Foster and Elam Vs. Neilson

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SooperKanoon Citation : sooperkanoon.com/79200

Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 253

Appellant : Foster and Elam

Respondent : Neilson

Judgement :

Foster & Elam v. Neilson - 27 U.S. 253 (1829)
U.S. Supreme Court Foster & Elam v. Neilson, 27 U.S. 2 Pet. 253 253 (1829)

Foster & Elam v. Neilson

27 U.S. (2 Pet.) 253

ERROR TO THE DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

SYLLABUS

By the Treaty of St. Ildefonso, made on the 1st of October, 1800, Spain ceded Louisiana to France, and France, by the Treaty of Paris, signed the 30th of April, 1803, ceded it to the United States. Under this treaty, the United States claimed

the country between the Iberville and the Perdido. Spain contended that her cession to France comprehended only that territory which, at the time of the cession, was denominated Louisiana, consisting of the Island of New Orleans and the country which had been originally ceded to her by France, west of the Mississippi.

The land claimed by the plaintiffs in error under a grant from the Crown of Spain made after the Treaty of St. Ildefonso lies within the disputed territory, and this case presents the question to whom did the country between the Iberville and Perdido belong after the Treaty of St. Ildefonso?

Had France and Spain agreed upon the boundaries of the retroceded territory before Louisiana was acquired by the United States, that agreement would undoubtedly have ascertained its limits. But the declaration of France, made after parting with the province, cannot be admitted as conclusive. In questions of this character, political considerations have too much influence over the conduct of nations to permit their declarations to decide the course of an independent government in a matter vitally interesting to itself.

However individual judges might construe the Treaty of St. Ildefonso, it is the province of the Court to conform its decisions to the will of the Legislature if that will has been clearly expressed.

After the acts of sovereign power over the territory in dispute which have been exercised by the Legislature and Government of the United States asserting the American construction of the Treaty by which the Government claims it, to maintain the opposite construction in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty, if the Legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied.

If a Spanish grantee had obtained possession of the land in dispute so as to be the defendant, would a court of the United States maintain his title under a Spanish

grant, made subsequent to the acquisition of Louisiana, singly on the principle that the Spanish construction of the Treaty of St. Ildefonso was right, and the American construction wrong? Such a decision would subvert those principles which govern the relations between the Legislative and Judicial Departments, and mark the limits of each.

The sounds construction of the 8th article of the Treaty between the United States and Spain of 22d February 1829, will not enable the Court to apply its provisions to the case of the plaintiff.

The article does not declare that all the grants made by His Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and it would have repealed those acts of Congress which were repugnant to it; but its language is that those grants shall be ratified and confirmed to the persons in possession, &c.; By whom shall they be ratified and confirmed? This seems to be the language of contract, and, if it is, the ratification and confirmation which are promised must be the act of the legislature. Until such act shall be passed, the Court is not at liberty to disregard the existing laws on this subject.

A treaty is in the nature of a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument.

In the United States, a different principle is established. Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature whenever it operates of itself,

without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the Political, not the Judicial, Department, and the Legislature must execute the contract before it can become a rule for the Court.

The plaintiffs in error filed their petition in the district court setting forth that, on the 2d of January, 1804, Jayme Joydra purchased of the Spanish government for a valuable consideration, and was put in possession of, a certain tract or parcel of land situated in the district of Feliciana, thirty miles to the east of the Mississippi within the province of West Florida, containing forty thousand arpents, having the marks and boundaries as laid down in the original plat of survey annexed to the deed of sale, made by Juan Ventura Morales then intendent of the Spanish Government, dated January 2d, 1804, which sale was duly confirmed by the

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King of Spain by his resolves dated May 29, 1804, and February 20th, 1805.

May 17, 1805, Jayme Joydra sold and conveyed six thousand arpents, part of the said forty thousand, to one Joseph Maria de la Barba; and upon the same day, Joseph Maria de la Barba sold and conveyed three thousand arpents, parcel of the six thousand so purchased on the same day of Jayme Joydra, to one Francoise Poinet, for the consideration of $750. These three thousand arpents, situated in the district of Feliciana, about thirty miles east of the Mississippi, bounded on the north by the line of demarcation between the United States and the Spanish territory; on the west by lands of Manuel de Lanzos; on the east by the lands of the said Jayme Joydra; and on the south by the lands of the said Joseph Maria de la Barba.

