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

United States Vs. Wiggins

United States Vs. Wiggins

SooperKanoon Citation : sooperkanoon.com/79720

Court : US Supreme Court

Decided On : 1840

Appeal No. : 39 U.S. 334

Appellant : United States

Respondent : Wiggins

Judgement :

United States v. Wiggins - 39 U.S. 334 (1840)
U.S. Supreme Court United States v. Wiggins, 39 U.S. 14 Pet. 334 334 (1840)

United States v. Wiggins

39 U.S. (14 Pet.) 334

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

SYLLABUS

A grant of land by Estrada, the Governor of East Florida, was made on 1 August, 1815, to Elizabeth Wiggins on her petition stating, that "owing to the diminution of trade, she will have to devote herself to the pursuits of the country." The grant was

made for the quantity of land apportioned by the regulations of East Florida to the number of the family of the grantee. It was regularly surveyed by the surveyor general according to the petition and grant. No settlement or improvement was ever made by the grantee or by anyone acting for her on the property. In 1831, Elizabeth Wiggins presented a petition to the Superior Court of East Florida praying for a confirmation of the grant, and in July, 1838, the court gave a decree in favor of the claimant. On an appeal to the Supreme Court of the United States, the decree of the Superior Court of East Florida was reversed. The court held that by the regulations established on 25 November, 1818, by Governor Coppinger, the grant had become void because of the nonimprovement and the neglect to settle the land granted.

The existence of a foreign law, especially when unwritten, is a fact to be proved like any other fact, by appropriate evidence.

A copy of a decree by the Governor of East Florida granting land to a petitioner while Spain had possession of the territory, certified by the secretary of the government to have been faithfully made from the original in the secretary's office, is evidence in the courts of the United States. By the laws of Spain prevailing in the province at that time, the secretary was the proper officer to give copies, and the law trusted him for this particular purpose so far as he acted under its authority. The original was confined to the public office.

The cases of *Owings v. Hull,* 9 Pet. 624; *Percheman's Case,* 7 Pet. 51; *United States v. Delespine,* 12 Pet. 655, cited.

Prima facie evidence of a fact is such as in judgment of law is sufficient to establish the fact, and if not rebutted remains sufficient evidence of it. *Kelly v. Jackson,* 6 Pet. 632, cited.

The eighth article of the Florida treaty stipulates that

"Grants of land made by Spain in Florida, after 24 January, 1818, shall be ratified and confirmed to the persons in possession of the land to the same extent that the same grants would be valid if the government of the territory had remained under

the dominion of Spain."

The government of the United States may take advantage of the nonperformance of the conditions prescribed by the law relative to grants of land if the treaty does not provide for the omission.

In the cases of *Arredondo,* 6 Pet. 691, and *Percheman,* 7 Pet. 51, it was held that the words in the Florida treaty "shall be ratified and confirmed," in reference to perfect titles, should be construed "are" ratified and confirmed. The object of the Court in these cases was to exempt them from the operation of the eighth article for that they were perfect titles by the laws of Spain when the treaty was made, and that when the soil and sovereignty of Florida were ceded by the second article, private rights of property were, by implication, protected. By the law of nations, the rights to property are secured when territories are ceded, and to reconcile the eighth article of the treaty with the law of nations, the Spanish side of the article was referred to in aid of the American side. The Court held that perfect titles "stood confirmed" by the treaty, and must be so recognized by the United States in our courts.

Perfect titles to lands made by Spain in the Territory of Florida before 24 January, 1818, are intrinsically valid, and exempt from the provision of the eighth article of the treaty, and they need no sanction from the legislative or judicial departments of the United States.

The eighth article of the Florida treaty was intended to apply to claims to land whose validity depended on the performance of conditions in consideration of which the concessions had been made and which must have been performed before Spain was bound to perfect the titles. The United States was bound after the cession of the country, to the same extent that Spain had been bound before the ratification of the treaty, to perfect them by legislation and adjudication.

