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transaction between defendants and Vanderbilt out of rule of *caveat emptor*. I am of opinion, therefore, that the decree of the Circuit Court should be affirmed, except as to two-twentieths, which I think were the property of Vanderbilt, and one-twentieth the property of Frank Johnson, which, with the other seven twentieths held by Chenery, passed to defendants by Vanderbilt's sale.

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1. In a California land case, the production of a fraudulent and false certificate of approval signed by the Governor and Secretary who signed the grant, and proved by the same witnesses in the same way that the grant was proved, affords (in the absence of explanatory evidence,) strong ground for believing all the title papers to be fabricated.
2. Where the date of a grant has been altered, while it was in the hands of the claimants and is produced to the Court without evidence, to show how the alteration came to be made, this Court cannot confirm the title.
3. The case of *U. S. vs. West's Heirs* reviewed, the facts stated from the original record, and all its features shown to be strikingly different from this case.
4. The fact that an *espediente* is found among those indexed by Hartnell in 1847-8, is no evidence that it was made at the time of its date.

This was a land claim originating before the Commission appointed under the Act of March 3d, 1851, and coming into this Court by appeal from the decree of the District Court for the Northern District of California.

The petition of John D. Galbraith, John Sime, Richard H. Sinton, and David T. Bagley asserted their right to a tract of land containing four square leagues in Sonoma, called the *Bolsa de Tomales*, bounded by lands of Juan Viojet, Bartolo Bojorques, the bay of Bodega and the creek (entre) of Tomales, under a

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grant from the Governor, dated 12th June, 1846, to Juan N. Padilla, whose title by sundry mesne conveyances became vested in the petitioners.

The title papers consisted of 1. A petition for *four* square leagues, signed by Padilla, addressed to the Governor and dated at Monterey, May 14th, 1846. 2. A marginal order of the Governor, dated Los Angeles, May 20th, 1846, directing the Prefect of the Second District "to report about the state of this land with all the particulars concerning the same," and declaring that "when the return is made the Governor will resolve." 3. A certificate of the Prefect (Manuel Castro) dated May 10th, 1846, that Padilla had made application for the land; that the *espediente* was in that prefecture; and that the reports show the land to be vacant and grantable. 4. A decree of concession dated June 12th, 1846. 5. A *borrador* of a grant for *five* leagues, dated same day. 6. The grant or *titulo* alleged to be the original and bearing the date of February 12th, 1846, signed by Pio Pico as Governor, and attested by Moreno as Secretary. 7. A certificate dated 14th June, 1846, and signed in the same way by Pico and Moreno, that the grant had been confirmed by the Departmental Assembly.

The last two of these papers were produced by the claimants from their private custody; the other five were brought from the Surveyor-General's Office, where they were found filed, arranged and deposited in the form of an *espediente* with a class of documents known as being comprised in Hartnell's Index. An account of that Index will be found in *United States vs. Knight's adm'rs.*, (1 Black, 227.)

Parol evidence was given by the claimants to prove the handwriting of Padilla to the petition, of Castro to the *informe*, of Pico to the order of reference, and of Pico and Moreno to the grant and certificate of approval. Moreno, the Secretary, was himself called, and he testified that the signatures to the grant and to the certificate of approval were genuine and made at the time those documents bear date. On cross-examination, he said that the grant appearing to be dated on the 12th of February, he could not have signed it then, for he was not in office until

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afterwards, but he must undoubtedly have signed it before the 4th of May, and he was convinced that he did so.

The word *Febrero* was plainly written as the date of the original grant; all copies of it in the record have it so; and every official translation gives February as the date. The claimants, themselves, at first, recited it as of that date in their petition. But it appeared from the remarks of the Land Commission and otherwise, that the date had been altered by writing *Febrero* over some other word, probably *Junio*. Of this alteration no explanation was given to show when, how, or by whom it was made. The paper did not appear ever to have been in any custody but that of the claimants themselves, or the persons from and through whom the title was deduced.