In June, 1811, Francoise Poinet, by her attorney, Louis Leonard Poinet, sold to the petitioners the said three thousand arpents, for the sum of $3,200.

The petition then avers that the three thousand arpents of lands justly and legally belong to them, and that, nevertheless, David Neilson, the defendant, a resident of the parish of east Feliciana in the State of Louisiana, had taken possession of the

same, and refuses to deliver the same up.

On the 23d of March 1826, the defendant in the district court filed exceptions to the petition, and the questions before this Court arose out of the third exception, which was as follows:

That the petition does not show any right in the petitioners to the land demanded, which they aver lies in a district formerly called Feliciana, in the province of West Florida; and they claim under a grant made at New Orleans on the 2d of January, 1804, and regularly confirmed by the Spanish Government; whereas, as defendant pleads, all that section of territory called Feliciana was, long before the alleged date of said grant, ceded by Spain to France, and by France to the United States, and the officer making said grant had not then and there any right so to do, and the said grant is wholly null and void.

The judgment of the district court is founded on this exception,

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and decides that the grant under which the plaintiffs claim was made by persons having no authority at the time of the grant to grant lands within the territory within which the lands are situated, and dismisses the petition.

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Mr Chief Justice MARSHALL delivered the opinion of the Court.

This suit was brought by the plaintiffs in error in the Court of the United States for the Eastern District of Louisiana to recover a tract of land lying in that district, about thirty miles east of the Mississippi, and in the possession of the defendant. The plaintiffs claimed under a grant for 40,000 arpents of land, made by the Spanish governor, on the 2d of January, 1804, to Jayme Joydra, and ratified by the King of Spain on the 29th of May, 1804. The petition and order of survey are dated in September, 1803, and the return of the survey itself was made on the 27th of October in the same year. The defendant excepted to the petition of the

plaintiffs, alleging that it does not show a title on which

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they can recover; that the territory within which the land claimed is situated had been ceded before the grant to France, and by France to the United States; and that the grant is void, being made by persons who had no authority to make it. The court sustained the exception and dismissed the petition. The cause is brought before this Court by a writ of error.

The case presents this very intricate, and, at one time, very interesting, question: to whom did the country between the Iberville and the Perdido rightfully belong when the title now asserted by the plaintiffs was acquired?

This question has been repeatedly discussed with great talent and research by the Government of the United States and that of Spain. The United States have perseveringly and earnestly insisted that, by the Treaty of St Ildefonso, made on the 1st of October in the year 1800, Spain ceded the disputed territory as part of Louisiana to France, and that France, by the treaty of Paris, signed on the 30th of April, 1803, and ratified on the 21st of October in the same year, ceded it to the United States. Spain has, with equal perseverance and earnestness, maintained that her cession to France comprehended that territory only which was at that time denominated Louisiana, consisting of the island of New Orleans and the country she received from France west of the Mississippi.

Without tracing the title of France to its origin, we may state with confidence that, at the commencement of the War of 1756, she was the undisputed possessor of the province of Louisiana, lying on both sides the Mississippi and extending eastward beyond the Bay of Mobile. Spain was at the same time in possession of Florida, and it is understood that the River Perdido separated the two provinces from each other.

Such was the State of possession and title at the Treaty of Paris, concluded between Great Britain, France, and Spain on the 10th day of February, 1763. By that Treaty, France ceded to Great Britain the River and Port of the Mobile and all

her possessions on the left side of the river Mississippi except the town of New Orleans and the island on which it

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is situated; and, by the same Treaty, Spain ceded Florida to Great Britain. The residue of Louisiana was ceded by France to Spain in a separate and secret treaty between those two powers. The King of Great Britain, being thus the acknowledged sovereign of the whole country east of the Mississippi except the island of New Orleans, divided his late acquisition in the south into two provinces, East and West Florida. The latter comprehended so much of the country ceded by France as lay south of the 31st degree of north latitude and a part of that ceded by Spain.

