

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

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merely temporary, and of very short continuance; whereas, more than eleven years had elapsed (as appeared by the showing of the said Andrew Burgevin himself) since the date of the said supposed grant; during any part of which period, he might, with due and reasonable diligence, have proceeded to erect and construct the said water saw-mill on the said tract of land, in accordance with the objects of said supposed grant.

The superior court of East Florida gave a decree in favor of the petitioner, and the United States prosecuted this appeal.

The case was argued by *Grundy*, Attorney-General of the \*United States, and *Dent*, for the appellants; and by *Coxe*, for the appellee. [\*86

*Dent*, for the United States, cited the *United States v. Mills's Heirs*, 12 Pet. 215; *United States v. Kingsley*, Ibid. 476. The question before the court in these cases was precisely the same as that in the present case; and this court refused to confirm the grant. This court has said, it will apply the most liberal rules of equity to the condition of Spanish grants; but in this case, there is no room for the application of any such rules. The grantee has not performed the condition of the grant; nor did he, during all the period which passed after the grant, make an attempt to perform it.

In the *United States v. Kingsley*, the same excuse for the non-performance was offered—"the disturbed state of the country;" and it was overruled. This grant was made within six months of the cession of Florida to the United States. This court has allowed six months for the performance of such conditions; and by the Spanish law, the same period was allowed.

*Coxe*, for the appellee, contended, that the disturbed situation of the country, by Indians, prevented the erection of the mill contemplated by the grantee. He cited *Huideköper v. Douglass*, 1 W. C. C. 258.

The *Attorney-General*, in reply, stated, that if this grant should be confirmed, there would be no limitation to claims for lands in Florida. There was a proposition to erect a water saw-mill on the land; and the governor of Florida declared the grant should be void, if the mill should not be erected.

WAYNE, Justice, delivered the opinion of the court.—This is an appeal from the superior court of the Eastern District of Florida, confirming the right of the appellee to a tract of land, under a concession or grant from the governor of Florida, dated before the treaty of the 22d February 1819, between the United States and Spain.

We think the concession or grant identical with that in *Kingsley's Case*, in 12 Pet. 476; and that it is controlled by the principles laid down by the court in that case. *Kingsley's Case* was well considered by this court—has been reconsidered maturely upon the argument of counsel made in the case before us—but we see no reason to modify or change, in any particular, what was then decided; nor why this case should be taken out of the application of that case. The decree of the superior court of East Florida is, therefore, reversed.

United States v. Arredondo.

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 \*87] 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.

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\*88] \*UNITED STATES, Appellants, v. The HEIRS OF FERNANDO DE LA MAZA ARREDONDO, Appellees.

*Florida land-claims.*

A concession by the governor of East Florida, made before the Florida treaty, in consideration of services, confirmed.

APPEAL from the Superior Court of East Florida. In the superior court of East Florida, Fernando de la Maza Arredondo filed a petition, praying a confirmation of a concession made to him, in consideration of services, by Don Jose Coppinger, on the 24th of March 1817 ; he being then governor of East Florida, a dependency at that time of the crown of Spain. The court confirmed the concession, and the United States prosecuted this appeal.

WAYNE, Justice, delivered the opinion of the court.—This case is one of a concession and grant of land in East Florida, made by the Spanish authorities in that province, before the 24th January 1818 ; surveyed and granted in absolute property, in consideration of the meritorious services of Fernando de la Maza Arredondo. The survey corresponds with the concession. The decree of the court below in favor of the claimants is in every regard within the decisions of this court ; and the 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 adjudged and decreed by this court, that the decree of the said superior court in this cause, confirming 15,000 acres of land to the petitioners, be and the same is hereby in all respects affirmed.