It was similar in most of its features to the preceding case, and was argued by *Mr. Ballance* for the plaintiff in error, and submitted on printed arguments by *Mr. Williams* and *Mr. Gamble* for the defendants.

Mr. Justice CATRON delivered the opinion of the court.

In the case of Charles Ballance against Papin and Atchison, the same title was relied on by the defendant below (Ballance) that was set up in defence in the preceding case of Forsyth *v.* Brien and Rouse. The plaintiff sued to recover a village lot in Peoria, No. 42, confirmed to Fontaine, in right of his wife, Josette Cassarau, dit Fontaine. A plat of lot No. 42 was given in evidence, and is found in the record, but no certificate of the surveyor accompanies this plat, and without such certificate there is no evidence that lot No. 42 was lawfully surveyed. The act of 1823 (sec. 2) required that a survey should be made of each lot confirmed to the claimant, and a plat thereof forwarded to the Secretary. The evidence of a legal United States survey is not a mere plat, without any written description of the land by metes and bounds; neither the plat, nor less proof than a written description, will make a record on which a patent can issue. That most accurate evidence of separate surveys of the village lots of Peoria exists, we know; but as none is found in this record of lot No. 42, it follows, from the reasons given in the previous case, that no title was adduced in the Circuit Court that authorized it to reject the instructions demanded by the defendant; that, comparing the titles of the parties by their face, the defendant's was the better one. But as the same question of the application of the act of limitations arises in this case as it did in the former one, it must of course have been reversed, had the certificate of survey been found in the record. We therefore order that the judgment be reversed, and the cause remanded for another trial to be had therein.

Mr. Justice McLEAN dissented.

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THE UNITED STATES, APPELLANTS, *v.* DOMINGO AND VICENTE PERALTA.

Where a claimant of land in California produced documentary evidence in his favor, copied from the archives in the office of the surveyor general and other original grants by Spanish officers, the presumption is in favor of the power of those officers to make the grants.

If the power be denied, the burden of proof is upon the party who denies it.
The history of California, with respect to the power of its Governors to grant land, examined.
The boundaries of the tract of land, as decreed by the District Court, affirmed.

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

The nature of the claim, and a list of the documents in support of it, are given in the opinion of the court.

The decree of the District Court was as follows, viz:

That the claim presented in the petition filed in this case, for the place called San Antonio, is valid to the whole extent of its bounds, to wit: having for its northern boundary a line commencing on the bay of San Francisco, at a point where there are close to the said bay the two cerritos, as described in the first possession given by Martinez to Louis Peralta, on the 16th of August, 1820, running from the said bay eastwardly along by the southern base of the cerritos of San Antonio up a ravine, at the head of which there is a large rock or monument looking to the north, described in evidence as the Sugar-loaf Rock; thence by the southern base of said rock to the comb or crest of the coast range of mountains, or the Sierra; thence for the western boundary a line running along the comb of the said Sierra, until it reaches the eastern extremity of a line, beginning on the said bay of San Francisco at the mouth of the deep creek of San Leandro, and running eastwardly up the said creek to its head or source in the Sierra, and to the comb or crest thereof, which last line is the southern boundary of the land of San Antonio; and by the said bay of San Francisco, from the mouth of the said deep creek of San Leandro up to the beginning of the said line, which has been described as the northern boundary of said tract, which line along the bay constitutes its western boundary.

And it is hereby further adjudged, ordered, and decreed, that there be confirmed to the said Domingo and Vicente Peralta, the northern portion of said land of San Antonio, bounded as follows: On the north by the northern boundary of said tract of San Antonio as above described, on the east by the comb of the said Sierra, on the west by the bay of San Francisco, and on the south by a ravine a short distance south of the buildings in the town of Oakland, on the north of which ravine there is a small house in sight of the public road, being the line of division between this land and the land of Antonio Peralta, which line extends from the said bay to the most eastern boundary of the rancho of San Antonio.

The United States appealed from this decree.

It was argued by *Mr. Gillet* for the United States, and by *Mr. Rose* and *Mr. Bibb* for the appellees.

Mr. Justice GRIER delivered the opinion of the court.

This case originated before the commissioners for ascertaining and settling private land claims in California.

Domingo and Vicente Peralta claimed as grantees and devisees of their father, Luis Peralta.

The documentary evidence filed in support of the claim consists of a true copy from the archives in the office of the surveyor general of California, containing, so far as they are material in the present inquiry, the following averments:

1. The petition of Luis Peralta to the Governor for a grant of land, extending from the creek of San Leandro to a small mountain adjoining the sea beach, at the distance of four or five leagues, for the purpose of establishing a rancho, dated June 20, 1820.

