Henderson Vs. Poindexter's Lessee

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Appeal No. : 25 U.S. 530

Appellant : Henderson

Respondent : Poindexter's Lessee

Judgement :

Henderson v. Poindexter's Lessee - 25 U.S. 530 (1827)
U.S. Supreme Court Henderson v. Poindexter's Lessee, 25 U.S. 530 (1827)

Henderson v. Poindexter's Lessee

25 U.S. 530

ERROR TO THE COURT OF THE UNITED

STATES FOR THE DISTRICT OF MISSISSIPPI

SYLLABUS

Spanish grants made after the treaty of peace of 1782 between the United States and Great Britain within the territory east of the River Mississippi and north of a line drawn from that river at the thirty-first degree of north latitude east to the

middle of the River Apalachicola have no intrinsic validity, and the holders must depend for their titles exclusively on the laws of the United States.

No Spanish grant, made while the country was wrongfully occupied by Spain, can be valid unless it was confirmed by the compact between the United States and the State of Georgia, of 24 April, 1802, or has been laid before the board of commissioners constituted by the Act of Congress of 3 March, 1803, ch. 340, and of March 27, 1804, ch. 414.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is a writ of error to a judgment rendered in the court of the United States for the District of Mississippi in an ejectment brought by the defendant in error.

George Poindexter, the lessor of the plaintiff, claimed title to the premises in controversy by virtue of several patents regularly issued to him under the laws of the United States. If the lands were at the time, grantable, his title is unquestionable. Consequently the case depended, in the district court, on the title of the defendant in that court. Under several opinions given by the judge of the jury to which bills of exceptions were taken, a verdict was found

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for the plaintiff in ejectment, the judgment on which has been brought before this Court. The case must depend on the correctness of the opinions given by the district judge, but as those opinions bring the title of the defendant in ejectment before this Court, the case will be best understood by taking a general view of the principles on which that title stands.

The defendant gave in evidence a grant from the government of Spain for 1,000 acres of land, bearing date on 20 June, 1795, with a plat and certificate of survey annexed under which grant he claimed so much of the land in controversy as it covered. He also offered in evidence a duly certified copy of a certificate of survey and patent issued thereon to David Pannell for 500 acres, the residue of the premises in controversy, the certificate by the Spanish Surveyor General Carlos

Trudeau, dated 25 March, 1795, and the patent issued December 7, 1797, by Manuel Gayoso, the Spanish Governor of West Florida, with a deed of release and confirmation from David Pannell to him dated January 19, 1820. It was admitted that the originals of the plat and certificate of survey and of the patent thereon, of which copies were offered, were not in his possession nor under his control. These papers were rejected and a bill of exceptions was taken to the opinion rejecting them.

The defendant also read the deposition of Tessias to prove the fairness of the grants under which he claimed and that they were regularly issued by the proper officers of the Spanish government at the time they bear date respectively. To rebut this testimony the plaintiff in ejectment produced a letter of instructions found among the papers of William Atcheson, deceased, the deputy surveyor, by whom the lands in controversy were surveyed. This letter was directed to William Atcheson, and was proved to be in the handwriting of William Dunbar, who is also dead and who was proved to be the principal surveyor of the District of Natchez, under whom Atcheson acted. The signature appears to have been torn off. This paper tended to show that the surveys and grant were not made at the time they bear date, but afterwards. The defendant objected

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to its admission, but his objection was overruled, and to this opinion also he took an exception.

The defendant prayed the court to instruct the jury 1st, if it should find that at the time of the sale by the United States of the premises in question, the defendant was in full possession thereof under an adverse title or color of title, such sale was void and passed no title on which the plaintiff could recover.

2d. If they should find that the defendant and those under whom he claimed had the uninterrupted and quiet adverse possession of the premises, claiming under a Spanish title legally and fully executed prior to October 27, 1795, under which the possession was originally taken, that the plaintiff cannot recover.

3d. If the jury should find, that on 20 June, 1795, a patent emanated from the Spanish government to Joseph Pannell, under whom the defendant claimed, then such patent constituted a good title in the grantee and those claiming under him although the grantee was not, on 27 October, 1795, an actual resident of the territory ceded by Georgia to the United States.