The certificate of approval was shown not to be true by the journals of the Departmental Assembly. It was made certain by these records that no such grant as this to Padilla was ever laid before that body. But there was no evidence in the case besides that of Moreno, to show whether the false certificate was actually made by the Governor and Secretary or by some other person who counterfeited their signatures.

Mr. Hopkins, clerk in the Surveyor-General's Office and keeper of the archives, was a witness in the cause, and gave it as his opinion that the *espediente* was genuine. His testimony proved that this *espediente* was numbered 571 on Hartnell's Index, and that the grants in numbers 569, 570, 572, and 573, as well as some others indexed by Hartnell, were originally dated on days subsequent to the conquest, and afterwards altered to other days before the conquest. He regarded these latter grants as fraudulent.

Evidence was given of the occupancy and use of the land by the claimants. It did not establish any clear, notorious or well settled possession previous to the conquest or at any time soon afterwards.

The Land Commission decreed the confirmation of the title with strong expressions of reluctance and much doubt concerning its honesty. That decree was affirmed by the District Court from whence it came up to this Court by appeal where

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the decree of the District Court was reversed and the cause remitted with directions to take further evidence, (22 How. 89). Much of the evidence referred to above was taken after the cause went back.

The District Court upon the whole evidence considered and adjudged the claim to be well founded in law. The decree in accordance with that opinion was brought to the Supreme Court on this appeal by the United States.

*Mr. Black*, of Pennsylvania, and *Mr. Gillet*, of Washington City, for the United States.

The title is not proved. The claimant has produced certain witnesses who swear that in their opinion, the signatures to the several papers, are genuine. This has often been held, not only insufficient and unsatisfactory, but inadmissible. The testimony of Moreno will not help them, because he is not a credible man, and because he has told an incredible story and for the still further reason, that his statement, if believed, is in conflict with the whole theory of their case.

There is no record of the title, and on this point the case in every material fact and circumstance, is precisely that of Knight, decided at the last term. The *espediente* is among those arranged in 1847-8, by Hartnell, who gathered his materials from the custom-house floor and from other places no better. He did not know a true title from a false one—had not the means of knowing—but picked up, put away and indexed whatever he got his hands on.

The reasons which induced the Court last year to reject that index, are strengthened a hundred fold by the evidence which comes up with this record. The testimony of Captain Halleck, showing how the papers were got, did indeed prove that they were just as likely to be true as false; but here we have evidence from the lips of Mr. Hopkins, that some of them are known to be false. The fact is established by affirmative proof that this very *espediente*, No. 571, lies in the centre of five: the two others on each side of it, are plainly fraudulent. That settles the character of the index, if anything can.

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But these title papers bear upon their own face sufficient evidence to insure their condemnation.

The informe is dated ten days before the order of reference. It is barely possible to suppose that this might be an innocent blunder. But the Court is certainly bound to presume nothing in favor of a title which presents such an anachronism. The language of the order and the declaration that *when* the prefect *shall report*, the Governor *will resolve* shows that the report did not exist then ; if it was made afterwards it is falsely dated, and if falsely dated it is a fraudulent paper.

The grant is dated three months before the petition. Now this date is either true or false. If it be true, the title is void ; for on the principle of *Cambuston's case*, the Governor had no power to make a grant without a petition. The claimants seeing this difficulty and seeking to avoid it got into another by asserting that the date has been altered. By whom was it altered ? By themselves of course, for it never was in any other custody. How was it altered ? Fraudulently ; for that is the presumption of law, when there is no explanatory evidence. It is in vain to say that the date of a deed is not material. Of such a paper as this it is the *most material* part. If it was made before the 14th of May, or after the 7th of July, it is a nullity. It is highly important, therefore, to know whether it was or was not executed at some intermediate time. The claimants did not permit the paper to speak for itself, but obliterated the name of the month and wrote another word over it, so that the true reading can never be known. After having themselves falsely and designedly spoiled the evidence, covered up the truth and put it out of your power, to ascertain when it was made they ask you to supply a date suitable to their interests by mere presumption. If all presumptions were in favor of the spoiler, and if Courts could act on the principle that suitors must be encouraged in falsifying their documents, then the reasonings of the claimants' counsel might have a chance of success ; but the rule is directly the reverse.

