

United States Vs. Low

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Court : US Supreme Court

Decided On : 1842

Appeal No. : 41 U.S. 162

Appellant : United States

Respondent : Low

Judgement :

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United States v. Low

41 U.S. (16 Pet.) 162

APPEAL FROM THE SUPERIOR

COURT OF EAST FLORIDA

SYLLABUS

A Florida land claim. On 6 April, 1816, a grant was made by the Governor of Florida of five miles square, or sixteen thousand acres of land, on condition that a mill should be built.

The grant of six thousand acres was for land on Doctor's Branch, where the mill was intended to be erected. The ten thousand acres were granted on the northeast side, on the lagoon of Indian River. The six thousand acres were surveyed in 1809, on Doctor's Branch, and the mill was built. The survey under this grant, was confirmed.

The survey of ten thousand acres was made in February, 1820, by the Surveyor General of Florida, "northwestwardly of the head of Indian River, and west of the prairies of the stream called North Creek, which empties itself at the head or pond of said river."

The official return of the Surveyor General has acceded to it the force of a deposition.

The land granted could only be surveyed at the place granted; if elsewhere, it would have been a new appropriation, and therefore void, and contrary to the eighth article of the treaty with Spain.

According to the strict ideas of conforming a survey to a location, in the United States, the survey of ten thousand acres should be located adjoining the natural object called for, there being no other to aid and control the general call; and therefore the head of the lagoon would necessarily have formed one boundary. But it is obvious, more latitude was allowed in the province of Florida, under the government of Spain.

The Surveyor General having returned that the survey was made according to the grant, and in the absence of other contradictory proof, the claim was confirmed.

The heirs of John Low claimed 16,000 acres of land in East Florida, under a grant by Governor Coppinger, founded on a petition alleged to have been presented by their ancestor, dated 20 March 1816, and a decree of Governor Coppinger thereon, dated April 6, 1816. The petition stated that

"Bounding with the petitioner's land on Bell River, there was a creek known by the name of Doctor's Branch, which was suitable for the establishment of a water saw

mill, and as he could construct, and was desirous of constructing immediately, a saw mill on said place, if he could obtain the permission of government, and a grant of the accustomed quantity of land for the supply of lumber, and the assurance, in his favor, that the great expenses that were indispensable to its construction, and the risks to which he

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would be liable would be compensated; he therefore prayed that the governor would grant him five miles square of land, or its equivalent, permitting him to take 6,000 acres in the vacant lands in the neighborhood of Doctor's Branch, and 10,000 acres on the northwest side of the head or lagoon of Indian River."

The governor's decree on this petition stated that

"In consideration of the benefit and utility that would result to the province should it be executed as the petitioner proposed, he grants him the permission he asked, likewise the lands at the places he mentioned, with the express condition that until he erected the said machine, he should not have an absolute right in them,"

&c.;

The originals of the petition and decree were not produced in evidence, neither are they to be found in the archives at St. Augustine. A certified copy, dated April 6, 1816, under the hand of Tomas de Aguilar, secretary of the government (whose handwriting was proved); stated to be faithfully drawn from the original in his office, was alone offered, and was objected to on the part of the appellants. There were also produced two plats and certificates of survey, made by George J. F. Clarke, the surveyor general, for John Low. The first was dated December 23, 1819, for "six thousand acres of land in the place called Doctor's Branch, on Bell River." The second was dated February 7, 1820, for

"ten thousand acres of land northwestwardly of the head of Indian River, and west of the prairies of the stream called North Creek, which empties itself at the head or pond of said river."

Among the witnesses examined to prove the building of the mill was George J. F. Clarke, who was objected to by the district attorney. The objection to the testimony of George J. F. Clarke, taken in the superior court, was made on the ground that he was interested in the case. It appeared from the record, that after he had been examined on interrogatories to prove the surveys made by him, the following was attached, at his request, to the examination of the commissioner.

