

212 REPORT OF COMMISSIONER OF GENERAL LAND OFFICE.

RANCHO CORTE DE MADERA DEL PRESIDIO, CALIFORNIA.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., November 30, 1885.

Hon. L. Q. C. LAMAR,
Secretary of the Interior :

SIR: I have the honor to acknowledge the receipt of a communication from the Attorney-General, dated July 13, 1885, accompanied by the application of J. W. and A. St. Clair Denver, attorneys for the settlers and State of California, for proceedings to annul or modify the patent issued to the claimants of the Rancho "Corte de Madera del Presidio," heirs of Juan Read, confirmees, and situated in the county of Marin, State of California.

Said application, with other papers, was referred to this office on the 16th of July, 1885, "for report and recommendation."

HISTORY OF THE CASE.

On the 27th of June, 1834, Juan Read, a native of Ireland, of the Roman Catholic religion, and a resident of Mexico for nine years, petitioned the governor of California for a grant of the place called "Sausalito." For certain reasons, which do not fully appear, he failed to obtain this grant, and on the 4th of September following he filed another petition with the governor, in which it was set forth "that, not having been able to obtain the place called 'El Sausalito,' he prays you to be so good as to grant him the place of 'El Corte de Madera del Presidio' to the 'Punta del Taburon,' as shown by the sketch or plan which your excellency has in your possession." This sketch or plan is supposed to be the same one which accompanied his petition for the "Sausalito," and which represented and included not only "Sausalito," but also Corte de Madera, Point Taburon, and other lands still further to the northeast.

The matter was referred to the proper officer on the 23d of September, 1834, for his investigation and for the information of the governor, and on the next day Read furnished several witnesses, who testified of their knowledge concerning the land applied for and that its "extent is about a league in length and about half a league in width."

In pursuance of these proceedings, on October 2, 1834, the governor issued to Read a grant in the following terms:

"For the land known by the name of 'Corte de Madera del Presidio,' as far as la Punta del Taburon, bounded by the mission of San Rafael and the port of San Francisco, the proper measures and examinations being previously made." * * *

When the ownership is confirmed to him he will request the proper magistrate to give him judicial possession, * * * by whom the boundaries will be marked out, in the limits of which he will place some fruit or forest trees of a useful character.

"The land of which donation is made is *one square league*, a little more or less, as shown by the map which goes with the expediente.

"The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, in order to mark out the boundaries, *leaving the surplus which may result to the nation for its convenient use.*"

As a result of this grant, the grantee, Read, presented his petition to the alcalde of San Francisco in the following form:

"Juan Read, naturalized, in the United States of Mexico, and resident of the port of San Francisco, owner of the rancho of Corte de Madera, as I may best proceed in law, appear and say: That, as appears by the title which I present with the necessary solemnity and oath, *I have in my said rancho one square league within the boundaries expressed in said title*; and, as it is necessary for me that it should in all time appear how far they reach, and if any of the neighbors prejudice me or any of them, you will be pleased to order that, after usual official acts of identity, view, and examination and summoning the colindantes (the possession of my said lands be proceeded to), for which purpose I appoint now, and for when the time may arrive, as measurer, José Antonio Galindo, resident of this port, skillful in these matters, and let the others who may be interested appoint one on their part, and this being done, let those whom they may appoint and the said Galindo, by me appointed, appear, accept, swear, and in conformity proceed to said measurements.

"Wherefore I pray you that, admitting this document, you will have the goodness to order as I have asked, and being finished, to return me said title, with the original official acts which may be made for the security of my right, this petition, and whatever else may be necessary."

This petition was received by the alcalde according to his indorsement on the 25th of November, and in due time he and the proper witnesses went into the field for the purpose of a preliminary examination of matters assigned to him in connection with the rancho and the following certificate was returned:

"Being in the fields in the place named 'Corte de Madera del Presidio de San Francisco' on the twenty-seventh day of the month of November, one thousand eight hun-

dred and thirty-five, I, the constitutional alcalde, acting in virtue of my office, with two assisting witnesses for want of a public notary, the witnesses by me examined, present Citizen Juan Read, owner of said lands, and Citizen Fernando Feliz, on the part of the pueblo of San Rafael, as mayor domo of said pueblo and community, the only colindante on the north, I proceeded to see and examine the lands of said rancho, and for greater clearness mounting on horseback, in company with both the parties and witnesses referred to, I ordered the latter to point out to me the places, limits, and boundaries of them, according to the signs which they have declared in their depositions; and in conformity they led the way to the west of a cañada, where they showed me a forest of tall trees, which they called red woods, in the cañada itself, and some little valleys which form the base of the high peak called 'Palmos,' which forest is called 'Corte de Madera del Presidio,' a little brook with a willow thicket and the remains of a rancheria called 'Animas'; thence, continuing the examination and view of said lands, they led me north to another arroyo and forest of red trees, called also 'Corte de Madera de San Pablo,' and they said it was the boundary with the pueblo of San Rafael; and thence, continuing the examination south as far as Point Taburon, which they said was the limit in that direction, we continued to the west to the point of an estero which empties into the bight formed by said Point Taburon and Point Caballas on the south, and which ends at the entrance of said cañada, where is situated the home of the owner of said lands, Don Juan Read, the arroyo, willow thicket, and forest of redwood trees named 'Corte de Madera del Presidio' aforesaid, which they said was the last boundary of the lands pertaining to the rancho referred to of 'Corte de Madera' of Señor Read, which places I, the constitutional alcalde, saw and examined, with those of my assistants and said witnesses; and the papers presented having been compared with said examination, the identification of the aforesaid lands proved to be certain, according to the declarations of the witnesses, and in testimony I make official record of it and sign it, with those of my assistants and others who knew how, to which I certify."

