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confirms to the claimants the lands contained in two other surveys thereof, made by the said Don Andrew Burgevin, filed also in this cause, one for five thousand acres, on the 10th of March 1819, and the other for three thousand acres, on the 12th of the same month, is erroneous, and ought to be reversed, and the same is hereby reversed accordingly; and this court doth remand the said cause to the said superior court, with directions to conform to this decree, and to take such further proceedings in the premises, that the remaining eight thousand acres, which have been improperly surveyed without authority, be surveyed on any lands now vacant within the limits of the grant made to the petitioner on the 6th of April 1816, and that the title of the petitioner to the land so surveyed be confirmed. All which is ordered, adjudged and decreed by this court.

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*UNITED STATES, Appellants, v. FRANCES RICHARD.

Florida land-claims.

Confirmation of a grant of land by Governor Coppering made in June 1817. The grant was made to the appellee, on his stating his intention to build a saw-mill.

The decree granted to the petitioner, "license to construct a water saw-mill, on the creek known by the name of Pottsburg, bounded by the lands of Strawberry Hill, and this tract not being sufficient, I grant him the equivalent quantity in Cedar Swamp, about a mile east of McQueen's mill, but with the precise condition, that, as long as he does not erect said machinery, this grant will be considered null and without value nor effect, until that event takes place; and then, in order that he may not receive any prejudice from the expensive expenditures which he is preparing, he will have the faculty of using the pines and other trees comprehended in the square of five miles, or the equivalent thereof, which five miles are granted to him in the mentioned place, the avails of which he will enjoy without any defalcation whatever." The judge of the superior court construed this concession to be a grant of land, and we concur with him.

APPEAL from the Superior Court of East Florida.

The case was argued by *Call*, for the United States; and by *White*, for the appellee.

MARSHALL, Ch. J., delivered the opinion of the court.—This claim is founded on a concession made to the appellee in June 1817, by Governor Coppering, of 16,000 acres of land, lying in two places, designated in the petition and concession. The surveys were made in 1824. These surveys were laid before the register and receiver, whose report was unfavorable to the title. The appellee, believing it to be well founded, presented a petition to the judge of the district, praying an examination of his title, and that it be confirmed.

The attorney for the United States, in additional to his general objection to the want of power in the governor, contends, that his decree grants permission to cut timber, but does not convey the land itself, and that the condition of the grant has not been performed. The proof is complete, that the mill, the building *of which was the consideration of the concession, was commenced in 1818, was in full operation in 1820, and the been kept up ever since. The material question is, whether the land itself, or the privilege of cutting timber, was conceded. For this purpose, the petition and concession are to be examined.

Don Francisco Richard, after stating in his petition his intention to

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build a water saw-mill, proceeds, "and as for that purpose a fit situation is necessary, such as is offered on Pottsbury creek, bounded by the lands of Strawberry Hill, and the mentioned tract not being sufficient, for the indicated objects, he requests that the quantity equivalent to the object of his petition, be granted to him, about one mile distant, east of McQueen's mill, in order to get cypress for timber; therefore, he supplicates your excellency submissively, to grant him your superior license, and the expressed tract of five miles of land, for the purposes he proposes to himself, in order that, what he solicits being granted, he may, with all possible brevity, commence this advantageous work, and in order that he may have in the said tract the necessary timber." The decree grants to the petitioner, "license to construct a water saw-mill, on the creek known by the name of Pottsbury, bounded by the lands of Strawberry Hill, and this tract not being sufficient, I grant him the equivalent quantity in Cedar Swamp, about a mile east of McQueen's mill, but with the precise condition, that as long as he does not erect said machinery, this grant will be considered null, and without value nor effect, until that event takes place; and then, in order that he may not receive any prejudice from the expensive expenditures which he is preparing, he will have the faculty of using the pines and other trees comprehended in the square of five miles, or the equivalent thereof, which five miles are granted to him in the mentioned place, the avails of which he will enjoy without any defalcation whatever."

This translation was made by order of the court, by the translator. Another translation was made, also by order of the court, by the keeper of the public archives. The difference between them is unimportant. In the last, the petitioner, after stating his object, respectfully prays, that "your excellency will grant him his superior permission, and also five miles square of land, *that he may possess thereon the necessary timber for the purposes aforesaid." The decree grants the permission to build the mill on the lands adjoining Strawberry Hill, and adds, "if there be not sufficient lands, the deficiency (to the amount granted), on Cedar Swamp." The condition of the grant is then stated nearly as in the preceding translation. The petitioner asks permission to build the mill and a grant of land usually annexed to such permission. It is plainly to be inferred from these documents, that this quantity was five miles square. The same fact is collected from other similar grants. The doubt is, whether the land itself, or only the timber growing on it, is asked and conceded.

The petitioner, in the first translation, says, "that the mentioned tract" (on Pottsbury creek) "not being sufficient for the indicated objects" (that is, not amounting to five miles square), "he requests that the quantity equivalent to the object of his petition, be granted to him in Cedar Swamp. He supplicates his excellency "to grant him his license, and the expressed tract of five miles of land." The application is obviously for land, not merely for the timber growing on it.

