

United States Vs. Kingsley

United States Vs. Kingsley

SooperKanoon Citation : sooperkanoon.com/79627

Court : US Supreme Court

Decided On : 1838

Appeal No. : 37 U.S. 476

Appellant : United States

Respondent : Kingsley

Judgement :

United States v. Kingsley - 37 U.S. 476 (1838)

U.S. Supreme Court United States v. Kingsley, 37 U.S. 12 Pet. 476 476 (1838)

United States v. Kingsley

37 U.S. (12 Pet.) 476

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

SYLLABUS

A grant for land in Florida by Governor Coppinger on condition that the grantee build a mill within a period fixed in the grant declared to be void, the grantee not having performed the condition or shown sufficient cause for its nonperformance.

Under the Florida treaty, grants of land made before 24 January, 1818, by His Catholic Majesty or by his lawful authorities stand ratified and confirmed to the same extent that the same grants would be valid if Florida had remained under the dominion of Spain, and the owners of conditional grants who have been prevented from fulfilling all the conditions of their grants have time by the treaty extended to them to complete such conditions. That time, as was declared by this Court in [Arredondo's Case](#), 6 Pet. 748, began to run in regard to individual rights from the ratification of the treaty, and the treaty declares if the conditions are not complied with within the terms limited in the grant that the grants shall be null and void.

In the construction of the Florida treaty it is admitted that the United States succeeds to all those equitable obligations which we are to suppose would have influenced His Catholic Majesty to secure their property to his subjects and which would have been applied by him in the construction of a conditional grant to make it absolute, and further that the United States must maintain the rights of property under it by applying the laws and customs by which those rights were secured before Florida was ceded, or by which an inchoate right of property would, by those laws and customs, have been adjudicated by the Spanish authority to have become a perfect right.

The cases decided by the Court relative to grants of land in Florida reviewed and affirmed.

In the District Court of East Florida in April, 1829, Zephaniah Kingsley presented a petition claiming title to a tract of land situated on a creek emptying into the River St. John which he asserted was granted to him by Governor Coppinger on 20 November, 1816, while East Florida was held by the Crown of Spain.

The petition stated that in virtue of the grant, the petitioner had, soon after its date, entered and taken possession of the land, and was preparing to build a water saw mill thereon according to the condition of the grant, but was deterred therefrom by the disturbed state of that part of the province of East Florida and the occupancy of the land by some of the tribes of Florida Indians, who were wandering in all directions over the country.

The grant referred to in the petition was in the following terms:

"Considering the advantage and utility which is to accrue to the province if that is effected which Don Zephaniah Kingsley proposes to do, it is hereby granted to him that, without prejudice of a third party, he may build a water saw mill in that creek of the River St. John called McGirt's, under the precise condition, however, that until he builds said mill, this grant will be considered null and void, and when the event takes place, then, in order that he may not suffer by the expensive preparations he is making, he will have the faculty of using the pines comprehended within the square of five miles, which he solicits for the supply of said saw mill, and no other person will have a right to take anything from it. Let the corresponding certificate be issued to him from the secretary's office."

"COPPINGER"

The District Attorney of the United States for East Florida filed, at May term, 1829, an answer to the petition of Zephaniah Kingsley requiring from the court that due proof should be made by the petitioner of the matters set forth in the petition, and also that the grantee had prepared to build a water saw mill on the land as stated in the grant.

The answer also asserts that the grant was made on the express condition that until the grantee built the mill, the grant was to be considered as null and void, and that he had wholly and entirely failed to build the mill and still fails to build the same.

On 6 July, 1833, an amended petition was filed setting forth that upon the state and condition of the province of East Florida east of the St. John's, being made known by the grantees of mill grants, and of the impossibility of complying with the conditions of the grants, Governor Coppinger, by a verbal order or decree, made known that in consequence of the continued unsettled and disturbed state of the province and of the impossibility of the grantees of mill grants complying with the

conditions of the same with safety to themselves or their property, that the grantees should not, by a failure to erect their mills, thereby forfeit their title, but that the same should remain valid and be exonerated from the compliance of the condition therein named till the state of the country should be such as that the grantees could with safety erect their works.

