

United States Vs. King

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Appeal No. : 44 U.S. 773

Appellant : United States

Respondent : King

Judgement :

United States v. King - 44 U.S. 773 (1845)

U.S. Supreme Court United States v. King, 44 U.S. 3 How. 773 773 (1845)

United States v. King

44 U.S. (3 How.) 773

ERROR TO THE CIRCUIT

COURT FOR EAST LOUISIANA

SYLLABUS

The certificate of survey alleged to have been given by Trudeau on 14 June, 1797, and brought forward to sustain a grant to the Marquis de Maison Rouge, declared antedated and fraudulent.

The circumstance that a copy of this paper was delivered by the Spanish authorities in 1803 is not sufficient to prevent its authenticity from being impeached.

Leaving this certificate out of the case, the instruments executed by the Baron de Carondelet in 1795 and 1797 have not the aid of any authentic survey to ascertain and fix the limits of the land, and to determine its location.

This Court has repeatedly decided, and in cases too where the instrument contained clear words of grant, that if the description was vague and indefinite, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land, which could be maintained in a court of justice.

An equitable title is no defense in a suit brought by the United States. An imperfect title derived from Spain before the cession cannot be supported against a party claiming under a grant from the United States.

The Act of Congress of 29 April, 1816, confirming the grant to the extent of a league square restricted it to that quantity, and cannot be construed as confirming the residue.

Query whether the acceptance by the claimant of this league square affected his title to the residue.

This case involved a claim for upwards of two hundred thousand arpens of land in Western Louisiana, commonly known as the Maison Rouge claim, the history of which is this:

About the year 1795, a number of French royalists arrived in New Orleans, and amongst them the Marquis de Maison Rouge, a knight of St. Louis, who had been banished from France and whose property had been confiscated in the Revolution.

On 1 January, 1795, he obtained the following passport:

"The Baron de Carondelet, knight of the religion of St. John, brigadier of the royal armies, governor vice-patron of the Provinces of Louisiana, West Florida, and inspector of the troops thereof &c.;"

"It is hereby permitted Messrs. De Maison Rouge, De Breard, and other persons of their suite to pass on to Ouachita to examine its position, and there to form a settlement. In consequence, Mr. de Filhiol will afford them every assistance and the information necessary for that object."

"Given in our government house at New Orleans this 1 January, one thousand seven hundred and ninety-five."

"[Signed] THE BARON DE CARONDELET"

"ANDREW LOPEZ ARMESTO"

On 17 March, 1795, the following contract was entered into:

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"We, Francis Lewis Hector, Baron de Carondelet, knight of Malta, brigadier-general of the royal armies of his Catholic Majesty, Military and Civil Governor of the Provinces of Louisiana and West Florida; Don Francis Rendon, intendant of the army and deputy superintendent of the royal domains in the said provinces; Don Joseph de Orue, Knight of the royal and distinguished order of Charles Third, principal accountant for the royal chests of this army, exercising the functions of fiscal of the royal domains, declare that we agree and contract with the Senior Marquis de Maison Rouge, an emigrant French knight, who has arrived in this capital from the United States, to propose to us to bring into these provinces thirty families, who are also emigrants, and who are to descend the Ohio for the purpose of forming an establishment with them on the lands bordering upon the Washita, designed principally for the culture of wheat and the erection of mills for manufacturing flour, under the following conditions: "

"1. We offer, in the name of his Catholic majesty, whom God preserve, to pay out of the royal treasury two hundred dollars to every family composed of two white persons fit for agriculture, or for the arts useful and necessary for this establishment, as house or ship carpenters, blacksmiths and locksmiths, and four hundred dollars to those having four laborers, and in the same way, one hundred to those having no more than one useful laborer or artificer, as before described, with his family."

"2. At the same time, we promise, under the auspices of our sovereign monarch, to assist them forward from New Madrid to Washita, with a skillful guide, and the provisions necessary for them till their arrival at their place of destination."