By the Treaty of Peace between Great Britain and Spain, signed at Versailles on the 3d of September, 1783, Great Britain ceded East and West Florida to Spain, and those provinces continued to be known and governed by those names as long as they remained in the possession and under the dominion of His Catholic Majesty.

On the 1st of October in the year 1800, a secret treaty was concluded between France and Spain at St Ildefonso, the third article of which is in these words:

"His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the full and entire execution of the conditions and stipulations relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and the other States."

The Treaty of the 30th of April, 1803, by which the United States acquired Louisiana, after reciting this article, proceeds to state that

"the First Consul of the French Republic doth hereby cede to the United States, in the name of the French Republic, forever and in full sovereignty, the said territory,

with all its rights and appurtenances as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned Treaty concluded with His Catholic Majesty."

The 4th article stipulates that

"there shall be sent by the Government of France a commissary to Louisiana to the end that he do every act necessary, as well to receive from the officers of His Catholic

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Majesty the said country and its dependencies in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States."

On the 30th of November, 1803, Peter Clement Laussatt, Colonial Prefect and Commissioner of the French Republic, authorised, by full powers dated the 6th of June, 1803, to receive the surrender of the province of Louisiana, presented those powers to Don Manuel Salcedo, Governor of Louisiana and West Florida, and to the Marquis de Casa Calvo, Commissioners on the part of Spain, together with full powers to them from His Catholic Majesty to make the surrender. These full powers were dated at Barcelona the 15th of October 1802. The Act of Surrender declares that, in virtue of these full powers, the Spanish Commissioners, Don Manuel Salcedo and the Marquis de Casa Calvo,

"put from this moment the said French Commissioner, the Citizen Laussatt, in possession of the Colony of Louisiana and of its dependencies, as also of the Town and Island of New Orleans, in the same extent which they now have, and which they had in the hands of France when she ceded them to the royal Crown of Spain, and such as they should be after the treaties subsequently entered into between the States of His Catholic Majesty and those of other powers."

The following is an extract from the order of the King of Spain referred to by the Commissioners in the act of delivery. "Don Carlos, by the grace of God, & c."

"Deeming it convenient to retrocede to the French Republic the Colony and Province of Louisiana, I order you, as soon as the present order shall be presented to you by General Victor or other officer duly authorised by the French Republic, to take charge of said delivery; you will put him in possession of the Colony of Louisiana and its dependencies, as also of the City and Island of New Orleans, with the same extent that it now has, that it had in the hands of France when she ceded it to my royal Crown, and such as it ought to be after the treaties which have successively taken place between my States and those of other powers."

Previous to the arrival of the French Commissioner, the

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Governor of the Provinces of Louisiana and West Florida, and the Marquis de Casa Calvo, had issued their proclamation, dated the 18th of May 1803, in which they say,

"His Majesty having before his eyes the obligations imposed by the treaties, and desirous of avoiding any disputes that might arise, has deigned to resolve that the delivery of the Colony and Island of New Orleans, which is to be made to the General of Division Victor, or such other officer as may be legally authorised by the Government of the French Republic, shall be executed on the same terms that France ceded it to his majesty; in virtue of which, the limits of both shores of the River St Louis or Mississippi shall remain as they were irrevocably fixed by the 7th article of the definitive treaty of peace, concluded at Paris the 10th of February 1763, according to which the settlements from the River Manshac or Iberville, to the line which separates the American territory from the dominions of the King, remain in possession of Spain and annexed to West Florida."

On the 21st of October, 1803, Congress passed an act to enable the President to take possession of the territory ceded by France to the United States, in pursuance of which Commissioners were appointed, to whom Monsieur Laussatt, the Commissioner of the French Republic, surrendered New Orleans and the

Province of Louisiana on the 20th of December, 1803. The surrender was made in general terms, but no actual possession was taken of the territory lying east of New Orleans. The Government of the United States, however, soon manifested the opinion that the whole country originally held by France, and belonging to Spain when the Treaty of St Ildefonso was concluded, was by that Treaty retroceded to France.

