land is withdrawn from location; you cannot be heard." If the grantee, Ross, lost part of his land by Henderson's grant, and his warrants were merged by this misfortune, equity required that Congress should declare his survey to be valid by a curative act. This is the principle governing the decisions in the cases of *Galloway* v. *Finley* (12 Peters, 294), and *McArthur* v. *Dun* (7 Howard, 264), where the entries, surveys, and patents had been made to dead men, and were void of course for want of a grantee; yet this court held that the act of 1807 applied, and that a second entry on the first survey was void. In the case of *Stubblefield* v. *Boggs* (2 Ohio State Reports, 216), the same doctrine is maintained.

We hold that the survey of Ross was protected, and that Saunders's entry, survey, and patent were void, and order that the judgment of the Supreme Court of Ohio be reversed, and that the cause be remanded to that court, to be proceeded with in conformity to this opinion.

REMANDED ACCORDINGLY.

UNITED STATES *v.* HALLECK ET AL.

1. Where a decree of the Board of Commissioners, created under the act of March 3d, 1851, to ascertain and settle private land claims in the State of California, confirming a claim to a tract of land under a Mexican grant, gives the boundaries of the tract to which the claim is confirmed, the survey of the tract made by the Surveyor-General of California must conform to the lines designated in the decree. There must be a reasonable conformity between them, or the survey cannot be sustained.
2. When such decree describes the tract of land, to which the claim is confirmed, with precision, by giving a river on one side and running the other boundaries by courses and distances, a reference at the close of the decree to the original title-papers for a more particular description will not control the description given. The documents to which reference is thus made, can only be resorted to in order to explain any ambiguity in the language of the descriptions given; they cannot be resorted to in order to change the natural import of the language used, when it is not affected by uncertainty.
3. When a decree gives the boundaries of the tract, to which the claim is confirmed, with precision, and has become final by stipulation of the

United States, and the withdrawal of their appeal therefrom, it is conclusive, not only on the question of title, but also as to the boundaries which it specifies.

Messrs. Justices CLIFFORD, MILLER, and SWAYNE, dissented in this case.

APPEAL by the United States from a decree of the District Court for the Northern District of California, approving the survey of a tract of land claimed under a Mexican grant, confirmed to Folsom, deceased. The case was thus:

In 1844, William A. Leidesdorff presented his petition to the then Governor of California, for the grant of a tract of land, the petition representing as follows:

That being owner of a great number of large cattle, and desirous of owning in fee a place to take care of them, he has found one vacant, bounded by the lands of Señor Sutter, *as shown by the annexed map, which he duly transmits.* Said place is on the bank of the American River, and consists of *four leagues in length towards the east, and two in breadth towards the south*

