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other property that may belong to him;" and, we add, of course, is subject to like taxation.

It was supposed, on the argument, that this principle was in conflict with that which governed the decision of this court in the case of *Gardner v. The Appeal Tax Court*,* but this is a mistake. That case turned upon the construction of an act of Maryland exempting the bank from taxation on account of a large bonus to the State for the extension of the charter. This court held, that upon a true construction of the act, the stockholders were within the scope of the exemption. The court say: "In whatever way we examine the acts of 1813 and 1821, we are of opinion that it appears from the eleventh section in those acts, to have been the intention of the legislatures which passed them, to exempt the stockholders from taxation as persons, on account of the stock which they owned in the banks."

Some other questions were discussed on the argument, besides those we have noticed, but they are questions of which this court cannot take cognizance. We have examined all of them that are here under the twenty-fifth section of the Judiciary Act.

Judgment of the court below

AFFIRMED.

The CHIEF JUSTICE: In concurrence with my brothers Wayne and Swayne, I dissent from the opinion just read. The reasons of dissent sufficiently appear in our dissenting opinion in the case of *Van Allen v. The Assessors*, read at the last term, and we do not think it necessary to repeat them.

 GRAHAM v. UNITED STATES.

1. The Mexican law made a formal delivery of possession of real property granted essential, after the execution of the grant, for the investiture of the title.

* 3 Howard, 133.

Statement of the case.

2. The proceeding had upon such delivery—called, in the language of the country, the delivery of juridical possession—was usually taken by the magistrate of the vicinage, with assisting witnesses, in the presence of the adjoining land proprietors, and involved, when there was any uncertainty in the description of the premises, a measurement of the land and the establishment of its boundaries.
3. The record of a proceeding of this nature must control the action of the officers of the United States, in surveying the land granted, when the grant is confirmed.

ON the 22d of April, 1841, a grant of land was issued to one Mayors by the Governor of California. The grant describes the land granted as that formerly occupied by Francis Moss, and known by the name of Zayante, bordering on the village of Brancoforte and Mission of Santa Cruz, and as being in extent “longitudinally one league, and latitudinally one-half league, more or less,” as explained by an accompanying diagram.

This grant was transferred to the appellants by the grantee, and was by them presented to the Board of Land Commissioners for confirmation, and was confirmed by the board on the 26th of June, 1855. An appeal taken from the decree by the United States was withdrawn on the 9th of February, 1857, and by consent of the district attorney, upon instructions from the Attorney-General, a decree was entered on that day, by the District Court, giving leave to the claimants to proceed upon the decree of the board as a final decree. In the proceedings before the board the claimants produced an original record of juridical measurement, from which it appeared that the grantee was formally put in possession of the premises granted, by the proper officer, to the extent of one square league in length by three thousand varas in width.

The decree of the board describes the land as follows: “The land of which confirmation is made is situated in the County of Santa Cruz, and is known by the name of Zayante, being the same which is now held and occupied by the claimants, and is of the extent of one league in length, and a half league in width, a little more or less, as shown by the original grant, record of juridical possession, and map filed in

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the case, to all of which reference is hereby made for a more particular description.”

In surveying the land confirmed, the Surveyor-General of the United States for California did not follow the measurement contained in the record of juridical possession. The District Court, for that reason, set it aside, and ordered a new survey which should correspond with such measurement. Such survey being made was approved by the decree of the District Court, October 26th, 1863. From this decree the present appeal was taken, and the question presented is, whether this survey embraces the land granted and confirmed.

Mr. Reverdy Johnson, for the appellants.

Mr. Wills, contra.

Mr. Justice FIELD delivered the opinion of the court.

As we have had occasion heretofore to observe,* the Mexican law, as well as the common law, made a formal delivery of possession, or livery of seizin of the property, essential, after the execution of a grant, for the investiture of the title. This proceeding was usually taken by the magistrate of the vicinage, with assisting witnesses, in the presence of the adjoining land proprietors, who were summoned for the occasion. As preliminary to the actual delivery of possession, the land had to be measured and its boundaries established, when there was any uncertainty in the description of the premises. Various regulations for the guidance in these matters of the magistrates were prescribed by law. That which concerns the present inquiry is that they required the magistrate to preserve a record of the measurement, and of all other steps of the proceeding, to have the same attested by the assisting witnesses, and to furnish an authentic copy to the grantee. By this proceeding—called in the language of the country the delivery of juridical possession—the land granted was separated from the public

* *Malarin v. The United States*, 1 Wallace, 289.

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domain, and what was previously a grant of quantity, became a grant of a specific tract.

The record of a proceeding of this nature must necessarily control the action of the officers of the United States in surveying land claimed under a confirmed Mexican grant.

In the present case, juridical possession of the land had been delivered to the grantee, and the record was produced and given in evidence. The first survey of the land made by the Surveyor-General of the United States for California, after the confirmation, did not conform to the measurement shown by this record. The District Court, for that reason, set the survey aside, and directed a new survey, which should correspond with that measurement.

To the application of the appellants for a change in the location, the District Court held that there were insuperable objections presented by the action of the officers under the former government, and that it was the duty of the court to locate the land according to the measurement made by the alcalde, and signed by him and the assisting witnesses in the record of proceedings upon the delivery of possession.

We fully concur in this view with the District Court, and, therefore,

AFFIRM ITS DECREE.

 BROWN v. BASS.

- 1 Brown Brothers & Co. had filed a creditor's bill against the Bank of Mississippi before having obtained judgment at law, which, however, was obtained soon after the bill was filed. After this a receiver was appointed and proceeded to take possession of the assets of the bank, to collect debts and compromise with debtors, and with the proceeds to pay the debts of the bank.
2. The defendant, Mrs. Bass, having purchased land upon which the bank had a mortgage, made an arrangement with the receivers by which the latter transferred to her the mortgage and took her notes secured by mortgage on the same land. These notes he passed to Brown Brothers & Co. in part satisfaction of their judgment against the bank. Subsequently, after these proceedings had gone on for twelve years, the creditor's bill filed by Brown Brothers & Co. was dismissed for want of ju-