontes and José Antonio Alviso.

In 1844 Miramontes presented a petition to the governor alleging a surplus within the limits of his grant of two thousand *varas* and praying for a grant of the *sabrante*. This petition was referred to the secretary to make report. A report was made, showing that Alviso claimed the land and objected to the grant.

It does not appear that the governor granted the disputed land to either of the contesting parties, although Miramontes continues to complain up to April 1846, of the conduct of Alviso, and pray that he might be "summoned to terminate this question."

The commissioners and District Court very properly confirmed the title of claimant to his square league, as it had been measured to him, and refused to extend his boundaries to cover this *sabrante* or surplus for which he had contended so long with Alviso, and had not succeeded in obtaining a title. The petition for a surplus not granted by the Mexican government, is no foundation for an equitable claim against the United States.

The decree of the District Court is affirmed.

Mr. J. A. McDougall for appellants. *Attorney General*, *Mr. J. S. Black* and *Mr. P. Della Torre* for appellee.

In *Brooks* v. *Martin*, 2 Wall. 70, No. 158, December Term, 1863, there is a statement by the reporter that Mr. Justice Catron dissented, but the dissenting opinion is not reported. It is now on file, and is as follows:

These parties formed a partnership, to speculate on soldiers' claims to land warrants, secured by the act of 1847.

They contracted for more than six hundred claims paying about one half the contract price to the soldier, and taking his bond to assign the warrant, when it was issued and the balance paid; and also a power to assign the warrant after its issue, which power was in blank, and to be filled up of a date subsequent to the issuing of the warrant.

The price paid for the claims was about one half of what the warrant would have sold for if it had then existed. The profit on each warrant was seventy dollars, says the complainant in one of his letters.