

Buyck Vs. United States

Buyck Vs. United States

SooperKanoon Citation : sooperkanoon.com/79748

Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 215

Appellant : Buyck

Respondent : United States

Judgement :

Buyck v. United States - 40 U.S. 215 (1841)

U.S. Supreme Court Buyck v. United States, 40 U.S. 15 Pet. 215 215 (1841)

Buyck v. United States

40 U.S. (15 Pet.) 215

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

On 23 May, 1829, Ann Buyck, the appellant, presented a petition to the Superior Court for the Eastern District of Florida, claiming title to a tract of land containing 50,000 acres, south and north of the Musquito River. The title on which the claim was founded was a Spanish

grant from Governor White.

The proceedings on which the grant was made, and the grant, were as follows:

"His Excellency, the Governor: Don Augustin Buyck, a resident of this place, with the greatest respect, appears before your Excellency, and says that having a large number of new negroes (*negroes bozales*), and there being also some white persons, native citizens of the United States of America, who wish to join him for the settlement and cultivation of the lands at Musquito, he solicits that this government will grant him fifty thousand acres of land, south and north of said place, with the privilege of, and asking for more, in proper time, as he may need it, within which lands it is not the intention of your petitioner that the tract which your Excellency granted to Don Ambrosio Hull should be embraced, who at this time has abandoned the possession of his settlement owing to Indian hostilities, but who is determined to return to said settlement in consequence of the protection that a large number of settlers in that neighborhood may afford, and that the right to the grant I pray for shall not be interrupted by the right that some individuals of this place, or foreigners may have, or pretend to have, to whom part of said lands may have been granted by order of your Excellency, and because the first to these persons have suffered a long time to elapse without taking any steps for the pretended cultivation of said land, which makes it appear that their right has in some degree become diminished, and there being others who offer to cultivate said land, in accordance with the wishes of the King, who is desirous of having the whole province settled, and as regards the latter, the same reasons apply in consequence of their not having complied with what they promised. Your petitioner promises positively to carry into effect said settlement, between the period embraced from this time and the month of December next, after which period it will remain discretionary with your Excellency to grant the said tract to any other person who may ask for it. The considerable number of settlers whom your petitioner offers to carry to that point will open a vast field towards fulfilling his Majesty's will, and to refrain the savages from committing robberies and hostilities who have by their incursions, until now,

troubled the plantations situated north of the capital, and your petitioner, not doubting that such considerations will have their due weight on your Excellency's mind, who is always disposed to do what seems best for the service of the King and of the country, your petitioner respectfully reiterates his prayer for this favor from the accustomed bounty of your Excellency."

"A. BUYCK"

"St. Augustine of Florida, 22 July 1802"

"ORDER FOR REPORT. St. Augustine, July 22d, 1802. Let the engineer commandant report."

"WHITE"

"REPORT OF ENGINEER. Being informed of the premises and in compliance with the foregoing decree, I report to your Excellency that the settlement and cultivation of the lands at Musquito presents no obstacle either to the general or particular defense of the province, and so far as this department is concerned, there may be granted to the petitioner for the purposes he mentions the number of acres which your Excellency may deem proper. This is all which I have to report to your Excellency, who will act in the matter at your pleasure."

"NICHOLAS BARCELO"

"GRANT TO BUYCK. St. Augustine, 29 July 1802. The land which the party solicits is granted to him in manner as he proposes, and with the condition that he shall not cede any part thereof to any person whatever without the knowledge and approbation of the government."

"WHITE"

"A certificate was issued."

"PIERRA"

"I certify that the foregoing is a correct translation of the annexed document, written in the Spanish language."

"JOHN M. FONTANE"

" *Translator and Interpreter S.C. D. E. F.* "

"St. Augustine, July 16, 1838"

The decree of the Superior Court of Florida was against the claim of the petitioner, and this appeal was prosecuted by him.

WAYNE, JUSTICE, delivered the opinion of the Court.