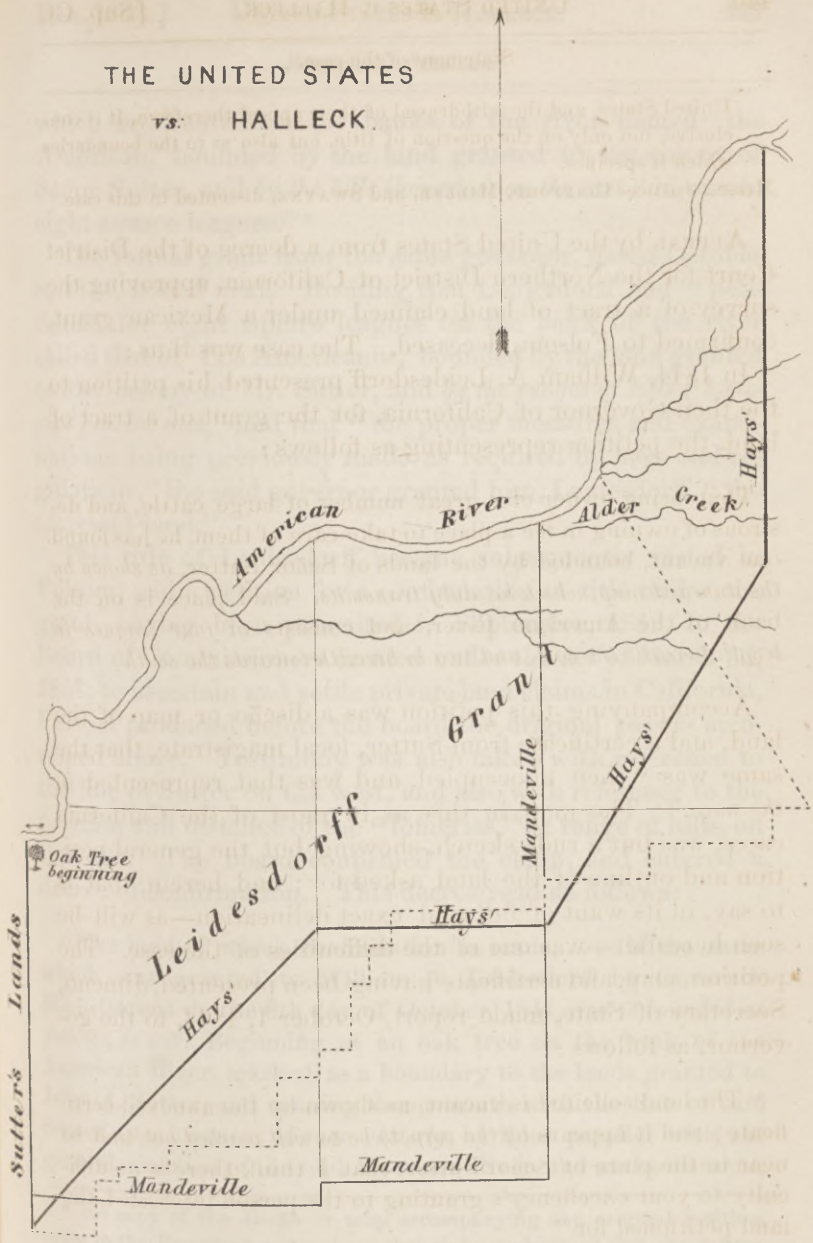
Accompanying this petition was a diseño or map of the land, and a certificate from Sutter, local magistrate, that the same was "then unoccupied, and was that represented *in the map.*" The map, in this, as in most of the California cases, was but a rude sketch, showing but the general position and outline of the land asked for; and herein, that is to say, in its want of full and exact delineation—as will be seen hereafter—was one of the difficulties of the case. The petition, map, and certificate having been presented, Jimeno, Secretary of State, made report, October 1, 1844, to the governor, as follows:

"The land solicited is vacant, as shown by the annexed certificate; and it appears *by the map, to be so well marked out,* and so near to the place of Señor Sutter, that I think there is no difficulty to your excellency's granting to the person interested, the land petitioned for."

The provisional concession of the governor, Micheltorena, dated October 8, 1844, was subsequently made. In this, the governor declares Leidesdorff "owner in fee of the land

THE UNITED STATES

vs. HALLECK.



which is situated on the banks of the river named 'the American,' bounded by the land granted to the colony of Señor Sutter, and *by the hills* (*lomerias*) *on the east;* in extent eight square leagues."*

The formal grant from the same governor, dated October 8, 1844, issued next. Reciting that Leidesdorff had "petitioned for eight square leagues on the bank of the river called that of 'Los Americanos,' bounded by the land granted to the colony of Mr. Sutter, and *by the ranges of hills* ('*lomerias*') *on the east*," and that "the proper measures and examinations being previously made as required by laws and regulations," the said governor granted him, Leidesdorff, "the aforesaid land."

This title of Leidesdorff became subsequently vested in Folsom, and a petition for a confirmation of title under the grant, having been presented in September, 1852, to the Board of Commissioners created under the act of March 3d, 1851, to ascertain and settle private land claims in California, Folsom produced before the board the original papers mentioned above. Testimony was also taken with reference to the line of Sutter on the west, and also with reference to the position and distance of the "lomerias," or range of hills, on the east. The board confirmed the claim, and entered a decree of confirmation. This decree read as follows:

"The land of which confirmation is made, ... is the same which was granted to William A. Leidesdorff by Governor Micheltorena on the 8th day of October, 1844, *and is bounded as follows, to wit:* Beginning at an oak tree on the bank of the American River, marked as a boundary to the lands granted to John A. Sutter, and running thence south with the line of said Sutter two leagues; thence *easterly*, by lines parallel with the general direction of the said American River, and at the distance,

* No copy of the diseño or map accompanying the original petition, came to the Reporter's possession; though he understood that the "*lomerias*" on the east were not designated upon it. He *supposes*, that in fact, they lay somewhat in the direction of the *dotted* lines, indicating one survey of the tract as that line runs northwesterly and above the mouth of Alder Creek, towards the American River. On the diseño this river ran nearly west.

as near as may be, of two leagues therefrom, four leagues, or so far as may be necessary to include in the tract the quantity of eight square leagues; thence northerly, by a line parallel to the one above-described, to the American River; thence along the southern bank of said river, and bending thereon to the point of beginning. *For a more particular description, reference to be had to the original grant and to the petition and map contained in the espediente.*"

The case was removed by appeal to the District Court of the United States for the Northern District of California. In March, 1857, the attorney-general gave notice that no further appeal would be prosecuted by the United States, and upon stipulation of the district attorney, pursuant to such notice, the court, April 30th, 1857, "on motion of the district attorney, ordered, adjudged and decreed that the claimants have leave to proceed under the decree of the land commission heretofore rendered in their favor as under final decree."

Previous to the entry of this order, Folsom died, and his executors, Halleck and others, being substituted in his place, the subsequent proceedings were carried on in their names.

In May, 1857, a survey was made of the tract confirmed, by directions of the Surveyor-General of California, and was approved by him. From the name of the officer this survey is called in the argument of counsel "the Hays survey." This survey was forwarded to the Commissioner of the Land Office at Washington, in order that a patent might be issued upon it. The commissioner approved of it; but the Secretary of the Interior, to whom the case was taken, disapproved it; and in September, 1858, the case was sent back to the surveyor-general for a new survey. So far as the Reporter understood a case which he did not hear, the objections to the Hays survey in the secretary's mind was, that it ran on the east far beyond that point where the lomerias, fixed in the original grant by Governor Micheltorena, were supposed to be; this range having, on the diseño or map attached to Leidesdorff's original petition, been indicated as

being near a stream, not named, indeed, by Leidesdorff, but which was assumed by the secretary to be Alder Creek. The surveyor-general, accordingly, made and approved a new survey. From the name of the officer under whom this second survey was made it is distinguished as "the Mandeville survey." It was based apparently on instructions sent down from the Land Office on dissatisfaction with the former survey; these instructions saying, "that the decree of confirmation resting upon the *diseño and grant* must be satisfied by the survey; first, by adhering to Sutter's line on the west, the American River on the north, *and the foot-hills* near the junction on the east of a creek distinctly laid down on the diseño; that the said creek is held to be identical with Alder Creek*, . . . the said hills running near the junction of said creek, and in a southeasterly direction. That these are the *natural* features which must *control* the longitudinal extension of the grant. But," the instructions went on to say, "as quantity was petitioned for, granted, and confirmed, the said quantity may be taken by *increasing* the *depth* of the survey, so as to comprise the eight square leagues; thereby giving the location a more *compact* form." The differences of the survey and the difficulties of the case will be exhibited by reference to the map inserted in the report.

On the 22d of November, 1859, the District Court, acting upon the impression that it had jurisdiction to supervise all surveys of confirmed claims under Mexican grants, under the decision of the Supreme Court, in the *United States* v. *Fossatt*,† ordered the new survey made by Mandeville to be returned into court, and authorized the claimants to file exceptions to it. The survey was accordingly returned, and exceptions were filed by the claimants and purchasers under them.

After the passage of the act of June 14, 1860—by which new powers were given to the District Courts of California, with authority to order into court *any survey*, and to decide

* The secretary thus translated the word "lomerias;" assuming it apparently to mean smaller hills at the base of a higher range. REP.

