

United States Vs. Rodman

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Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 130

Appellant : United States

Respondent : Rodman

Judgement :

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United States v. Rodman

40 U.S. (15 Pet.) 130

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

The appellee, as assignee of Robert McHardy, presented a petition to the judge of the Superior Court for the Eastern District of Florida claiming a tract of land containing 16,000 acres, situated in that district on the west side of the River St. Johns at a place where there is a spring and stream of fresh water, formerly known by the name of "Old Stores." The claim was alleged to be founded on a

grant dated

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November 8, 1814, by Governor Kindelan, the Spanish Governor of East Florida. The claim was opposed by the United States.

The Superior Court of East Florida decided in favor of the claimant, and the United States prosecuted this appeal. The case is fully stated in the opinion of the Court.

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WAYNE, JUSTICE, delivered the opinion of the Court.

The decree of the court below confirms the title of the appellees to a square of five miles of land situated in the place known under the denomination of Apprecile Spring, opposite the old store of the house of Messrs. Panton & Leslie called Hamlet. The claim is founded upon a concession to Robert McHardy, dated 8 November, 1814. The memorial for the grant and the grant are as follows:

"His Excellency the governor: "

"Don Roberto McHardy, an inhabitant of this province, with due respect represents to your Excellency that since the month

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of July 1803, when he came to it and was admitted under the protection of his Catholic Majesty (whom may God preserve!), he flatters himself with having the honor of having been selected and preferred to others of his class for holding commissions of the government, the truth of which is well known to your Excellency, and moreover for the same reason of his fidelity in the year 1812, when said province was invaded by some rebellious inhabitants thereof, your petitioner was arrested by them and detained prisoner for the space of twenty-nine days, in consequence of which violence he suffered the loss of all his crop and other damages and losses to a great amount which he does not mention, as they

are well known to your Excellency. In consideration of which, and your petitioner wishing to repair in some measure his said losses, he intends to invest his means in the erection of a water saw mill in consideration of the great scarcity of lumber in this province, both in regard to the home consumption and to the purposes of commerce, and as it is necessary for that purpose to obtain a suitable position, as is the place known under the denomination of Apprecile Spring, opposite the old store of the house of Messrs. Panton & Leslie, called Hamlet. Therefore your petitioner supplicates your Excellency be pleased, in consideration of the merits he has obtained and of other circumstances in his favor, to grant him in absolute property a square of five miles, in the location designated, and which is vacant, which favor he hopes to receive from the justice of your Excellency. St. Augustine of Florida, on the eighth day of November 1814."

"ROBERT Mc HARDY"

" *DECREE*"

"St. Augustine of Florida, eighth of November 1814. Whereas the merits, services and other circumstances which the interested party exposes in this representation are well known to me, in consideration of the advantages which will result in favor of the home and foreign trade of this province, and also in conformity to the provisions of the royal order of

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29 October, 1790, communicated to this government by the captain general of the Island of Cuba and of the two Floridas in relation to the distribution of lands to the new inhabitants, I have come to the determination of granting to the petitioner, in absolute property, the square of five miles of land in the designated place, without prejudice to a better owner, and for the attainment of which let the secretary's office issue to him a certified copy of this expediente and decree, which in all events will serve to him as a title in form."

"KINDELAN"

It is contended on the part of the United States that the decree should be reversed upon three grounds:

1. That the evidence in the case is insufficient to prove that the alleged grant or concession was ever made. The evidence is a certificate from Aguilar, Secretary of the Government of East Florida, the same as that to be found in [United States v. Wiggins](#), 14 Pet. 345, which the Court held to be sufficient proof of the grant.

2. The second objection is that if it be proved or admitted that the grant was made, still it is void because it is not in conformity to the royal order of 29 October, 1790, by virtue of which it declared the concession was made. That royal order will be found in 2 White's New Rec. 365. It is contended that under the order, grants can only be made to foreigners, and that the number of acres granted must be in proportion to workers. The argument is, professing to be made under the royal order, if the grant is not in accordance with it, it is void, and [United States v. Clarke](#), 8 Pet. 448, is cited to sustain the objection. The authority has been mistaken. The Court did say in that case, "if the validity of the grant depends upon its being in conformity with the royal order of 1790, it cannot be supported." But it immediately proceeds to show, though the royal order is recited in the grant, that it was in fact founded upon a meritorious consideration of the petitioner having constructed a machine of great value for sawing lumber. The Court said:

"We cannot think that the recital of a fact, entirely immaterial, on which fact the grant does profess to be founded can vitiate an instrument reciting other considerations

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on which it does profess to be founded if the matter as recited be sufficient to authorize it. Without attempting to assign motives for the recital of that order, we are of opinion that in this case the recital is quite immaterial, and does not affect the instrument; the real question is whether Governor Coppenger had power to make it."

