

Statement of the case.

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GERMAN *v.* UNITED STATES.

An appeal from California dismissed where the record was not brought and filed within sixty days of the next term of the court; the record, moreover, not having been returned within the term.

ON motion to dismiss an appeal from the District Court of the United States for Southern California.

The CHIEF JUSTICE stated the case, and delivered the opinion of the court.

The appeal in this case was allowed on the 26th October, 1864, and the record was filed here on the 21st August, 1865.

This was too late. The record should have been brought and filed within the first sixty days of the next term of this court. This was not done, nor was the record returned within the term. The appeal, therefore, must be

DISMISSED.

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EX PARTE THE MILWAUKEE RAILROAD COMPANY.

A mandamus awarded in a branch of the railroad controversies between the Milwaukee and Minnesota Railroad Company and the Milwaukee and St. Paul Railway Company, compelling the latter, and its receivers, to deliver to the former certain rolling stock in compliance with a mandate of this court made July 18, 1865.

THIS was an application for a mandamus to the judge of the Circuit Court for the District of Wisconsin, in one part of the railroad cases connected with the roads between Milwaukee and St. Paul, and which under various names have filled so considerable a part of the reports of this court for the last few terms.

By a reference to the case of the *Railroad Company v. Souter*,\* it will be seen that this court, reversing the action of

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\* 2 Wallace, 510.

## Opinion of the court.

the Circuit Court, sent its mandate directing that an order be entered there that upon the payment by the Milwaukee and Minnesota Company of all the interest due on the mortgage which was the foundation of the suit, and all the costs, that company should be put in possession of the road, and of all the rolling stock and other property belonging to said road.

Accordingly, that court, on the 18th day of July, A. D. 1865, having ascertained the amount due, and to become due, within a prescribed time, made an order that on the payment of that sum the receiver and the Milwaukee and St. Paul Railway Company, who were in possession of said road and rolling stock, should deliver it to said Minnesota Company.

The Minnesota Company paid this money, amounting to nearly a half million dollars, and the receiver and the St. Paul Company delivered them possession of the road and of part of the rolling stock specified in the order, but the St. Paul Company refused to comply with this order as to a very large amount of the rolling stock, worth several hundred thousand dollars.

At the April Term, 1866, of the Circuit Court, the Minnesota Company made an application to that court to enforce this decree by an attachment against the officers of the St. Paul Company. After a full hearing of this motion in the Circuit Court, on affidavits and argument, the judges of the court were divided in opinion, and the motion failed. The present application was for the purpose of compelling that court to execute its order of the 18th July, 1865.

*Mr. Carpenter, in support of the petition for a mandamus, and Messrs. Ryan & Cary, contra,* argued the matter at much length, December 14th, 1866.

Mr. Justice MILLER now, May 16th, 1867, delivered the opinion of the court.

This case was argued very fully in the early part of the term, but a decision has been reserved, in the hope that the action of this court might become unnecessary.

## Syllabus.

The litigation between these parties has consumed such a large proportion of the time of this court, and the close of the term is so near at hand, with the pressure of matters of more importance upon us, that we cannot enter into a statement of the reasoning which governs our action in the present motion. It is sufficient to say that we are satisfied that the petitioner has presented a case calling for the exercise of the supervisory power of this court over the Circuit Court, which can only be made effectual by a writ of mandamus. A writ of mandamus will therefore issue from this court, directed to the judges of the Circuit Court of the United States for the District of Wisconsin, commanding them to proceed with the execution of the order of that court of July 18, 1865.

## HIGUERAS v. UNITED STATES.\*

1. Land claims arising by virtue of a right or title derived from the Spanish or Mexican government are required to be presented to the land commissioners for adjudication.
2. Final decrees in such cases, whether made by the commissioners or by the District Court, unless an appeal is taken, are conclusive between the United States and the claimants.
3. Confirmation alone, however, did not, under the original act, confer upon the claimant a right to a patent; but it was made the duty of the surveyor-general, as a condition to the granting of the same, to cause such claim, if finally confirmed, to be accurately surveyed, and to furnish plats of the same to the Land Office.
4. But the second section of the subsequent act conferred jurisdiction upon the District Court to order such surveys to be returned into that court for examination.
5. Authority is also conferred upon the court to set the survey aside and annul the same, or to correct and modify it.
6. Parties may except to any such order or decree, and appeal from the same; but the questions for decision here are those only which are presented in the exceptions.

\* For the syllabus to this case, adjudged some terms since in the reporter's absence, he is indebted to the courtesy of the learned Justice by whom the opinion of the court was delivered.