4th. If the jury should believe that Joseph Pannell, under whom the defendant claimed, on or before 27 October, 1795, was a resident of the said territory and that he claimed the premises in controversy by virtue of a Spanish patent legally and fully executed prior to that day, the defendant is entitled to a verdict.

5th. That the paper purporting to be a copy of the articles of agreement between Joseph Pannell and Francis Poussett dated September 20, 1796, was competent testimony to prove and fact in controversy between the parties in this suit.

6th. If the jury should be of opinion that the date attached to the paper purporting to be the instructions from William Dunbar to William Atcheson is an interpolation or forgery, in such case they shall disregard it altogether.

7th. In this action of ejectment, after a long and continued possession of thirty years on the part of the defendant and those under whom he claims under title or color of title, the jury was authorized to presume that it had a legal

origin and was legally continued in the defendant and those under whom he claims in the absence of satisfactory proof to the contrary.

8th. If the jury should believe that the survey made by William Atcheson in September, 1795, was made at the time it purports to bear date, that then and in such case it will constitute an instrument of a higher and superior nature to the instrument purporting to be private instructions from said Dunbar to said Atcheson for the purpose of proving the residence of the said Pannell at that time.

9th. That if, on the whole matter, the jury should have a reasonable doubt, then its verdict should be for the defendant.

The court granted the 4th, 6th, 7th, and 9th prayers, but refused the 1st, 2d, 3d, 5th, and 8th, to which refusal the counsel for the defendant excepted.

In argument, two general questions have been made.

1st. Is the title set up by the plaintiff in error under the Spanish government sufficient in itself to protect his possession?

2d. Has it been recognized and confirmed by the United States?

1. The first point has been argued very elaborately and with deep research. The Court will not enter into the reasoning of the parties, but will state the result of an attentive consideration of that reasoning.

It is undoubtedly true that the exact boundary line between the southern British Colonies and Florida was never adjusted while that province remained in possession of Spain. Each crown claimed territory which had been granted by the other and was settled by its subjects. Florida was at length ceded to Great Britain, after which the 31st degree of north latitude was, by the proclamation of 1763, established as the dividing line between that province and Georgia. The Crown, however, was in the habit of changing the limits of the colonies, and though we complained of the manner in which this branch of the prerogative was exercised, we did not resist it. In consequence of a recommendation of the Board of Trade, the limits of Florida were supposed to be extended, as appears by the commissions to

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its governor, so as to comprehend the land in controversy. This was the state of things when the war of our revolution commenced. In its progress, Spain took part in it and reconquered Florida. At the treaty by which that war was terminated, Great Britain acknowledged the United States to be free, sovereign, and independent, and treated with them as such. Their boundaries were particularly described so as to comprehend the land in controversy. The preliminary articles of peace between the United States and Great Britain were signed at Paris on 30

November, 1782. But these articles were provisional, and were not to take effect until terms of peace should be agreed upon between Great Britain and France. On 20 January, 1783, preliminary articles of peace were signed between Great Britain and France and between Great Britain and Spain. In the treaty with Spain, the Floridas were ceded to that power without any description of boundary.

The United States continued to assert a claim to the 31st degree of north latitude, while Spain maintained perseveringly her pretensions to extend further north. This was the subject of long and fruitless discussion between the two governments, which was terminated by the treaty signed at San Lorenzo el Real on 27 October, 1795. By this treaty,

"The high contracting parties declare and agree that the southern boundary of the United States which divides their territory from the Spanish colonies of East and West Florida shall be designated by a line beginning on the River Mississippi at the northernmost part of the 31st degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the River Apalachicola or Catahouchee, thence"

&c.; This treaty declares and agrees that the line which was described in the treaty of peace between Great Britain and the United States as their southern boundary shall be the line which divides their territory from East and West Florida.

