

1892

A Sketch of Land Titles in California

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THESIS

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A SKETCH OF LAND TITLES IN
CALIFORNIA.

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Colonization Scheme.

The subject of land titles in California, although local, is one that could not be concisely treated in a work of this character ; it would take a volume to properly cover the ground and bring out clearly all the necessary details.

This thesis is not intended to be exhaustive, such a thing would be impossible, not only from the nature of the subject, but from the fact that original documentary sources are not accessible to the writer.

All that is hoped for and the most that can be expected is to lay before the reader as clear and comprehensive a statement as is possible ; its origin, history, and final settlement by the courts.

The tenure of lands is an interesting topic of California history, both in itself and in view of the legislation of later times.

As soon as this territory was occupied by the Spaniards in 1769, the absolute title vested in the king - no individual ownership of lands, but only the usufructuary titles of many different kinds existed in California in the times of the Spanish rule.

The king of Spain however, was actually in possession of only the ground on which the "residuos" (a Spanish word meaning fortress or garrison for soldiers) stood, and such adjoining lands as were needed in connection with the royal services.

The natives were recognized as the real owners under the king of all the territory needed for their subsistence ; but the civilizing process to which they were to be subjected would greatly reduce the area from that occupied in their savage state, and thus there was no prospective legal hindrance to the establishment of the Spanish settlements. Moreover, the general laws of Spain, [Recopilacion de Indias] provided for just such establishments, and the assignment to each, of lands to the extent of four square leagues. [A Spanish league equalling nearly four English miles.]

Meanwhile neither the friars, nor the missions established by the Catholic Church, nor the Church itself owned any land whatever. The missionaries had the use of such lands as they needed for the furtherance of their object, which was to prepare the Indians to take possession as individuals of the lands they now held as communities.

When this was done and the missions had become "pueblos". [literally, people, but as generally used, corresponding with our word town, or village], the friars would move on to new spiritual victories.

Each "mission" and each "presidio" was at the proper time to become a "pueblo" ; and to each "pueblo" as soon as formed, four square leagues of land was to be assigned.

In 1777 the "pueblo" of San Jose was founded and a somewhat informal distribution of lands to settlers was made by order of Neve, the then governor. Latter the same governor instituted a

"regulacion" which went into effect in 1781: one of its sections regulated the distribution of "pueblo" lands, prescribed the assignment to each settler of four fields each 200 varas square, [1' vara being equal to about an English yard]; A lot for a house was also assigned, and land for various other uses was also specified, and provisions made for the gradual extension of the town by the granting of new lots and fields.

Under this regulation of Neve, the pueblo of Los Angeles was founded in the same year, 1781. The formal distribution of the lands, and the giving of written titles did not take place till 1786.

These titles were the nearest approach to absolute ownership in California under the Spanish rule, but it was far from being absolute: they could be forfeited by abandonment, or failure to cultivate, and they could not be alienated. In a word, the settlers had only a beneficial interest in the lands.

New grants of pueblo lands were of frequent occurrence from 1786 and on, but neither in the "regulacion" nor in the proceedings under it, was any attention paid to exterior "pueblo limits".

In 1784 however, permits had been given to several individuals for grants of "ranchos", [small farms], but the conditions on which these grants were given were so stringent that few took advantage of them: they were not to consist of more than three leagues, were to be beyond the limits of the pueblos, a stone house was to be built upon each rancho, and the "ranchero

must own at least 2000 head of cattle. Such being the case many ranchos were taken up without even the color of a grant or title.

By 1795, there were five ranchos in possession, held under these provisional grants and supporting near thousand head of cattle and sheep. The first was that of "San Fafael", about sixteen miles from Los Angeles; the second was known as "Los Nietos", and was the largest of all; the third was named "San Pedro, eighteen miles from Los Angeles, and was chiefly remarkable as being one of the few Californian ranches that has remained in the possession of the original grantees or their descendants; fourth in the list was "Portezuelo", a small but important one; the last was that known as the "Encino Rancho", and was situated where the present mission of San Fernando now is; and a fact which illustrates the slight tenure by which these early grants were held is that when the friars in 1797 established this mission, they took forcible possession of the house belonging to this rancho.

