SACRAMENTO DAILY UNION.

WEDNESDAY MORNING, APRIL 8.

NEWS OF THE MORNING.

In the Senate, yesterday, the bill amendatory and explanatory of the Act reducing the rates allowed the State Printer, was ordered to an engrossment. The Senate refused to suspend the rules with a view to its passage. This was because some Senators did not consider the bill—now in the hands of the Executive—obnoxious to the objections urged against it. The object of the supplementary Act is to enable the State Printer to receive pay, under the present law, for such work as may have been commenced, but cannot be completed by the first of May—the day upon which the new Act would go into effect. This we conceive to be very well, and we see no objection to the passage of the new explanatory bill, although we apprehend, as was urged in the course of debate, that the Board of Examiners could, in the exercise of their powers, audit all bills for work done under the existing law, in accordance with the provisions of that law. Such would be clearly their duty, and it is difficult to perceive how they could evade it. The Printing bill which has passed the Legislature, and now rests with the Governor, is the most important measure of the session towards a reduction of the expenses of the State Government, and the day upon which it becomes the law of the land will be hailed as one of the most important of the session. The Senate made some progress with the Revenue bill, and passed upon most of the amendments adopted in Committee of the Whole, but did not reach the point of engrossment. An Act to prevent persons from interfering with the officers of the Indian Department in the discharge of their duties, and another to authorize certain parties to collect tolls on a road in Los Angeles county, were passed. Very little other business was transacted. In the Assembly, the most of the day was consumed in the discussion of the substitute for the various bills amendatory of the Civil Practice Act. Very little else was done.

The bill imposing certain stamp duties, which has passed the Assembly, and been reported back from the Finance Committee of the Senate, with amendments, will come up in the latter branch today. The proposed amendments are very material, and while they will, as a matter of course, destroy many points of objection, they will also, most materially, reduce the amount of revenue collectable under the law. The Senate Committee propose to strike out entirely the duty upon inland bills of exchange, promissory notes and all paper payable within the State, as well as the tax upon testimentary instruments, collateral inheritances and polices of insurance. The proviso exempting the bonds of United States and State officers is stricken out, as well as the clause which permits unstamped deeds to be given in evidence upon payment of fifty dollars for the use of the State. "Two" instead of "four" hundred dollars is made the limit of the expenses to be incurred in the office of either the Controller or Secretary of State for the payment of clerks, &c., and "ten" thousand instead of "sixteen" thousand dollars is appropriated for the purpose of carrying out the provisions of the Act.

Yesterday a case in which our citizens feel a profound interest—involving the possession of the very homes of many of them—was decided in the District Court, by Judge Monson. We refer to the case of Brannan vs. Mesick et al., which will be found given in full in another portion of this morning's issue. Judge Monson decides the Mesick title to be of no account. Were this a simple decision of a fact at issue in law, no unusual importance might be attached to it, because the case will necessarily have to undergo the investigation of a higher and ultimate tribunal; but it is not a simple decision of a mooted point—it is a critical and elaborate exposition of the law bearing upon the case in all points of view, showing the most careful research, and furnishing at least some assurance of what the ultimate decision may be. In this respect, it is of more than ordinary interest. Although it may be that points have been overlocked, which will come up before the minds of the higher tribunal, in the course of their investigation, yet, to the ordinary reader, the arguments of Judge Monson cannot but be irresistible. We understand that no briefs were filed by the counsel for the defendants during the pendency of the case before the District Court. The case is one of such vast importance that we would not attempt an analysis. It will be read by every one.

In the Supreme Court, a decision of some importance was rendered, in a case growing out of the sale of a lot in this city. The case is that of Alvarez vs. Brannan. The defendant is the appellant, and the judgment of the lower court is affirmed. Defendant, in 1849, sold to the partner of the plaintiff a lot which he had previously sold, and upon being sued for the recovery of the purchase money and interest, he procured the title derived from the first grantee and offered the same to the plaintiff. This plaintiff refused to accept, and the court below held the refusal good. Brannan appealed. The Supreme Court now hold that, in making the second sale, the defendant was guilty of legal, although it might have been unintentional, fraud; and further more, that he could not compel the plaintiff, under these circumstances, to accept a title subsequently acquired to the property. This would have given him an opportunity to speculate upon his own wrong, which the court will not sanction.

The returns of the late municipal election, which we publish in full this morning, show the complete success of the Democratic ticket. Every candidate on that ticket has been elected, mostly by large majorities. The Republican vote was very meagre. The five thousand dollar fee to Judge Felch, to assist in upturning titles in Sacramento, was also adopted by the people at this election.

Justice to whom Justice is Due.—In commenting a few days since upon the expedition of the Atlantic mails, by reason of which they were received in this city, by the Cornelia, early on Monday morning—the J. L. Stephens having arrived on Sunday afternoon—we remarked that "should Jerry Sullivan have objected to the mail going on board, he is certainly not entitled to the credit awarded him; but we have no grounds for supposing that he made any objection." Since the publication of the article containing the foregoing remark, we have received information from San Francisco, which entirely satisfies us that Mr. Sullivan made no objection whatever to the transmission of the letter mails on the steamer chartered by himself, but willingly acceded to the request of the Postmaster to convey them. He did, however—and as we conceive very properly—object to carrying the newspaper bags, in which were the packages of his competitors in business; for to excel them in enterprize and be ahead in the delivery of his papers, was the very object of chartering the steamer. It would have been a useless expenditure of money on his part, to have hired a boat to convey with his own, all the newspaper matter which might be directed to his rivals in the trade, and one which, as a matter of course, he would not have incurred. To have insisted upon forcing the newspaper matter on board the chartered boat, would have only had the effect of compelling him to abandon the enterprise. To Jerry Sullivan the credit first awarded is fully due, and we repeat our acknowledgements with interest. His enterprising spirit is only equalled by his efforts to accommodate the public.

