

## Syllabus.

trespass, for apology or indemnity. But neither an enemy, nor a neutral, acting the part of an enemy, can demand restitution of captured property on the sole ground of capture in neutral waters.

We must, therefore, look further into the case.

There is some evidence which justifies suspicion. Several witnesses state facts which tend to prove that the Peel was in the employment of the rebel government; and that part, at least, of the cotton laden upon her, as return cargo, was in fact rebel property.

There are statements, on the other hand, which make it probable that the Peel was in truth what she professed to be, a merchant steamer, belonging to neutral merchants, and nothing more; that her cargo was consigned in good faith by neutral owners for sale at Matamoras, or to be conveyed across the river and sold in Texas, as it might lawfully be, not being contraband; that the cotton was purchased by neutrals, and on neutral account, with the proceeds of the cargo or other money.

In this conflict of evidence we do not think ourselves warranted in condemning, or in quite excusing the vessel or her cargo. We shall, therefore, affirm the decree by the District Court, and direct restitution, without costs or expenses to either party as against the other.

AFFIRMANCE AND DIRECTION ACCORDINGLY.

UNITED STATES *v.* PICO.

1. When, in Mexican grants, boundaries are given, and a limitation upon the quantity embraced within the boundaries is intended, words expressing such intention are generally used. In their absence the extent of the grant is only subject to the limitation upon the power of the governor imposed by the colonization law of 1824.
2. Where a doubt arises upon the meaning of the grant as to the quantity ceded, reference may be had to the juridical possession delivered to the grantee. This proceeding involved an ascertainment and settlement of the boundaries of the land granted, by the appropriate officers of the gov.

## Statement of the case.

ernment, specially designated for that purpose, and had all the force and efficacy of a judicial determination. It bound the former government, and is equally binding upon the officers of our government.

3. A pueblo, or town of Mexico, once formed and officially recognized, became entitled, under the laws of that country, to the use of certain lands, for its benefit and the benefit of its inhabitants, and the lands were upon petition set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given. The disposition of the lands assigned was subject at all times to the control of the government of the country.

THIS was a proceeding for the confirmation of a claim to lands in California acquired under the Mexican government. The claim was for two tracts, one of which was designated as the Rancho of San Margarita and San Onofre; and the other as the Rancho of Las Flores.

The Rancho of San Margarita and San Onofre was acquired under a grant made in May, 1841. It describes the land as "bordering to the north on the point called El Ballicito and La Tenega, to the west on the point of San Mateo, to the south on the boundaries of the Pueblo de las Flores and El Moro, and to the east on the land of the Cajon, according to what is shown in the sketch annexed to the expediente;" and the testimony in the case showed that these boundaries were well known in the country and easily traced. In 1842, juridical possession was given to the grantees, when the land was measured, and its boundaries established, and ever since it has been occupied, cultivated, and improved by the grantees or parties claiming under them. In 1845, the concession was approved by the departmental assembly. The resolution of approval, after reciting the concession, and that it was made in conformity with the requirements of the laws, is as follows:

"It approves of the concession made by the superior government of the department in favor of the native-born Mexican citizens, Pio Pico and Andres Pico, of the locations known by the names of San Onofre and Santa Margarita, in extent twelve square leagues (*sitios ganada mayor*), in entire conformity with the law of the 18th of August, 1824, and article fifth of the regulations of 21st of November, 1828."

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The tract known as the Rancho of Las Flores was acquired by purchase from an Indian pueblo or town of that name. The record showed the existence of the pueblo and the assignment to it of the land in question by the officers of the Mexican government, and that subsequently the land was transferred to the Picos, under the supervision and with the sanction of the local authorities.

The District Court confirmed the claim to both ranches, stating in the decree that the tract confirmed contained twenty square leagues, and giving its boundaries specifically. From this decree the United States appealed.

*Mr. Stanbery, A. G., and Mr. Wills, for the appellants, and Mr. Coffey, contra.*

Mr. Justice FIELD delivered the opinion of the court.