On the 24th of February, 1804, Congress passed an act for laying and collecting duties within the ceded territories, which authorised the President, whenever he should deem it expedient, to erect the shores, &c.; of the Bay and River Mobile, and of the other rivers, creeks, &c.; emptying into the Gulf of Mexico east of the said River Mobile and west thereof to the Pascagoula Inclusive, into a separate district, and to establish a port of entry and delivery therein. The

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port established in pursuance of this act was at fort Stoddert, within the acknowledged jurisdiction of the United States, and this circumstance appears to have been offered as a sufficient answer to the subsequent remonstrances of Spain against the measure. It must be considered not as acting on the territory, but as indicating the American exposition of the treaty, and exhibiting the claim its government intended to assert.

In the same session, on the 26th of March, 1804, Congress passed an act erecting Louisiana into two territories. This act declares that the country ceded by France to the United States south of the Mississippi Territory, and south of an east and west line to commence on the Mississippi river at the 33d degree of north latitude and run west to the western boundary of the cession, shall constitute a territory under the name of the Territory of Orleans. Now the Mississippi Territory extended to the 31st degree of north latitude, and the country south of that Territory was necessarily the country which Spain held as West Florida; but still its constituting a part of the Territory of Orleans depends on the fact that it was a part of the country ceded by France to the United States. No practical application of the laws of the United States to this part of the territory was attempted, nor could be made, while

the country remained in the actual possession of a foreign power.

The 14th section enacts

"that all grants for lands within the territories ceded by the French Republic to the United States by the Treaty of the 30th of April 1803, the title whereof was at the date of the Treaty of St Ildefonso in the Crown, Government, or Nation of Spain, and every act and proceeding subsequent thereto of whatsoever nature towards the obtaining any grant, title or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity."

A proviso excepts the titles of actual settlers acquired before the 20th of December, 1803, from the operation of this section. It was obviously intended to act on all grants made by Spain after her retrocession of Louisiana to France, and,

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without deciding on the extent of that retrocession, to put the titles which might be thus acquired through the whole territory, whatever might be its extent, completely under the control of the American government.

The President was authorised to appoint registers or recorders of lands acquired under the Spanish and French governments, and boards of Commissioners who should receive all claims to lands, and hear and determine in a summary way all matters respecting such claims. Their proceedings were to be reported to the secretary of the treasury, to be laid before Congress for the final decision of that body.

Previous to the acquisition of Louisiana, the ministers of the United States had been instructed to endeavour to obtain the Floridas from Spain. After that acquisition, this object was still pursued, and the friendly aid of the French government towards its attainment was requested. On the suggestion of Mr Talleyrand that the time was unfavourable, the design was suspended. The government of the United States, however, soon resumed its purpose, and the

settlement of the boundaries of Louisiana was blended with the purchase of the Floridas and the adjustment of heavy claims made by the United States for American property, condemned in the ports of Spain during the war which was terminated by the treaty of Amiens.

On his way to Madrid, Mr Monroe, who was empowered in conjunction with Mr Pinckney, the American minister at the court of His Catholic Majesty, to conduct the negotiation, passed through Paris; and addressed a letter to the Minister of Exterior Relations in which he detailed the objects of his mission and his views respecting the boundaries of Louisiana. In his answer to this letter dated the 21st of December, 1804, Mr Talleyrand declared in decided terms that, by the Treaty of St Ildefonso, Spain retroceded to France no part of the territory east of the Iberville which had been held and known as West Florida, and that, in all the negotiations between the two governments, Spain had constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile. He added that he was authorized by his Imperial Majesty to say that, at the

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beginning of the year 1802, General Bournonville had been charged to open a new negotiation with Spain for the acquisition of the Floridas, but this project had not been followed by a treaty.