The amended petition alleged that the country was in a disturbed and dangerous state from the date of the petitioner's grant and for a long time previous, till the transfer of the province from

Page 37 U. S. 478

Spain to the United States, and that your petitioner could not with any safety to himself or his property have erected said mill west of the St. John's, between the time of the date of his grant and the transfer of the province as aforesaid.

To this amended petition the district attorney answered and called for proofs of the allegations therein, and he also submitted to the court that if the part of the province in which the land said to have been granted had continued in a disturbed situation from Indian hostilities, it had been in that situation when the grant was made, and that this should not be an excuse for the noncompliance with the conditions of the grant. The answer alleged that from 1821, part of the province has been entirely tranquil, but no attempt to erect the mill has been made.

At July term, 1835, a second amendment to the petition was filed stating that soon after the issuing of the grant, the petitioner entered and took possession of a tract of the land surveyed to him under the grant, and actually began to build a mill upon it, but was deterred by the dangerous situation of the country from completing the same. The answer of the district attorney denied the allegations in this petition and called for proofs of the same. No evidence was given to sustain the statement in the second amended petition. The assertion that the uncertainty as to titles to the lands in the province since the transfer by Spain is denied to be an excuse for the laches or negligence of the grantee.

After the production of written evidence and the examination of witnesses, the district court gave a decree in favor of the petitioner, confirming to him the quantity of land mentioned in the grant. From this decree the United States prosecuted an appeal to this Court.

Page 37 U. S. 479

MR. JUSTICE WAYNE delivered the opinion of the Court:

It appears that Zephaniah Kingsley, on 20 November, 1816, being then an inhabitant of the Province of Florida, petitioned Governor Coppinger stating

"That wishing to erect a water sawmill in that creek of the River St. John, called McGirt's on a vacant place, and it being necessary for that purpose to have a quantity of

Page 37 U. S. 480

timber sufficient to supply said mill and establishment, he supplicates your Excellency to be pleased to favor him with your superior permission to build the same on the place aforesaid, with its area of five miles square of land as the equivalent thereof, for its continued supply of timber, bounded southeast and south by lands granted to Ferguson and Doctor Lake; southwest and west by vacant lands; north by Don Juan McIntosh's land, and east by lands of said Kingsley, and the River St. John."

Upon this petition the governor made the following decree:

"Considering the advantage and utility which is to accrue to the province, if that is effected which Don Zephaniah Kingsley proposes to do, it is hereby granted to him that without prejudice of a third party, he may build a water mill on that creek of the River St. John, called McGirt's, under the precise condition, however, that until he builds said mill, this grant will be considered null and void, and when the event takes place, then in order that he may not suffer by the expensive preparations he is making, he will have the faculty of using the pines comprehended within the

square of five miles, which he solicits for the supply of said saw mill, and no other person will have a right to take anything from it. Let the corresponding certificate be issued to him from the secretary's office."

"St. Augustine, 2d Dec. 1816 COPPINGER"

Upon this decree the petitioner states that soon after the date of it, he entered upon and took possession of the land granted in the situation mentioned in said grant, and was preparing to build a water saw mill agreeably to the condition of the grant, but was deterred therefrom by the disturbed state of that part of the Province of East Florida and the occupancy of the land by some of the tribes of Florida Indians, who were then wandering in all directions over the country. The appellee then insists that his right to the land is embraced by the treaty between Spain and the United States, gives a narrative of his submission of his claim to the board of commissioners under the Act of Congress entitled

"An act amending and supplementary to an act for ascertaining claims and titles to land in the Territory of Florida, and to provide for the survey and disposal of the public lands in Florida,"

passed 3 March, 1823; that the commissioners reported unfavorably upon it, which he insists was contrary to the law and evidence produced in the cause, and further that the report of the commissioners upon his claim was not final, as the tract of land claimed by him contains a larger quantity than the

Page 37 U. S. 481

commissioners were authorized to decide upon by any of the acts of Congress.

