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H. R. Rep. No. 463, 45th Cong., 2nd Sess. (1878)

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A CERTAIN PRIVATE LAND-CLAIM IN THE TERRITORY OF  
NEW MEXICO.

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APRIL 5, 1878.—Laid on the table and ordered to be printed.

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Mr. BOUCK, from the Committee on Private Land-Claims, submitted the following

REPORT:

[To accompany bill H. R. 1427.]

*The Committee on Private Land-Claims, to whom was referred the bill (H. R. 1427) to confirm a certain private land-claim in the Territory of New Mexico, report thereon:*

That on the 12th day of March, A. D. 1838, Joseph Sutton was engaged in the mercantile business at Santa Fé, N. Mex.; that on that day and year he presented his petition to Manuel Armijo, then governor of New Mexico, wherein he portrayed the poverty and deplorable condition of New Mexico, and represented that the pursuit best adapted to the country and climate was the raising of merino sheep, the establishment of a woolen-factory capable of supplying that Territory, thereby giving employment to many persons then idle, advancing its commerce, and increasing its security; requesting a grant of sixteen Spanish square leagues of land on both banks of the Pecos River, binding himself that within three years after being put in possession thereof he would establish and put in actual operation a woolen-factory, and commence the raising of merino sheep at such rate that in five years at least would supply the consumption of such factory.

On the 14th of March, 1838, Manuel Armijo, not under his official title or seal, executed an informal instrument, wherein in substance it was provided—

That such land is granted to said Sutton “under the conditions expressed in the foregoing petition.” That the justice of San Miguel del Bado, whenever the said Sutton should present himself, should proceed to measure out the land, mark the lines, &c., put and leave the said Sutton in possession, making record thereof, and transmitting a copy thereof to the government.

This is the grant which this bill proposes to confirm. The petition and instrument of grant must be taken together. They constitute only a conditional grant. The terms thereof are plain, and there cannot be a difference of opinion as to the construction thereof.

Sutton was to present himself to the officer designated, have the land measured and marked, a proper record thereof made, a copy thereof transmitted to the government. Sutton to be put in possession. Sutton within a certain time to erect thereon a woolen factory, raise merino sheep, &c.

As this committee is now informed, the governor was authorized to make grants only under the Mexican colonization laws. Under these laws, only for the purpose of settlement and cultivation, he could grant to any one person not to exceed eleven leagues. (United States vs.

Hartnell's Ex'or, 22 How., 286 ; report of Judiciary Committee, No. 71, 40th Congress, 2d session.)

Not any of the terms of this agreement were fulfilled, or attempted to be fulfilled, by either party. The petition of Sutton, the execution of said instrument by Manuel Armijo, were the beginning and the end.

Sutton left New Mexico in 1840. There is no evidence that he has ever been in said Territory since.

Sutton has no claim to said land in law or equity.

*In law.*—He never paid one cent consideration therefor. The only consideration on his part were certain things by him thereafter to be done, which he wholly failed to do. The government received no consideration therefor. The consideration which it was to receive therefor were supposed benefits to be derived from certain things to be done by Sutton thereafter, which he wholly failed to do. The agreement or grant was never completed by its execution by either party. Sutton was solely responsible for its non-execution.

Sutton never presented himself to the officer designated to have the land measured and marked and to be put in possession. The land never was measured or marked. He never was in possession of the same or any part thereof. He never erected or caused to be erected, or even commenced or caused to be commenced the erection of, a woolen-factory thereon. He never commenced the raising of merino sheep.

Not only did said Sutton wholly neglect and fail to perform the conditions of said contract on his part, but he also in fact, judging him by his own acts, wholly abandoned the same. From the time of such pretended grant until his claim twenty years afterward was presented for confirmation, he, by act, deed, word, or otherwise, never made any claim to said land or under such pretended grant.

*In equity:* Sutton has no claims that can entitle him to equitable relief. He never parted with anything. For its non-fulfillment he was wholly in fault. He voluntarily abandoned all claims for twenty years. He has never been wronged. The only consideration was supposed benefits to the Territory of New Mexico, the erection and operation of a woolen-factory, and raising merino sheep. It is not now in his power to give the consideration. New Mexico has wholly lost the same.