There is another manifest and palpable fraud in those papers

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The certificate of approval, is either a forgery out and out, or else it was made by Moreno and Pico with a knowledge that it was false. The claimants' counsel will not choose either horn of this dilemma; but they cannot escape. They introduced the certificate in evidence as a genuine paper, called Moreno to prove it, and he swore to its execution as he swore to the other papers. They gave it up only when the truth as proved by the journals became too strong to be faced down. If Moreno and Pico actually signed it, what is the value of other papers signed by them and proved in the same way? If their names are counterfeited, what shall be the moral status of the party that got it done and used it?

Mr. Hopkins' testimony to a *fact* is not to be disputed. But his *opinion* is out of place on this record. He has assumed to give judgment in the cause, and that judgment is manifestly erroneous, being unsupported by evidence, and contrary to the well settled law of the land.

The case of *West's Heirs* is not to the point. There the title was admitted to have been made for *one* league; but after the conquest, somebody (not the claimants) changed the grant so as to make it read for *two* leagues; and the question was whether this attempt to enlarge the grant destroyed it altogether. The Court answered in the negative, and that settled a *rule of property*. But here we are dealing with the *law of evidence*. The claimants can support their title only by proving that a grant was issued *after* the date of their petition, and they produce the original which is dated *before* the petition. To mend this fatal defect they assert that it was altered by themselves. This is certainly the first case on record of a party producing a paper which vested in him the only title he pretends to have, and asking a decree not because the paper is genuine, but because he alleges it to be a forgery.

A diseno or map is a necessary part of every land espediente, and is distinctly required by the regulations of 1828. There are cases in which its absence has been excused; but not cases like this.

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*Mr. Ashmun*, of Massachusetts, and *Mr. Hill*, of Missouri, for the claimants.

The possession of the grantee is well made out, and sufficient of itself to give his alienees a right to be confirmed in their title. *Alviso's case*, 23 How., 318; *Wilson's case*, 1 Black, 267; *De Haro's case*, 22 How., 293.

The Court is bound to act upon principles of equity, and therefore to confirm the claim according to the possession although a suspicious criticism may be able to raise a doubt concerning the completeness of the *espediente* and the grant.

A map was not necessary in this case. The description of the land was perfect without one. The external boundaries could not be made more distinct by a diagram on paper.

*Knight's case* is not authority against the validity of this *espediente* or against the truthfulness of *Hartnell's index*. *Knight's espediente* had many infirmities and irregularities, which are not found in *Padilla's*. It had no *informe*, nor was any original grant produced, and its genuineness was impeached by proof that *Knight* was not in a condition to receive such a grant.

Nor is it just to deny the integrity of the *index* because there are in it some *espedientes* besides that of *Knight* which are false *Hartnell* found them, and though they appeared on their faces to be altered, he did not presume to decide upon the legal effect of those alterations. The *index* is conclusive on the United States as proof that the *espedientes* all belonged to the Mexican archives, but the value of each one must depend on the special circumstances connected with it. *Knight's case* justly fell by its own demerits.

The value of *Mr. Hopkins' testimony* can hardly be over-estimated. He is (and the counsel on the other side acknowledge it) a most faithful public officer of twenty years experience, an upright man, and every way a credible witness. He pronounces this *espediente* to be genuine. And there is other evidence besides his to prove the handwriting of the several signatures.