On the next day, Read and the colindantes consenting, measurers were duly appointed and sworn, provided with the proper implements for measuring the land, and by due process, according to the custom, the lands were measured and Read placed in possession, as the following certificate will show:

"Being in the field and lands pertaining to the rancho of 'Corte de Madera' of Don Juan Read, Saturday, the twenty-eighth of November, eighteen hundred and thirty-five, I, the constitutional alcalde of the port of San Francisco de assis, acting in virtue of my office, with two assisting witnesses, for want of a notary public present, citizens José Antonio Galindo and the Indian Neri, appointed measurers by the party interested and colindantes, I ordered them to proceed to the *measurement of one square league of land*, which a little more or less pertains to the rancho of 'Corte de Madera,' according to the title and map presented, in obedience to which, having again measured and examined the rope, they commenced said measurements from the solar which faces west, and standing at the slope and foot of the hills which lie in that direction and on the edge of the forest of red woods called 'Corte de Madera del San Presidio' they commenced said measurements, and going from S. to N. they measured to an arroyo called 'Holon,' where is another forest of red wood called 'Corte de Madera de San Pablo,' ninety cordels of fifty varas; and the person interested, fixing there a known point as a mark, said that he would place a bound from this point, taking a direction from north to south; the measurement was continued to Point Taburon, and they measured two hundred cordels; and said point serving as a mark and limit, he promised to place there the corresponding bound; thence continuing the measurement from east to west to the mouth of the cañada and the point of the 'sausal,' which is near the estero lying east of the house of the person interested, which is at present on the rancho, there were measured ninety-four cordels; and from this last point, continuing the measurement from east to west along the last line to the place of beginning, they finished by measuring sixteen cordels, so that *the square league of land* which the rancho of 'Corte de Madera' contains forms a square of twenty thousand Castilian varas, which, *being regulated by said measurers*, they declared Citizen Juan Read to be informed of the lands which belonged to his rancho according to the title and map at the head of this expediente, so that no third party is injured.

"Wherefore said Citizen Don Juan Read pulled up various herbs and stones and threw them to the four winds, in sign of his legal and legitimate possession; and at this period the constitutional alcalde ordered said Read, for the permanence and clearness of the boundaries which have been mentioned, to make, at his own cost and expense, bounds of masonry more than a vara high, that it may in all time appear, they be observed and kept as limits and boundaries of his lands by the others, neighbors thereto. And he prayed for a testimony that said measurements were made quietly and peaceably, without contradiction by any person; and I, the constitutional alcalde of the port of San Francisco, acting in virtue of my office, with two assisting witnesses, for want of a notary public, give it *that everything was done as has been said, and that the aforesaid measurements were executed to the best of the knowledge and under-*

standing of the measurers, as they deposed, without deceit or fraud against any person; and for greater security and the ratification of the oath which they have made they did not sign, not knowing how, and the others who knew how, and were present, did so, before me and those of my assistants."

On the 23d of December, 1852, the widow and children of Juan Read, by their attorneys, presented their petition to the board of land commissioners, setting forth: "That on the 2d day of October, 1834, José Figueroa, governor of California, by virtue of authority in him vested, granted to the aforesaid Juan Read the tract of land called 'Corte de Madera,' situate in the present county of Marin, containing *one square league of land, a little more or less*, as described in the original grant and map, which grant was duly proved. That on the 28th day of November, A. D. 1835, the said tract of land was *duly measured*, and the juridical possession of it given to the grantee in due form of law."

The original grant, map, and *record of juridical measurement* and possession were submitted, the death of Juan Read was shown, and confirmation of the aforesaid tract of land prayed for.

On the 13th of June, 1854, an amended petition was filed, differing only from the original in alleging the death of Richard Read, one of the heirs, and the descent of his interest to his co-petitioners.

On the 13th of June, 1854, the board of land commissioners rendered the following decree:

"In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and it is therefore hereby decreed that the same be confirmed.

"The land of which confirmation is hereby made is the same on which said Juan Read resided in his lifetime; is known by the name of Corte de Madera del Presidio; is situated in Marin county, and bounded as follows, to wit: Commencing from the solar which faces west at a point at the slope and foot of the hills which lie in that direction and on the edge of the forest of red woods called Corte de Madera del Presidio, and running from thence in a northwardly direction 4,500 varas to an arroyo called Holon, where is another forest of red woods called Corte de Madera de San Pablo; thence by the waters of said arroyo and the Bay of San Francisco 10,000 varas to the Point Taburon, said point serving as a mark and limit; thence running along the borders of said bay, and continuing in a westerly direction along the shore of the bay formed by Point Caballas and Point Taburon 4,700 varas, to the mouth of the cañada and the point of the 'sausai,' which is near the estero lying east of the house on said premises which was occupied by said Juan Read in November, 1835; and thence continuing the measurement from east to west along the east line 800 varas to the place of beginning, containing *one square league of land, be the same more or less, being the same land described in the testimonial of juridical possession on file in this case as having been measured to said Juan Read under a grant of the same to him, to which testimonial and the map therein referred to, and constituting a part of the expediente, a traced copy of which is filed in the case, reference is to be had."*

The case came before the United States district court for the northern district of California on appeal from the decision of the board of commissioners, and on the 14th of January, 1856, said court rendered the following decree:

"This cause came on to be heard at a stated term of the court, on appeal from the decision of the board of commissioners, to ascertain and settle the private land claims in the State of California, under the act of Congress approved on the 3d day of March, A. D. 1851. Upon the transcript of the proceedings and decision of the board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, *it is by the court hereby ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed;* and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, *confirmed to the extent and quantity of one square league, being the same land described in the grant, and of which the possession was proved to have been long enjoyed: Provided, That the said quantity of one square league, now confirmed to the claimants, be contained within the boundaries called for in the said grant and the map to which the grant refers, and if there be less than that quantity within the said boundaries then we confirm to the claimants that less quantity."*

This decree of the court became final by order of the court of April 2, 1857, and in 1858 a survey of the grant was executed by Deputy Surveyor R. C. Mathewson under a provision of the act of March 3, 1851.

This survey proceeded upon the theory that the grant was one for quantity within certain exterior limits, and gave to the claimants an area of 4,460.24 acres, or twenty-one acres and a fraction in excess of one square league, including Point Taburon proper, but excluding what is now known as Richardson's Island, the smaller one between it and the main land, and all the salt marshes.

