*United States, Appellants, *v.* John Breward, Appellee.

Florida land-claims.

Breward petitioned the governor of East Florida, intending to establish a saw-mill to saw lumber on St. John's river, for a grant of five miles square of land, or its equivalent: 10,000 acres to be in the neigborhood of the place designated, and the remaining 6000 acres in Cedar Swamp, on the west side of St. John's river, and in Cabbage Hammock, on the east side of the river; the governor granted the land asked for, on the condition that the mill should be built; and the condition was complied with. On the 27th of May 1817, the surveyor-general surveyed 7000 acres under the grant, including Little Cedar Creek, and bounded on three sides by Big Cedar Creek, including the mill; this grant and survey were confirmed.

Three thousand acres were laid off on the northern part of the river St. John's, and east of the Royal Road, leading from the river to St. Mary's, four or five miles from the first survey; this survey having been made at a place not within the grant, was void; but the court held, that grantee was to be allowed to survey, under the grant, 3000 acres adjoining the survey of 7000 acres, if so much vacant land could be found; and patents for the same should issue for the land, if laid out in conformity with the decree of the court.

In 1819, 2000 acres were surveyed in Cedar Swamp, west of the river St. John's, at a place known by the name of Sugar Town: this survey was confirmed.

Four thousand acres, by survey, dated April 1819, in Cabbage Hammock, were laid out by the surveyor-general: this survey was confirmed.

By the eighth article of the Florida treaty, all grants of lands made before the 24th of January 1824, by his Catholic Majesty, were confirmed; but all grants made since the time when the first proposal by his majesty for the cession of the country was made, were declared and agreed by the treaty to be void. The survey of 5000 acres having been made at a different place from the land granted, would, if confirmed, be a new appropriation of so much land, and void, if it had been ordered by the governor of Florida; and of course, it is void, having nothing to uphold it but the act of the surveyor-general. 10 Pet. 309, cited.

In the superior court of East Florida, the counsel for the claimant offered to introduce testimony in regard to the survey of 3000 acres; and the counsel of the United States withdrew his objections to the testimony; the admission of the evidence did not prove the survey to have been made. Proof of the signature of the surveyor-general to the return of survey, made the survey *primâ facie* evidence. Wiggins's Case, 14 Pet. 346, cited.

The proof of the signature of Aguilar to the certificate of a copy of the grant by the governor of East Florida, authorized its admission in evidence; but this did not establish the validity of the concession; to test the validity of the survey, it was necessary to give it in evidence; but the survey did not give a good title to the land.

The United States have a right to disprove a survey made by the surveyor-general, if the survey on the ground does not correspond to the land granted.

*Appeal from the Superior Court of East Florida. The claim was [*144 founded on a petition of Breward, dated 23d August 1816, and an alleged decree of Governor Coppinger thereon, dated the following day. The petition stated, that "he intends to establish a mill to saw lumber for the supply of commerce and the province, which he wishes to situate upon St. John's river, on the creek known by the name of Little Cedar creek; and whereas, said costly fabric requires, to secure in lands and timber, what may be sufficient to cover the great expenses which are necessary to build it, and it being all for the benefit of the province, he prays that there may be granted to him the usual five miles square of land, or its equivalent, destining to him ten thousand acres in the neighborhood of said place, and the remaining six thousand acres in Cedar Swamp, on the west side of St. John's river, and in Cabbage Hammock, on the east side of said river." Governor Coppinger's decree on this petition stated, that, "in consideration of the benefit and advantages which ought to result in favor of the province, if what the interested proposes is effected, the lands and permission which he

solicits are granted to him, but with the express condition, that he shall not have the absolute right to them, until he erects said machine."

The original of the petition and decree were not produced in evidence; neither were they to be found in the archives at St. Augustine; but a certified copy, under the hand of Tomas de Aguilar, secretary of the government, whose handwriting was proved, stating that they were true copies, faithfully taken from the original which existed in his office, was offered, and was objected to by the district-attorney, and admitted by the court.

