ing any opinion as to the applicability of *that* remedy to the case before the court.

[For a further part of this case, and for the reasons and justification (under the special facts) of the court below, in executing the mandate as it did, see Railroad Company *v.* Soutter; *infra*, p. 510.]

UNITED STATES *v.* BILLING.

1. The doctrine of *United States* v. *Halleck* (1 Wallace, 439), that the decrees of the District Court on California land surveys under the acts of Congress are final, not only as to the questions of title, but as to the boundaries which it specifies, redeclared; and the remedy, if erroneous, stated to be by appeal.
2. Appeals on frivolous grounds, from decrees in cases of California surveys, in the name of the United States, acting for intervenors, under the act of June 14, 1860, discouraged as being liable to abuse; since, on the one hand, the party wronged by the appeal gets no costs from the Government; while, on the other, the Government is made to pay the expenses of a suit promoted under its name by persons who may be litigious intervenors merely.

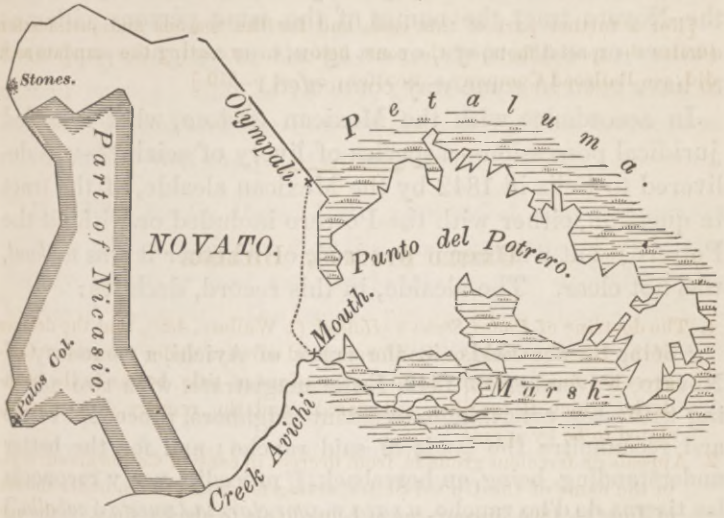
THE Board of Land Commissioners, established by act of Congress of March 3, 1851, to settle private land claims in California, confirmed, in 1851, to Billing and others, a tract of land granted in 1839 by the Mexican Government to one Felis.

The decree set forth the boundaries of the land essentially as follows:

"Commencing at the mouth of the creek Avichi, emptying into the Petaluma marsh, and running up said creek ten thousand varas, to a point called Palos Colorados; thence in a northerly direction five thousand varas, to a place marked by a pile of stones; thence in an easterly direction to a place called Olympali, five thousand varas; *from thence with the estuary, around the Punta del Potrero, on the estuary, to the place of beginning;* containing *two* square leagues, *a little more or less.*"

Statement of the case.

The diagram below will illustrate the *general* position of things; enough to give an idea.



It was admitted that no difficulty existed in ascertaining the boundaries described in this decree.

A survey was made according to these boundaries; but, thus surveyed, the tract included nearly *three* leagues, and the United States excepted to the survey on that ground.

While the case was pending in the District Court on that exception, one of the deputies of the Surveyor-General of the United States,—not acting under immediate direction of his superior, acting, indeed, without his knowledge at the time, though the principal afterwards issued instructions in execution of what his deputy had done—made a survey which excluded one league on the western side of the Novato tract, including it within another called Nicasio, now patented by the United States; the patent of the Government, however, by its terms, being declared not to "affect the interests of third persons." The District Court confirmed the survey for the tract as it stood, including the Potrero, and excluding the league on the west. This made a tract of about *two* leagues. From this decree the claimants made no appeal.

[The part of the land confirmed which was thus excluded from the Novato tract, and included in the Nicasio, lies in shade in the left of the diagram.] In both the Nicasio and the Novato tract the names of the same persons, either as owners or as attorneys, or as agents or assignees, appeared to have been in some way connected.

In accordance with the Mexican custom, what is called juridical possession—a species of livery of seizin*—was delivered to Felis in 1842 by the Mexican alcalde, of the tract in question, either with the Potrero included or without the Potrero; but whether it was *with*, or whether it was *without*, was not clear. The alcalde, in this record, declares:

"Being in the fields, in the creek of Avichi, a boundary of Novato, November 13, 1842, I, the magistrate, with two assisting witnesses, coterminous resident neighbors, proceeded to see and reconnoitre the lands of said rancho; and for the better understanding, being on horseback, ['procedi á ver y reconoces las tierras de d'ho rancho, *y para mayor claridad puesto á caballo*,'] in company with all the parties and witnesses before mentioned, I ordered the aforesaid witnesses to point out the places, limits, and boundaries of the land as they described them in their depositions. They did so; and I, the magistrate, and those of my assistance, saw and examined them and the documents presented, and in testimony I made official note of it, &c."

