THE UNITED STATES, APPELLANTS, *v.* THOMAS W. SUTHERLAND, GUARDIAN OF VICTORIA, ISABEL, MIGUEL, AND HELINA, MINOR CHILDREN OF MIGUEL DE PEDRORENA, DECEASED.

That the Spanish grants of land in California were large, is no reason why this court should refuse to confirm them.

A grant of a tract of land known by the name of El Cahon, lying near the mission of San Diego, and being that which the map attached to the official papers expresses, which map is of such a character that a surveyor could lay off the land, is good, and must be confirmed.

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

The case is stated in the opinion of the court.

It was argued by *Mr. Cushing* (Attorney General) for the United States, and by *Mr. Rose* for the appellees.

Mr. Justice GRIER delivered the opinion of the court.

The defendants in error filed their petition before the board of commissioners for ascertaining and settling private land claims in California, claiming "a tract of land called El Cahon, containing eleven sitios de ganado mayor, situated in the county of San Diego, by virtue of a grant in fee made to their mother, Doña Maria Antonio Estudillo de Pedrorena, by Pio Pico, Governor of California, bearing date 23d of September, 1845, and approved by the territorial deputation on the 3d of October, 1845."

The only question arising in this case, which has not been disposed of in former decisions of this court, is the objection "that the grant is void for uncertainty," because it defines neither boundaries nor quantity. The authenticity of the grant and confirmation are proved, and do not appear to have been disputed before the commissioners. It is in evidence, also, that Doña Maria and her husband went into possession of the place called "El Cahon" in the year 1845, and have made it "the best-cultivated rancho in the country about San Diego." It had formerly belonged to the mission of San Diego. The mission was in debt to the husband of Doña Maria, and agreed to transfer their right of occupancy on this rancho to her, in satisfaction of her husband's debt.

Judicial possession was not delivered till September, 1846, after the establishment of the American authority, which was in July of that year. And whether void or valid, the espediente of possession made by the officer, Santiago E. Arguello, (who

could not get the assistance of a surveyor,) seems to throw little light on the subject of precise boundary.

But, under the circumstances, the want of such juridical delivery of possession will not affect the title of the petitioners, unless the grant be absolutely void for uncertainty. The description of the land granted is to be found in the following language in the patent or espediente: "A tract of land known by the name of El Cahon, near the mission of San Diego." And again: "The land of which grant is made is that which the map (diseño) attached to the respective espediente expresses," &c. "The judge who may give the possession shall inform the Government of the number of sitios de ganado mayor it contains."

In construing grants of land in California, made under the Spanish or Mexican authorities, we must take into view the state of the country and the policy of the Government. The population of California before its transfer to the United States was very sparse, consisting chiefly of a few military posts and some inconsiderable villages. The millions of acres of land around them, with the exception of a mission or a rancho on some favored spot, were uninhabited and uncultivated. It was the interest and the policy of the King of Spain, and afterwards of the Mexican Government, to make liberal grants of these lands to those who would engage to colonize or settle upon them. Where land is plenty and labor scarce, pasturage and raising of cattle promised the greatest reward with the least labor. Hence, persons who established ranchos required and readily received grants of large tracts of country as a range for pasturage for their numerous herds. Under such circumstances, land was not estimated by acres or arpens. A square league, or "sitio de ganado mayor," appears to have been the only unit in estimating the superficies of land. Eleven of these leagues was the usual extent for a rancho grant. If more or less was intended in the grant, it was carefully stated. Surveying instruments or surveyors were seldom to be obtained in distant locations. The applicant for land usually accompanied his petition with a diseño, or map, showing the natural boundaries or monuments of the tract desired. These were usually rivers, creeks, rivulets, hills, and mountian ranges. The distances between these monuments were often estimated at *about* so many leagues, and fractions of this unit little regarded. To those who deal out land by the acre, such monuments as hills, mountains, &c., though fixed, would appear rather as vague and uncertain boundary lines. But where land had no value, and the unit of measurement was a league, such monuments were considered to be sufficiently certain.