There was also offered in evidence plats and certificates of survey, made for John Breward, by George J. F. Clarke, surveyor-general: 1. Dated 27th May 1817, for 7000 acres of land between the branches called Cedar creek, and Dunn's creek, on the northern part of the river St. John's. 2. Dated 28th August 1819, for 3000 acres on the northern part of the river St. John's, and east of the Royal Road leading from said river to St. Mary's. *3. Dated 10th October 1819, for 2000 acres in Cedar Swamp, on
*145] the west part of the river St. John's, at a place known by the name of Sugar-Town. 4. Dated 19th April 1820, for 4000 acres, in Cabbage Hammock, on the east part of the river St. John's, and south of the branch called Dunn's creek, which runs from Dunn's creek to the said river.

After hearing testimony in the cause, the superior court made a decree in favor of the claimants, for the four tracts of land; from which the present appeal was taken.

For the United States, it was contended, that the decree should be reversed, because: 1. That there was not sufficient evidence that the said alleged grant or commission was ever made by Governor Coppinger. 2. That the alleged concession, if made, was on a condition precedent, which was never fulfilled. 3. That the concession, if ever made, did not contemplate that the lands conceded should be surveyed in four different tracts or parcels. 4. That the description of the lands in the grant were too vague to be the foundation of a valid survey. 5. That the plats and certificates of survey did not conform to the description of the lands in the said pretended grant.

The case was argued by *Legaré*, Attorney-General, for the appellants; and by *Wilde*, for the appellee.

Catron, Justice, delivered the opinion of the court.—The petitioner asked five miles square of land, being 16,000 acres, on Little Cedar creek, of St. John's river; he intending to establish a mill to saw lumber; 10,000 acres were asked for in the neighborhood of the place; and the remaining 6000 acres, in Cedar Swamp, on the west side of St. John's river, and in Cabbage Hammock, on the east side of that river. On the 20th of August 1816, the governor of Florida decreed the same, on the condition the mill was built. The condition was complied with.

1. On the 27th of May 1817, George F. Clarke, the surveyor-general of
*146] the province, surveyed for Breward 7000 *acres, including Little Cedar creek; and bounded on three sides by Big Cedar creek and Dunn's creek; and which includes the mill. This survey is valid.

2. There were laid off 3000 acres on the northern part of the river St. John's, and east of the Royal road, leading from the river to St. Mary's.

This survey is proved to lie four or five miles from the first survey, and is on Trout creek. It was made the 28th of August 1819.

By the 8th article of the Florida treaty, all grants of land made before the 24th of January 1818, by his Catholic Majesty, were confirmed. But all grants made since the 24th of January 1818, when the first proposal by his majesty was made for the cession of the country, were declared and agreed by the treaty to be null and void. This survey having been made at a different place from the land granted, would, if confirmed, be a new appropriation of so much land; and void, if it had been ordered by the governor of Florida, and, of course, it is void, having nothing to uphold it but the act of surveyor-general. So this court held in *Seton's Case*, 10 Pet. 309. The party, however, is entitled to his entire 10,000 acres in the neighborhood of Little Cedar creek. The decree confirming the 3000 acre survey, is, therefore, reversed; and this quantity of land will be ordered by the superior court of East Florida, to be surveyed adjoining the 7000 acre survey, on vacant land; the addition to conform to the fourth article of the instructions to the surveyor-general, of the 10th of June 1811 (Land Laws United States 1004). The 7000 acres, and the 3000 acres, will be laid down in connection, as one 10,000 acre survey. Not more than one-third can be bounded in front on the river St. John's, should the claimant choose to add the 3000 acres next to either side of the 7000 acre tract adjoining the river. The 7000 acre survey being 360 chains deep, the 10,000 acres can only front 120 chains.

