TOWNSEND ET AL. *v.* GREELEY.

1. The treaty of Guadalupe Hidalgo between the United States and Mexico does not divest the pueblo, existing at the site of the city of San Francisco, of any rights of property or alter the character of the interests it may have held in any lands under the former government. It makes no distinction in the protection it provides between the property of individuals and the property held by towns under the Mexican government.
2. The act of March 3d, 1851, does not change the nature of estates in land held by individuals or towns. By proceedings under that act, imperfect rights,—mere equitable claims,—might be converted by the decrees of the board created by the act or of the courts, and the patent of the government following, into legal titles; but if the claim was held subject to any trust before presentation to the board the trust was not discharged by the confirmation and the subsequent patent. The confirmation only enures to the benefit of the confirmee so far as the legal title is concerned. It does not determine the equitable relations between him and third parties.
3. By the laws of Mexico, in force on the acquisition of the country, pueblos or towns in California were entitled, for their benefit and the benefit of their inhabitants, to the use of lands constituting the site of such pueblos and towns, and of adjoining lands, within certain prescribed limits. The right of the pueblos in these lands was a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture lands, or as a source of revenue, or for other public purposes. This right of disposition and use was, in all particulars, subject to the control of the government of the country.
4. Lands thus held by pueblos or towns, under the Mexican government, are not held by them in absolute property, but in trust for the benefit of their inhabitants; and are held subject to a similar trust by municipal bodies, created by legislation since the conquest, which have succeeded to the possession of such property.
5. The municipal lands held by the city of San Francisco, as successor to the former pueblo existing there, being held in trust for its inhabitants, are not the subject of seizure and sale under judgment and execution against the city.

ON the 20th of June, 1855, the common council of the city of San Francisco, the legislative body of that city, passed "An ordinance for the settlement and quieting of the land titles in the city of San Francisco." This ordinance is generally known in San Francisco as "The Van Hess ordi-

nance," after the name of its reputed author. By the second section of the ordinance the city relinquished and granted all her right and claim to the lands within the corporate limits, as defined by the charter of 1851, with certain exceptions, to the parties in the actual possession thereof, by themselves or tenants, on or before the 1st day of January, 1855, and to their heirs and assigns forever, provided such possession continued up to the time of the introduction of the ordinance into the common council; or, if interrupted by an intruder or trespasser, had been or might be recovered by legal process. This ordinance was ratified by the legislature of the State on the 11th of March, 1858.

At the time this ordinance was passed the city of San Francisco asserted a claim to four square leagues of land, as successor of a Mexican pueblo, established and in existence at the site of the present city, and had presented her claim for the same to the board of commissioners created under the "act to ascertain and settle the private land claims in the State of California," of March 3d, 1851, for confirmation, and the board had confirmed the claim for a portion of the land and rejected the claim for the rest. The portion confirmed included the premises in controversy.

One Greeley, having acquired title to certain premises from parties who were in the actual possession of them at the time mentioned in the ordinance, brought the present action, ejectment, in one of the District Courts of the State of California, against two persons whom he found in occupation,—Townsend and Powelson, defendants below,—to oust them. The defendants filed separate answers.

Townsend, after pleading a general denial, averred as a separate answer, in substance, "that by the treaty of peace between the United States and Mexico, dated at Guadalupe Hidalgo, February 2d, 1848, the ownership and title in fee simple of the lot passed to and became vested in the United States, and that the United States afterwards, by force and effect of the act of the Congress thereof, passed March 3d, 1851, entitled 'An act to ascertain and settle the private land claims in the State of California,' and by force and

effect of the final decision and decree of the board of commissioners of said United States, appointed and acting thereunder (upon the petition and claim of the city of San Francisco, presented to and filed before said board in favor of said city), the ownership and title in fee so acquired and held by the United States passed to and vested in the city of San Francisco, and that by divers mesne conveyances, and by force of divers ordinances of the said city, and an act or acts of the legislature of California, the title in fee had, prior to the 28th day of March, A. D. 1862, become, and then was, vested in and held by one Mumford, who executed a lease of the premises to the defendant Powelson, under which Powelson entered and took possession, and has ever since continued, and still is, lawfully, peaceably, and rightfully in possession thereof." And that all acts done by the defendant Townsend with reference to the premises, have been done as the agent and attorney of the said Mumford, and by his authority, and by the license and permission of the said Powelson, his lessee.

