Jourdan Vs. Barrett

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Appellant : Jourdan

Respondent : Barrett

Judgement :

Jourdan v. Barrett - 45 U.S. 169 (1846)
U.S. Supreme Court Jourdan v. Barrett, 45 U.S. 4 How. 169 169 (1846)

Jourdan v. Barrett

45 U.S. (4 How.) 169

ERROR TO THE SUPREME COURT OF

LOUISIANA FOR THE EASTERN DISTRICT

SYLLABUS

Under the former government of Louisiana, the regulations of O'Reilly, Gayoso, and Morales recognized the equitable claim of the owners of tracts of land fronting on rivers &c.;, to a portion of the public lands which were back of them, and after

the cession, the United States did so also.

The Act of Congress passed 3 March, 1811, 2 Lit. & Brown's ed. 662, extended to the front owner a preference to enter the land behind him. That act also provided that where, owing to a bend in the river, each claimant could not obtain a tract equal in quantity to the tract already owned by him, the principal deputy surveyor of each district, under the superintendence of the Surveyor of the Public Lands South of the State of Tennessee should divide the vacant land amongst the claimants in such manner as to him might seem most equitable.

The Act of March 2, 1805, had extended the power of the surveyor of lands south of Tennessee over the Territory of Orleans, and the Act of April 27, 1806, had directed him to appoint two principal deputies, one for each district of the Territory of Orleans.

The Act of March 3, 1831, directed the appointment of a Surveyor General of Public Lands in Louisiana, after 1 May, 1831.

In March, 1832, therefore, the Surveyor of Public Lands South of Tennessee had no power to approve a survey.

The act of 1811 reserved for the public all such back lands as were not correctly taken up under that act by the proprietors of river fronts, and those who did not enter their claims in time did not lose whatever equity they may have had before the passage of the act.

An unauthorized survey by one of the claimants did not confer upon him any additional rights.

In executing the acts of 1820 and 1832, claimants were allowed to pay for the largest amount which they claimed, but the precise amount due on the exact quantity of land to which they were entitled could not appear until the final survey.

When the land was laid out into ranges, townships &c.;, the survey of township No. 11, approved by H. S Williams, Surveyor General of Louisiana, settled the rights of parties in that township.

A possession of any part of these back lands anterior to this survey cannot be set up as a defense under the laws of Louisiana, because the lands belonged to the United States, and those persons in possession were trespassers.

These were petitory actions, according to the practice of Louisiana, brought by the plaintiffs in error against Barrett to recover some land, and as they involved the same questions of law, they were consolidated in the courts of that state.

By referring to the diagram which will be found on the next page, it will be seen that Jourdan and Landry were the owners of land fronting on the Mississippi River and running back about forty arpents. There were nearly forty other proprietors similarly situated, between *a* and *c* , whose location it is not necessary to insert. Their lands were all bounded in the rear by a line running nearly parallel with the river, so as to include the quantity called for in their respective grants.

Page 45 U. S. 170

The facts in the case were these.

On 3 March, 1811, Congress passed an act entitled

"An act providing for the final adjustment of claims to lands, and for the sale of the public lands, in the Territories of Orleans and Louisiana and to repeal the Act passed for the same purpose and approved February 16, 1811."

2 Lit. & Brown's ed. 662.

image:a

Page 45 U. S. 171

The fifth section was as follows:

"5th. That every person who, either by virtue of a French or Spanish grant recognized by the laws of the United States, or under a claim confirmed by the

