United States Vs. Percheman

United States Vs. Percheman

SooperKanoon Citation : sooperkanoon.com/79381

Court : US Supreme Court

Decided On : 1832

Appeal No. : 32 U.S. 51

Appellant : United States

Respondent : Percheman

Judgement :

United States v. Percheman - 32 U.S. 51 (1832)
U.S. Supreme Court United States v. Percheman, 32 U.S. 7 Pet. 51 51 (1832)

United States v. Percheman

32 U.S. (7 Pet.) 51

APPEAL FROM THE SUPERIOR COURT

FOR THE EASTERN DISTRICT OF FLORIDA

SYLLABUS

Juan Percheman claimed two thousand acres of land lying in the Territory of Florida by virtue of a grant from the Spanish governor made in 1815. His title consisted of a petition presented by himself to the Governor of East Florida,

praying for a grant of two thousand acres at a designated place in pursuance of the royal order of 29 March, 1815, granting lands to the military who were in St. Augustine during the invasion of 1812 and 1813; a decree by the governor made 12 December, 1815, in conformity to the petition, in absolute property, under the authority of the royal order, a certified copy of which decree and of the petition was directed to be issued to him from the secretary's offices in order that it may be to him in all events an equivalent of a title in form; a petition to the governor dated 31 December, 1815, for an order of survey, and a certificate of a survey having been made on 20 August,

1819, in obedience to the same. This claim was presented, according to law, to the Register and Receiver of East Florida, while acting as a board of commissioners to ascertain claims and titles to lands in East Florida. The claim was rejected by the board, and the following entry made of the same:

"In the memorial of the claimant to this board, he speaks of a survey made by"

authority in 1829. If this had been produced, it would have furnished some

support for the certificate of Aguilar. As it is, we reject the claim.

Held that this was not a final action on the claim in "the sense those words are used in the Act of 26 May, 1830 entitled *An act supplementary to,'"*

&c.;

Even in cases of conquest, it is very unusual for the conqueror to do more than to displace the sovereign and assume dominion over the country.

The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled on a change in the sovereignty of the country. The people change their allegiance, their relation to their ancient sovereign is dissolved, but their relations to each other and their rights of property remain undisturbed.

Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have retrained the same as under the ancient sovereign.

The language of the second article of the Treaty between the United States and Spain of 22 February, 1819, by which Florida was ceded to the United States, conforms to this general principle.

The eighth article of the treaty must be intended to stipulate expressly for

the security to private property which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security further than its positive words require would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old. And those titles, so far at least as they were consummated, might be asserted in the courts of the United States independently of this article.

The treaty was drawn up in the Spanish as well as in the English languages. Both are original, and were unquestionably intended by the parties to be identical. The Spanish has been translated, and it is now understood that the article expressed in that language is that "the grants shall retrain ratified and confirmed to the persons in possession of them, to the same extent," &c.;, thus conforming exactly to the universally received law of nations.

If the English and Spanish part can, without violence, be made to agree, that construction which establishes this conformity ought to prevail.

No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words "shall be ratified and confirmed" are properly words of contract, stipulating for some

future legislation, they are not necessarily so. They may import that "they shall be ratified and confirmed" by force of the instrument itself. When it is observed that in the counterpart of the same treaty, executed at the same time, by the same parties, they are used in this sense, the construction is proper, if not unavoidable.

In the case of *Foster v. Elam,* 2 Pet. 253, this Court considered those words importing a contract. The Spanish part of the treaty was not then brought into view, and it was then supposed there was no variance between them. It was not supposed that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, it is believed it would have produced the construction which it now given to the article.

On 8 May, 1822, an act was passed "for ascertaining claims and titles to land within the Territory of Florida." Congress did not design to submit the validity of titles which were "valid under the Spanish government or by the law of nations" to the determination of the commissioners acting under this

law. It was necessary to ascertain these claims and to ascertain their location, not to decide finally upon them. The powers to be exercised by the commissioners ought to be limited to the object and purpose of the act.

In all the acts passed upon this subject previous to May, 1830, the decisions of the commissioners or of the register and receiver acting as commissioners have been confirmed. Whether these acts affirm those decisions by which claims are rejected, as well as those by which they are recommended for confirmation, admits of some doubt. Whether a rejection amounts to more than a refusal to recommend for confirmation may be a subject of serious inquiry. However this may be, it can admit of no doubt that the decision of the commissioners was conclusive in no

case until confirmed by an act of Congress. The language of these acts, and among others that of the act of 1828, would indicate that the mind of Congress

was directed solely to the confirmation of claims, not to their annulment. The decision of this question is not necessary to this case.

The Act of 26 May, 1830, entitled "An act to provide for the final settlement of land claims in Florida," contains the action of Congress on the report of the commissioners of 14 January, 1830, in which is the rejection of the claim of the petitioner in this case. The first, second and third sections of this act confirm the claims recommended for confirmation by the commissioners. The fourth section enacts

"That all remaining claims, which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled upon the same conditions,"

&c.; It is apparent that no claim was finally acted upon until it had been acted upon by Congress, and it is equally apparent that the action of Congress in the report containing this claim is confined to the confirmation of those titles which were recommended for confirmation. Congress has not passed upon those which were rejected. They were, of consequence, expressly submitted to the court.