This survey was approved by the surveyor-general without objections, and if the same had been transmitted to this office without delay it is fair to presume there would have been no further difficulty in the matter; but the survey and plat having remained in the office of the surveyor-general until after the passage of the act of June 4, 1860, the said officer construed the act as requiring the publication of the plat, and it was published accordingly.

The district court also understood the act of 1860 as conferring jurisdiction upon it for the approval of the survey, and on the 13th of September, 1860, on application of the claimants, ordered it into court.

Exceptions to the survey were filed by the claimants on the 22d of December, 1860, as follows:

"1st. That said survey is erroneous, because it does not conform to the grant and diseño in said cause.

"2d. That said survey is erroneous, because it is not made in accordance with the directions of the final decree of this court in this cause.

"3d. That said survey does not include all the land granted and confirmed to the claimants.

"4th. That said claimants were entitled to different land and more land than is included in said survey, and were not notified or consulted when said survey was made or approved."

The next action taken was by the United States district attorney for California, who, on the 19th of September, 1864, filed a motion to "dismiss all proceedings herein in the matter of survey for want of jurisdiction."

On the 23d of August, 1865, the attorneys for the claimants moved the court—

"That the decree which was entered in this case on the 14th day of January, 1856, be corrected and reformed so as to conform to the opinion of the court heretofore filed herein, confirming the claim of the claimants."

On the 28th of September, 1865, the court made an order overruling the exceptions of claimants, approving the survey, and reciting the denial at a previous session of the motion to reform the decree in the following words:

"The approved survey in this case was ordered into court on the application of the claimants on the 3d September, 1860. Exceptions were filed December, 1860. *No testimony whatever has been adduced by the claimants in support of them, nor is the court informed in what particular the survey is supposed not to conform to the decree.* A motion to reform the decree was made about three weeks since. It was denied, on the ground that the term at which it was rendered having long since expired the court had no power to review or modify its judgment.

"Assuming, then, the decree to be final, I see no ground of objection to the survey, and none has been suggested."

On the 16th of October, 1865, the court ordered as follows:

"Upon reading and filing the notice of motion on the part of the district attorney to dismiss the exceptions to the survey and the affidavit of B. S. Brooks and S. A. Sharp, attorneys of the claimants, from which it appears that the order or decree heretofore entered was entered under misapprehension, on motion of B. S. Brooks, esq., attorney of the claimants, it is ordered that the said order or decree overruling said exceptions and approving the survey be set aside, be vacated and annulled; and it is further ordered, on the like motion, that all proceedings in this court touching the said survey be, and the same are hereby, dismissed."

On the 16th of October following the case was again brought to the attention of the court by a motion on the part of the claimants, and another order of the court was rendered almost entirely similar to the one above quoted, and thus ended all judicial proceedings in the case.

Meanwhile the act of Congress of July 1, 1864, was passed, and in pursuance thereof, and under instructions of the Commissioner of this office, notice of the Mathewson survey was again published in May and June, 1868. It was duly returned to this office, and under date of May 6, 1871, approved by the then Commissioner, Hon. Willis Drummond.

After a brief statement of the facts and the law connected with the case Mr. Drummond decided "that the confirmatory judicial decree limits the area to *one square league*, and that the survey executed by R. C. Mathewson, deputy surveyor, in October, 1858, and approved by the surveyor-general September 19, 1859, should be approved as the final and correct survey of the rancho in question," thus affirming the decision of the surveyor-general of February 26, 1870.

An appeal was taken from this decision to the Secretary of the Interior, Hon. C. Delano, who referred the matter to the then Assistant Attorney-General for the Department for review and decision. This decision was rendered December 26, 1871, and recommended "that the decision of the Commissioner be reversed, and that the surveyor-general be directed to make another survey, including the land within the boundaries particularly described in the decree of the district court, *by reference to the confirmation by the board of commissioners, being the land covered by the juridical possession of the original claimants.*"

216 REPORT OF COMMISSIONER OF GENERAL LAND OFFICE.

The latter opinion was accepted by the Secretary of the Interior, who, on the 6th of January, 1872, adopted it, and transmitted a copy of it to this office, with the following indorsement in his letter of transmittal:

"The Assistant Attorney-General, in his opinion (copy herewith), discusses at length the questions of law and fact involved in the case, and I fully concur in the conclusion at which he arrives."

He also disapproved, in terms, the Mathewson survey, and directed that another "be made conforming to the juridical possession."

On the 5th of February, 1872, Hon. Willis Drummond, Commissioner of this office, forwarded to the surveyor-general a copy of the opinion of the Assistant Attorney-General and of the decision of the Secretary of the Interior above referred to, with directions "that a new survey of said rancho be made, at the expense of the parties in interest, which will conform to the juridical possession, after which you will cause it to be published according to law and make the usual return to this office."

He then proceeds to state that—

"The places from which juridical measurement commenced, and to which it extended to the north, are so accurately described by natural objects that it is believed no difficulty will be experienced in locating the western boundary of the rancho; but with respect to the line run from the arroyo Holon to the place called Taburon I submit the following suggestions:

"The place called Point Taburon is not clearly described, either in the grant or record of juridical possession. The grant simply mentions it as one of the boundaries of the rancho Corte de Madera del Presidio, the other boundaries being the mission of San Rafael and the port of San Francisco. The record of juridical possession is no more explicit. One of the witnesses therein mentioned states that the rancho has for boundary 'on the east Point Taburon'; another that it has for boundary 'on the east Point Taburon, which is in front of the island called Los Angeles,' and a third states that the boundary on the east terminates 'in said Point Taburon.'

"The record also shows that the alcalde and accompanying witnesses in viewing the rancho went to the arroyo Holon, and from that place continued south 'as far as Point Taburon,' which the witnesses 'said was the limit in that direction'; and also that the same alcalde caused to be measured from the arroyo Holon as follows: 'Taking a direction from north to south the measurement was continued to Point Taburon,' 'two hundred cordels' (4 miles 16 chs.), 'said point serving as a mark and limit.'