commissioners appointed for the purpose of ascertaining the rights of persons claiming lands in the Territory of Orleans, owns a tract of land, bordering on any river, creek, bayou, or watercourse in the said territory, and not exceeding in depth forty arpents, French measure, shall be entitled to a preference in becoming the purchaser of any vacant tract of land adjacent to, and back of, his own tract, not exceeding forty arpents, French measure, in depth, nor in quantity of land that which is contained in his own tract, at the same price, and on the same terms and conditions, as are or may be provided by law for the other public lands in the said territory. And the principal deputy surveyor of each district, respectively, shall be, and he is, hereby authorized, under the superintendence of the Surveyor of the Public Lands South of the State of Tennessee, to cause to be surveyed the tracts claimed by virtue of this section, and in all cases where, by reason of bends in the river, lake, creek, bayou, or watercourse bordering on the tract, and of adjacent claims of a similar nature, each claimant cannot obtain a tract equal in quantity to the adjacent tract already owned by him, to divide the vacant land applicable to that object between the several claimants in such manner as to him may appear most equitable, provided, however, that the right of preemption granted by this section shall not extend so far in depth as to include lands fit for cultivation bordering on another river, creek, bayou, or watercourse. And every person entitled to the benefit of this section shall, within three years after the date of this act, deliver, to the register of the proper land office, a notice in writing, stating the situation and extent of the tract of land he wishes to purchase, and shall also make the payment and payments for the same at the time and times which are or may be prescribed by law for the disposal of the other public lands in the said territory; the time of his delivering the notice aforesaid being considered as the date of the purchase. And if any such person shall fail to deliver such notice within the said period of three years, or to make such payment or payments at the time above mentioned, his right of preemption shall cease and become void, and the land may thereafter be purchased by any other person in the same manner and on the same terms as are or may be provided by law for the sale of other public lands in the said territory."

On the 11th of May, 1820, Congress passed another act, 3 Lit. & Brown's ed. 573, entitled, "An act supplementary to the several acts for the adjustment of land claims in the State of Louisiana," the seventh section of which was as follows.

"That the fifth section of the Act of 3 March,

Page 45 U. S. 172

1811, entitled 'An act providing for the final adjustment,' &c.;, be, and the same is, hereby revived and continued for the term of two years from and after the passing of this act."

On 12 April, 1822, Bringier, under whom Barrett, the defendant claimed, filed the following application.

"To the Register of the Land Office for the Eastern District of Louisiana, at New Orleans."

"SIR -- In virtue of an Act of Congress, dated 11 May, 1820, I apply to become the purchaser of a tract of land adjacent to and back of a front tract already owned by me, which said front tract contains 27 arpents 13 toises and 2 feet front, and forty arpents in depth, bounded as follows, *viz.,* front on the left bank of the Mississippi, on the upper side by land of Baptiste Loviere, and below by lands of Paul Le Blanc. This land, composed of four tracts, confirmed in the name of Alexis Cesar Bonremy and in the name of James Melancon. Two arpents, on the lower side, have been sold. The said back land, now claimed by right of preemption, extends in depth _____ arpents, beginning at the rear of the said front tract, and contains five hundred and ten superficial acres, not being a greater quantity than is contained in my front tract, and does not extend so far back as to include any land fit for cultivation, bordering on any river, creek, bayou, or watercourse."

"[Signed] ML. DORADON BRINGIER"

"New Orleans, April 12, 1822"

On 13 April, 1822, Bringier paid to the receiver $637.50, as the price of the land.

On 17 May, 1822, Harper, the register, issued the following certificate.

"I certify, that from the records in my office, expressing the quantity of land contained in the applicant's front tract (the surveys in this district not having been executed), and in virtue of the laws in this case made and provided, it appears the said applicant is entitled to the quantity of land for which he has applied, *viz.,* five hundred and ten superficial acres, on paying the price of one dollar and twenty-five cents per acre."

"[Signed] SAMUEL H. HARPER, *Register* "

On 17 December, 1822, John Wilson, subscribing himself principal deputy surveyor for that district, surveyed the tract of land at the request of Bringier, who took possession of it. It is unnecessary to state the mesne conveyances by which the title was passed, through sundry persons, from Bringier to Barrett, who was in possession at the institution of the present suits.

In 1829, the township and sectional lines were run for the first

time over this district in the mode pursued in running out other public lands of the United States.

On 10 June, 1830, a survey was completed under the authority and with the approbation of A. T. Rightor, principal deputy surveyor of the exterior boundaries of the township and of the lands in question, together with others, which survey was reexamined and approved by Gideon Fitz, Surveyor of Public Lands South of Tennessee, on 9 March, 1832. This survey differed in some degree from the one previously made by Wilson, although agreeing with it in substance, and being adopted by Bringier and his grantees as the basis of their title, has been followed in the preceding diagram.