"3. The expenses of transportation of their baggage and implements of labor which shall come by sea to this capital shall be paid on account of the royal domains, and they shall be taken on the same account from this place to the Washita, provided, that the weight shall not exceed three thousand pounds for each family."

"4. There shall be granted to every family containing two white persons fit for agriculture ten arpens of land, extending back forty arpens, and increasing in the same proportion to those which shall contain a greater number of white cultivators."

"5. Lastly, it shall be permitted to the families to bring or to cause to come with them European servants, who shall bind themselves to their service for six or more years, under the express condition that, if they have families, they shall have a right, after their term of service is expired, to receive grants of land, proportioned in the same manner to their numbers. Thus we promise, as we have here stated, and that it may come to the knowledge of those families which propose to transport themselves hither, we sign the present contract with the aforesaid Senior Marquis de Maison Rouge, to

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whom, that it may be made plain, a certified copy shall be furnished."

"[Signed] THE BARON DE CARONDELET"

"FRANCIS RENDON"

"JOSEPH DE ORUE"

"THE MARQUIS DE MAISON ROUGE"

"New Orleans, 17 March, 1795"

On 14 July, 1795, this contract was approved by the King as follows:

"Having laid before the King what you have made known in your letter of 25 April last, No. 44, relative to the contract entered into with the Marquis of Maison Rouge for the establishment on the Washita of thirty families of farmers, destined to cultivate wheat for the supply of these provinces, his Majesty, considering the advantages which it promises compared with the preceding, has been pleased to approve it in all its parts."

"By his royal direction, I communicate it to you for your information. God preserve you many years."

"[Signed] GARDOGORI"

"Madrid, 14 July, 1795"

"The Intendant of Louisiana"

On 12 August, 1795, the following letter was addressed to the Marquis de Maison Rouge:

"New Orleans, August 12, 1795"

"SIR -- I have received the honor of your letter of 25 June last, with a statement of the families. Your perseverance in the opinion you have formed of the excellence of the lands you inhabit and which you are going to make flourish for the happiness of this province as well as for those in its neighborhood which ought to

partake of these advantages ought to animate you to make the greatest efforts to effect its early accomplishment. The picture you draw of these enchanted places convinces me of the solidity of your judgment and of the fortunate selection you have made in your plan, as well as of the facility of means to carry it into execution in all its branches."

"I have paid Mr. Merieult the \$300 for Alexander Laurent, Peter Rele, and James Feret."

"By this opportunity I inform the commandant of what is to be done when any new family arrives, giving him distinctly to understand that if the least formality or a certificate is wanting and not conformable to the copy which I send him, no payment whatever will be made from the royal treasury."

"I have the honor to be, with respect, sir, your very humble and most obedient servant,"

"[Signed] FRANCISCO RENDON"

"Mr. De Maison Rouge "

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On 26 August, 1796, the following letter was written:

"Under this date I have written to the commandant, John Filhiol, as follows: "

"By the certificates which you sent me in behalf of the individuals who were brought here lately by the Chevalier Breard, I learn that there were among them many single men, who cannot therefore be considered as composing families, and consequently they ought not to have received the \$100 stipulated in the 1st article of the contract which the Marquis of Maison Rouge made with the governor and intendant of this province. On this occasion, we passed over this irregularity in order to avoid disputes in future, it being inconsistent with the spirit of the contract, and of no use to the interests of the King, to spend the public money on individuals who, having no inducements to remain in the country, could leave it with the same

facility they came. It must not occur again, and inform the Marquis that there are no funds in the public treasury destined to that object, and that as soon as he has completed the number of thirty families which he contracted for, nothing will be paid out of the royal treasury to any who should exceed that number and who wish to come and establish themselves in this district, and you will consider yourself instructed to this effect, and conform to it in future, advising me in conformity of what is done in the premises. I consider you as the agent, and authorized to act for the Marquis of Maison Rouge, in the business of bringing families to that post, and therefore communicate this for your government and information. The Lord preserve you many years."

