

\*ALLISON ROSS, Plaintiff in error, *v.* JOHN DOE, on the demise of ADAM BARLAND and others.

*Jurisdiction.—Ejectment.—Land law.*

Both the plaintiff and defendants claimed title under the provisions of the act of congress, passed 3d March 1803, entitled "an act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the state of Tennessee;" and the decision of the supreme court of the state of Mississippi was, upon the construction given to that act, by the commissioners acting under its authority: This is a case which draws into question the construction of an act of congress, and the supreme court of the United States has jurisdiction, on a writ of error, by which the decision of the court of the state of Mississippi is brought up for revision, under the 25th section of the judiciary act of 1789. p. 663.

Where, by the established practice of courts in particular states, the courts, in actions of ejectment, look beyond the grant, and examine the progressive stages of the title, from its incipient state until its consummation; such a practice will form the law of cases decided under the same, in these states, and the supreme court of the United States regard those rules of decision, in cases brought up from such states, provided that in so doing, they do not suffer the provisions of any statute of the United States to be violated.<sup>1</sup> p. 664.

Under the act of congress of March 3d, 1803, such lands only were authorized to be offered for sale, as had not been appropriated by the previous sections of the law, and certificates granted by the commissioners in pursuance thereof; a right, therefore, to a particular tract of land, derived from a donation certificate given under that law, is superior to the title of any one who purchased the same land at the public sales, unless there be some fatal infirmity in the certificate, which renders it void. p. 666.

The act of congress requires no precise form for the donation certificate; it is sufficient, if the proofs be exhibited to the court of commissioners, to satisfy them of the facts entitling the party to the certificate; it is sufficient, if the consideration, to wit, the occupancy and the quantity granted, appears; nothing more is necessary to certify to the government the party's right, or to enable him, after it is surveyed by the proper officer, to obtain a patent. p. 666.

The second section of the act of congress of March 3d, 1803, was intended to confer a bounty on a numerous class of individuals, and in construing the ambiguous words of the section, it is the duty of the court to adopt that construction which will best effect the liberal intentions of the legislature. p. 667.

The time when the territory over which this law operated, was evacuated by the Spanish troops, was very important; as the law was intended to provide for those who were actually, at that time, inhabitants of, and cultivated the soil within it; but whether it was in 1797 or 1798, was comparatively unimportant. The decision of the commissioners upon the period when the evacuation took place, is sufficient; and the court are disposed to adopt the construction of the act, given by the commissioners west of Pearl river, that the evacuation took place on the 30th March 1798, by which persons coming within the objects of the section, were entitled to donation certificates. p. 667.

\*Congress have treated as erroneous, the construction given to the law by the commissioners to settle claims to lands east of Pearl river, who have decided, that only those who were settled on the lands within the territory, in the year 1797, were entitled to donation certificates, and who had granted to others pre-emption certificates. p. 668.

\*656] The commissioners appointed under the act of congress relative to claims to lands of the United States, south of the state of Tennessee, were authorized to hear evidence as to the time of the actual evacuation of the territory by the Spanish troops, and to decide upon the fact; the law gave them power to hear and decide all matters respecting such claims, and to determine thereon, according to justice and equity, and declared their deliberations shall be final; the court are bound to presume that every fact necessary to warrant the certificate, in the terms of it, was proved before the commissioners; and that, consequently, it was shown to them, that the final evacuation of the territory by the Spanish troops, took place on the 30th of March 1798. p. 668.

<sup>1</sup> See *Bryan v. Forsyth*, 19 How. 336; *Bagnell v. Broderick*, 13 Pet. 436.

