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the fulfilment of which they were executed? The opinion of the court is, that it was a departure from the business of the corporation, and that their officers exceeded their authority. Judgment affirmed.

THE UNITED STATES, APPELLANTS, *v.* CHARLES FOSSATT.

The only cases which will be taken up out of their regular order on the docket are those where the question in dispute will embarrass the operations of the Government while it remains unsettled.

But if the court below, to which a mandate is sent, does not proceed to execute it, or disobeys and mistakes its meaning, the party aggrieved may, by motion for a mandamus, at any time, bring the errors or omissions before this court for correction.

No appeal will lie from any order or decision of the court below which is not a final decree.

The decree of the court below, in the present case, was not a final decree.

The jurisdiction of the board of commissioners for the settlement of private land claims in California, and of the courts of the United States on appeal, extends not only to the adjudication of questions relating to the genuineness and authenticity of the grant, and others of a similar character, but also all questions relating to its location and boundaries; and does not terminate until the issue of a patent conformably to the decree.

It is the duty of the surveyor general to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same.

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

It was the same case which was before this court at the preceding term, and is reported in 20 Howard, 413. The position of the case is explained in the second opinion of the court, as delivered by Mr. Justice Campbell.

Being so down upon the docket as that there was no probability of reaching it in the regular order of business, a motion was made to take it up out of its regular turn. This motion was argued by *Mr. Bayard* and *Mr. Nelson* in favor of it, and by *Mr. Black* against it.

Mr. Black (Attorney General) remarked, that he could not say that the public business of the Government was obstructed in consequence of the pendency of this appeal.

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Upon this motion, Mr. Chief Justice TANEY delivered the opinion of the court.

According to the rules and practice of the court, no case can be taken up out of its order on the docket, where private interests only are concerned. The only cases in which they will depart from this rule are those where the question in dispute will embarrass the operations of the Government while it remains unsettled. But when a case is sent to the court below by a mandate from this court, no appeal will lie from any order or decision of the court until it has passed its final decree in the case. And if the court does not proceed to execute the mandate, or disobeys and mistakes its meaning, the party aggrieved may, by motion for a mandamus, at any time, bring the errors or omissions of the inferior court before this court for correction. Upon looking into the record in the case of *United States v. Fossatt*, the court doubt whether there has been a final decision under the mandate, and whether the present appeal ought not to be dismissed on that ground. If there is no final decree, the proceedings of the court below cannot be interrupted by an appeal from interlocutory proceedings.

The court therefore desire to hear the counsel upon the question, whether the decree in question is final, upon motion to dismiss, and will hear the argument on Monday, March 7th.

When the case came up again, the motion to dismiss the appeal, because the judgment of the court below was not final, was argued by *Mr. Bayard* and *Mr. Nelson* in support thereof, and by *Mr. Black* (Attorney General) and *Mr. Reverdy Johnson* in opposition thereto.

Mr. Justice CAMPBELL delivered the opinion of the court.

This cause came before this court by appeal from the District Court of the United States for the northern district of California, and was decided at the last term, and is reported in 20 How., 413.

The court determined:

“That a grant under which the plaintiff claimed land in California was valid for one league, to be taken within the south-

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ern, western, and eastern boundaries designated therein, at the election of the grantee and his assigns, under the restrictions established for the location and survey of private land claims in California by the executive department of the Government. The external boundaries of the grant may be declared by the District Court from the evidence on file, and such other evidence as may be produced before it; and the claim of an interest equal to three-fourths of the land granted is confirmed to the appellee."

The District Court, in conformity with the directions of the decree, declared the external lines on three sides of the tract claimed, leaving the other line to be completed by a survey to be made. From the decree, in this form, the United States have appealed.

A motion has been submitted to the court for the dismissal of the appeal, because the decree of the District Court is interlocutory, not final.