The alteration of the grant by changing the date is immaterial; it would be as valid if made in June as in February. The

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records show that it was actually made in June; the title was vested before the alteration took place, and the alteration could not operate as a forfeiture. It is not known when, how, or by whom the alteration was made, but it is not important since the archives and other evidence *abundant* show that a good title existed before the conquest. The case of *West's Heirs* is directly in point, and its authority is conclusive.

The certificate of approval is said to be a forgery. This cannot defeat the claimants' right. If it were genuine, its production would be unnecessary. That principle is established in *Fremont's case* (17 Howard), and by the three cases of *Cruz Cervantes, Vaca*, and *Larkin*, in 18 Howard. A good title having been proved cannot be divested by proof that another document offered in support of it is forged. *Lloyd vs. Panningham*, (16 Vesey, 59).

Mr. Justice NELSON. This is an appeal from a decree of the District Court of the United States for the Northern District of California.

The case presents a California land claim filed before the Board of Commissioners April 29, 1852, by the assignees of Juan N. Padilla, to whom the original grant as alleged was made of a tract of land containing five square leagues, 12th of June, 1846, situate in the Department of Sonoma, and known by the name of "Balsa de Tomales."

The claim was confirmed by the Commissioners, and on appeal by the United States to the District Court the decree was affirmed. Afterwards an appeal was taken to this Court, where the decree of the District Court was reversed, and the cause remitted to that Court for further testimony. The case will be found reported in the 22 How., p. 89.

This Court, after referring to the grounds of objection to the claim, namely, the unsatisfactory proof of any possession or occupation of the tract, the alteration of the date of the original grant of the title in form, which was in the hands of the grantee and his assigns, and the questionable character of the certificate of approval by the Departmental Assembly produced by the

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claimants, expressed the opinion, that, in consideration of the doubtful character of the claim and entire want of any merits upon the testimony, the decree below should be reversed and the case remitted for further examination. Since then much additional evidence has been taken by both parties before the District Court, which Court again affirmed the decree of the Commissioners, and the case is now here on an appeal from that decree.

The expediente produced before the Commissioners and Court below, contained the petition of Padilla, dated Monterey, 14th of May, 1846, the informe dated at Los Angeles, 20th of May, the certificate of Manuel Castro that the land is vacant and grantable, dated at Monterey, 10th of May, and the title in form dated at Los Angeles, 12th of June following, the latter signed by Pio Pico, the Governor, and Jose Matias Moreno, Secretary. A certificate of the approval of the Departmental Assembly, signed by the same Governor and Secretary, dated at Los Angeles, 14th of June, same year, was also filed with the papers, together with the original grant which had been delivered to the petitioner, Padilla. This instrument is dated at Los Angeles, 12th of June, 1846, altered to 12th of February of the same year.

The genuineness of the signatures of the Governor and Secretary to these evidences of title is proved by several witnesses, and, among them, by Moreno himself, the Secretary. The fact upon the proofs cannot well be denied, and if there was nothing else in the case affecting the integrity of this title, we could concur with the Court below in confirming it. But two objections are taken to these papers, which, in our judgment, have not been satisfactorily met or explained. The first is, that the certificate of approval by the Departmental Assembly is a fabrication. The records of that Assembly, which are in good condition, prove the fact, and which is admitted in the brief of the counsel for the claimants. It was also so held by the Court below. Now, the signatures of the Governor and Secretary to this certificate are proved to be genuine with the same strength of evidence as they are to the document of the formal title. Mo-

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reno testifies with the same fulness to the signatures in the one case as in the other. The fabrication of this certificate, therefore, is not the work of a stranger or of a party interested, but of these functionaries themselves. As their signatures to it are genuine, these persons are necessarily implicated in the fraud, as the certificate could not have been fabricated without their participation. There is no escape from this conclusion. It might have been met by proof that their signatures were forged. This would have relieved them and the title from much of the suspicion and doubtful character resting upon the title, though not entirely, as the use of fraudulent papers by the claimant in support of a claim cannot but excite apprehension and caution. But no attempt was made to prove that these signatures were forged. On the contrary, every witness called and examined in respect to them testifies to their genuineness, and as we have seen, Morena himself, one of them.