"[Signed] JUAN VENTURE MORALES"

"To Mr. Augustus de Breard"

"New Orleans, 26 August, 1796"

On 14 June, 1797, it was alleged that Trudeau, the surveyor general, issued the following certificate:

"Figurative plan of the thirty leagues of superficies of land granted to the Marquis of Maison Rouge, not including the lands held by anterior titles."

"Don Carlos Trudeau, surveyor general and particular of the Province of Louisiana."

"I certify in behalf of the Marquis of Maison Rouge that the plats of land represented and sketched in the foregoing plan of vermilion color may contain thirty superficial leagues, to-wit, the first plat marked No. 1, on the right bank of the River Ouachita, commencing or starting five arpens below the mouth of the Bayou Cheniere au Tondre till it reaches the Bayou Calumet, with the depth necessary to complete or produce one hundred and forty thousand superficial arpens. The second plat marked No. 2, on the left bank of the same River Ouachita, to start or begin two leagues below the Fort Miro at

the point called Laine, till it reaches the Prairie de Lee, with the necessary depth to complete or produce sixty thousand arpens superficial. The third plat marked No. 3, to start in front of the Bayou de la Loutre, and from thence on a line running south sixty-five degrees east to the Bayou Siar, which line the Bayou Siar and Bayou Barthelemy, and the Ouachita bound said plat No. 3 and the plat No. 4, on the right bank of the Ouachita, to start in front of the entrance of Bayou Barthelemy, running down the river till it reaches the Bayou la Loutre; which plats Nos. 3 and 4, with the corresponding or necessary depth, are to complete eight thousand three hundred and forty-four superficial arpens, and, added to the plats Nos. 1 and 2, form together the superficial total of two hundred and eight thousand three hundred and forty-four superficial arpens, equal to the foregoing thirty leagues, at the rate of two thousand five hundred toises or fathoms per side for each league, which is the agrarian measure of this province, it being well understood that the lands included in the foregoing plats, which are held by titles in form, or by virtue of a fresh decree of commission, are not to compose a part of the foregoing thirty leagues; on the contrary, the Marquis of Maison Rouge promises not to injure any of the said occupants, promising to maintain and support them in all their rights, since, if it should happen that the said thirty leagues should suffer any diminution of the land occupied, there will be no objection or inconvenience to the said Marquis of Maison Rouge's completing or making up the deficiency in any other place where there are vacant lands, and to the satisfaction of the concerned."

"And in order that it may so appear or be made patent, I give the present, with the preceding figurative plan, formed or drawn by order of the Governor General, the Baron de Carondelet, to which faith is to be given this 14 June, one thousand seven hundred and ninety-seven."

"[Signed] CARLOS TRUDEAU"

"Noted in book A"

On 20 June, 1797, the following grant was issued:

"The Baron de Carondelet, knight of the order of St. John, marshal de camp of the royal armies, governor general, vice patron of the provinces of Louisiana and West Florida, inspector of troops &c.;"

"Forasmuch as the Marquis de Maison Rouge is near completing the establishment of the Washita, which he was authorized to make for thirty families, by the royal order of July 14, 1795, and, desirous to remove, for the future, all doubt respecting other families or new colonists who may come to establish themselves, we destine and appropriate conclusively for the establishment of the aforesaid Marquis de Maison Rouge, by virtue of the powers granted to us by the King, the thirty superficial leagues marked in the plan annexed

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to the head of this instrument, with the limits and boundaries designated, with our approbation, by the Surveyor General Don Carlos Lareau Trudeau, under the terms and conditions stipulated and contracted for by the said Marquis de Maison Rouge."

"And that it may at all times stand good, we give the present, signed with our hand, sealed with our seal at arms, and countersigned by the underwritten honorary commissary of war and secretary of his Majesty for this commandancy general."