Drowned.—A lad by the name of Umecindo Portello, about fourteen years of age, was accidentally drowned in the Mormon Slough, near Stockton, on Monday afternoon, April 6th.

Stockton Turn-Verein.—At a meeting of the Stockton Social Turn-Verein the following officers were elected: Charles Grunsky, President; J. Goldman, First Secretary; E. Camerer, Second Secretary; N. Heinze, First Turnwart; Franz Keubstein, Second Turnwart; Geo. Deitz, Zengwart; H. Fisher, Singwart.

Districting the State—Meeting of Legislatures.

For four years past we have insisted that the State ought to be divided into Congressional Districts, but we had nearly dispaired of seeing it done by a California Legislature. The Assembly has at last managed to pass a bill to accomplish that object, which contains provisions for dividing the State into two districts, that are about as fair, we suppose, as could be agreed upon. The voting population in the two districts is made nearly equal, which, at present, is the only basis the Legislature has to act upon.

In addition to passing a law districting the State, the Legislature ought to pass an Act to change the time of electing our members of Congress. To elect men to Congress, as we now do, fifteen months in advance of the time they are required to take their seats, is wrong in principle and practice. The people and their representatives ought to be brought as near together as possible.

Our general elections are held at the wrong season, and the Legislature is required to meet and hold its session at a singularly inappropriate season of the year.

The winter is the season of active life in California. It is the season during which the farmer prepares his land for a crop, and the miner expects to enjoy his harvest of gold. It is the winter rains which develope the vast resources of California. While they are falling the people are actively employed in their various occupations. The winter rains and snows also render it almost impossible for the people in some portions of the State from communicating with the capital. The roads are rendered almost impassable by the snow, rain, and consequent mud and water. Members elect find it difficult to reach Sacramento; traveling becomes doubly difficult as well as expensive. In the remote counties it is found nearly impossible to obtain information from the Legislature for weeks and sometimes for months.

These inconveniences would mostly be obviated were the Legislature to meet four months earlier than it now does.

From the first of September until the first of December, the people of California are more at leisure than during any other three months of the year. The roads are then good, though dusty, and the communication to all parts of the State regular and rapid. Members could easily reach the capitol; their constituents could do the same if business or pleasure required, and two-thirds of the people of the State would be enabled to read the reports of the proceedings in the Legislature the day after said proceedings took place. This of itself would be a vast advantage gained by the people.

In all the northern and north-western States, there exists an excellent reason why the sessions of the Legislature should be held in the winter. It is a season of the year during which, in that climate, the people are unable, from climatic causes, to pursue their ordinary avocations. Their rivers and canals are frozen up, the soil is either covered with snow or rendered as solid as granite by the frost, farmers are mainly housed for the winter, and the commerce of the lakes completely suspended. Under such circumstances the winter is the appropriate time for Legislatures to hold their sessions. Politicians and legislators have really nothing else to do.

In the Southern and Southwestern States, other reasons combine to designate the winter as the season for legislating. It is what is termed the healthy season of the year. In years passed most of the traveling in those States was by steamboat, and in the summer and fall their rivers are too low to be navigated. But none of these reasons are tenable in California. Here every argument combines in favor of having the Legislature meet early in the fall, in preference to meeting as it now does in the winter.

Altogether Wrong.—The Stockton *Republican* of yesterday, comes out with extreme violence against the "odious Stamp tax," and enters into a discussion to show up its obhoxious features For this purpose it quotes from Mr. Westmoreland's bill, which it erroneously supposes to be under consideration. This is all wrong, and the *Republican's* astonishment is entirely lost. The bill under consideration is the Assembly bill, which bears no resemblance to Mr. Westmoreland's.

Miss Provost.—This lady has organized a troupe for the purpose of giving dramatic entertainments in the principal towns of the Southern mines. On Thursday evening she will open the new theater at Folsom. The denizens of that burgh have a treat in store.

Failure at Shasta.—John Ball, merchant, and proprietor of the Charter Oak Saloon, in Shasta, has failed for $30,000.

Outrage and Murder of Indians.—The Shasta *Republican* has information that on the Hay Fork of Trinity river, on the 23d of March, some of the Indians who lived in that vicinity, became intoxicated upon some liquor furnished them by some white men, and while in that condition went to a tent where a lady resided and drove her from home. Some of the citizens in that neighborhood were so exasperated when they heard of the outrage that they attacked the Indians and killed fifteen of them.

[Communicated.]

$5,000 Appropriation!

Messrs. Editors:—The vote by which this appropriation was made yesterday is a beautiful illustration of the ease with which impositions may be practiced upon communities through the mixing of questions upon election ballots. Twenty-four hours after the ballots had been deposited many of the voters were disputing as to what the appropriation was. The writer heard some contending vigorously that the appropriation was made for the purpose of defending the Sutter title to our city property; others asserted with unshakable confidence that the object was to expedite the decision, or to stimulate the Supreme Court of the United States to a speedy consideration of the question, whilst others were entirely ignorant of the fact that any question of the kind was connected with any of the printed tickets. Not a few men can be found who are indignant to think that they have, by mere inattention, voted for an appropriation of $5,000 from the poor city treasury to fee a class of individuals, amongst whom are to be found the very men who have blighted the prosperity of the city by casting a fraudulent shadow upon the people's property.

