

*UNITED STATES, Appellants, v. WILLIAM MILLS'S HEIRS.

Florida land-claims.

A grant of land in East Florida was made by the governor, before the cession of Florida by Spain to the United States, on conditions which were not performed by the grantee within the time limited in the grant; or any exertions made by him to perform them. No sufficient cause for the non-performance of the conditions having shown, the decree of the supreme court of East Florida which confirmed the grant, was reversed.

APPEAL from the Superior Court of East Florida. In the superior court of East Florida, the widow and children, heirs of William Mills, deceased, presented a petition, claiming title to a tract of land, situated on the east side of the river St. Johns, at a place called Buffalo Bluff, about two miles below the former plantation of Pantón, Leslie & Company. This land was claimed under a grant of Governor Coppinger, dated, St. Augustine, 10th April 1817.

The petition of William Mills to Governor Coppinger, dated 17th March 1817, stated, that he was an inhabitant of Fernandina, and that, in 1805, he had obtained permission from the government to erect a water saw-mill, in the place called Mulberry branch, near the head of Matanzas river, the certificate of which was mislaid; and after erecting the buildings, they were burned down by the rebels, in a sedition which took place in the year 1812; and wishing to build another saw-mill east of the river St. Johns, at Buffalo Bluff, he asked that a tract of two miles square be granted to him, with title and property thereto, in order that he might carry his purpose into effect. Governor Coppinger, on the 10th of August 1817, granted the permission asked for by the petition, to erect a water saw-mill on the river St. Johns, on the east side thereof, at a place called Buffalo Bluff; under the express conditions, that until he carries said work into effect, this grant of land will be null. "It being well understood, that unless the said machinery be built and erected, within the term of six months, this favor will be null, and of no value; as it can never be understood to have been granted with any other view but that of protecting the inhabitant settlers, and stimulating them to industry, for the known advantages which result from it to the province, and consequently to the interests of the king."

*The claimants afterwards filed a supplementary or amended petition, in which they stated, that the grantee had been deterred from [*216 making the improvements mentioned in his petition to Governor Coppinger, by Indian hostilities, and by threats to persons and their property, by hostile Indians, negroes and marauders; and they further stated, that by the cession of Florida to the United States, by the treaty of 22d of February 1819, they were further prevented making the improvements, as it was uncertain how their rights to the land would be affected by the change of government.

The answers of the attorney of the United States to the petition and the amended petition, asserted the non-compliance of the petitioner with the condition of the grant; and as to the amended petition, alleged, as to the dangers of proceeding to erect the mill, that if any such difficulties existed at all, they existed to as great an extent, at the time when it is alleged that said grant was made, and when the ancestor of the claimant took upon

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himself the performance of the condition therein mentioned, as at any time since.

Evidence was taken by both parties, and the claim of the petitioners was confirmed by the superior court of Florida, at July term 1837. The United States prosecuted this appeal.

The case was argued by *Butler*, Attorney-General, for the United States. No counsel appeared for the appellees.

WAYNE, Justice, delivered the opinion of the court.—This is an appeal from a decree of the superior court of East Florida, confirming a land-claim. It differs only from the case of the *United States v. Z. Kingsley*, decided by the court at this term (*post*, p. 476), in this : that the conditions upon which the appellee was to have a property in the land petitioned for, was limited to performance within six months from the date of the governor's decree. It was not performed. Nor was any attempt made to perform it by the appellee, in his lifetime, or by his representatives, after his death. No sufficient cause for non-performance is shown, within the time limited, nor afterwards ; to bring it within those rules of justice and equity, which this court has said shall be applied in its construction of the 8th article of the treaty of February 1819, with Spain ; on its consideration of grants made upon consideration. For the reasons stated in the case of *Kingsley*, *217] the court is of *opinion, that the decree of the court below in this case, should be reversed, and it is ordered accordingly.

BALDWIN, Justice, dissented.

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 the opinion of this court, that the petitioner has not fulfilled the condition of the grant ; and that, therefore, the grant or concession is null and void ; and that the petitioner has no right or title to the land. Whereupon, it is now here decreed and ordered by this court, that the decree of the said superior court in this cause be and the same is hereby reversed and annulled ; and that this cause be and the same is hereby remanded to the said superior court, with directions to enter a decree in conformity to the opinion of this court.

*218] *MOSES E. LEVY, Appellant, v. FERNANDO DE LA MAZA ARREDONDO and JUAN DE ENTRALGO, Appellees.

Florida land-claims.

In the superior court of East Florida, the complainant filed a bill, claiming compensation for the non-performance of certain contracts for the sale of lands in East Florida, referring to the contracts, the contents of which were stated to be set out in the bill of the complainant ; which was replied to by the defendants. The contracts were not proved in the cause, by testimony ; nor was the non-production of them duly accounted for, nor secondary evidence of the contents thereof, so far as practicable, given before the superior court. The supreme court, for this defect and imperfection in the proceedings, had not sufficient evidence before them to found any final and satisfactory decree ; the decree of the court of appeals of East Florida, and the decree of the superior court of East Florida, was, therefore, reversed, and the cause remanded to the court of appeals, to allow the pleadings to be amended, and the documents referred to, or the contents of the same, to be duly authenticated and proved, &c.