

United States v. Hernandez.

shall appear to that court, that the tract of 10,400 acres has not been surveyed according to the concession made to Antonio Huertas, on the 15th of September 1817, that the same be re-surveyed on the land contained in the said concession, and be decreed and confirmed to the petitioner, if the same be now vacant.

*484] *UNITED STATES, Appellants, v. PHILIP R. YOUNGE.

Florida land-claims.

The decree of the superior court of East Florida, confirming a grant of land to the appellee, affirmed.

APPEAL from the Superior Court of East Florida.

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

MARSHALL, Ch. J., delivered the opinion of the court.—This is a claim for 5000 acres of land; part of a grant for 25,000 acres, made by the governor of East Florida to the petitioner, on the 22d of February 1817. Part of this land, 20,000 acres, was conveyed to Moses E. Levi, and both the validity of the claim, and the identity of the land, were established, in the opinion given in that case. The decree of the superior court for the district of East Florida is affirmed.

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 counsel: On consideration whereof, it is ordered, adjudged and decreed, by this court, that the decree of the said superior court in this cause be and the same is hereby affirmed in all respects.

*485] *UNITED STATES, Appellants, v. JOSEPH H. HERNANDEZ.

Florida land-claims.

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

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 is an appeal from a decree of the judge of the superior court for the eastern district of Florida, declaring the claim of the appellee to 20,000 acres of land to be valid. His title commences with the following decree, made by Governor Coppering on the 18th of November 1817.

“In attention to what the interested party sets forth and represents, and in virtue of the powers which are annexed to my authority, also conforming to the laws and royal dispositions on the distribution of lands, the memorialist being one of those settlers who most contributes to the improvement of

United States v. Hernandez.

this province ; I grant him, in the name of his majesty, and of his royal justice which I administer, the twenty thousand acres of land which he requests, in the places which he points out in his memorial, that he may possess them in absolute property and dominion. And for confirmation, and his security, until titles in form be delivered him, which will be as soon as he shall have accomplished the survey and demarcation of said lands by a surveyor, let the proceedings be lodged in the archives of the notary, and an authenticated copy given to the interested."

The order of survey was made on the 5th of December 1820, and executed by Don Andrew Burgevin, in three surveys, on the 4th and 5th of April 1821. The full title was granted on the 9th of the same month.

The court decreed, that the claim was valid, and confirmed *the same "to the claimant to the extent and agreeably to the boundaries, as in the three surveys of the said land made by Don Andrew Burgevin, and dated the 4th and 5th day of April 1821, and filed as herein is set forth."

As the surveys and full title were made after the 24th day of January 1818, the claim of the petitioner depends entirely on the concession of the 18th of November 1817 ; and such was the opinion of the district court. That concession having been unconditional, and the power of the governor to make it having been decided in the case of *G. J. F. Clarke*, the only remaining question is, whether the land contained in the surveys is also contained in the concession ?

The decree of the governor refers to the petition on which it was made, for a description of the property conveyed. The petitioner, after setting forth his services and meritorious claims, proceeds, "wherefore, he prays your excellency to be pleased to grant him in absolute property and dominion, twenty thousand acres of land : to wit, ten thousand on both banks of the river St. John's, between the place known by the name of Buffalo's Bluff, and another place named Mount Tucker ; and the remaining ten thousand, on the west side of Lake St. George, the land to be divided into two parts by a brook or creek, which discharges itself into said lake, named Salt Spring, about ten miles more or less to the north of another creek, named Silver Creek." The 10,000 acres on both banks of the river St. John's, are laid off in two surveys of 5000 acres each. One on the east side of the river, between Buffalo's Bluff and Mount Tucker, and the other on the west side of that river. These tracts appear to have been properly surveyed.

The other survey for 10,000 acres, is laid down on the west side of lake St. George, and is divided into two parts, by a brook which discharges itself into the lake, and is in the decree named Salt Spring. In the certificate of the surveyor, it is called White Spring. The decree of the court corresponds precisely with the concession, as does the figure of the plat. No other discrepancy is found, than in the name of the spring. As no notice was taken of this discrepancy in the district court, where the locality of the survey was understood, we suppose, *that the spring may have been known by both names, or that some error may have taken place in transcribing the record. The decree of the district court is affirmed.

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 counsel:

United States v. Huertas.

On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said superior court, confirming the title of the petitioner in this cause be and the same is hereby affirmed in all respects.

*488]

*UNITED STATES, Appellants, v. JOHN HUERTAS.

Florida land-claims.

The decree of the superior court of East Florida, confirming a concession of land to the appellee, by Governor Coppering, in 1817, affirmed.

APPEAL from the Superior Court of East Florida.

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

MARSHALL, Ch. J., delivered the opinion of the court.—This is an appeal from a decree of the court for the district of East Florida, in favor of the validity of his claim to 15,000 acres of land, under a grant made by Governor Coppering in 1817.

He has failed to allege in express terms, in his petition to the district court, that his claim is protected by the treaty of 1819, and this objection has been taken on the part of the United States. If the reference made in the acts of congress, which authorize this proceeding, to the act of the 26th of May 1824, for the conditions, restrictions and limitations, according to which these claims should be adjudicated, was considered as made, for the purpose of describing the jurisdiction of the court, the objection would, perhaps, be fatal. But it has been decided in the case of *Clarke*, that the words to which this reference is made, do not describe the jurisdiction of the court, but the principles according to which this jurisdiction is to be exercised; and that if the petition shows a case which is really submitted to the court by the law, it is sufficient. This is fully shown by the petition before the court; it states the concession to have been made to him by the Spanish governor, and adds, that he was in possession when the flags were changed. We think, no valid objection exists to the petition.

It is also urged, that the motive to the grant is the service rendered by raising cattle, and the advantage to be derived *from the establishment of a cow-pen. It is added, that the petitioner has ceased to apply the land to the intended object. It having been decided, that land might be granted for meritorious services, the governor must necessarily judge of them; and the full title acknowledges that the conditions of the concession, which was made by Governor Kindelan, in October 1814, had been complied with. After reciting that the conditions of the concession have been fully performed, the grant proceeds: "I have, therefore, granted, and by these presents do grant, in the name of his majesty, to the said Don Juan Huertas, his heirs and successors, the said fifteen thousand acres of land, in absolute property," &c. The title to the land is complete, and cannot depend on his continuing to raise cattle, or to keep up his cow-pen, after the change of government. The only question in the case which has not been already decided, respects the identity of the land decreed with that granted.

The decree confirms the title of the claimant, "to the extent and agree-