† 21 Howard, 445; and see *ante*, 104.

on it—a monition was issued for notice to all parties, claiming any interest in the survey and location, to appear before the court, on or before September 26, 1860, for the protection of such interests, or their defaults would be taken. On the return of the monition, counsel appeared in behalf of the United States, and also counsel for the claimants, and also counsel for the Natoma Water Company, a corporation created under the laws of California. The default of all other parties not appearing was entered. Folsom subsequently filed exceptions to the survey. Among the exceptions filed to it in his behalf were these:

"1. Because it does not conform to the description of the land confirmed as contained in the decree of final confirmation.

"2. Because the grant calls for four leagues in length upon the American River, and two leagues in width from north to south, and the said survey gives the said tract less than two and one-half leagues in length on said river, and makes the same more than three leagues in width from north to south; thereby entirely changing the form of said tract from the form in which it was granted.

"3. Because the claim was regularly surveyed, and the survey thereof approved by United States Surveyor-General Hays, in May, 1857, which survey was in conformity with the final decree of confirmation.

"4. The survey of Mandeville ought to be rejected, and the survey heretofore made by Hays ought to be adopted, because the latter locates said eastern boundary in pursuance of the final decree, and the former ignores the said decree altogether, and professes to follow the arbitrary and illegal instructions of the Secretary of the Interior, said instructions being in conflict with said final decree, and with the evidence in the case filed before the land commissioners before whom the said eastern boundary was a question litigated by both parties hereto, and settled by the said final decree."

The United States also, by Mr. Williams, "acting in this case as United States District Attorney, at the request of Mr. Benham, who was once counsel for some of the claimants," filed several objections, embracing in substance the following:

1st. That the survey was not according to the final decree of confirmation entered in the above-entitled cause, or to the grant and other title-papers upon which that decree was founded, or to the evidence of the witnesses in the said cause, but in violation thereof is made to extend more than two leagues south of the American River, and thereby to embrace public lands of the United States not rightfully included within the limits of the said claim.

2d. That the survey wrongfully includes lands not at any time claimed by Folsom or his representatives, but, on the contrary expressly disclaimed.

3d. That it is erroneous, because the land granted and confirmed was a tract bounded on the west by Sutter's eastern line; on the north by the American River; on the east by Alder Creek and the neighboring low hills; and on the south by vacant lands; the southern line to be at a distance of two leagues from the river, as near as may be, and run on subdivision lines, so as to meet the meanderings of the river. Whereas the said survey does not regard these boundaries, but shows a southern line at right angles with the western line, disregards the meanderings of the river, and thereby includes within its lines a much larger quantity of land than was granted, and also includes many settlers under the United States, who have so settled and made improvements in good faith long before the said official survey was made.

Upon these exceptions, evidence was taken, and in November, 1861, the District Court set the survey aside, and ordered a new one to be made.* A rehearing being granted, the original survey made by Hays was approved and confirmed by the court. The decree of approval was entered August 2d, 1862. From this decree the present appeal was taken.

Messrs. Della Torre and Wills, for the appellants: The question strictly before the court is as to the correctness of the

* This new survey, of no practical interest in the case, is yet marked on the map inserted in the report as part of the history, and as showing the diverse forms that surveys of California lands, under the same grant, sometimes take. It is indicated by the dotted line without a name along it.

location of the land as shown by the Hays survey; although the record also contains sufficient matter to enable the court to direct the correct manner of survey and location, if the United States succeed in showing that the Hays location is incorrect. We insist that the survey and location of the land, as shown by the Hays plat, are incorrect, and must be set aside.

It is the duty of the one who comes here for confirmation of a land claim, not only to establish the validity of his title to some land, but also to point out the land, and identify it with the tract conceded him by the former government of California. It is enough for us to show that the land claimed is not that which was in contemplation of the granting power. It is not for the government to show how the land should be located; that is a matter for the claimant to demonstrate.

The Mandeville survey was made in general conformity with the directions, mentioned, *ante*, on page 443, and sent down by the Land Office to the Surveyor-General of California, when the Hays survey was disapproved, and a glance at that and the Hays survey will show the chief difference of opinion in this matter between claimants and the government.