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ERROR to the Supreme Court of the state of Mississippi. This action of ejectment was originally instituted in the state circuit court of Mississippi, by the lessee of the defendants in error, citizens of that state, against Allison Ross, the plaintiff in error, to recover a tract of land lying in that state. The plaintiff, in that court, obtained a verdict for the land, and on the trial of the cause, a bill of exceptions was taken to the opinion of the circuit court, upon certain instructions which were refused to be given, when required by the counsel for the defendant below. From the decision of the state circuit court, the defendant in that court, appealed to the supreme court of the state of Mississippi, and the judgment of the circuit court having affirmed in that court, he prosecuted a writ of error to this court.

The bill of exceptions sent up with the record, set forth, that the counsel for the plaintiff in error moved the circuit court to instruct the jury, that if they should be of opinion, that the defendant in the ejectment was in possession of the land in controversy, under a patent from the United States to Isaac Ross, dated 12th August 1819, and assigned to him by the said defendant, the plaintiff in the ejectment could not recover.

The patent to Isaac Ross was founded upon a certificate of the register of the land-office west of Pearl river, and was for the land in controversy; which had been sold at the sales of the lands of the United States, and purchased by Isaac Ross, who afterwards assigned the same to Allison Ross, the defendant below. The patent was of older date than the patent held by the lessors of the plaintiff below; which patent was issued to Joseph White, on a certificate of the board of commissioners, west of Pearl river, granted in pursuance of an act of congress, passed the 3d of March 1803, entitled "an act regulating \*the grants of land, and providing for the sales of lands of the United States, south of the state of Tennessee." [\*657

The instructions required, claimed that the elder patent of the defendant below, should prevail in the action of ejectment, in a court of law, against the junior patent of the plaintiff, although the junior patent emanated from a prior certificate of the commissioners. The court refused to give the instructions prayed for, but on the contrary, instructed them, that the junior patent of the plaintiff in the ejectment, emanating upon a certificate for a donation claim, prior in date to the patent under which the defendants claimed, would overreach the elder patent of the defendant, and in point of law should prevail against it. The plaintiff in error contended, that the court below erred in refusing the instructions prayed for, and in the instructions they gave to the jury in favor of the title of the plaintiff in the ejectment.

The case was argued by *Wirt*, Attorney-General, for the plaintiff in error; and by *Coxe*, for the defendant.

For the *plaintiff* in error.—1. The patent under which the defendants claim to hold the land, was granted under a donation certificate, issued by the board of commissioners, west of Pearl river. The land in question was sold at public sale, by the government of the United States, and was purchased by the assignor of the plaintiff in error, ignorant of any other title; the purchase-money was paid; a patent issued to him, from the general land-office, and possession was taken. The holder of the donation certificate

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applied for a patent, and the land-office, not knowing of the prior patent, granted his request, and he, holding a junior patent, brought this ejectment in the state court of Mississippi. The question before that court was—whether before a court of law, the junior patent could be given in evidence? The court refused to instruct the jury that the senior patent was the best title, and gave instructions that the junior patent, in conformity with the donation certificate, gave the defendant in error the title to the land described in it.

The first question to be considered is—whether, in a court of law, the proceedings, behind the patent, can be looked at, to ascertain the validity of such a patent? Several references have been given by the opposite counsel, but they are all cases of chancery proceedings, and there is no doubt, chancery can do this. The question now is, can a court of law do it? It has been decided here, that this can be done; but this was only when the local law of the state, in which the case arose, authorized such an examination; but not \*658] upon any principles of general law. *Polk's Lessee v. Wendell et al.*, 9 Cranch 87; 1 Wheat. 432; 5 Ibid. 293. The decisions of the courts of Virginia consider the prior patent conclusive, unless in case of fraud; and it is not known, that any adjudications in the courts of Mississippi have established a different principle.