The appellee, Elizabeth Wiggins, on 1 August, 1815, presented a petition to Estrada, the Governor of East Florida, stating that, "owing to the diminution of trade, she will have to devote herself to the pursuits of the country," and wishing to establish herself on the eastern side of the Pond of St. George, "she asked the governor to grant three hundred acres in the said place, as she had five children, and five slaves, with herself."

By a decree of 6 August, 1815, the object of the petition was granted by Governor Estrada and "a certified copy of this instance and decree" was ordered to be issued to the petitioner "from the secretary's office." A certified copy of these documents was given to the petitioner on the same day by "Don Tomas De Aguilar."

A survey of the land was made by the surveyor general of the province on 23 March, 1821. On 26 May, 1831, Elizabeth Wiggins presented a petition to the judge of the Superior Court of East Florida stating her claim to three hundred acres of land granted to her by Governor Estrada and praying that the validity of the claim might be inquired into and decided by the court in pursuance of the acts of Congress.

The answer of the district Attorney of the United States to this petition denied the right of Elizabeth Wiggins to the land claimed on many grounds. Those which were brought into examination and decided upon were:

First, that the petitioner had never taken possession of or cultivated the land.

Second, the petitioner was required to make proof that a grant for the land had been issued.

Third, that the petitioner having failed and neglected to occupy, improve, or cultivate the land and having abandoned it, the right and title thereto, if any had existed, were wholly forfeited and lost.

Subsequently a replication to the answer of the United States was filed, and the original certified copy of the grant to Elizabeth Wiggins of the land, the same being

certified by Tomas De Aguilar, secretary, &c.;, was offered in evidence by the claimant and was objected to by the United States.

The court admitted the evidence.

By an amended bill the petitioner also stated that no condition of settlement or improvement was contained in the grant of the land, and that if any condition of settlement had been contained in it, the unprotected situation of that part of East Florida from Indian depredations and aggressions, from the time of the grant to the cession of the Territory of Florida to the United States, had rendered it impossible to settle in that portion of the country with safety to the persons or property of those who might venture so to do.

The United States, in an amended answer, set up in further opposition to the claim of the petitioner the usage, practice, and custom

Page 39 U. S. 336

of the government of Spain which prevailed when the alleged grant was made that ten years' occupancy and cultivation of the land, under such a grant, was necessary to give the grantee the title in fee simple to the land. The United States stated other objections to the title claimed by the petitioner, and denied that the settlement of the land was rendered dangerous by the disturbed state of the country.

The parties to the cause proceeded to take evidence in support and in opposition to the claim of the petitioner, and the cause was heard on the documents and evidence. At July term, 1838, the superior court made a decree confirming the title of Elizabeth Wiggins to the land claimed by her. From this decree the United States took an appeal to this Court.

Page 39 U. S. 344

MR. JUSTICE CATRON delivered the opinion of the Court.

The first question arises upon the admission in evidence of the memorial of Mrs. Wiggins and the decree thereon by the Governor, Estrada, on the certificate of the Secretary, Aguilar. They are as follow:

" *MEMORIAL FOR GRANT"*

" *Translation* "

"Isabel Wiggins, an inhabitant of the Town of Fernandina, with the greatest respect appears before your Excellency and states that she has never importuned this attention of the government with petitions for lands, as she procured to support her family with the fruits of her industry in this town, but owing to the diminution of trade, she considers that she will have to devote herself to the pursuits of the country, and wishing to establish herself on the eastern side of the Pond of St. George, she supplicates your Excellency to be pleased to grant to her three hundred acres in the said place, as she has five

Page 39 U. S. 345

children and five slaves, with herself, which favor she begs of the just administration of your Excellency."

"Fernandina, 1 August, 1815"

"ISABEL WIGGINS"

" *DECREE"*

"St. Augustine, 6th August, one thousand eight hundred and fifteen"

"The tract which the interested party solicits is granted to her, without prejudice to a third party, and for the security thereof, let a certified copy of this instance and decree be issued to her from the secretary's office."