The answer of the other defendant, Powelson, was substantially the same, except that he averred that he held as tenant under Mumford.

On the trial various exceptions were taken to the ruling of the court upon matters relating to the possession of the plaintiff, but the manner in which the matters arose are not stated, because the rulings made thereon are not noticed by the court, for the reasons given in its opinion.

The defendants offered in evidence a certified copy of the petition of the city of San Francisco, filed on the second day of July, A. D. 1852, before the board of United States Land Commissioners, appointed and sitting under the already mentioned act of Congress of March 3, 1851; the said copy being certified to be a true copy of said petition by the United States Surveyor-General of California.

Also, in connection with the said petition, a certified copy of the decree of said board of land commissioners thereupon made, and filed in the office of the secretary of said board on the 21st of December, A. D. 1854, confirming to

the city a tract of land therein described; the said last-mentioned copy being likewise certified by said surveyor-general to be a true copy of the said decree.

The court then inquiring of the defendants and requiring them to state by what proof they intended to follow the said documentary evidence, they offered to prove that the premises in controversy were a part of the land described in the decree of confirmation; that the appeal for the decree was dismissed by the District Court of the United States, March 30, 1857, and that the decree had become final; and they also offered to deraign title to the premises in dispute under said confirmation, from the city to Mumford, by conveyances executed and delivered since the decree of confirmation, and since the dismissal of the appeal therefrom, and prior to the 28th day of March, A. D. 1862, and offered to justify the acts of Townsend done in reference to the premises, by proving authority for his acts as agent and attorney for Mumford, and to justify the entry of the defendant Powelson by proving a lease to him of the premises from Mumford.

The court then inquiring further of the defendants, and requiring them to state by what means, and in what particular manner they expected to deraign title to Mumford from the city, they offered to show the recovery of a judgment against the city, the issue of an execution thereon, and the sale by the sheriff of the county thereunder of the premises in controversy, and the purchase of the same by one Wakeman, the delivery of a sheriff's deed to him, and his conveyance of his interest to the said Mumford.

Thereupon the plaintiff objected to the admission of the evidence offered, or of any part of it, on various grounds, and among others, on the ground that the premises in controversy were not subject to seizure and sale under execution upon a judgment against the city; and hence that the title could not be affected in any way by the introduction of the evidence offered. The court sustained the objection and excluded the evidence. The defendants excepted to the ruling. The plaintiff had judgment, and the Supreme Court

of the State having affirmed it, the case was here upon writ of error, under the twenty-fifth section of the Judiciary Act.

Messrs. Ewing and Vanarman, for the plaintiffs in error:

The court below erred in excluding from the jury the evidence offered by the defendants of the final confirmation of the premises in controversy by the United States to the city, and of the deraignment of title thereto from the city to Mumford, under whom they undertook and claimed the right, to justify their possession.

1. By the treaty of February 2, 1848, between the United States and the Mexican Republic, commonly known as that of Guadalupe Hidalgo, the title to all lands then vested in the Mexican Republic within what is now the State of California, passed to and became vested in the United States.*

2. By *presumption of law* all lands within this State are deemed public lands, and the title thereto vested in the United States until the title is shown to be elsewhere.† And this presumption applies as well to lands situated within the limits of a "pueblo" as elsewhere.‡

3. The confirmation, therefore, by the United States of the premises in dispute to the city of San Francisco, by decree of the United States Commissioners, dated December 21, 1854, made final March 30th, 1857 (which the defendants offered to prove by the evidence excluded by the court), operated to vest the title of the United States, from that date, in the city.§

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* Art. V of the Treaty.

† Act of Congress admitting California, § 3; California Statutes, 1856, p. 54, § 1; People v. Folsom, 5 California, 377; Burdge v. Smith, 14 Id. 383.

‡ Brown v. San Francisco, 16 California, 459, 460; Chouteau v. Eckhart, 2 Howard, 344; Les Bois v. Bramell, 4 Id. 464.

§ Act to Settle Private Land Claims in California, § 15, 9 Stat. at Large, 634; Stoddard v. Chambers, 2 Howard, 316; Les Bois v. Bramell, 4 Id. 463, 464; Bryan v. Forsyth, 19 Id. 335, 336, 337; Waterman v. Smith, 13 California, 419; Moore v. Wilkinson, Id. 488; Gregory v. McPherson, Id. 574; Natoma W. & M. Co. v. Clarkin, 14 Id. 550, 551; Soto v. Kroder, 19 Id. 96; Estrada v. Murphy, Id. 272–274.

