

Case No. 14,749. UNITED STATES v. CASTRO.
[Cal. Law J. & Lit. Rev. 56.]

District Court, N. D. California.

Oct. 30, 1862.

MEXICAN LAND GRANT—SURVEY.

[Where a survey based on a Mexican grant appears to be incorrect, it will be rejected, and a new one ordered.]

It appears, by the expediente in this case, that on the twelfth of June, 1834, there was granted to the successors of Francisco Ma. Castro, then deceased, the lawful ownership of a tract of land known by the name of "San Pablo," and bounded by the ranchos of San Antonio and El Pinole, and by a portion of the Bay of San Francisco. For this tract Francisco Castro had previously, on the twenty-third of April, 1823, obtained a concession from the territorial deputation. The fourth condition of the grant of 1834 declares the land granted to be three square leagues, a little more or less, according to the diseno which accompanies the expediente. On the twenty-third of June of the same year, Joaquin Castro, the son and representative of Francisco Ma. Castro, addressed a petition to the governor, in which he states that, through inadvertence, he neglected in his first petition to ask for the extent included in the diseno annexed, and "only claimed the three square leagues which we formerly occupied. That, as this piece of land is rather too small for the number of cattle grazing on it, he solicits, in the names of the other heirs, and as their agent, that the said petition be understood to include the augmentation of land described in the aforesaid plan." This petition was referred

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by the governor to the secretary for an informe. By the report of that officer, it appears that he proceeded to measure a tract of land of which he gives the boundaries and which he delineates on a plan annexed to his report, and marked by him "No. 2," to distinguish it from the original diseno presented by Castro, marked "No. 1." The report further states that it results from the measurement that from the hill of San Antonio to the northeast there is a distance of one league and 500 varas, from that point to the north-northwest, one league and 1,500 varas, and from that point to the north-northwest, one league and 100 varas. "Reducing these land and sea boundary lines to the right lines of a quadrilateral figure, and performing the measurement of the same, I find a tract of land measuring four square leagues and nearly one twenty-fourth of a league, setting aside and not counting the inequalities or unevenness of the ground, which do not appear on the plan marked 'No. 2,' but are shown on the plan No. 1, though inaccurately, because the height of the hills does not appear, as they ought to do, to arrive at a correct conclusion as to the dimensions of the tract."

On the 14th August, 1835, the governor made a decree of concession, as follows: "Having seen the petition with which this expediente begins, the concession which was obtained from the most ex territorial deputation on the 15th April, 1823, and the petition dated June 23d of this year, soliciting the amplification of a little more than one square league, as is exhibited on the diseno No. 2, with whatever else was necessary and convenient, I declare Don Francisco Maria Castro, and by his decease his heirs and successors, lawful owner and owners of the tract known as San Pablo, bounded by the ranchos of San Antonio and Pinole, and by a part of the Bay of San Francisco," etc. On the 20th August of the same year, the formal title issued. In this are recited the grant to Francisco Castro by the deputation, the subsequent application by his heirs for the lawful ownership, and their recent petition for the surplus of a little more than one square league. The fourth condition states that the land of which mention is made is "of the extent of a little more than four square leagues ('cuatro sitios de ganado mayor, poco mas'), including the amplification which was conceded by the decree of the 14th August of this year, and as is explained by the diseno which accompanies the expediente. The judge who shall give the possession will cause it to be measured, designate the boundaries, and reserve the surplus to the nation for its convenient uses."

It is apparent from these documents that the governor intended to grant to the successors of Francisco Castro an addition of a little more than one league to the tract of three leagues already conceded, and that the boundaries of the whole tract, as augmented, were those designated on the diseno of Negrete. No. 2, which is expressly referred to in the decree of concession, as indicating the amplification solicited. The quantity of land ascertained by Negrete to be included within the sea boundaries and the land lines run by him is designated in the 4th condition as to the quantity granted, and the surplus or sobrante

is reserved. It cannot be pretended that the governor meant to grant all the land included within the first diseno, or within the exterior boundaries mentioned, viz the ranchos of El Pinole, San Antonio, and the bay, for those boundaries contain nearly double the quantity granted. The extent of the first grant to his father is mentioned by Joaquin Castro, in his last petition, as three leagues. The extent of the tract, as augmented, is reported by Negrete to be four leagues and one twenty-fourth of a league, and he annexes a map showing its boundaries, and marked No. 2. The governor, in his decree of concession, states the amplification solicited to be of the extent of a little more than one square league, "as explained by the diseno No. 2"; and of this and the tract of three leagues already conceded he declares the heirs of Castro the owners. And finally, in the formal title, the land is declared to be of the extent of a little more than four square leagues, "as shown by the map" (clearly meaning the map No. 2), and the sobrante is reserved.

On reference to the diseno of Negrete, there would seem to be no difficulty in locating the land with reasonable certainty. On two sides the land fronts on the bay. On the south, the dividing line between the ranchos of San Pablo and San Antonio has already been determined by this court, after full argument by the representatives of both ranchos. If, then, that line be adopted, from the crest of the hills to the bay, thence along the shores of the latter, and including the Potrero, up to the point marked on Negrete's map as the termination of his northern line, there will be no difficulty in running the remaining lines so as to include the quantity of four leagues and about one twenty-fourth of a league; conforming the courses and lengths of said lines as nearly as may be to the northern and northeastern dotted lines as laid down on the diseno of Negrete. The survey must therefore be rejected and a new survey made, conformably to this opinion.

{For the opinion confirming the grant in this case, see Case No. 14,751.}