A motion was made to the court below, on the part of the petitioner, to be permitted to introduce testimony in regard to the survey of 3000 acres; when offered, the counsel for the United States withdrew the objections to the introduction of the paper. *It is now insisted, for complainant, that the validity and legality of the survey was admitted; and [*147 *Richard's Case*, 8 Pet. 470; *Sibbald's Case*, 10 Ibid. 323; and *Seton's Case*, Ibid. 309, are relied upon. These authorities, we think, do not sustain the argument. It being necessary to establish that such a survey had been made by the surveyor-general, proof of his signature was *primâ facie* sufficient to authorize the reading of the paper; and if the attorney of the United States was satisfied that the plat and certificate had been made by that officer (about which he could hardly be mistaken), to require proof of the fact would have been useless.

The contests of Aguilar's certificates have been numerous. Nothing was required but proof of the secretary's signature, to admit in evidence the copy of the concession; so this court held, in *Wiggins's Case*, 14 Pet. 346; but when the concession was admitted, its legality was not conceded by the defendant; no such ground has been, to our recollection, assumed, nor do we think it can be assumed, in regard to the survey. To test its legality by the laws and regulations of Spain, it was necessary the court should have the survey in evidence. It was the common case of the competency of a title paper, wanting legal effect; the court, therefore, properly admitted the paper, but improperly adjudged it gave title to the land.

3. The next survey (dated in 1819) is for 2000 acres in Cedar Swamp, west of the river St. John's, at a place known under the name of Sugar-Town. Had this last designation been left out, no difficulty could be raised in regard to the fact that the survey had been located at the place granted;

nor do we think this makes any difference, although a witness proves he knew nothing of such a town. The surveyor having described the land as laid off within the description of the grant, we take the fact to be *primâ facie* as he certifies it; nor do we think the certificate discredited by the further description, even should the object called for not be found. This survey is, therefore, confirmed.

4. The survey for 4000 acres (dated in April 1819) is in Cabbage Hammock, and within the grant, taking the certificate of the surveyor-general to be *primâ facie* true. And this, we think, is the credit that lawfully attaches to it. His duties *were prescribed by the instructions to him, in 1811 (Land Laws 1034); and if his plot and certificate are lawful on their face, they must be accredited, until the United States disprove them; which they have the right to do, if the survey on the ground does not, in fact, correspond to the land granted; although the certificate may declare it to be at the proper place. This survey is also confirmed.

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The cause is, however, remanded to the court below, to be further proceeded in, as regards the rejected survey of 3000 acres.

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*149] *Zenas Fulton and others, Plaintiffs in error, *v.* Morgan McAffee, Defendant in error.

Error to state court.

The high court of errors and appeals of the state of Mississippi, on a writ of error to the circuit court of Washington county, Mississippi, confirmed a judgment of the circuit court, by which a title to land, set up under an act of congress of the United States, was held valid; thus construing the act of congress in favor of the party claiming a right to the land, under the act. The party against whom the decision of the court of appeals was given, prosecuted a writ of error to the supreme court of the United States: the writ of error was dismissed, the court having no jurisdiction.

In order to give the supreme court of the United States jurisdiction in such cases, it is not sufficient, that the construction of the act of congress on the validity of the act on which the claim was founded, was drawn in question; it must appear also, that the decision was against the right claimed. The power of the supreme court is carefully defined and restricted by the judiciary act of 1789; and it is the duty of this court not to transcend the limits of the jurisdiction conferred upon it.

Error to the High Court of Errors and Appeals of the state of Mississippi. The case is fully stated in the opinion of the court.

Coxe, for the defendant, moved to dismiss the writ of error, on the ground that the court had no jurisdiction of the case. The motion was opposed by *Crittenden*, for the plaintiffs in error.

Taney, Ch. J., delivered the opinion of the court.—This case is brought up by writ of error from the high court of appeals of the state of Mississippi. A motion was made, at the last term, to dismiss the case, upon the ground that this court has not jurisdiction under the 25th section of the act of 1789; but the argument upon the motion was not heard, until about the close of the session, when many other cases were pressing upon the attention of the court; and it was, therefore, held under advisement, until the present term.

It appears, that an action of ejectment was brought for certain lands in