From the testimony in the case, it does not appear that the Governor of Florida, under whose grant the land is claimed by the petitioner, exceeded his authority in making the grant.

Papers translated from a foreign language respecting the transactions of foreign officers with whose powers and authorities the court are not well acquainted, containing uncertain and incomplete references to things well understood by the parties but not understood by the court, should be carefully examined before it pronounces that an officer holding a high place of trust and confidence has exceeded his authority.

On general principles of law, a copy of a paper given by a public officer whose duty it is to keep the originals ought to be received in evidence.

On 17 September, 1830, Juan Percheman filed in the clerk's office of the Superior Court for the Eastern District of Florida a petition, setting forth his claim to a tract of land containing two thousand acres within the District of East Florida, situated at a place called the Ockliwaha, along the margin of the River St. John.

The petitioner stated that he derived his title to the said tract of land under a grant made to him on 12 December, 1815, by Governor Estrada, then Spanish Governor of East Florida, and whilst East Florida belonged to Spain. The documents exhibiting the alleged title annexed to the petition were the following:

"His Excellency the Governor: Don Juan Percheman, ensign of the corps of dragoons of America, and stationed in this place, with due veneration and respect appears before your Excellency and says that in virtue of the bounty in lands which, pursuant to his royal order of 29 March of the present year, the King grants to the military which were of this place in the time of the invasion which took place in the years 1812 and 1813, and your petitioner considering himself as being comprehended in the said sovereign resolution, as it is proved by the annexed certificates of his lordship Brigadier Don Sebastian Kindelan, and by that which your lordship thought proper to provide herewith, which certificates express the merits and services rendered by your petitioner at the time of the siege, in consequence of which said bounties were granted to those who deserved them, and which said certificates your petitioner solicits from your goodness may be returned to him for any other purposes which may be useful to your petitioner; therefore he most respectfully supplicates your lordship to grant him two thousand acres of land in the place called Ockliwaha, situated on the margin of St. John's River, which favor he doubts not to receive from your good heart and paternal dispositions. St. Augustine of Florida, 8 December, 1815."

"JUAN PERCHEMAN"

"St. Augustine of Florida, 12 December, 1815. Whereas, this officer, the party interested, by the two certificates enclosed and which will be returned to him for

the purposes which may be convenient to him, has proved the services which he rendered in the defense of this province, and in consideration also of what is provided in the royal order of 29 March last past, which he cites, I do grant him the two thousand acres of land which he solicits, in absolute property in the indicated place, to which effect let a certified copy of this petition and decree be issued to him from the secretary's office in order that it may be to him, in all events, an equivalent of a title in form."

"ESTRADA"

"PETITION. His Excellency the Governor:"

"Don Juan Percheman, sergeant of the squadron of dragoons of America, stationed in this place, with due veneration and respect, appears before your Excellency, and says that in virtue of the royal

Page 32 U. S. 55

bounties in lands, granted by his Majesty, by his royal order of 29 March of the present year, to the military individuals who were in this place aforesaid, in the time of the invasion thereof, in the years 1812 and 1813, and your petitioner considering himself as included in the said royal resolution, as he proves it by the annexed certificates, exhibited with due solemnity, one of them from the Brigadier Don Sebastian Kindelan, and the other with which your Excellency thought proper to provide him, which certificates express the merits and services which he acquired and rendered in the time and epochs of the siege, in consequence of which the meritorious were thus rewarded, and which certificates your Excellency will be pleased to return to your petitioner, for other purposes which may be useful to him, wherefore, your petitioner most respectfully supplicates your Excellency to be pleased to grant him two thousand acres of land, in the place called Ockliwaha, situated on the margins of the River St. John, which favor he doubts not to receive from the benevolent and charitable dispositions of your Excellency. St. Augustine of Florida, on 8 December, 1815."

"JUAN PERCHEMAN"

"DECREE. St. Augustine of Florida, on 12 December, 1815. Whereas, this officer interested proves by the two certificates annexed, and which will be returned to him for such purposes as may suit him, the services which he has rendered in the defense of this province, and also in consideration of the provisions of the royal order, under date 29 March last, which is referred to, I do grant to him in absolute property the two thousand acres of land in the place which he indicates, for the attainment of which, let a certified copy of this petition and decree be issued to him, which documents will at all events serve him as a title in form."

"ESTRADA"

"I, Don Tomas de Aguilar, under-lieutenant of the army, and secretary for his Majesty of the government of this place, and of the province thereof, do certify that the preceding copy is faithfully drawn from the original, which exists in the secretary's office under my charge, and in obedience to what is

ordered, I give the present, in St. Augustine of Florida, on 12 December, 1815."

