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Case No. 16,044.

UNITED STATES v. PICO.

[Cal. Law J. & Lit Rev. 78.]

District Court, N. D. California.

Nov. 5, 1862.

MEXICAN LAND GRANTS—LOCATION OF BOUNDARIES—OBJECTIONS TO SURVEY.

HOFFMAN, District Judge. The grant in this case describes the land as known by the name of “Arroyo Seco,” situated towards the cordilleras of the Sierra Nevada, and having for limits on the north the river Consumnes, on the south the Moquelumne, on the west the road of the Sacramento, and on the east the adjoining sierras (“las sierras inmediatas”). The third condition recites that the land of which mention is made is of eleven square leagues within the limits of the *diseño* which accompanies the expediente. The claim having been finally confirmed [Case No. 11,127], a tract of eleven square leagues has been surveyed. This survey, which is an amended survey made under the immediate supervision of the late United States surveyor general, is objected to on the ground that it is not within the limits described in the grant and shown on the *diseño*.

The only question presented in the cause is as to the true location of the eastern boundary described in the grant as “las sierras inmediatas” and represented on the *diseño* by a line of mountains inscribed “Sierra.” The whole tract embraced within the exterior limits of the very rude map found in the expediente is, according to the scale of the *diseño*, as it is in fact, of much greater extent than the eleven leagues which, by the terms of the third condition, were to be taken within its boundaries. On the north and south, the Consumnes and Moquelumne rivers are represented as issuing from the sierra, and running nearly due west across the Sacramento road. Between these rivers, and running north and south, that road is laid down and inscribed “Camino del Sacramento.” It forms the western boundary of the tract. On the east is represented a chain of mountains running from the Consumnes due south for about half the length of the tract, when its continuity is broken by a *cañada*, or narrow valley, which seems to penetrate it. To the south of this *cañada* the course of the range deflects considerably to the east, and is continued in a south-easterly direction until it reaches the Moquelumne river. In about the centre of the tract thus enclosed between the sierra, the road, and the two rivers, there is represented a valley lying between two nearly parallel ranges of “lomas muertas,” or barren hills, and running nearly east and west, or at right angles to the general direction of the road and of the mountains. Through about the centre of this valley a creek inscribed “Arroyo Seco,” is represented as flowing. It appears to issue from the sierra, and curving around the eastern end of the northerly line of “lomas muertas,” it flows down the valley between the two ranges of “lomas,” towards the Sacramento road. The southern range of “lomas” is also

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delineated as trending to the south, and terminating very nearly opposite the “Canada” before spoken of, as piercing the sierra on the east. The valley is thus drawn as narrowest to the west, or towards the road, and as gradually widening towards the east, or the sierra, as the hills which form its sides diverge. At the request of all the parties to the cause, and accompanied by their counsel, I have personally visited the lands.

The testimony, though very voluminous, is little else than a description of the general features of the country and the expression of the Witnesses’ opinions as to the identity of the natural objects indicated on the diseño. But these opinions are in no sense those of experts. To know the natural features of

the country is all that is necessary to enable the surveyor or the judge who may be required to locate the land, to determine what objects are intended to be represented on the diseño, and the conclusions thus reached must be adopted by them, whatever may be the opinions of witnesses who have perhaps, from their want of familiarity with Mexican diseños, less means of forming a correct judgment. The valley of the Arroyo Seco, at a short distance east of the Sacramento road, is a clearly defined strip of bottom land, of the average width of nearly a mile, and skirted on either side by low hills, or elevated table or rolling land. As the valley is ascended, the stream bends to the north, or rather its course becomes southwest instead of west, which is its general direction lower down toward the road. The hills on the north also deflect in the same direction, and the stream passes by or through them, and, preserving the same general direction, traverses a valley now known as "lone," and after receiving some confluent is traced to the mountains from which it issues. At about the point where this change of course first occurs, another creek, flowing from the same range in a nearly westerly direction, falls into the Arroyo Seco. This is known as "Jackson Creek," and on either side of it is a valley of considerable width. From the junction of these creeks, and running in a northerly direction, is a range of hills which it is claimed is the sierra of the diseño. There is also a range of low hills running nearly parallel with the course of Jackson creek, which serves to separate the valley of that name from the lone valley on the north, while the range running north and south, before spoken of, in like manner separates Dry Creek valley from lone valley on the east. These three valleys have thus come to be distinguished from each other in the common speech of the inhabitants, and are spoken of in the depositions as distinct natural features of the country. They in fact, however, seem to be but parts or branches of one large and irregular tract of alluvial and nearly level land. The line of hills which separates Dry Creek valley from lone valley on the east, is for the most part easy of ascent, and in many places readily traversable by vehicles of every description. One or two of the hills rise to some height, but the majority are low and rolling, and admitting between them strips of nearly level land, affording ready communication from one valley to the other. The hills which are supposed to separate lone valley from Jackson valley on the south are of the same general character.