"ESTRADA"

" *CERTIFICATE OF AGUILAR"*

"I, Don Thomas de Aguilar, sublieutenant of the army and secretary of the government of the place and province of East Florida for his Majesty, do certify that the preceding copy is faithfully drawn from the original which exists in the secretary's office under my charge, and pursuant to the order I give the present, in St. Augustine of Florida, on the sixth of August, one thousand eight hundred and fifteen."

"TOMAS DE AGUILAR"

Before the memorial and concession were offered in evidence, Elizabeth Wiggins made affidavit:

"That, in August, 1815, she petitioned for the grant; that she received shortly after from the secretary of the government a certified copy of the petition and decree; that she never had had possession or control of the original; that she always understood that it was, at the date thereof, placed in the proper public office, as was usual in such cases; that she understood from her counsel the same could not be found; and that she is ignorant what has become of the same."

The affidavit was objected to on the part of the United States and rejected by the court, and the evidence offered received without its aid on proof's being made of the handwriting of Aguilar, the government secretary.

Much evidence was introduced to prove the practice and rules in use in the offices of the Spanish government from which titles to lands issued. We think the evidence was admissible; the existence of a foreign law, especially when unwritten, is a fact to be proved, like any other fact, by appropriate evidence. The Spanish province of Florida was foreign to this country in 1815, when the transaction referred to purports to have taken place.

A principal witness to prove the practice in the government secretary's office was Alvarez, who had been a clerk in it from 1807 to the time of the change of government in 1821. He and others establish beyond controversy that persons wishing grants of land from the Spanish government presented a memorial to the governor, and he decreed on the memorial in the form pursued in Mrs. Wiggins'

case; that the decree of the governor was filed in the secretary's office and constantly retained there unless in cases where a royal title was ordered to be issued, when the decree was transferred

Page 39 U. S. 346

to the escribano's office. Mrs. Wiggins' is a case of the first class, and the petition and decree could not be removed from the government secretary's office. These papers were not recorded in books there, but kept in files or bundles.

The evidence given to the grantee was a certified copy of the decree, or of the memorial and decree, by the government secretary, and that it was one of the ordinary duties of the secretary to make certified copies of memorials and decrees for the use of the parties. Generally the decree of the governor directed the copy to be made for the use of the party, and that copies made by the government secretary and certified by him were generally received as evidence of title in the Spanish courts of justice; the copies were made immediately after making the decree, and delivered to the party when he called for them. No seal was affixed to the secretary's certificate, which was evidence of the facts to which it certified in a case like this. From the evidences of the duties incumbent on the government secretary of Florida, derived from this record and other sources, we have no doubt the duties were such as proved, that the secretary was the proper officer appointed by law to give copies, and that the law trusted him, for this particular purpose, so far as he acted under its authority. It follows. in this case as in all others where the originals are confined to a public office and copies are introduced, that the copy is (first) competent evidence by authority of the certificate of the proper officer, and (second) that it proves *prima facie* the original to have been of file in the office, when the copy was made. And for this plain reason: the officer's certificate has accorded to it the sanctity of a deposition; he certifies "that the preceding copy is faithfully drawn from the original, which exits in the secretary's office under my charge."

The same doctrine was holden in this Court in *Owings v. Hull,* 9 Pet. 624-625. The copy of a bill of sale for slaves, made and of record in a notary's office in New

Orleans, was offered in evidence without accounting for the original, and objected to for this reason. By the laws of Louisiana, the original could not be removed from the notary's office, and he was authorized to give a copy. This was received and deemed evidence of what was contained in the original, and of course that it existed when the copy was made.

Again, in *Percheman's Case,* 7 Pet. 85, it was decided by this Court that a copy of a Spanish grant certified by the government secretary could be given in evidence without accounting for the nonproduction of the original, and this on general principles, which did not require the aid of legislation, much reliance in that case having been placed upon acts of Congress to give effect to the certificate.

