

Case No. 16,419
[1 Cal. Law J. 252.] UNITED STATES V. SUNOL ET AL.

District Court, N. D. California.

1863.

MEXICAN LAND GRANTS.

[Modification of the official survey directed, on a review of the evidence.]

Official survey of the rancho known as "El Valle de San Jose." in Alameda county. Rejected February 21, 1863.

HOFFMAN, District Judge. The contest between the claimants in this case and the owners of the Santa Rita Rancho having been settled by mutual agreement, the only remaining inquiry is whether the official survey is within the exterior limits of the Rancho El Valle de San Jose. It is objected, on the part of the United States, that a rectangular piece, of land, on the northeast, is improperly included, as is also a considerable tract on the southwest.

The first objection is evidently untenable. On any construction of the grant and diseno, the Valle of San Jose, granted to the claimants, extended as far north as the base of the hills called "Lomeria," on the disenos. The northern line, it would seem, from the indications of the disenos, both of the El Valle and of the Santa Rita Ranchos, as well as from the terms of the respective grants, to have been intended to be drawn from the Parage, or Canada de la Tassajera, eastwardly, to the edge of the lomas of the Positas, which form the western boundary of the "Las Positas Rancho." But a small portion of this tract is included in the official survey; the line between the Santa Rita and the El Valle Ranchos having been settled, as before stated, by agreement. The grant for El Valle contains no limitations of quantity. It was confirmed by the board and by this court by metes and bounds, and that decree has become final. As, then, the tract on the northeast is clearly within the limits of the grant, there can be no reason for excluding it from the survey.

With respect to the land included on the southwest there is more difficulty. The boundaries mentioned in the decree of confirmation are as follows: "On the southeast by the Corralitos, on the east by the edges of the Lomas de las Positas, adjoining the water; on the northwest and north by the Place of the Arroyo, or Canada de la Tassajera." The diseno represents an arroyo issuing from a tular swamp, or lagoon, and flowing in a southeasterly direction, not far from the base of a range of hills, on the west, marked "Loma Alta." From the range of hills, on the eastern side of the diseno, three streams are represented as flowing across the plain from east to west, and nearly at right angles to the general course of the creek issuing from the Tular, or the Arroyo de la Laguna. The first, or most northerly of these, is marked "Arroyo Mocho." It still retains its name, and its identity is not disputed. The second stream, inscribed "Arroyo de las Taumanises,"

is represented as flowing nearly parallel to the Mocho, and emptying into the Arroyo de la Laguna. Immediately south of it, and extending across the plain from east to west, a range of hills is delineated, which serve to divide the valley of the Taumanises from that of the Arroyo del Alameda, another creek flowing in a similar direction to the south of the hills. It would seem clear, from the topographical map of Lewis, that the Arroyo de las Taumanises of the diseno must be the stream now known and laid down by him as the "Arroyo Valle." The third stream, inscribed "Arroyo del Alameda," is likewise represented on the diseno as flowing from the extreme eastern limits of the map, across its entire breadth from east to west, and falling into the Arroyo de la Laguna. It appears to be assumed, both by the claimants and the United States, that the stream intended to be delineated is the Arroyo de las Calaveras, and not the Arroyo de San Antonio. Mr. Dyer, the witness for the United States, identifies it with the former; but Mr. Lewis, a witness for the claimants, and who prepared the map exhibited by them, expresses his belief that the Arroyo del Alameda, of

the diseno, is the Arroyo de San Antonio. Of the correctness of this opinion there cannot, I think, be much doubt.

