UNITED STATES *v.* MAXWELL LAND-GRANT CO. and others.

(*Circuit Court, D. Colorado.* July 28, 1884.)

1. LAND GRANT—EFFECT OF CONFIRMATORY ACT OF CONGRESS ON SURVEYOR'S REPORT.
   An act of congress confirming the report of the surveyor general of the territory of New Mexico as to the validity and extent of a Mexican land grant operates as a grant *de novo* of all the land *within the boundaries* as given in that report.
2. SAME—ERROR OR FRAUD OF SURVEYOR—POWERS OF THE COURTS.
   If a surveyor, having been directed to make a survey of 22 leagues, in fact surveyed 44 leagues, and platted a tract thereof, the error is one that can be corrected by the courts, even after the issue of the patent; and that, notwithstanding the principle that a confirmatory act of congress secures to the patentee all the land included in the boundaries given in the surveyor's report.
3. SAME—OFFICERS OF THE GOVERNMENT—AGENCY—SCOPE OF AUTHORITY.
   All the officers of the government, from the highest to the lowest, are but agents with delegated powers, and if they act beyond the scope of those delegated powers their acts do not bind the principal.
4. SAME—INVALIDITY—SUBSEQUENT PURCHASERS—WHAT IS NOTICE.
   When a patent on its face recites the terms of the original petition and grant, and gives the description in full, as well as the lines of the survey based thereon, the purchaser of a title under such patent is chargeable with notice of whatever it contains.

On Demurrer to the Bill.

J. A. Bentley, for complainant.

Frank Springer and *C. E. Gast*, for defendants.

BREWER, J. This was an action brought by the United States to set aside a patent to what is known as the Maxwell land grant, or to so much of it as lies within the state of Colorado. The case now stands on demurrer to an amended bill. Two principal questions have been presented and argued.

First. It is insisted that the extent of the original concession to Beaubien and Miranda did not exceed 11 square leagues to each, or less than 96,000 acres, and that the description in the petition, and other papers executed while the territory was a province of Mexico and before its acquisition by the United States, only defined the outer boundaries within which a tract of 22 square leagues could be selected by the applicants; and this, because, under the Mexican decree of August 18, 1824, as well as the regulations of November 21, 1828, only 11 square leagues could be granted to any one person; that the confirmation by the act of congress must be understood as limited to the terms of the original concession, and as confirming only a grant to that extent. I think the case of *Tameling* v. *Freehold Co.* 93 U. S. 644, effectually disposes of this question. That case held that the confirmation by an act of congress was equivalent to a grant *de novo*, and I seeing no substantial difference between that case and this. In order to a clear understanding of the point of difference presented by counsel for the government, a brief statement of the action of congress is necessary.

After the treaty of Guadalupe Hidalgo, by which we acquired this territory, congress, in 1854, (10 St. p. 308, § 8,) cast upon the surveyor general of the territory of New Mexico the duty of ascertaining the origin, nature, character, and extent of the private land claims therein, and required him to make a full report, with his decision thereon, to be laid before congress for such action as it should deem fit. In pursuance of that duty the surveyor general, on September 15, 1857, transmitted his report as to this claim, showing a petition for a grant of lands, describing them only by the outer boundaries, the grant by the governor of the territory, the giving of juridical possession, a dispute as to the grant, its confirmation by the departmental assembly, its occupation by the grantees, and then his opinion that it was "a good and valid grant according to the laws and customs of the government of the republic of Mexico." Some 18 of these land claims were in separate reports thus transmitted by him to congress and placed before that body for action, and on the twenty-first of June, 1860, an act was passed confirming most of them, in accordance with the recommendation and decision of the surveyor general. Among these claims No. 15 was the one in controversy in this suit. No. 4 was the one which came before the supreme court for consideration in the case just referred to. In the report of the surveyor general of that claim, after narrating the prior proceedings, which were similar to those in the case at bar, he makes this decision:

"The grant being a positive one, without any subsequent conditions attached, and made by a competent authority, and having been in the possession and occupancy of the grantees and their assigns from the time the grant was made, it is the opinion of this office that the grant is a good and valid one, and that a legal title vests in Charles Beaubien to the land embraced within the limits contained in the petition. The grant is therefore approved by this office, and transferred to the proper department, with the recommendation that it be confirmed by the congress of the United States."

So that while in that case he declared that the grant was a good and valid one, and that a legal title was vested in Charles Beaubien to the land embraced within the limits contained in the petition, in this he simply says that it is a good and valid grant according to the laws of the government of the republic of Mexico; hence counsel argues that as by such laws only 11 square leagues could be granted to a single person, what the surveyor general meant to say was simply that it was a good and valid grant to the extent of 22 square leagues within these outer boundaries, and that congress, confirming his report, only confirmed the grant to that extent. As heretofore stated, I do not think the difference between the cases of any significance. All preliminary statements in the two reports, as to petition, description, grant, and occupation, are alike. In each the petition is for the land described, and not a tract within the boundaries named. In neither is any notice of the alleged limitation of 11 square leagues. In each the land described is largely in excess of such limitation, in