"This description of Point Taburon is ambiguous, in that it supports either of two hypotheses—first, that Point Taburon was a small projection of land, such as United States Deputy Surveyor Mathewson seems to have considered it; and, second, that the name 'Point Taburon,' as used in the record of juridical possession, described generally the entire body of land surrounded by San Francisco and Sausalito Bays, and by a line running northeasterly from near meander course 105 to near meander course 24, as said courses are marked on the plat of Mathewson's survey executed in 1858.

"From the data before me I am inclined to the opinion that the second hypothesis is the correct one in this case, and that the juridical survey terminated at some point in a line drawn directly across from course to course, as above stated. This construction of the words used in the record of juridical proceedings will harmonize the measurements stated to have been made from Holon to Taburon and from Taburon to the place of beginning with the actual distances between those places.

"Upon the inclosed diagram the dotted blue lines represent approximately the eastern boundary of the rancho Corte de Madera del Presidio, according to the second hypothesis, heretofore stated."

As will be readily seen by an examination of the alleged survey made in pursuance of these explicit instructions they were totally disregarded.

No survey was made in the field in pursuance of Commissioner Drummond's instructions, but a plat was compiled from records and field-notes of other surveys, principally those made by the tide-land commissioners of the State of California, for the purpose of enabling her to dispose of the tide lands belonging to the state, and returned to this office as having been executed by Leander Ransom and G. F. Allardt, deputy surveyors, in September and October, 1873, and June, 1874. In fact, the only official survey of the Corte de Madera del Presidio grant in the field that has ever been made and reported to this office, or acted on by it or the Department, is the one made by Mathewson in 1858.

The Ransom-Allardt survey, if such it may be called, adopted for its initial point a place at the "southwest corner of the tract designated as the solar (the initial point of the juridical possession), and from thence runs south 2.45 chains to the center of the arroyo Corte de Madera del Presidio, the northerly boundary of the rancho Sausalito; thence follows down said arroyo to its mouth, and thence by the shore of Richardson's Bay, Raccoon Straits, and San Francisco Bay, by the several courses easterly, northerly, and westerly, to the mouth of the arroyo Holon, at the northwest corner of the tract; thence following up said arroyo to the point where it changes from a nearly north and south to an almost due east and west course, and thence

southerly to the place of beginning. It includes an area of 6,033 acres, excludes the several adjoining tracts of salt-marsh tide lands and the peninsula known as Peninsula Island, and includes the small peninsula or island known as De Silva's Island." (*See Commissioner Williamson's decision of September 18, 1878.*)

By this decision of Commissioner Williamson the surveyor-general was instructed to amend the Ransom-Allardt survey—

"So as to exclude said De Silva's Island, which had been previously patented by the United States, and include within its boundary lines, as belonging to said grant, said Peninsula Island and the marsh lands lying on the shore of said grant and above the line of ordinary high-water mark."

The United States and various parties claiming adversely to the confirmees appealed from this decision, and the Hon. C. Schurz, Secretary of the Interior, on the 31st of December, 1879, reviewed the last-mentioned decision of the Commissioner, holding that the alleged Ransom-Allardt survey was not a survey within the meaning of the law, not having been made in the field nor based upon lines actually run.

"A survey to be legally effective must be based upon lines actually run or established by triangulation in the field by the officer who makes the survey in the manner prescribed by law and the instructions of your office; the markings and monuments of such survey must be established upon the ground as described in the field-notes, and the whole verified by the usual and prescribed oaths, forms, and certifications. To adopt any other mode or irregular proceeding in making surveys of the public lands, by which title to specific tracts must be conveyed from the Government and pass indefinitely through successive and perpetual assignments and records, would establish a precedent leading to interminable confusion and uncertainty and deprive individuals of that security and evidence of boundary upon the face of the earth which is guaranteed by the law establishing the surveying system and regulating its requirements." He approved of so much of the decision of the Commissioner as fixed the location of the solar and of the arroyo Holon and the northern and southern boundaries of the rancho, which included the survey of the salt marsh above the line of ordinary high-water mark and excluded De Silva's Island, but disapproved of the location of the eastern boundary of the rancho as fixed by the Commissioner, and held that the measurement made for the purpose of fixing the boundaries of the grant at the time of giving juridical possession terminated on the east at "an old stone mound located nearly due west from California City Point, which is proven to have been of ancient appearance; was evidently erected on that high and prominent part of the peninsula as a mark or initial point."

After commenting upon the testimony for and against the theory that this mound was erected as a boundary mark, he says further:

"The position of this mound is evidently on or near the head of what was known as Point Taburon, in contradistinction to other places in the vicinity, as Sausalito, San Rafael, Point Quintin, and Corte de Madera del Presidio. A line drawn through it parallel to the west line will strike the bay on the south just east of El Meja, and will approach the marsh lands lying along the outlet to the Holon and minor estuaries on the north, making it practicable to close with the northern and southern lines and form substantially a quadrangle, containing about one square league of land, as specified in the grant."

"Some point was established by the alcalde in giving juridical possession, upon which the grantee agreed to erect a mound corresponding to the one established on the Holon, and the testimony, in my opinion, warrants the conclusion, all the circumstances being considered, that this mound from which Juan Read, jr., removed the stake was the one selected, and should now be considered as the eastern boundary of the grant."

"You are therefore directed to instruct the surveyor-general of California to cause a new survey of said rancho to be made in conformity with the foregoing opinion, and report the same to you for approval when the same is completed."

This line, if it had been established in accordance with the Secretary's order, would have corresponded approximately with the line indicated by Commissioner Drummond in his instructions of February 5, 1872, to the surveyor-general; but having on the 3d of May, 1880, denied an application for a review of his decision, he afterwards, on the 25th of the same month, consented informally to a suspension of its execution, of which fact the surveyor-general was notified on the same day.

It is proper to state at this point that the President of the United States, as far back as the year 1867, reserved by proclamation Peninsula Island for military purposes.