This motion is resisted, because the inquiries and decrees of the board of commissioners for the settlement of private land claims in California, by the act of 3d March, 1851, (9 S. at L., 632,) in the first instance, and of the courts of the United States on appeal, relate only to the question of the validity of the claim—and by validity is meant its authenticity, legality, and in some cases interpretation, but does not include any question of location, extent, or boundary—and that the District Court has gone to the full limit of its jurisdiction in the decree under consideration, if it has not already exceeded it.

The matter submitted by Congress to the inquiry and determination of the board of commissioners, by the act of 3d March, 1851, (9 Stat. at Large, 632, sec. 8,) and to the courts of the United States on appeal, by that act and the act of 31st August, 1852, (10 Stat. at Large, 99, sec. 12,) are the claims "of each and every person in California, by virtue of any right or title derived from the Spanish or Mexican Government." And it will be at once understood that these comprehend all private claims to land in California.

The effect of the inquiry and decision of these tribunals upon the matter submitted is final and conclusive. If unfavorable

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to the claimant, the land "shall be deemed, held, and considered, as a part of the public domain of the United States;" but if favorable, the decrees rendered by the commissioners or the courts "shall be conclusive between the United States and the claimants."

These acts of Congress do not create a voluntary jurisdiction, that the claimant may seek or decline. All claims to land that are withheld from the board of commissioners during the legal term for presentation, are treated as non-existent, and the land as belonging to the public domain.

Thus it appears that the right and title of the inhabitants of California, at the date of the treaty of Guadalupe Hidalgo, to land within its limits, with the exception of some within the limits of a pueblo or corporation described in the 14th section of the act of 3d March, 1851, must undergo the scrutiny of this board, and that its decisions are subject to review in the District and Supreme Courts. This jurisdiction comprehends every species of title or right, whether inchoate or complete; whether resting in contract or evinced by authentic act and judicial possession.

The object of this inquiry was not to discover forfeitures or to enforce rigorous conditions. The declared purpose was to authenticate titles, and to afford the solid guarantee to rights which ensues from their full acknowledgment by the supreme authority. The tribunals were therefore enjoined to proceed promptly, and to render judgment upon the pleadings and evidence; and in deciding, they were to be governed by the laws of nations, the stipulations of the treaty of Guadalupe Hidalgo, the laws, usages, and customs, of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court of the United States in similar cases.

What are the questions involved in the inquiry into the validity of a claim to land?

It is obvious that the answer to this question must depend, in a great measure, upon the state and condition of the evidence. It may present questions of the genuineness and authenticity of the title, and whether the evidence is forged or fraudulent; or, it may involve an inquiry into the authority of

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the officer to make a grant, or whether he was in the exercise of the faculties of his office when it was made; or, it may disclose questions of the capacity of the grantee to take, or whether the claim has been abandoned or is a subsisting title, or has been forfeited for a breach of conditions. Questions of each kind here mentioned have been considered by the court in cases arising under this law.

But, in addition to these questions upon the vitality of the title, there may arise questions of extent, quantity, location, boundary, and legal operation, that are equally essential in determining the validity of the claim.

In affirming a claim to land under a Spanish or Mexican grant, to be valid within the law of nations, the stipulations of the treaty of Guadalupe Hidalgo, and the usages of those Governments, we imply something more than that certain papers are genuine, legal, and translativ of property. We affirm that ownership and possession of land of definite boundaries rightfully attach to the grantee.

In the case of the *United States v. Arredondo*, (6 Pet., 691,) the inquiries of this court, beside those affirming the legality of the grant, extended to questions of forfeiture for the non-fulfilment of conditions, the inalienability of lands in possession of an Indian tribe, and fraud. The Superior Court of Florida in that suit directed that the land should be surveyed, in the form of a square, with a designated monument as the centre. This court annulled that decree, and ascertained another as the central point. The appeal in *Mitchell v. United States* (15 Pet., 52) was taken in a case that had been decided here, and in which an issue upon the decree that succeeded the mandate of this court, and made in execution of it, subsequently arose. Certain property about Fort St. Mark's was excepted in the original decree of confirmation, and reserved to the United States, and the Superior Court in that decree was directed to ascertain the extent and boundaries of the land reserved. This was done and the land specifically described, and on appeal this decree was affirmed.