Had France and Spain agreed upon the boundaries of the retroceded territory before Louisiana was acquired by the United States, that agreement would undoubtedly have ascertained its limits. But the declarations of France made after parting with the Province cannot be admitted as conclusive. In questions of this character, political considerations have too much influence over the conduct of nations to permit their declarations to decide the course of an independent Government in a matter vitally interesting to itself.

Soon after the arrival of Mr. Monroe at his place of destination, the negotiations commenced at Aranjuez. Every word in that article of the Treaty of St Ildefonso which ceded Louisiana to France was scanned by the ministers on both sides with

all the critical acumen which talents and zeal could bring into their service. Every argument drawn from collateral circumstances connected with the subject, which could be supposed to elucidate it, was exhausted. No advance towards an arrangement was made, and the negotiation terminated, leaving each party firm in his original opinion and purpose. Each persevered in maintaining the construction with which he had commenced. The discussion has since been resumed between the two nations, with as much ability and with as little success. The question has been again argued at this bar with the same talent and research which it has uniformly called forth. Every topic which relates to it has been completely exhausted, and the Court, by reasoning on the subject, could only repeat what is familiar to all.

We shall say only that the language of the article may admit of either construction, and it is scarcely possible to consider the arguments on either side without believing that they proceed from a conviction of their truth. The phrase on which the controversy mainly depends -- that Spain retrocedes Louisiana with the same extent that it had when France possessed it -- might so readily have been expressed

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in plain language that it is difficult to resist the persuasion that the ambiguity was intentional. Had Louisiana been retroceded with the same extent that it had when France ceded it to Spain, or with the same extent that it had before the cession of any part of it to England, no controversy respecting its limits could have arisen. Had the parties concurred in their intention, a plain mode of expressing that intention would have presented itself to them. But Spain has always manifested infinite repugnance to the surrender of territory, and was probably unwilling to give back more than she had received. The introduction of ambiguous phrases into the Treaty, which power might afterwards construe according to circumstances, was a measure which the strong and the politic might not be disinclined to employ.

However this may be, it is, we think, incontestable that the American construction of the article, if not entirely free from question, is supported by arguments of great

strength which cannot be easily confuted.

In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they cannot adjust their differences peaceably, the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided, and its duty commonly is to decide upon individual rights according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous.

We think then, however individual judges might construe the Treaty of St Ildefonso, it is the Province of the Court to conform its decisions to the will of the Legislature if that will has been clearly expressed.

The convulsed State of European Spain affected her influence over her colonies, and a degree of disorder prevailed

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in the Floridas at which the United States could not look with indifference. In October, 1810, the President issued his proclamation directing the Governor of the Orleans territory to take possession of the country as far east as the Perdido and to hold it for the United States. This measure was avowedly intended as an assertion of the title of the United States, but as an assertion which was rendered necessary in order to avoid evils which might contravene the wishes of both parties, and which would still leave the territory "a subject of fair and friendly negotiation and adjustment."

In April, 1812, Congress passed "an act to enlarge the limits of the State of Louisiana." This act describes lines which comprehend the land in controversy, and declares that the country included within them shall become and form a part of the State of Louisiana.

In May of the same year, another act was passed annexing the residue of the country west of the Perdido to the Mississippi Territory.

And in February, 1813, the President was authorized

"to occupy and hold all that tract of country called West Florida, which lies west of the river Perdido, not now in possession of the United States."

On the third of March, 1817, Congress erected that part of Florida which had been annexed to the Mississippi Territory into a separate territory, called Alabama.

The powers of Government were extended to, and exercised in, those parts of West Florida which composed a part of Louisiana and Mississippi, respectively, and a separate government was erected in Alabama. U.S.L. c. 4, 409.

In March 1819, "Congress passed an act to enable the people of Alabama to form a Constitution and State government." And in December, 1819, she was admitted into the Union, and declared one of the United States of America. The Treaty of Amity, Settlement and Limits between the United States and Spain was signed at Washington on the 22d day of February, 1819, but was not ratified by Spain till the 24th day of October 1820, nor by the United States until the 22d day of February, 1821. So that Alabama was

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admitted into the Union as an independent State, in virtue of the title acquired by the United States to her territory under the treaty of April 1803.