"TOMAS DE AGUILAR"

"PETITION FOR SURVEY. His Excellency the governor:"

"Don Juan Percheman, ensign of the corps or dragoons and commandant of the detachment of the same stationed in this place, with due respect represents to your Excellency that this government having granted your petitioner two thousand acres of land in the place called Ockliwaha, on the margin of the River St. John, he may be permitted to have the same surveyed by a competent surveyor as soon and at any time your petitioner will find it convenient, which favor your petitioner hopes to receive from the high consideration of your Excellency. St. Augustine of Florida, on 31 December, 1815."

"JUAN PERCHEMAN"

"St. Augustine, 31 December 1815. The preceding petition is granted."

"ESTRADA"

I, Don Robert McHardy, an inhabitant of this province, and appointed surveyor, by decree of this government, rendered on the 31st December 1815 in behalf of the interested party, do certify, that I have surveyed for Don Juan Percheman, lieutenant of the Havana dragoons, a tract of land containing two thousand acres, situated on the south side of Ockliwaha, and is conformable in all its circumstances to the following plat. In testimony whereof, I sign the present, in St. Augustine of Florida, on the 20th of August 1819.

"R'T Mc HARDY"

The petitioner proceeds to state that his claim to said tract of land so claimed by him was submitted to the examination of the board of commissioners appointed under and in virtue of an act of the Congress of the United States of America entitled "An act for ascertaining claims and titles to lands in the Territory of Florida, and to provide for the survey and disposal of the public lands in Florida," passed 3 March, 1823. And that the land so claimed by him, and situated as aforesaid within the Territory of Florida and within the jurisdiction

Page 32 U. S. 57

of this Honorable Court, as aforesaid, was embraced by the Treaty between Spain and the United States of 22 February, 1819; that his claim to said land had not been finally settled under the provisions of the Act of the Congress of the United States entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," passed 23 May, 1828, or of any of the acts to which the said last-recited act is supplementary, and that the claim of the petitioner to the said land had not been reported by the said commissioners appointed under any of the said acts of Congress or any other, or by the register and receiver acting as such under the several acts of the Congress of the United States in such case made and provided, as antedated or forged, and that the said claim had not been annulled by the aforesaid treaty between Spain and the United States, nor by the decree ratifying the same. Wherefore he prayed

that the validity of his claim to said land might be inquired into and decided upon by the court and that, in pursuance of an act of Congress for that purpose, in that case made and provided, the United States be made a party defendant to this petition, and that process, &c.;

On the 2d of October, the attorney of the United States for the District of East Florida filed an answer to the petition of Juan Percheman in which it is stated that on 28 November, 1823, he, the said Juan Percheman, sold, transferred and conveyed to one Francis P. Sanchez all his right, title, and interest in the tract of land claimed by him, which, the answer asserted, appeared by a copy of the conveyance annexed to the action, and that he had not, at the time of the filing of his petition, any right, title, or interest in the land. The answer admitted that the claim of the said Francis P. Sanchez to the said tract of land was duly presented to the register and receiver of the district while they were acting as a board of commissioners to ascertain titles to land in East Florida, and averred that the said claim was finally acted upon and rejected by the said register and receiver, while lawfully acting as aforesaid, as appeared by a copy of their report thereon annexed to the answer. The United States further said that the tract of land claimed

Page 32 U. S. 58

by the petitioner contains a less quantity than 3,500 acres, to-wit, but 2,000 acres, by the showing of the petitioner himself, and that the court had no jurisdiction in the case, nor could any court exercise jurisdiction over the claim against the United States. The answer submitted that if the Governor Estrada did make the grant or concession set forth by the petitioner at the time

"and in the manner alleged in the said petition of bill of complaint, he made it contrary to the laws, ordinances, and royal regulations of the government of Spain which were then in force in East Florida on the subject of granting lands, and without any power or authority to do so, and that the said grant was therefore null and void, and that the right and title to said tract of land consequently vested in the said United States, as will more fully appear by reference to the laws, ordinances,

and royal regulations aforesaid."

The proceedings of the register and receiver on the claim of Francis P. Sanchez, referred to in the answer, were as follows:

"This is a certificate of Thomas de Aguilar that in December, 1815, Estrada granted Don Juan Percheman, cornet of squadron of dragoons, for services, two thousand acres of land at a place called Ockliwaha, on the St. John's River. In 1819, Percheman sold to Sanchez. In the memorial of the claimant to this board, he speaks of a survey made by authority in 1819. If this had been produced, it would have furnished some support to the certificate of Aguilar. As it is, we reject the claim."

The petitioner, by an amended petition, filed on t14 December, 1830, stated, that the Register and Receiver of the United States for East Florida, in their final report on the land claims, transmitted on 12 December, 1828, to the Secretary of the Treasury, reported the claim of the petitioner as rejected on the ground that the claim depended on a certificate only of Don Thomas Aguilar, notary of the Spanish government in East Florida, and he averred that his claim depended on an original grant on file in the Office of the Public Archives of East Florida, a certified copy of which was filed with the petition in the court, dated 8 December, 1815.

The amended petition also stated that the sale made by him

Page 32 U. S. 59

of the tract of land described in the original petition was a conditional sale, and no more. It also stated that the register and receiver further reported that the survey of the tract of land, made by the authority of the Spanish government, was not produced to them, but the petitioner averred the contrary, for that the survey was filed with the claim, and was before them when they examined the same; for the truth of which averment, a certificate from the keeper of the office of archives was filed with the amended petition.

