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date. Hence the necessity of changing the venue to that of the highway, when it was too late to alter or erase the certificate of record to suit it. And hence the absurd contradictions exhibited in the testimony of Moreno, who appears to be emulating the example of his predecessor.

The judgment of the District Court is therefore affirmed, with costs.

THE UNITED STATES, APPELLANTS, *v.* CLAUDE CHANA, WILLIAM MARTIN, THOMAS P. TURNER, AND ALBERT ROWE.

The decision of this court in the cases of *United States v. Nye*, 21 Howard, 408, and *United States v. Rose*, 23 Howard, 262, again affirmed; and as the testimony in the present case is similar to that offered in the above cases, the judgment of the District Court in favor of the claimant is reversed.

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

The claim was based upon Sutter's general title, which has been explained in some of the preceding volumes of these Reports.

It was submitted on printed argument by *Mr. Black* (Attorney General) for the United States, no counsel appearing for the appellees. It appears to have been confirmed by the court below before they knew the decision of this court with regard to Sutter's general title.

Mr. Justice CAMPBELL delivered the opinion of the court.

The appellees presented their claim before the board of commissioners for the settlement of land claims in California for a tract of land, consisting of four leagues, on the south side of Bear creek, in Yuba county, under a grant to Theodore Sicard by Micheltorena, Governor of the Department of California.

The testimony to sustain the claim is similar to that offered in the cases of *United States v. Nye*, 21 How., 408, and *United States v. Rose*, 23 How., 262. In these cases it was determined that the testimony was not sufficient to support the

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claims. This case must follow the same course that was assumed in those.

Judgment of the District Court reversed, and petition dismissed.

WILLIAM A. HALL, PLAINTIFF IN ERROR, v. JOSEPH L. PAPIN.

An act of Congress passed on the 15th of May, 1829, (3 Stat. at L., 605,) authorizes persons who claim lots in the village of Peoria, in Illinois, to notify the register of the land office, who was directed to report to the Secretary of the Treasury, to be laid by him before Congress.

An act of March 3, 1823, (3 Stat. at L., 786,) grants to each one of the settlers who had settled on a lot prior to the 1st of January, 1813, the lot so settled on and improved, where the same shall not exceed two acres; and where the same shall exceed two acres, every such claimant shall be confirmed in a quantity not exceeding ten acres: *Provided*, the right of any other person derived from the United States, or any other source whatever, &c., shall not be affected.

These two statutes were drawn into question in the case of *Bryan et al. v. Forsyth*, 19 Howard, 334, where it was ruled that "in the interval between 1823 and the survey a patent was taken out, which was issued subject to all the rights of persons claiming under the act of 1823. This patent was controlled by the subsequent survey."

In the present case the patent is not controlled by the subsequent survey, for the following reasons:

The old village of Peoria was settled very early in the history of the country, but abandoned before the years 1796, 1797, and the new village of Peoria built up at the distance of a mile and a half.

The act of March, 1823, applies only to the new town, and the land in question is an out-lot or field of ten acres near the old village of Peoria.

Papin, the plaintiff below, claimed under a plat of the village made in May, 1837, approved September, 1841, and a deed to himself from the confirmee made in 1854.

Hall, the defendant below, claimed under a pre-emption certificate of 1833, a patent from the United States in 1837 to Seth and Josiah Fulton, and a deed to himself from the patentees in 1838.

Supposing that no out-lot was meant to be confirmed, the inchoate right of the claimant under the act was subject to a survey and designation before it could be matured into a title.

An instruction given by the court below to the jury, viz: that the persons taking under the patent of March 18, 1837, and under the entry of July 11, 1833, must be considered as taking their grant subject to the contingency of the better title which might thereafter be perfected under the acts of 1820 and