4. The title so acquired was one upon which an action of ejectment could be maintained, and, of course, defended.*

5. The title so acquired was a *complete American title* under the act of Congress, though derived from Mexico through the United States, and was *the legal title in fee simple absolute.*†

6. *No trust* attached upon this title. If any holding in trust could be predicated of lands being "situated within the limits of a pueblo," or of their being "reserved or set apart for the uses of a pueblo," nothing of either kind was shown in this case, and neither this court nor the court below could acquire any knowledge of either of those facts, except *by proof.*

Messrs. W. M. Stewart and C. Burbank, contra, for the defendant in error:

The court below, in the trial of the action, properly excluded the decree of the United States Land Commissioners confirming the title of the city of San Francisco to the pueblo lands and the evidence offered of the deraignment of the title of the city to Mumford; because—

I. The defendants only proposed to connect themselves with the title of the city by showing a judgment against the city and an execution sale under it. This would not show title in them; because—

1st. San Francisco was a pueblo at the date of the conquest and cession of California, with the municipal rights of such a body.

2d. The city, as successor to such pueblo, has a right and title to the uplands within her limits, and holds those undisposed of in *trust for the uses and purposes* of the municipality.

3d. The lands thus held in trust are not subject to seizure and sale under execution against the city.‡

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* Strother *v.* Lucas, 12 Peters, 452–454; Stoddard *v.* Chambers, 2 Howard, 316, 317; Stanford *v.* Taylor, 18 Id. 412; Bryan *v.* Forsyth, 19 Id. 336, 337.

† See Opinion of United States Land Commissioners in the City Case; Bissell *v.* Penrose, 8 Howard, 331; Strother *v.* Lucas, 12 Peters, 453, 454; Stoddard *v.* Chambers, 2 Howard, 316, 317; Les Bois *v.* Bramell, 4 Id. 464

‡ Hart *v.* Burnett, 15 California, 615; Fulton *v.* Hanlow, 20 Id. 450.

II. The decree of confirmation did not, as asserted by the defendants, give an American title to the city. It only established the fact that San Francisco was a pueblo, and that the lands within her limits were not a portion of the public lands of the United States. It followed, as an inevitable conclusion, that the pueblo held the lands within its limits for the uses and purposes of the municipality.

Mr. Justice FIELD delivered the opinion of the court.

This is an action of ejectment to recover the possession of a tract of land situated within the corporate limits of the city of San Francisco, in the State of California. The plaintiff in the court below, the defendant in this court, claims to be owner in fee of the premises, by virtue of an ordinance of the common council of the city, passed on the 20th of June, 1855, and an act of the legislature of the State, confirmatory thereof. At the time this ordinance was passed the city of Francisco asserted title, as successor of a Mexican pueblo, established and in existence on the acquisition of the country by the United States, to four square leagues of land, embracing the site of the present city, and had presented her claim for the same to the board of land commissioners, created under the act of March 3d, 1851, for recognition and confirmation, and the board had confirmed the claim to a portion of the land and rejected the claim for the residue. The portion confirmed included the premises in controversy in this case.

By the second section of the ordinance the city relinquished and granted all the title and claim which she thus held to the land within her corporate limits, as defined by the charter of 1851, with certain exceptions, to the parties in the actual possession thereof, by themselves or tenants, on or before the first day of January, 1855, provided such possession was continued up to the time of the introduction of the ordinance into the common council, or if interrupted by an intruder or trespasser, had been, or might be recovered by legal process.

The party through whom the plaintiff in the court below

traces his title was in such actual possession of the premises in controversy at the times designated by the ordinance; at least the jury must have found, under the instructions of the court, that he was in such actual possession, and in this court the finding must be taken as conclusive.

We have not looked into the rulings of the court below upon this matter, and therefore do not intimate, nor have we any reason to suppose that error intervened. We have not looked into those rulings, because if error was committed, it would not constitute ground of reversal.