These ranches above mentioned were the principal, and probably all that were in private possession by 1800.

To sum up the condition of land matters in California by the beginning of this century: it was briefly as follows:- There were eighteen "missions": four "presidios" each entitled to four square leagues of land for distribution to settlers in house lots and farming lands; three "pueblos" were already established, each of which had four leagues of land, and were inhabited by over one hundred settlers, each settler holding

about four acres ; and finally about twenty-five or thirty men raising cattle on ranchos by permission but without legal authority, in addition to the five large private ranchos described above.

As is readily seen from the above description, the Spanish occupation of 1769 was a well organized plan to colonize the new country ; the "presidio" being a mere temporary scheme to further the progress of the new settlements and to defend them when established. The "mission" was another expedient, the object of which was to educate and Christianize the natives and to fit them for citizens.

The final outcome of all this would be, if as the Spaniards vainly hoped, that California might become a populous province of busy towns and farms, occupied by the descendants of the soldiers, the civilized Indians, and the settlers from the mother country, the whole forming a dependancy that would add greatly to the already great fame and wealth of the mother country and the Spanish Crown.

The pueblos above described were founded as centers, nuclei, from which the remainder of the country was to be settled, and quite naturally, for a long time the only distribution of land was in the form of town lots, but after 1800, some twenty or more farms were occupied under provisional licenses. About twelve more were occupied before 1822, the end of the Spanish rule.

Some of the latter were formal grants, and during the

the first ten years of the Mexican independence, the number was increased to about fifty. From 1823, the number of grants numbered about fifty-three each year to 1846, and most of the old Spanish grants were renewed under the Mexican regime, in many cases conferred on the heirs of the original grantees.

Procedure.

Under the Mexican law, any one who was a citizen, alive, or by naturalization, might pick out a tract of land that was unoccupied and make his application to the governor for a grant.

With the petition, the applicant handed in a rough map or "diseno"; this petition was generally handed over to the "alcalde", (the judge of the pueblo) for investigation. This official if he found the land vacant and had no material objections of his own, sent back to the governor a favorable "informe" or report, on which the governor wrote on the margin, "Let the title issue," passing it over to the other papers to the State Secretary.

The latter wrote a formal grant which was signed by the governor and the recorded in the "Toma de posesion" or book of record; it was then delivered to the grantee who was entitled to immediate possession.

The next step was to collect the petition, map, and other documents into a bundle and deliver them to an officer of the court who was to deposit them in the archives.

It was now the duty of the governor to submit the grant to the assembly for their approval, after which the grantee was put into legal possession by a ceremony that included a loose kind of survey and a fixing of the boundaries.

No more than eleven square leagues of land could be granted to one man or family, the larger number of grants containing

no more than five leagues.

The proper formalities were complied with by the settlers in but very few cases, for the reason that lands were abundant and very reasonable in price, and the officials both judicial, and habitually careless in regard to details.

With the most of the settlers, the main object was to get some color of title and to obtain possession of the "ranchero", which as can be seen was no very difficult matter.

But little trouble arose, and this was confined to a few disputes with the priests, as to the boundaries and boundary lines. These were generally settled by arbitration. There was little or no litigation and only a very small number of cases ever sent to the national government in Mexico.

Boundaries, if they were described at all were described but vaguely. The grants were for so many leagues at a designated place; or a certain area between defined natural bounds; or a limited amount of lands to be located within a larger amount.

There was never any definitely fixed form for these grants, nor was there any uniformity in regard to the conditions, which in fact, were often omitted altogether.

But in spite of all these apparent irregularities and imperfections that existed in regard to the tenure of the lands there seems to be no doubt that under Mexican law and usage, the grants were in the main, held as valid i. e., that when the grantee had received his written concession from the governor, and had recorded his deeds in the archives and had not regranted

or abandoned his claim, his title was regarded by the government and by others as perfect.

And moreover, when by an increase of population, more accurate surveys should have become necessary, such surveys would have given but little difficulty because the Mexicans would have respected the rights which actual possession gave.

