

United States v. Drummond.

to land covered by water, and consisting of marshes ; and if such a custom or practice can be proved to exist, it cannot be applied to any concession carried into an actual grant, according to a survey made and returned by the officer, or person appointed to make such survey. Such are the facts in this case. The survey was made by Burgevin, the governor having appointed and qualified him for the purpose ; and the grant is made by a recital of Burgevin's survey. It is this survey also, which the court below decrees in favor of the claimant, and which it is to be particularly understood this court affirms. But this court thinks it necessary to say further, in affirming the decree of the court below ; rejecting the claim of the petitioner to have 14,500 acres of land surveyed to him, excluding land covered with water and marshes ; that even though the survey had not been made, it would not be competent to the court below, or to this court, to designate a new location, varying from the original concession, as any such alteration on a concession would be equivalent to a new grant. See the case of the *United States v. Huertas*, 9 Pet. 171. The acts of congress by which these cases are subjected to judicial investigation and judgment, give no such power to the courts.

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 adjudged and decreed by this court, that the decree of the said superior court in this cause be and the same is hereby in all respects affirmed.

*UNITED STATES, Appellants, v. WILLIAM DRUMMOND, Appellee. [*84

Florida land-claims.

A concession was made by the governor of Florida, before Florida was ceded to the United States, on the condition that grantee should erect a water saw-mill, "and with the precise condition, that until he executes the said machinery, the grant to be considered void, and with out effect, until that event takes place;" the mill was never erected, and no sufficient reason shown for its non-erection. The court held, that the concession gave no title to the land.

APPEAL from the Superior Court of East Florida.

Grundy, Attorney-General of the United States, submitted this case to the court, alleging, that the claimant relied on a concession made by Governor Coppinger for 16,000 acres of land, dated September 12th, 1816. The grant was upon a condition, namely, the erection of a water saw-mill ; "and with the precise condition, that until he executes said machinery, this grant will be considered as null and void, and without effect or value until that event takes place," &c. The mill was never erected. No sufficient reason was shown for its non-erection.

It was insisted, that the erection of the mill was a condition precedent ; and consequently, that until the claimant showed a performance of that condition, or some reason for non-performance, which would satisfy the terms of the eighth article of the treaty ceding Florida to the United States, he had no title in law or equity.

This case is believed to be fully decided against the claimants, by the decisions of this court at its last term, in the cases of the *United States v. Mills's Heirs*, 12 Pet. 215, and *United States v. Kingsley*, *Ibid.* 476.

United States v. Burgevin.

WAYNE, Justice, delivered the opinion of the court.—This case, like that of the *United States v. Andrew Burgevin* (*post*, p. 85), is controlled by the decision of this court in the case of the *United States v. Kingsley*, 12 Pet. 476. The decree of the superior court of East Florida is, therefore, reversed.

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 having failed to fulfil the condition of the grant, the said grant or concession is null and void; and that the said 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.

*85] *UNITED STATES, Appellants, *v.* ANDREW BURGEVIN, Appellee.

Florida land-claims.

A grant of land in East Florida, by the Spanish governor, on the condition that a water saw-mill should be erected on the land, declared void; the condition of the grant not having been performed, according to its terms.

APPEAL from the Superior Court of East Florida. Andrew Burgevin, on the 21st day of May 1829, presented a petition to the judge of the superior court for the district of East Florida, claiming a tract of land of five miles square, or 16,000 acres, situated in the district of East Florida; under a title derived from a grant made to him by the Spanish government, on the 13th day of January 1818.

The petition addressed by Andrew Burgevin to Governor Coppinger, asked for the grant for the purpose of erecting a water saw-mill on the same; with a view not only to remedy the notable want of lumber which was felt at that place, but also to supply the export trade of that article, so much recommended to the government of Florida, by the superior authority of Havana. The grant was made to Andrew Burgevin, in consideration of the advantages and benefit which the province would receive from the proposed establishment; "with the precise condition, that until he erects said machinery, said grant will be considered as null and void, and without effect or value, until such an event takes place."

The answer of the district attorney of the United States, among other objections to the allowance of the claim, stated, that the condition of the grant had not been complied with by the grantee—"that the said Andrew Burgevin has not built, constructed or erected the said water saw-mill on the said tract of land; but that he has always hitherto wholly failed and neglected to construct or erect the same, or to comply with and perform the said conditions, in any way or manner whatever." The answer denied that the said Andrew Burgevin had been prevented from constructing and erecting said mill and proceeding in the objects of said grant, owing to the general disturbed and unsettled state of the country; and further, if any such disturbed and unsettled state of the country at any time existed, it was