When Leidesdorff applied for land, and the reports thereon had been made, Governor Micheltorena made his provisional concession of a tract "situated on the banks of the river named the American, bounded by the land granted to the colony of Señor Sutter, and by the hills on the east." The initial point and two lines are here fixed, and have never been disputed, to wit: the point on the river where the Hays survey begins, the river in its extension, and the line running north and south from the initial point, which has always been treated on all sides as coterminous with the lands of Sutter's colony. It is evident that the location cannot be extended beyond these assigned boundaries. There is also a terminus towards the east, beyond which the location cannot be extended, because the titles made by the granting power went no further. This is the line of the "lomerias." It would not matter even if Leidesdorff had

expressly asked for land beyond these bounds, for we are to seek not what he desired to get, but what the governor chose to give. In the documents of title which have been presented as emanating from that officer, the "lomerias" are laid down by him as the extreme limits of the land towards the east. They are laid down in the same instruments and with the same particularity as are the American River and the lands of the colony of Sutter. We therefore contend that the concession can no more be stretched across the "lomerias" than across any other of the particularized boundaries.

Then we have three of the inclosing lines of the granted tract,—the western, northern, and eastern. The fourth line is not fixed in the grant, and is dependent upon quantity for the place in which it shall run. It is therefore the discretionary line, all the others being fixed, and not to be moved, even if there should be difficulty in deciding upon the location of this southern line. By the express terms of the grant, then, it must be satisfied out of land lying southwardly on the American River, and between the lands of Sutter's colony and the "lomerias" on the west and east, respectively, extending southwardly to make up the quantity which may be held to have been granted. For the present we will presume that to have been eight leagues.

Having settled *what* are the fixed boundaries of this land, we next inquire *where* those boundaries are.

There is no dispute about the northern and western lines, but we have to ascertain where are the "lomerias" which are the eastern boundary, and here there is contention. We assert they are to be found in a row of hills arising a short distance from the mouth of Alder Creek, at its junction with the American River, and running thence in a southerly or southeasterly direction towards the Cosumnes River, the next stream which flows westward from the Sierra Nevada.

We shall be met with the objection that we have no right to look into this matter at all; that under the circumstances, we are confined to such *description* of the land as is given in the decree of the land commission, and that from its decree

the Hays survey may be constructed. Now, it will be said, that this description is conclusive and exhaustive of the description of the land; that in its location we can only seek for such land as is therein described; and as the board excluded the "lomerias" from contemplation in describing the tract, we are, in this proceeding, estopped from any examination as to *what* they are or *where* they are. This is a strange argument. We must presume, in the words of the judge below, when he rejected this survey, "that neither in this case nor in any other did the board mean to confirm the claim for any other tract than that described in the grant, and delineated in the diseño." Can we presume that the board deliberately excluded as one of the boundaries a natural landmark, called for by every one of the instruments of title produced by the claimants as issued to the original grantee? But in setting up this argument claimants have not quoted the whole of the decree, for immediately after the part above recited the decree goes on continuously to say, "*For a more particular description, reference to be had to the original grant, and to the petition and map contained in the espediente.*" This must be conclusive. Is not this latter quotation as much a part of the decree as the former? Has not the reference to the description in the grant and espediente, &c., the same effect as if the words had been set out in the decree? And are we now, when in search of the "more particular description," to be estopped from reading the documents to which the commission has referred us? This would suit the claimants, because by disregarding the "lomerias," as unnamed by the decree, they might stretch their claim *beyond* the limit assigned by the grant. But the reference to the grant makes the decree, in law, precisely the same as if the boundary "lomerias" was fully and particularly, and in words, inserted therein, for "*verba illata inesse videntur.*" In truth, the board intended in this case, as in all others, to give a general description of the land, leaving it for after-proceedings by the surveyors or other proper authority to compare and assimilate the land as it exists in nature with its description in the title-papers.

