

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 HALLOWE'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

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have been recommended by the commissioners, or the register and receiver acting as such, be and the same are hereby confirmed." The treaty referred to in the above recited act, was evidently intended to be that of the 3d of September 1783, and the article is the fifth of that treaty, and not the third, as alleged in the petition.

In addition to the above laws and treaties, the petitioners have proved a possession, which constitutes a title by prescription, by the laws of Spain. It is, therefore, considered, adjudged and decreed, that the decree of the superior court of East Florida, be 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.

*UNITED STATES, Appellants, *v.* WILLIAM GIBSON *et al.*, Heirs [*494
of FRANCIS P. FATIO, deceased.

Florida land-claims.

Confirmation of the decree of the superior court of East Florida, in favor of a grant of land to Francis 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 appellee.

MARSHALL, Ch. J., delivered the opinion of the court.—This was a grant made by Governor Grant, of East Florida, for 10,000 acres of land, whilst that province was under the dominion of Great Britain, and another grant made by Governor Tomyn, to Francis P. Fatio, for 760 acres. The first tract was conveyed by regular deeds to the ancestor of the petitioner. The same questions are involved as in the case of the heirs of Francis P. Fatio. It is, therefore, considered by the court, that the decree of the superior court of East Florida be 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.