

Wherry v. United States.

to itself, of directing by its own officers, the surveys of its lands, either on specific grants, or orders of survey for vacant lands.

The negative evidence in the record is also powerful to lead to the same conclusion. The unprecedented privilege granted to St. Vrain was of immense value, if asserted in time, before other appropriations were made of the places of which he had the right of selection, without limit ; but it would become less valuable, by waiting till others had obtained grants for them. Neither he, nor the petitioner Smith, have in any way accounted for the delay, They have shown no selection made, no application to a public or even private surveyor, to make any survey, during the eight years which elapsed, from the date of the grant till the cession. The grant does not appear to have been recorded or entered in any Spanish office, exhibited to any Spanish officer, or any notoriety given to it, by any assertion of right under it. With such powerful reasons for action, it is not a harsh construction of this conduct of St. Vrain, to attribute it to the conviction, that the Spanish authorities would not have sanctioned his claim. The power of the governor-general being supreme, his power would not have been invoked in vain, if the grant was good ; and no officer in the province would have disobeyed his order to survey, on the selections being made.

It is not for us to say what, if any, acts would have given St. Vrain an equity in any definite piece of ground ; it suffices for this case, that he had none, while the country was under the government of Spain, and that the petitioner Smith has acquired none, since the cession, by any acts which he has done, or caused to be done, in making the location specified in his petition.

It is for another branch of the government to decide on the claims of the petitioner, under the third section of the act of 1828. With that we have nothing to do ; our duty terminates by a decision on the validity of his title by any law, treaty or proceedings under them, according to those principles of justice which govern courts of equity. Being clearly of opinion, that the claim of the petitioner to any of the *land claimed by his petition is not valid, and ought not to be confirmed, the decree of the district [*337 court is affirmed.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the district of Missouri, and was argued by counsel : On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said district court in this cause be and the same is hereby affirmed.

*JOSEPH A. WHERRY and others, Heirs of MACKAY WHERRY, [*338 deceased, Appellants, v. UNITED STATES, Appellees.

Missouri land-claims.

On the 18th of April 1802, the lieutenant-governor of Upper Louisiana granted 1600 arpents of land, near certain rivers named in the grant, with directions to survey the same in a vacant place of the royal domain ; but no survey was made, before the cession of Louisiana to the United States. As the grant contained no description of the land granted, and was not located within the time prescribed by the act of congress of the 10th of March 1804, it comes directly within the point decided by this court in the case of John Smith, T., and cannot be confirmed

Mackay v. United States.

APPEAL from the District Court of Missouri. The case is fully stated in the opinion of the court.

It was argued by *White*, for the appellants; and by *Butler*, Attorney-General, for the United States.

BALDWIN, Justice, delivered the opinion of the court.—This is an appeal from the decree of the district court of Missouri, rejecting the claim of the appellants to 1600 arpents of land in that state, for the confirmation of which they had filed their petition, pursuant to the provisions of the act of 1824, for the adjustment of land-claims in that state. 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 by Mackey Wherry to the lieutenant-governor of Upper Louisiana, on the 15th of April 1802, for a grant of 1600 arpents of land, near the rivers Dardennes and Mississippi, in the vacant lands of the king, which he shall point out at the time of the survey. On the 18th of the same month, this application was granted by the lieutenant-governor, with directions to survey the quantity demanded, in a vacant place of the royal domain; but no survey appears to have been made, before the 10th of March 1804. As this grant contained no description of the lands granted, and was not located, before *339] the time prescribed by the act of 1824, *submitting these cases to judicial cognisance, it comes directly within the point decided by this court in the case of *John Smith, T. v. United States*, at this term, and cannot be confirmed. It is, therefore, our opinion, that the title of the petitioners to the land claimed and described in their petition, is not valid. The decree of the district court is affirmed.

THIS cause came on to be heard, on the transcript of the record from the district court of the United States for the district of Missouri, and was argued by counsel: On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said district court in this cause be and the same is hereby affirmed.

*340] *ISABELLA MACKAY, Widow, JOHN ZENON MACKAY and others,
Heirs of JAMES MACKAY, Appellants, v. UNITED STATES.

Missouri land-claims.

A grant of land in Missouri, made by a lieutenant-governor of Upper Louisiana, before the treaty of 1804, affirmed.

In repeated decisions, the supreme court have affirmed the authority of local governors, under the crown of Spain, to grant land in Louisiana, before the same was ceded by Spain, to France, and the court have also affirmed the validity of descriptive grants, though not surveyed before the 11th of March 1804, in Missouri, and the 24th of January 1818, in Florida.

APPEAL from the District Court of Missouri. The case is stated in the opinion of the court.

It was argued by *White*, for the appellants; and by *Butler*, Attorney-General, for the United States.