
Cervantes v. The United States.

are the same as those stated in this opinion and in the cases cited.

We affirm the judgment of the Circuit Court.

ORDER.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia, holden in and for the county of Washington, and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said Circuit Court in this cause be, and the same is hereby affirmed, with costs.

CRUZ CERVANTES, APPELLANT, v. THE UNITED STATES.

Upon an appeal from the District Court of the United States for the Northern District of California, where it did not appear, from the proceedings, whether the land claimed was within the Northern or Southern District, this court will reverse the judgment of the District Court and remand the case for the purpose of making its jurisdiction apparent, (if it should have any,) and of correcting any other matter of form or substance which may be necessary.

THIS was an appeal from the District Court of the United States for Northern California.

In February, 1852, Cervantes filed before the board of commissioners to ascertain and settle the private land claims in California, the following claim:

Cruz Cervantes, a citizen of said State, gives notice that he claims, by virtue of a grant from the Mexican nation, a tract of land situated in the county of Santa Clara, in said State, and known by the name of San Joaquin or Rosa Morada, with the boundaries described in the grant thereof, to wit: on one side the arroyo of San Felipe; on the second side, the hills or *mountains of San Joaquin; on the third, the arroyo [*620 of Santa Anna; and on the fourth, a line drawn through the plain of San Juan.

Said land was conceded to claimant by a grant issued on the 1st day of April, 1836, by Don Nicolas Gutierrez, superior political chief *ad interim* of California, and thereby authorized to grant lands in the name and on behalf of the Mexican nation. On the 18th February, 1841, judicial possession was given to claimant by Juan Miguel Anzar, Judge of First Instance of that jurisdiction.

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Said land has been occupied by claimant, according to law and the directions contained in said grant, and is now held by him in quiet possession.

There is no conflicting grant to said land, or any part thereof, in the knowledge of claimant.

Said land has never been surveyed, but its boundaries are natural and well known, and may be easily traced. It is supposed to contain the quantity of two sitios de ganado mayor, more or less.

A copy and translation of said grant, and a copy of said act of judicial possession, are herewith presented, and the originals are ready to be produced and proved, as may be required.

On the 3d of August, 1852, Commissioner *Harvy J. Thornton* delivered the opinion of the board, declaring the claim valid.

In July, 1853, the following notice was issued:

CRUZ CERVANTES, claimant, vs. UNITED STATES.

ATTORNEY-GENERAL'S OFFICE,

Washington, D.C. July 11th, 1853.

You will please take notice, that the appeal in the above case from the decision of the commissioners, to ascertain and settle the private land claims in the State of California to the District Court of the United States, for the Northern District of California, will be prosecuted by the United States.

C. CUSHING,

Attorney-General United States.

To the Clerk of the District Court of the United States
for the Northern District of California, San Francisco.

At a special term of the District Court of the United States of America, for the Northern District of California, held at the court-house in the city of San Francisco, on Monday, the 31st day of October, in the year of our Lord one thousand eight hundred and fifty-three.

Present, the honorable Ogden Hoffman, Jr., District Judge.
THE UNITED STATES, appellants, v. CRUZ CERVANTES,
appellee.

This cause coming on to be heard at the above stated term, on appeal from the final decision of the commissioners
*621] to *ascertain and settle private land claims in the
State of California, under the act of Congress, approved 3d of March, 1851, upon the transcript of the proceedings and decision, and the papers and evidence on which

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said decision was founded; and it appearing to the court that said transcript has been duly and regularly filed in pursuance of the 12th section of the act of Congress, approved August 31st, 1852.

And the argument of counsel for the United States and for the claimant being heard, it is ordered, adjudged, and decreed that the decision of the said commissioners be in all things reversed and annulled; and that the said claim be held invalid and rejected.

(Signed.)

OGDEN HOFFMAN, JR.,

U. S. District Judge.

Cervantes appealed from this decree to this court, which appeal was allowed.

It was argued by *Mr. William Carey Jones*, for the appellant, when

Mr. Justice McLEAN delivered the following opinion of the court.

It does not appear, from the proceedings before the District Court, that the land claimed is within the Northern Judicial District of California. This is necessary to give that court jurisdiction. It can exercise no power over any claim, where the land lies in the Southern Judicial District of the same State.

This court has often held, unless the jurisdiction of the Circuit or District Court appear in the record, the judgment of such court may be reversed on a writ of error. It is therefore important, that in dealing with land titles, the jurisdiction of the inferior court should appear in the proceeding.

From a map of the State of California, recently published, it appears the land claimed in this case lies in the Southern District, and if so, no jurisdiction attached to the court where the proceeding was instituted.

For the purpose of correcting the proceeding in this respect, the decision of the District Court is reversed, and the cause is remanded to that court with leave to amend the proceeding in regard to the jurisdiction of the District Court, and to any other matter of form or substance which may be necessary.

ORDER.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of California, and it not appearing there-

Deshler v. Dodge.

*622] from that the *land claimed is within the Northern Judicial District of California, it is, on consideration thereof now here ordered and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed, and that this cause be, and the same is hereby remanded to the said District Court, with leave to amend the proceedings in regard to the jurisdiction of the said District Court, and also in regard to any other matter of form or substance which may be necessary.

JOHN C. DESHLER v. GEORGE C. DODGE.

The eleventh section of the Judiciary Act of 1789, says, "nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in cases of foreign bills of exchange."

This clause has no application to the case of a suit by the assignee of a chose in action to recover possession of the thing in specie, or damages for its wrongful caption or detention.¹

Therefore where an assignee of a package of bank-notes brought an action of replevin for the package, the action can be maintained in the Circuit Court, although the assignor could not himself have sued in that court.²

THIS case was brought up by writ of error from the Circuit Court of the United States for the District of Ohio.

It was an action of replevin brought by Deshler, a resident and citizen of the State of New York, against Dodge, a citizen and resident of the State of Ohio.

The proceedings in the case were these:

In March, 1853, Deshler filed in the Circuit Court of the United States for the District of Ohio the following *præcipe* and affidavit.

Præcipe. Issue a writ of replevin for the following goods and chattels, to wit, a quantity of bank-bills, of various denominations, consisting of fives, tens, twenties, and fifties, given for the payment, in the aggregate, of the sum of ten thousand five hundred and eighty dollars, being the same

¹ CITED. *Corbin v. County of Black Hawk*, 5 Otto, 666. The 11th section of the judiciary act does not apply to negotiable bonds, or to bills and notes payable to bearer or transferrable by indorsement. *White v. Vermont &c. R. R. Co.*, 21 How., 575; *Thompson v. Lee County*, 3 Wall., 327; *City of Lexington v. Butler*, 14 Wall., 282.

² REVIEWED. *Ohio Life &c. Co. v. Debolt*, ante, p. 442. CITED. *Dodge v. Woolsey*, 18 How., 363; *Bushnell v. Kennedy*, 9 Wall., 391.