The petition of the appellee, of which an abstract has been just given, was filed on 21 April, 1829. In the following month, the United States, by the United States attorney, filed an answer to this petition denying, for sundry causes and reasons, the entire existence and equity of the appellee's claim, and in August of the ensuing year the United States attorney amended his answer, referring to certain orders of Governor Coppinger dated 27 October, 1818, and on 19 January, 1819,

the first of which limits the time to six months from 27 October, 1818, within which all grants and concessions of land which had been made on condition for mechanical works, to-wit, factories, saw mills, &c.;, were to revert to the class of public lands, and to be declared vacant unless the grantees or concessioners should comply with the conditions of such grants or concessions, and the second of which declares all such conditional grants or concessions null and of no effect in those cases where the persons in whose favor they were made had remained inactive, having done nothing to advance the establishment of those works. See White's Compilation 250, 253, 256-257 for these orders.

The United States attorney alleges the appellee to be one of those persons whose supposed concession was null and void under the first order, and that it was entirely annulled and set aside by the last, as he had not then, nor had not since established or advanced in any manner the building of his mill, but had wholly failed and neglected to do so. To this answer the appellee put in a general replication, and the cause came by regular continuance to the term of the court in November, 1832, when permission was given to the appellee to amend his petition. In July, 1833, he filed the amendment stating that the disturbed and dangerous condition of the province west of the St. John's River, which continued from 1812 to the exchange of flags, had induced Governor Coppinger to declare, by a verbal order and decree, that the unsettled and disturbed state of the province and the impossibility of the grantees of mill grants to comply with the conditions of the same with safety to themselves and their property that the grantees should not, by a failure to erect their mills, forfeit their titles.

Of the existence, however, of any such modification of the condition

Page 37 U. S. 482

of such grants by any verbal order and decree the appellee gave no proof on the trial of this cause.

In the amendment of the appellee's petition, the United States' counsel replies, denying the existence of any such verbal order and decree by Governor

Coppinger and stating that if there was any such danger from the disturbed condition of the province as the appellee had alleged, that it existed as well at the time when he applied for the grant and when he accepted the same as at any time afterwards. In this state of the pleadings, the cause was brought to trial as well upon the evidence on the part of the United States as upon the part of the appellee, but was not then decided. At the July term of 1835, the appellee filed, by permission of the court, another amendment to his petition in which, after reciting the surveys made under the decrees of the governor upon his petition, he further says that soon after the grant was made to him, he took possession of the land and actually began to build a water saw mill on McGirt's Creek pursuant to the condition of the grant, but that he was deterred and prevented from completing the same by the disturbed and dangerous state of the country, which continued until the cession of Florida by Spain to the United States. And after that cession, he states he was deterred from proceeding to the further performance of the conditions of said grant by the great uncertainty in which his right and title to said land was involved by said cession. To this amendment of the petition the United States attorney replied, repeating the facts and objections to the claim of the appellee made in his previous answers and further insisting that the surveys upon which the appellee relied were made after 24 of January, 1818, and are not agreeable to the calls of the said supposed grant, and that they are null and void by the provision of the latter clause of the 8th article of the treaty between Spain and the United States of 22 February, 1819.

Upon these pleadings and the evidence, the court has decreed the appellee's claim to be valid; that it is in accordance with the laws and customs of Spain and under and by virtue of the late treaty with Spain and under and by virtue of the laws of nations and of the United States.

We think differently from the court upon all the grounds stated in the decree. They open a wide subject of remark, but we abstain from discussing any of them except the application of the treaty to this claim or of the laws and customs of Spain. These points we shall such very briefly. We first observe, that no

case of a land claim in Florida, confirmed by this Court under the treaty, either in terms, or by necessary inference from what the court has said, covers this case. We view this claim under the decree of Governor Coppinger as a permission to enter upon the land designated in the petition and decree, in which land the appellee did not and could not acquire property, or even inchoate title, such as embraced in the 8th article of the treaty or by this Court's construction of it, until he had in good faith prepared to execute the condition which the appellee held out as the inducement to obtain a grant -- or in other words, we think the decree of the governor contains a condition precedent to be performed by the appellee before the grant could take effect. In this case the appellee never attempted to perform the condition; there is no proof of his having done so in good faith by the expenditure of money or application of labor. On the contrary, there are, in the original petition of the appellee to the court below and in all the subsequent amendments of it from 1829 to 1833, his declarations that he had not done so until the amendment made in 1835, when he states for the first time that he actually began to build a water saw mill according to the conditions of the grant a short time after it was made, but that he was prevented from completing it by the disturbed and dangerous condition of the country.