Even when war with the United States was declared, there was no unjust discrimination against citizens of American birth, and there were scarcely any fraudulent grants and very few transactions that could even be termed irregular.

Action of the United States.

In 1848, the United States took possession of California. At that time a large portion of the finest land in California was occupied as above described by the Mexican grantees.

The United States government by treaty in 1848, re-affirming former promises, was bound to protect the Californians in their property rights then existing - and during the interim period of military rule by the governors, all granting of new ranches was suspended, and things were wisely left in statu quo, pending the action of Congress.

In a like situation, under ordinary circumstances, these affairs would have regulated themselves, i. e., the Mexican titles to the land if perfect, would have been amply protected by the United States courts, like other rights. But it was known that the surveys at least, were extremely loose and uncertain, and it was also thought by the Americans, that the titles were in other respects imperfect, judging them from American methods and by American standards.

To settle these matters by the local courts would result in fraud and confiscation, hence there was real anxiety felt by the people as to the nature of the action that would be taken by Congress.

The newly arrived settlers hoped that some way might be discovered by which a large portion of the California lands

could be kept from being monopolized by these Mexican grants, real or pretended.

The natives hoped that their rights would be liberally and equitably considered and respected, though from their experiences with the "malditos Americanos", [the cursed Americans] they probably did not feel assured as to American methods and American justice.

It was felt and felt strongly by both classes, that there were abundant opportunities for fraud and trickery.

The finding of gold in 1848-50, brought to California a numerous band of immigrants, whose presence increased the interest in and the desire for lands.

Among the seekers after treasure, besides an element entirely destitute of honorable principles, there was a strong element from the Western States, who were well grounded in the belief that by the "higher law", a species of "divine right", they were entitled to lands simply because they were citizens of this glorious republic, and "this was a free country"; added to all this, was a deep rooted prejudice against all that was Mexican.

But these two elements, spoken of above, could not of themselves control the body of the people, and hence they had to rely on the pretended plea that individual titles were fraudulent, or that the whole Mexican law itself, having been superseded by the American, was invalid.

To give a clear idea of the new-comers views,, I can

not do better than to quote from Dr. Boyce's book, in the "American Commonwealth" Series, entitled "California". On page 491 he says:—"The squatter wants to make out that Mexican land grants, or at least all the any wise imperfect or informal grants, have in some fashion lapsed with the conquest; and that in a proper, legal sense, the owners of these grants are no better than squatters themselves, unless Congress shall do what they hope and pass some act to give them back the land that they used to own before the conquest. The old Mexican grants were to them, [the squatters] obviously an un-American institution, a creation of a benighted people. What was the good of the conquest, if it did not make our enlightened American ideas paramount in the country? Unless then, Congress, by some freak should restore to these rapacious speculators, their old, benighted legal status, they would have no land. Meanwhile of course, the settlers were to be as well off as the others. So their thoughts ran."

Before any action was taken by the government at Washington, two very valuable and important reports were obtained, which gave a clear idea of the whole situation; one by Captain Belleck, [afterwards major-General] in 1849, another by William Carey Jones in 1850. But the first magnified somewhat the expected difficulties, and suggested imperfections in most of the land grants, which would enable the government "to defend itself by a cautious policy" against a fraudulent monopoly of all the most valuable lands.

The second report by Jones, erred by giving too far-

orable a view; Jones holding that the titles were for the most part perfect and equitable, and that an authorized survey of the grants would be sufficient, reserving the right to take legal steps against suspicious titles.

However as will be shown latter, by the effects of the Congressional action, untold litigation, and great loss of property and even life, would have been saved, and California would have been more than "thrice-blessed", if this liberal policy suggested by Jones had been pursued.

In 1848, 1849, 1850, bills were reported to Congress, but none was enacted till 1851, when a bill was introduced by Senator Gwin, which provided for a board of commissioners, with a secretary, and a law agent skilled in the Spanish language. ~~It was appointed by the president.~~ to be appointed by the president.

This board was to sit for three years and was to hold sessions at places named by the president. It was to administer oaths and take testimony.