"[Signed] THE BARON DE CARONDELET"

"ANDRES LOPEZ ARMESTO"

"New Orleans, 20 June, 1797"

"NOTE. -- That in conformity with his contract, the Marquis de Maison Rouge is not to admit or establish any American in the lands included in his grant."

"[Signed] THE BARON DE CARONDELET"

In the latter part of the year 1799, Maison Rouge died, leaving a will, which was dated 26 August in that year. It was as follows:

"First. -- Recommending my soul to the same Lord God who gave it to me, and created and redeemed it at the price of his most precious blood, passion, and death, I implore him by the most holy bowels of his divine mercy, that he will pardon it and send it to eternal rest among the chosen, for which it was created."

"My body I order to be placed in the earth, out of which it was made, and when I die, I desire to be buried in the plainest manner, and that my funeral shall take place in such place as my executor chooses, to whom I leave the management of the rest of my funeral and interment in order that he may act as to him appears best -- such being my will and pleasure."

"I also direct that three masses be said for the rest and repose of my soul, for each of which three bits or rials shall be paid once, and to each of the donations into which my goods and effects are divided."

"I also declare that I am a bachelor, that it may so be made manifest and certain. I also declare and make known that I possess property in Paris, Berry, and Querry, which was confiscated, of which I possess no documents to establish my claim."

"I also declare that I possess in Ouachita a house and land, which I give and bequeath to my servant maid, called Maria, an Irish woman -- such being my wish and pleasure."

"I also declare that I owe some small sums to my work people, which I desire to be paid from the present harvest."

"I also name as my executor and property holder Mr. Louis Bouligny, whom I empower and give authority to, after my death, to take possession of my goods and property, without the intervention

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or interference of judicial proceedings; to make inventories, valuations, and sales thereof; to appoint such appraisers as he chooses, and to adopt all necessary proceedings until my mortuary affairs are concluded and wound up, for which purpose I postpone and extend the year of executorship, and further time which

may be necessary for that purpose, and such is my will and pleasure."

"I also declare that I have, at the house of Don Pedro, all the articles necessary to build a saw mill for cutting plank, and a pump auger."

"I also desire and declare that in the donation which by this will I make to my servant maid Maria of a house and land, there is only included five acres front, by the usual depth, and the aforesaid house, and not the rest, or other land, such being my will and pleasure."

"And the residue and remainder of my goods, rights, and actions, as well within as out of this province, in case my parents are dead, I constitute and name, for my sole and universal heir, the aforesaid Louis Bouligny, in order that, after my decease, he may have and inherit them, with the blessing of God and myself, and such is my will and pleasure."

"I revoke and annul, and declare void, cancelled, of no value nor effect whatever any other wills and testamentary dispositions I may have heretofore made by word, or in writing, which I desire no faith or value shall be attached to, saving and excepting this, which I at present authorize and declare in such manner and form as may stand good and right."

"In faith of which, this instrument is dated in the City of New Orleans, 26 August, one thousand seven hundred and ninety-nine."

"I, the notary, give faith to and know the declarer, who, to appearance, possesses his natural judgment, memory, and understanding, and signed it in the presence of Don Andres Lopez de Armesto, honorary commissary of war and secretary of this government, Dn. Pedro Gondillo, and Dn. Vizente Texeiro Lientard, inhabitants."

"DE MAISON ROUGE"

In 1802, Bouligny went upon the ground and caused a survey to be made by McLaughlin, who had been a deputy surveyor under Trudeau.

In 1803, Daniel Clarke applied for and obtained from the intendant general of New Orleans copies of the contract with Maison Rouge, and of the order of 14 July, 1795.

Congress having passed an act for the purpose of ascertaining the rights of persons to land within the district and Territory of New Orleans, the commissioners appointed under that act reported upon Bouligny's claim as follows:

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image:a

Class B, in which the claim was placed by the commissioners, is thus described by them.