2. But if the court can go into the examination of circumstances which preceded the patent, still the instruction given to the jury was wrong, as the junior patent cannot prevail, unless it is warranted by the prior steps. The certificate given by the commissioners is not a donation, but a pre-emption certificate. This is shown by a reference to the provisions of the act of congress. The act of 3d March 1803 (2 U. S. Stat. 229), is the foundation of the certificate. The second section of that act gives land to those who "actually inhabited and cultivated" the tract, on the day the Spanish troops actually evacuated the territory, on the 27th October 1797. The third section gives to persons inhabiting and cultivating a tract, at the time of the passing of the law, a pre-emption certificate for such tract. The certificate under which the plaintiffs below applied for a patent, states the occupation of the tract by the patentee, on the 13th of March 1798. This, therefore, could not be a donation certificate, which could only be granted to a person who "inhabited and cultivated" the land on the 27th of October 1797, and it must have been given under the third section, which authorizes the issuing of pre-emption certificates. The certificate granted to the holder of the junior patent, states, that he "occupied" the land, and this does not, *ex vi termini*, mean inhabit and cultivate. It was the duty of the plaintiff to make out a good title, and if he does not show, that by the course of decisions in Mississippi you can look behind the patent, he has failed to do so.

The period at which the territory was actually evacuated by the Spanish troops, is not known to the court, otherwise than as stated in the act of congress; which affirms the same to have been on the 27th of October 1797. Congress have legislated as to the lands east of Pearl river, but there has been no legislation as to those which lie west of the same. The court have here nothing to do, but to decide whether this certificate is a donation certificate, within the second section of the law; and to do this, they must decide upon facts which were for the jury alone.

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*Coxe*, for the defendant in error.—1. This is not a case in which the supreme court can entertain jurisdiction. It is a writ of error directed to the highest \*court of the state of Mississippi; and the 25th section of the judiciary act furnishes the only rule by which to determine the [\*659 question of jurisdiction. The plaintiff in error has not produced the clause in the constitution, the treaty or statute, under which he claims this proceeding; nor can he designate it. The court below being of opinion, that the case of the defendant in error was within the provisions of the act of congress, decided the case upon general principles, and held that his title is, in law and equity, paramount to that of his opponent. Had the court decided differently, this court would have had jurisdiction; but the constitution and judiciary act do not confer this jurisdiction in every case in which the plaintiff in error claims title under a patent from the United States; which is the only ground upon which it is pretended to exist here. Should this doctrine meet the sanction of the court, it will be difficult to conceive a case of ejection that can be brought in any of our states, in which this court may not entertain jurisdiction; for nearly every title is derived from, or depends upon, a patent from the United States.

Again, what question can this court decide, admitting it to possess jurisdiction? The same 25th section expressly declares, that no error shall be assigned, or regarded as a ground of reversal, but such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, &c. No such question is presented on this record. The construction of the 25th section has been frequently before this court, and may be considered as settled. *Inglee v. Coolidge*, 2 Wheat. 368, decides, that the error contemplated in the statute, must be apparent on the record. *Matthews v. Zane*, 7 Wheat. 164; *Martin v. Hunter*, 1 Ibid. 357; *Montgomery v. Hernandez*, 12 Ibid. 132; *Hickie et al. v. Starke et al.*, at this term (*ante* p. 94).

The case is clear upon the merits, should the court examine them. The title of defendant in error is based upon the 2d section of the act of March 3d, 1803, c. 340 (2 U. S. Stat. 229). To every person, &c., who did, on that day of the year 1797, when the Mississippi territory was finally evacuated by the Spanish troops, actually inhabit and cultivate a tract of land in the said territory, &c., the said tract of land, thus inhabited and cultivated, shall be granted. The objection is, that the certificate of the board of commissioners under which this title is derived, shows an occupancy on and before the 30th of March 1798. It is admitted, that this is, *primâ facie*, erroneous, and that it is incumbent on the party claiming under such a donation certificate, to show that it is warranted by the fair construction of the statute. The design of congress in this section, was to secure the titles \*of [\*660 actual occupants, who had taken possession under Spanish authorities; and the period up to which such occupancy should be entitled to this protection, is fixed by two circumstances—it must be on a day in the year 1797; and on the day when the Spanish troops finally evacuated this territory, the right to which had been so long contested between the two nations, and which was finally settled by the treaty of 1795.

