

*UNITED STATES v. BENJAMIN CHAIRES and others.

Florida land-claims.

A grant of land by the governor of East Florida, in consideration of services to the Spanish government, made before the cession of the territory of Florida to the United States, confirmed.

APPEAL from the Superior Court of East Florida.

This case was submitted to the court, by *Butler*, Attorney-General, for the United States; and by *White*, for the appellees.

BALDWIN, Justice, 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, confirming the claim of the appellee to 20,000 acres of land, pursuant to the acts of congress for the adjustment of land-claims in Florida. In the court below, the petition was in the form prescribed by law, presenting a proper case for the jurisdiction of the court. The claim of the petitioner was founded on an application to the governor of East Florida, made by Don Jose de la Maza Arredondo, for a grant of 20,000 acres of land, in consideration of his services to the Spanish government; which was granted on the 20th of March 1817, at the place solicited, with a promise of a title in absolute property; and surveyed in one tract, on the 14th of September 1819. The petitioners also allege that they claim the whole land, by purchase from Arredondo. On an inspection of the record, we are of opinion, that the title of Arredondo was valid to all the land contained in the survey; and (without deciding on the claim of the petitioner as derived from him) that the claim of the petitioner to the same ought to be confirmed. The decree of the court below is, therefore, affirmed.

THIS cause came on to be heard, on the transcript of the record from the superior court for the district of East 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 for the district of East Florida in this cause be and the same is hereby affirmed.

*309] *UNITED STATES, Appellants, v. CHARLES SETON, Appellee.

Florida land-claims.

Under a grant of the governor of Florida, prior to the cession of the same to the United States, of 16,000 acres of land, for the purpose of erecting a water-mill, a survey of 520 acres was made, and at another place, a survey of 15,630 acres was also made. The court held, that the first survey of 520 acres was valid, and that the survey of 15,480 was invalid; but that the grantee had a title to 15,480 acres of vacant land; which he had a right to have surveyed, adjoining the survey of 520 acres.

APPEAL from the Superior Court of East Florida. This was a claim to land in East Florida, under a concession made by Don Jose Coppinger, governor of the province of East Florida, then under the dominion of the king of Spain, on the 6th day of May 1816, to Charles Seton, the claimant.

The claimant, on the 26th day of April 1816, applied by petition to Governor Coppinger, for leave to build a water saw-mill on Nassau river, in

United States v. Seton.

East Florida, at a place called Roundabout, and for the right to the quantity of land which was customary for his supply of timber. On the 8th of May following, the governor, in consideration (as he stated in his decree made on said petition) of the benefit and utility which would redound to the improvement of the province, if what Don Charles Seton proposed, should be carried into effect, granted to him, without injury to a third person, that he might build a water saw-mill at the place which he solicited; but, with the precise condition, that until he should establish said mill, said concession should be considered as not made, and without any value or effect, until that event took place. That then, in order that he might not be injured by the increased expenses which he was preparing to incur; he might make use of the pine trees which were included in the square of five miles which he asked for: 15,630 acres of this land were surveyed by George J. F. Clarke, public surveyor of the province, agreeable to the calls of the concession, on the 1st of November 1816, which is stated in the petition to be adjoining to a tract of 370 acres, which had been before surveyed by said *Clarke, as a part of said 16,000 acres; but it was alleged, that the certificate and plat of the 370 acres, had been mislaid or lost. The [*310 claimant also alleged in the petition, that, in the year 1817, he completed the building of said saw-mill, and that it was for some time in full operation.

The district-attorney, by his answer, filed on behalf of the United States, denied the power of the governor to make the concession; and insisted that if he did possess competent power to make it, and if the condition was complied with, it gave to Seton no right of soil, but only a right to "use the pine trees which were comprehended in the square of five miles which he asked for;" and that only while the mill was in operation: and that for several years past, Seton had entirely failed and neglected to keep the mill in operation, by which failure and neglect, he has lost all right, even to the use of the pine trees.

This claim was evidenced by a copy of the concession, certified by Thomas de Aguilar, late secretary of the government of this province, and by a duly certified copy of the survey and plat for 15,630 acres. A duly certified copy of another survey and plat, made by said Clarke, on the 16th of May 1816, for 520 acres, at the place called Roundabout, was also produced. It was in evidence, that Seton built the mill, in the year 1817 or 1818 (for the witnesses differed on this point), but all agreed, that it had not been in operation since 1819.

Upon this state of the case, three questions were submitted in the court below: 1st. Had the governor power to make the grant? 2d. If he had, what interest vested in Seton, upon the establishment of the mill? 3d. Does that interest, whatever it was, continue? or did it cease with the destruction of said mill?

The claim was confirmed: the first question being considered as settled, and the court being of opinion, that, upon the establishment of the mill, a full and complete title to the land itself vested in Seton, to which he is entitled, notwithstanding his neglect to keep it in operation. The United States appealed from this decree.

The case was argued by *Butler*, Attorney-General, for the United States; and by *White*, for the appellee.

United States v. Seton.

**Butler* stated, that if the court should consider the grant to the appellee a valid grant, it would be for them to decide, whether it should endure beyond the ground occupied as a mill. Was it not a grant on a condition subsequent, that the mill should be kept in order? The grant is not to be understood as giving the trees, until the mill was built—no further.

White, for the appellee, asked the attention of the court to the petition, which was for the right to use timber, until the mill should be built; and afterwards for a right to the land. These grants are protected by the provisions of the treaty, which gave three years after it was made to complete the condition. But in this case, the mill was built; and what afterwards took place was of no moment.

BALDWIN, Justice, delivered the opinion of the court.—This is an appeal from the decree of the judge of the superior court for the eastern district of Florida, confirming the claim of the appellee to 16,000 acres of land, pursuant to the acts of congress for the adjustment of land claims in Florida. In the court below, the petition was in due form, as prescribed by law, presenting a proper case for the exercise of jurisdiction by the court.

The claim of the petitioner was founded on his application to the governor of East Florida for a grant of 16,000 acres of land, for the purpose of erecting a water saw-mill thereon, and the supply of timber therefor; which was granted by the governor, in consideration of the benefits which would thereby redound to the province. The grant was made the 16th of May 1816, but with the precise condition, "that until he shall establish said mill, this concession shall be considered as not made, and without any value or effect until that event takes place." The mill was built in 1817, pursuant to this condition, and in due performance thereof. On the 16th of May 1816, a survey of 520 acres was made at the place called for by the petition and grant; another survey of the residue of 16,000 acres was surveyed at another place on the 16th of November 1816; the first survey was declared valid by the court below, the second was rejected. The claim was adjudged valid, and the survey of the residue of the land directed to be made at the *312] place called for in the grant. On an inspection of the whole *record, we are of opinion, that the title of the petitioner is valid to the 520 acres surveyed at the place called for by the grant, and not valid as to the survey of 15,630 acres; but that his title is valid to 15,480 acres of vacant land, which he has a right to have surveyed, adjoining the said survey of 520 acres, according to the decree of the court below. Their decree is, therefore, affirmed.

THIS cause came on to be heard, on the transcript of the record from the superior court for the district of East 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 for the district of East Florida in this cause be and the same is hereby affirmed.