What consideration has Sutton given for said land if this grant is confirmed?

He gets eleven leagues of land for nothing.

The law, as laid down in the opinions of the court in the United States *v.* Borsodore et al., 11 Peters, 63 ; *Lafayette v. Blanc*, 3, 4a, An. Rep., 60, is applicable to the questions involved in this case.

Sutton, or rather his attorney (because Sutton did not sign the application, and in fact in none of these proceedings appears in person), anticipated these difficulties, and therefore, in the petition and proofs, attempts to remove the same. (The petition is not verified by Sutton or any other person.) The petition alleges that the grant was made in consideration of money advanced to the New Mexican Government in revolutionary times. It does not state the amount.

The only proof that is offered of this is contained in the following *ex-parte* affidavits:

James Conklins: "I have frequently heard that he had loaned sums of money to the Mexican Government."

Augustus Durán: "I am aware that Sutton, at the close of the rebellion here in 1837, loaned to Governor Armijo a sum or sums of money amounting to about \$1,000."

If full credit is given to this, it establishes nothing. If Sutton ever made such loans there is no evidence to show that they were not repaid

to him by the government. Neither one of these witnesses pretends that this pretended grant was made in payment of or in consideration of any loan or loans.

In direct conflict thereto is the written evidence of the transaction made at the time, to wit: Sutton's petition; the governor's pretended grant. No mention is made in either of any money consideration or reference to any loan.

If the consideration of such grant was in part or in whole in the payment of a loan made, it is probable that both the petition and instrument of grant would have so stated, or at least made some reference thereto.

The petition also sets forth—

That he has never been able to occupy or cultivate said tract of land, owing to the fact that from the date of the grant in 1838, up to the treaty of Guadalupe Hidalgo, in 1848, he was prevented from so doing by the continued hostility of savages, which made all his attempts unavailing.

Of course, the *ex-parte* affidavit of a witness, only one, Antonio Sena, is filed, wherein he swears—

In the region in which the land in question lies the Indians have always been very bad, enough so to prevent the settling of the place. This has been the case, in my opinion, in and since 1838.

It will be observed that the petition only pleads the Indian obstacle up to the time of the treaty in 1848, but this witness swears such obstacles up to the time of the making of his affidavit in 1861. He never attempted to take possession of the land, or to make any of the improvements thereon as he agreed. There is no pretense that there was any change in the status of the Indians after the grant. Even if it was true that Sutton failed to make a settlement, and improvements on account of the hostile character of the Indians, they were so to his knowledge at the time of the grant, and the committee do not regard this as any good reason that he should have this enormous amount of land without ever paying one cent therefor, or making any settlement or improvements thereon. This evidence must be taken, at the least, with great allowance, if not wholly discredited. It is in conflict with the history of New Mexico since its acquisition by the United States in 1848, since which time the United States Government has preserved order and the public peace in that Territory. Troops were stationed in the vicinity of this grant. The map of New Mexico shows that there were other Mexican grants (confirmed) in the vicinity of this land. The proofs returned by the surveyor-general of New Mexico to the office of the Secretary of the Interior, upon the application to confirm said grants, show occupancy and cultivation by such grantees.

There cannot be any question but that the said Sutton not only wholly neglected and failed to comply, or attempt to comply, with the terms of said grant, but that in 1840 he abandoned not only all claims under said grant, but the Territory of New Mexico.

The committee are of the opinion that the said Sutton, or those claiming through or under him, are not entitled to any relief, and recommend that the said bill do not pass.

NOTE.—For the information of those who may hereafter serve as members of the Committee on Private Land-Claims—for claims like these *never die, they endure forever*—the committee would refer them to Ex. Doc. 112, Thirty-seventh Congress, second session; report of the Committee on Private Land Claims, No. 66, Fortieth Congress, second session; report of the Judiciary Committee, No. 71, same Congress, same session.