or things in action, belonging to the defendant or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery."

The fourth section provides that when service cannot be made at law, and a judgment cannot be obtained, and also where the demand is of a purely equitable nature, "a court of equity shall have jurisdiction to subject legal and equitable interests in every species of stock and other property, with the exception hereinbefore stated, and also in real estate."

The Supreme Court of the State decided, in the suits referred to, that this statute embraces trusts of real estate, and that it exempted the property in question from liability to the judgment creditors. There can be no doubt of the power of the legislature to pass the statute. Its wisdom and policy are considerations with which we have nothing to do. Being a local statute and involving a rule of property, we adopt the construction which has been given to it by the highest judicial tribunal of the State.

This is decisive of the case as to those of the appellees who were not parties to the former suits.

The decree of the Circuit Court is REVERSED, and the cause will be remanded to that court with directions to enter a decree

IN CONFORMITY TO THIS OPINION.

UNITED STATES v. ARMIJO ET AL.

1. The motives which may actuate parties intervening in a California land case to appeal, or the fact that an inconsiderable interest in the grant is represented by them, can have no influence upon the decision of the matter presented. The holder of the slightest interest, if properly before the court, has the right to insist upon a fair location of the quantity granted, however much such location may clash with the wishes of his co-owners.
2. Where two grants in California, made by the Mexican government, were both for specific quantities without designation of location or bounds,

Statement of the case.

except that they were within the same general outboundaries, which included a much larger quantity of land than was specified in both grants, the location by occupation and settlement of the second grantee under a provisional license of an earlier date than the first grant was properly respected in the survey of his land after his grant was confirmed. The equity created by the prior occupation and settlement under the provisional license, was superior to that of the other grantee, although the formal title was first issued to the latter.

3. Where a grant was of a specified quantity within exterior limits embracing a much larger quantity, there was no obligation on the part of the former government, nor is there on that of the present government, to allow the quantity to be selected in accordance with the wishes of the grantee. The duty of the government is discharged when the right conferred by the grant to the quantity designated is attached to a specific and defined tract.

4. Under our system the grantee is allowed the privilege of directing a selection of the quantity granted, subject only to the restriction that the selection be made in one body, and in a compact form. It is a privilege given by the generosity of the government; but its exercise is not permitted, so as to defeat the equitable prior rights of others.

5. As compactness of form depends, in many instances, upon a variety of circumstances, such as the character of the country, its division into different parcels by mountains, rivers, and lakes, and sometimes by its relation to neighboring grants, it will be sufficient if the survey be in reasonable conformity with the decree of confirmation.

APPEAL from the District Court of the United States for the Northern District of California.

The question presented for determination in the case related to the location of the southwestern line of the survey of a grant of land in California, made to one Francisco Armijo, which survey was approved by the District Court. The Armijo grant adjoined another grant in California made to one Francisco Solano; and, to understand the question presented, a statement of the origin and nature of both of the grants is necessary.

In January, 1837, Francisco Solano, a chief of an Indian tribe, presented a petition to the commanding general of the northern frontier of California, and director of colonization, for a grant of a tract of land of about four square leagues in extent, known by the name of Suisun. In his petition he represented that the land belonged to him by hereditary right from his ancest rs, and that he was in its actual posses-

sion, but that he desired to "revalidate" his rights; that is, to obtain a new recognition of their validity, in accordance with the existing laws of the Republic and the recent law of colonization decreed by the supreme government. The commanding general soon afterwards, during the same month, acceded to the petition so far as to give Solano a provisional grant of the land, "as belonging to him by natural right and actual possession," but accompanied it with a direction to him to ask from the government the usual title, in order to give validity to his rights, in conformity with the new law of colonization. In accordance with this direction, Solano applied, in January, 1842, to Alvarado, then Governor of California, for a full grant, accompanying his application with the above petition to the commanding general and the provisional grant of that officer.

On the 20th of the same month a formal grant was accordingly issued to him by the Governor, which was afterwards approved by the departmental assembly.

This grant was presented to the board of land commissioners created under the act of March 3, 1851, by Archibald C. Ritchie, who had become interested in the land, and the same was confirmed to him by the board, and afterwards by the District Court, and the decree of confirmation was affirmed by this court at its December Term, 1854.*

In the following year the four square leagues were surveyed under the directions of the Surveyor-General of the United States for California, and the survey was approved by that officer. In conformity with this survey, a patent was issued by the United States to Ritchie in January, 1857, and his representatives (heirs or vendees) have been in possession of the premises ever since.

In November, 1839, more than two years after the application of Solano to the commanding general, Francisco Armijo also presented a petition to that officer for a grant of a tract of land of about three leagues in extent, known by the name of Tolenas, representing that the land solicited ad-

* 17 Howard, 525.

joins the Suisun tract. The general immediately gave the petitioner permission to occupy the land thus situated, as it was vacant and was not private property. The order granting this permission enjoins upon the petitioner, as a duty, to avoid molesting the Indians or other neighbors, to endeavor to win their confidence, to give information of any attempt at rebellion, and, in every case, to act in accord with the chief of the Suisun, and directs him to apply, with this order, to the political authorities for the necessary title-papers. Application was accordingly made to the prefect of the district, and by him the application was transferred to the governor of the department, who, on the 4th of March, 1840, issued to Armijo a formal grant of the premises. One of the conditions annexed to the grant provided that on no account should the grantee molest the Indians nor his immediate neighbors. This grant was also presented to the board of land commissioners, and was rejected. On appeal to the District Court, the decision of the board was reversed and the grant confirmed, and at the December Term of 1859 the decree of the District Court was affirmed by this court.