Now, without a fraction of interest that can be influenced by Sutter's claims being confirmed, we ask what is the prospect of its being defeated after being confirmed by the two investigating tribunals and one court, deciding by the light of principles laid down in the United States Supreme Court? Again, we would ask, how the defeat of his claim can benefit this city or its people at the present time? Nine-tenths of our citizens are in the purchased possession of Sutter titles, undisturbed except by the Mesick swindle, and to disturb them by throwing the property into a condition of pre-emption and making it impossible for them to obtain a title from those who would become the claimants under pre-emption is only relieving them from the shadow of difficulty to launch them into a labyrinth of real difficulties. To lawyers it opens an exhaustless field of the richest kind of litigation, and it is not wonderful that for the purpose of opening such advantages, they should be found willing to receive additional consideration in the delicate little sum of $5000!!

Yours to no man, CYNIC.

Fire at Marysville.—A fire broke out in the paint shop of J. Brownee, in Marysville, on Sunday night, April 5th, which was soon discovered, and extinguished. It originated in some rags in a corner of the room, but from what cause, is not known.

Inauguration of the Marysville Park.—The Marysville Park House was opened on Monday, April 6th, in the presence of a large number of visitors.

THE CITY.

Taking to Water.—Two yoke of oxen, hauling a wagon heavily loaded with wood, were crossing J street, on 13th street, about noon yesterday, and having been driven some distance through the broiling sun over a dusty road and become exceedingly thirsty, made a bold dash for some water in the ditch on the north line of the street, overturning the wagon, spilling the wood and themselves in the bargain. The chain parted and one of the yokes was broken, otherwise no especial damage was done. When we passed, the cattle were standing panting in the puddle, exhibiting by frequent draughts of water the neglect of which they had been made the victims. There were none in the neighborhood to sympathise with the teamster under the circumstances, but several who felt inclined to give him a gentle ducking in the pool.

Recorder's Court.—The following is a report of the killed, wounded, missing, &c., on the day of the election, as returned to the Recorder yesterday, and of the disposition made thereof:—John Rooney, breach of the peace, discharged. Wm. Briggs, complicated case—assault and battery, drawing a deadly weapon, &c.—laid on the table till this morning, for witnesses for the defense. T. R. Rice, breach of the peace, discharged. Mdle. Julie, threatening Madame Swift with bodily harm, bound over in the sum of $500 to keep the peace for six months. John Brown, assault and battery on John Doe, sent below for one day. —— Robinson, (colored,) threatening Baylor Temple, (colored,) with bodily harm—a conditional threat—discharged.

Assault with a Slung Shot.—A man named John Kline was arrested yesterday afternoon, on a charge of assaulting Officer Lutz with a deadly weapoon—a slung-shot. The defendant, being in liquor, had been noisy and disorderly in the Philadelphia Beer Cellar under the "Indian Queen," and probably disliking an official interference so soon after the election, assaulted the officer with the weapon, striking two blows before it could be wrested from him. As his hand was unsteady and the blows consequently awkwardly directed, the officer suffered little or no injury.

The Sutter Claim.—Upon the announcement and confirmation in the Council, last evening, of the returns of the election showing a majority of 1,156 votes cast in favor thereof, a resolution was presented and adopted authorizing the Mayor to draw his warrant for $5,000 in favor of Alpheus Felch, in payment of services to be rendered by him in contesting the claim of Sutter to land within the city limits, before the U. S. Supreme Court and Board of Commissioners of Patents.

The Improvement.—Mr. Heyward will, we understand, break ground to-day for the erection of his new building on the southeast corner of J and 2d streets. The building will have a front of 40 feet on J street, and 100 feet on 2d street, and will be three stories in hight, instead of two stories, as previously reported. The change in altitude will meet with general favor, as all admit that ground so valuable should not be monopolized by an under-sized structure.

Fortunate Candidates.—The returns of the late municipal election were examined and the result declared in the Council last evening. The Secretary was also instructed to notify the fortunate, or unfortunate elect, to be on hand on Thursday (tomorrow) evening, to be inducted into office, according to law. It is presumed that the "workers" of the party will be present on that occasion, to receive their reward.

Forrest Theater.—To-night is the last of the appearance of Jacobs, the Wizard, upon which occasion he will be the recipient of a benefit; and according to announcement last night, a number of tricks not heretofore played will be produced—among others the shawl trick. His friends will doubtless be out in full force. The Minstrels will follow him at the Forrest.

Fire Alarm.—A portion of the wall of the building No. 115 J street—the scene of the late crash—fell about half-past five o'clock yesterday afternoon, sending up such a cloud of dust that an alarm of fire ensued. As hands have been employed for some time past in removing the rubbish, it is presumed the wall was thrown down intentionally.

District Court Calendar.—We publish in another column the Calendar of the District Court for the present term, so far as cases have been set for trial, continued, &c. The list includes 108 cases; there being no less than 157 cases on the Calendar—more than ever before, and exceeding the Calendar of last term by 22 cases.

Election.—The following were last evening elected officers of Neptune Hose Co. No. 1: President, R. Shea; Foreman, P. Holland; Assistant Foreman, J. Gunning; Secretary, W. M. Thaw; Treasurer, Mat. K. Smith; Trustee, Alex. Badlam.

