

O'Hara Vs. United States

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Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 275

Appellant : O'Hara

Respondent : United States

Judgement :

O'Hara v. United States - 40 U.S. 275 (1841)

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O'Hara v. United States

40 U.S. (15 Pet.) 275

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

In the Superior Court of East Florida, Oliver O'Hara, for himself and for the other heirs of Daniel O'Hara, presented a petition, praying for the confirmation of a grant of 15,000 acres of land, made by Henry White, then the Spanish

Governor of East Florida, on 5 September, 1803, to Daniel O'Hara, the father of the petitioners, which was alleged to have been confirmed on 3 September, 1818, by the Spanish Governor, Coppinger. The grant and the proceedings on the same are fully stated in the opinion of the Court.

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WAYNE, JUSTICE, delivered the opinion of the Court.

The appellants are the heirs of Daniel O'Hara, and they claim the land in controversy in virtue of a alleged grant, dated 5 September, 1803. The grant was adjudged in the court below not valid.

The memorial for the grant, order of Governor White to the commandant of engineers to report upon it, the report of that officer, and the decree of the governor are as follows:

"His Excellency, the Governor:"

"Don Daniel O'Hara, lately admitted an inhabitant of this province, under the protection of his Catholic Majesty, with due respect, represents to your Excellency that intending to settle in this province with a considerable property and his large family after having ascertained that all or the greatest number of all those who had petitioned for lands have solicited to have them located in the Southern District, in the vicinity of Musquito River, and after having consulted many neighbors in reference to vacant lands, as he has no wish to enter into disagreeable litigation with other petitioners or to injure them in any way, he begs of your Excellency be pleased to grant him 15,000 acres of land out of those lands which are vacant between the Rivers St. John and St. Mary's in the place called Nassau, and in case the said vacant lands do not comprehend the number of acres he solicits, he begs your Excellency to have the goodness, when the survey will take place, to grant him the deficiency on the River St. Mary's, and he obligates himself to take possession of the said lands, within the term of six months, which favor, he doubts not he will receive from the noble munificence of your Excellency."

"DANIEL O'HARA"

"St. Augustine of Florida, 3 September 1803"

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"DECREE. St. Augustine, 3d September 1803. Let the commandant-engineer inform on the subject."

"WHITE"

"Having taken cognizance of the petition, and in obedience to the preceding decree, I represent to your Excellency that the culture of the lands solicited by the petitioner does not interfere with the defense of the province; therefore, as far as the department of fortifications is concerned, your Excellency may grant to him the number of acres you see fit. This is all I have to represent to your Excellency, who will determine according to your pleasure."

"NICOLAS BARCELO"

"St. Augustine of Florida, 5 September, 1803."

"DECREE. St. Augustine of Florida, 5 September, 1803. The lands solicited by the petitioner are hereby granted to him in the place indicated, without prejudice to a third party, and until the time when, in conformity to the number of workers whom he may have to cultivate them, the corresponding number of acres may be surveyed to him, it being well understood that he shall not claim indemnity for damages or losses in the case, that under the apprehension of an invasion or other motives relating to the royal service, he be ordered to retire in the interior of the province, and that he will take possession of the said land within the term of six months from this date."

"WHITE"

It will be perceived that the memorialist asks for 15,000 acres, as it is his intention, with his vast property and numerous family, to settle in the province. He asks for it at the place called Nassau, and if it cannot be found vacant there when the survey is made, that the deficiency may be granted on the River St. Mary's, and he obliges himself to take possession within six months. The decree of the governor is the lands "solicited by the petitioner, are hereby granted to him in the place indicated," "in conformity to the number of workers which he may have to cultivate them, the corresponding number of acres may be surveyed to him," "and that he will take possession of said land within the term of six months from this date."

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It is a decree, then, not granting 15,000 acres as asked for, but so much in the place where it is asked for as shall be surveyed, in conformity to the number of workers he may have to cultivate the land, and as to what that quantity should be there is no uncertainty, for we have the regulation of governor White, promulgated by him, the month after the date of the decree, which states to each head of a family of a new settler there shall be granted fifty acres of land, and an equal quantity to a single person, widow or widower, and to the children or slaves of sixteen years of age, twenty-five acres each. This regulation, then, determines in that respect what the governor intended to grant, and the conclusion that the grant was to be in conformity with the regulation cannot be shaken by the suggestion that the decree was made before the date of the regulation, as it might be if the grant had been for 15,000 acres in terms. There is no grant for any quantity when it is found that the decree is restrained to a right to be determined by the number of workers which the memorialist shall have, that the governor had the power to make a grant with such a restriction, and that so shortly after the decree was made as the following month, he promulgated a general rule for grants to new settlers; the inference is good, until it is contradicted by some other fact or other regulation applying to new settlers, that the memorialist was to take under the decree in his favor as contemporary new settlers would have to take. The memorialist never made a settlement. The witness, Marien, says he did attempt a settlement, that a house was built, and that O'Hara informed him he had employed a carpenter to

