

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 MACKEY, Widow, JOHN ZENON MACKEY and others,
Heirs of JAMES MACKEY, 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.

Mackey v. 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 800 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 the law, presenting a proper case for the jurisdiction of the court.

The claim of the petitioners was founded on an application by James Mackey, to the lieutenant-governor of Upper Louisiana, on the 13th of September 1799, for a grant of 800 arpents of land, at a place therein particularly described. On the 14th of the same month, the application was granted by the lieutenant-governor, with directions to make the survey, and put the party into possession. The grant or commission was proved to have been in the handwriting of the surveyor-general; the signature of the lieutenant-governor was also proved to be genuine. The claim of the petitioner was rejected by the district court, on the ground, that the grant was not consistent with the regulations of O'Reilly, made in 1770, and was invalid for the want of authority to make it.

*Having heretofore decided, that these regulations were not in force in Upper Louisiana, this court cannot consider them as in any [*341 way affecting the title of the petitioners. In repeated decisions, we have affirmed the authority of the local governor to make grants of land, and have also affirmed the validity of descriptive grants; though not surveyed before the 10th of March 1804, in Missouri, and the 24th of January 1818, in Florida.

But there is another objection to the title of the claimants, which is suggested in the decree of the court below, though it is not assigned as a reason for its rejection. In the original petition to the lieutenant-governor, the land prayed for is described as adjoining the land of Mr. Choteau; whereas, the grant to Choteau for the land referred to, was not made until January 1800, four months after the date of Mackey's application, in September 1799. This was deemed a circumstance tending to show that his grant was fraudulently ante-dated; and had it not been explained, would have induced this court to have directed an issue to the court below to try its genuineness.

By the record in the case of *Choteau's Heirs*, decided at the last term (9 Pet. 142-3), it appears, that, by a letter of the 20th of May 1799, the governor-general of Louisiana directed the governor of the Upper province to favor all the undertakings of Mr. Choteau. In the evidence given in that case, it was established, that Mr. Choteau had erected a distillery on the tract granted to him in 1800, as early as 1796, which was occupied and in operation, from that time until the date of the grant; after obtaining which, he enlarged and continued the establishment at the same place. It is, therefore, perfectly consistent with the date of Mackey's application, that he should refer to land in the occupation and actual possession of Choteau; though he had not, at the time, any grant or order of survey. The record in the present case also shows, that the court below have considered this subject, and did not think the reference to Choteau's land was such evidence of fraud or of ante-dating the grant, as to make it their duty to prevent it from being used as evidence of title to the land claimed. The final decree

United States v. Bradley.

was rendered on the 15th of January 1830. On the 16th, the court ordered that the clerk retain, with the papers on file in this case, the concession upon which the claim is founded, until its further order. On the 18th the court "ordered that the petitioners show cause why the concession *342] under which the petitioners claim *should not be impounded by the court." This rule was discharged on the 5th of February 1830.

After such evidence as appears on the record in the case of *Choteau*, and the proceedings of the district court in this case in relation to the grant to the petitioner, it is fair to presume, that the court was satisfied, on their last examination, that the grant to Mackey was genuine, and not open to any impeachment on account of the reference to Choteau's adjoining land. It would be assuming much, in this case, for this court to decide, as a matter of fact, that the grant was fraudulent and void ; the proof of the signature to, and the handwriting of, the grant, is positive and uncontradicted ; and the reference to Choteau's land, before the date of the grant to him, is accounted for. We, therefore, are of opinion, that the grant was genuine, and that the title of the petitioners derived therefrom is valid, by the law of nations, of the United States, of Spain, under whose government the claim originated, and by the stipulations of the treaty ceding Louisiana to the United States ; and ought to be confirmed.

It is therefore ordered, adjudged and decreed by this court, that the decree of the district court be and the same is hereby reversed ; and proceeding to render such decree as the said district court ought to have rendered, it is further ordered, adjudged and decreed, that the title of the petitioners to the land described in their petition to the district court, is valid by the laws and treaty aforesaid, and the same is hereby confirmed as therein described ; and that the surveyor of public lands in Missouri be and he is hereby directed to survey the quantity of land claimed in the place described in the petition and grant, or concession ; that he deliver to the petitioners a copy or plat of such survey, and also do and perform such other acts and things therein as by law are directed.

*343] *UNITED STATES, Plaintiffs in error, v. PHINEAS BRADLEY, surviving Administrator of DAVID OTT, deceased.

Bonds of public officers.

An action was instituted on a joint and several bond given by H., O. and V., to the United States of North America ; which, after reciting that H. had been appointed paymaster of the rifle regiment of the army of the United States, conditioned, that if H. shall " well and truly execute, and faithfully discharge, according to law, and to instructions received by him from proper authority, his duties, as paymaster aforesaid ; and he, his heirs, executors or administrators shall regularly account, when thereto required, for all moneys received by him, from time to time, as paymaster aforesaid, with such person or persons as shall be duly authorized and qualified on the part of the United States for that purpose ; and moreover, pay into their treasury such balance as, on a final settlement of the said John Hall's accounts, shall be found justly due from him to the said United States, then the obligation should be null and void, and of no effect, otherwise to be and remain in full force and virtue.

The act of congress of the 24th of April 1816, provides, " that all officers of the pay, commissary and quartermaster's department shall, previous to entering on the duties of their respective offices, give good and sufficient bonds to the United States, fully to account for all moneys and public property which they may receive, in such sums as the secretary of war shall direct."