[The counsel here proceeded to comment upon the evidence in the case. They noted particularly the call in the decree of the board for an "easterly" course after the lines should leave Sutter's land; and argued that as this was to be "parallel with *the general* direction of the said American River," it was obvious that the exact course of that river was not well known to the board, for that the line could not run "east" and be parallel to the river at all. Undeniably, the line was to be an "easterly" one; and this being so, rendered necessary a change in the other lines east and west, so as to conform with the general intent of the board respecting the southern boundary. The counsel also argued from the evidence that the "lomerias"—hills on the east—were situated west of Alder Creek and the eastern line run by Hays; and that from the whole evidence, and especially from original title-papers and map, it was clear that the land granted to Leidesdorff, and described in the espediente, is contained within the bounds of the Mandeville survey. In reply to a question from the court, in what way they reconciled their apparent inconsistency in taking positions in support of the second or Mandeville survey in this argument, which were the reverse of the objections which had once been urged in the name of the United States in the court below, they answered, that the objections below were not those of the United States, but of individual claimants; that this form of proceeding was upheld by the district judge, who considered these proceedings upon surveys in the nature of proceedings *in rem*, and held that parties claiming interests in the subject-matter should be allowed to use the name of the United States to bring their claims to the notice of the court;* that the objections, accordingly, though put forward in the name of the United States, were, in point of fact, urged in behalf of settlers claiming part of the tract surveyed as public land and open to settlement.]

* See *post*, The United States *v.* Estudillo. REP.

Argument for the respondent.

A. P. Catlin and J. S. Black, for respondent:

1. The decree of the land commission in this case, by the dismissal of the appeal and the decree of the District Court of April 30, 1857, became final and conclusive as to all the questions decided by it. Under the act of 1860, the District Court did not acquire jurisdiction to open or reform the decree, but was confined to the duty of seeing that the surveyor ran the lines according to the decree.

2. The Hays survey is in conformity with the lines laid down in the decree. But the government contends that the said lines do not correspond with the original documentary title-papers; that the boundary lines laid down in the decree of confirmation, do not correspond with the boundaries named in the grant and other documentary title-papers, and consequently that a new decree, corresponding with such boundary, ought to be made.

I. If the descriptive portion of the decree can be disposed of upon such grounds, there would be nothing final in any branch of the case. The inquiry might be pushed still further, and the authority of the governor and all other vital questions upon which the commission passed, be laid bare for inspection and readjudication.

II. The court must construe the decree upon its face, when it is clear and plain, and the matters upon which a decree are founded are not resorted to for the purposes of construction, unless in the terms of the decree there is some want of clearness or some difficulty in understanding it. Understanding it is construing it, and if we understand it, there is no need of groping back into the darkness out of which the light of the decree was created. When the decree is understood, then it is construed. But the construction for which the appellant's counsel contend, is the power to construe the meaning of the original parties to the grant, in other words, to exercise the same power which the Land Commissioners exercised, and to review as upon appeal the judgment of that tribunal, and to make a new decree, in so far as it becomes necessary to illustrate the difference of opinion which may exist between the District Court under

the act of 1860, and the Land Commission under the act of 1851. There is no telling to what extent this mode of construction might be carried. It is equal to the power of making a new decree, and of reversing the judgment of a court, the meaning of which it pretends only to construe. It is said that the form of the tract produced by the lines of the decree show that the board, by the term "easterly," applied to the general course of the southern boundary, evidently intended that line should run more nearly east than it does in the Hays survey, and that the board must have supposed that the general course of the river was east, and that in order to carry out the meaning of the board we must change the course of the other lines on the east and west, in order to conform with the supposed intention of the board respecting the southern boundary. The assumption that the board did not understand the course of the river, is without foundation, and is contradicted by the terms of the decree itself. The peculiar manner in which the southern boundary lines are constructed, show that the board perfectly well understood that the course of the river was circuitous and irregular, and that its general course was not east. After first directing the starting-point to be the oak tree, and the first line to run from thence "south" two leagues, it says, "thence 'easterly,' by lines parallel with the general direction of the said American River, and at the distance, as near as may be, of two leagues therefrom." The course provided by this language is the course of the river by its bends and turns, and so the line is to be divided in parts to accommodate itself to these bends and turns, otherwise the board, if it had supposed the course of the river to be east or near east, would have said, thence "easterly in a line," instead of "easterly in lines." The term "easterly" is only necessary to indicate the way to turn when at the end of the first line, whether toward the west or toward the east. We understand the word easterly in its usual acceptation to mean to the east generally, in contradistinction to west, north, or south, and is correctly applied to any general direction to the east, as opposed to the west, which would not be better

indicated by using the terms northerly or southerly. In this decree the term easterly has qualifying words attached to it, showing that it meant the direction of the American River from the oak tree.