On the hearing of the case before the Supreme Court for the District of East Florida, the claimant, by his counsel, offered in evidence a copy from the Office of the Keeper of Public Archives of the original grant on which this claim was founded, to the receiving of which in evidence the said attorney for the United States objected, alleging that the original grant itself should be produced and its execution proved before it could be admitted in evidence, and that the original only could be received in evidence, which objection, after argument from the counsel, was overruled by the court, and the copy from the Office of the Keeper of the Public Archives, certified according to law, was ordered to be received in evidence. And the court further ordered that though, by the express statute of this territory, copies are to be received in evidence, yet, in cases where either the claimant or the United States shall suggest that the original in the Office of the Keeper of the Public Archives is deemed necessary to be produced in court, on motion therefor, a subpoena will be issued by order of the court to the said keeper to appear and produce the said original in court for due examination there.

The court proceeded to a decree in the case and adjudged that the claim of the petitioner as presented was within its jurisdiction --

"that the grant is valid, that it ought to be, and by virtue of the statute of 26 May, 1830, and of the late treaty between the United States and Spain, it is confirmed."

The United States appealed to this Court.

Page 32 U. S. 82

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

This is an appeal from a decree pronounced by the Judge of the Superior Court for the District of East Florida confirming the title of the appellee to 2,000 acres of land lying in that territory which he claimed by virtue of a grant from the Spanish governor made in December, 1815. The title laid before the district court by the petitioner consists of a petition presented by himself to the Governor of East Florida, praying for a grant of 2,000 acres of land in the place called Ockliwaha,

situated on the margin of St. John's River, which

Page 32 U. S. 83

he prays for in pursuance of the royal order of 29 March, 1815, granting lands to the military who were in St. Augustine, during the invasion in the years 1812 and 1813, to which the following grant is attached.

"St. Augustine of Florida, 12th of December 1815. Whereas this officer, the party interested, by the two certificates enclosed and which will be returned to him for the purposes which may be convenient to him, has proved the services which he rendered in defense of this province, and in consideration also of what is provided in the royal order of 29 March last past, which he cites, I do grant him the two thousand acres of land which he solicits in absolute property in the indicated place, to which effect let a certified copy of this petition and decree be issued to him from the secretary's office in order that it may be to him in all events an equivalent of a title in form."

"ESTRADA"

In a copy of the grant certified by Thomas de Aguilar, secretary of his Majesty's government, the words "which documents will at all events serve him as a title in form" are employed instead of the words "in order that it may be to him in all events an equivalent of a title in form."

The petitioner also filed his petition to the governor for an order of survey, dated 31f December, 1815, which was granted on the same day, and a certificate of Robert McHardy, the surveyor, dated 20 August, 1813, that the survey had been made.

The attorney of the United States for the district, in his answer to this petition, states that on 28 November, 1823, the petitioner sold and conveyed his right in and to the said tract of land to Francis P. Sanchez, as will appear by the deed of conveyance to which he refers; that the claim was presented by the said Francis P. Sanchez to the register and receiver, while acting as a board of commissioners

to ascertain claims and titles to land in East Florida, and was finally acted upon and rejected by them, as appears by a copy of their report thereon. As the tract claimed by the petitioner contains less than 3,500 acres of land and had been rejected by the register and receiver acting as a board of

Page 32 U. S. 84

commissioners, the attorney contended that the court had no jurisdiction of the case.

At the trial, the counsel for the claimant offered in evidence a copy from the office of the keeper of public archives of the original grant on which the claim was founded, to the receiving of which in evidence the attorney for the United States objected, alleging that the original grant itself should be procured and its execution proved. This objection was overruled by the court, and the copy from the Office of the Keeper of the Public Archives, certified according to law, was admitted. The attorney for the United States excepted to this opinion.

It appears from the words of the grant that the original was not in possession of the grantee. The decree which constitutes the title appears to be addressed to the officer of the government whose duty it was to keep the originals and to issue a copy. Its language, after granting in absolute property, is

"for the attainment of which let a certified copy of this petition and decree be issued to him for the secretary's office, in order that it may be to him in all events equivalent to a title is form."

This copy is, in contemplation of law, an original. It appears, too, from the opinion of the judge "that by an express statute of the territory, copies are to be received in evidence." The judge added that

"Where either party shall suggest that the original in the Office of the Keeper of the Public Archives is deemed necessary to be produced in court, on motion therefor, a subpoena will be issued by order of the court to the said keeper to appear and produce the said original for examination."

The act of 26 May, 1824,

"enabling the claimants of lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims,"

in its fourth section, makes it the duty of

"the keeper of any public records who may have possession of the records and evidence of the different tribunals which have been constituted by law for the adjustment of land titles in Missouri, as held by France, upon the application of any person or persons whose claims to lands have been rejected by such tribunals, or either of them, or on the application of any person interested,

Page 32 U. S. 85

or by the attorney of the United States for the District of Missouri, to furnish copies of such evidence, certified under his official signature, with the seal of office thereto annexed, if there be a seal of office."