City Finances.—The City Collector reported last evening the following as the collections in his office during the week ending the 4th inst.: For taxes, $2,409 91; licenses, $1,405—total, $3,814 91.

Municipal Election Returns—Official.

CANDIDATES.	First Ward.	Second Ward.	Third Ward.	Total.
Mayor.				
J. P. Dyer, (D.)	687	505	763	1955
R. B. Ellis, (P.)	194	199	395	788
Geo. Rowland, (R.)	139	127	233	499
Recorder.				
Presley Dunlap, (D.)	567	435	692	1694
N. Greene Curtis, (P.)	390	320	561	1271
Mark Hopkins, (R.)	66	72	135	273
Scattering	1	....	....	....
Marshal.				
James Lansing, (D.)	621	455	689	1765
Sam'l Deal, (P.)	325	298	578	1201
John E. Miller, (R.)	74	74	128	276
Treasurer.				
James Sullivan, (D.)	572	409	648	1629
G. I. N. Monell, (P.)	374	350	614	1338
John M. Milliken, (R.)	72	67	136	275
Scattering	3	....	....	....
Collector.				
John H. Housman, (D.)	667	512	853	2032
John A. Tutt, (P.)	279	245	368	892
Anson Perry, (R.)	71	72	179	322
Scattering	2	....	....	....
City Attorney.				
George R. Moore, (D. and P.)	938	751	1252	2941
I. B. Marshall, (R.)	75	78	130	283
Scattering	1	....	....	....
Assessor.				
Alex. Montgomery, (D.)	606	474	774	1854
Chas. Binney, (P.)	329	266	419	1014
H. W. Bragg, (R.)	80	82	194	336
Sup. Common Schools.				
J. G. Lawton, Jr., (D.)	612	460	701	1773
E. C. Winchell, (P.)	321	283	492	1096
Dr. A. B. Nixon, (R.)	83	84	187	354

ALDERMEN—FIRST WARD.

W. E. Terry, D	604	F. A. Birge, P	311
J. W. Titus, D	568	L. Stanford, R	87
J. G. Phelan, D	591	A. W. Hall, R	97
E. P. Figg, P	300	J. W. Avery, R	75
J. Trautman, P	305	Scattering	98
SECOND WARD.			
Charles H. Shaw, D	427	David Kendall, P	290
Jackson R. Myers, D	437	Cornelius Noonen, R	81
John Hatch, D. P	708	John Campbell, R	81
J. A. Bullard, P	292	R. Stone, R	70
THIRD WARD.			
Sam. McCullough, D	715	J. A. C. McCune, P	520
Frank Hastings, D	749	Wm. M. Harron, R	133
H. S. Burgess, D	773	J. L. Polhemus, R	142
E. Culver, P	436	Geo. Whitney, R	120
A. Henley, P	467		

SCHOOL COMMISSIONERS—FIRST WARD.

H. J. Bidleman, D	621	G. A. Coursen, R	71
P. W. S. Rayle, D	595	J. M. Bailey, R	75
J. H. Mitchell, P	269	Scattering	84
J. S. Bien, P	300		
SECOND WARD.			
Dr. G. L. Simmons, D	439	Wesley Merritt, P	278
David Murray, D	434	Dr. H. B. May, R	81
Dr. James Blake, P	279	E. L. Barber, R	79
THIRD WARD.			
Saml. Cross, D	741	L. Warner, P	431
Dr. R. A. Pearis, D	746	H. P. Osborn, R	162
Jesse M. Sheppard, P	434	Joseph Sutton, R	141

APPROPRIATION OF $5,000 TO ALPHEUS FELCH.

	1st Ward.	2d Ward.	3d Ward.	Total.
Yes	516	428	916	1860
No	300	169	235	704

RECAPITULATION.

Dyer over Ellis	1167
Dyer over Rowland	1456
Dyer's majority	668
Dunlap over Curtis	423
Dunlap over Hopkin's	1421
Dunlap's majority	150
Lansing over Deal	564
Lansing over Miller	1489
Lansing's majority	288
Sullivan over Monell	291
Sullivan over Milliken	1354
Sullivan's majority	16
Housman over Tutt	1140
Housman over Perry	1710
Housman's majority	818
Moore's majority	2657
Montgomery over Binney	840
Montgomery over Bragg	1,518
Montgomery's majority	504
Lawton over Winchell	677
Lawton over Nixon	1,419
Lawton's majority	828
Appropriation—Yes—majority	1,156

THE MESICK TITLE INVALID.

Decision of Judge Monson.

Yesterday, April 7th, Judge Monson delivered the following opinion, in the Sixth District Court:

Samuel Brannan vs. *Wm. S. Mesick et. al.*—John A. Sutter, Jr., on the 28th day of June, 1850, sold to Samuel Brannan, S. C. Bruce, Julius Wetzlar and James S. Graham, certain property in the city of Sacramento. Subsequently, the grantees divided the property, and mutual deeds of division were executed. In July, 1855, Sutter, Jr., conveyed the whole of the property to Mesick, and plaintiff institutes this suit to cancel the last deed, as a cloud upon his title.