To the second class, comprising

"claims which, though not embraced by the provisions of the said acts, ought nevertheless, in the opinion of the commissioners, to be confirmed in conformity with the laws, usages, and customs of the Spanish government,"

the letter B will be affixed.

By an Act of 29 April, 1816, the claims marked B were confirmed:

"provided, nevertheless, that under no one claim shall any person or persons be entitled under this act to more than the quantity contained in a league square."

In 1841, the defendant Coxe, who had become owner of this claim, applied for patents for a league square, which were accordingly given him, under the circumstances stated in the opinion of the late Mr. Attorney General Legare, under date of 22 December, 1841.

On 13 February, 1843, the United States, by Bailie Peyton, its attorney, filed a petition in the circuit court of the United States stating that Richard King had taken possession of and claimed title to, a part of the land. The petition prayed that the

land might be adjudged to belong to the United States &c.;

King answered and called Coxe in warranty, who also answered and set forth his title *in extenso* under the grant to Maison Rouge.

On 10 July, 1843, the court, after argument, pronounced the following decree:

"The court having maturely considered the law and the evidence in this case, doth now order, adjudge and decree that the plaintiff's petition be dismissed and that the grant made by the Baron de Carondelet, as the Governor of Louisiana, on 20 June, 1797, to the Marquis de Maison Rouge, be and the same is hereby declared valid; that the said Richard King, the defendant, and the said Daniel W. Coxe, warrantor, be and they are hereby declared and recognized to be the lawful owners of the parts of the said grant held by them, as described in the answer of the said Richard King,

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and in the schedule 'A,' and that they be quieted in the ownership and possession of the same."

"[Signed] THEO. H. Mc CALEB, U.S. Judge"

In the course of the trial, the United States filed five, and the defendants three bills of exceptions. The following were assigned as errors on the part of the United States.

1. That in the matters stated in the several bills of exception, not necessary here to be restated, the court below committed error.
2. That the evidence in the cause does not sustain the claim of title of the defendants to the lands in controversy.
3. That the acceptance by the defendant Daniel W. Coxe, of a patent for one league square of said land, under the Act of Congress of 29 April, 1816, operates as an extinguishment of his title to any other portion of said land.

The evidence referred to in the second point of error was very voluminous. It consisted of a number of letters written by the Baron de Carondelet by the Marquis de Maison Rouge and by others, and of the deposition of sundry persons, all of which it is impossible to insert at length or to compress within a reasonable compass.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case is one of great importance from the amount of property in dispute, and if the Court entertained any doubt upon the questions of law or of fact which are presented by the record, we should regard it as our duty to hold it under advisement and postpone the decision to another term. But the principles of law upon which it

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depends are not new in this Court, and have often been the subjects of discussion and consideration since the cession of Louisiana and Florida to the United States. And having, after a careful examination of the evidence, formed a decided opinion upon the facts in the case, we deem it proper to dispose of it without further delay.

The claim in question arises upon two instruments of writing, executed by the Baron de Carondelet, Civil Governor of Louisiana, one in 1795, and the other in 1797, the latter of which is alleged, by the defendant in error, to be a grant to the Marquis de Maison Rouge, for the land included in a plat made out by Trudeau, the surveyor general of the province, and dated 14 June, 1797, and which survey embraces the land in controversy. It is insisted, on the part of the United States, that this certificate of Trudeau is antedated and fraudulent; and in order to determine the state of the facts upon which the questions of law will arise, the authenticity of this survey will be the first subject of inquiry.