2. The decree of Governor Sola, therein directing Captain Luis Antonio Arguello to appoint an officer to place the petitioner in possession of the lands petitioned for, dated August 3, 1820.

3. Order of Captain Arguello, dated August 10, 1820, detailing Lieut. Don Ignacio Martinez for that purpose.

4. The relinquishment of Father Narciso Duran, on behalf of the mission of San José, of any claim to the land, and reserving the privilege of cutting wood on the same, which, he says, should remain in common, dated August 16, 1820.

5. Under the same date, the return of Lieut. Martinez, upon the order to give the possession, describing the boundaries, &c.

6. The decree of the Governor, directing a portion of the lands assigned to Luis Peralta, by the foregoing act of possession, to be withdrawn, upon the reclamation of the mission of San Francisco, who claimed that the said portion of the lands was then in the occupancy of the mission as a sheep ranch.

7. The consent of Father Juan Cabot and Paloz Ordez, ministers of the mission, that the boundaries of the land solicited by Luis Peralta should be established at the rivulet, at the distance of three and a half to four leagues from the rancho-house of the mission.

8. The return of Maximo Martinez upon Governor Sola's second decree for the delivery of possession, filing the boundaries in accordance with the claim of the mission, at a rivulet which runs down from the mountains to the beach, where there is a grove of willows, and about a league and a half from the cerito (little mountain) of San Antonio, in the direction of San Leandro.

9. A document dated October, 1822, and signed Sola, setting out, that on that day was issued in favor of Sergeant Luis Peralta, by the Governor of the province, the certifying document for the land which has been granted him, as appears by the writ of possession which was given him by the lieutenant of his company, Don Ignacio Martinez, in conformity with the orders of the Government.

10. A letter from Luis Peralta, protesting against the claim of the mission, dated October 14th, 1820.

11. A representation from Captain Don Luis Arguello to the Governor, dated June 23, 1821, advocating the rights of Sergeant Peralta, in opposition to those of the mission, to the land in controversy; and, lastly, the description of the land returned by Luis Peralta, in obedience to the Government, of the 7th of October, 1827.

The claimants gave in evidence, also, the original grant from Governor Sola to Luis Peralta, dated 18th of August, 1822; the petition of Luis Peralta to Governor Arguello, praying the restitution of the lands which had been taken from him on the demand of the mission; and the decree of Arguello, making such restitution, and directing him to be again put in possession by the same officer who had executed the former act of possession. To this order, Maximo Martinez made a return, duly executed, certifying that the grantee had been newly put in possession of the place called "Cerito de St. Antonio, and the rivulet which crosses the place, to the coast, where is a rock looking to the north."

It was further shown, from the public records, that on the 9th of April, 1822, the civil and military authorities of California formally recognised and gave in their adhesion to the new Government of Mexico, according to the plan of Iguala and treaty of Cordova. Also, that in 1844, Ignacio Peralta, one of the heirs of Luis Peralta, petitioned the Government for a new title to the land claimed, in consequence of the original title-papers having been lost or mislaid. The archives show, also, that on the 13th of February, 1844, an order was made by Micheltorena, that a title be issued. Of the same date, there is the usual formal document "declaring Don Luis Peralta owner in fee of said land, which is bounded as follows:

"On the southeast by the creek of San Leandro; on the northwest by the creek of *Los Ceritos de San Antonio*, (the small hills of San Antonio;) on the southwest by the sea; and on the northeast by the tops of hills range, without prohibiting the inhabitants of Contra Costa from cutting wood for their own use, they not to sell the same." This document contains an order that "this espediente be transmitted to the depart-

mental assembly for their approval," but nothing further appears to have been done, nor is the signature of Micheltorena attached to the record.

The authenticity of these documents is admitted. The objections urged against their sufficiency to establish the claim are: first, that the officers had no power to make grants of land; and, second, that the northern boundary of the land described does not extend beyond a certain creek or stream, known by the name of San Antonio. This would exclude about one half of the claim.

We are of opinion that neither of these objections is supported by the evidence in the case.

We have frequently decided that "the public acts of public officers, purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given or subsequently ratified." To adopt a contrary rule would lead to infinite confusion and uncertainty of titles. The presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it. The general powers of the Governors and other Spanish officers to grant lands within the colonies in full property, and without restriction as to quantity, and in reward for important services, were fully considered by this court in the case of United States *v.* Clarke, (8 Peters, 436.)