It is certainly true, that congress, at the date of this law, were ignorant of the precise day when this evacuation occurred, and were mistaken as to the year. The Spanish troops finally evacuated the territory, on the 30th of

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March 1798, as is stated by an eye-witness of the fact. Ellicott's Jour. 176. Under the act of 1803, two boards of commissioners were created, the one for the lands east of Pearl river, the other, for the lands west of the same stream. These boards were organized, and proceeded to business in the latter part of the same year. The board to the west of Pearl river, discovered the incongruity in the statute. This board proceeded to execute their duties, and all their donation certificates, amounting in number to near 300, have reference to an occupancy on and before the 30th March 1798. This construction of the law, it is apprehended, is not only correct in itself, but has received the implied sanction of the legislature. In consequence of the diversity of opinion and of practice between the two boards, congress passed another law, on the 21st of April 1806, ch. 46; the 4th section of which enacts, that whenever it shall appear, to the satisfaction of the register and receiver of the district east of Pearl river, that the settlement and occupancy, by virtue of which a pre-emption certificate had been granted by the commissioners, had been made and taken place prior to the 30th of March 1798, they shall be authorized to grant to the party a donation certificate in lieu of such pre-emption. This was a legislative sanction, given to the opinion of the board of commissioners, west of Pearl river, who had, in the cases contemplated in this provision, considered the parties as within the 2d section of the act of 1803, and therefore, entitled to a donation certificate; and a legislative repudiation of the construction given by the other board, who had considered such cases as coming within the 3d section of the act of 1803, and the parties entitled only to a pre-emption title. On the 31st of March 1808, congress passed another law, c. 40, the 2d section of which re-enacts and extends the benefit of the 4th section of the act of April 21st, 1806.

Independently, however, of these legislative provisions, it is the only fair interpretation of which, under the circumstances, the 2d section of the act of 1803 is susceptible. A literal compliance with the act is impossible, \*661] as there was no day in \*the year 1797, in which the Spanish troops finally evacuated the Mississippi territory. Either some latitude of construction must be admitted, or this section must become a dead letter, and every title dependent upon its provisions, annulled. The obvious meaning of the act was, to make the period of evacuation the *punctum temporis*, to which the occupancy should refer, and as the one incident or the other must yield, in order to carry the whole design of the legislature into operation, the expunging of the words "in the year 1797," involves the least sacrifice, and tends more effectually than anything else to further the intentions of the legislature.

In settling this question of construction, the practice of the government, and of its lawfully authorized agents is entitled to much consideration. This construction has received the sanction of the board of commissioners, who were invested not only with ministerial, but judicial functions; and who, throughout the whole period of their existence, so interpreted the law. It has received the sanction of the land-office, and of the executive, for patents have invariably been granted on such certificates.

In *Edwards's Lessee v. Darby*, 12 Wheat. 210, this court seems to recognise the importance of recurring to such sources of information. In order to arrive at the true construction of a statute, or even to enable it correctly

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to interpret the provisions of the constitution, the court will refer to, and judicially notice the historical facts which are essential to their correct interpretation. This was done in the case of *Gibbons v. Ogden*, 9 Wheat. 1.

If, then, this form of certificate be correct, under the law, what is its operation? The 2d section says, that the land thus occupied shall be granted to the occupant; this does look as if congress designed some ulterior act to be done to vest the title. The language of the 8th section amounts, however, to a present legislative grant. It provides, that so much of the five millions of acres, reserved for that purpose, as may be necessary to satisfy various classes of claims, enumerating particularly those which are embraced by the 2d section of the act, "be and the same is hereby appropriated." This language is more definite than that which this court, in *Sims v. Irvine*, 3 Dall. 425, construed to confer a legal title as effectually as a patent. Also 2 Wheat. 196. If this view of the case be correct, it follows, that the title of the plaintiff in error is, radically and intrinsically, a nullity. The patent under which he claims, cannot be valid even at law, if, at the period of its emanation, the United States had no title. *Polk's Lessee v. Wendell*, 9 Cranch 87, 94; *Patterson v. Winn*, 11 Wheat. 304. \*Neither the language, nor the policy of any law, limits the time within which we were to call for the patent. No money was to be paid beyond the mere official fee for the paper. No person could be injured by the delay; and in this view, nearly all the patents emanating on donation certificates, bear date about the same period of time.