Commissioner Williamson's decision of September 18, 1878, having included this island in the boundaries of the grant, the War Department became a party in interest, and on the 19th of July, 1879, Hon. Charles Devens, Attorney-General of the United States, at the request of the Secretary of War, rendered an opinion on the case as it stood before the Secretary of the Interior at that time, on appeal from the Commissioner's decision aforesaid.

This opinion is elaborate, and reviews at length the opinion of Assistant Attorney-General Smith, the decision of Secretary of the Interior Delano, and of Commissioner Williamson. It dissents in unequivocal terms from each and all of them, holding that the decree of the court was final, and that the survey must conform to it; that said decree was for quantity, and that the quantity granted was *one square league*; and that Point Taburon was not included within the grant. He also holds that the southeastern boundary was substantially on the line fixed by Commissioner Drummond, afterwards by Secretary Schurz, and denying the right of the Read claimants to the swamp lands included in the decisions of Commissioner Williamson and Secretary Schurz.

After repeated propositions of various kinds, including a resort to Congress by the claimants, which was unsuccessful (the Senate committee reporting adversely and holding that the Mathewson survey was correct), Mr. Montgomery Blair, of counsel for some of the claimants, and claiming to represent their entire interest, filed on the 25th of January, 1881, a proposition to accept as a compromise a patent upon the Mathewson survey, rejected by Secretary Delano in 1872. On the 7th of March following Mr. Schurz indorsed upon this paper his decision declining to accept the proposition, because of inability, for lack of time, to examine into the propriety of granting it, adding to his indorsement that he would consider the letter as a motion for a reconsideration of his decision in the case. This carried the proceeding before his successor, Mr. Secretary Kirkwood, who, after hearing oral argument on the proposition for compromise, declined to accede to it, not being satisfied that all the interests of the grantees were represented by the offer, a distinct demand having been filed for a patent upon the whole claim as allowed by the decision of this office, and also a claim that the decision of 1879 was without jurisdiction, that of 1872 having been made final by survey executed in accordance with its directions. He accordingly, on the 14th of April, 1881, made an indorsement on the case to the effect that he had determined to hear argument on all points, as a guide to his judgment in making final disposal of the case.

In this condition the matter came before the late Secretary, who, after hearing arguments submitted in accordance with the arrangement last recited and from all that had been gathered, proceeded to dispose of the various questions involved by his decision of July 28, 1882.

In this decision he held that the Department was without jurisdiction, except to carry out the decision of Secretary Delano, and construed that decision as holding that the grant and confirmation were of *boundaries*, and not of quantity, and that "when rendered nothing remained but to conform the survey by strictly mechanical processes to the boundaries declared to have been intended by the decree." Upon this theory he held that the decision of Secretary Schurz of 1879 was void under the rule of *stare decisis*; but as it had dissented in some of its details from the decision of Secretary Delano, both decisions were taken up and analyzed, resulting in an unqualified concurrence with the letter.

"As the decision of 1872, in which I have also stated my own concurrence, requires a reference to the decree of the board of land commissioners in making the survey, the boundaries therein are fixed by authority of the Department, as well as the courts, and must be considered as controlling. And I am the more ready to adopt this conclusion as it seems to be demanded by every principle of justice and fair-dealing towards these grantees, some of whom for more than a generation have had their homes upon the land excluded by the late ruling, and whose all is concentrated upon the spot. During all those years no question of its being within the grant [Point Taburon, as excluded by the instructions of Commissioner Drummond and sanctioned by Secretary Schurz] had intruded itself upon the attention of this Department up to the time of final decision of 1872.

"It was included in the Mathewson survey of 1858, had been partitioned among the heirs, and was recognized by all the authorities as a part of the grant. The only controversy was whether or not more land should also be included. This leaves nothing to be determined except the question of conformity to that decree as a matter of fact in the survey under consideration, as I do not consider the technical objection raised against the manner of its execution sufficient to impair the validity of the plat.

"After a careful examination of the evidence, I am satisfied that the questions of boundary have in the main been correctly decided, and whatever of uncertainty may exist is not sufficient to justify another expensive and prolonged attempt to remove. That the line of ordinary high-water mark is the limit of the grant upon its water boundary is clearly sustained by the authority of *United States v. Pacheco* (2 Wall., 587) and numerous other cases. That the Point Taburon must be found at the water's edge is clear from the language of the decree. We follow 'by the waters of said arroyo and the bay' to the point, and having reached it we proceed, 'thence running along the borders of said bay.' We cannot both reach and leave it by running along the bay and find it far inland in another locality."

The decisions of December 31, 1879, and May 3, 1880, were accordingly revoked, and exception was also taken to the decision of Commissioner Williamson, wherein Peninsula Island was included, and directions given that the same be excluded from the survey and plat ordered to be made.

I will state in this connection that another plat, which was not published, appears to have been executed by Ransom in November and December, 1873, and completed by Allardt in June, 1874. This plat agrees with the first as to the monuments called for in the description, but includes the salt marsh above ordinary high tide, and also Peninsula Island, which were excluded from the published survey.

It will also be observed that by Secretary Schurz' advisory decision of May 28, 1879, this office was instructed that the publication of their first survey, in 1875, was unauthorized by law, not being required by the act of 1864. It was therefore held by Secretary Teller that both of the surveys by Ransom and Allardt were properly before the Department under the order of Secretary Delano of January 6, 1872, and subject to approval or rejection respectively, as found in conformity with or differing from that instruction.

Commissioner Williamson found that the Ransom-Allardt survey of September and October and June, 1874, should be approved, after modification, by adding thereto the marsh lands on the north and Peninsula Island on the south and excluding what is known as De Silva's Island; and Secretary Teller held that said decision of this office would, with a slight correction, adopt the second Ransom-Allardt survey referred to.

Therefore on the 4th of August, 1882, this office transmitted the decision of Secretary Teller to the surveyor-general of California, directing him to proceed at once to amend the said second survey of Ransom-Allardt, containing 7,863.68 acres, by excluding therefrom De Silva's Island, Peninsula Island, and the small island lying between Peninsula Island and Point Taburon, as directed by the Secretary.