The act further provided that each claimant under a Spanish or Mexican title, must within two years present his claim with the documentary, and other evidence on which he relied for support, and the board must decide whether his claim was valid or not. And herein lies the greatest wrong done, one of the most short-sighted and unjust enactments ever passed by any legislative body in an enlightened and civilized nation. Contrary to all law and justice, Congress acted on the presumption that these Spanish and Mexican grantees, had

no title or right whatsoever. "Possession is nine points of the law," and is not every occupant of lands deemed to have lawful possession until the contrary is proven? Should not the burden of proof have been on the United States, or on individual claimants, to show illegality of title, instead of this wholesale and barbarous enactment to the contrary? Most emphatically yes.

But to resume an appeal could be had by either party to the district court, which might take additional testimony and from its decision an appeal would lie to the Supreme Court.

The courts were to be governed in their decisions by the "law of nations, the laws usages, and customs of the government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court as far as applicable."

And lands for which the claims were rejected were to be considered as part of the public domain; all claims that were confirmed by the commission were to be surveyed, and a patent, conclusive only against the United States, and not affecting the rights of third parties, was to be issued.

In the case of towns to which grants had been made, or standing on land owned by individuals, the claim was to be presented, not by the lot owner, but by the municipal authorities or by the original grantees.

It is well known in California, that a few fraudulent

claims were confirmed and some good ones rejected, but the most apparent injustice was in compelling the claimants to come from the extreme Southern part of the state to San Francisco, where with the exception of one term in Los Angeles the Commission held its sessions.

Another aggravating feature was the policy of the attorneys who fought the claims over again and again on the most trifling technicalities; and also in the frequent taking up by the United States courts of a weak claim to defeat a stronger one, especially in the appealing of many cases of a mere formality to a higher tribunal.

Even insignificant irregularity was insisted on by the government agents and attorneys, and had to be overruled more than once by each court.

But strict and technical ruling was finally succeeded by more liberal and equitable principles, and it is just to say, that the judges, in the main, acted fairly and uprightly, but as will be shown later the evil did not lie here but farther back.

The board and the United States courts required the claimant to show only a prima facie title, but their decision was on the validity of the original grant and was final only as against the United States, while the rights of third parties was left to be settled by the state courts.

Progress of Litigation and Specimen Cases.

It is not my purpose to review the decisions of the board and of the courts for it would be impossible to give more than a outline of the points settled and the reasons for the holdings of the courts, but a few illustrative cases will be necessary to give a complete view of the subject.

The claims that gave rise to more complications than any others, were the so called "floating" claims or grants, by which was meant, a grant of a given area within bounds that included a greater area. And when as often happened, there were two or more of such grants within the same greater area the difficulties were increased.

The grantee was entitled to locate his land as he pleased, and he could hold the whole tract until final survey, except as against other grantees.

But in the final survey, he was required to select his land in compact form, and in case of two grants, the patent was final even if the later grant happened to be the first patented.

As to evidence in support of a grant, the records from the archives were ordinarily given the first importance; after which came the original grant and the proof of occupation.

It was held not enough to merely prove the loss of the archives that might have contained the record, but it must

be shown that the record had actually existed.

In the absence of archive evidence, other proofs must be exceptionally full and conclusive, and in resisting fraudulent claims, the court had to decide that "documentary evidence, no matter how formal and complete, or how well supported by the testimony of witnesses, will not suffice if it is obtained from private hands". *Peralta versus U.S.* 13 Wall. 4341.

The most numerous and dangerous fraudulent claims were the granting of grants written after 1848, the end of Mexican rule, bearing the genuine signature of the governor and other officials, but antedated. It was easy to get oral testimony in support of such titles and the methods in vogue with the courts under technical rules of evidence do not seem to have been well adapted to the detection of these frauds.

Some of the most complex and intricate questions arose in regard to the surveys. These presented the greatest difficulties and offered ample opportunity for fraud.

At first after final confirmation of the grant, a survey was made and the surveyor followed instructions, and whose judgment was always more or less influenced by the "guidance of interested parties, generally followed the calls of the grant.

On this survey, the commissioner of the land office at Washington, if he could see or be influenced to see no

material objection, issued the final patent. After 1860, the survey itself was submitted to the district court, whose decisions could be appealed to the Supreme Court.