The act of 23 May, 1828, supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, declares, in its sixth section that certain claims to lands in Florida which have not been decided and finally settled

"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, according to the forms, rules, regulations, conditions, restrictions and limitations prescribed by [for] the district and claimants in the State of Missouri, by act of Congress approved May 26, 1824, entitled, 'an act enabling the claimants,'"

&c.; The copies directed by the act of 1824 would undoubtedly have been receivable in evidence on the trial of claims to lands in Missouri. Every reason which could operate with Congress for applying this rule of evidence to the courts of Missouri operates with equal force for applying it to the courts of Florida, and a liberal construction of the Act of May 23, 1828, admits of this application. The fourth section of the Act of May 26, 1830, "to provide for the final settlement of

land claims in Florida" adopts, almost in words, the provision which has been cited from the sixth section of the Act of May 23, 1828. Whether these acts be or be not construed to authorize the admission of the copies offered in this cause, we think that on general principles of law, a copy given by a public officer whose duty it is to keep the original ought to be received in evidence. We are all satisfied that the opinion was perfectly correct and that the copies ought to have been admitted.

We proceed, then, to examine the decree which was pronounced confirming the title of the petitioner. The general jurisdiction of the courts not extending to suits against the United States, the power of the Superior Court for the District of East Florida to act upon the claim of the petitioner, Percheman, in the form in which it was presented must be specially conferred by statute. It is conferred, if at all, by

Page 32 U. S. 86

the Act of 26 May, 1830, entitled "An act to provide for the final settlement of land claims in Florida." The fourth section of that act enacts

"That all the remaining claims which have been presented according to law and not finally acted upon shall be adjudicated and finally settled upon the same conditions, restrictions, and limitations in every respect as are prescribed by the Act of Congress approved 23 May, 1828, entitled 'An act supplementary,'"

&c.;

The claim of the petitioner, it is admitted, "had been presented according to law," but the attorney for the United States contended that "it had been finally acted upon." The jurisdiction of the court depends on the correctness of the allegation. In support of it, the attorney for the United States produced an extract from the books of the register and receiver, acting as commissioners to ascertain claims and titles to land in East Florida, from which it appears that this claim was presented by Francis P. Sanchez, assignee of the petitioner, on which the following entry was made.

"In the memorial of the claimant to this board, he speaks of a survey made by authority in 1819; if this had been produced, it would have furnished some support for the certificate of Aguilar; as it is, we reject the claim."

Is this rejection a final action on the claim in the sense in which those words are used in the Act of 26 May, 1830?

In pursuing this inquiry in endeavoring to ascertain the intention of Congress, it may not be improper to review the acts which have passed on the subject in connection with the actual situation of the person to whom those acts relate. Florida was a colony of Spain the acquisition of which by the United States was extremely desirable. It was ceded by a treaty concluded between the two powers at Washington on 22 February, 1819. The second article contains the cession and enumerates its objects. The eighth contains stipulations respecting the titles to lands in the ceded territory.

It may not be unworthy of remark that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law,

Page 32 U. S. 87

would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged if private property should be generally confiscated and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change; it would have remained the same as under the ancient sovereign. The language of the second article conforms to this general principle:

"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 by the name of East and West Florida."

A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The King cedes that only which belonged to him; lands he had previously granted were not his to cede. Neither party could so understand the cession; neither party could consider itself as attempting a wrong to individuals condemned by the practice of the whole civilized world. The cession of a territory by its name from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property. If this could be doubted, the doubt would be removed by the particular enumeration which follows:

"The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other building which are not private property, archives and documents which relate directly to the property and sovereignty of the said provinces, are included in this article."

This special enumeration could not have been made had the first clause of the article been supposed to pass not only the objects thus enumerated, but private property also. The grant

Page 32 U. S. 88

of buildings could not have been limited by the words "which are not private property" had private property been included in the cession of the territory.

This state of things ought to be kept in view when we construe the eighth article of the treaty, and the acts which have been passed by Congress for the ascertainment and adjustment of titles acquired under the Spanish government. That article, in the English part of it, is in these words:

"All the grants of land made before 24 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."

This article is apparently introduced on the part of Spain, and must be intended to stipulate expressly for that security to private property which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security further than its positive words require would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old, and those titles, so far at least as they were consummate, might be asserted in the courts of the United States independently of this article.

The treaty was drawn up in the Spanish as well as in the English language; both are originals, and were unquestionably intended by the parties to be identical. The Spanish has been translated, and we now understand that the article, as expressed in that language, is that the grants "shall remain ratified and confirmed to the person in possession of them to the same extent," &c.; -- thus conforming exactly to the universally received doctrine of the law of nations. If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. If, as we think must be admitted, the security of private property was intended by the parties, if this security would have been complete without the article, the United States could have no motive for insisting on the interposition of government in order to give validity to titles which, according

to the usages of the civilized world, were already valid. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words "shall be ratified and confirmed" are properly the words of contract stipulating for some future legislative act, they are not

necessarily so. They may import that they "shall be ratified and confirmed" by force of the instrument itself. When we observe that in the counterpart of the same treaty, executed at the same time by the same parties, they are used in this sense, we think the construction proper, if not unavoidable. In the case of *Foster v. Neilson,* 2 Pet. 253, this Court considered these words as importing contract. The Spanish part of the treaty was not then brought to our view, and we then supposed that there was no variance between them. We did not suppose that there was even a formal difference of expression in the same instrument drawn up in the language of each party. Had this circumstance been known, we believe it would have produced the construction which we now give to the article.