On August 18, 1882, the surveyor-general reported compliance with instructions as to the manner of the survey, but did not forward the plat, desiring first some advice from this office; but no action seems to have been taken in the matter by this office, and on November 1, 1882, the surveyor-general forwarded the protest of J. W. Shanklin, state surveyor-general of California, against the survey as made by the United States surveyor-general, which was accompanied by a map showing salt-marsh tide lands sold by order of the board of tide-land commissioners at public auction in 1871.

On the 10th of November, 1882, the above-named papers, with others, including an application for review by the claimants, were forwarded to the Secretary of the Interior, who on the 31st of January, 1883, rendered a supplemental decision, which I append in full:

"In the case of the private claim known as the 'Corte de Madera del Presidio,' heirs of Juan Reed, confirmees, I rendered a decision on the 28th of July last, directing a survey to be made in accordance with the boundaries fixed by the decree of the district court, by reference to the description given by the decree of the board of land commissioners.

"In relation to these boundaries I was in doubt whether or not the peninsula called Peninsula Island and another small peninsula to the eastward near the point of the mainland were properly included in the calls for boundary, and I ordered them to be excluded.

"This doubt arose from an apparent failure on the part of the original claimant to show such peninsula on the *diseño*, the water line of indentation not being carried up into the body of land sufficiently to mark the actual separation to the extent shown on the maps of survey.

"On the 4th of September last B. S. Brooks, attorney for the claimants, filed a petition of Thomas B. Valentine, an assignee for a portion of the claim embracing these tracts, asking a further examination of the matter, with a view to the including them in the survey, on the ground that the *diseño* and evidence connected therewith show them to have been as matter of fact shown on the same, and in the occupation of Read, the original grantee, and necessarily included in the decree of the board.

"At the time of the oral hearing before me I was in some manner impressed with the idea that the parties did not especially press their claim to the peninsula, and would be satisfied with its exclusion. Consequently I did not so thoroughly examine the evidence respecting the actual showing of the same upon the *diseño* as I otherwise should have done.

"Having now made such examination, I am relieved of all reasonable doubt, the contour of the *diseño* and the location of objects adjacent to the land delineated as the claim being found to comport substantially with the fact of the inclusion of the peninsula, while its exclusion would render the map essentially inaccurate and unreliable. The failure to show the full extent of the indentation is explained by the fact that the *diseño* is, as appears on its face, a nautical chart, with the surroundings of the bay marked thereon, and evidently made at low tide by Read, who was a sailor, and whose map or chart of the shore would be most likely to show the extreme out-

line of the land at low water, with a view to keeping his course around the point in the deep, permanent, navigable channel of the bay.

"I am also in receipt of a motion, filed 27th ultimo by J. W. and A. St. C. Denver, attorneys for Peter Gardner, for further modification, so as to exclude the marsh lands above ordinary high-water mark, and an argument in support of the same.

"Mr. Gardner does not allege any specific interest, and the argument relates to the general subject, ostensibly in behalf of a number of purchasers from the State of California under her tide-land segregations, none of whom are definitely named or represented by the counsel. I have, however, considered the general argument in connection with the protest of J. W. Shanklin, the state surveyor-general, and other papers accompanying your letter of November 10, 1882, and must decline to grant the modification prayed for.

"You will accordingly direct the correction of the survey to conform to the decision of July 23, 1882, as herein modified, so as to include the peninsulas heretofore excluded."

In accordance with this decision, the survey of the claim was amended and approved by the surveyor-general of California March 24, 1883, and subsequently approved by my predecessor, Mr. McFarland, on the 19th of April, 1884.

Within the claim as patented to the Read claimants there are about 30 acres which have been patented as public lands, something over 25 acres as a pre-emption cash entry, and the remainder to the State of California as school lieu lands. These tracts are located in section 15, Tp. 1 N., R. 6 W.

The claim, as patented, also embraces several hundred acres of marsh or swamp and overflowed lands, which were segregated under the provisions of the act of July 23, 1866, and most if not all of them sold by the tide-land commissioners for the State of California.

These last-named claimants having petitioned Congress for the protection of their rights, the Senate of the United States, on the 26th of February 1883, adopted the following resolution:

"*Resolved*, That the Committee on Public Lands be, and is hereby, instructed to inquire into and report to the Senate upon the questions herein, relating to the land in Marin county, California, known as 'Corte de Madera del Presidio,' of one square league of land, granted to Juan Read by the Mexican government, and confirmed by the United States courts to the heirs of said Read:

"First. Whether the location of said grant, as lately made or ordered to be made, is in conformity with the original grant and juridical possession.

"Second. Whether the location as thus directed does or does not include land reserved by the United States authorities for military purposes; and if it does include such lands, what quantity.

"Third. Whether the location as thus directed does or does not include lands sold as public lands by the United States, and for which patents have issued.

"Fourth. Whether the location as thus directed does or does not include marsh or swamp and overflowed land belonging to the State of California, and which said state had long since sold and conveyed by deeds to purchasers; and if it does include such lands, what quantity.

"Fifth. Whether there has or has not been made an actual survey of said grant by a surveyor in the field, giving courses and distances, which has received the approval of the Department of the Interior; and if so, by whom was such survey made.

"Sixth. That the said committee inquire into and report all other matters material to a full knowledge of everything relating to said grant and the controversy in connection therewith, examining all the evidence, reports, opinions, and decisions made thereon in the Department of the Interior, the War Department, and Department of Justice, and any information deemed important, sending for persons and papers if necessary, and report the same to the Senate by bill or otherwise.

"And the President is hereby requested to withhold the issuing of any patent for said grant known as 'Corte de Madera del Presidio' until such time as the investigation herein directed can be made and *action had in accordance therewith*."

On the 3d of March following the Senate adopted a resolution continuing said committee until December following, and giving it authority to sit during vacation and to send for persons and papers, &c.

The request embodied in the Senate resolution, that the President withhold patent for the grant until investigation and action might be had, was referred by the President to Secretary Teller, and by him referred to this office March 1, 1883, with instructions to suspend issue of patent until further ordered.