The article does not import to be a cession of territory, but the adjustment of a controversy between the two nations. It is understood as an admission that the right was originally in the United States. Nor is there anything extraordinary in this admission. The negotiations were all

depending at the same time and the same place. That between the United States and Great Britain was first completed and signed; it must have been communicated to France, and of course was known to Spain; in it the southern boundary of the United States was accurately defined. The subsequent cession of the Floridas to Spain contained no description of boundaries. Great Britain could

not, without a breach of faith, cede to Spain what she had acknowledged to be the territory of the United States. No general words ought to be so construed. We think that Spain ought to have understood the cession, and must have understood it, as being made only to the extent that Britain might rightfully make. This opinion is confirmed by a subsequent part of the same article, which respects the troops, &c.;, of either party in the territory of the other. It is in these words:

"And it is agreed that if there should be any troops, garrisons, or settlements of either party in the territory of the other according to the above-mentioned boundaries they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty, or sooner, if it be possible, and that they shall be permitted to take with them all the goods and effects which they possess."

It has been very truly urged by the counsel for the defendant in error that it is the usage of all the civilized nations of the world, when territory is ceded, to stipulate for the property of its inhabitants. An article to secure this object, so deservedly held sacred in the view of policy as well as of justice and humanity, is always required and is never refused. Had Spain considered herself as ceding territory, she could not have neglected a stipulation which every sentiment of justice and of national honor would have demanded and which the United States could not have refused. But instead of requiring an article to this effect, she has expressly stipulated for the withdrawal of the settlements made within what the treaty admits to be the territory of the United States, and for permission to the settlers to bring their property with them. We think this an unequivocal acknowledgment that the occupation of that territory by Spain was wrongful, and we think the opinion thus clearly indicated was supported

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by the state of facts. It follows that Spanish grants made after the treaty of peace can have no intrinsic validity, and the holders must depend for their titles on the laws of the United States. We proceed, then, to inquire into the rights of the plaintiff in error under those laws.

The first act to which our attention has been directed is that by which Georgia ceded her western territory to the United States. That act provides

"That all persons who, on 27 October, 1795, were actual settlers within the territory thus ceded shall be confirmed in all the grants legally and fully executed prior to that day by the former British government of West Florida or by the government of Spain."

On 3 March, 1803, vol. 3, s. 546, Congress passed "An act regulating the grants of land, and provided for the disposal of the lands of the United States south of the State of Tennessee."

The first section enacts that any person or persons

"who were resident in the Mississippi Territory on 27 October, 1795, and who had, prior to that day obtained either from the British government of West Florida or from the Spanish government any warrant or order of survey for lands lying within the said territory to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if their titles had been completed."

This section places those persons, who had obtained a warrant or order of survey on 27 October, 1795, on equal ground with those whose titles were completed, provided the Indian title was extinguished, and provided also the land claimed was actually inhabited and cultivated either by the person claiming title or by some other for his use.

The second section provides for those who did on that day of the year 1797 when the Mississippi Territory was finally evacuated by the Spanish troops actually inhabit and cultivate a tract of land in that country, and the third section

gives a preemption to those who did actually inhabit and cultivate a tract of land at the time of passing the act.

The 4th section enacts that two land offices shall be established for the disposal of the lands of the United States in the Mississippi Territory, one in the County of Adams and the other in the County of Washington, and the fifth directs

"That every person claiming lands by virtue of any British grant or of the three first sections of the act or of the articles of agreement and cession between the United States and the State of Georgia shall, before the last day of March in the year 1804, deliver to the register of the land office within whose district the land may be a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed, and shall also, on or before that day, deliver to the said register, for the purpose of being recorded, every grant, order of survey, and conveyance or other written evidence of his claim, and the same shall be recorded, . . . and if such person shall neglect, . . . all his right, so far as the same is derived from the above-mentioned articles of agreement or from the three first sections of this act, shall become void, and forever thereafter be barred."

The sixth section directs the appointment of two boards of commissioners for the purpose of ascertaining the right of persons claiming the benefit of the articles of agreement and cession between the United States and the State of Georgia or of the three first sections of the act. One of these boards was to take cognizance of claims to lands lying west of Pearl River, and the other of claims to lands lying east of that river. Each board was empowered to hear and determine and decide in a summary manner all matters respecting such claims within their respective districts, and their determination so far as relates to any rights derived from the articles of agreement with Georgia and from the three first sections of the act was declared to be final. The act proceeds to direct that each board may appoint a clerk,

"whose duty it shall be to enter in a book, to be kept for that purpose, perfect and correct minutes of the proceedings, decisions, meetings and adjournments of the boards, together with the

evidence on which such decisions are made, which books and papers, on the dissolution of the boards, shall be transmitted to, and lodged in the office of the Secretary of State. The commissioners are directed to grant certificates to all persons in whose favor decisions shall be made, which certificates are to be recorded by the register of the land office, and amount, in all cases where grants have been made, to a complete relinquishment on the part of the United States, and, where grants have not been made, entitle the party to receive one from the United States."