The appellants, on whom the burden of proof is cast, to show want of authority, have produced no evidence, either documentary or historical, that the Spanish officers who usually acted as Governors of the distant provinces of California were restricted in their powers, and could not make grants of land. The necessity for the exercise of such a power by the Governors, if the Crown desired these distant provinces to be settled, is the greater, because of their distance from the source of power. By the royal order of August 22, 1776, the northern and northwestern provinces of Mexico were formed into a new and distinct organization, called the Internal Provinces of New Spain. This organization included California. It conferred ample powers, civil, military, and political, on the Commandant General. The archives of the former Government also show, that as early as 1786, the Governors of California had authority from the Commandant General to make grants, limiting the number of sitios which should be granted. In 1792, California was annexed to the viceroyalty of Mexico, and so continued till the Spanish authority ceased. An attempt to trace the obscure history of the various decrees, orders, and regulations of

the Spanish Government on this subject, would be tedious and unprofitable. It is sufficient for the case, that the archives of the Mexican Government show that such power has been exercised by the Governors under Spain, and continued to be so exercised under Mexico; and that such grants, made by the Spanish officers, have been confirmed and held valid by the Mexican authorities. Sola styles himself political and military Governor of California. He continued to exercise the same powers after his adhesion to the Mexican Government, under the provisions of the plan of Iguala, and the twelfth section of the treaty of Cordova. The grant in fee, given by Sola, was after the revolution.

The Government of Mexico, since that time, has always respected and confirmed such concessions, when any equitable or inchoate right, followed by possession and cultivation, had been conferred by the Governors under Spain. The case of Arguello (18 How., 540) was that of a permit by Governor Sola, afterwards confirmed by the Mexican Government and by this court. The plaintiff in error has not been able to produce anything from historical documents or the archives of California, tending to show a want of power in the respective officers in this case. On the contrary, the presumption of law is confirmed by both. The order of Micheltorena, in 1844, for the granting the new title to Peralta, is itself evidence of the usage and custom, and that the acts of Sola and Arguello were considered valid, and that the title, whether equitable or legal, conferred to them, should be respected and confirmed by the Government.

As the validity of the petitioner's title has been assailed on the ground of want of authority alone, it is unnecessary to notice more particularly the various documents exhibited in support of it. The grant by Sola of a portion of the tract of which Peralta had been originally put in possession, is a complete grant in fee for that portion. The restoration by Arguello of the original boundaries, by decree and act of the public officer, may not have the character of a complete grant; but it is of little importance to the decision of the case, whether it conferred only an inchoate or equitable title, connected with an undisputed possession of thirty years, and confirmed again in 1844, by the order of the Governor of California; its claim for protection under the treaty with Mexico cannot be doubted, notwithstanding its want of confirmation by the departmental assembly.

The only remaining question is the position of the northern boundary line.

Peralta's original petition, in June, 1820, described the land

desired, as beginning at a creek called San Leandro, "and from this to a white hill, adjoining the sea beach, in the same direction, and along the coast four or five leagues."

The return of Ignacio Martinez, the officer who executed the order for delivery of possession on the 16th of August, 1820, describes "the boundaries which separate the land of Peralta, to be marked out as follows: The deep creek called San Leandro, and at a distance from this, (say five leagues,) there are two small mountains, (cerritos;) the first is close to the beach; next to it follows the San Antonio, serving as boundaries, the rivulet which issues from the mountain range, and runs along the foot of said cerrito of San Antonio, and at the entrance of a little gulch there is a rock elevating itself in the form of a monument, and looking towards the north." This is the description of the northern boundary. It refers to stable monuments—two hills, a rivulet passing at their foot, and a monumental rock. In other documents, Peralta speaks of this line "as the dividing boundary with my neighbor, Francisco Castro." Again, in the return of Ignacio Martinez to the order of the Governor, Arguello, in 1823, to redeliver the possession to Peralta, up to his original boundary, he describes this within boundary by the same monument, "the cerrito San Antonio, the arroyito or rivulet which crosses the place to the coast, where is a rock looking to the north."

Lastly, the title of confirmation by Micheltorena in 1844, as quoted above, though not in the very words of the above documents, clearly describes the same monuments. These hills, rivulet, and rock, are well-known monuments, and their position is satisfactorily proved.

The testimony of the opinions of witnesses who have but lately arrived in the country, who are ignorant of the language and traditions of the neighborhood, and who are all interested in defeating the claim of the petitioners, can have little weight against the knowledge of others who were present when the lines were established, some thirty years ago, and have known these boundaries till the present time.

The decree of the Circuit Court is therefore affirmed.

Mr. Justice DANIEL dissented.

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JOHN MCCULLOUGH AND CYRUS D. CULBERTSON, PLAINTIFFS IN ERROR, *v.* GURNSEY Y. ROOTS AND ERASTUS P. COE.

Where a sale was made of merchandise, and two parties, viz: Roots & Coe as one party, and Henry Lewis as the other party, both claimed to be the vendors, and