On 15 June, 1832, Congress passed another act, 4 Lit. & Brown's ed. 539, entitled "An act to authorize the inhabitants of the State of Louisiana to enter the back lands." It did not refer to either of the two preceding acts, but in substance and

nearly in the same words reenacted the fifth section of the act of 1811, limiting the time of making application to three years from the date of the act.

On 9 August, 1834, Jourdan, one of the plaintiffs in error, obtained from the receiver the following certificate.

"RECEIVER'S OFFICE, SO. EAST. DIST. LA."

"New Orleans, August 9, 1834"

"Received from Noel Jourdan, of the Parish of St. James, the sum of three hundred and thirty-six 80/100 dollars, being in full of the purchase money of his preemption right by virtue of an act of Congress authorizing the inhabitants of Louisiana to enter their back lands, approved 15 June, 1832, to a tract of land adjacent to and back of his front tract, situate in township No. 11, range No. 3 east, and containing two hundred and sixty-nine 44/100 superficial acres, at one dollar and twenty-five cents, as per register's certificate, numbered No. 9."

"[Signed] MAURICE CANNON, *Receiver of Public Moneys* "

On 8 March, 1836, Landry, the other plaintiff in error, obtained the following certificate.

"No. 520. RECEIVER'S OFFICE, SO. EAST. DIST. LA."

"New Orleans, 8 March, 1836"

"Received from Joseph Landry, of the Parish of St. James, the sum of one hundred and ninety-two 76/100 dollars, being in full of the purchase money of his preemption rights, by virtue of an act of Congress, authorizing the inhabitants of Louisiana to enter their back lands, approved 15 June, 1832, to a tract of land adjacent to and back of his front tract, situate in township No. 11, range

No. 3 east, and containing one hundred and fifty-four 21/100 superficial acres, at one dollar and twenty-five cents, as per register's certificate, numbered 520, and

being described as section No. 19."

"[Signed] MAURICE CANNON, *Receiver of Public Moneys* "

In February, 1838, Jourdan and Landry filed separate petitions in the District Court for the First Judicial district of the State of Louisiana, claiming their respective back lands. Barrett, who was then in possession of the tract surveyed for Bringier, answered the petition and called in warranty, according to the Louisiana practice, all the intermediate grantors between Bringier and himself and Bringier also. They all responded to the call, and various evidence was taken and filed in the causes, which, as has been already mentioned, were consolidated and prosecuted together.

On 22 March, 1838, the court adjudged and decreed that judgment should be entered for Barrett, the defendant; an appeal being made to the Supreme Court of Louisiana, that court, on 21 January, 1839, affirmed the judgment, to review which a writ of error brought the case up to this Court.

Page 45 U. S. 177

MR. JUSTICE CATRON delivered the opinion of the Court.

The record brings before us two petitory actions, one of Landry against Barrett and the other of Jourdan against the same defendant. The state district court of Louisiana adjudged the title of Barrett the better, and for this reason decided in his favor in both actions, but in that of Landry it was also held that the title to the land he claimed was invalid because he produced no other evidence of claim than the receipt of the receiver above set forth, dated 8 March, 1836; that the Act of June 15, 1832, limited his right to purchase to three years, and not having filed his notice of claim, and paid his money, until 8 March, 1836, he came too late, and for this reason also the petition must be dismissed. The judgment being affirmed generally by the Supreme Court of Louisiana, and being opposed to the authority exercised by the officers of the United States, acting in virtue of acts of Congress, it becomes our duty to examine whether the judgment below was proper on this

ground. We find the district court overlooked the Act of February 24, 1835, which extended the time to 15 June, 1836, to owners of front tracts to become purchasers by preference of the back tracts adjacent to those owned by them, so that the purchase made by Landry on 8 March, 1836, was in time. It follows the claims of Landry and Jourdan are alike, and the opposing claim of Barrett, being the same as to each of the petitioners, the controversy may be treated as one suit. It depends on mixed questions of law and fact, both having been submitted to the courts below for their judgment without the aid of a jury, and as the facts giving rise to the controversy call for construction of acts of Congress to give the facts effect, they come before this Court for its action under the 25th section of the Judiciary Act. This is the settled doctrine here, as will be seen by the cases of *Pollard's Heirs v. Kibbie,* 14 Pet. 353, *City of Mobile v. Eslava,* 16 Pet. 234, and *Chouteau v. Eckhart,* 2 How. 372.

