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*United States v. Nye.*

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There is no statement in the answer of the consideration paid to Love for these certificates, nor of the time, place, and circumstances, of the contract between him and the defendant's testator. It appears that the plaintiff did not direct their sale or transfer, and that they were not disposed of on his account; and if there had been a power of attorney containing an authority to sell, the circumstances would have imposed upon the defendant the necessity of showing there was no collusion with Love. Upon the case as presented the court is constrained to reverse the decree of the Circuit Court, dismissing the plaintiff's bill. But the case is presented in an unsatisfactory manner.

The transaction between Love and the decedent (Hodge) has not been exhibited to the court, although parties fully cognizant of it are before the court.

We have concluded to remand the cause to the Circuit Court, with directions to allow the parties to amend the pleadings, and to take testimony, if they should be so advised.

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THE UNITED STATES, APPELLANTS, *v.* MICHAEL C. NYE.

Where there was a petition for land in California, addressed to Micheltorena, the Governor, which was referred by him to his Secretary, Jimeno, and by him to Sutter, and there is no evidence that these papers, with Sutter's certificate, were ever returned to the Governor, or sanctioned by the authorities of the State subsequently, the evidence is not sufficient to support the claim, although sanctioned by what is called Sutter's general title.

Sutter's general title was this :

In December, 1844, Micheltorena issued a general grant to all persons who had made applications upon which a favorable report had been made by Sutter, and directed Sutter to give them a copy of this order, to serve instead of a formal title.

But this power thus conferred upon Sutter was abrogated by the abdication of the Governor, and, in this case, the power was not executed for more than a year after such abdication. The claim is therefore invalid.

THIS was an appeal from the District Court of the United States for the northern district of California.

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The facts of the case and grounds of the claim are stated in the opinion of the court.

It was argued by *Mr. Hull* and *Mr. Black* (Attorney General) for the United States, and *Mr. Benham* for the appellee, upon which side there was also a brief by *Mr. Felch*, and one by *Mr. Hawes*.

For the United States, it was contended that, under the laws of 1824 and 1828, the Governor had not the power to issue such a grant, and that, when it was issued, Micheltorena was not *de facto* Governor.

For the claimant, it was contended that the Governor had this power; that he was not restricted by the executive regulation of 1828; that the grant took effect *in presenti*; that it was not necessary for the grantee to be named; that the party who was to take could be proved by extrinsic evidence; that in this case the grantee was easily made out; that the record shows Nye to be one of the persons; that it was not necessary for the grant to be delivered to Nye, but that a delivery to Sutter was sufficient; that, under the Spanish law, copies were public writings; and that all the claimants under this general title were a meritorious class.

Mr. Justice CAMPBELL delivered the opinion of the court.

The appellee claimed, before the board of commissioners for the settlement of land claims in California, four leagues of land called "Wylly," situate on the Sacramento river and the Arroyo de los Venados. His evidence consists of a petition addressed to Micheltorena, Mexican Governor of the Department of Californias, in December, 1843, at Monterey, representing that he was a native of the United States; that he had resided in Mexico two years; that he had some horses and cattle, and desired to possess a suitable place for them. The Governor referred this petition to the Secretary, Jimeno, to obtain the proper information on the subject. The Secretary referred the petition to Senor Sutter, commissioner (*encargado*) of the fron-

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tier of the Sacramento. Sutter certifies, on this reference, that the land is now unoccupied. His certificate is dated 29th January, 1844. There is no evidence to show that these papers were returned to Micheltorena, or that he ever saw the certificate. They are produced by the claimant.

The remainder of his evidence consists of what is termed, in the opinion of the board, "Sutter's general title," which bears date the 22d December, 1844, and is as follows:

"Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the *Plana Mayor*, Governor, Commandant General, and Inspector of the Department of the Californias.

