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from the Secretary of the Treasury before the service of process upon him in this suit, in respect to which payment and the effect thereof the counsel for the said Birch and Murray, and for the said Hardenberg respectively, desired to be heard, it was ordered that time for such hearing should be given to the said parties.

Both the complainant and the defendants had liberty to apply for further directions in respect to the execution of the decree.

ROLAND v. UNITED STATES.

A grant of land in California, purporting to have been made by Governor Pio Pico, on the 2d of May, 1846, and insufficient on the archive papers, decided not to be helped by papers produced by the claimant; these being found by the court, upon the evidence in the case, not genuine, but an afterthought, and produced in court only because the growth of California had stimulated the cupidity of speculators to experiment with fragments of title-papers left unfinished by Pico, and which were gathered up by our officers on the conquest of the country.

APPEAL from the District Court for the Northern District of California, respecting a land claim, under the act of March 3d, 1851. The grant purported to have been made on the 2d of May, 1846, by Pio Pico; Moreno being secretary *ad interim*; this court having decided that, after the 7th July, 1846, Pico had no powers as governor. The claim was for "eleven leagues of land in California, at the junction of the San Joaquin and Stanislaus rivers." The expediente was obtained from the archives, and was among the papers of which Hartwell made an index. It consisted of a petition, marginal order that the title issue, decree of concession, and the borrador, or draft, of the title, to be given to the party interested. It differed from other expedientes in this: that there was no report, no *diseño*, no approval by the Departmental Assembly, and because the whole proceedings were begun and consummated on the same day. This document not being enough to establish the title, the claimant, in order to make it complete, produced from his own custody

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the titulo which annexed conditions to the grant; a petition asking for further time to comply with these conditions; the order of the governor granting the request, and a certificate that the Departmental Assembly approved the grant.

In the borrador, the land was described "as eleven leagues, situated on the banks of the rivers Stanislaus and San Joaquin," corresponding with the description given in the petition. The titulo, issued on the same day as the borrador, directed "that the measurement of the eleven leagues shall be on the banks of the Stanislaus, of the width of one league, commencing where the two rivers run."

The signature, "Pio Pico," to the grant in this case had a different aspect, in certain particulars, from other signatures to public documents of the same governor; especially in the letter P.

Pico and Moreno were examined as witnesses. Pico testified that he believed that the signature to the grant, purporting to be his, was his; and he thought that the one purporting to be Moreno's was Moreno's. As to the one purporting to be his own, and the difference between it and some signatures admitted, he said that he "was accustomed to sign his name sometimes in one way and sometimes in another." He could not tell whether he had signed any document at a date different from that which the document bore, but he believed that he had not; he had no recollection when he signed this document; he believed that he had made no grants after 1846, but did not remember when, in 1846, he ceased making them. He might have made, elsewhere than in Los Angeles, grants dated as if there made; but he was positive that he signed none of the papers in this case in 1847 or 1848. He had no recollection of anything connected with this particular grant; and "none whatever" of Roland's application. He knew Roland, however, and had known him since 1840; thought that he was naturalized; he remembered, at all events, that he had married a Mexican woman; there was no particular reason, he testified, for granting so much as eleven leagues to Roland, "except that he was an honest man, had a family and considerable prop-

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erty." The law, as he considered, imposed no limits; but eleven leagues was his limit in fact.

Moreno testified that he believed the signature of Pico to be genuine. He remembered that Roland "petitioned for lands" during the short time that he, Moreno, was secretary, and that they were granted to him; but he did not recollect the time when, or the circumstances under which the grant now set up was made; but he stated that, in 1846, the country was generally in a state of agitation, and that great confusion prevailed in all the public offices. The record contained a certificate from Pio Pico, that the Departmental Assembly met on the 4th day of May, 1846, and approved this grant. It appeared, however, from the journals of the Departmental Assembly, that the earliest meeting in May was on the 8th of May, *when minutes of the 29th of April were read and approved.* Pico, in his testimony given, accounted, or attempted to account for this by saying that at that time "there was great informality in all public affairs, and that it might have been that the notes of the meeting of the 4th were lost or mislaid; that they might have been left on the table, and only the draft of the 29th April been delivered to the secretary, to be copied into the book." He had no recollection that the grant was approved by the Departmental Assembly, or of his giving a certificate that it had been; nor any reason whatever for believing that it had been, except his seeing what he was positively sure was his own certificate that it was.

Some slight omissions and discrepancies were also pointed out in the journal.