This paper was regarded by the public authorities in California as well as by the petitioners for a grant of a portion of the public lands as very important in the perfection of the title. The grant in form by the Governor, in express terms, is made "subject to the approval of the most excellent Departmental Assembly." Such is the condition annexed, according to the law of 1824, and the regulations of 1828. This Court has dispensed with the condition in favor of these grants, which were in all other respects unobjectionable.

This paper, therefore, thus fabricated by Pico and Moreno while engaged in making the grant of the land in question to Padilla, cannot but connect itself closely with all the other documentary evidence of the title, especially that portion of it to which their names were essential, namely, the grant of the title in form.

Of the documentary evidence of title, under the Mexican laws, the approval of the Departmental Assembly was next in importance to the grant itself. If it must be admitted that these functionaries have been guilty of fabricating one of the documents to which their names are attached in making out the grant, what assurance have we from the mere fact of the

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genuineness of their signatures that they have not fabricated the other. Dates of time and place afford no protection, as these can be fixed to the document at the will of the parties. This certificate of approval bears date city of Los Angeles, 14th June, 1846. But these could be fixed to the paper, if fabricated, at any time after it purports to bear date, as well as at the date itself. So as it respects the time and place fixed to the document of the formal title, which purports to have been made at the same place and on the 12th June, 1846. If fabricated, like the certificate of approval, the date or place affords no security of its genuineness. We have no record to detect the fraud, if committed, in respect to the title in form in this case as we have in many of these grants. The usual memorandum is made at the foot of the grant by Moreno, the Secretary, as follows: "A note has been taken of this dispatch of the Supreme Government in the appropriate book."

Now, if a note of this grant had been found in the book of records, the *Tomada razon*, as it is called, of this date, as is certified by the Secretary, it would have been entitled to great weight in relieving the title of much of the suspicion resting upon it. The counsel for the claimants insist that the proof furnished on this point, under the circumstances and condition of the country at the time, should be regarded as equivalent. The Mexican records of these grants which were at the city of Los Angeles in August, 1846, were placed by the Governor in the keeping of one Vignes, in boxes, a short time before he fled from that place, which was on the 10th of that month. These archives came into the custody of Colonel Fremont, and were carried to Sutter's fort, and kept there till 1847, when they were removed to Monterey, and were placed in the charge of Mr. Hartnell, who made an index of the *espedientes* found among the archives, but not noted in any book. This grant to Padilla was found among them and indexed by Hartnell. Now, the argument is, that it must have been among the Mexican archives in the possession of Pico at the time he placed them in the hands of Vignes when he left the city of Los Angeles. This may be so. But, Pico, Moreno, M. Castro, and Padilla, whose names are connected with

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the grant, were at the city of Los Angeles from the 22d of July till the 10th of August, when they fled, within which time this grant could have been made and placed among the archives, and during which time the Governor had no authority to make any grant. This Government was in possession of the country as early as the 7th of July, 1846. It will be seen, therefore, that the fact of finding the *espediente* among the Mexican grants in the hands of Hartnell affords no evidence that it must have been made at its date. We agree, if it was not connected with the other document of title, an admitted fabrication, committed, if we believe the date, two days after the date of the grant, the above facts would be entitled to consideration. But, as we have seen, the fabrication of the grant was as practicable by these parties as that of the certificate of approval consistently with the fact of the deposit of the *espediente* among the archives at Los Angeles before their removal to Sutter's fort.

It is worthy of remark in this connection, that the certificate of approval and the title in form, both came from the hands of the claimants, and of course both had been delivered by the Governor and Secretary to Padilla, the grantee. They were filed before the Board of Commissioners on the 28th March, 1853, and no explanation in respect to the certificate was given or attempted, either before the Board or the Court below.