The concession is loosely worded, but is understood to allude to land. After granting permission to build a mill on the place designated, the governor adds, "and this tract not being sufficient," plainly indicating the tract on which the mill was to be constructed, "I grant him the equivalent quantity in Cedar Swamp." The word "tract" means land, not timber, and the words "equivalent quantity" refer to the antecedent word "tract,"

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and consequently also mean land. After stating the condition of the grant, he adds, "which five miles are granted to him in the mentioned place." This construction is strengthened by the express permission to take timber, while he is erecting the mill, for the purpose of executing the work. While the grant of the tract is of no effect, he is permitted to use the timber on it. The grant of the tract, which depends on building the mill, was obviously supposed to pass something more than was passed by the permission to cut timber until it should have effect. It is difficult to conceive any motive for granting the timber *and withholding the land. That could not be granted to, or used by another, while the right to the timber existed. It is not to be believed, that the government wished to restrain the grantee from cultivating a part of it. The judge of the superior court construed this concession to be a grant of land, and we concur with him in this construction.

But the surveys laid before the court, were for a larger quantity of land than is expressed in the concession. That made on Pottsburg creek, which was intended for 14,400 acres, actually contains 17,610, being 3210 more than was designed. This difference is accounted for, by the fact, that it includes other tracts previously appropriated, and a quantity of land covered with water. The superior court for the district has very properly, in its opinion, disallowed this excess, so far as respects the land covered with water. But after having adjudged the claim to be valid, "it confirmed and decreed the same to the said claimant, to the extent, and agreeable to the boundaries, as in the grant for the said land, and as in the surveys thereof, made by Andrew Burgevin; provided said surveys do not include a greater quantity of land than 16,000 acres." But the surveys do include a greater quantity, as the petitioner himself states in his petition. This conditional confirmation of the larger survey, according to the exterior boundaries as described in the plat, when the petitioner is confessedly not entitled to all the vacant land lying within those boundaries, is, we think, not to be sustained.

The court is of opinion, that there is no error in so much of the decree of the superior court for the district of East Florida, made in this case, as declares the claim to be valid, and as confirms the title of the petitioner to the land described in the second survey mentioned in the said decree, containing 1600 acres, made the 26th of November 1824, and doth affirm so much thereof. But this court is of opinion, that there is error in so much of the said decree as confirms the title of the petitioner to the land described in the first survey, made on the first day of November 1824, because the said survey is admitted by the petitioner to contain more than 14,400 acres of land, not previously granted. This court doth, *therefore, reverse so much of the said decree as confirms the title of the petitioner to the land contained in the said survey, according to the exterior boundaries in the said decree described, and doth remand the cause to the said superior court, with directions to conform its decree to the decree of this court, by ordering the said tract to be so surveyed as to contain 14,400 acres of land, not previously granted, and no more.

THIS cause came on to be heard, on the transcript of the record from the superior court for the eastern district of Florida, and was argued by

United States v. Huertas.

counsel: On consideration whereof, this court is of opinion, that there is no error in so much of the decree of the superior court for the district of East Florida, made in this case, as declares to be valid, and as confirms the title of the petitioner to the land described in the second survey mentioned in the said decree, containing 1600 acres, made the 26th of November 1824; and doth affirm so much thereof. But this court is of opinion, that there is error in so much of the said decree, as confirms the title of the petitioner to the land described in the first survey, made on the first day of November 1824, because the said survey is admitted by the petitioner, to contain more than 14,400 acres of land, not previously granted. This court doth, therefore, reverse so much of the said decree as confirms the title of the petitioner to the land contained in the said survey, according to the exterior boundaries in the said decree described; and doth remand the cause to the said superior court, with directions to conform its decree to the decree of this court, by ordering the said tract to be so surveyed, as to contain 14,400 acres of and, not previously granted, and no more.

*UNITED STATES, Appellants, *v.* ANTONIO HUERTAS.

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Florida land-claims.

The decree of the superior court of East Florida, confirming a concession of land by Governor Kindelan, to the appellee, affirmed.

APPEAL from the Superior Court of East Florida.

This case was submitted by *Call*, for the United States; and by *White* for the appellee.

MARSHALL, Ch. J., delivered the opinion of the court.—The appellee had obtained a concession for 10,000 acres of land, from Governor Kindelan, in March 1813. The petitioner, in his application to the governor, sets forth many and great services rendered to the government, in the course of which he had sustained considerable loss, in the last insurrection. He also states that he has ten children, and fourteen slaves. Governor Kindelan, in his decree making the concession, states his own knowledge of the facts set forth in the petition, but grants the 10,000 acres, with the precise condition to use the same for the purpose of raising cattle, “without having the faculty of alienating the said tract, without the knowledge of this government.”

On the 20th of July 1816, Governor Copinger granted a complete title to this land. His grant recites the decree made by Governor Kindelan, and the boundaries of the land. This claim was laid before the board of commissioners, and recommended for confirmation. Don Antonio Huertas presented his petition to the court for the district of East Florida, by which tribunal his claim was adjudged valid. It was confirmed to him to the extent, and agreeable to the boundaries as in the grant, and the plat of the survey of said land, made by Andrew Burgevin, on the 19th of September 1818, and filed in the cause.

No exception can be taken to this decree, unless the survey *made by Burgevin varies from the grant. The description in the survey [*476 corresponds, in many respects, with that in the grant; but does not pursue its calls with such regular precision as to prove, completely, their exact