The Arroyo de las Calaveras flows from the southeast, and falls into the Arroyo de la Laguna, at a point not far from the confluence of that stream with Arroyo de San Antonio. At this point the latter makes an abrupt turn, nearly at right angles to its previous course, and, breaking through the hills, flows in a direction nearly due west. But the courses of the Arroyo de la Laguna above this point of junction, and that of the Calaveras, though the streams flow, the one from the north and the other from the south, form a nearly straight line along the western side of the plain. But the Arroyo del Alameda of the diseno is represented, as before stated, as issuing from the mountains on the east, and flowing from east to west across the whole breadth of the tract on its southern side. If the Arroyo del Alameda be not the San Antonio, then that stream is wholly omitted, notwithstanding that the much smaller streams of the Mocho and the Arroyo Valle are carefully delineated. The course, too, of the Alameda, with reference to the range of hills represented as lying between it and the Valle, and immediately south of the latter stream, entirely corresponds with that of the San Antonio, as laid down on Lewis' map; while the Calaveras wholly fails to satisfy these indications.

For these reasons I think that Mr. Lewis is right in identifying the San Antonio with the Arroyo del Alameda of the diseno. The point is not important, except in showing that the name of "Corralitos," was intended to apply, not merely to the range of hills on the southern portion of the western line, but, as indicated by the diseno, to the range lying south of the San Antonio, and running from west to east, so as to form the southern limit of the plain. The name may, however, have been also applied to the same hills where, turning to the northwest, they form the southwestern limit of the grant. That the hills on the south of the San Antonio, and not merely those west of the Calaveras, were intended to be designated on the diseno under the name of "Corralitos," is also to be inferred from the language of the grant, which describes the tract as bounded by the Corralitos on the southeast. The same description is given in the decree of confirmation.

Adopting, then, this construction of the diseno, the intention of the grant is clear. It was to grant all the plain, or Valle of San Jose, up to the hills which bound it on the south, the southwest and the west. This would, necessarily, include the valley of the Calaveras. For, though the junction of the Arroyo de la Laguna and the Alameda (and, in this connection it is immaterial whether the Alameda be the San Antonio or the Calaveras) is laid down on the extreme south-western edge of the diseno, yet its other indications, and the fact that the Corralitos hills are represented as extending to the point of junction, and nearly connecting with the range on the west, show that it was intended to include all the land bounded by those two ranges. But, in running the lines on the southwest, it has not, apparently, been attempted to follow the line of the Corralitos hills, expressly mentioned

as a boundary, both in the grant and the decree. It has been stated that the Arroyo de la Laguna, after receiving its affluents, the San Antonio from the east and the Calaveras from the south, turns abruptly at right angles, and flows through the hills in a direction nearly due west. No part of its course in this direction, or beyond the point of junction, is represented on the diseno; and yet there is included in the survey at least two miles of that stream to the west of the point of junction. The western line of the survey, which, in descending the valley of the Arroyo de la Laguna, appears, in accordance with the diseno to follow substantially the line of hills which form the western boundary, of the valley, on reaching the point where the arroyo bends to the west, also makes an abrupt deflection in the same direction, and running due west more than two miles turns to the southeast, running along the crest; or even as stated by Dyer, on the western slope of what the map of Lewis denominates the "Corralitos Hills."

I can see no reason why a line near the base of the hills should not be adopted on the southern, as it is on the northern, portion of the line. The indications of the diseno—the natural limits of the tract, now and at the date of the grant known as "El Valle de San Jose"—and the terms of the grant and decree, which call for the Corralitos as a boundary, show conclusively that those hills were not intended to be included. It has already been stated that the hills inscribed with that name on the diseno, and mentioned in the grant, are probably the range on the south of the San Antonio, rather than those west of the Calaveras on the southwest, though, perhaps, the term may have been applied to both. But, on either supposition, the diseno shows that the tract was bounded on the south, the southwest and the west by ranges of hills and that boundary should be followed.

I therefore think that the official survey should be modified in this respect and that the line of hills marked "Corralitos" on Lewis' map should be taken as a boundary. By this is meant not that their base should be meandered, or that the low foot or projecting spurs should be excluded, but that the line should be substantially followed, as appears to have been done in the survey of the northern portion of the western line.

{See Case No. 16,420.]