The next objection to the documentary evidence of title is the alteration of the date of the title in form from 12th June, 1846, to the 12th February preceding,—the word February over the word June. The only attempt to explain this alteration is found in the testimony of Danglada, a witness for the claimants. He testified before the District Court that the papers were delivered to him by Padilla in the month of December, 1850, for the purpose of making a sale of the lands. That at this time they had been mortgaged by Luco, the owner, to Padilla, and both were interested in the sale. The witness acted as the agent of both. On his examination in chief he testified that the date of the paper was not altered when it came into his hands, nor while in them, and that the alteration must have been made afterwards. But, on cross-examination, his attention was called to a deed

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executed on the 1st March, 1852, by him, as attorney for others, of this tract, in which is recited the grant by Pico to Padilla as of the date of 12th February, 1846, and he was asked to explain this date, when he was obliged to admit that he might be mistaken. This is all the explanation that has been offered.

The case of the *U. S. vs. West's Heirs*, (22 How., 315,) has been referred to as an instance of the confirmation of a Mexican grant which was subject to the imputation of a forgery in the alteration of the title in form. The alteration consisted in enlarging the grant of one and a half leagues to two and a half, "un sitio to dos sitios." The grant was made to West in 1840. He had been in the possession and occupation of the ranch from 1838 till 1849, when he died. Had made extensive improvements in buildings and cultivation; among other improvements a grist-mill and cultivation of two hundred acres of grain and vegetables, besides a stock of two hundred horses and two thousand cattle. The case is not fully reported in the 22 How., and the above facts are obtained from the original record. The attorney general admitted the grant when made was genuine and honest, and that the only objection to it was the alteration. The papers, after the death of West, came into the possession of the widow and were necessarily entrusted to other hands for the purpose of procuring a confirmation. There was no evidence tending to prove that the alteration took place while in the hands of West, and taking the admission of the government that the original grant was genuine and honest, in connection with the possession and improvements, this Court concurred with the Court below in the confirmation of the league and a half. The features of that case upon the evidence were strikingly different from the present one.

There has been no possession or occupation in this case deserving of notice in aid of the title, or as evidence of any merit on the part of the grantee. Indeed, the weight of it is decidedly against a possession beyond that in common with the owners of other ranches in the neighborhood. The grant was made, according to its date, only twenty-five days before the United States took possession of the country. Padilla had a

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previous grant of the ranch Roblar de la Miseria, in the same neighborhood, made on the 25th November, 1845, only a few months before the application for the one in question. Some of the witnesses confounded the occupation of this tract for that of the Balsa de Tomales. Another difficulty in the way of yielding our assent to the integrity of this grant is, that as early as the last of May or the first of June, 1846, Padilla was at Sonoma, or in that neighborhood, some five hundred miles from Los Angeles where this grant purports to have been made. He was at the head of a party of Californians in the disturbances which about that time broke out between them and the American settlers, and was charged with having participated in the murder of two of them. He fled about the middle of the month to the south side of the bay of San Francisco and joined the forces of Castro, the commander-in-chief of the Californians; and, according to the evidence of Morena, the Secretary, he came down with Castro and met Governor Pico and party at Santa Marguientta, which was some one hundred and fifty miles below Monterey. Castro and Pico united their forces and passed on to Los Angeles, where they arrived on the 21st or 22d July, and remained till 10th August, when they fled South. It is clear Padilla could not have been at Los Angeles at the time the grant purports to be dated, and ground for strong doubt as to his being at Monterey May 14, at the date of the petition. All the parties to these documents of title, Pico, Moreno, M. Castro, and Padilla, were with the forces of Pico and General Castro at Los Angeles during the nineteen or twenty days they remained at that place. It was within their power to have made this grant while thus remaining together; and, as it is admitted that the certificate of approval of the Departmental Assembly was fabricated by two of them, we cannot but distrust upon all the evidence that the *espediente*, including all the papers relating to the title, was fabricated in the same way and at the same time.