A supplemental act was passed in March, 1804, which prolonged the time until the last day of November in that year for giving the notice prescribed by the 5th section of the original act to the register of the land office of claims to lands lying west of Pearl River for the purpose of being recorded. This act provides that in cases of a complete British or Spanish grant, it shall not be necessary for the claimant to have any other evidence of his claim recorded except the original grant or patent, together with the warrant or order of survey and the plot. The 3d section enacts

"That when any Spanish grant, warrant, or order of survey shall be produced to either of the said boards for lands which were not, at the date of the instrument or within one year thereafter, inhabited, cultivated, or occupied by or for the use of the grantee, or whenever either of the said boards shall not be satisfied that such grant, warrant, or order of survey did issue at the time when the same bears date, the said commissioners shall not be bound to consider such grant, warrant, or order of survey as conclusive evidence of the title, but may require such other proof of its validity as they may deem proper, and the said boards shall make a full report to the Secretary of the Treasury, to be by him laid before Congress for its final decision, of all claims grounded on such grants, &c.;, as may have been disallowed by the said boards, on suspicion of their being antedated or otherwise fraudulent."

It is contended by the plaintiff in error that these several acts confirm the titles of all those who held lands under the Spanish government by virtue of grants or orders of survey which were made with good faith prior to 27

October, 1795. The defendant in error maintains that they confirm the titles of those only who were actual settlers of the Mississippi Territory anterior to that day.

It is admitted that the State of Georgia, in its act of cession, has stipulated for those only who were actual settlers on 27 October, 1795, and who held grants legally and fully executed at that time.

The first section of the act of 1803 comprises incomplete titles only, and does not extend to those which were comprehended in the act of cession. It is in terms limited to actual settlers, and no person who was not an actual settler can claim under that act. The silence observed by Congress respecting grants fully executed countenances the opinion that the articles of agreement between the United States and Georgia were supposed to be in themselves a confirmation of the titles of those who were within the words of the instrument. But as the legislature was making provision for the sale of the vacant lands within the ceded territory, it was deemed necessary to ascertain the particular lands which were appropriated. The 5th section of the act therefore requires that every person having such claims shall, before the last day of March in the year 1804, deliver a notice in writing specifying the extent of his claims to the register of the land office, together with his title papers, that they may be recorded. On failure, his title, so far as it is derived from the three first sections of the act or from the articles of agreement with Georgia, shall become void, nor shall such title paper "be considered or admitted as evidence in any court of the United States against any grant derived from the United States."

So far as titles were derived from the act itself, no person could complain of this restriction. It was, however, a very rigorous law as respected those who were protected by the articles of agreement of Georgia.

This act certainly contains no confirmation of Spanish titles, except of those which were held by persons who were actual settlers at the time prescribed in the law itself. It provides for the sale of all the unappropriated lands, and establishes a

tribunal with power to decide on all titles.

The language of the Act of 27 March, 1804, is

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less explicit. It declares

"That persons claiming lands in the Mississippi Territory by virtue of any British or Spanish grant or by virtue of the three first sections of the act to which this is a supplement or of the articles of agreement and cession with the State of Georgia may, after the last day of March in the year 1804 and until the last day of November then next following, give notice in writing of their claims to the register of the land office for the lands lying west of Pearl River, and have the same recorded in the manner prescribed by the 5th section of the act to which this is a supplement."

The defendant in error contends that although the descriptive words of the act apply generally to persons claiming lands under British or Spanish grants, they ought to be confined to the actual settlers of the country. This construction rests chiefly on the argument that the act of 1804 is a mere supplement to the act of 1803, that the two laws ought to be construed together, that their great object is to quiet possession, and that the main purpose is to give a longer time for recording claims to lands lying west of Pearl River.