Mr. Justice FIELD delivered the opinion of the court:

This case comes before us on appeal from a decree of the District Court of the United States for the Northern District of California, approving the survey of the tract confirmed to Folsom, the testator of the respondents. The grant to Leidesdorff, from whom the respondents deraign their title, was issued in October, 1844, by Micheltorena, then Governor of the Department of California. In September, 1852, the claim for the land granted was presented to the Board of Commissioners created by the act of March 3d, 1851, and by a decree of that body, rendered in June, 1855, the claim was adjudged valid and confirmed. The case being removed by appeal to the District Court, the attorney-general gave notice that the appeal would not be prosecuted by the United States, and upon the stipulation of the district attorney in pursuance of such notice, the claimants had leave to proceed upon the decree of the board as upon a final decree.

The grant describes the land as consisting of eight square leagues, and as situated on the bank of the American River, and bounded by land previously granted to the colony of Sutter, and by a range of hills—"lomerias"—on the east. The provisional concession preceding the issue of the formal title, gives a similar description. The petition of Leidesdorff, which the grant recites, represents the land as being "four leagues in length towards the east, and two in breadth towards the south," and refers to a map transmitted with it. This map is a rough sketch indicating the general locality and outline of the land solicited.

The original papers give the locality, the form, and the dimensions of the tract granted. It is situated on the southern bank of the American River; it is four leagues in length by two leagues in width; it embraces eight square leagues;

and it is bounded by the land of Sutter on the west. From the data thus furnished, the boundaries, which are not designated, can be readily ascertained and declared. As a question was made before the board upon the location of some of the boundaries, and testimony was taken as to the line of the land of Sutter, and the position of the range of hills on the east, the case was a proper one for the board to fix with precision and declare the boundaries in its decree. As the appeal from the decree rendered was withdrawn by the United States, it is unnecessary to consider the character of the testimony produced or the weight to which it was entitled. The board acted upon it in connection with the title-papers, and in its decree, entered in April, 1857, declared the boundaries of the tract, running the same, except on the side of the river, by courses and distances.

In May following, a survey of the tract confirmed, was made under the directions of the Surveyor-General of California, and was approved and transmitted by him to the Commissioner of the General Land Office, at Washington, for examination and approval preliminary to the issue of a patent. In May, 1858, the commissioner appears to have approved the survey, and to have made preparations to carry the same into a patent, but was overruled by the Secretary of the Interior, who, in September following, disapproved of the survey, and sent the case back to the surveyor-general. At the subsequent December Term of this court, the decision of the case of the *United States* v. *Charles Fossat* (21 Howard, 445), was made, which was supposed by the District Court of California to recognize a jurisdiction in that court to supervise all surveys of confirmed claims under Mexican grants. Acting upon this view of the decision, the District Court, in November, 1859, ordered the new survey which had been made by the surveyor-general to be returned into court, and gave leave to the claimants to file exceptions to it. The new survey was accordingly returned, and exceptions to it were filed by the claimants and purchasers under them; and proceedings upon the exceptions were pending on the passage of the act of June 14th, 1860.

Whatever question might be raised as to the jurisdiction of the District Court to supervise the survey previous to that act, there can be none since its passage. That act applies not merely to surveys subsequently made, but also to such surveys as had been previously made and approved by the surveyor-general, and returned into the District Court upon objections to their correctness. Under the act, a monition was issued, and on its return counsel appeared on behalf of the United States, and for the claimants, and for the Natoma Water Company, a purchaser under the claimants. No other party appeared, and the court ordered "the default of all parties not appearing" to be entered. The United States subsequently filed their exceptions. All parties agreed in averring a want of conformity in the survey with the description of the land contained in the decree of final confirmation.