By the decree of the District Court, which is the subject of appeal in this case, the respondents obtained a confirmation of their claim to two tracts of land, containing together an area of twenty square leagues.

One of the tracts is designated as the Rancho of San Margarita and San Onofre, and is described in the concession of the governor by specific boundaries. The testimony shows that these boundaries were, at the time, well known in the country, and easily traced. The concession was made in May, 1841, and within the year following juridical possession of the land was given to the grantees; and from that time until the present day it has been occupied, cultivated, and improved by them, or parties claiming under them.

In July, 1845, the concession was approved by the departmental assembly. The resolution of approval, after designating the tract ceded, adds, "in extent twelve square leagues;" and these words are supposed by the appellants to create a limitation upon the quantity granted.

It is evident, however, that the words are not used for any such purpose, but merely indicate a conjectural estimate of the quantity. The concession of the governor, with its specific description, is referred to in the proceedings of the as-

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sembly, and is stated to have been made in conformity with the requirements of the law. No objection is suggested to the boundaries given, nor is an intimation made of any intention to exclude from the concession any portion of the land they embrace or to restrict the concession in any particular.

When, in Mexican grants, boundaries are given, and a limitation upon the quantity embraced within the boundaries is intended, words expressing such intention are generally used. Thus, in the Fremont case, the boundaries stated embraced many leagues more than the quantity intended to be granted, and the grant provided for the measurement of the designated quantity and the reservation of the surplus. In the absence of terms of similar import, the extent of the grant is only subject to the limitation upon the power of the governor, imposed by the colonization law of 1824.\*

Were there any doubt of the intention of the governor to cede all the land contained within the boundaries designated by him, it would be removed by the juridical possession delivered to the grantees. This proceeding involved an ascertainment and settlement of the boundaries of the lands granted by the appropriate officers of the government, specially designated for that purpose, and has all the force and efficacy of a judicial determination. It bound the former government, and is equally binding upon the officers of our government.

Such is the purport of the recent decision in the case of *Graham v. United States*.† In that case the survey made by the Surveyor-General of the grant confirmed did not conform to the measurement of the land as shown by the record of juridical possession, and the District Court, for that reason, set the survey aside and ordered a new survey, which should correspond with the measurement, holding that the action of the officers of the former government, upon the delivery of possession, furnished insuperable objections to

\* *United States v. D'Aguirre*, 1 Wallace, 316.

† 4 Id. 260.

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any other course. In affirming this decision, this court expressed its concurrence with the views of the District Court, and held that a proceeding of that character must control the officers of the United States in the survey of land claimed under a confirmed Mexican grant. In other words, the case decided that the juridical possession was conclusive as to the boundaries and extent of the land granted.

The other tract included in the confirmation is designated as the Rancho of Las Flores, and was acquired by the claimants by purchase from the Indians of the pueblo of that name. The existence of the pueblo and the assignment to it of the land in question by the officers of the Mexican government are fully established by the documentary evidence in the case. The objection of the appellants is founded upon the absence of any transfer of the title to the pueblo by deed or other writing. But such transfer was not essential, nor was it usual. A pueblo once formed and officially recognized became entitled, under the laws of Mexico, to the use of certain lands, for its benefit and the benefit of its inhabitants, and the lands were, upon petition, set apart and assigned to it by the government. No other evidence of title than such assignment was required, nor was any other given.\*

The disposition of the lands assigned was subject at all times to the control of the government of the country. The pueblo of Las Flores was an Indian pueblo, and over the inhabitants the government extended a special guardianship. The transfer of the land to the Picos was made in conformity with the existing regulations established for the protection of the Indians, under the supervision and with the approval of the local authorities, and appears to have been satisfactory to all parties.

The decree of the District Court must be affirmed, and it is

SO ORDERED.

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\* Hart v. Burnett, 15 California, 542, 561.