Upon this point, a good deal of testimony has been taken upon both sides. But it would extend this opinion to an unreasonable and unnecessary length, to enter

upon a minute comparison and analysis of the testimony of the different witnesses, and of the other evidence contained in the record. It is sufficient to say that, after an attentive scrutiny and collation of the whole testimony, we think it is perfectly clear that this certificate of Trudeau is antedated and fraudulent, and we refer to the evidence of Filhiol, McLaughlin, and Pomier, as establishing conclusively that the actual survey upon which this certificate was made out, did not take place until December, 1802, and January, 1803; and that the one referred to by the governor, in the paper of 1797, was for land in a different place, and higher up the Washita River. We are entirely convinced that the survey now produced was not made in the lifetime of the Marquis de Maison Rouge, who died in 1799, but after his death, and at the instance of Louis Boulogny, who, according to the laws of Louisiana, was what is there termed the forced heir of the marquis; and that it was made in anticipation and expectation of the cession of the country to the United States; the negotiations upon that subject being then actually pending, and the treaty of cession signed on 30 April, 1803. We see no reason to doubt the truth of the witnesses to whom we have referred. On the contrary, they are supported by the testimony of other witnesses, and by various circumstances detailed in the record.

It has, however, been argued that, inasmuch as an attested copy of this certificate, with the two instruments executed by the Baron de Carondelet, were delivered to Daniel Clarke, in August, 1803, by the Spanish authorities at New Orleans, upon his application for the documentary proofs of the title to this land, the authenticity of the paper in question ought not to be impeached, and that it is inconsistent with the comity due to the officers of a foreign government,

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to impute to them fraud, or connivance in a fraud, in an official act where their conduct has not been questioned by the authority under which they were acting, and to which they were responsible. This proposition is undoubtedly true, where no other interest is concerned except that of their own government or its citizens. And as regards the interest of others, the acts of the officer, in the line of his duty, will *prima facie* be considered as performed honestly, and in good faith. And although this certificate and the other documents were delivered to Clarke after the

country had been ceded to the United States, yet as possession had not been taken, and the evidences of titles to lands in the ceded province were still lawfully in the hands of the Spanish authorities, the documents upon that subject, obtained from the proper officer, ought to be regarded as genuine, unless impeached by other testimony, and to that extent this Court is bound to respect the certificate in question. But it would be pushing the comity usually extended to the tribunals and officers of a foreign government, beyond the bounds of justice and the usages of nations, to claim for them a total exemption from inquiry, when their acts affect the rights of another nation or its citizens. Certainly, the political department of this government has never acknowledged this immunity from inquiry, now claimed for the Spanish tribunals and officers, and in every law establishing American tribunals to examine into the validity of titles to land in Louisiana and Florida, derived from the government of Spain, they are expressly enjoined to inquire whether the documents produced in support of the claim are antedated or fraudulent, and we have no doubt that it is the right of this Court to hear and determine whether the certificate of Trudeau, although recognized and sanctioned by the colonial authorities of Spain, is antedated and made out either with or without their privity and consent, in order to defraud the United States, and to deprive them of lands which rightfully belonged to them under the treaty; and that it is our duty to deal with it as the evidence may require. We desire, however, to be understood, when speaking upon this subject, as not intending to charge the present claimants with having participated in the fraud, but from the testimony in the record, we are fully convinced that it was committed in the manner hereinbefore mentioned, by Boulogny, under whom they claim title.

Regarding the case in this point of view, the right of the defendant in error must stand altogether upon the instruments executed in 1795 and 1797, by the Baron de Carondelet; and it has not the aid of any authentic survey, to ascertain and fix the limits of the land, and to determine its location. The instruments themselves contain no lines or boundaries, whereby any definite and specific parcel of land was severed from the public domain; and it has been settled, by repeated decisions in this Court, and in cases, too, where the instrument contained clear words of grant, that if the description was