The twenty-fifth section of the Judiciary Act of 1789, under which alone this court has jurisdiction to review the final judgments and decrees of the highest courts of a State, provides for such review only in three classes of cases:

First. Where is drawn in question the validity of a treaty or statute of, or authority exercised under the United States, and the decision is against their validity;

Second. Where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity; and

Third. Where is drawn in question the construction of any clause of the Constitution, or of a treaty or statute of, or commission held under the United States, and the decision is against the title, right, privilege, or exemption specially set up or claimed by either party under such clause of the Constitution, treaty, statute, or commission. And in these cases no error can be regarded as ground of reversal except it appear on the face of the record, and relate to these questions of validity or construction.

The inquiry then is, whether error was committed in the disposition of any questions of this character arising upon the record.

The defendants in the court below alleged in their answer to the complaint—the designation applied in the practice of California to the first pleading in a civil action, whether at law or in equity—in substance as follows: that by virtue of

the treaty of Guadalupe Hidalgo, between the United States and the Republic of Mexico, the ownership and fee of the premises in controversy passed to the United States; that by force of the act of March 3d, 1851, to ascertain and settle private land claims in California, and the final decree of the board of commissioners created under that act, the ownership and fee of the premises vested in the city of San Francisco; and that by various mesne conveyances and ordinances of the city, and acts of the legislature of the State, they passed to one Mumford, under whom one of the defendants holds as tenant, and for whom the other has acted as agent.

On the trial the defendants produced the petition of the city of San Francisco to the board of land commissioners for confirmation of the claim asserted to four square leagues; the decision of the board confirming the claim to a portion of the land; the dismissal of the appeal on the part of the United States by order of the District Court, in March, 1857; the recovery of a judgment against the city; the issue of an execution thereon; the purchase of the premises by one Wakeman; the delivery of a sheriff's deed to him; and the transfer of his title by sundry mesne conveyances to Mumford.

Upon objection the evidence thus offered was excluded on various grounds, and among others that the title of the city to the premises was not the subject of seizure and sale under execution. This ruling denied the position assumed by the defendants in their answer respecting the operation of the treaty, the act of Congress, and the decision of the board in passing a fee simple title to the city; for if the city had in this way, or in any other way, become invested with a title in fee simple at the time the judgment was docketed or the execution was issued, there could be no question that the title passed by the sheriff's sale and deed.

The treaty of Guadalupe Hidalgo does not purport to divest the pueblo, existing at the site of the city of San Francisco, of any rights of property, or to alter the character of the interests it may have held in any lands under the former government It provides for the protection of the

rights of the inhabitants of the ceded country to their property; and there is nothing in any of its clauses inducing the inference that any distinction was to be made with reference to the property claimed by towns under the Mexican government. The subsequent legislation of Congress does not favor any such supposition, for it has treated the claims of such towns as entitled to the same protection as the claims of individuals, and has authorized their presentation to the board of commissioners for confirmation.

Nor is there anything in the act of March 3d, 1851, which changes the nature of estates in land held by individuals or towns. One of the objects of that act was to enable claimants of land, individual or municipal, by virtue of any right or title derived from Spain or Mexico, to obtain a recognition of their claims, and, when these were of an imperfect character, to furnish a mode for perfecting them.

Thus the government provided for discharging the obligation of protection cast upon it by the stipulations of the treaty, and at the same time for separating private lands from the public domain. By proceedings under that act, imperfect rights — mere equitable claims — might be converted by the decrees of the board or courts, and the patent of the government following, into legal titles; but whether the legal title thus secured to the patentee was to be held by him charged with any trust, was not a matter upon which either board or court was called upon to pass. If the claim was held subject to any trust, before presentation to the board, the trust was not discharged by the confirmation and the subsequent patent. The confirmation only enures to the benefit of the confirmee so far as the legal title is concerned. It establishes the legal title in him, but it does not determine the equitable relations between him and third parties. It is true if a claim were presented by one designating himself as trustee, executor, or guardian, or if such relation of the claimant to others appeared in the examination of the case before the board or courts, the decree might declare that the confirmation was to the claimant in such fiduciary character. But if the trust was not stated, and did not

appear, the legal title was none the less subject to the same trust in the hands of the claimant.