The only proof given by him of his having actually began to build is very equivocal, and should have been rejected by the court on the ground of its being hearsay, except so much of it as relates to the remains of some work or mill dam, which of itself could not be evidence, until, by other proof, the appellee had established the fact of such work having been done by himself, as the witness testifying says expressly that it was only from hearsay that he had said that work was done by the appellee. The witness says he does not know of his own knowledge that the appellee ever made any attempt or preparations for building a saw mill on said mill seat tract, but that he had seen timber on the said tract; was told it was got by Kingsley for the purpose of building a saw mill; that he afterwards saw a dam had been erected on each side of the stream, in the bottom of the stream saw timbers laid, as witness supposed, for the sills of a saw mill; that he only knows from hearsay that said preparations were made by Kingsley; that a part of the preparations are still remaining, and to be seen on said tract; that he first saw the

timber above mentioned in the year 1817 or 1818, and shortly after saw

Page 37 U. S. 484

the dam and sills aforesaid; that the said timber was mostly destroyed by fire. And by the record we are left to conclude that these works were made by Kingsley, without any, even probable proof that he had at any time taken possession of the land. We cannot do so; and if we could, it would be deemed by us no compliance with the condition contained in the governor's decree or concession in his favor, as the work was discontinued for an insufficient cause, that was, the disturbed and dangerous condition of the country. All the witnesses concur in stating there was no more danger after the appellee petitioned for the land, than there had been before and at the time of his application.

The appellee then cannot be permitted to urge as an excuse, in fact or in law, for not complying with his undertaking, a danger which applies as forcibly to repudiate the sincerity of his intention to build a mill when he petitioned for land for that purpose as it does to his inability from such danger to execute it afterwards. Under the treaty, it is true that grants of land made before 24 January, 1818, by His Catholic Majesty, or by his lawful authorities, stand ratified and confirmed to the same extent that the same grants would be valid if Florida had remained under the dominion of Spain, and the owners of conditional grants, who have been prevented by the circumstances of the Spanish nation from fulfilling all the conditions of their grants have time by the treaty extended to them to complete such conditions. That time, it was determined by this Court in [Arredondo's Case](#), 6 Pet. 748-749, began to run in regard to individual rights from the ratification of the treaty, and the treaty declares if the conditions are not complied with within the terms limited in the grants, that the grants shall be null and void.

It is admitted that in the construction of this article of the treaty, the United States succeeds to all those equitable obligations which we are to suppose would have influenced His Catholic Majesty to secure to his subjects their property and which would have been applied by him in the construction of a conditional grant to make it absolute. And further, in the construction of this article of the treaty it must be

conceded that the United States must maintain the rights of property under it by applying the laws and customs by which those rights were secured before Florida was ceded or by which an inchoate right of property would, by laws and customs, have been adjudicated by Spanish authority to have become a perfect right, by applying in the first instance in such cases as was said in *Arredondo's Case*, the principles of justice

Page 37 U. S. 485

according to the rules of equity, and in the second all those laws and customs decisive of a right of property whilst the party claiming the right was a subject of Spain. Test, then, the case before us by the most liberal equity and it will appear that the claim of the appellee cannot be sustained by any effort by him to perform the condition of the governor's grant, either before the ratification of the treaty or since. Indeed, in the last amendment of his petition in 1835, he states he was prevented from proceeding to the further performance of the condition of said grant by the great uncertainty in which his right and title to the land was involved by the cession.

