

Opinion of the Court.

UNITED STATES *v.* MAISH.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 297. Argued March 15, 16, 1898. — Decided May 31, 1898.

Ely's Administrator v. United States, ante, 220, affirmed and followed.

THE case is stated in the opinion.

Mr. Rochester Ford and *Mr. James C. Carter* for appellant.*Mr. Special Assistant Reynolds* for appellees. *Mr. Solicitor General* was on his brief.*Mr. George Lines* filed a brief on behalf of the Sopori Land & Mining Company.

MR. JUSTICE BREWER delivered the opinion of the court.

This case resembles that of *Ely's Administrator v. United States* just decided, ante, 220. The proceedings for the sale were had in 1820 and 1821 and before the same intendant. We deem it unnecessary to add anything to what was stated in that opinion as to the law controlling. It is sufficient to say that while the claim now made is for 46,696.2 acres, the application for purchase was for four sitios (17,353.84 acres). All the proceedings contemplated a sale of only that amount of land. Thus the appraisers stated that "from their examination they said that each sitio should be valued at thirty dollars, taking into consideration that none of them had running water or natural standing water, but that water facilities might be obtained by means of a well." The first of the three final auctions was reported in these words:

"In the city of Arizpe, on the 13th day of December, 1821, there met as a board of auction the provisional intendant, as president, and the other members that compose it, to hold the first auction of the lands to which these proceedings refer, and they caused the people to be assembled at this office by

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the beating of the drum, and many persons gathered at the office of the intendant, when the auctioneer, Loreto Salcido, in their presence was ordered to ask for a bid, which he did in a loud and clear voice, saying: 'Here before this board of the treasury are being sold four sitios of public land for the raising of cattle situated at the place called San Ygnacio de la Canoa, within the jurisdiction of the military post of Tubac, surveyed in favor of Tomas and Ygnacio Ortiz, residents of that same town, and appraised in the sum of one hundred and twenty dollars, being at the rate of thirty dollars for each sitio, it being necessary to dig a well to make the land useful. Whosoever wishes to make a bid upon this land, let him come forward and do so in the manner established by law before this board, where his bid will be heard, notice being given that the Rev. Father Fray Juan Bano, minister of the mission of San Xavier del Bac, in the name of Ygnacio Sanches and Francisco Flores, resident citizens of the same town, had bid for said land the amount of two hundred and ten dollars; and with the understanding that on the third auction, which is to take place on the day after to-morrow, the sale shall be settled upon the highest bidder.' As no bidder appeared, the board adjourned, and the minutes were signed by the president and members of this board."

At the third auction a bid of two hundred and fifty dollars was made, and on that bid the property was struck off to Tomas and Ygnacio Ortiz, who subsequently paid into the treasury the full amount of the purchase price with all charges. Nothing seems to have been done on this purchase until 1849, when title papers were issued by the substitute treasurer general of the state of Sonora.

Without repeating the discussion contained in the foregoing opinion, we think that the grant should be sustained for the four sitios purchased, petitioned and paid for, and for no more. As the grant was confirmed *in toto*, we are compelled to order that the decree of the Court of Private Land Claims be

Reversed, and the case remanded to the court for further proceedings.