But the courts confined themselves mainly to the approval or rejection of the survey as a whole, or to the correction of radical errors, still leaving a great deal to the discretion of the surveyor.

This change though necessary led to almost endless litigation and ruined many of the grantees who had before escaped.

Inaccurate surveys, that were rejected by the government or refused by the claimant, technical blunders of officials, allowing the reopening of cases, disputes and misunderstandings between the Surveyor-General and the land officer, successive acts of Congress settling old difficulties, and opening the door to new ones, were among the many matters that led to the inextricable and almost hopeless confusion that followed.

But the survey was the only question in most of the Supreme Court cases, and the court only decided whether or not the survey was in accord with the decree of the district court. (*Higuera versus U.S.*, 3 Wall., 484).

In *Moore versus Wilkinson*, [13 Cal. 478,] the court held, that "when a grant is for four leagues of land, within a larger tract, the right to measure off the specific quantity rested with the former government, and upon its accession passed with other public rights to the United States. That

right is political and cannot be exercised by the judicial department."

In *Hodgins versus Kemp*, [18 How. 539,] an early case the United States Supreme Court overruled the objection urged by the United States, that a grant within ten leagues of the coast was illegal.

In *Heirs of Nieto versus Carpenter*, [21 Cal. 455,] the claims of the Nietos, children of the grantee, resting on the original grant or concession of 1734, was rejected. Manuel Nieto and his heirs occupied the whole tract until 1834 when it was divided among two sons and the widows of two others, the four getting grants from the governor, which were confirmed. In 1843, Josefa Cota, one of the widows, with authority from the government, sold the estate to Carpenter. Her children failing before the land commissioners applied later to the California courts, claiming as heirs of Nieto, since if Manuel Nieto had a title, their mothers sale was invalid. But the California courts decided after several changes of opinion, that Manuel had no grant, only a permit to occupy, and that Josefa as grantee and owner had made a legal sale.

In *United States versus D'Aguirre*, [1 Wall. 255,] there were two ranchos and a "sobrante", or overplus, of five leagues, more or less, and the latter was confirmed for the full extent of eleven leagues. An attorney in this case explains how the owners, by crooked surveys of the three ranchos, succeeded in stretching the Sobrante across twelve

22444 miles of intervening space so as to include a number of valuable tin mines.

Henshaw versus Bissell, [18 Wall. 255.] This case was a boundary dispute between two confirmed and patented grants; the court held that the earliest grant with junior patent prevailed against the later grant and senior patent, but on the ground that the former was not purely a floating grant-- otherwise the date of the patent was decisive.

In U.S. versus Larkin, [18 How. 257.] the court settled the points, that "area" not in grants may be learned from other documents-- that evidence of fraud not offered in district court will not be received in the supreme court-- that grants to civil and military employees are valid, and absence of the usual conditions in the grant do not invalidate it.

Serrano versus U.S., [5 Wall. 451.] This claim was rejected by the commissioner, was confirmed by the district court and afterwards rejected by the supreme court, on a license of 1851, under which Serrano occupied the land from 1812 until 1852, his right having never been questioned.

It was held that his written permission to occupy constituted no equitable claim; but the truth is, he would have been better off without the license, since long possession with his belief in ownership, might have been an equitable title, but for the paper showing his right to be temporary. This was a species of reasoning that the natives failed to appreciate.

United States versus Vallego, [1 Black 542]. This claim was confirmed by the land commission and by the district court, but was rejected by the Supreme Court on a grant and sale made by Governor Michelena in 1842, and 1844. There is no doubt of the legitimacy and good faith of this transaction; the genuineness of the documents was not questioned in the lower courts; and in the Supreme Court in a general way only, but the claim was rejected on the grounds that the governor had no power to sell government lands. He could give it away for nothing but could not exchange it for food to support his soldiers. One of the judges dissented from this unjust ruling, and in 1863 Congress, by a special act, provided that actual purchasers under the Vallego title should have the preference to enter the land at \$1.25 per acre. The grant covered the towns of Benicia and Vallejo, and there was much litigation later between different interests.