There is, we think, great difficulty in maintaining this construction. It has been observed, and the observation has great weight, that all British and Spanish grants held by persons who were actual inhabitants of the country on 27 October, 1795, were protected by the articles of agreement with the State of Georgia. Yet these persons are enumerated in the act as constituting a distinct class of claimants not provided for in that compact. The inference is very strong that Congress must have supposed there was such a class. The concluding words of the section indicate the same idea. They are

"and the powers vested by law in the commissioners appointed for the purpose of ascertaining the claims to lands lying west of Pearl River shall in every respect extend and apply to claims which may be made by virtue of this section, and the same proceedings shall thereupon be had as are prescribed by the act aforesaid in relation to claims which shall have been exhibited on or before 1 March, 1804. "

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This language, we think, adapted to new claims, as well as to a prolongation of the time in which claims may be recorded, as the preparatory step to laying them before the commissioners. It is observable too that the 5th section of the act of 1803 mentions British but not Spanish grants. They are comprehended in that class of claims which were confirmed by the articles of agreement with Georgia. The act of 1803 contemplates no Spanish grant that was not protected by those articles. The act of 1804, however, introduces Spanish with British grants, and places them together as forming a class of cases not provided for in the compact with Georgia. We cannot suppose that the legislature would have changed its language and have introduced the words "Spanish grants," with directions that they should be recorded, and laid before the commissioners, if nothing existed to which the words would be applicable.

The language of the third section also indicates an opinion that persons not inhabitants of the country on 27 March, 1795, might be entitled to land under a Spanish grant, warrant, or order of survey. It provides for the case of a claim to land which was not, at the date of such grant, &c.;, or within one year thereafter, inhabited, cultivated, or occupied by or for the use of the grantee. Now land might be inhabited, cultivated, or occupied for the use of a grantee who was not himself an inhabitant of the country, or might be occupied by himself within one year after the date of the grant, though not so occupied on 27 October, 1795. The act goes on to provide that in such case, or whenever the commissioners shall not be satisfied that the grant, &c.;, issued at the time it bears date, such grant, &c.;, shall not be conclusive evidence of the title. This language might certainly justify the implication that Congress supposed the commissioners might establish titles in favor of nonresidents.

The decision of the commissioners against them is not to be final. They are to be reported to the Secretary of the Treasury, to be by him laid before Congress for the final decision of that body.

On 28 February, 1809, Congress appears to have acted on this report. An act was then passed directing the

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lands the claims to which had been disallowed by the commissioners to be sold in the same manner as other public lands. The same act reserves the right of the Spanish claimant to institute his suit in the highest court of law or equity in the said territory for the recovery of the land within one year after it shall have been sold by the United States. If he shall fail to sue within the time limited, his right to sue shall be forever barred. The second section makes the decision of such cause to depend entirely on the claimant's proving that the survey was made before 27 October, 1795, and on the fairness of the transaction, and the third section declares parol evidence to be admissible.

This act relates solely to those claims which were laid before the commissioners and disallowed.

The patent under which the plaintiff in error claims the tract of 1,000 acres appears to have the following endorsements on it:

"Entered on record at Natchez, in the County of Adams, Mississippi Territory, in lib. B. fol. 149 a 150, this second day of April, A.D. 1801."

"JOHN HENDERSON, Recorder"

"Land Office west of Pearl River"

"This plat, certificate, and letters patent, are recorded in the Register's book B, of written evidences of claims, fol. 621. &c.;"

"Examined and corrected by"

"J. GIRAULT, Translator"

The plat and certificate survey and patent for 500 acres appear to have been registered in the land office west of Pearl River on 26 March, 1804.

The patent for this last survey gives no additional title, because it was granted after the authority of Spain over the country had ceased. It does not appear that either of these title papers was laid before the board of commissioners.