This Court, in *United States v. Delespine,* 12 Pet. 655, recognized the principle that a certified copy such as the one before us was evidence, for there a copy of the first copy was introduced, and when speaking of the first copy, the Court said

"The

Page 39 U. S. 347

first copy was made from the original filed in the proper office, from which the original could not be removed for any purpose. That copy, it is admitted, would have been evidence in the cause."

The original copy having been lost, and no decree being found in the government secretary's office in favor of Delespine, although there was proof that one had existed, the copy of the first copy was received, and a decree founded on it.

Delespine's Case is, however, prominently distinguished from the present on the main point in controversy; in that case, there was positive proof of the existence in the secretary's office of the original concession; here, there is none save the inference that arises from Aguilar's certificate, with some other circumstances, and the question is can a decree for the land be founded upon these proofs in the face of the fact that no decree, or evidence of the claim now exists or has ever been known to exist in the proper office.

We have established that the copy of the petition and decree are made *prima facie* evidence by the certificate of the secretary.

"What is *prima facie* evidence of a fact? It is such as, in judgment of law, is sufficient to establish the fact, and if not rebutted, remains sufficient for the purpose."

Kelly v. Jackson, 6 Pet. 632. And is it rebutted in this case? Had the papers in the government secretary's office been carefully kept, and had this claim been first brought forward at a late day, as it is insisted in argument it was -- that is, eighteen years after its date -- then the presumption would stand against its original existence, and it ought to be rejected if the certificate had no support. But this is far from being the fact. The survey was made by the proper surveyor for Mrs. Wiggins March 23, 1821, in conformity to the memorial and decree, and which refers to their date. Then again, she pursued this claim before the register and receiver of the Land Office of East Florida whilst they acted as a board of commissioners for the examination of Spanish claims and titles, and they rejected it because there was no evidence of cultivation. Truly the certificate and plot of the survey were only before them, but as no exception appears to have been taken, for want of sufficient evidence of the existence of the concession, the circumstance of the nonproduction of it before the board has not so much in it as was supposed in the argument.

The record shows why such vigorous exertions were made either to reject or to destroy the force of Aguilar's certificate. The attorney for the government offered to prove by William G. Davis that Aguilar, just before the delivery of the province was made to the United States, offered to forge a grant in favor of the witness for a tract of land, and the attorney also offered to prove by William Levington that about the same time, Aguilar offered to forge or did actually forge, under the signature of the former governor, White, of that province, a grant of land in favor of the witness, which evidence the court rejected, and, we think, correctly. Aguilar was not introduced as a witness, but the proof offered sought to establish upon him forgery and fraud in other instances so as to

destroy the credit of his certificate in this. The secretary may have been honest and faithful in the discharge of his duties in 1815 and grossly the reverse in 1821, and although any number of frauds should be established upon him, still, if the particular act sought to be avoided be not shown to be tainted with fraud, it cannot be affected with other frauds. 29 U. S. 297. If there had been a forgery in this instance, it is probable it would have been brought to light at the time the survey was made, the making of which is the controlling fact with this Court coming in aid of the certificate of Aguilar. For it must be admitted that if the unsupported certificate had been brought forward and the claim for the first time set up under it in July, 1833, eighteen years after it bears date, that it could not have furnished any foundation for a decree or been evidence of title worthy of credit. The lapse of time, the silence of the claimant, and her failure to have presented it for confirmation would, under the circumstances, have been conclusive objections to its credibility. But the existence of the claim in 1821 is rendered certain by the return of the surveyor general, and before the American tribunals it has been steadily pursued.

Furthermore, the presumption that the original memorial and concession, supposed to have been on file in the government secretary's office, have been lost or destroyed is very strong. After the papers were taken possession of in 1821 by the authorities of the United States, they were almost abandoned in an open house subject to the inspection and depredation of everyone; many of the files were seen untied, and the papers scattered about the room, the doors and windows of the house being open. There can hardly be a doubt that some of the papers were destroyed or lost.