The first question involved is the construction of the conveyance or instrument in writing made by Sutter, Jr., to Brannan, Bruce and others. It is said that it is void for the want of certainty in the description of the premises intended to be conveyed. In the construction of deeds, as well as other instruments, the cardinal rule is to arrive, if possible, at the true intent and meaning of the parties, and to give effect to that intention, if it can be done without violating any rule of law—and if the instrument bears upon its face evidence that it was written by a person unskilled and unacquainted with legal requirements and technicalities, a much greater latitude is indulged than when it appears to have been drawn by a careful and skillful draftsman. (Andrews vs. Murphy, 12 Geo. Rep., p. 431.) Applying this rule to the instrument in question—making one clause or part aid and help to expound another—there is no difficulty in the description of the property. The obvious meaning and intent of Sutter, Jr., was to sell all the lots he owned in the city of Sacramento—all the real estate he owned in the State of California at the time of the execution of the instrument. I would examine the instrument at length, and show that such was the clear intent and meaning of Sutter, Jr., but it is unnecessary, as the Supreme Court, in the case of Mesick vs. Sunderland, decided July Term, 1856, held the description sufficient. They say: "Taking the deed as a whole, it is apparent that the intention was to convey all the real estate of the grantor in the State of California."

The evidence adduced at the hearing of this case clearly establishes that such was the real intent of Sutter, Jr. This evidence, perhaps, could not be taken in view by the Court in construing the words of the instrument, but it shows that the intent, as gathered from the language of the instrument itself is sustained, and sustained by the facts as disclosed by the evidence.

The description of the property being sufficient, the next inquiry is, the nature of the instrument; is it a deed in *presenti*; does it convey an absolute estate in fee simple with a lien or charge attached, or is it a conveyance or condition precedent or subsequent, or is it a mere executory agreement for the sale and purchase of lands?

The Supreme Court, in the case of Mesick vs. Sunderland, held that it was not a deed in *presenti*, nor a conveyance in fee with a lien or charge attached. So far, then, I am precluded from examining the instrument, as the decision of the Supreme tribunal is conclusive and binding upon me. They say that it is an executory contract or a conveyance on condition precedent. There is a distinction between a conveyance on condition precedent and a mere executory agreement for the sale and purchase of lands. The former is a conveyance, and on the performance of the condition transfers an estate. It is true the estate does not vest until performance; but when the condition is performed the estate immediately passes and becomes absolute. A condition is a qualification or restriction annexed to a conveyance of lands. Conditions cannot be annexed to estates of inheritance or freehold estates without deed. Bacon's Abridgment, vol. 2, 283.

In the case of an executory agreement for the sale and purchase of lands, the title does not vest upon the performance of the covenants, but a deed or conveyance has to be made and executed before the legal estate passes.

If the instrument in question is not a conveyance in fee with a lien or charge attached, then, in my opinion, it must be construed to be a conveyance on condition precedent or subsequent—the Supreme Court say on condition precedent. I must so regard it, to show that it is not a mere executory agreement, I would call attention to the language used in the latter part of the instrument: it reads, "And the said party of the first part, his heirs, executors, administrators and assigns, doth further covenant to and with the said parties of the second part, their heirs, that in case the said parties of the second part, their heirs and assigns, pay to the said party of the first part, his heirs, executors, administrators or assigns, the just and full sum of $25,000, on or before first day of July, 1850; and the further sum of $25,000 on or before the 29th day of September, 1850; and the further sum of $75,000, on or before the first day of July, 1851; making, in all, the just and full sum of $125,000, then, this instrument is to take effect, as a full and complete conveyance in fee of all and singular the lands, tenements, hereditaments, appurtenances and real estate, in the State of California, belonging to, or in which the said party of the first part, his heirs, executors, administrators, &c., is, or are, in any way, entitled or interested."

It will be seen that, upon the payment of the money, the legal estate was to vest immediately in the grantees; no other conveyance was to be executed. Regarding, then, the instrument as a conveyance, on condition precedent, it was entitled to be recorded, provided it was properly acknowledged.

Section 24 of the Act concerning conveyances, passed in 1850—Compiled Laws, page 517—reads: "Every conveyance, whereby any real estate is conveyed, *or may be affected*, duly acknowledged, &c., shall be recorded in the office of the Recorder of the county in which the real estate is situated." Sec. 25 provides that every such conveyance, acknowledged or recorded, shall impart notice to all persons of the contents thereof. Sec. 36 reads—"The term conveyance as used in this act shall be construed to embrace every instrument in writing by which any real estate is created, aliened, mortgaged, or assigned, except wills, leases for a term not exceeding one year, and executory contracts for the sale or purchase of lands," &c. This is an instrument in writing; it does affect real estate; it is not a will—not a lease, and, as I have endeavored to show, not a mere executory agreement for the sale and purchase of lands; it is, consequently, a conveyance within the meaning of the act, and, as I have before stated, was, if duly acknowledged, entitled to be recorded. I am not aware that defendant, Mesick, intends to attack the certificate of acknowledgement attached to the conveyance to Brannan and others. As, however, it is noticed in the brief submitted, I will as briefly as possible, give my views as to the rule which Courts should adopt in the construction of such certificates:

It is not necessary that an officer, in certifying the acknowledgement or proof of a deed, should use the express words of the statute. The Legislature, in the passage of the Act concerning conveyances, did not so intend; for the Act itself says, a substantial compliance with the form there given shall be sufficient; even if the Act itself did not so provide, the Courts would hold such to be the rule. In the case of Alexander Botts vs. Merry, 9 Missouri Rep., p. 510, it was held that when the statute requires the officer to certify that the person acknowledging the deed was personally known to him, it is sufficient if he certify that he was known to him. The Court in its decision says: It is much to be desired that every officer who takes the acknowledgment of a deed would conform literally to the law, but we know that the convenience of our people require that the taking of the acknowledgment of deeds should be entrusted to those who are ignorant of the forms of the law—who will take a proper acknowledgment, but blunder in certifying to it.