Neither party has a patent, and each comes before us asserting a superior equity to the lands in dispute. Barrett insists that the entry under which he claims title, dated April 12, 1822, was made for a specific quantity of 510 superficial acres, and designated by

Page 45 U. S. 178

survey and side lines ten years and more before the opposing claims originated, and therefore his possession cannot be disturbed by their assertion.

On the other hand, it is insisted that Bringier, under whom Barrett claims title, had no preference extended to him by the Act of May 11, 1820, to enter so much as 510 acres as back land to the Whitehall tract; that it fronted on the inside of a bend of the Mississippi River and conformed to Spanish and French forty arpent concessions made on fronts, in concave bends, in the extension of side lines, which uniformly converged in proportion to the greater or less circle of the bend; that the Whitehall tract was much narrower on the back than on the front side; that the act of Congress did not permit Bringier to enter any other back land than that within his direct side lines, produced from the river eighty arpents deep; and that Barrett's equity is limited to the "back land," in quantity to forty arpents deep within

these lines, although much less than 510 acres. And that as this mode of surveying the double concession will not include the land entered by either of the petitioners, they are entitled to recover; furthermore, that in this form has Barrett's claim been surveyed by public authority, and in no other.

In December, 1832, Bringier caused Wilson, a surveyor, to run out his claim of 510 acres in the same form of the front tract -- that is, he began at the back terminus of each side line of the old tract and ran diverging lines so as to make the opposite side of his new survey of the same width with the front on the river, thus making a tract of 1,020 acres, little more than half as wide in the middle as it is at either end. This survey was neither returned to nor recorded in the surveyor general's office, nor recognized by the officers of the United States as a public survey. Bringier, and those claiming under him, however, took and held possession of the land surveyed, and improved the same, assuming that it covered the land entered in 1832, and that it was lawfully made; at least, as against any claim the petitioners can be permitted to set up. This we suppose mainly to depend on the true construction of the act of 1811, which was renewed from time to time.

The surveys of township No. 11, including the lands in dispute, were not made until the fall of 1829 and spring of 1830, and then only in part, both as to the ordinary extension lines, and as regarded the private grants and back lands subject to be attached by preference of entry to front grants. Until these latter were surveyed, they could not be acted on as to specific quantity. By the Act of March 2, 1805, section 7, the powers of the surveyor of lands south of Tennessee were extended over the Territory of Orleans. And by the 9th section of the Act of April 21, 1806, he was directed to appoint two principal deputies, one

for each of the districts into which the Orleans territory was divided, who were to keep separate offices of their own, and to execute public surveys in their respective districts, in conformity to the regulations and instructions of their principal.

By the Act of March 3, 1831, a surveyor general of public lands lying in the State of Louisiana was ordered to be appointed, and on whom, within that state, were devolved the duties formerly imposed on the surveyor of lands south of Tennessee; that is, after 1 May, 1831; and also the duties of the two principal deputies authorized by the act of 1806. The latter offices were abolished, and the duties appertaining to them merged in the surveyor general's office of Louisiana. That officer took charge of the official records and papers, and on him was imposed the duty of doing equity among those entitled to back concessions under the acts of 1820 and 1832, where it had not been previously done. His own deputies did the field work not done on his coming into office; and in his time were the surveys in township No. 11 completed, and by him were they first approved after their completion. This the government recognizes as the legal survey of the township, by which the United States are bound, and on extracts from which patents and certificates can be founded, and to this end the approved plan of it was filed in the register's office of the South-Eastern District of Louisiana on 8 of August, 1834; by it all those purchasing from the United States, either by preference of entry or otherwise are bound to abide, unless legal alterations have been made or there were existing legal and sanctioned surveys, laying off back lands to particular front owners, independent of the general survey. None such was made for the Whitehall tract, as we think, and its back land, as to extend and form, is governed by the general plan above named. The one made by Rightor's direction, approved by Gideon Fitz, Surveyor of Public Lands South of Tennessee (March 9, 1832), received no additional value from such approval, as the act of 1831 superseded his authority in this respect. Rightor deposes that at no time had the surveyor south of Tennessee any power of approval or supervision of the surveys made by him, Rightor, as principal deputy, and that the surveys made by Foster and Walker in the spring of 1830, and approved by Rightor, as principal deputy, June 10, 1830, in his judgment bound the United States, as to the form and extent of the land attached to the Whitehall tract. The Commissioner of the General Land Office thought the survey on its face an unwarrantable proceeding, as it cut off the back lands of Bringier's neighbors, and violated the act of 1811. 2 Land Laws, No. 950. And we think the commissioner was right in his conclusion. Claims of double concessions in Louisiana were not new in practice; surveys of