These Florida grants or concessions of land upon condition have been repeatedly confirmed by this Court, and it will apply the principles of its adjudications to all cases of a like kind. It will, as it has done, liberally construe a performance of conditions precedent or subsequent in such grants. It has not, nor will it apply in the construction of such conditions in such cases the rules of the common law. But this Court cannot say a condition wholly unperformed, without strong proof of sufficient cause to prevent it, does not defeat all right of property in land under such a decree as the appellee in this case makes the foundation of his claim.

Arredondo's grant, confirmed by this Court, 6 Peters, was a clear case of a grant in fee for past services and commendable loyalty to his sovereign, with a condition subsequent of a nature the performance of which must have been a matter of indifference as well to the King of Spain as to the United States after a cession of Florida was made. The condition was that the grantees should establish on the land two hundred Spanish families, and that they were to begin to carry into effect

the establishment within three years from the date of the grant, and there was no time limited for its completion. This Court said in that case, [31 U. S. 6](#) Pet. 745:

"From the evidence returned with the record, we are abundantly satisfied that the establishment was commenced within the time required (which appears to have been extended for one year beyond that limited in the grant) and in a manner which, considering the state of that country as appears by the evidence, we must consider as a performance of that part of the condition."

The case of [Segui](#), 10 Pet. 306, was a grant in consideration of services to the Spanish government and for erecting machinery for the purpose of sawing timber. That grant was confirmed by this Court upon the ground that the governor considered the services

Page 37 U. S. 486

of Segui a sufficient consideration, and made the grant absolute. [Seton's Case](#), 9 Pet. 311, was a decree or permission of the governor in all particulars like that now before us, and Seton's right to the survey which has been made, and to the equivalent quantity to make up the extent of the original concession, was confirmed by this Court upon the positive proof that Seton had built his mill in a year after the date of the decree upon which he claimed. [Sibbald's Case](#), 9 Pet. 313, another like Seton's and that before the Court, were confirmed by this Court upon the ground that Sibbald had performed the condition according to the rules of equity which govern these cases. Sibbald, in good faith and within a reasonable time after the decree in his favor, began to build his mill, expended five thousand dollars towards it, had his horses and negroes stolen while the mill was building; his mill-dam carried away by a freshet, in the absence of his millwright, who was in pursuit of the stolen property, rebuilt his mill in 1827, which was destroyed by fire the same year, and the year after built again another mill of twenty horsepower which could saw twenty thousand feet of lumber a day.

It remains only for us to say a word concerning the laws and customs of Spain supposed by the learned judge in the court below applicable to the confirmation of

this claim under the treaty. The fact that no instance is known of land so decreed having reverted to the class of public lands, for the nonperformance of the condition does not prove a custom unless a current of cases can be shown in which claimants have held the land without performance. Besides, the existence of any such custom is disproved by the decree for the land itself, by the subsequent decrees of the Spanish governor declaring lands granted upon condition would be null and void within a certain time, if the conditions were not performed, and by the treaty itself, which stipulates for the performance of conditions within terms after the treaty was made, contained in the grants, and which is recognized by this Court by its decision, that the time given only begins to run against individual rights from the date of the ratification. As to the laws of Spain supposed to aid the case, we remark, it being conceded that the governor had authority to make grants and concessions and to give permission to persons to enter upon lands upon conditions, nothing less than a law dispensing with the performance of them or a release of the performance of them by the governor, sanctioned by the general royal authority under which he acted, or a release by royal authority after grants were made general

Page 37 U. S. 487

in its application or applicable to some particular case or class of cases can be admitted *proprio vigore* as a release of the obligations upon grantees to perform the conditions of these grants. It is not pretended that any such law or release exists.

MR. JUSTICE BALDWIN dissented.

This cause came on to be heard on the transcript of the record from the Superior Court for the Eastern District of Florida and was argued by counsel. On consideration whereof it is the opinion of this Court that the petitioner having failed to fulfill the condition of the grant, that the said grant or concession is null and void, and that the said petitioner has no right or title to the land. Whereupon it is now here decreed and ordered by this Court that the decree of the said superior court in this cause be and the same is hereby reversed and annulled, and that this

cause be and the same is hereby remanded to the said superior court with directions to enter a decree in conformity to the opinion of this Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com