On the 10th of December, 1883, the said committee made a report to the Senate, containing a detailed statement of facts, which, it alleges, "are not disputed by any of the parties to the controversy," and on the 29th of April, 1884, a bill was offered "to authorize a suit to settle the boundaries of the grant known as the Rancho Corte de Madera del Presidio, and for other purposes."

The report on which said bill was founded holds as a conclusion "that the grant to Read was *one of quantity, and for one league of land, and no more, to be found within the boundaries of the juridical possession conferred upon Read by the alcalde*; that the decree of the district court confirmed to Read's heirs *but one league of land, limited to the boundaries of such juridical possession*; that said grant *did not include Peninsula Island nor the lower portion of Point Taburon, nor any of the swamp or tide lands now claimed and which have been awarded to the Read heirs by the latest decision of the Secretary of the Interior*. The committee have no doubt of the correctness of the decision of Attorney-General Devens upon all the material points of controversy. But the decision of the Secretary of the Interior is entitled to great weight, not only on account of the ability of that official, but also because the case was one properly belonging to his Department."

They further report that, in view of the contrariety of opinion held by the Attorney-General and the Secretary of the Interior, also in view of the fact that the United States and the State of California have interests involved, and that settlers went upon the land in good faith, relying upon the validity of the first survey, all matters pertaining to the case can be best "settled by the adjudication of a court."

However, about ten days prior to the offering of the aforesaid bill in the Senate, Secretary Teller, April 18, 1884, addressed this office as follows:

"In my letter to you of 1st March, 1883, you were directed, in pursuance of a resolution of the United States Senate of Feb. 26, 1883, to suspend the issue of a patent in the case of the California rancho 'Corte de Madera del Presidio,' heirs of Juan Read, confirmees.

"It was not intended by said order to prevent an examination by your office of the official survey of said rancho, recognized and adopted by my last decision, when forwarded in proper form by the surveyor-general, and if found to be in all respects regular and correct to indorse your approval upon the plat thereof, as provided by the act of July 1, 1864 (Stats. 13, page 332).

"This course may therefore be pursued by you, but the patent will not issue until the further order of this Department to that effect."

In pursuance of this letter of instructions the plat of survey of the rancho was approved by Commissioner McFarland on the next day thereafter, to wit, April 19, 1884, containing 7,845.12 acres.

While said bill was pending in the Senate the Secretary of the Interior, on the 25th of February, 1885, sent to this office another letter of instructions, to wit:

"In the case of the California rancho Corte de Madera del Presidio, heirs of Juan Read, confirmees, I directed you, on March 1, 1883, to suspend the issue of a patent. Again, April 18, 1884, you were directed not to issue the patent 'until the further order of this Department to that effect.' These orders were made pursuant to a resolution of the United States Senate, dated February 26, 1883, and for the purpose of affording Congress an opportunity to examine said claim, and, if necessary, legislate upon the subject.

"Two years have elapsed since the passage of said resolution and no action has been had by Congress in the matter, and in my judgment there is no good reason why the suspension should longer be continued. The orders above referred to are therefore hereby revoked, and you will proceed at once to carry the claim into patent."

The records of this office show that the patent was issued February 25, 1885, the same date as of the last-named instructions from the Secretary of the Interior.

The bill, although favorably reported by the committee, was not reached prior to the adjournment of Congress, and thus the matter rests.

Having thus given a detailed statement of all the material facts connected with the case, from its inception to its close, they may be summarized as follows:

Read petitioned the governor of California for the place "Corte de Madera del Presidio," and produced witnesses to show that its extent was about a league in length and about half a league in width.

The governor granted him the place asked for, and fixed the extent of it at one square league, a little more or less, and ordered that it be measured by the proper officer, leaving the surplus to the nation.

The grantee afterwards petitioned the alcalde to measure off his land, stating that he had in his rancho *one square league* within certain boundaries.

The alcalde, acting upon his petition, took witnesses into the field and explored the boundaries within which the claim was located, and afterwards proceeded to measure off for him one square league within the boundaries previously ascertained and established and gave him juridical possession of it in due form.

In due course of time the matter was presented to the board of land commissioners and confirmation asked for to the extent of one square league, a little more or less, and the claim was confirmed by said board as the same land described in the testimonial of juridical possession and *measured* to Juan Read under the grant.

The matter was appealed to the proper court, and a final decree rendered that the claim was good and valid to the extent of one square league; *it might be less, but not more than one square league*.

But notwithstanding this seemingly conclusive limitation of the grant to one square league, it would appear that the sole and finally successful effort of the claimants has been to inject nearly a league more of land into it.

This has been done by an ingenious and fairly plausible interpretation of the decision of the board of land commissioners and of that part of the final decree of the court which affirms said decision "in all things."

But the interpretation will not bear inspection; for, to say that the court affirmed the board "in all things," would be to say in effect that it affirmed at least three things which are at variance and irreconcilable.

First. It would affirm the board's boundaries of the grant and its measurements thereof, which are totally irreconcilable.

Second. It would, under certain conditions, confirm the grant *for exactly one square league*, and under other conditions for nearly two square leagues.

Third. It would affirm the land to Read as described in the juridical measurement and as by the boundaries of the board, which are at variance and irreconcilable.

Be this as it may, however, the court, after making this decree in general terms, proceeded to specify in particular terms exactly what it meant, to wit: That the claim is good and valid; that it is "confirmed to the extent and *quantity of one square league*, being the same land described in the grant, and of which" (extent and quantity) "the possession was proved to have been long enjoyed: *Provided*, That the said *quantity of one square league now confirmed* to the claimants be contained within the boundaries called for in the said grant and the map to which the grant refers, and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity."

I am of the opinion that the conflicting theories in this case, both as to location and quantity, would best be reconciled by ascertaining what was in the minds of the board and of the court when they rendered their respective decrees, and I think it is shown beyond peradventure that they looked upon the map or *diseño* before them as representing two distinct tracts of land, designated as "Corte de Madera del Presidio" and "Point Taburon."