such claims were common, and the direct extension of the side lines of the front tract was the

Page 45 U. S. 180

equity, as a general rule, accorded to them, as we apprehend, and so gross a violation of it as is found in Bringier's survey could not be sanctioned.

In April, 1822, when Bringier's entry was made, there can be no fair pretense to say he acquired by the entry an equity to the extent of Wilson's or Rightor's survey, as against others having at that time equal rights to enter back land, which rights the survey assumed to defeat. By his entry, Bringier acquired an equity to certain land, to be laid off in a form not to interfere with his neighbors having equal rights under the law. They did not enter, probably because his unjust, pretended claim deterred them, and failing to do so until the time expired, Bringier assumed that his equity might be enlarged, and was enlarged, to the extent that Rightor's or Wilson's survey goes.

We think this assumption cannot be sustained; what equity Bringier acquired took date with his entry, and his survey ought to have been the same, had no one claiming front lands interfered, as the act of Congress reserved for future sale all the back lands not entered in time, a provision that would have been altogether defeated in this instance if the assumption was true. For nearly twenty years after the act of 1811 was passed, the government failed to survey the back lands, so as to afford an opportunity to front owners to acquire woodland in the rear (most necessary in a sugar-growing country), and it would be strange had the power to make back concessions been parted with, in so plain a case, by permitting sweeping surveys like that of Bringier.

We say above claims for double concessions were not new. O'Reilly's regulations of 1770 provide for narrow front grants on rivers, by forty arpens in depth; for embankments in front for the exclusion of high water; for ditches to carry off the water; for roads and bridges. The 17th article of Gayoso's regulations confirms those of O'Reilly. These were made by governors general, who had the distribution

of lands from 1770 to October, 1798; then the authority was restored to the General Intendant of Louisiana and West Florida, Morales; and in this officer the power remained up to the change of governments in 1804. All the regulations will be found in 2 White's Recopilacion 228, 244. In article 3 of Morales's, especial duties are prescribed to the owners of front grants, but nearly the same of O'Reilly's. The syndics were bound to enforce the making of such embankments, ditches, roads, and bridges, and the clearing in the three first years, in addition, a certain quantity of land, and putting it into cultivation. The grants were not to exceed six or eight arpens in front; usually not so much was granted, and the lands were to adjoin. Annually the Mississippi overflows, and to prevent an inundation of the country, heavy and expensive embankments are required, and they must be continuous, and are so, for hundreds of miles, on the banks

of the river. The country would be worthless without them. It had been reclaimed from the water by this means and the ditches, by the French and Spanish front proprietors, and on the keeping up of the levees the value of the back lands depended; the great expense, and constant watchings, during a part of the year, to guard against inundation, and that of the whole country, by a break in the levee at any one place, involve public considerations to Louisiana of the highest magnitude, and those whose duty and interest it was to prevent it -- the front owners -- had extended to them, by the Spanish government, peculiar privileges, and which the United States at an early day recognized.

A board of commissioners was established by the Act of March 2, 1805, whose duty it was to examine and report to Congress on French and Spanish claims to lands in that section of country; and by the Supplementary Act of April 21, 1806, section 5, it was made their further duty, among other things,

"to inquire into the nature and extent of claims which may arise from a right to a double or additional concession on the back of grants or concessions heretofore made, . . . and to make a special report thereon to the Secretary of the Treasury, which report shall be by him laid before Congress at their next session. And the

lands which may be embraced in such report shall not be otherwise disposed of until a decision of Congress shall have been had thereupon."