The land in controversy in this case is claimed by virtue of an alleged concession or grant for 50,000 acres dated July 29, 1802. In the court below the claim was adjudged not to be valid. The evidence offered and read on the trial is:

1. A memorial from Don Augustin Buyck, 22 July 1802,

with an order annexed by Governor White to the engineer commandant to report, and the report of the engineer.

2. The decree of Governor White, as follows:

"The land which the party solicits is granted to him in manner as he proposes, and with the condition that he shall not cede any part thereof to any person whatever without the knowledge and approbation of the government."

3. An assessment, by order of Governor White, dated 30 October, 1802, upon Buyck and others for building a bridge. The assessment upon Buyck being thirty dollars, "for himself and his settlers of the fifty thousand acres of land, south," attached to which is the return of one Bernando Segui, of the names of the persons assessed, such of them as had paid, others who had not, with Segui's receipt, dated a year after, for thirty dollars, paid by one Robira as attorney for Buyck, said to be "his proportion of the tax," in consequence of a grant of 50,000 acres of land and others which he possesses in this province.

The paper purporting to be a grant was received in evidence, without any certificate that it was the copy of a grant, from an original in the office in which grants are required to be deposited, without proof of the handwriting of the governor or of Pierra, who says a certificate was issued -- indeed, without any official attestation of authenticity, or proof of any kind, that such a paper was ever issued or on file in the proper office. The same may be said of the other papers. One Fontane certifies that he has translated them correctly from Spanish originals. That is all that is said of them. No proof is given that the originals were to be found in the "office of the archives." It is not alleged that they were lost or destroyed by any mutilation of the records or other accident. The other proof relied upon to sustain the claim is Segui's receipt and the papers in connection with it, already mentioned. Where that paper came from the record does not show. The authenticity of the governor's order assessing the tax, the signature of the person signing himself government notary, the appointment of Segui to collect the tax all rest upon the receipt of Segui for Buyck's assessment and upon the paper purporting to be a report to the governor of those who had not paid, and of the sum of money which he had in

Page 40 U. S. 222

hand from those who had paid assessments. We do not intend, however, as the attorney for the United States in the court below did not object to the memorial and grant as evidence, though he did so as to the papers connected with the assessments, to allow any formal objection to the proof of a grant to weigh with us in this decision; the opinion of the Court rests upon grounds connected with the

merits.

The memorialist asks for the land, first stating that he has a large number of new negroes and that some white persons, native citizens of the United States of America, wish to join him in the settlement and cultivation of the lands "at Musquito." He prays that his right to the grant may not be denied by the right which others may claim or pretend to have on account of former grants to them, because they had suffered a long time to pass without taking any steps to cultivate the lands, and as others are ready to cultivate them, and he promises to carry into effect his settlement by the month of December after the date of his memorial, after which time, if he does not do so, he says, it will remain discretionary with the governor to grant the land to any other person who may ask for it. The governor replies the land which the party solicits is granted to him in manner as he proposes, and restrains his alienation of it without the consent of government. The undertakings of the memorialist were voluntary, and were the inducement held out by him to obtain the grant. None of them was complied with. The forfeiture then of the land results from the conditions' not having been performed, which the memorialist himself proposed as the terms upon which he was to hold it, and which were recognized by the governor as the terms upon which he should have what he asked for. The memorial, report of the engineer, and decree are all parts of the same instrument, each having a distinct reference to the other. If, therefore, for the purpose of determining the quantity of the land intended to be granted and where it was granted, we must go out of the decree into the memorial, we must do the like to ascertain the conditions annexed to the grant. Besides, the forfeiture is only in accordance with what the memorialist states had been incurred by others to whom grants had been made, who had neglected to settle them, and which he says will be his own case if he does not make his settlement

Page 40 U. S. 223

within the time stated in his petition. In this view of the case, then, the grant is without merits, and the judgment of the court below should be affirmed.