This understanding of the article must enter into our construction of the acts of Congress on the subject. The United States had acquired a territory containing near thirty millions of acres, of which about three millions had probably been granted to individuals. The demands of the Treasury and the settlement of the territory required that the vacant lands should be brought into the market, for which purpose the operations of the land office were to be extended into Florida. The necessity of distinguishing the vacant from the appropriated lands was obvious, and this could be effected only by adopting means to search out and ascertain preexisting titles. This seems to have been the object of the first legislation of Congress. On 8 May, 1822, an act was passed, "for ascertaining claims and titles to land within the Territory of Florida." The first section directs the appointment of commissioners for the purpose of ascertaining the claims and titles to lands within the Territory of Florida, as acquired by the Treaty of 22 February, 1819.

Page 32 U. S. 90

It would seem from the title of the act and from this declaratory section that the object for which these commissioners were appointed was the ascertainment of these claims and titles; that they constituted a board of inquiry, not a court exercising judicial power and deciding finally on titles. By the act "for the establishment of a territorial government in Florida," previously passed at the same session, superior courts had been establish in East and West Florida whose

jurisdiction extended to the trial of civil causes between individuals. These commissioners seem to have been appointed for the special purpose of procuring promptly for Congress that information which was required for the immediate operations of the land office. In pursuance of this idea, the second section directs that all the proceedings of the commissioners, the claims admitted with those rejected and the reason of their admission and rejection be recorded in a well bound book and forwarded to the Secretary of the Treasury, to be submitted to Congress. To this desire for immediate information we must ascribe the short duration of the board. Its session for East Florida was to terminate on the last of June in the succeeding year, but any claims not filed previous to 31 May in that year to be void and of no effect.

These provisions show the solicitude of Congress to obtain with the utmost celerity that information which ought to be preliminary to the sale of the public lands. The provision that claims not filed with the commissioners previous to 30 June, 1823, should be void can mean only that they should be held so by the commissioners, and not allowed by them. Their power should not extend to claims filed afterwards. It is impossible to suppose that Congress intended to forfeit real titles not exhibited to their commissioners within so short a period.

The principal object of this act is further illustrated by the sixth section, which directed the appointment of a surveyor who should survey the country, taking care to have surveyed and marked and laid down upon a general plan to be kept in his office the metes and bounds of the claims admitted.

The fourth section might seem in its language to invest the commissioners with judicial powers and to enable them to

Page 32 U. S. 91

decide as a court in the first instance for or against the title in cases brought before them, and to make such decision final if approved by Congress. It directs that the "said commissioners shall proceed to examine and determine on the validity of said patents," &c.; If, however, the preceding part of the section to which this

clause refers be considered, we shall find in it almost conclusive reason for the opinion that the examination and determination they were to make had relation to the purpose of the act, to the purpose of quieting speedily those whose titles were free from objection and procuring that information which was necessary for the safe operation of the land office, not for the ultimate decision which, if adverse, should bind the proprietor. The part of the section describing the claims into the validity of which the commissioners were to examine, and on which they were to determine, enacts that every person, &c.;, claiming title to lands under any patent, &c.;,

"which were valid under the Spanish government or by the law of nations and which are not rejected by the treaty ceding the Territory of East and West Florida to the United States, shall file"

&c.; Is it possible that Congress could design to submit the validity of titles, which were "valid under the Spanish government or by the law of nations" to the determination of these commissioners? It was necessary to ascertain these claims and to ascertain their location, not to decide finally upon them. The powers to be exercised by the commissioners under these words ought therefore to be limited to the object and purpose of the act. The fifth section, in its terms, enables them only to examine into and confirm the claims before them. They were authorized to confirm those claims only which did not exceed one thousand acres.

From this review of the original act, it results we think that the object for which this board of commissioners was appointed was to examine into and report to Congress such claims as ought to be confirmed, and their refusal to report a claim for confirmation, whether expressed by the term "rejected" or in any other manner, is not to be considered as a final judicial

decision on the claim, binding the title of the party, but as a rejection for the purposes of the act. This idea is strongly supported by a consideration of the manner in which the commissioners proceeded and by an examination of the

proceedings themselves, as exhibited in the reports to Congress. The commissioners do not appear to have proceeded with open doors, deriving aid from the argument of counsel, as is the usage of a judicial tribunal deciding finally on the rights of parties, but to have pursued their inquiries like a board of commissioners, making those preliminary inquiries which would enable the government to open its land office, whose inquiries would enable the government to ascertain the great bulk of titles which were to be confirmed, not to decide ultimately on the titles which those who had become American citizens legally possessed.