In the case of Shaller vs. Branch, 6 Bin., 438, the Supreme Court of Pennsylvania says, we have always declared that it was sufficient if the law was substantially complied with, and on any other principle of construction the peace of the country would be seriously affected, as the certificates of the acknowledgment of deeds have been generally drawn by persons who were either ignorant of or disregarded the words of the Act of Assembly. In case of Nantz vs. Bailey, 3 Dana Rep., p —— the Court says it is not indispensable that the certificate should state the exact process of examination in verbal detail. Such particularity has never been observed or required. In the case of Livingston vs. Ketelle, 1 Gillman, 116, the Supreme Court of Illinois says the certificate states that the "above named mortgagor personally appeared before the justice and that he was personally known to him as the identical person who executed the mortgage. This is equivalent to the statement that the individual was personally known to the justice to be the person whose name was subscribed to the mortgage. The term the "above named mortgagor" must be understood to mean the real party who was to execute the mortgage.

See also, Den vs. Geiger, 4 Halsted, p. 225. Pickett vs. Doe, 5 S. & M., p. 471. Thurman vs. Cameron, 24 Wend., p. 87. Jackson vs. Gumaer, 3 Cowan, p. 552.

The summary of all that is to be found in the books on this question as stated by the Supreme Court of Missouri is that a substantial compliance with the law is all that is required. When this appears, the Courts feel no inclination to disturb the land titles of the country by indulging a severity of criticism on the language of the certificate of the proof or acknowledgement of deeds. From the condition of many portions of this State, the disadvantages under which they labor in regard to legal information and the necessity of entrusting the execution of the laws in many instances to inexperienced hands, an application of these principles of construction to certificates of acknowledgement will not only be found wholesome, but indispensable to the peace and quiet of the country. The certificate attached to the instrument in this case declares that the grantor acknowledged the deed "for the purposes," &c., omitting the word "uses" given by the statutory form; in every other respect the very language of the statute is strictly followed. The purposes of a deed must be synonymous with its uses. The word omitted is not necessary either to the sense or legal effect of the statutory form.

The instrument from Sutter, Jr., to Brannan and others having been properly acknowledged, and being, as I have endeavored to show, a conveyance affecting real estate, was entitled to be recorded. The evidence shows that it was placed on record in the County Recorder's office of this county on the 20th day of June, 1850. Its registry imparted notice to Mesick, and consequently the subsequent conveyance to him by Sutter, Jr., is fraudulent and void as against Brannan and others.—(See section 27th, Conveyances.)

But again, concede that the instrument from Sutter, Jr., to Brannan and others did not operate as a conveyance, and was not entitled to be recorded until the estate passed, yet as soon as the money was paid and the performance of the condition acknowledged by Sutter, Jr., the fee vested, the legal estate immediately passed to Brannan and others, and then most certainly it was entitled to be recorded. The evidence shows that the first payment of $25,000 was paid to Sutter, Jr., at the time the original instrument was recorded and delivered. On the 18th March, 1851, Sutter, Jr., executes and delivers to Brannan, Bruce, Wetzlar and Graham, two written receipts—the one acknowledging the second payment of $25,000, and the other the sum of $75,000, as payment in full of the third and final payment mentioned in the instrument. These two receipts were acknowledged before a Notary Public and recorded on the 19th of March, 1851, in the office of the County Recorder of this county.

The conditions having been performed, or what is a legal equivalent thereto, their performance having been acknowledged, an absolute estate passed to Brannan and others, and therefore was not the conveyance from Sutter, Jr., to Brannan and others properly on record after March 19th, 1851; and did not its registry from that date, if not before, impart notice to subsequent purchasers?

I will now proceed to examine the case regarding the instrument from Sutter, Jr., to Brannan and others as an executory contract. Under the statute of 1850, as we have already seen, an executory contract for the sale and purchase of real estate was not entitled to be recorded. The Legislature, in 1855, however, amended the act of 1850, and authorized the record of such agreements. Was it intended by the Legislature that this act should have a retroactive effect and legalize the registry of agreements which had been previously placed on record, and constitute the registry of the same, notice as against purchasers subsequent to the passage of the act? I think such should be the construction of the Court. Remedial statutes should be liberally construed, sometimes restrained, sometimes enlarged, so as more effectually to meet the beneficial end in view, and prevent a failure of the remedy. The Legislature has the constitutional right to give to remedial statutes a retroactive effect, provided they do not impair contracts or destroy vested rights. 1 Kent. Com., p. 502 3.

It has a right to make that a legal record which was not so before, and constitute the same notice to all purchasers subsequent to the passage of the act. Mercer vs. Watson, 1 Watts Rep. 330; Barnet vs. Barnet, 15; Sergt. vs. Roule, p. 72; Dulany et al. vs. Tilghman, 16; Gill vs. Johns, 461; Smith Com. on Statutory Construction.