The commissioners were engaged for some six years in the Orleans Territory in pursuing their investigations, and their reports were laid before Congress by the Secretary of the Treasury early in 1812. But in the meantime it was well known what course had been pursued by the board in regard to all descriptions of claims, and among others of back concessions. Instances in the report will be found in 2 Am.State Papers 297, 337. Of claim (p. 297) No. 101, the board says

"Benj. Babin claims a second depth of forty arpents, lying immediately back of a front or first depth, which we have already confirmed to him among the confirmed claims."

"The claimant has no other foundation for his title to the second depth than having occupied the front and first depth, and having occasionally supplied himself with timber from this second depth."

"According to the laws, customs, and usages of the Spanish government, no front proprietor, by any act of his own, could acquire a right to lands further back than the ordinary depth of forty arpents, and although the Spanish government has invariably refused to grant the second depth to any other than the front proprietor, yet nothing short of a grant or warrant of survey from the governor could confer a title or right to the land; wherefore we reject the claim."

We give this as an instance of many similar ones reported.

The statement applies to all front tracts, where only the first

forty arpents had been granted by France or Spain. Instead of granting the back lands as a donation, the government of the United States extended to the front owner a preference of entry, by the act of 1811, and if the entry was not made, the land was reserved, as above stated. No question affecting the titles to lands in Louisiana was more interesting to the old inhabitants, than the one concerning the

back lands, and although the former government had granted them in probably but few instances, yet this was quite immaterial to front owners at that time, as they had the privilege of getting wood and timber from them, and the lands were in no danger of being granted to another. That back lands at all times meant those in the rear between the extended front lines in the rear, to the distance of forty arpents (each line being a straight one throughout) we suppose to be undoubted, as a general rule, although there may have been exceptions to it.

Many tracts had no doubt been surveyed for the purpose of having them acted on by boards of commissioners; but the record does not show that any of the front tracts in township No. 11 had been surveyed by public authority; which could only be done, after the passing of the Act of February 28, 1800, under the superintendence of the surveyor general -- and all other surveys were, by the third section of that act, declared to be private surveys, on which no patent could issue for an incomplete claim, after it was confirmed by Congress. And this law applied equally to confirmations by the commissioners, under the act of March 3, 1807, whose adjudications were final, and authorized a patent to issue thereon.

When the first two acts of 1811 and 1820 were passed, it was known that no township surveys had been made in much the greater portion of the country to which the acts applied; in reference to this state of the country Congress legislated, and therefore it was provided by the fifth section of the act of 1811, that the principal deputy surveyor of each district should be, and was, authorized, "under the superintendence of the Surveyor of the Public Lands South of the State of Tennessee," to cause to be surveyed the tracts claimed by virtue of that section, that is, preference rights; and in all cases where there were bends in rivers (as in the case before us) on which the granted tract bordered, and there were adjacent claims of a similar nature, and each claimant could not obtain a tract of equal quantity with the original front tract, then it should be the duty of the surveyor to divide the vacant land between the several claimants in such manner as to him might appear most equitable.

Three years were allowed from the date of the act for those entitled to give notice in writing, stating the situation and extent of the tract each wished to purchase,

and for which he was to make payment according to the then credit system. But if he failed in either, the right to preemption should cease and become void, and

Page 45 U. S. 183

the land might be purchased thereafter by any person, as other public lands. As no public surveys existed, from which it could be ascertained at the register's offices what the back lands of the numerous tracts were; and as entries were contemplated in advance of the public township surveys, some mode of ascertaining the quantity and form each front owner was entitled to was indispensable. And the mode adopted by Congress was to make the principal deputy surveyor of the particular district the judge of form and quantity, subject, however, to the superintendence of his principal, the surveyor-in-chief of the lands south of Tennessee.

This officer (as well as the principal deputy) was, by the acts of 1812 (April 25) and 1836 (July 4), subject to the direct control, and bound by the instructions, of the Commissioner of the General Land Office, and so was the commissioner subject to the control of the President, through the Secretary of the Treasury, as will be seen by the opinion of the Attorney General of July 4, 1836, 2 Public Lands, Laws, Opinions, &c.; 103. So that, in the end, it devolved on the President, by aid of the secretary, as in other instances, to see the acts of Congress above set forth duly executed; and this was done through the Commissioner of the General Land Office.