The survey made by the Surveyor-General of the United States for California of the tract thus confirmed located the land adjoining the tract patented to Ritchie, and was approved by the decree of the District Court in July, 1863, and the case came before this court on appeal from this decree. The appeal was prosecuted by two intervenors, claiming under the Armijo title. All the other representatives of the original grantee approved of the location made, and desired its confirmation.

The United States were also appellants on the record, but they did not press their objections urged in the court below. The specific quantity granted was not described by metes and bounds in either of the two grants, but in each reference was made to a map indicating the exterior limits within which the quantity was to be taken. Both maps represented, to a great extent, the same general tract, and the intervenors sought to include within the survey of the Armijo

grant a portion of the land patented to Ritchie, and thus to be enabled to retain the land occupied by them, either as pre-emptors or holders of warrants issued by the State for the five hundred thousand acres given by Congress under the act of September 4, 1841.

Messrs. J. B. Williams and J. A. Wills, for the appellants, and Messrs. Carlisle and Stanley, for the respondents.

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The motives which may actuate the intervenors appealing, or the fact that an inconsiderable interest in the grant is represented by them, can have no influence upon the decision of the matter presented. The holder of the slightest interest, if properly before the court, has the right to insist upon a fair location of the quantity granted, however much such location may clash with the wishes of his co-owners.

The intervenors appealing rest their claim principally upon two grounds:

1st. Upon the alleged priority of the grant to Armijo; and

2d. Upon the alleged priority of occupation and settlement.

The priority of the grant consists only in the date of the former title-papers. The grant to Armijo bears date on the 4th day of March, 1840; that to Solano on the 20th of January, 1842. But the rights of Solano are recognized by Armijo in his petition, and in the order of concession by the commanding general, and are specially referred to in the formal grant issued by the governor. The concession to Armijo assumes, and correctly assumes, that the land known as Tolenas was vacant and unappropriated. It is clear, therefore, that the political authorities intended that Armijo should take his grant in subordination to the previously existing, or, at least, previously asserted, rights of the Indian chief.

There can be no doubt, as observes the district judge, that, under these circumstances, the rights of Solano, according

to Mexican usages, would have been recognized as superior to those of Armijo in any contest, notwithstanding the formal title issued first to Armijo. And, as he justly adds, "the archives abound in instances where not only the equity created by a prior occupation and cultivation under a provisional license to occupy, but even that created by a prior solicitation, has been recognized and enforced."

This is not all. Where a grant was of a specific quantity within exterior limits embracing a much larger quantity, there was no obligation on the part of the former government, nor is there any obligation on the part of the present government, to allow the quantity to be selected in accordance with the wishes of the grantee. The duty of the government is discharged when the right conferred by the grant to the quantity designated is attached to a specific and defined tract.

Under our system the right of the grantee to direct a selection of the quantity granted is admitted, subject only to the restriction that the selection be made in one body, and in a compact form. This right, we say, is admitted, though strictly it is not a right; it is only a privilege given by the generosity of the government.

The law of Mexico, as stated by Galvan, was otherwise. It was as follows: "No person, though his grant be older than others, can take possession for himself, or measure, or set limits to his landed property, unless it is done by judicial authority, with the citation of all those who bound upon him; for whatever is done contrary to this will be null, of no validity or effect."*

And to the same purport is the language of this court in the case of *Fremont* v. *United States*.† "Under the Mexican government," said the court, "the survey was to be made or approved by the officer of the government, and the party was not at liberty to give what form he pleased to the grant. This precaution was necessary, in order to prevent the party from giving it such a form as would be inconveni-

* See Ordenanzas de tierras y aguas, by Galvan, ed. of 1855, p. 185.
† 17 Howard, 542.

ent to the adjoining public domain and impair its value. The right which the Mexican government reserved to control this survey passed, with all other public rights, to the United States, and the survey must now be made under the authority of the United States, and in the form and divisions prescribed by law for surveys in California, embracing the entire grant in one tract."

The exercise of the right of selection given to the grantee is not permitted by the political authorities, and when a location is subject to the control of the courts is never permitted by them so as to defeat the equitable prior rights of others.

2. The alleged priority of occupation and settlement consists in the fact that Armijo, after obtaining his grant, built a house upon a portion of the land included in the patent to Ritchie, and occupied it. But this fact is met by the further fact that the erection of the house gave rise to a suit between the owners of the two grants as to the boundary between them, which finally led to an arbitration of the matter. The award, as we construe it, fixed the Sierra Madre as the common boundary of their respective claims. The patent of the Suisun tract does not embrace any land situated on the Armijo side of this boundary, and cannot, therefore, be justly a ground of objection by the claimants under the Armijo title.

The objection that the survey does not locate the land in a compact form cannot be sustained. Compactness of form must depend, in many instances, upon a variety of circumstances: such as the character of the country, its division into different parcels by mountains, rivers, and lakes, and sometimes by the relation of the tract to neighboring grants. In this case, the Tolenas tract is surrounded by three grants, confirmed, surveyed, and patented. The survey is made so as to avoid collision with any of the elder patents, and, under these circumstances, is in reasonable conformity with the decree of confirmation—the only conformity which the law requires.

DECREE AFFIRMED.