Nothing is therefore found in the condition of the office to rebut the *prima facie* presumption furnished by the secretary's certificate, as might be the case had the papers been kept with proper care, and especially had the concessions been numbered, and no number been missing.

The next question is does the concession carry with it the conditions imposed by law on those having lands given to them for the purposes of settlement? The object of the applicant, Mrs. Wiggins, is distinctly set forth by her memorial, with the number of the family of which she was the head -- that is, five children and five slaves, with herself. By the regulations of Governor White, published in 1803, it was declared that to each head of a family there should be distributed fifty acres, and to the children and slaves, sixteen years of age, twenty-five acres for each one, but from the age of eight to sixteen years only fifteen acres.

Taking the slaves and children all to have been over sixteen, there being ten of them, would have entitled the applicant to two hundred and fifty acres on their account, and the fifty acres on her own, which would have made up the three hundred acres applied for.

The same ordinance provides

"That those employed in the city,

Page 39 U. S. 349

if lands be granted to them for cultivation by themselves or their slaves, it shall be with the express condition that he shall commence cultivation within one month after the concession of them, with the understanding that if they do not do it, they will be granted to anyone who will denounce him and verbally prove it."

And that all concessions, without time specified, shall be void and held as though not made if grantees do not appear to take possession and cultivate them within the term of six months.

In the concession to Mrs. Wiggins, no time is specified for the settlement, and the government of the United States may take advantage of the nonperformance of the condition prescribed by law if the eighth article of the treaty with Spain does not provide for the omission. It stipulates

"That grants of lands made by Spain before 24 January, 1818, 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 Spain."

It was adjudged by this Court in the cases of *Arredondo* and *Percheman,* 6 and 7 Pet, that the words "shall be ratified and confirmed," in reference to perfect titles, should be construed to mean "are" ratified and confirmed, in the present tense. The object of the Court in these cases was to exempt them from the operation of the eighth article for the reason that they were perfect titles by the laws of Spain when the treaty was made, and that when the soil and sovereignty of Florida were ceded by the second article, private rights of property were by implication protected. The Court in its reasoning most justly held that such was the rule by the laws of nations even in cases of conquest, and undoubtedly so in a case of concession; therefore it would be an unnatural construction of the eighth article to hold that perfect and complete titles, at the date of the treaty, should be subject to investigation and confirmation by this government and to reconcile the article with the law of nations, the Spanish side of the article was referred to in aid of the meaning of the American side when it was ascertained that the Spanish side was in the present tense, whereupon the Court held that the implication resulting from the second article, being according to the law of nations, that and the eighth article were consistent, and that perfect titles "stood confirmed" by the treaty and must be so recognized by the United States and in our courts.

The construction of the treaty being settled, a leading inquiry in the cases referred to was were they perfect unconditional Spanish grants?

Percheman's had no condition in it, and the only difficulty involved was whether it had been made by the proper authority. The Court held it had been so made.

The grant to Arredondo and son was for four leagues square, and made as a present grant from its date, with the subsequent condition that the grantees should settle and improve the land in three

years, and on failure, the grant should become void; further, that they should settle on it two hundred Spanish families; but no time was fixed for the performance of this condition. Possession was taken and improvements made within the three years, but the families were not settled when the country was ceded. This Court declared that after the cession of Florida to the United States, the condition of settling Spanish families had become probably impossible by the acts of the grantor, the government of Spain, and certainly immaterial to the United States; therefore the grant was discharged from the unperformed condition, and single.

That the perfect titles made by Spain, before 24 January, 1818, within the ceded territory are intrinsically valid, and exempt from the provisions of the eighth article, is the established doctrine of this Court, and that they need no sanction from the legislative or judicial departments of this country.

