UNITED STATES v. VALLEJO.

As a general rule a warrant for public land should be so located and surveyed that the surplus left to the United States shall be in one connected piece. But a large discretion must be left in this class of cases to the surveyor, and the rule is not one of universal application. Hence, in a California case, where the surplus was left in two very large parcels, one of three thousand five hundred and the other of two thousand acres, the rule was held to be controlled by the facts that the survey was located as desired by the claimant, that it had a reasonably compact form, and that it included two "adobe houses," probably twenty years old, now and long inhabited by the heirs of the original grantee, the present owners of the claim, and one of which houses would be excluded, if the survey were made in the more usual form. The court declared that while it is not prepared to say that it will, in no case, review the discretion which belongs to the surveyor, it does not hesitate to announce that it will not determine whether this discretion has been exercised with the nicest discrimination or the highest wisdom.

THIS was a question of a survey of a California Mexican grant, of two leagues in quantity, to be located within a larger outboundary, and came by appeal from the District Court for the Southern District of California. The area of the larger tract was about three leagues and a third of a league. It resembled in shape a sack or purse, and the ranch was hence called the *Bolsa* or Sack de San Cayetano.

The United States, appellants in the case, objected to the survey upon two principal grounds; namely, that the two leagues of claimant were taken out of the central part of the sack, leaving to the government the remnant, in two detached corners; and because the land thus left was not equal in quality to that which the claimant got.

As regarded the first point, it was true that the land surveyed for the claimant was so taken out as to leave remnants; one of about three thousand five hundred acres, the other of about two thousand. As respected the quality of the land, the surveyor testified that the portion given to the claimant was of the *average* quality of the whole sack; parts were better for some purposes, parts worse. It appeared, however, that the land had been located as the claimant desired; that

it was of a form sufficiently compact, and that, as surveyed, it embraced two "old adobe houses," inhabited now and for many years by the heirs of the original grantee, the present owners of the claim.

Mr. Wills, for the United States.

Mr. Justice MILLER delivered the opinion of the court.

The objection to the quality of the land does not seem to be sustained by the testimony. If there be a difference in quality between the part surveyed and the part left, it must be too slight to be the subject of consideration here.

It is certainly true that the surplus left to the United States should have been in one connected piece, if there were not sufficient reasons to justify a different course. In all these locations of a limited quantity within a larger one, many rules deserve attention. But as some of these may, and often do conflict with others, they cannot all be observed in every case.

In the present case the survey is supported:

1. By the fact that it was located as desired by the claimant.

2. That it is in a reasonably compact form.

3. That it includes two old adobe houses, inhabited now and for many years past by the heirs of the original grantee, the present owners of the claim.

Both of the first-named two considerations are prominent among the rules laid down by the Commissioner of the General Land Office for the location of this class of claims.

As respects the third, it appears that if the two leagues were taken from either end of the sack as claimed by the government, the one of these houses must be left out. They were both there when the grant was made, and are, probably, twenty years old. This raises a strong presumption that the grant was intended to cover them both.

These reasons, we think, overbalance the inconvenience of having the surplus left to the United States in two disconnected parcels; especially when one of these parcels contains

as much as three thousand five hundred acres, and the other about two thousand acres.

Besides, in this class of cases, a large discretion must necessarily be left to the surveyor; and while we are not prepared to say that we will not in any case review the exercise of that discretion, we have no hesitation in saying that we do not sit here to determine whether it has been accompanied with the nicest discrimination, or the highest of wisdom.

DECREE AFFIRMED.

WHITE *v.* UNITED STATES.

Where there is no archive evidence of a California grant, and its absence is unaccounted for, and there has been no such possession as raises an equity in behalf of the party, and especially where, in addition, the *expediente* produced is tainted with suspicions of fraud, the claim must be rejected.

APPEAL from the District Court for the Northern District of California; the following case being presented.

The appellant, White, claimed a tract, or rancho of land, known as *San Antonio*, under a grant alleged to have been made to one Antonio Ortega. The United States, appellees in the suit, claimed it under a grant alleged to have been made by the same authority to a certain Juan Miranda. One question, therefore, was as to the validity of the respective documentary titles thus set up. But this question was complicated by other questions: one of actual occupation, another of agency or representation, and a third of abandonment. Ortega had married the daughter of Miranda, and both Ortega and Miranda had occupied the tract,—Miranda and his family being sometimes in occupation, as Ortega and his wife were at others; and the additional question therefore was, whether Ortega was occupying under Miranda, or Miranda occupying under Ortega,—a question made more difficult to solve by the fact that Ortega and his wife were in hostile relations, leaving it uncertain when *she* was in pos-