U. S. versus Linantur, [1 Hoffman, 389]. One of the most famous cases in which a Frenchman named Linantur, attempted to erase the most valuable part of San Francisco, by means of a fraudulent document which was antedated, and supported by other forgeries and by the perjury of a great number of witnesses.

The confirmation of the claim by the commissioners naturally created a great deal of excitement in San Francisco, and large sums of money were extorted from frightened property holders. But fortunately the fraud was exposed before the

district court, the judge pronouncing the case, "without parallel in the judicial history of the country."

The most celebrated case however, was that of the new Almaden Quick Silver Mine, Castillero versus G. S. [Hoffman, 28]. In the magnitude of interests involved, it is one of the greatest cases ever decided by any court.

There were two adjoining ranches, those of Larrea, [Fossat, claimant], and Berreyesa, in a "canad," [valley], about fifteen miles south-east of San Jose, which were occupied about 1854, and granted about 1842. In a range of hills in the southern part of the "canada", on one of the ranches was a mineral deposit known from early times, and in 1845 "denounced" as a quicksilver mine by Castillero, who formed a company to work it, obtaining from the Mexican government approval of his acts, and granted a league of land.

Ferres and Company became the chief owners and before 1852 the property had become very valuable and had already been the subject of much litigation.

Before the land commission, the district court and the supreme court from 1852, there had been a triangular battle, with the United States as one of the three contending interests-- with this mine as a prize.

The claims of Fossat and Berreyesa being of unquestionable genuineness, were finally confirmed in 1857, though restricted within much narrower bounds than would have ordinarily been allowed them.

Castillero's land claim was rejected from the first as there had been no grant and as the land was already private property ; but the mining claim was confirmed by the land commission and by the district court in 1861.

There was no question as to the equity of this, and the district court disregarded the charges of perjury and forgery that were made ; but the supreme court was so far influenced by those charges, that it felt justified in a strict ruling and rejected the claim on the ground that the "alcalde" had no ground jurisdiction in the denouncement of mines and that other formalities had not been complied with.

Three of the judges dissented from what was without question an unjust decision. This was in 1862. In the meanwhile by official survey of 1860, agreeing with the grants, the line between the ranchos had been so located as to leave the mine on the Fossat claim, now the property of Saenz and Edgerton. Now the mining company, having lost its claim but controlling the Berreyesa rancho, made a final effort to overthrow the survey, and move the line westward sufficiently to include the mine. They managed to do this before the district court. In 1863, the supreme court rejected the new survey and confirmed the original one, thus ending this famous and complicated case.

Being defeated the company in 1864, were forced to sell for a \$1,700,000 and before 1880 the new company had taken out over \$12,000,000 in quick-silver.

I have cited the few cases given above more to illustrate the nature and extent of the problems with which the court had to wrestle, than to bring out the legal questions involved; that not being a part of the intention of the author.

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The Mission and Pueblo Lands.

In order to obtain a more comprehensive view of the subject, in this connection, the lands belonging to the "missions" and the "pueblos" will need some notice.

The Mission Lands:- In a strict legal sense, there never were any such lands as the "missions lands-- neither to the members of the native communities, xxx to the priests, nor to the church, were the so-called "mission" lands, i. e. the land adjoining the missions-- ever granted by the Spanish or Mexican government.

The priests were simply the hired agents of the government, they never had any property rights, and never obtained any, except as guardians of the Indians.

The natives had simply the right, on becoming christianized and civilized, to obtain lands like other citizens, viz, by grants. A few of them did so, and the government merely withheld from colonization such portions of the lands as might be needed for the use of the natives.

The governors granted lands not thus needed, from time to time, to private ownership, their right to do this never being questioned by the Mexican government, nor later by the United States, the latter virtually admitting the same right. In this matter the priests had no other rights than that of protesting to the government, that in some particular grant the needs of the natives had been ignored.

The church had an equitable right to the possession of the church buildings, the houses of the priests, and a few small tracts of land used by them as gardens and orchards.