The case is, therefore, relieved from the difficulties presented by the question, whether the court will look behind the elder patent, and investigate the prior rights of the parties. The various decisions on that question relate exclusively to cases in which no other than an equitable title existed before the patent, and where the patent itself properly issued. Even in such cases, this court has adopted the practice of the state courts where the land was situated, and have decided either for or against the conclusiveness of the patent, as to the legal title, according to the varying ideas of the state courts. In this case, it is incumbent on the plaintiff in error to show, affirmatively, that the state court has erred. *Kirk v. Smith*, 9 Wheat. 241. And to do this, he must show, that under the law of Mississippi, the patent is the only and conclusive evidence of the legal title. No authority to this point, can, it is believed, be produced.

TRIMBLE, Justice, delivered the opinion of the court.—This was an action of ejectment, originally instituted in a circuit court of the state of Mississippi. Upon the trial of the cause, in the court of original jurisdiction, the defendant excepted to the opinion of the court, in overruling instructions moved on his part, to be given to the jury, and also to the instructions given by the court, at the trial of the cause. In the bill of exceptions tendered by the plaintiff in error, in the court below, are inserted the titles of the parties to the land in controversy, and the facts upon which the questions of law arise, which were decided by the court. A verdict and judgment were rendered against the defendant, from which he appealed to the supreme court of the state, being the highest court of law therein, where the judgment was affirmed; and the case is now brought before this court, by writ of error to the supreme court of the state.

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The material facts of the case are the following : The lessors of the plaintiffs in the action of ejection, claimed the land in controversy under and by virtue of a patent from the United States, dated the 13th day of October 1820, which was given in evidence. This patent emanated upon a certificate of the board of commissioners west of Pearl river, organised under the provisions of the act of congress, of the 3d of March 1803, entitled "an \*663] act regulating the grants of land, and providing \*for the disposal of the lands of the United States, south of the state of Tennessee ;" which certificate was also given in evidence, and bears date the 13th day of February 1807. The important parts of the certificate are in the following words, to wit : "Joseph White claims a tract of six hundred and forty acres of land, situated in Claiborne county, on the waters of Bayou Pierre, by virtue of the occupancy of the claimant on and before the 30th of March in the year 1798. We certify, that the said Joseph White is entitled to a patent therefor, from the United States, by virtue of the recited act." The defendant claimed and held possession of the land, under and by virtue of a patent from the United States, dated the 12th day of August 1819, for 553 acres of land. This patent is founded upon a purchase at the general sale of the lands of the United States, at Washington, Mississippi ; under the authority of the before-recited act of congress.

Upon this state of facts, the counsel for the defendant moved the court to instruct the jury : "That in such a case, the older patent of the defendant, under which he claimed possession, should prevail in the action of ejection in a court of law, against the said junior patent of the plaintiff ; although the said junior patent of the plaintiff emanated upon a prior certificate of the board of commissioners west of Pearl river ; but the court refused to give such instructions in point of law to the jury, but on the contrary, instructed them, that the junior patent of the said plaintiff, emanating upon a certificate of a donation claim, prior in date to the patent under which the defendant claims, would overreach the patent of the defendant, and in point of law, should prevail against such prior patent of the defendant." These opinions having been affirmed upon appeal to the supreme court of the state, the object of this writ of error is to have them reviewed in this court.