By the laws of Mexico, in force at the date of the acquisition of the country, pueblos or towns were entitled, for their benefit and the benefit of their inhabitants, to the use of lands constituting the site of such pueblos and towns, and of adjoining lands, within certain prescribed limits. This right appears to have been common to the cities and towns of Spain from an early period in her history, and was recognized in the laws and ordinances for the settlement and government of her colonies on this continent. These laws and ordinances provided for the assignment to the pueblos or towns, when once established and officially recognized, for their use and the use of their inhabitants, of four square leagues of land.

It may be difficult to state with precision the exact nature of the right or title which the pueblos held in these lands. It was not an indefeasible estate; ownership of the lands in the pueblos could not in strictness be affirmed. It amounted in truth to little more than a restricted and qualified right to alienate portions of the land to its inhabitants for building or cultivation, and to use the remainder for commons, for pasture-lands, or as a source of revenue, or for other public purposes. This right of disposition and use was, in all particulars, subject to the control of the government of the country.

The royal instructions of November, 1789, for the establishment of the town of Pictic, in the province of Sonora, were made applicable to all new towns which should be established within the district under the Commandant General, and that included California. They gave special directions for the establishment and government of the new pueblos, declared that there should be assigned to them four square leagues of land, and provided for the distribution of building and farming lots to settlers, the laying out of pasture-lands, and lands from which a revenue was to be derived, and for the appropriation of the residue to the use of the inhabitants.

It is evident from this brief statement that these lands were not assigned to the pueblos in absolute property, but were to be held in trust for the benefit of their inhabitants.

This is the view taken by the Supreme Court of the State of California after an extended and elaborate consideration of the subject.*

This view was also taken by the Circuit Court of the United States, in the final decree confirming the claim of the city to her municipal lands. Since the trial of the present cause in the court below, the appeal taken by the city from the decree of the board of commissioners has been heard by the Circuit Court of the United States, to which the case was transferred under the act of July 1st, 1864.† That decree declares that the confirmation "is in trust for the benefit of the lot-holders, under grants from the pueblo, town, or city of San Francisco, or other competent authority, and as to any residue, in trust for the use and benefit of the inhabitants of the city." From this decree the United States and the city of San Francisco appealed, the United States from the whole decree, and the city from so much thereof as included certain lands reserved for public purposes in the estimate of the quantity confirmed; but during the present term of this court both parties have, by stipulation, withdrawn their objections, and their respective appeals have been dismissed. It is therefore now the settled law that the municipal lands held by the city of San Francisco, as successor to the former pueblo existing there, are not held in absolute property, but in trust for its inhabitants. Trust property, thus held, is not the subject of seizure and sale under judgment and execution against the trustee, whether that trustee be a natural or an artificial person.

JUDGMENT AFFIRMED.

NOTE.

Another case—*Townsend* v. *Burbank*—substantially the same in question and principle with the one preceding and like it from

* Hart *v.* Burnett, 15 California, 530; Fulton *v.* Hanlow, 20 Id. 480.
† 13 Stat. at Large, 333; 3 Wallace, 686.

the Supreme Court of California, was decided in the same way with it: the CHIEF JUSTICE delivering the judgment of this court

AFFIRMING THE JUDGMENT BELOW.

FRANCIS v. UNITED STATES.

Although, under the act of 6th August, 1861, "to confiscate property used for insurrectionary purposes," an informer may file an information *along* with the Attorney-General, and so make the proceeding enure, under the act, to his own benefit equally as to the benefit of the United States, yet, after the proceeding has been instituted by the Attorney-General alone, and wholly for the benefit of the United States, and after issue has been joined and proofs furnished by other parties, no person can come in asserting himself to have been the informer, and so share the benefit of the proceeding.

ERROR to the Circuit Court of the United States for the District of Missouri.

The record showed a libel of information against certain bales of cotton marked C. S. A., as belonging to persons in insurrection against the United States, and the confiscation of which was demanded under the act of 6th August, 1861, entitled "An act to confiscate property used for insurrectionary purposes." [For the sake or distinction this case was numbered 939.] The act just referred to provides (by its third section, which indicates the persons who may institute proceedings)—

"That the Attorney-General or any District Attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation; and *in such case they shall be wholly for the benefit of the United States.* Or any person may file an information with such attorney, *in which case the proceeding shall be for the use of such informer and the United States, in equal parts.*"

The order for the detention of the cotton was dated 18th October, 1862, and recited that it appeared, on the return of a warrant of arrest issued in case No. 934, that the marshal