"I further state that in February 1821, I purchased of the said John Low a tract of land embraced by this grant; this I mention in support of my confidence in the integrity thereof;

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while I exercise the candor due to the Honorable Court in this case, and to myself as a witness. Perhaps, it may be necessary to add, that before February 1821, I was entirely uninterested in this grant."

"GEORGE J. F. CLARKE"

"Before me K. B. GIBBS, Commissioner"

After hearing the testimony, the court made a decree in favor of the claimants for both tracts of land, from which the present appeal was taken.

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CATRON, JUSTICE, delivered the opinion of the Court.

This was a mill grant of five miles squares of land, or 16,000 acres; that is, at Doctor's Branch, where the mill was intended to be erected, 6000 acres; and 10,000 acres "on the northwest side of the head or lagoon of Indian River." The concession was made (6 April 1816) on the condition that the mill was built; the mill was erected. The first survey was made at Doctor's Branch, in 1819, and is free from objection.

The second, for 10,000 acres, was made February 1820, by the Surveyor General of East Florida,

"northwestwardly of the head of Indian River, and west of the prairies of the stream called North Creek, which empties itself at the head or pond of said river."

Such is the description in the certificate of the surveyor general. The survey had been objected to, but the objection was withdrawn at the hearing below; and it is insisted that a waiver of its legality must be inferred. The objection extended to the competency of the paper as evidence, and not to its effect when heard; so the Court held in *Breward's Case*, at this term.

The official return of the surveyor general has accorded to it the force of a deposition. So we held in the cases of *Breward* and *Hanson*, to which we refer. The land could only be surveyed at the place granted; if elsewhere, it would have been a new appropriation, when the survey bears date in 1819, contrary to the eighth article of the treaty with Spain, and the question is, was it at the proper place?

It was granted "on the northwest side of the head of Indian River or lagoon."

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According to the strict ideas of conforming a survey to a location, in the United States, the survey would be located adjoining the natural object called for, there being no other to aid and control the general call, and therefore the head of the lagoon would necessarily have formed one boundary. But it is obvious more latitude was allowed in the province of Florida. The object of the grant was timbered land, fit for the supply of lumber; and if the nearest vacant timbered land to the head of the lagoon was surveyed, the intentions of the government and of the grantee were complied with. This was the construction given by the surveyor general to the words "northwest side." He permitted the general call to vary so far, and no farther, as to secure timbered land, excluding the prairies next the head of the lagoon. The legality of the survey depends on the fact. The description given in

the certificate above recited, and that set forth by the decree, must be taken together; the lines and boundaries on other lands are given in the decree. The complaint is that the land was surveyed too far west. On the north, it is bounded by the lands of Charles Sibbald; on the south, by those of John McIntosh; on the west, by royal or vacant lands; and on the east, by the prairies of North Creek, which empties itself at the head of Indian lagoon. There is no evidence that North Creek is navigable. If there was such evidence, as the survey includes the creek, we would reverse the decree, and order the survey only to front one-third part on the creek. The surveyor general certifies that this 10,000 acres is the tract of land granted to the petitioner, on 6 April 1816, and although no reliance would be placed on the assertion in the certificate, standing alone, still, taking the return that the survey was on the land granted, in connection with all the facts and circumstances appearing in the record, it tends to confirm the conclusion that the land was laid off on the next land to the head of the lagoon, covered with timber.

One other consideration has weight. If it be untrue that the survey is at the proper place, the United States could have proved the fact to a certainty with the slightest diligence, and ought to have proved it. This consideration is strengthened by the pleadings and evidence. The petition, filed in 1829, alleges that the surveys were made for lands granted, and sets out the descriptions, courses and distances, to which the

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attorney of the United States made no answer; the fact was not admitted for this reason, and necessary to be proved by the complainant, [10 U. S. 6](#) Cranch 51, yet it shows that the claim was not resisted on this ground, and such was clearly the case throughout, as George F. Clarke, the surveyor general, was twice examined as a witness, on many interrogatories, without having been requested to state the locality of the 10,000 acres survey. Upon all these facts and circumstances taken together, we order the decree to be affirmed.

Decree affirmed.

