

United States v. Clarke.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel: On consideration whereof, it is adjudged and ordered by this court, that the judgment of the district court in this cause be and the same is hereby affirmed, with costs and damages at the rate of six per centum per annum.

\*168] \*UNITED STATES, Appellants, v. GEORGE J. F. CLARKE.

*Florida land-claims.*

The decree of the supreme court of East Florida, confirming a concession of land to the appellee granted to him by Governor Coppinger, in December 1817, confirmed.

A concession on condition, becomes absolute, when the condition is performed.

The original concession by Governor Coppinger, on the petition of George J. F. Clarke, was made on the 17th December 1817, of 26,000 acres of land, in the places he solicited in his petition, and a complete title was made of 22,000 acres, part of the same, in December 1817; 20,000 acres, part of the whole concession, were sold by the appellee; the other 4000 were surveyed in conformity with the decree of 17th of December 1817, and a complete title to the same was made by Governor Coppinger, on the 4th of May 1818. The claimant cannot avail himself of the grant of the 4th of May 1818, made after the 24th of January 1818, the time limited by the Florida treaty; he must rest his claim on the concession made on the 17th of December 1817.

The validity of concessions of land by the authorities of Spain, in East Florida, is expressly recognised in the Florida treaty, and in the several acts of congress.

The eighth article allows the owners of land the same time for fulfilling the conditions of their grants, from the date of the treaty, as is allowed in the grant from the date of the instrument; and the act of the 8th of May 1822 requires every person claiming title to lands, under any patent, grant, concession or order of survey, dated previous to the 24th of January 1818, to file his claim before the commissioners, appointed in pursuance of the act. All the subsequent acts on the subject observe the same language; and the titles under these concessions have been uniformly confirmed, when the tract did not exceed a league square.

APPEAL from the Supreme Court of East Florida.

The case was argued by *Call*, for the appellants; and by *Wilde*, for appellee.

MARSHALL, Ch. J., delivered the opinion of the court.—This case is in many respects similar to that which has been decided at this term, between  
\*169] the same parties. (a) The appellee \*filed his petition before the district court of East Florida, asserting a title of 26,000 acres of land, granted by Don Jose Coppinger, governor of that territory, while under the dominion of his Catholic Majesty.

The petition presented by Clarke to the Spanish governor, asks, in consideration of services and as a remuneration for losses sustained, all which he states, 26,000 acres of land in the following places: twenty-two thereof, in the Hammocks of Cuscoville and Chachala; and the four remaining, at a vacant place called Tallahassa, on the west of the river St. John. On the 17th of December 1817, the governor passed a decree granting in absolute property to the said Don George Clarke, the 26,000 acres of land in the places he solicits in his petition; and a complete title was made in December

(a) 8 Pct. 436. This case was decided at January term 1834, but the opinion was not received by the reporter, until after the publication of the reports of the term.

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1817, 22,000 lying in the Hammocks, known by the names of Cuscoville and Chachala. The petition filed in the district court states, that 20,000 acres, part of this tract, have been surveyed at the place designated, and sold to John De Centralgo. The other 4000 acres were surveyed in conformity with the decree, and a complete title made by Governor Coppinger on the 4th of May 1818.

The court decreed the claim to be valid ; and reciting that 20,000 acres, part of the 22,000, had been on the same day confirmed to Moses E. Levy, on his petition for the same ; proceeded to decree the remaining 4000 acres to the petitioner. The United States appealed from this decree.

The only question not already decided, which is made in this case, arises from the fact, that the full title for the 4000 acres of land in controversy, was made after the 24th of January 1818. The petitioner, therefore, cannot avail himself of that grant, and must rest his claim on the concession made the 17th of December 1817. That concession is unconditional ; but the counsel for the United States contends, that it can give no valid title. The argument is understood to have been applied to concessions made absolutely, as well as to those made on condition ; and the court will, therefore, consider it as \*applicable to both. A concession on condition, [\*170 becomes absolute, when the condition is performed.

The validity of concessions is, we think, expressly recognised both in the treaty, and in the several acts of congress. The eight article allows the owners of lands the same time for fulfilling the conditions of their grants, from the date of the treaty, as is allowed in the grant from the date of the instrument ; and the act of the 8th of May 1822, requires every person claiming title to lands under any patent, grant, concession or order of survey, dated previous to the 24th day of January 1818, to file his claim before the commissioners appointed in pursuance of that act. All the subsequent acts on the subject observe the same language ; and the titles held under these concessions have been uniformly confirmed, where the tract did not exceed a league square. The question is not now open for discussion. The decree is confirmed.

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, confirming the title of the claimant, be and the same is hereby affirmed in all respects.