But that there were at the date of the treaty very many claims whose validity depended upon the performance of conditions in consideration of which the concessions had been made, and which must have been performed before Spain was bound to perfect the titles, is a fact rendered prominently notorious by the legislation of Congress and the litigation in the courts of this country for now nearly twenty years. To this class of cases the eighth article was intended to apply, and the United States were bound, after the cession of the country to the same extent that Spain had been bound before the ratification of the treaty to perfect them by legislation and adjudication, and to this end the government has provided that it may be sued by the claimants in its own courts, where the claims shall be adjudged and the equities of the claimants determined and settled according to the law of nations, the stipulations of the treaty, and the proceedings under the same and the laws and ordinances of the government from which the claims are alleged to have been derived.

These are the rules of decision prescribed to the courts by Congress in the Act of 1824, ch. 173, sec. 2, passed to settle the titles of Missouri and Arkansas, and made applicable to Florida by the act of 1828, ch. 70, sec. 6. By the sixth section of the act of 1824, the claimant who has a decree in his favor is entitled to a patent from the United States, by which means his equitable claim draws to it the estate

in fee. These are the imperfect claims to which the eighth article of the treaty with Spain refers.

That a Spanish concession carrying on its face a condition the performance of which is the consideration for the ultimate perfect title is void unless the condition has been performed in the time prescribed by the ordinances of Spain was decided by this Court after the most mature consideration, in the cause of *United States v. Kingsley,* 12 Pet., which is the leading decision upon the imperfect titles known as Mill grants, and which has been followed by all others coming within the principles then with so much care

Page 39 U. S. 351

and accuracy laid down. The concession to Mrs. Wiggins, carrying with it the conditions incident to settlement rights by the ordinances and usages of Spain, a brief notice, in addition to what has already been said, will be taken of the regulations and ordinances governing the case. As, on the first point, the practice of the government in disposing of the public domain may be proved by those familiar with the customs, and there is in the record very satisfactory proof by witnesses of the laws and customs governing the provincial authorities in this respect, but as the proof is in exact accordance with the published ordinances on the subject, of course the written law will be relied upon.

After the passage of the act of 1828, it was the opinion of the Attorney General of the United States that it was indispensable to the correct decision of the Florida claims by the court that a correct translation into the English language should be made of the Spanish and French ordinances affecting the land titles in that country. The task of translating and compiling them was assigned to Joseph M. White, Esq., then of Florida. The collection was accordingly made and translated, and the manuscript deposited in the State Department, and Congress was informed of the fact by a special message from the President of the United States of February 11, 1829. 2 White's Recopilacion 9-10. It was afterwards published by Mr. White, and latterly he has published a second and enlarged edition, which is the one referred to in this case.

The treaty with Spain for the cession of Florida was signed 2 February, 1819; on 25 November preceding, the political and military governor (Coppinger) caused to be published an ordinance setting forth the conditions on which concessions for settlement claims had been issued, obviously with a view to the future cession. 2 White's Recopilacion 282-285. From the ordinance it appears

"That concessions made to foreigners or natives of large or small portions of land, carrying their documents with them (which shall be certificates issued by the Secretary) without having cultivated or ever seen the lands granted to them, such concessions are of no value or effect, and should be considered as not made, because the abandonment has been voluntary, and that they have failed in complying with the conditions prescribed for the encouragement of population, . . . and therefore there is no reason why they should not revert to the class of public lands, making null the titles of cession which were made to them."

Ten years had been the time required for cultivation and occupation; this rule was not rigidly adhered to, but the titles were perfected in some instances, where valuable improvements had been made, and the occupation had been short of ten years, the governors taking into consideration the disturbed state of the country. These exceptions were abatements of the general rule, requiring ten years cultivation and occupation; as Mrs. Wiggins, however, never cultivated or occupied the land claimed, she took no interest under the

Page 39 U. S. 352

rule, or any exception made to it, and it is free from doubt, had Spain continued to govern the country, no title could have been made to her; nor can any be claimed from the United States, as successors to the rights and obligations of Spain.

It is therefore adjudged that the decree below be

Reversed and the petition dismissed.

This cause came on to be heard on the transcript of the record from the Superior Court for the District of East Florida, and was argued by counsel. On consideration

whereof, it is now here ordered and decreed 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 dismiss the petition.

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