If the record of the instrument was beneficially effected by the Act of April, 1855, then it imparted notice to Mesick, as he purchased subsequent to the passage of the Act; but conceding that it was not the intention of the legislature to give the Act of April, 1855, a retroactive effect, then the question arises, was Mesick a purchaser in good faith and for a valuable consideration. When he took his deed from Sutter, Jr., did he have actual notice of the instrument executed to Brannan and others, or did he have such notice as put him upon inquiry and render his deed fraudulent. Notice may be either actual or constructive. In some of the States it is expressly provided by statute that an unregistered conveyance shall be void as against all except those having actual notice, thus abrogating constructive notice; but there is no such provision in our statute, and, consequently, in this State constructive notice is not abolished. Our Registry Act simply protects a purchaser who takes the precaution to search the records, and registers his own conveyance against prior unrecorded conveyances of which he had no notice. 1 Sand. Chy. Rep., p. 425.

To effect, however, a purchaser having a deed duly registered with constructive notice, it should be of such a nature as to show a want of good faith, and justify an inference of actual knowledge or notice. White vs. Tudor, Equity cases, Vol. 2. Pt. 1, p. 132-3.

In the authority cited, it is said, nothing is better settled in England and this country, than the general doctrine that the purchaser of a legal title will be liable to all equities of which he had actual or constructive notice at the time of the purchase; a person purchasing under such circumstances is a *mala fide* purchaser, and will not be enabled by getting in the legal estate to defeat such prior equitable interest. In the principal case this was put on the ground that, although the words of the Registry Acts are express, that unregistered conveyances shall be void as against subsequent purchasers, the legislature could not have intended to sanction such gross wrong and injustice as is implied in accepting a conveyance of an estate with a knowledge that it had previously been sold to another, and for the purpose of depriving him of the benefit of his purchase.

In England this construction of the act is confined to Courts of Equity; but in this country it is well settled both in Courts of Law and Equity, that a conveyance, duly registered, passes no title whatever, when it is taken with a knowledge of a prior unregistered conveyance. Our recording acts only apply in favor of parties who have acted in good faith, and cannot be made the means of fraud or oppression. White vs. Tuder, Equity Cases, vol. 2, Pt. 1, p. 130.

Our act concerning conveyances, sec. 26, provides that every conveyance of real estate not duly recorded, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, thus making unregistered conveyances good when *mala fides* or malice is shown to have existed. But if our statute contained no such qualifying words, the construction would be the same. White & Tudor's Equity Cases, vol. 2, pts. p. 130.

Courts, says Chancellor Kent, 10 Johns, 461, will not suffer a *statute made* to *prevent fraud* to be a *protection* to *fraud*. It may often be a question what fact or circumstances will amount to notice sufficient to charge the party, but if the fact of notice be once made out, there is no doubt in the books but that as against such prior deed the subsequent registered conveyance is to be adjudged fraudulent and void. It is not necessary in any case to constitute notice, that it should be in the shape of a distinct and formal communication, it will be implied in all cases where a party is shown to have had such means of informing himself as to justify the conclusion that he has availed himself of them; whatever, therefore, is sufficient to direct the attention of a purchaser to the prior rights and equities of third persons, and to enable him to ascertain their nature by enquiry, will operate as notice. White & Tudor's Equity cases, vol. 2, pt 1, p. 116. If a party designedly abstain from making inquiries for the purpose of avoiding knowledge, he will be charged with notice. 1 Story's Equity Jur. 8,400—note. Having thus examined the law, let us see whether Mesick was a *bona fide* or fraudulent purchaser. The conveyance or instrument from Sutter, Jr., to Brannan and others, was placed upon record in July, 1850; if it was placed there without authority of law, the registry *itself* imparted no notice, but it is shown by the evidence that Mesick was engaged in the County Recorder's office in this county, from some time in 1853 to 1855, during a portion of which time he acted as Deputy Recorder, and during the whole time he was actively engaged in transcribing from the records; he was an examiner of titles, made out abstracts, &c.—one of which, dated March 20th, 1855, was produced in evidence. In it he mentions the conveyance or instrument from Sutter, Jr., to Brannan and others; he calls it "conditional," and refers to the book and page in and on which it was registered—thus showing that he had seen, read and examined it—it was a true copy of the original. Under these circumstances, can it be said that Mesick purchased without knowledge—that there was not sufficient to put him upon inquiry? Can he be considered as a purchaser in good faith? I am aware that the Supreme Court of Pennsylvania, (one of the Judges dissenting,) in the case of Kims vs. Swope, 2 Watts 72, says that an actual inspection of a defective registry will not amount to actual notice. But in the first place the decision was not applicable to the facts in the case before the Court, and, consequently, it is a mere dictum—and in the second place it is, in my opinion, unsupported by sound reasoning. A party purchased two tracts of land—one lying in Huntington county, the other in Bedford county—both tracts were conveyed by the same deed; it was recorded, however, only in Huntington county. I find the decision reviewed in White and Tudor's leading cases in Equity. It is there said—"The evidence was not merely sufficient, but legally conclusive, that the record was a true copy of the deed, as to the lands in Huntington county, although *not* as to those in Bedford county; and if it had actually been examined by the purchaser, which *could not be presumed* and *was not proved*, the case would have stood upon the same footing as if he had seen a deed duly executed and proved of the lands in the former county, and containing a recital of a contemporaneous conveyance of those in the latter. Such a recital would not have been *sufficient to induce* and *direct inquiry*, and thus operate as actual notice. And even if the record was to be regarded as a mere unauthenticated copy, still a copy of a deed, purporting to pass the land for which a purchaser is in treaty, found among the papers of a party claiming an interest in other land under the same deed, would seem to make it the duty of the purchaser to pause in completing his purchase, until he had made inquiry of the parties to the instrument. In Kims vs. Swope, however, there was nothing to prove that the copy had been seen by the purchaser, except the presumption that a purchaser examines the registry, which, as a presumption of fact, has no weight whatever, and as a presumption of law, is applicable only when the deed is registered in the same county with the land."