After these acts of sovereign power over the territory in dispute asserting the American construction of the treaty by which the government claims it, to maintain the opposite construction in its own courts would certainly be an anomaly in the history and practice of nations. If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign powers, have unequivocally asserted its rights of dominion over a country of which it is in possession and which it claims under a treaty, if the Legislature has acted on the construction thus asserted, it is not in its own courts that this

construction is to be denied. A question like this respecting the boundaries of nations is, as has been truly said, more a political than a legal question, and, in its discussion, the courts of every country must respect the pronounced will of the Legislature. Had this suit been instituted immediately after the passage of the act for extending the bounds of Louisiana, could the Spanish construction of the Treaty of St Ildefonso have been maintained? Could the plaintiff have insisted that the land did not lie in Louisiana, but in West Florida; that the occupation of the country by the United States was wrongful; and that his title under a Spanish grant must prevail because the acts of Congress on the subject were founded on a misconstruction of the treaty? If it be said that this statement does not present the question fairly because a plaintiff admits the authority of the Court, let the parties be changed. If the Spanish grantee had obtained possession so as to be the defendant, would a Court of the United States maintain his title under a Spanish grant, made subsequent to the acquisition of Louisiana, singly on the principle that the Spanish construction of the Treaty of St Ildefonso was right, and the American construction wrong? Such a decision would, we think, have subverted those principles which govern the relations between the legislative and judicial departments and mark the limits of each.

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If the rights of the parties are in any degree changed, that change must be produced by the subsequent arrangements made between the two governments.

A "Treaty of Amity, settlement, and Limits between the United States of America and the King of Spain," was signed at Washington on the 22d day of February, 1819. By the 2d article,

"His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida."

The 8th article stipulates, that

"all the grants of land made before the 24th of January, 1818, by His Catholic Majesty or by his lawful authorities in the said territories ceded by His Majesty to the United States shall be ratified and confirmed to the persons in possession of the lands to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty."

The Court will not attempt to conceal the difficulty which is created by these articles.

It is well known that Spain had uniformly maintained her construction of the Treaty of St Ildefonso. His Catholic Majesty had perseveringly insisted that no part of West Florida had been ceded by that treaty, and that the whole country which had been known by that name still belonged to him. It is then a fair inference from the language of the Treaty that he did not mean to retrace his steps and relinquish his pretensions, but to cede on a sufficient consideration all that he had claimed as his, and consequently, by the 8th article, to stipulate for the confirmation of all those grants which he had made while the title remained in him.

But the United States had uniformly denied the title set up by the Crown of Spain; had insisted that a part of West Florida had been transferred to France by the Treaty of St Ildefonso, and ceded to the United States by the treaty of April, 1803; had asserted this construction by taking actual possession of the county; and had extended its legislation over it. The United States therefore cannot be understood to have admitted that this country belonged to His Catholic

Majesty, or that it passed from him to them by this article. Had His Catholic Majesty ceded to the United States "all the territories situated to the eastward of the Mississippi known by the name of East and West Florida," omitting the words "which belong to him," the United States, in receiving this cession, might have sanctioned the right to make it, and might have been bound to consider the 8th article as coextensive with the second. The stipulation of the 8th article might have been construed to be an admission that West Florida to its full extent was ceded

by this treaty.

But the insertion of these words materially affects the construction of the article. They cannot be rejected as surplusage. They have a plain meaning, and that meaning can be no other than to limit the extent of the cession. We cannot say they were inserted carelessly or unadvisedly, and must understand them according to their obvious import.

It is not improbable that terms were selected which might not compromise the dignity of either government, and which each might understand consistently with its former pretensions. But if a court of the United States would have been bound, under the state of things existing at the signature of the treaty, to consider the territory then composing a part of the State of Louisiana as rightfully belonging to the United States, it would be difficult to construe this article into an admission that it belonged rightfully to His Catholic Majesty.

The 6th article of the treaty may be considered in connexion with the second. The 6th stipulates

"that the inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Constitution."