There is certainly some difficulty in construing these acts of Congress. It is not easy to resist the conviction that the government has legislated on the idea that Spanish titles might be valid, though held by persons who were not

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residents of the country on 27 October, 1795. Yet no law has in express terms imparted this validity to them. The act of 1804 allows them to be recorded and to be laid before the commissioners to be decided on by them. It goes further and seems to point the attention of the commissioners to the fairness of the claim, rather than to the residence of the claimant. The certificate of the board in favor of the claimant is conclusive against the United States. Its determination against him is to be reported to the Secretary of the Treasury in order to be laid before Congress, and this determination is to be founded on the opinion that the document of title is antedated or otherwise fraudulent. When Congress acts on this report, no absolute decision is made against the rejected claims, but the claimant is allowed time to assert his title in a court of law or equity. These provisions are scarcely to be reconciled with the idea that no Spanish grant could be valid if made to a nonresident of the territory. It would seem as if the commissioners might have taken cognizance of such a claim, might have decided in its favor, and that such a decision would have been conclusive.

But we repeat that there is no act of Congress expressly confirming such titles, and that they derive no validity from any other source.

The whole legislation on this subject requires that every title to lands in the country which had been occupied by Spain should be laid before the board of commissioners. The motives for this regulation are obvious, and as the titles had no intrinsic validity, it was opposed by no principle. Claimants could not complain if the law which gave validity to their claims should also provide a board to examine their fairness and should make the validity depend on their being laid before that board. The plaintiff in error has failed to bring his case before the tribunal which the legislature had provided for its examination, and has therefore not brought himself within the law. No act of Congress applies to a grant held by a nonresident of the territory in October, 1795, which has not been laid before the board of commissioners. It is true that no act has declared such grants void, but the legislature has ordered the lands to be

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sold which were not appropriated in a manner recognized by law, and the land in controversy is of that description.

If this view of the subject be correct, no Spanish grant made while the country was wrongfully occupied by Spain can be valid unless it was confirmed by the contract with Georgia or has been laid before the board of commissioners.

This opinion is decisive of every point on which the court gave an opinion so far as respects title.

The first bill of exceptions taken by the plaintiff in error is to the rejection of a duly certified copy of a certificate of survey and a patent issued thereon by the Spanish governor of West Florida in December, 1797.

The patent was properly rejected, because Spain no longer occupied the territory and the authority which had been exercised in fact by the Spanish government had ceased. The order and certificate of survey were properly rejected because they were not confirmed by the three first sections of the act of 1803 and had never been laid before the board of commissioners.

The paper dated 19 October, 1796, purporting to be private instructions from William Dunbar, the Principal Surveyor of the District of Natchez, to William Atchison, the deputy, who made the surveys for the land in controversy, was admitted to rebut the testimony of a witness whose deposition had been taken to prove that the Spanish title papers were fair and were correctly dated. This paper was admitted because it related to the official duties of the deputy, was found among his papers after his death, and was proved to be in the handwriting of his principal, who was also dead. Doubts are entertained by some of the judges respecting the propriety of its admission. But this is a question which we think it unnecessary to decide, because the grant, not having been laid before the board of commissioners, could not have availed the defendant in the court below, who did not bring himself within the reservation of the cession from Georgia.

The plaintiff in error, after the testimony had been laid before the jury, prayed the court to instruct it on several points of law which grew out of it. The first of these,

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which was refused, questioned the validity of a grant made by the United States for land occupied at the time under color of an adverse title. There can be no doubt of the correctness of rejecting this proposition.

The 2d, 3d and 5th points, which the court was prayed to state as law to the jury, depend on the position that residence in the country on 27 October, 1795, was not necessary to the validity of the title set up by the defendant in that court. As the title had not been laid before the board of commissioners, and as residence was indispensable to the validity of a claim, supported by the act of cession from Georgia, we think these instructions were properly refused.

The 8th was unimportant to the case in the view which this Court has taken of it. If the question whether the survey purporting to bear date in September, 1795, was really made on that day or was antedated had been the question to be decided by the jury, as it would have been had this paper been laid before the board of commissioners, the court did right in refusing to grant this prayer. It seems to

request the court to say that, in deciding on the verity of a paper alleged to be fraudulent, the paper itself is entitled to more credit than the parol testimony which impeaches it, though the law declares parol testimony to be admissible.

On the other points, the court gave the instruction asked by the plaintiff in error.

We think the plaintiff in error has neither brought himself within the articles of agreement between the United States and the State of Georgia nor within the acts of Congress, and that the judgment of the district court must be

Affirmed with costs.