It was admitted by an agreement of record, as a fact, that on the 22d day of July, 1845, Governor Pico granted to Roland and one Julius Horkman, four leagues of land, and that the claim had been prosecuted and confirmed. And that on the 6th day of May, 1846, he granted to Roland and one Louis Avenas, the sobrantes of certain ranchos, to the extent of nine leagues. This grant had been presented for confirmation, and was now pending in the District Court of California.

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The District Court rejected the claim, and the claimant now appealed here; the question at issue being whether the title here set up was a genuine title to land in California acquired under Mexican rule, which this government was under obligations to protect?

*Messrs. Carlisle and Black, for the appellant, citing United States v. Johnson.**

Mr. Evarts, Attorney-General, and Mr. Wills, contra, who relied largely on White v. United States,† and Pico v. Same.‡

Mr. Justice DAVIS delivered the opinion of the court.

The haste and recklessness, to use no harsher term, with which this grant was made, cannot but suggest grave doubts of the *bonâ fides* of the transaction. It nowhere appears that Roland had any claim on the bounty of the Mexican nation, or ability, or intention to occupy so large a tract of country; and yet Pico, near the time when power passed from his hands, in the midst of civil commotion, disregarding the customary and established modes of making concession of the public domain to meritorious persons; without an informe; without a map; without any inquiry whatever; grants to him eleven leagues of land (the maximum quantity grantable to a single person) in a remote wilderness, occupied by hostile Indians, and of which so little was known that the best description that could be given of it was, that it was situated on the banks of the San Joaquin and Stanislaus rivers.

That the plain requirements of the Mexican colonization laws were violated in these proceedings, is very apparent from the frequent decisions of this court in this class of cases; but it is unnecessary to examine the effect of this departure on this title, if it were genuine, because in our opinion it has no validity. And it is not the first time, in the history of California land cases in this court, that grants made at or

* 1 Wallace, 326.

† Ib. 660.

‡ 2 Id. 279.

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near the time of the one in controversy purports to be made by Governor Pico, and countersigned by his secretary, Moreno, have been held not to be genuine.*

The struggle in this case, as in others of like character, is to make up by parol proof for a deficiency of record evidence. Pico and Moreno have been examined in support of the title, but their testimony is singularly unsatisfactory. Pico has no recollection of making the grant, nor, indeed, of Roland's application, but is able to identify his signatures. Although he knew Roland—that he had married a Mexican woman, the number of his children, and the state of his property—yet he cannot recollect that he donated to him an immense tract in a remote part of the country, and broke through all the forms of law in order to do it quickly.

A transaction of this magnitude, where the favored party was known, is not apt to be forgotten, and to say the least on the subject, this want of memory on Pico's part, is in itself a circumstance of great suspicion that the grant was never made. Moreno's memory, if somewhat better than Pico's, is not enough so to clear away the difficulties from this title.

It is a little singular, if Pico's signatures to the papers produced by the claimant are authentic, that they should differ so materially from his signatures to public documents of that date. In *Luco v. The United States*,† the same differences existed, and the court adopted the conclusion that they were not genuine. If these inequalities in Pico's signatures create distrust as to their genuineness, the different phraseology in describing the land in the borrador, from that used in the titulo, increases the distrust in the authenticity of this title.

In the borrador the land is described "as eleven leagues, situated on the banks of the rivers Stanislaus and San Joaquin," corresponding with the description given in the peti-

* Knight's Case, 1 Black, 227; Galbraith's Case, 2 Id. 394; Luco's Case, 23 Howard, 543.

† 23 Howard, 543.

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tion, while the titulo, issued on the same day as the borrador, directs "that the measurement of the eleven leagues shall be on the banks of the Stanislaus, of the width of one league, commencing where the two rivers run." On the theory that the borrador and titulo were actually signed on the same day, how did it come to pass that the designation of the tract is so much more particular in the one than in the other? It will be borne in mind that Pico and Moreno have no definite recollection concerning this grant, and yet in this most important point the title-paper issued to the claimant differs essentially from the one which forms part of the expediente. Why think of the *necessity* of this change of description, when both documents were made on the same day, and form part of the same transaction? The change of description cannot be explained on the hypothesis that both papers were prepared and executed on the same day; but it is easily understood, if the titulo was prepared at a subsequent date, when the parties interested could see that a more definite description was wanting, than that which the borrador furnished.

But there are much graver difficulties affecting this title than those which we have noticed.