It has been objected, that this court has not jurisdiction of the case. By the second section of the third article of the constitution, it is declared, "that the judicial power shall extend to all cases arising under this constitution, the laws of the United States and treaties made, or to be made, under their authority, &c." By the 25th section of the judiciary act of 1789, made in pursuance of this provision of the constitution, it is enacted, "that a final judgment or decree in any suit, in the highest court of law or equity of a state in which a decision in the suit could be had, where is drawn in question the construction of any statute of the United States, and the decision is against the title or right, &c., specially set up or claimed by either party, \*664] &c., under such statute, &c., may be re-examined and \*reversed or affirmed, by the supreme court of the United States, upon a writ of error." In this case, the titles of both parties are derived under an act of congress ; the construction of the statute is drawn directly in question ; and the decision of the highest court of law of the state is against title and right of the party, specially set up in his defence, under the statute. This

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case is not distinguishable from the case of *Matthews v. Zane*, 4 Cranch 382, in which the jurisdiction of this court was maintained.

For the plaintiff in error, it is argued, that the state court erred in deciding that the elder grant should not prevail in the action of ejectment. It is undoubtedly true, that upon common-law principles, the legal title should prevail in the action of ejectment, upon the same grounds that the legal right prevails in other actions in courts of law. It is so held in those states in which the principles of the common law are carried into full effect, and the course of proceeding in the action of ejectment is according to those principles. In the states where these principles prevail, it is held, that in a trial at law, the courts will not look behind, or beyond, a grant, to the rights upon which it is founded; nor examine the progressive stages of the title, antecedent to the grant. But in other states, the courts of law proceed upon other principles. In the action of ejectment, they look beyond the grant, and examine the progressive stages of the title, from its incipient state, whether by warrant, survey, entry or certificate, until its final consummation by grant; and if found regular and according to law, in the progressive stages, the grant is held to relate back to the inception of the right, and to have dignity accordingly. This latter course seems to be the one adopted and pursued by the courts of Mississippi. It is enough for us to say, that in so doing, and in applying their peculiar mode of proceeding to titles derived through and under the laws of the United States, they violated no provisions of any statute of the United States.

The important question in the case is this: In applying its own principles and practice in the action of ejectment, as might well be done to this case, has the court misconstrued the act of congress, in deciding that the grant of the plaintiff, emanating upon the donation certificate of the board of commissioners west of Pearl river, set forth in the record, would overreach the defendant's grant, and should prevail against it in the action of ejectment? This draws in question the construction of the act of congress of 1803, and gives this court jurisdiction of the case. \*It is well known, that prior to the treaty of San Lorenzo, of the 27th of [665 October 1795, controversies had long existed between the United States and his Catholic Majesty, on the subject of the boundaries which separated the United States and the Spanish provinces of East and West Florida. The second article of that treaty declares, "that the southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the Mississippi river, at the northernmost part of the thirty-first degree of latitude, north of the equator, which, from thence, shall be drawn due east to the middle of the river Appalachicola," &c. And it is agreed, that if there should be any troops, garrisons or settlements of either party, in the territory of the other, according to the above-mentioned boundaries, they should be withdrawn from the said territory, within the term of six months after the ratification of this treaty, or sooner, if it be possible. It is matter of public history, that there were Spanish troops, garrisons and settlements, north of this boundary, and within the territory of the United States, which were not withdrawn, till long after the time stipulated by the treaty.