The District Court set the survey aside, and ordered a new one. Subsequently, upon a rehearing, it approved and confirmed the survey originally made. From its decree in this respect the United States appealed, and on the argument of the appeal took positions in support of the second survey, which are directly the reverse of the objections urged in their name in the court below. To the apparent inconsistency in their action in this respect the attention of counsel was called, and the explanation given was that objections in the District Court, though put forward in the name of the United States, were in fact urged on behalf of settlers claiming that part of the tract covered by the survey, was public land open to settlement. It is unnecessary to express any opinion upon the sufficiency of this explanation, or whether the United States are bound by objections on the record, which are advanced in their name, when presented for the protection of parties claiming interests under them by pre-emption, settlement, or other right or title. We refer to the matter, not because our judgment will be in any respect affected by it, but to indicate that it would be the better practice for the district attorney, when appearing for third parties in the name of the United States, to state the fact,

and give the names of the real contestants in the exceptions filed.

The material question for determination is, whether the survey approved conforms to the decree of confirmation. There must exist a reasonable conformity between them, or the survey cannot be sustained. And such reasonable conformity we at once perceive when we take up the survey and trace its lines under the directions of the decree. Indeed, we do not think that such conformity will be seriously controverted by the learned counsel of the appellants, if the survey be restricted to the description contained in the decree. Their position is, that this description is to be controlled by the original grant and by the petition and map contained in the espediente, to which reference is made at the close of the decree; in other words, that the question of boundary is open for adjudication precisely as it would be if no description had been given. The position of the learned counsel in this respect cannot be maintained. The documents to which reference is made can only be resorted to in order to explain an ambiguity in the language of the description given; they cannot be resorted to in order to change the natural import of the language used, if there be no uncertainty therein. If reference to original title-papers, where no doubt arises upon the terms of the decree, would authorize an inquiry into a matter of boundary, it would with equal propriety authorize an inquiry into any other matter upon which the commission had acted; and every question affecting the decree might be opened anew to consideration and contestation.

The decree in this case is plain, and admits of only one construction: the object of the appellants is to change the meaning of its language, by showing that the commissioners were ignorant of the true course and direction of the American River, and therefore intended different lines from those they specifically declared, and that they could not have intended the eastern line to run as directed, in disregard of what is asserted to be the true position of the "lomerias."

The answer to all efforts of this kind is, that the decree is

a finality, not only on the question of title, but as to the boundaries which it specifies. If erroneous in either particular, the remedy was by appeal; but the appeal having been withdrawn by the government, the question of its correctness is forever closed.

The decree of the District Court is

AFFIRMED.

Messrs. Justices CLIFFORD, MILLER, and SWAYNE, dissented.

THE INSURANCE COMPANIES *v.* WRIGHT.

1. Where a written contract is susceptible on its face of a construction that is "reasonable," resort cannot be had to evidence of custom or usage to explain its language. And this general rule of evidence applies to an instrument so loose as an open or running policy of assurance, and even to one on which the phrases relating to the matter in contest are scattered about the document in a very disorderly way. NELSON and FIELD, JJ., dissenting from the rule, or from its application in this case: in which there was a clause that, as they conceived, made the evidence of usage proper.
2. The expression "rate," or "rating" of vessels, as used in policies of assurance, means relative state in regard to insurable qualities. Hence, where a policy requires that a vessel shall not be below a certain "rate," as, *Ex gr.*, "not below A 2;" this rate is not, in the absence of agreement to that effect, to be established by the rating-register alone of the office making the insurance—certainly not unless the vessel was actually rated there,—nor by a standard of rating anywhere in the port merely where that office is. There being, as yet, no "American Lloyds," the party assured—if not actually rated on the books of the office insuring—may establish the rate by any kind of evidence which shows what the vessel's condition really was; and that, had she been rated at all at the port where the office was, she *would* have rated in the way required. He may even show how she would have rated in her port of departure, or in one where the company insuring had an agency through which the insurance in question was effected; this being shown, of course, not as conclusive on the matter of rate, but as bearing upon it, and so fit for consideration by the jury.
3. Evidence is not admissible of a general usage and understanding among shippers and insurers of the port in which the insuring office is, that in open policies the expression used, as *Ex gr.*, "not below A 2," refers to