What are the facts?

The records show that at the same time the petition of Read was before the board for confirmation of Corte de Madera that of one Limantour was before them for the confirmation of Point Taburon. His claim was for one league, and his *diseño* was before them, showing the line between his claim and that of Read.

On this point I quote from the opinion of the Attorney-General, before alluded to: "Limantour filed his petition February 3, 1853, just six weeks after the Corte de Madera claimants presented theirs. The two cases were pending at the same time. He asked for several tracts of land, and among them for that known and called Punta del Taburon, in extent one square league, and situate at the westward of Raccoon Straits, opposite to the Island of Los Angeles. Said tract is *bounded westwardly* by the waters of the bay of San Francisco, eastward by the waters of Raccoon Straits, northeasterly by the waters of said bay of San Francisco, and northwestwardly by the rancho of Don Juan Read, as will more fully appear by reference to the map or *diseño* attached to the expediente."

"Upon an examination of the *diseño* there cannot be a question that the peninsula called Point Taburon is the land asked for."

"The decision of the board in the Read case was made on the 13th of June, 1854; in that of Limantour about eighteen months after, on the 12th of February, 1856."

"In the latter case the commissioners confirmed to Limantour the surplus lands (Sobranste) on the Point of Taburon, which forms the straits of the Island of Los Angeles, as represented on the map, contained in the expediente to the extent of one square league."

It will thus be seen that the commissioners recognized the fact that after they had given to Read his Corte de Madera claim there was still unappropriated land on Point Taburon.

It is true that this claim of Limantour was afterwards repudiated by the court as fraudulent, but there is no fraud intimated on the part of the commissioners, and it shows conclusively what was in their minds as to the extent of Read's claim with reference to Point Taburon.

Still further: Just two years and a half after the action of the court in the Read case the Limantour case came before the same judge on appeal from the board of land commissioners. In his decision rejecting the claim he takes occasion to say in forcible terms that—

"The singular advantages presented by the bay and harbor of San Francisco for commercial purposes had long before the date of the grants to Limantour attracted the attention not only of foreigners but of the more intelligent of the native population. So early as 1837 General Vallejo had, in a memoir or exposition addressed to the departmental authorities, brought to their attention the great commercial advantages of the bay and its tributaries, and had particularly remarked the importance of the

Point of Taburon and the islands of Alcatraz and Yerba Buena for the military defense of the harbor. The record in this case discloses that just previous to the date of these grants (1843) a plan had been proposed to transfer the custom-house from Monterey to this port (San Francisco) and to establish at the latter naval arsenals and schools."

And further on, in still more forcible terms, he says: "That a governor of California should not only have so widely departed from the ancient and traditional policy of his country with regard to foreigners as to make the enormous concessions which have been offered for confirmation by the claimant, but that he should have granted to him the site of a future town, upon the most important bay of the coast, and added thereto a grant of all the islands and military positions which command the approach or the entrance to the harbor, strikes us at the outset as a circumstance astonishing if not incredible."

The judge also takes occasion to say that the privilege of acquisition of lands by foreigners in the frontier departments could only be granted by "express permission of the supreme government." The records fail to show that such permission was ever obtained by Read.

Now the diseño before the board in the Limantour case shows a line of demarkation between the Read claim and Point Taburon which corresponds approximately with the line fixed by Commissioner Drummond in pursuance of the decision of Secretary Delano, which held that the survey must accord with the juridical possession, and which is conclusive as to the extent of Mexican grants and binding upon both Mexican and American governments. (U. S. v. Graham, 4 Wall., 261; U. S. v. Pico, 5 Wall., 537; Malarin v. U. S., 1 Wall., 290.)

There can be but little dispute as to the initial point of the juridical measurement, and its direction and terminus on the north would seem to be easily determined. Therefore with these established points, and the land known as Point Taburon as a boundary on the southeast, I can perceive no great difficulty in ascertaining in the field "the square league of land which the Corte de Madera contains," forming a square of twenty thousand Castilian varas, which were "regulated" by the measurers, and which Citizen Read was informed "belonged to his rancho." If less than this be found, then he is entitled to that lesser quantity.

This view of the case would bring into apparent harmony the grant, the juridical measurement, the decree of the court, the decision of Secretary Delano as officially interpreted by Commissioner Drummond, under the sanction, most likely, of Mr. Delano himself, and this decision of Mr. Delano is also held by Mr. Teller to be the governing decision in the case.

It is proper, perhaps, to state, in conclusion, that almost every feature of this case has been ably argued by distinguished counsel, whose arguments, as well as the many decisions of this office and the Department, have been carefully examined and considered in connection with the multiplied details of the case.

I am of the opinion that by the present survey and patent the claimants of rancho Corte de Madera del Presidio are wrongfully in possession of over three thousand acres of land; that the United States, the State of California, and settlers in good faith under the laws, are justly entitled to the lands in excess of one square league; and that the survey upon which the patent rests has never been properly and legally executed.

I therefore respectfully recommend that the application be granted.

The papers referred are herewith returned.

Very respectfully, your obedient servant,

WM. A. J. SPARKS,
Commissioner.

REPORT ON THE BILL FOR THE CONFIRMATION OF THE ALLEGED PRIVATE LAND-CLAIM KNOWN AS THE ARROYA DE SAN LORENZO GRANT, NO. 79, NEW MEXICO.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 3, 1886.

Hon. L. Q. C. LAMAR,
Secretary of the Interior:

SIR: I am in receipt, by departmental reference, for report, of a letter dated January 20, 1886, from Hon. O. B. Thomas, of the Committee on Private Land Claims, United States House of Representatives, inclosing H. R. No. 1208, "to confirm a certain private land claim in the Territory of New Mexico."

This bill provides for confirmation of title to the alleged private land claim known as the arroyo de San Lorenzo grant, No. 79, the heirs and legal representatives of Antonio Chaves, claimants.

It is proper to state that the papers presented in the case, copies of which have been transmitted to Congress, are themselves copies only of alleged originals, and that there is no evidence in this office of their authenticity. The proceedings had before the sur-