The claimant, in attempting to prove too much, has established the falsity of his title. This court has frequently decided, that the approval by the Departmental Assembly was not necessary to the validity of a grant; but has also observed that, under certain circumstances, the absence of such approval is entitled to great weight. It was, doubtless, with a view to meet all objections, and to show the fulness of his title, that the claimant furnished evidence that the Assembly did approve the grant. If this evidence is true, it strengthens the claimant's title, but if false, it destroys all confidence in it. It is important therefore to ascertain whether the Assembly met on the 4th day of May, 1846. Pico certifies that it did meet on that day, and approved this grant; but it is clear that very little reliance can be placed on this certificate, if genuine, because, when interrogated on the subject, Pico testifies that he has no recollection of the approval, nor, indeed, of giving a certificate to that effect, and but for the

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fact that he sees his signature to the certificate of approval, he has no reason to believe that the grant was approved. It is true he testifies that there was great looseness in the administration of public affairs at the time; but from this no inference can be properly drawn that the Departmental Assembly convened on the 4th day of May, 1846. It will not do to say that there might have been a meeting of that body on that day. In the absence of direct proof of the fact, there must be evidence affording reasonable grounds to believe that the meeting actually took place, and that the records of it are lost. But we are not left, in this case, to rely on conjectures or probabilities, for, fortunately, the journals of the Departmental Assembly have been preserved, and they show that the body was not in session at the date when the testimonio states the grant to have been approved. It appears by the journals that the earliest meeting in May was the 8th day of the month, when the minutes of the meeting held on the 29th day of the preceding month of April, as was customary, were read and approved.

It is not credible that the Assembly could have met between these dates, and overlooked the fact in recording the proceedings of the 8th of May.

To escape the force of this evidence, the claimant has pointed out some discrepancies and omissions in the journals, but they are not of a character requiring notice, and do not tend to prove that the Assembly convened on the day when the testimonio purports to have been signed.

If Pico does not remember the sale of this large tract of country, nor the fact of approval by the Assembly, of what value is his testimony that the approval must have been obtained, because the document certifying to it bears his signature?

But if what has been said is not enough to show that the alleged grant was not issued to Roland, there is still further evidence in the record, which is conclusive on the point.

In deciding this case we are to be governed by the laws and usages of the Mexican government, in granting lands, before the conquest of California, and according to the prin-

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ciples of equity. Tested by these rules, this claim has neither a legal or equitable status.

Lands were to be granted by the colonization laws of Mexico, for the purpose of cultivating and inhabiting them, and no more than eleven leagues could be granted to a single individual. It is stipulated in the record that, on the 22d day of July, 1845, Governor Pico granted to John Roland and Julius Horkman, four leagues of land, and that the claim has been prosecuted and confirmed. And that on the 6th day of May, 1846, only four days after the date of the grant in controversy, a still further grant was made to John Roland and Louis Arenas, of the sobrantes of certain ranchos, to the extent of nine leagues. This latter grant is also claimed to be genuine, and has been presented for confirmation, and is now pending in the District Court of California. All these grants cannot be sustained, because Pico had no power to make them. If they could be sustained Roland would receive from the Mexican government (if the surplus lands of the ranchos reached nine leagues) a quantity of land exceeding seventeen leagues. The United States are under no obligations to recognize grants which aggregate, in the hands of one person, such a quantity of land, even if they were actually made; but the strong probability is, that the eleven-league grant was abandoned when the petition was presented, and the grant obtained for other lands in a different part of the country. In no other way can we acquit Pico of a wilful departure from the law under which he acted, and account for the petition and grant of the 6th of May.

It is fair to infer from this record that Roland was an intelligent man, and knew the limit of the governor's power to grant lands, and the corrective applied by the Departmental Assembly when he exceeded his authority. If so, he knew Pico had no right to make the eleven-league grant, because he had already conceded to him the undivided half of four leagues, in July, 1845. It may be, before the proceedings were completed for the eleven-league grant, he saw his difficulty, and concluded to rely on the first grant made

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to him, and to ask for a concession of other lands nearer the settled part of the State, and which lands, although less in quantity, were more desirable. Adopting this theory, the conduct of Roland in asking for other lands on the 6th of May, can be explained. On any other theory his petition on that day for an additional grant, and Pico's action conceding it, were palpable frauds committed against the letter and spirit of the colonization laws of Mexico.

Without pursuing the subject further, in our opinion this claim should not be confirmed.

The archive papers fail to make out the title, and the papers produced by the claimant are not genuine, but the result of an afterthought, and would never have been produced in court if the unparalleled growth of California had not stimulated the cupidity of speculators to experiment with fragments of title-papers left unfinished by Pico, and which were gathered up by our officers on the conquest of the country.

DECREE AFFIRMED.

MILLER and FIELD, JJ., dissenting.

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THE COURT, by Chief Justice DUNN, affirmed.

MR. JUSTICE FIELD, dissenting.

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