By the second section of the before-recited act of congress, of the 3d of March 1803, it is enacted, "that to every person, or to the legal representa-

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tive or representatives of every person, who, either being the head of a family, or of twenty-one years of age, did, on that day of the year 1797, when the Mississippi territory was finally evacuated by the Spanish troops, actually inhabit and cultivate a tract of land in the said territory, &c., the said tract of land thus inhabited and cultivated, shall be granted: provided, however, that not more than one tract shall be thus granted to any one person, and the same shall not contain more than 640 acres; and provided, that this donation shall not be made to any person who claims any other tract of land in the said territory, by virtue of any British or Spanish grant or order of survey." The sixth section of the act provides for the establishment of two boards of commissioners, one east and the other west of Pearl river, in said territory, "for the purpose of ascertaining the rights of persons claiming the benefit of the articles of agreement and cession between the United States and state of Georgia, or of the three first sections of this act. And each board, or a majority of each board, shall, in their respective districts, have power to hear and decide, in a summary manner, all matters respecting such claims; also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon, according to justice and equity; which determination, so far as relates to any rights \*666] derived from the articles of agreement aforesaid, or from the three first sections of this act, shall be final." The eleventh section provides, "that the lands for which certificates of any description whatsoever shall have been granted by the commissioners, in pursuance of the provisions of this act, shall, as soon as may be, be surveyed; and the said surveyor shall cause all the other lands of the United States, in the Mississippi territory, to be surveyed." And the twelfth section provides, that all the lands aforesaid, not otherwise disposed of or excepted, by virtue of the provisions of the preceding sections of this act, shall (with certain other reservations and exceptions) be offered for sale.

As such lands only were authorized to be offered for sale, as had not been appropriated by the previous sections of the law, and certificates granted by the commissioners, in pursuance thereof; it follows, incontestably, that the right of the plaintiff in the ejectment, derived from a donation certificate, is superior to that of the defendant, derived from a purchase at the sales, unless there is some fatal infirmity in the certificate, which renders it void. This has not been contested. But it is objected to this certificate: 1. That it is not a donation certificate. 2. That it is not sufficiently precise, and does not aver all the facts necessary to authorize the commissioners to grant a certificate. 3. The period of occupancy is alleged to be the 30th of March 1798.

The answer to the first objection is, that the certificate is granted for 640 acres of land, the precise quantity for which a donation certificate was authorized. This is sufficient evidence of the intention of the board of commissioners to grant a donation certificate. The period of occupancy, too, fits the case of a donation certificate or note; and if necessary, fortifies the conclusion of its being granted as a donation certificate.

To the second objection, it may be answered, that the law requires no precise form in the certificate. It is sufficient, if the proofs be exhibited to the board of commissioners, to satisfy them of the facts entitling the party to the certificate. The facts need not be spread upon the record. It is suf

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ficient, if the consideration, to wit, the occupancy, and the quantity granted, appear. Nothing more is necessary to certify to the government of the party's right; or to enable him, after it is surveyed by the proper officer, to obtain a patent.

The objection, that the occupancy is stated to be on the 30th of March 1798, produces more difficulty. \*The language of the second section of the act of congress, authorizing these donation claims, is, that the [ \*667 persons, who on that day of the year 1797, when the Mississippi territory was finally evacuated by the Spanish troops, &c. This language is very peculiar, and shows plainly, that, although congress, at the time of passing the law, was certain of the fact of evacuation by the Spanish troops, that body was not informed of the precise time when the evacuation took place. The law was intended to confer a bounty on a numerous class of individuals; and in construing the ambiguous words of the section, it is the duty of the court, to adopt that construction which will best effect the liberal intentions of the legislature. To interpret this section literally, that land should be granted to those, who, on the same day of the year 1797, occupied a tract of land, provided the Spanish troops finally evacuated the territory, and on that very day of that very year 1797, would totally defeat the operation of the law, and the bounty intended by it; if it should have happened, that the final evacuation of the territory, by the Spanish troops, took place on the first day of January 1798, or on any subsequent day. If an individual had inhabited and cultivated a tract of land every day in the year 1797, still, according to the letter of this section, he was not entitled to the bounty of the government, because the Spanish troops had not evacuated the territory any day of that year, but some day of the next year; and although the party continued to occupy the land, until the day of the actual evacuation, still, he could not be entitled, according to the letter of the act, because that day was not any day of the year 1797.