These questions arose upon an act of Congress that required the courts, "by a final decree, to settle and determine the ques-

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tion of the validity of the title according to the law of nations, the stipulations of any treaty and proceedings under the same, the several acts of Congress in relation thereto, and the laws and ordinances of the Government from which it is alleged to have been derived." This act enumerates as proper to be heard and decided, preliminary to such a decree, questions of extent, location, and boundary. (4 Stat. at L., 52, sec. 2.)

It is asserted on the part of the appellants that the District Court has no means to ascertain the specific boundaries of a confirmed claim, and no power to enforce the execution of its decree, and consequently cannot proceed further in the cause than it has done.

The 13th section of the act of 3d March, 1851, makes it the duty of the surveyor general to cause all private claims which shall be finally confirmed to be accurately surveyed, and to furnish plats of the same. It was the practice under the acts of 1824 and 1828, (4 Stat. at L., 52, 284,) for the court to direct their mandates specifically to the surveyor designated in those acts. And in the case *ex parte Sibbald v. United States*, (12 Pet., 488,) the duty of the surveyor to fulfil the decree of the court, and the power of the court to enforce the discharge of that duty, are declared and maintained. The duties of the surveyor begin under the same conditions, and are declared in similar language, in the acts of 1824, 1828, and of 1851.

The opinion of the court is, that the power of the District Court over the cause, under the acts of Congress, does not terminate until the issue of a patent, conformably to the decree.

In the exercise of the jurisdiction conferred by this act, and acts of a similar character, this court has habitually revised decrees of the District Court, which were not final decrees under the judiciary act of 1789. The court has uniformly accepted, in the first instance, as a final decree, one that ascertained the authenticity of the claimant's title, and declared, in general terms, its operation, leaving the questions of boundary and location to be settled subsequently. This practice was approved in the case last cited. The peculiar nature of these cases rendered such a relaxation of the rules of proceeding of the court appropriate. The United States did not appear in

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the courts as a contentious litigant; but as a great nation, acknowledging their obligation to recognise as valid every authentic title, and soliciting exact information to direct their executive Government to comply with that obligation.

They had instrumentalities adequate to the fulfilment of their engagements without delay, whenever their existence was duly ascertained. There was no occasion for the strict rules of proceeding that experience has suggested to secure a speedy and exact administration between suitors of a different character. And it has rarely occurred that the same case has reappeared in the court after the first decree. If the litigation had been other than it was, the rule of proceeding would have varied with it.

But, after the authenticity of the grant is ascertained in this court, and a reference has been made to the District Court, to determine the external bounds of the grant, in order that the final confirmation may be made, we cannot understand upon what principle an appeal can be claimed until the whole of the directions of this court are complied with, and that decree made. It would lead to vexatious and unjust delays to sanction such a practice. It is the opinion of the court that this appeal was improvidently taken and allowed, and must be dismissed; and that the District Court proceed to ascertain the external lines of the land confirmed to the appellee, and enter a final decree of confirmation of that land.

RUSSELL STURGIS, LIBELLANT AND APPELLANT, v. JOHN CLOUGH,
ROBERT L. MABEY, AND HENRY M. WEED, CLAIMANTS OF
THE STEAMBOAT R. L. MABEY, HER TACKLE, &c.

Where two steam-tugs are approaching a vessel from different directions, in order to secure the contract of towing her into harbor, the established rules are, that the steamer which is following in the wake of the vessel should come up on her starboard quarter and slack her engine, whilst the steamer which is approaching from the opposite direction should round to, either to windward or leeward, so as to head the same way as the vessel.