An observer standing on any of the hills belonging to the range, if such it can be called, which serves to distinguish Dry Creek valley from lone valley, and looking to the eastward, beholds the snow-covered chain of the Cordilleras, bounding his view at the distance of fifty miles, while at his feet lies the broad and fertile valley of lone, bounded on its eastern side by the clearly defined line of the foothills of the great chain, whose snowy summits he sees in the distance. These foothills are of steep ascent, crowned for the most part with chemisal, and, whatever valleys may be found between them and the loftier peaks beyond, they seem unmistakably to form the base or commencement of the

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great sierra. If, however, from the standpoint supposed the eye be turned either to the north or the south, and it be attempted to trace the line of hills on which the observer is placed, it will be found difficult, if not impracticable, to do so. And it will appear inconceivable that any person sufficiently well acquainted with the country to draw the *diseño*, and desirous of obtaining the best land in the vicinity, should either have neglected to ask for the singularly attractive and beautiful valleys of lone and Jackson, which stretch along the base of the mountains, or, with the mountain range full in view and bounding those valleys on the east, should have designated the low hills to the west of the valleys as the "sierra." But there is one indication of the *diseño*, which seems decisive as to the range of mountains represented upon it. On the theory of those who object to the survey, the mountains inscribed "sierra," are a range of hills lying to the west of lone valley. On the *diseño*, the "sierra" is represented as a continuous chain running from the Consumnes to the Moquelumne, and pierced at but one point by a small valley or Canada. If then the range of hills intended be that I supposed by the counsel for the United States, we should expect to find it extending continuously northwards to the Consumnes, and separating lone valley from Dry Creek valley and the rolling plain of the Sacramento. But this range of hills wholly fails in this respect to satisfy the indications of the *diseño*. For a short distance north of the confluence of Dry and Jackson creeks it is more or less distinctly traceable as a line of hills; but further to the north the hills disappear, and a strip of level and fertile land of considerable width extends from lone valley, past the northern termination of the range of hills, into the plain of the Sacramento. Beyond, and to the north of this level land, hills again occur, but they are of no great height, and evidently such as the *diseño* intended to indicate by the words "mesas y lomas muertas." They are certainly not such mountains as the draftsman of a Mexican *diseño* would have represented as a mountain chain marked "sierra." The fact, then, that the range of hills is not continuous, but is broken, as has been stated, would seem to be an unanswerable objection to identifying it with the "sierra" of the *diseño*.

It is urged that the foothills, or base of the Sierra Nevada, which have been adopted in the survey as the eastern boundary, cannot

have been referred to in the grant, because that boundary is therein described as “las sierras inmediatas,” in contradistinction, it is said, to the “Cordilleras de la Sierra Nevada,” “toward which” the tract is described as situated. But I see in this language no ground for supposing that by “sierras inmediatas” a broken range of low hills was intended rather than the base of the great chain to the east, which would properly be described as the adjacent mountains, or the “sierras inmediatas.” By the “Cordilleras de la Sierra Nevada,” was no doubt meant the distant chain of snow-covered peaks which, more than fifty miles to the east, bound the horizon. The “sierras inmediatas” are evidently the mountains which form the eastern limit of the flat land, and which, rising abruptly and covered with chemical, constitute the base or commencement of the vast mountain system which culminates in the lofty heights beyond.

Much testimony has been taken to prove what natural objects are meant by the “laguna” and a high peak to the south of the valley, represented on the *diseño*. If the theory of those who oppose the survey be true, there can be found in the lower valley, or bottom of the Arroyo Seco, a pond answering in some degree to the laguna of the *diseño*. There is also found on the hills to the south a peak higher than those in the immediate vicinity which may be supposed to have been intended to be represented. On the other hand, if the sierra of the *diseño* be the base of the main sierra, as contended for by the claimant, there is found in lone valley, and to the south of the Arroyo Seco, a laguna, which may, with perhaps greater probability, be identified with the laguna of the *diseño*, while to the south is a high and conspicuous mountain called “Chaparral Peak,” which would correspond with that represented on the map. The same observations apply to the “cañada” of the *diseño*. It is either the valley of Jackson creek, at or near its confluence with the Arroyo Seco, or it is its upper end, where, under the name of Buena Vista valley, it penetrates into the sierra. All depends, as the principal witness for the United States admits, on what line of hills be taken as the sierra of the *diseño*. Where the description in the grant is so general, and the delineation of the *diseño* so rude as in this case, it is perhaps not practicable to affirm with absolute certainty the exact limits of the tract intended to be granted. But the United States surveyor who has made the location, with ample opportunities to become as thoroughly acquainted with the natural features of the country as any of the witnesses who have expressed opinions as to the meaning of the *diseño*, has adopted the foothills or base of the sierra as the eastern boundary. My own personal examination of the tract, and comparison of its natural objects with the description in the grant and the representation on the *diseño*, have convinced me that the conclusion of the surveyor was correct: I think, therefore, that the official location and survey should be confirmed.