vague and indefinite, as in the case before us, and there was no official survey to give it a certain location, it could create no right of private property in any particular parcel of land, which could be maintained in a court of justice. It was so held in the cases reported in [40 U. S. 15](#) Pet. 184, [40 U. S. 215](#) , 257, [40 U. S. 319](#) , and in [41 U. S. 16](#) Pet. 159-160. After such repeated decisions upon the subject, all affirming the same doctrine, the question cannot be considered as an open one in this Court. Putting aside, therefore, and rejecting the certificate of Trudeau, for the reasons before stated, the instruments in question, even if they could be construed as grants, conveyed no title to the Marquis de Maison Rouge for the land in question, and, consequently, the defendants in error can derive none from him. The land claimed was not severed from the public domain, by the Spanish authorities, and set apart as private property, and consequently it passed to the United States by the treaty which ceded to them all the public and unappropriated lands. It is unnecessary, therefore, for the decision of the case, to say anything in relation to the construction and effect of these two instruments or the purposes for which they were intended.

As relates to the claim of an equitable arising from the number of immigrants alleged to have been introduced under these instruments, it would not avail the defendant in error in this action, even if the proofs showed a performance equal to that contended for on his part. For if these instruments were regarded as grants, and it appeared that the Marquis de Maison Rouge had originally selected this very district as the place where the grant was intended to be located, and the immigrants introduced by him had been settled upon it in performance of the conditions of his contract, and if it should be held that he had thereby acquired an equitable right to have the quantity of land mentioned in the paper of 1797 laid off to him at this place, still it would be no defense against the United States. For in the case of [Choteau v. Eckhart](#), 2 How. 375, this Court decided that an imperfect title derived from Spain, before the cession, would not be supported against a party claiming under a grant from the United States, unless it had been confirmed by act of Congress. The same point was again fully considered and decided, at the

present term, in the case of *Hickey v. Stewart*. These decisions stand upon the ground that such titles are not confirmed by the treaty itself so as to bring them within judicial cognizance and authority, and that it rests with the political department of the government to determine how and by what tribunals justice should be done to persons claiming such rights. If, therefore, this controversy was in a court of equity, and no suspicion of fraud rested upon the claim, yet it could not be supported against a grantee of the United States, because Congress has not confirmed it, nor authorized any other tribunal to determine upon its validity. This case, however, is in a court of law; the petitory action brought by

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the United States in the Circuit Court of Louisiana, being in the nature of an action of ejectment in which the decision must depend on the legal title, and that title under the treaty of cession being in the United States, an equitable title, if the defendant in error could show one, would be no defense.

It has indeed been urged in the argument that the Act of April 29, 1816, 1, 3 Story Laws, 1604, confirmed this grant to the claimants to its whole extent. Upon this point we do not think it necessary to go into a particular and minute examination of the acts of Congress upon this subject, nor indeed of the act referred to. Because the provision in this act, that the confirmation shall extend only to the quantity of land contained in a league square, is in the judgment of the court too clear and unambiguous to admit of serious controversy. The restriction of the confirmation to the quantity above mentioned, appears to be as plainly stated in the proviso as language could make it, and Congress certainly, in a claim of this description, addressing itself to the political power, had a right to confirm a portion of the claim, and at the same time, to refuse to give the claimant a title to the residue, if they supposed it just to do so.

Another question of more difficulty arises under this act of Congress, but as it has not been pressed in the argument, we forbear to express an opinion upon it. It appears that the claimant has accepted a patent for a league square. In similar cases in Florida, the act of Congress upon that subject provided, that the patent

for the quantity confirmed should not issue unless the claimant released all title to the residue. The law in relation to the land in question does not, it is true, require this release, and the patent was issued and accepted under an understanding with the Commissioner of the General Land Office, that the acceptance should not prejudice the claim to the residue. Yet it is a question worthy of serious consideration, how far the acceptance of the land proffered by Congress, even under these circumstances, must affect any title to the residue, which the party might be supposed to have had, and ought to influence the judgment of the court where the fact appears in the record. It is unnecessary, however, to pursue the inquiry, since for the reasons before stated, the judgment of the circuit court must be

Reversed.