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United States Vs. Galbraith

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Decided On : 1862

Appeal No. : 67 U.S. 394

Appellant : United States

Respondent : Galbraith

Judgement :

United States v. Galbraith - 67 U.S. 394 (1862)
U.S. Supreme Court United States v. Galbraith, 67 U.S. 394 (1862)

United States v. Galbraith

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APPEAL FROM THE DISTRICT COURT FOR

THE NORTHERN DISTRICT OF CALIFORNIA

SYLLABUS

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 *United States v. 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 1847-1848 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 3, 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 12 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 14, 1846; 2. a marginal order of the governor, dated Los Angelos, May 20, 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 10, 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 12, 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 12, 1846, signed by Pio Pico as governor, and attested by Moreno as Secretary; 7. a certificate dated 14 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 v. 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, 63 U. S. 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.

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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 63 U. S. 22 How. 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 espediente produced before the commissioners and court below contained the petition of Padilla, dated Monterey, 14th of May, 1846, the informe dated at Los Angelos, 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 Angelos, 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 Angelos, 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 Angelos, 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. Moreno

testifies with the same fullness 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 Angelos, 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 Angelos 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 Angelos. This may be so. But, Pico, Moreno, M. Castro, and Padilla, whose names are connected with

the grant, were at the City of Los Angelos 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 Angelos 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 12 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 12 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 *United States v. 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 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 Angelos, 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 Marguentta, which was someone hundred and fifty miles below Monterey. Castro and Pico united their forces and passed on to Los Angelos, 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 Angelos 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 Angelos 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.

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