This officer then goes on to give some account of the measurement, which, he says, was made with a rope of hemp with measures stamped on it; and he concludes that by this rope, well twisted and stretched, it resulted that the rancho has five thousand "varas" in length and ten thousand in breadth. After which conclusion the owner having "been made to know the lands which belong to him, for a sign of true possession and customary form, pulled up grass and stones, and threw to the four winds of heaven, in manifestation of the legal and legitimate possession which he for himself took."

* See it described, Malarin *v.* United States, 1 Wallace, 284.

Argument for the appellant.

This Mexican record, the judge below, (Hoffman, J.,) after careful examination, thought so inaccurate and incomplete, that he considered himself free entirely to discard it, as hopelessly confused and unintelligible; and his Honor confirmed to Billing and the others the tract as marked out by the second survey; that is to say, the tract with the eastern league *ex*cluded and the Potrero *in*cluded. The correctness of his action was the point on appeal here.

Mr. Wills, for the United States, contended, that the owners of both tracts were in fact the same persons; that if the deputy surveyor had not made his survey excluding the league on the west,—the league put into the Nicasio tract,—the *Potrero* would have been excluded, and the claimants have thus lost the most valuable part of the whole tract; that to get this Potrero *they* had procured this survey by the deputy surveyor to be made, and had got the one league on the east included in the Nicasio tract (*their* tract, also, as was argued), in order to get the Potrero included in the Novato. The whole thing, it was urged, was a plan to get three leagues, the Potrero being included, where, otherwise, they would have got but two, with the Potrero excluded. It was argued, upon the evidence, not here reported, that the record of juridical possession did show that the Potrero was excluded, and that the tract of which possession was delivered was the Novato *without* that and *with* the part which the deputy had put into the Nicasio. In *Malarin* v. *United States*,* this court relied largely on this ancient proceeding of the Mexican law,—the identical form almost of the common law of England; and though no doubt, as was rightly decided in *United States* v. *Halleck*,† it will, as a general thing, follow boundaries distinctly given in a decree, it will not do so where it is plain that by the act of juridical possession the party was confined to less space; which space conforms exactly with the *amount* called for by the very grant confirmed.

Mr. Goold, contra:

* 1 Wallace, 282. † Id. 439.

Mr. Justice GRIER delivered the opinion of the court:

In the case of *United States* v. *Halleck*,* it is said that "the decree is a finality, not only as to 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. In *The Fossat Case*,† the same doctrine was fully established.

The final decree in this case sets forth the specific boundaries of the land granted, and it is admitted that the surveyor found no difficulty in finding the monuments and boundaries described in this decree. But as these boundaries included about three leagues, the surveyor-general, assuming that the grant was confined to two leagues, excluded a league of land within these boundaries on the western side, and included it in the survey of the Nicasio rancho, which adjoins.

As the owners of the Novato tract now in question did not appeal from that survey, and are content to take this survey of two leagues, we are not bound *now* to decide whether, according to the decree, they were not entitled to have *all* the land included within the boundaries mentioned in the decree, and whether the words "containing two leagues, a little more or less," should be construed merely as a conjectural estimate of the quantity contained within the boundaries described. But one thing is certain, that if the United States have taken a league on the western side of the Novato, and given it to the Nicasio rancho, it is with an ill grace that they who use their name now seek to take another league on the east.

The Punto del Potrero, a peninsula almost entirely surrounded by a salt marsh, is as clearly within the decree as language can make it. The decree being itself clear and precise, does not refer to the rough daubs called diseños, or to the record of juridical possession for the purpose of rendering uncertain that which the decree made certain. The

* 1 Wallace, 439.

† *Infra*, p. 649.

formula of this delivery of possession, or livery of seizin, did not require a survey of the estate. Perhaps the province of California at that time could not furnish a man capable of making an accurate survey. In the present case, the alcalde proceeded "*to see and reconnoitre*" the monuments claimed as corners in company of the witnesses, "*being himself on horseback for the better understanding;*" and after divers measurements made with a rope, he "concluded that it results that the rancho has five thousand varas in length and ten thousand in breadth." That would constitute a rectangular figure, whose contents would be easy of calculation, and avoid the difficulty of calculating the area of an irregular one, made by lines running from one monument or corner to another. The court below were fully justified in "entirely discarding" this document from consideration, whether it was "*hopelessly confused and unintelligible*" or not. We need not, therefore, further examine the argument of the learned counsel of the appellants whether the opinion of that court was correct or not on the construction of that document.

Another objection was made, though not much urged, that the survey in question was void, because not made by the surveyor-general in person, and because he had no "*lawful authority*" to approve a survey made by a deputy. This objection requires no further remark than merely to observe that the permission given by the act of 1860 to private intervenors to prosecute appeals to this court, in the name of the United States, may be much abused in cases where the Mexican grantee is compelled to defend himself even a second time in this court, and to answer frivolous objections to his title or his survey at the suggestion of any litigious intruder or secret intervenor. The party wronged by the appeal receives no costs from the Government; while the Government itself is made to pay the expenses of the oppressive and unjust litigation in which it has been made the actor by this class of persons.

DECREE AFFIRMED.