But further, supposing proof of the grant to be made, and that it was free from the conditions which, not having been complied with, has forfeited it, still it could convey no land, from the want of identify or ascertainable locality. The memorialist says, wishing to make the settlement and cultivation of the lands at Musquito, he solicits a grant of 50,000 acres, south and north of said place. Musquito is an inlet on the eastern coast of the peninsula made by Halifax River or lagoon, which extends from Musquito Bar northward more than twenty miles, and by the southern, or what is known as Hillsborough Lagoon, which extends from Cape Caravel to Musquito Inlet, a distance of forty miles. Both lagoons are navigable for about the same distance by vessels of such draft as can cross the bar. Creeks run into the first from the mainland, and Smyrna is on the western bank of the south lagoon, four or five miles from Musquito Bar. Where then shall the land claimed by the appellant be surveyed? Shall it border on the ocean, north and south of the inlet, 25,000 acres on either side to make up the quantity, or on the inner shore of the lagoon in the same way, or shall it be on the mainland, west of the inlet, or on some of the creeks emptying into Halifax River. The description of the grant is "south and north" of the lands "at Musquito." Musquito is not a designation of a land district fixed and known by the Spanish authorities, nor do we know from any usage the limits of the lands at Musquito. If it be the application of the name of an inlet to lands without and within it, still how shall boundaries be fixed within which surveys shall be made without other specific call than "north and south of lands at Musquito?" The regulations for granting lands in Florida by the Spanish authorities required that grants should be made in a certain place, and there were no floating rights of survey out of the place designated in the grant unless the land granted could not be gotten there in its entire quantity, and an equivalent was provided for, as in *Sibbald's Case*, reported in 10 and 12 Pet. [35 U. S. 313](#) , [37 U. S. 488](#) , one of the surveys of which was at Turnbull's Swamp, at Musquito.

Page 40 U. S. 224

In all of the decisions of this Court upon grants in Florida, it has gone as far as the most liberal equity can go in adopting some natural or artificial point in the

description of the grants, however subordinate or minor they may have been, to give locality to grants. Such was the fact in the leading case upon Florida grants. [Arredondo](#), 6 Pet. 691. So, in [Percheman's Case](#), 7 Pet. 91. Also in the cases of *Fleming and Huertas*, [33 U. S. 8](#) Pet. 478, [34 U. S. 9](#) Pet. 488. [Arredondo's Case](#), in 13 Pet. 133, was upon most indefinite calls. No survey had been made whilst Florida was a province of Spain, nor had the grant been surveyed when the case was brought by appeal to this Court. The Court said

"We do not consider the want of a survey as interfering with the right of a party to the land granted; it must be taken, as near as may be, as it is described in the petition, where it was asked for, and cannot be taken elsewhere."

The Court then declares if the points indicated in that case for a survey cannot be found, then that the description was too indefinite for a survey to be made, and that the claimants could take nothing under the concession. And so in this case, the description "south and north of the lands at Musquito" is too indefinite for a survey to be made, for there is nothing in it which can be aided by relation to something certain. The claimants, then, can take nothing under the concession.

We know from the eighth regulation of Governor White, October 12, 1803 (White's New Rec. 278), that this want of certainty in the description of grants had been productive of disputes and mistakes. When he declared that those, for the future, who ask for lands must indicate a fixed spot; he only reinforced a neglected law in Florida. Indeed, with a few exceptions, grants in Florida which have been before this Court have been particular in respect to the object from which the survey was to be made.

It is proper for us to remark that in coming to our conclusion upon this point, we have not been influenced by any of the English common law rules which make grants void for uncertainty. Such as, for instance, if the King grants land in a peat waste without ascertaining what part, or the special name of the land, or how bounded, it is void for uncertainty, for there can be no election in that case. 4 Bac.Abr. tit.

Grant 81, and yet if an individual so grant, it would be good. We apply to the case the laws and ordinances of the government under which the claim originated, and that rule which must be of universal application in the construction of grants, which is essential to their validity, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind or be capable of being ascertained by extraneous testimony.

The decree of the court below is

Affirmed.