This could not be the intention of congress. The country had been settled, during the conflict on the subject of boundaries between Spain and the United States, by the citizens and subjects of both governments. It was a weak and exposed frontier of the United States. The manifest general intent of the act of congress is, to confer a bounty upon the inhabitants and cultivators of the soil, who elected to remain in the country, at the time of the actual evacuation by the Spanish troops. In this view of the subject, the time of the actual evacuation was very important, but whether it was on some day in the year 1797 or 1798, was comparatively unimportant. If the fact be supposed, and it must be supposed, for the sake of the argument, that the actual evacuation took place on the 30th of March 1798, then something must be rejected in the construction and interpretation of the act of congress to make the provisions of the law effectual. Either the words \*"of the year 1797," must be rejected, as inconsistent with the main [ \*668 scope and general intent of the law, or the claims to donations of all the inhabitants and cultivators, west of Pearl river, must be defeated. This would but defeat the manifest general intent of the law.

It was said at the bar, that all the donation certificates, west of the Pearl river, express to be for occupancy on the 30th day of March 1798, and a certificate from the commissioners of the general land-office, to that effect, was produced. It is not necessary to decide, whether we can, or cannot, notice

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this certificate, as evidence of the fact that the evacuation took place on that day, or as evidence of the construction given by the board of commissioners west of Pearl river. It is sufficient, if they were authorized to give such construction to the act, in the event supposed, that the event happened; or in other words, that the actual evacuation took place on the 30th of March 1798, as supposed in the argument; and that the construction of the 2d section of the act of congress, which we are disposed to adopt, is the true construction in the estimation of congress itself, we think, may fairly be inferred from the act of congress of the 21st of April 1806. The 4th section of that act provides, that "wherever it shall appear to the satisfaction of the register and the receiver of the district east of Pearl river, that the settlement and occupancy, by virtue of which a pre-emption certificate had been granted by the commissioners, had been made and taken place prior to the 30th of March 1798, they shall be authorized to grant to the party a donation certificate, in lieu of such pre-emption." It appears, from this section, that the commissioners east of Pearl river had adopted the construction of the act of 1803, contended for by the plaintiff in error; and that, instead of granting donation certificates, to the inhabitants and settlers, down to the period of the 30th of March 1798, under the 2d section of the act, they had granted pre-emption certificates, under the provisions of the 3d section. Congress treat this as a mistaken construction of the law, by directing donation certificates to be made out in lieu of the pre-emption certificates. The act of 1803 puts the settlers east and west of Pearl river on precisely the same footing, and it is inconceivable, that congress could have any motive for giving those east of Pearl river any preference by the act of 1806; or that the act could have any other object, than to continue upon the same footing the settlers east and west of Pearl river.

The certificate granted in the case before us, is sufficient evidence that the commissioners west of Pearl river adopted a more liberal construction; such \*669] as we think they were \*warranted in adopting, and such as, we think, is manifestly sanctioned by congress, in the act of 1806. It is the opinion of this court, that the commissioners were authorized to hear evidence as to the time of the actual evacuation of the territory by Spanish troops, and to decide upon the fact. The law gave them "power to hear and decide all matters respecting such claims, and to determine thereon, according to justice and to equity;" and declares their determination shall be final. We are bound to presume, that every fact necessary to warrant the certificate, in the terms of it, was proved before the commissioners; and that, consequently, it was shown to them, that the final evacuation of the territory by the Spanish troops took place on the 30th of March 1798.

Upon the whole, it is the unanimous opinion of this court, that the supreme court of the state of Mississippi has not misconstrued the act of congress, from which rights of the parties are derived; and that the judgment of the supreme court be affirmed.

THIS cause came on, &c.: On consideration whereof, it is the opinion of this court, that the supreme court of the state of Mississippi has not misconstrued the act of congress on which the plaintiff below relies; and it is, therefore, adjudged and ordered by this court, that the judgment of said supreme court of the state of Mississippi be and the same is hereby affirmed, with costs.