

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.

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*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 Coppinger, 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 Coppinger 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-

able to the boundaries, as in those surveys made by Don Andrew Burgevin ;" the plats of which are in the record. The first, of 5000 acres, dated the 19th of September 1818, is situated on the east side of St. John's, about six miles southward of Picolata, beginning on the margin of the river, near the mouth of Tocoy creek. The description of the grant is 5000 acres, at a place called Tocoy, five miles above Picolata, and bounded on the west by the river St. John's. The grant also mentions the adjoining lands of others, which the surveyor has omitted to mention. The place called Tocoy in the grant, and the mouth of Tocoy creek, mentioned in the survey, may be considered as the same ; since the land binds on the river into which the Tocoy empties itself. The grant places the land five miles above Picolata, on the St. John's ; and the survey places it about six miles south of Picolata. Now, the St. John's runs from south ; and consequently, land on the river above Picolata, is south of Picolata. The identity of this tract is, we think, sufficiently proved.

The grant for the remaining 10,000 acres is placed on *the bank of the river, about twelve miles above a place called the Ferry, below [*490 A. Rayant's, bounded on the south by the lands of John Moore, and thence east, to the head of Deep creek, taking in the east and west banks of the said creek, and bounded on the north by the south west line of Tocoy, and on the west by the river St. John's. This part of the grant is surveyed in two tracts, one of six and the other of four thousand acres. The survey of 6000 acres is bounded on the west by the St. John's river, and on the south by Moore's land, and by vacant land. The certificate of the surveyor does not mention the other boundaries described in the grant. But as the tract is bounded on the west by the river St. John's, and on the south by Moore's land, the omission of the other boundaries is not material.

The remaining survey of 4000 acres contains no description which connects it in any manner with the grant. The order for this survey having been made subsequent to the 24th of January 1818, could give no title to land not within the grant.

There is no error in so much of the decree as declares the claim to be valid, and as confirms the title of the claimant, to the extent and agreeable to the boundaries as in the surveys dated the 19th day of September 1818 and the 31st day of May 1820 ; and so far the same is affirmed ; but there is error in so much of the said decree as confirms the title of the claimant to the extent and agreeable to the boundaries, as in the survey dated the 26th day of June 1820, and the said decree, so far as respects the title to the land contained in that survey, is reversed ; and the cause is remanded to the said district court with direction to reform the said decree, so as to conform the same to the decree of this court, by directing the said 4000 acres of land, to be surveyed within the bounds of the grant to the claimant, if the land be now vacant.

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 the opinion of this court, that there is no error in so much of the decree of the said superior court as declares the claim *of the petitioner to be valid, and as confirms the title of the claimant to the extent and agreeable to the boundaries in the surveys [*491

United States v. Fatio.

dated the 19th day of September 1818, and the 31st day of May 1820; and so far, it is ordered, adjudged and decreed by this court, that the said decree be and the same is hereby affirmed. But it is the opinion of this court, that there is error in so much of the said decree as confirms the title of the claimant to the extent and agreeable to the boundaries as in the survey dated the 26th day of June 1820; and that the said decree, so far as respects the title to the land contained in that survey, be and the same is hereby reversed. And it is further ordered and decreed by this court, that this cause be and the same is hereby remanded to the said superior court, with directions to reform the said decree, so as to conform the same to the decree of this court, by decreeing the said 4000 acres to be surveyed within the bounds of the grant to the claimant, if the land be now vacant.

*492] UNITED STATES, Appellants v. FRANCES P. FATIO's and LOUISA HALLOWES's HEIRS.

Florida land-claims.

Confirmation of a Spanish grant of land in Florida, to Philip P. Fatio.

APPEAL from the Superior Court of East Florida.

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

MARSHALL, Ch. J., delivered the opinion of the court.—This was a petition presented in pursuance of the act of congress, of the 23d of May 1828, providing for the adjudication of private land-claims in Florida. The petitioners state that their claim is founded upon a grant for 10,000 acres of land, made by the governor of the province, then under the dominion of the king of Great Britain, to their ancestor, Philip P. Fatio, deceased; and that by the stipulations of the treaty between their Britannic and Catholic Majesties, dated the 3d of September 1783, provision was made in the fifth article, that the British proprietors should be allowed a specified period to sell their lands in the provinces of East and West Florida, which were by that treaty ceded to Spain. It was further provided, that where the value of the possessions was such, that "they should not be able to dispose of them within the said term, then his Catholic Majesty shall grant them a prolongation proportioned to that end." Provision was also made by Spain in favor of such of the British proprietors as remained in the province, and became Spanish subjects. The ancestor of the petitioners remained and took the oath of allegiance, and the lands were surveyed and confirmed to him by the Spanish authorities.

The title was presented to the commissioners, and a report made in favor of the grant; and by the third section of the act of congress, approved May the 26th, 1830, it was provided, "that all claims derived from the former
*493] British government, *contained in the reports of the commissioners of East Florida, who did not avail themselves of the treaty between Spain and England, signed at Versailles, on the 20th of January 1783, by leaving said province, but who remained in the same, and became Spanish subjects, and whose titles were approved by the Spanish authorities, and