This article, according to its obvious import, extends to the whole territory which was ceded. The stipulation for the incorporation of the inhabitants of the ceded territory into the Union is co-extensive with the cession. But the country in which the land in controversy lies was already incorporated into the Union. It composed a part of the

State of Louisiana, which was already a member of the American Confederacy.

A part of West Florida lay east of the Perdido, and to that the right of His Catholic Majesty was acknowledged. There was then an ample subject on which the words of the cession might operate without discarding those which limit its general

expressions.

Such is the construction which the Court would put on the treaties by which the United States have acquired the country east of New Orleans. But an explanation of the 8th article seems to have been given by the parties which may vary this construction.

It was discovered that three large grants which had been supposed at the signature of the treaty to have been made subsequent to the 24th of January 1818 bore a date anterior to that period. Considering these grants as fraudulent, the United States insisted on an express declaration annulling them. This demand was resisted by Spain, and the ratification of the treaty was for some time suspended. At length, His Catholic Majesty yielded, and the following clause was introduced into his ratification:

"Desirous at the same time of avoiding any doubt or ambiguity concerning the meaning of the 8th article of the treaty in respect to the date which is pointed out in it as the period for the confirmation of the grants of lands in the Floridas made by me, or by the competent authorities in my royal name, which point of date was fixed in the positive understanding of the three grants of land made in favour of the Duke of Alagon, the Count of Punon Rostro, and Don Pedro de Vargas, being annulled by its tenor, I think it proper to declare that the said three grants have remained and do remain entirely annulled and invalid, and that neither the three individuals mentioned, nor those who may have title or interest through them, can avail themselves of the said grants at any time or in any manner; under which explicit declaration, the said 8th article is to be understood as ratified."

One of these grants, that to Vargas, lies west of the Perdido.

It has been argued, and with great force, that this explanation forms a part of the article. It may be considered

as if introduced into it as a proviso or exception to the stipulation in favour of grants anterior to the 24th of January, 1818. The article may be understood as if it had been written that

"all the grants of land made before the 24th of January, 1818, by His Catholic Majesty or his lawful authorities in the said territories ceded by his majesty to the United States (except those made to the Duke of Alagon, the Count of Punon Rostro, and Don Pedro de Vargas) shall be ratified and confirmed, &c.;"

Had this been the form of the original article, it would be difficult to resist the construction that the excepted grants were withdrawn from it by the exception, and would otherwise have been within its provisions. Consequently, that all other fair grants within the time specified were as obligatory on the United States as on His Catholic Majesty.

One other judge and myself are inclined to adopt this opinion. The majority of the Court, however, think differently. They suppose that these three large grants, being made about the same time, under circumstances strongly indicative of unfairness, and two of them lying east of the Perdido, might be objected to on the ground of fraud common to them all, without implying any opinion that one of them, which was for lands lying within the United States, and most probably in part sold by the Government, could have been otherwise confirmed. The Government might well insist on closing all future controversy relating to these grants, which might so materially interfere with its own rights and policy in its future disposition of the ceded lands, and not allow them to become the subject of judicial investigation, while other grants, though deemed by it to be invalid, might be left to the ordinary course of the law. The form of the ratification ought not, in their opinion, to change the natural construction of the words of the 8th article, or extend them to embrace grants not otherwise intended to be confirmed by it. An extreme solicitude to provide against injury or inconvenience, from the known existence of such large grants, by insisting upon a declaration of their absolute nullity can, in their opinion, furnish no satisfactory proof that the Government meant to recognise

the small grants as valid which in every previous act and struggle it had proclaimed to be void as being for lands within the American territory.

Whatever difference may exist respecting the effect of the ratification, in whatever sense it may be understood, we think the sound construction of the eighth article will not enable this Court to apply its provisions to the present case. The words of the article are that

"all the grants of land made before the 24th of January 1818, by His Catholic Majesty, &c.; shall be ratified and confirmed to the persons in possession of the lands to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty."

Do these words act directly on the grants so as to give validity to those not otherwise valid, or do they pledge the faith of the United States to pass acts which shall ratify and confirm them?

A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument.