Since this country has become a part of the United States, these extensive rancho grants, which then had little value, have now become very large and very valuable estates. They have been denounced as "enormous monopolies, princedoms," &c., and this court have been urged to deny to the grantees what it is assumed the former Governments have too liberally and lavishly granted. This rhetoric might have a just influence, when urged to those who have a right to give or refuse. But the United States have bound themselves by a treaty to acknowledge and protect all bona fide titles granted by the previous Government; and this court have no discretion to enlarge or curtail such grants, to suit our own sense of property, or defeat just claims, however extensive, by stringent technical rules of construction, to which they were not originally subjected.

The patent to the claimant's mother confers a title in fee to an estate "known by the name of El Cahon," or "The Chest." It describes it as lying "near the mission of San Diego." It therefore assumes, that there is an estate or rancho having such a name, and having some known boundaries.

It is prima facie evidence of such a fact. Those who allege that it is void for uncertainty, must prove either that there are two estates called "El Cahon," near the mission of San Diego, to which the description in the patent would equally apply; in such case it would be void for ambiguity; or they must prove that there is no estate or property known by that name about San Diego. But there is not a particle of such evidence to be found on the record, nor was such a defence set up before the commissioners. For anything that appears, the "El Cahon" was as well known as San Diego itself. But the description of the patent does not end here; it is further described as "that which the diseño attached to the espediente expresses." This map or survey is thus made a part of the patent for the purpose of description. It exhibits a circular valley surrounded by hills or mountains, except at a narrow outlet on the eastern boundary, where a stream of water passes out. The course of the stream through the valley is traced, as also are the roads. The position of corrals, ranchos, cottages, &c., are carefully noted; on the east, a hill or mountain bounds the valley called "El Cahon;" on the west, "Cerro del Porsuele" and "Cerro de la Mesa;" the northern boundary, as a continuous circular hill or mountain without a name; the southern are broken hills, called "Lomas Altas." The cardinal points of the compass are given, and a scale of measurement, a single glance at which would show that the valley traced according to that scale would contain about ten leagues, or possibly eleven, the usual allowance for such estates. There is no evidence what-

ever, tending to show that, with the assistance of this map, a surveyor would find any difficulty in locating it according to its calls.

In the cases of Frémont and of Larkin, the grants were much more vague than the present, and the same remark which was made in the latter case will equally apply to this. "No question appears to have been made as to the practicability of locating the grant in the tribunals below, nor do we see any ground upon which such a question could have been properly raised in the case."

The judgment is therefore affirmed.

Mr. Justice DANIEL dissented.

JOSEPH FELLOWS, SURVIVOR OF ROBERT KENDLE, PLAINTIFF IN ERROR, *v.* SUSAN BLACKSMITH AND ELY S. PARKER, ADMINISTRATORS OF JOHN BLACKSMITH, DECEASED.

The United States made two treaties, one in 1838, and one in 1842, with the Seneca Indians, residing in the State of New York, by which the Indians agreed to remove to the West within five years, and relinquish their possessions to certain assignees of the State of Massachusetts, and the United States agreed that they would appropriate a large sum of money to aid in the removal, and to support the Indians for the first year after their removal to their new residence.

But neither treaty made any provision as to the mode or manner in which the removal of the Indians or surrender of the reservations was to take place.

The grantees of the land, under the Massachusetts assignment, cannot enter upon it and take forcible possession of a farm occupied by an Indian, but are liable to an action of trespass, *quare clausum fregit*, if they do so.

The removal of tribes of Indians is to be made by the authority and under the care of the Government; and a forcible removal, if made at all, must be made under the direction of the United States.

The courts cannot go behind a treaty, when ratified, to inquire whether or not the tribe was properly represented by its head men.

THIS case was brought up from the Supreme Court of the State of New York, by a writ of error issued under the 25th section of the judiciary act.

The facts of the case are stated in the opinion of the court.

It was argued by *Mr. Gillet* and *Mr. Brown* for the plaintiff in error, and by *Mr. Martindale* for the defendants.

Mr. Justice NELSON delivered the opinion of the court.

This is a writ of error to the Supreme Court of the State of New York. The case was decided by the Court of Appeals of that State; but the record had been remitted, after the de-