On 3 March, 1823, Congress passed a supplementary act which also provided for the survey and disposal of the public lands in East Florida. It authorizes the appointment of a separate board of commissioners for East Florida, and empowers the commissioners to continue their sessions until the second Monday in the succeeding February, when they were to return their proceedings to the Secretary of the Treasury. This act dispenses with the necessity of deducing title from the original grantee, and authorizes the commissioners to decide on the validity of all claims derived from the Spanish government in favor of actual settlers where the quantity claimed does not exceed 3,500 acres. The act "to extend the time for the settlement of private land claims in the Territory of Florida," passed on 28 February, 1824, enacts that no person shall be deemed an actual settler

"unless such person or those under whom he claims title shall have been in the cultivation or occupation of the land at and before the period of the cession."

On 8 February, 1827, Congress passed an act extending the time for receiving private land claims in Florida and directing them to be filed on or before the 1st day of the following November with the register and receiver of the

district, "whose duty it shall be to report the same, with their decision thereon" on or before 1 January, 1828, to be laid before Congress at the next session. These

acts are not understood to vary the powers and duties of the tribunals authorized to settle and confirm these private land claims.

On 23 May, 1828, an act passed supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida. This act continues the power of the register and receiver till the first Monday in the following December, when they are to make a final report, after which it shall not be lawful for any of the claimants to exhibit any further evidence in support of their claims. The sixth section of this act transfers to the court all claims

"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 above the amount confirmed by this act, and which have not been reported as antedated or forged,"

and declares, that they "shall be received and adjudicated by the judge of the district court in which the land lies, upon the petition of the claimant, according to the forms," &c.;, "prescribed," &c.;, by act of Congress approved May 26, 1824, entitled "An act enabling the claimants to land within the limits of the State of Missouri and Territory of Arkansas to institute proceedings," &c.; A proviso excepts from the jurisdiction of the court any claim annulled by the treaty or decree of ratification by the King of Spain or any claim not presented to the commissioners or register and receiver. The 13th section enacts that the decrees which may be rendered by the district or supreme court "shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons."

In all the acts passed upon this subject previous to that of May, 1830, the decisions of the commissioners, or of the register and receiver acting as commissioners, have been confirmed. Whether these acts affirm those decisions by which claims are rejected, as well as those by which they are recommended for confirmation, admits of some doubt; whether a rejection

amounts to more than a refusal to recommend for confirmation may be a subject for serious inquiry; however this may be, we think it can admit of no doubt that the decision of the commissioners was conclusive in no case until confirmed by an act of Congress. The language of these acts, and among others, that of the act of 1828, would indicate that the mind of Congress was directed solely to the confirmation of claims, not to their annulment. The decision of this question is not necessary to this case. The claim of the petitioner was not contained in any one of the reports which have been stated.

On 26 May, 1830, Congress passed "an act to provide for the final settlement of land claims in Florida." This act contains the action of Congress on the report of 14 January, 1830, which contains the rejection of the claim in question. The first section confirm all the claims and titles to land filed before the register and receiver of the land office, under one league square, which have been decided and recommended for confirmation. The second section confirms all the conflicting Spanish claims, recommended for confirmation as valid titles. The third confirms certain claims derived from the former British government and which have been recommended for confirmation. The fourth enacts

"that all remaining claims which have been presented according to law and not finally acted upon shall be adjudicated and finally settled upon the same conditions,"

&c.;

It is apparent that no claim was finally acted upon until it had been acted upon by Congress, and it is equally apparent that the action of Congress on the report containing this claim is confined to the confirmation of those titles which were recommended for confirmation. Congress has not passed on those which were rejected; they were, of consequence, expressly submitted to the court. The decision of the register and receiver could not be conclusive for another reason. Their power to decide did not extend to claims exceeding one thousand acres unless the claimant was an actual settler, and it is not pretended that either the petitioner or Francisco de Sanchez, his assignee,

was a settler, as described in the third section of the act of 1824. The rejection of this claim, then, by the register and receiver did not withdraw it from the jurisdiction of the court nor constitute any bar to a judgment on the case according to its merits.

An objection not noticed in the decree of the territorial court has been urged by the Attorney General and is entitled to serious consideration. The governor, it is said, was empowered by the royal order on which the grant professes to be founded to allow to each person the quantity of land established by regulation in the province agreeable to the number of persons composing each family. The presumption arising from the grant itself of a right to make it is not directly controverted, but the attorney insists that the documents themselves prove that the governor has exceeded his authority.

Papers translated from a foreign language respecting the transactions of foreign officers with whose powers and authorities we are not well acquainted, containing uncertain and incomplete references to things well understood by the parties but not understood by the court, should be carefully examined before we pronounce that an officer holding a high place of trust and confidence has exceeded his authority. The objection rests on the assumption that the grant to the petitioner is founded entirely on the allowance made in the royal order of 29 March, 1815, at the request of the Governor of East Florida, and the petition to the governor undoubtedly affords strong ground for this assumption; but we are far from thinking it conclusive. The petitioner says

"That in virtue of the bounty in lands which, pursuant to his royal order of 29 March of the present year, the King grants to the military who were in this place at the time of the invasion which took place in the years 1812 and 1813, and your petitioner considering himself as being comprehended in the said sovereign resolution, as it is proved by the annexed certificates of his lordship, Brigadier Don Sebastian Kindelan, and by that which your lordship thought proper to provide herewith, which certificates express the merits and services

rendered by your petitioner at the time of the siege, in consequence of which said bounties were granted to those who deserved them, . . . therefore he most respectfully supplicates your lordship to grant him two thousand acres of land in the place,"

&c.; The governor granted the two thousand acres of land for which the petitioner prays.