And so it must be said that the recital of the royal order in this case is quite immaterial. The petitioner for the grant asks for it, reciting services and fidelity to the government in time of a rebellion, his imprisonment and loss of property to a great amount, in consequence of it, "all of which," he says, "are well known to your Excellency." In consideration of which he further states that to repair his losses, he intends to invest his means in the erection of a water saw mill, and then asks his Excellency, in consideration of his merits and other circumstances in his favor, to grant him in absolute property a square of five miles in the place designated in his petition. The governor's decree upon that petition first recites the merits and services of the petitioner, which he says are well known to him, and then says, in conformity with the royal order of October 1790, he grants him, in absolute property, the square of five miles. Now if it be the fact that the governor had the power to make a larger grant than the quantity recited in the royal order, which was applicable to a particular class of persons, foreigners, it will not be contended, because he says "in conformity to the royal order," that these words shall control a larger grant, made to one who was not a foreigner, but a subject of his Catholic Majesty, particularly when it is stated the considerations of the grant are the merits and losses of the grantee. That the governor had the power to make the larger grant cannot be denied. It is to be found in the Laws of the Indies, in the various regulations under which they granted lands in Florida for more than forty years, sanctioned by the King of Spain and the authorities representing him in Cuba, the Floridas and Louisiana. The power of the governor in this respect has been frequently affirmed by the decisions of the court in cases growing out of claims to land under the eighth article of the treaty with Spain.

3. The third objection against affirming the decree is that the

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grant was made upon condition that the grantee should build a water saw mill on the land granted, which condition has never been complied with, and that it was incumbent on the claimants to assign reason why this condition was not performed. A careful perusal of the memorial will show it certainly was not the intension of the memorialist to make the building a mill the inducement to the

grant, but his merits, services, imprisonment and loss of property. When, too, the governor, in the grant, proceeds his declaration to the advantages which will result in favor of the home and foreign trade by an acknowledgment of the petitioner's merits and services, it certainly cannot be inferred from the first that it was the sole consideration which induced the governor to make it. If it be not so, then it cannot be said that the grant would only be perfect upon the performance of a condition precedent, because another consideration or inducement for making it is given requiring nothing to be done by the petitioner. Indeed, from these expressions of the governor in the grant no condition can be inferred. They are a mere recital, and if a condition could be implied, it would be so inconsistent with an absolute grant in terms that it could not for a moment have any weight against it. But the objection is not new in this Court. The point has been directly decided in [United States v. Segui](#), 10 Pet. 306. The claim in that case was founded upon a grant of 16,000 acres in consideration of services to the Spanish government and for erecting machinery for sawing timber. The Court said

"It has been suggested by the attorney general that though there was no express condition in the grant, one was implied from the consideration in part being the erection of a saw mill. But we cannot attach any consideration to a grant of absolute property in the whole quantity. It was exclusively for the governor to judge of the conditions to be imposed on his grant. He appears to have considered the services of the appellee a sufficient consideration, and made the grant absolute."

The decree of the court below is affirmed. But as the court rejected the survey given in evidence in this case, as it should have done, this Court will direct a survey to be made at the place designated in the decree, for the number of acres decreed, without prejudice to the rights of third parties.

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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 adjudged and decreed by this Court that the decree of the said

superior court in this cause, so far as it declares the claim of the petitioners to be valid, be and the same is hereby affirmed in all respects, and that a survey be made of the lands contained in the said concession according to the terms thereof for the number of acres and at the place therein designated, provided it does not interfere with the rights of third parties. And it is further ordered by the Court that a mandate be issued to the surveyor of public lands directing him to do and cause to be done all the acts and things enjoined on him by law and as required by the opinion and decree of this Court in this case, and that this case be remanded to the said superior court for further proceedings to be had therein in conformity to this decree and the opinion of this Court, which must be annexed to the mandate.

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