In 1846, the government leased and later sold to private parties the public land adjoining the missions, that had not been sold before. During the years 1846-49, on account of the conflicting claims of the priestal lessees, and vendees, the mission lands gave rise to more trouble than any other lands in California.

After California became a state the legislature in 1850 attempted to investigate, but with out any results- but later the mission claims were presented before the land commissioners. The commissioners rejected the claims of the missions to the one square league in trust for the Indians, but confirmed the claim to the church property at each mission.

The Pueblo Lands:- Under Spanish and Mexican rule, a pueblo was entitled to a tract of land for the various uses of the community- the land was rarely granted formally by the government at its founding, [i.e. of the pueblo,] but the pueblo might at any time take steps to fix the bounds and this amounted virtually to a grant.

But even this was often delayed and in some cases omitted altogether- It was generally understood, that by both law and usage a pueblo was entitled to at least four leagues of land.

Public lots were sold by the municipal authorities instead of being granted, like the ranchos, by the governor.

The act of 1851, provided that the existence of a pueblo in 1848, should be regarded as prima facie evidence of a grant, hence the owners of lots bought and occupied before that time, were sure to be confirmed- but the sale of lots had continued since 1848, and on these lots the squatters had settled, and if the land should prove to belong to the United States, they would acquire valid titles.

The United States courts held that the towns were each entitled to four square leagues, and that sales by the "alcaldes" after 1848, were valid. The claims of Los Angeles, Sonoma, and San Francisco, ^{were confirmed} but those of some of the newer towns were not.

Some of the Results of the Act of 1851...

In 1880, twenty-nine years after the land act became a law, there were still pending in the courts, on a question of title, about four claims, and some 537 had been settled.

In the course of this long litigation the squatter influence was potent in a hundred ways. They settled on Mexican grants, fenced in the springs, raised crops, and devoted their gains to the costs of maintaining suits at law against the owners.

For many years they had a secret league, and instances of armed resistance to legal ejectment, involving even loss of life, were by no means uncommon.

In many cases, the squatters interest, disguised in the name of the United States, was the real opponent to the confirmation of equitable titles. It is even supposed to have influenced the appointment of law agents representing the government, and it naturally controlled legislatures, juries, and the whole policy of the Congressional action, so that the Californians had but a small chance of justice.

By an act of the legislature in 1852, [14 U. S. Stat. at Large, 220,] it was provided that all lands should be deemed public lands, till the legal title was shown to have passed to private parties; that possession should be prima facie evidence of a right to such possession; that title

under a patent should begin with the date of the patent, and the owner could claim nothing for the use of the land before such date, and that a successful plaintiff in an ejectment suit must pay for improvements and growing crops, or sell the lands, the value in either case to be fixed by a jury.

This act however, was declared unconstitutional by the supreme court of the United States in the case of The Secretary versus McGarrahan, [9 Fall. 2221], but this shows plainly the spirit of the legislation.

But it should be borne in mind that the settlers had their real grievances, as well as the grant owners. They could buy no Mexican titles that were good, and could find no government lands to settle on. They were educated to look with suspicious eyes upon all that was Mexican, and they held that these large grants were Un-american, and therefore wrong.

Moreover they held a current belief that most of the grants were fraudulent, and would finally be rejected by the courts, and they were advised by the lawyers to become squatters and trust to the future.

In cases without number, the "land sharks" deliberately set up false claims in the name of the native grantees, and extended their survey over the honest possessions of the settlers-- this with a view only to the levying of blackmail.

By their crafty interpretation of court decisions and laws, and by their threats to landowners, ignorant of

the English language, they stirred up ceaseless dissensions and endless strife.

In late years there have been many attempts to re-open litigation in some of the cases where fraudulent claims have been alleged, but they have never been successful, because whatever the rights and merits of the cases, not only the right of the government to reverse the old decrees, has been questioned, but the good policy of re-opening the doors of such litigation has been doubted as well.

And even if it had the power it would now only prepare the way to endless law suits and a new upsetting of the California titles.

The evils of the time should be attributed mainly, not to the squatters or any other particular class, but to the fundamental policy of the United States government.

There is no excuse for the system, that, in its application and practical results, merits the severest condemnation, such as this has received. It was thoroughly bad in almost every respect.