Again, section 27 of the Act concerning conveyances, passed in 1850, authorizes the recording of powers of attorney, and section 28th of the same Act forbids the revocation of a power of attorney until the revocation is recorded. The instrument in question contains a power of attorney from Sutter, Jr., to Brannan, Bruce, Wetzlar, and Graham. As such, it was entitled to be recorded. So far, then, it was not a defective registry, but one authorized by law, and having been seen and read by Mesick, did it not impart notice to him of all its contents, and have the same force and effect as if he had seen the original instrument?

If there existed any doubt, however, with regard to Mesick's having actual notice of the existence and contents of the instrument to Brannan and others, it is put at rest by the testimony of Col. Sanders. He testifies to conversation between himself and Mesick, in which the conveyance or instrument was discussed. They called it the 2,200 lot deed, and was by them considered insufficient and void for want of certainty in the description of the land intended to be conveyed. Mesick well knew what land Sutter, Jr., intended to convey by the instrument, but he thought the description was imperfect and insufficient, and he was willing to take advantage of it, and for this purpose started for Acapulco, where Sutter, Jr., resided, and obtained from him a deed, not only for the property previously sold to Brannan and others, but all other property which he, (Mesick,) from the examination of the public records, concluded had been defectively conveyed. According to the testimony of the witness, Mesick started, promising to obtain the deed in favor of Sutter, Sr. However this may be, he took the conveyance to himself.

The evidence shows that the property thus conveyed to Mesick is worth about one million ($1,000,000) dollars, for which he paid at the time the conveyance was executed, $500. He has since paid the further sum of $900. He also executed to Sutter, Jr., a bond id the penal sum of $25,000, the conditions of which as testified to by the witness are "very singular." The bond was probably given to secure the payment of a certain portion of the proceeds that Mesick might realize from sales. Mesick's object in connecting himself with the Recorder's office was to engage in a gigantic speculation—having devoted from one to two years to an examination of the records, having ascertained each and every flaw and defect, he takes counsel and proceeds to Acapulco to accomplish his ends; although he was well aware that the property that he was thus seeking to obtain had been previously sold and purchased in good faith; that a valuable consideration had been paid for it—that it embraced a large portion of the real estate in this city—that valuable buildings had been erected upon it, and large sums of money expended in improvements. Although he was well aware that it was held by innocent parties, and who, for years, (so far as the Sutter title was concerned,) had been in the undisturbed possession of. Although he well knew that from many he was endeavoring to take their homesteads, acquired, perhaps, after many years of hard toil and labor. Although he was well aware that he was seeking to take from his neighbors that which rightfully and justly belonged to them; that he was throwing a cloud upon titles in this city, and thereby impairing and retarding its prosperity and growth; notwithstanding all this, he asks the Court to aid and assist him in carrying out his gross speculation. I should regret to learn that in any civilized country such a fraud could be successfuly perpetrated.

I have no desire to speak harshly, but I feel it to be the duty of courts of justice to discountenance and condemn such unscrupulous and heartless speculations; to countenance such barefaced attempts to unsettle long established titles, and by virtue of mere technical defects, deprive hundreds of parties of property which they have bought in good faith and paid full value for, would be productive of incalculable evil. If courts were to encourage speculations of this character, in the language of Lord Redsdale, "I have no doubt but that they would swarm." In this country particularly, where there has been a great incorrectness in transacting business in remote periods, it would be highly dangerous to encourage such claims. It would be mischievous to society—mischievous to the country. In my opinion, an attempt of this description should be watched with every sort of jealousy in all cases, and received with every mark of dislike which can be shown to it.

Chief Justice Wood, of the Supreme Court of Ohio, in speaking of speculations and attempts to unsettle long established titles, says: "Fear is entertained that the feelings of this Court are hostile to the disturbance of titles long enjoyed, and that unwarranted prejudices may defeat a recovery. For one, I must admit that it is always with me a matter of serious regret when I see litigation springing up that is so often attended with such disastrous results to innocent purchasers. It is only in those cases, however, where the spoil is to be divided with some *mousing speculator*, and when from the state of the law the Court may be forced to aid in that result, that it feels itself called upon to give judgment in that spirit of disapprobation which tends to discourage a cause that adds nothing to the character of a profession in other respects proverbial for integrity and correct sentiment throughout the civilized world."

A decree must be entered in favor of plaintiff. Counsel will draw one and submit it to the Court.

A. C. Monson, District Judge.

DIED.

At Dry Creek, Shasta county, March 28th, Louise, infant daughter of P. F. and Kate Turbush.

In San Francisco, March 27th, of consumption, Mary Jane, wife of Wm H. Dowe, aged 25 years and 8 months.

In San Francisco, April 5th, Willey Cardner Elliot, aged 9 months and 12 days.

In San Francisco, April 5th, of consumption, William Dempsey, a native of Ireland, aged 28 years.

In San Francisco, April 5th, of heart disease, Louis Chase, a native of Ireland, aged 28 years.

In San Francisco, April 6th, of heart disease, Mrs. Ann Bonneau, of Charleston, S C., aged 36 years.