On 18 March, 1833, 2 Land Laws, 573, No. 516, the commissioner, by an instruction to the registers and receivers of Louisiana, gave a construction to the Act of June 15, 1832:

1. That where the back lands had been offered for sale and sold, after the passing of the act, still the front owner was to be permitted to enter them.

2. Where the back tracts had not been surveyed and connected with the adjoining public lands, and the quantity could not be ascertained at the time of payment, the party claiming should be required to pay for the maximum quantity to which he

could be entitled under the law, and any excess of payment found on actual survey should thereafter be refunded to the party, on instructions to that effect, to be given from the general land office.

The form of the receiver's receipt for the payment is there given, showing the land had not yet been surveyed. And the register was instructed not to transmit the certificate of purchase until the survey was completed, whereby the quantity would be ascertained. The commissioner also informed the registers and receivers that the surveyor general had been directed to advise them as to the course to be pursued by the claimants in cases where the back tracts remained to be surveyed.

In executing the act of 1832, the foregoing instructions were of course pursued, and entries received on such notices of claim as parties saw proper to file, subject to the risk of being curtailed by the proper public surveys, approved by the surveyor general. And Mr. Harper proves that on these terms notices of claim were received, under the act of 1820, in 1822, when Bringier's claim was

Page 45 U. S. 184

entered. Harper was then the register at New Orleans. It is manifest that in no other way could the acts of 1820 or 1932 be executed, than by general surveys of the back lands, whereby the portion of each claimant was marked out. Nor could any survey in township No. 11 be recognized by the register after the appointment of the surveyor general of Louisiana, and the extinguishment of the offices of the principal deputies (May 1, 1831), other than such as were approved by the surveyor general. None was made of Bringier's claim, so far as we are informed, before that time, which received the sanction of any department of the general land office, and on which a patent certificate and patent could issue. Of Rightor's survey, we have already spoken. Wilson's was a mere private act, at the instance of Bringier, and not recorded anywhere. The instruction of July 25, 1838, 2 Land Laws, No. 1009, applies to Bringier's case as well as others; the register and receiver are there directed to issue the certificate of purchase in cases where an overpayment has been made for back lands, by "describing each tract by section, township, range, and area, *as returned by the surveyor general* " -- assuming the

plan approved by him to have settled the equities of parties claiming under the preemption laws, as to extent and boundary. And our opinion is that the survey of township No. 11, approved by H. S. Williams, Surveyor General of Louisiana, on 5 August, 1834, was made in execution of the acts of Congress, and governs the rights of the parties before this Court; that to the land there designated as "back land" of the Whitehall tract, Bringier's equity attached, by his notice of claim and the payment of his money, in 1822, and to none other. And that by the same survey the equities of Landry and Jourdan, acquired by their entries, are established as the better title to the extent of "back land" attached to their respective tracts by the survey. And to that extent they are respectively entitled to recover, as against the claim of the defendant, set forth in the answers.

Some stress in the argument was laid on the fact, that possession had been held of the land in dispute, under Bringier's claim, for more than ten years before the suits of Landry and Jourdan were brought, and therefore the petitioners were barred by prescription and limitation in Louisiana. Prescription of ten years' possession is relied on in defense by a direct plea, and made up part of the defense.

To this ground of defense it is a sufficient answer to say that Jourdan first acquired his interest in 1834, and Landry his, in 1836; up to that time, the lands they claim belonged to the United States, as part of the public domain, and on which the defendant Barrett and those under whom he claims, were trespassers, and that no trespass of the kind can give title to the trespasser, as against the United States, or bar the right of recovery, nor had

Page 45 U. S. 185

the operation of time any effect as against Landry and Jourdan until they respectively purchased.

By the Constitution, Congress is given "power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States" for the disposal of the public lands, therefore, in the new states, where such lands

lie, Congress may provide by law, and having the constitutional power to pass the law, it is supreme; so Congress may prohibit and punish trespassers on the public lands. Having the power of disposal and of protection, Congress alone can deal with the title, and no state law, whether of limitations or otherwise, can defeat such title.

For the foregoing reasons, we order the judgment of the supreme court of Louisiana to be

Reversed and that the cause be remanded, &c.;