So uniform and overwhelming is the testimony of every man who has written to this effect, that there is no longer room for any doubt.

It was to the native Californians, owning lands under genuine and valid titles, seven-eighths of all the claimant

before the commission, that the greatest wrong was done. They were virtually robbed by the government that was bound by every tie of honor and judgment justice to protect them.

As a rule they lost nearly all their possessions in the struggles before the different tribunals, to escape from real or imaginary dangers of losing the whole. The lawyers took immense fees in land or cattle, often for slight services or none at all.

The United States promised full protection to all property rights, and theoretically, they admitted their obligation to confirm not only legal but inchoate equitable titles as well ; practically by the system adopted, they declared that every title should be deemed invalid until the holder had defended it at his own expense through a half dozen legal battles, against the United States for an opponent, the latter having no costs to pay and no real interest at stake.

It was in no sense the protection promised by the treaty, to finally confirm a title, after a fight of twenty-five years, when half or all of the estate had passed from the possession of the original grantee -- it was simply confiscation, and confiscation, not in the interests of the United States, but of speculators and land sharpers.

If Congress believed, as it evidently did, that nine-tenths of the claims were fraudulent, there was still injustice amounting almost to criminal negligence, to fail-

ing to confirm the remaining tenth, as equity and justice demands.

But the ruin of the grantees was only a small part of the injury done to Californians and to the state by the adoption of this measure.

The deplorable effects of the almost ceaseless litigation and of the unsettled land titles, for a period of over twenty years, would be apparent in advance. In one sense there was no government land at all that could be bought -- every holder felt that his possessions were threatened by the squatters on the one hand, and by the owners of the grants on the other. Neither claimants nor grant owners could sell or dared to invest in any improvements.

As a direct result of this, people were driven away; all industry and development were checked, and California was kept for many years from making use of her natural resources.

In addition must be considered the loss of life and property, caused by the land troubles; the general demoralization and the feeling of lawlessness, which rested for a large part on the uncertainties of land tenure; the opportunities for rascalities and illegitimate speculation; all the train of evils, moral and economic, that sprang from this same source, and for all of which the government at Washington must be held largely responsible.

And it must be noted, that besides the direct evil

mentioned above, this unwise legislation failed wholly to effect any of the particular benefits intended. These benefits the senate of 1851 imagined, were mainly the dividing up of the large California estates, and a providing of small tracts for American settlers, and to defeat fraudulent claims.

These objects were never accomplished. Had the bad and more genuine claims been properly confined and patented, so that a good title could have been given, then, large tracts of the finest land in the state would have naturally been sold in small parcels to settlers at a very low price.

As it was, the estates passed for the most part into the hands of a few cunning speculators, who were also sharp enough to hold them.

Land monopoly in California is due not so much to the old Mexican grants and their great extent, as to the short-sighted and wicked policy of the United States, and the method it pursued. And in regard to the fraudulent claims it is generally believed now by Californians that the worst ones were concocted after the commission of the courts began their work and the sharpers had learned by experience what kinds of forgery and perjury would do the most efficient work.

Had it not been for the treaty of 1847-8, and the national disgrace that would have resulted, it would have been far better to have rejected all the claims at the outset and broken the obligations of the United States completely, for then the grantees could have taken up small tracts

on their own honest possessions, under the pre-emption laws and thus have had at least an equal chance with the Americans.

The Californians were unquestionably entitled to the confirmation of their titles, after as brief and simple an examination as possible. The government should have made a list of all the ranches, the possession of which was a matter of common notoriety and mentioned in the archives ; should have confirmed them at once, then surveyed them and issued patents.

Those claims, not a matter of record and not reduced to possession, might then have been properly subjected to judicial inquiry.

Clearly a prompt settlement was the great thing to be desired for all interests -- It was much more important than the detection of a few petty frauds, and the whole matter should, and the consensus of opinion is, that it could, have all been settled in less than five years at the utmost. Litigation should have been confined to a few test cases, seven-eighths of the claims should have been confirmed on general principles of equity and justice, and the expenses should have been borne by the government..

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