In the United States, a different principle is established. Our Constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the Legislature whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the Judicial, Department, and the Legislature must execute the contract before it can become a rule for the Court.

The article under consideration does not declare that all the grants made by His Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say

that those grants are hereby confirmed. Had such been its language, it would have acted directly on the subject, and would have repealed those acts of Congress which

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were repugnant to it; but its language is that those grants shall be ratified and confirmed to the persons in possession, &c.; By whom shall they be ratified and confirmed? This seems to be the language of contract; and if it is, the ratification and confirmation which are promised must be the act of the Legislature. Until such act shall be passed, the Court is not at liberty to disregard the existing laws on the subject. Congress appears to have understood this article as it is understood by the Court. Boards of Commissioners have been appointed for East and West Florida to receive claims for lands, and, on their reports, titles to lands not exceeding ___ acres have been confirmed, and to a very large amount. On the 23d of May, 1828, an act was passed supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, the 6th section of which enacts that

"all claims to land within the territory of Florida embraced by the treaty between Spain and the United States of the 22d of February, 1819, which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the Commissioners were authorized to decide, and which have not been reported as antedated or forged, &c.;, shall be received and adjudicated by the judge of the superior court of the district within which the land lies, upon the petition of the claimant,"

&c.;, provided, that nothing in this section shall be construed to enable the judges to take cognizance of any claim annulled by the said treaty or the decree ratifying the same by the King of Spain, nor any claim not presented to the Commissioners or register and receiver. An appeal is allowed from the decision of the judge of the district to this Court. No such act of confirmation has been extended to grants for lands lying west of the Perdido.

The act of 1804, erecting Louisiana into two territories, has been already mentioned. It annuls all grants for lands in the ceded territories the title whereof was at the date of the Treaty of St Ildefonso in the Crown of Spain. The grant in controversy is not brought within any of the exceptions from the enacting clause.

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The Legislature has passed many subsequent acts previous to the treaty of 1819 the object of which was to adjust the titles to lands in the country acquired by the treaty of 1803.

They cautiously confirm to residents all incomplete titles to lands for which a warrant or order of survey had been obtained previous to the 1st of October, 1800.

An act passed in April, 1814, confirms incomplete titles to lands in the State of Louisiana for which a warrant or order of survey had been granted prior to the 20th of December 1803, where the claimant or the person under whom he claims was a resident of the Province of Louisiana on that day, or at the date of the concession, warrant, or order of survey, and where the tract does not exceed 640 acres. This act extends to those cases only which had been reported by the Board of Commissioners, and annexes to the confirmation several conditions which it is unnecessary to review, because the plaintiff does not claim to come within the provisions of the act.

On the 3d of March, 1819, Congress passed an act confirming all complete grants to land from the Spanish Government, contained in the reports made by the Commissioners appointed by the President for the purpose of adjusting titles which had been deemed valid by the Commissioners, and also all the claims reported as aforesaid, founded on any order of survey, requete, permission to settle, or any written evidence of claim derived from the Spanish authorities which ought, in the opinion of the Commissioners, to be confirmed, and which by the said reports appear to be derived from the Spanish Government before the 20th day of December, 1803, and the land claimed to have been cultivated or inhabited on or before that day.

Though the order of survey in this case was granted before the 20th of December, 1803, the plaintiff does not bring himself within this act.

Subsequent acts have passed in 1820, 1822 and 1826, but they only confirm claims approved by the Commissioners, among which the plaintiff does not allege his to have been placed.

Congress has reserved to itself the supervision of the titles

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reported by its Commissioners, and has confirmed those which the Commissioners have approved, but has passed no law withdrawing grants generally for lands west of the Perdido from the operation of the 14th section of the act of 1804 or repealing that section.

We are of opinion then, that the court committed no error in dismissing the petition of the plaintiff, and that the judgment ought to be affirmed with costs.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel; on consideration whereof, this Court is of opinion that the said district court committed no error in dismissing the petition of the plaintiffs; therefore it is considered, ordered and adjudged by this Court, that the judgment of the said district court in this cause be, and the same is hereby, affirmed with costs.