build it, but the memorialist never took his family or negroes to the land. The construction of a house was no compliance with the condition of the grant. That act itself could not, under the regulation, give a right to any number of acres. The right rested upon the persons, black and white, who might be carried to make a settlement. The house is good evidence of an intention to settle with persons, but if the evidence discloses the fact that no persons or workers were ever taken to it, that cultivation was not begun, the inference is made the stronger that the rights of the memorialist under the decree were abandoned.

The record discloses an attempt by the memorialist, immediately

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after the decree of the governor, to get negroes from Jamaica for a settlement, and that the vessel in which they were embarked was taken into Savannah and libeled in admiralty, but the proceedings in admiralty do not show that the memorialist was deprived ultimately of the negroes, and if he was not and the negroes were restored, no cause is shown why they were not taken to Florida. But if they were not restored, it will scarcely be contended that an unfortunate attempt to carry negroes to take possession of the land fulfills the intention of a grant, the quantity of which is to depend upon the number of workers actually employed in cultivation.

But there was not only a failure to settle in this case, there was an actual abandonment. We hear nothing of the memorialist, or of any attempt to settle the land, from the spring of 1804 until 1819. There never was a survey of any land by authority, though one is alluded to, until March 1819, and that was made without the order of the Spanish authorities in Florida. Indeed it was done against authority, for we find from the testimony in the cause that O'Hara petitioned governor Coppinger, on 20 April, 1819, within a few months of sixteen years after governor White's decree had been given upon his memorial, for an order of survey upon the decree, and that it was refused. We have, then, in this fact a denial of the memorialist's right to the land by a governor of Florida. There can be no doubt it was looked upon by Governor Coppinger as abandoned, and that the

right to the same was lost, under the 9th article of governor White's regulations, already spoken of, as contemporary with the decree upon the memorial of O'Hara. 2 White's New Rec. 278. It is not necessary for us to speak of a subsequent attempt by O'Hara to introduce negroes into Florida, in 1819 and its failure. His right to the land originally asked for had ceased; he could make no claim under the decree of September, 1803, and a revival of the old grant by the Spanish authorities would have been substantially a violation of the treaty with Spain, which only confirms grants made before 24 January, 1818. With this view of the case, we think the decree of the court below should be affirmed.

But if the right of the appellants had not been lost by their neglect to settle the land with workers, we should say the grant

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itself was too indefinite to convey and land unless a survey had been made and had been recognized by the Spanish authorities or unless the grantee had settled and occupied land under that decree, in which event a survey might be presumed. The memorialist asks for lands in the place called Nassau, and in the event of the whole quantity's not being got there, for the deficiency to be made up on the River St. Mary's. Such a place as the place called Nassau is not known, unless is meant by it all the land between Nassau River and the St. Johns and St. Mary's. It is equidistant, or nearly so, from those rivers, and wends its way to the Atlantic in a course of fifty or sixty miles. If the land is to be taken on the Nassau, where shall a survey be begun, and on what part of the St. Mary's shall the deficiency in quantity be taken, supposing that a part can be found in the "place called Nassau." The St. Mary's is known as the boundary between Florida and Georgia, and that its head or source is on the Oquafanoche Swamp. It is navigable for a hundred miles from its mouth to the Atlantic, between Cumberland and Amelia Islands. Where, then, shall a survey begin in this range, under this decree? It is no answer to say the decree is for vacant land and if there is vacant land there now, a survey could be made, for the place where the survey is to be made must first be made certain, if not as to fixed boundaries, at least so certain by evidence of general or popular apprehension as to show what was the grantor's notion of the limits of country

within which he intended to grant. Unless, then, a survey can be made of the original grant in the place called Nassau, the alternative for any deficiency on the St. Mary's River cannot be shown, which alone would entitle the memorialist to land there. This grant is therefore void on account of uncertainty. It is not made, as the Court said in the case of [*Buyck v. United States, ante*](#), 215, in such a way as to distinguish it from things of a like kind, nor has the identity of the grant been shown by extraneous evidence.

The decree of the court is affirmed.

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