The attorney contends that the royal order of 29 March, 1815, empowered the governor to grant so much land only as according to the established rules was allowed to each settler. This did not exceed one hundred acres to the head of a family and a smaller portion for each member of it. The extraordinary facts that an application for two thousand acres should be founded on an express power to grant only one hundred, that this application should be accompanied by no explanation whatever, and that the grant should be made without hesitation, as an ordinary exercise of legitimate authority, are circumstances well calculated to excite some doubt whether the real character of the transaction is understood and to suggest the propriety of further examination. The royal order is founded on a letter from Governor Kindelan to the captain general of Cuba, in which he recommends the militia as worthy the gifts to which the supreme governor may think them entitled,

"taking the liberty of recommending the granting of some, which may be as follows: to each officer who has been in actual service in said militia, a royal commission for each grade he may obtain as provincial, and to the soldiers a certain quantity of land as established by regulation in this province, agreeably to the number of persons composing each family, and which gifts can also be exclusively made to the married officers and soldiers of the said third battalion of Cuba."

The words "and which gifts" &c.; in the concluding part of the sentence would seem to refer to that part which asks lands for the soldiers of the militia, and yet it

is unusual in land bounties for military service to bestow the same quantity on the officers as on the soldiers. But be this as it may, the application of Governor Kindelan is confined to the privates who served in the militia and to the married officers and soldiers of the third battalion of Cuba.

Page 32 U. S. 97

The petitioner was in neither of these corps; he was an ensign of the corps of dragoons.

The royal order alluded to, is contained in a letter of 29 March, 1815, from the minister of the Indies, who, after stating the application in favor of the militia and the third regiment of Cuba, adds

"At the same time that his Majesty approves said gifts, he desires that your Excellency will inform him as to the reward which the commandant of the third battalion of Cuba, Don Juan Jose de Estrada, who acted as governor *pro tem.* at the commencement of the rebellion, the officers of artillery, Don Ignacia Salus, Don Manuel Paulin, and of dragoons, Don Juan Percheman, are entitled to, as mentioned by the governor in his official letter. By royal order, I communicate the same to his Excellency for your information and compliance therewith, enclosing the royal commissions of local militia, according to the note forwarded by your Excellency."

The governor adds,

"I forward you a copy of the same, enclosing also the documents above mentioned, that you may give their correspondent direction, with the intention, by the first opportunity, of informing his Majesty of what I consider just as to the remuneration before mentioned."

It appears, then, that the part of the royal order which is supposed to limit this power of the governor to grants of one hundred acres does not comprehend the petitioner; that he is mentioned in that order as a person entitled to the royal bounty, the extent of which is not fixed, and respecting which the governor

intended to inform his Majesty. The royal order, then, is referred to in the petition as showing the favorable intentions of the Crown towards the petitioner, not as ascertaining limits applying to him which the governor could not transcend. The petition also refers to certificates granted by General Kindelan and the governor himself expressing his merits and services during the siege. These could have no influence if the amount of the grant was fixed. In his grant, annexed to the petition, the governor says,

"Whereas this officer, the party interested by the two certificates enclosed, has proved the services which he rendered in defense of

Page 32 U. S. 98

this province, and in consideration also of what is provided in the royal order of 29 March last past, which he cites, I do grant him,"

&c.; Military service, then, is the foundation of the grant, and the royal order is referred to only as showing that the favorable attention the King had been directed to the petitioner. The record furnishes other reasons for the opinion that the power of the governor was not so limited in this case as is supposed by the attorney for the United States.

The objection does not appear to have been made in the territorial court, where the subject must have been understood. It was neither raised by the attorney for the United States nor noticed by the court. The register and receiver, before whom the claim was laid by Sanchez, the assignee of the present petitioner, did not reject it because the governor had exceeded his power in making it, but because the survey was not exhibited. "If this" (the survey), say the register and receiver, "had been produced, it would have furnished some support for the certificate of Aguilar; as it is, we reject the claim." It may be added that other claims under the same royal order for the same quantity of land have been admitted by the receiver and register, and have been confirmed by Congress. We do not think the testimony proves that the governor has transcended his power.

The Court does not enter into the inquiry whether the title has been conveyed to Sanchez or remains in Percheman. That is a question in which the United States can feel no interest and which is not to be decided in this cause. It was very truly observed by the territorial court that this objection "is founded altogether on a suggestion of a private adverse claim," but adverse claims, under the law giving jurisdiction to the court, are not to be decided or investigated. The point has not been made in this Court.

The decree is affirmed.