"The Supreme Departmental Government being unable, in consequence of its incessant occupations, to draw up, one by one, the respective title papers (*titulos*) for those citizens who have solicited lands, with *informe* in their favor of Mr. Augustus Sutter, captain and judge charged with the jurisdiction of New Helvetia and Sacramento:

"In the name of the Mexican nation, I do by these letters confer upon them and their families the property of the lands designated in their respective applications (*instancias*) and maps, (*disenos*), upon all and each one who have solicited (the same) and obtained the favorable *informe* of the aforesaid Mr. Sutter, up to the day of this date—so that nobody shall have power to question their right of property, a copy hereof, which Mr. Sutter shall hereafter give them, serving them for a formal title, with which they will present themselves to this Government, in order to extend the same title in due form and on stamped paper.

"And that it may remain firm and stable in all time, I give this document, which shall be recognised and respected by all the authorities, civil and military, of the Mexican nation, in this and the other Departments, authenticated with the military and governmental seals in Monterey, this twenty-second day of December, one thousand eight hundred and forty-four

"MICHELTORENA."

"I certify this is a copy.

"*New Helvetia*, June 8th, 1846.

"J. A. SUTTER."



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The circumstances under which this order was executed appear from a deposition of Sutter to be found in the record. He says: "That this document was delivered to him at his request. That the Governor was blockaded at Monterey, and would not deliver titles to the American and other immigrants who were desirous of obtaining lands, and he (Sutter) advised him to give them titles at once; and that the Governor had not time to do it in any other way. He never knew that the Governor was blockaded until the courier came with the paper above referred to." He further testifies that the mode he had adopted in giving titles to individual settlers was, to deliver certified copies of this decree of Micheltorena to those who had rendered meritorious services to the country, and who applied to him. That Governor Micheltorena, at his request, made a speech to the soldiers, and promised lands to all those whom he (Sutter) should recommend as worthy to receive them. The general title was issued before the men marched from New Helvetia. He testifies that the lands were never measured, and there was no formal delivery of possession. There were no surveyors or means of measurement. We have examined with particularity the Mexican laws of colonization in the case of the *United States v. John A. Sutter*, at this term, and it is not necessary to do so in this case. It is evident that this "general title" had no reference to those laws, as none of their requirements were considered when it was made. It is questionable whether the previous application of the claimant was before the Governor, or under the control of his subordinates, at its date. The general title was sent to Sutter, to enable him to raise a military force to assist the Governor, who was confined to his capital by the forces of the insurgent chiefs, who had determined to expel him from the country. His ability to comply with the expectations it encouraged depended upon the success of his efforts to maintain his authority in the Department, and to secure the sanction of the Supreme Government to the extraordinary measures he had adopted for that purpose. The decree has no signification except as an appeal to Sutter, and the persons under his influence, to come to his relief, and as a promise to them that he

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would make a liberal distribution of land among them, in case they should faithfully and successfully assist him in his extremity. But the issue of the war was fatal to Micheltorena, who was compelled to leave the country; and Sutter, his lieutenant and partisan, was made prisoner, and was required to abandon his chief, and to promise fidelity to his enemies. Whatever power was conferred upon Sutter was abrogated then, if not before. The execution of the power conferred, if any, in favor of this claimant, did not take place for more than a year after the abdication of Micheltorena.

The opinion of the court is, that the claim of the appellee is invalid, and the decree of the District Court is reversed, and the cause remanded, with directions to that court to dismiss the petition.

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THE UNITED STATES, APPELLANTS, *v.* NATHANIEL BASSETT.

Where there was a petition for land in California to Micheltorena, in July, 1844, but no final action was taken upon it except under Sutter's general title, (see preceding case of *United States v. Nye*,) the claim is not considered to be sufficiently established.

This was an appeal from the District Court of the United States for the northern district of California.

The facts are stated in the opinion of the court.

It was argued by *Mr. Hull* and *Mr. Black* (Attorney General) for the United States, and by *Mr. Blair* and *Mr. Volney E. Howard* for the appellee.

The case, like the preceding one of *Nye*, depended upon the validity of Sutter's general title, and the same points are applicable to both.

Mr. Justice CAMPBELL delivered the opinion of the court.

The appellee submitted to the board of commissioners appointed under the act of Congress of the 3d of March, 1851, (9