

United States v. Percheman

32 U.S. 51 (1833)

MARSHALL, Ch. J., delivered the opinion of the court.

This is an appeal from a decree pronounced by the judge of the superior court for the district of East Florida, confirming the title of the appellee to 2000 acres of land lying in that territory, which he claimed by virtue of a grant from the Spanish governor, made in December 1815. The title laid before the district court by the petitioner, consists of a petition presented by himself to the governor of East Florida, praying for a grant of 2000 acres of land, in the place called Ockliwaha, situated on the margin of St. John's river; which he prays for in pursuance of the royal order of the 29th of March 1815, granting lands to the military who were in St. Augustine, during the invasion in the years 1812 and 1813; to which the following grant is attached.

St. Augustine of Florida, 12th of December 1815. Whereas, this officer, the party interested, by the two certificates inclosed, and which will be returned to him for the purposes which may be convenient to him, has proved the services which he rendered in defence of this province, and in consideration also of what is provided in the royal order of the 29th of March last past, which he cites, I do grant him the two thousand acres of land which he solicits, in absolute property, in the indicated place, to which effect let a certified copy of this petition and decree be issued to him, from the secretary's office, in order that it may be to him in all events an equivalent of a title in form.

ESTRADA.

In a copy of the grant, certified by Thomas de Aguilar, secretary of his majesty's government, the words 'which documents will at all events serve him as a title in form,' are employed instead of the words 'in order that it may be to him in all events an equivalent of a title in form.'

The petitioner also filed his petition to the governor, for an order of survey, dated the 31st of December 1815, which was granted on the same day; and a certificate of Robert McHardy, the surveyor, dated the 20th of August 1813, that the survey had been made.

The attorney of the United States for the district, in his answer to this petition, states, that on the 28th of November 1823, the petitioner sold and conveyed his right in and to the said tract of land to Francis P. Sanchez, as will appear by the deed of conveyance to which he refers; that the claim was presented by the said Francis P. Sanchez to the register and receiver, while acting as a board of commissioners to ascertain claims and titles to land in East Florida, and was finally acted upon and rejected by them, as appears by a copy of their report thereon. As the tract claimed by the petitioner contains less than 3500 acres of land, and had been rejected by the register and receiver acting as a board of commissioners, the attorney contended, that the court had no jurisdiction of the case.

At the trial, the counsel for the claimant offered in evidence, a copy from the office of the

keeper of public archives, of the original grant on which the claim was founded, to the receiving of which in evidence the attorney for the United States objected, alleging that the original grant itself should be procured, and its execution proved. This objection was overruled by the court, and the copy from the office of the keeper of the public archives, certified according to law, was admitted. The attorney for the United States excepted to this opinion.

It appears, from the words of the grant, that the original was not in possession of the grantee. The decree which constitutes the title appears to be addressed to the officer of the government, whose duty it was to keep the originals and to issue a copy. Its language, after granting in absolute property, is, 'for the attainment of which let a certified copy of this petition and decree be issued to him for the secretary's office, in order that it may be to him in all events equivalent to a title in form.' This copy is, in contemplation of law, an original.

It appears, too, from the opinion of the judge, 'that by an express statute of the territory, copies are to be received in evidence.' The judge added, that 'where either party shall suggest that the original in the office of the keeper of the public archives, is deemed necessary to be produced in court, on motion therefor, a *subpoena* will be issued, by order of the court, to the said keeper, to appear and produce the said original for examination.'

The act of the 26th of May 1824, 'enabling the claimants of lands within the limits of the state of Missouri and territory of Arkansas to institute proceedings to try the validity of their claims,' in its fourth section, makes it the duty of 'the keeper of any public records who may have possession of the records and evidence of the different tribunals which have been constituted by law for the adjustment of land-titles in Missouri, as held by France, upon the application of any person or persons whose claims to lands have been rejected by such tribunals, or either of them, or on the application of any person interested, or by the attorney of the United States for the district of Missouri, to furnish copies of such evidence, certified under his official signature, with the seal of office thereto annexed, if there be a seal of office.'

The act of the 23d of May 1828, supplementary to the several acts providing for the settlement and confirmation of private land-claims in Florida, declares, in its sixth section, that certain claims to lands in Florida, which have not been decided and finally settled, 'shall be received and adjudicated by the judge of the superior court of the district within which the land lies, upon the petition of the claimant, according to the forms, rules, regulations, conditions, restrictions and limitations prescribed by (for) the district and claimants in the state of Missouri, by act of congress approved May 26th, 1824, entitled, 'an act enabling the claimants,' &c.

The copies directed by the act of 1824 would undoubtedly have been receivable in evidence on the trial of claims to lands in Missouri. Every reason which could operate with congress for applying this rule of evidence to the courts of Missouri, operates with equal force for applying it to the courts of Florida; and a liberal construction of the act of May 23d, 1828, admits of this application.

The fourth section of the act of May 26th, 1830, 'to provide for the final settlement of land-claims in Florida,' adopts, almost in words, the provision which has been cited from the sixth section of the act of May 23d, 1828.

Whether these acts be or be not construed to authorize the admission of the copies offered in this cause, we think that, on general principles of law, a copy given by a public

officer whose duty it is to keep the original, ought to be received in evidence.

We are all satisfied, that the opinion was perfectly correct, and that the copies ought to have been admitted.

We proceed then to examine the decree which was pronounced, confirming the title of the petitioner.

The general jurisdiction of the courts not extending to suits against the United States, the power of the superior court for the district of East Florida to act upon the claim of the petitioner, Percheman, in the form in which it was presented, must be specially conferred by statute. It is conferred, if at all, by the act of the 26th of May 1830, entitled 'an act to provide for the final settlement of landclaims in Florida.' The fourth section of that act enacts, 'that all the remaining claims which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled upon the same conditions, restrictions and limitations, in every respect, as are prescribed by the act of congress approved the 23d of May 1828, entitled 'an act supplementary,' &c.

The claim of the petitioner, it is admitted, 'had been presented according to law;' but the attorney for the United States contended, that 'it had been finally acted upon.' The jurisdiction of the court depends on the correctness of the allegation. In support of it, the attorney for the United States produced an extract from the books of the register and receiver, acting as commissioners to ascertain claims and titles to land in East Florida, from which it appears, that this claim was presented by Francis P. Sanchez, assignee of the petitioner, on which the following entry was made. 'In the memorial of the claimant to this board, he speaks of a survey made by authority in 1819; if this had been produced, it would have furnished some support for the certificate of Aguilar; as it is, we reject the claim.'

Is this rejection a final action on the claim, in the sense in which those words are used in the act of the 26th of May 1830?

In pursuing this inquiry, in endeavoring to ascertain the intention of congress, it may not be improper to review the acts which have passed on the subject, in connection with the actual situation of the person to whom those acts relate.

Florida was a colony of Spain, the acquisition of which by the United States was extremely desirable. It was ceded by a treaty concluded between the two powers at Washington, on the 22d day of February 1819.

The second article contains the cession, and enumerates its objects. The eighth contains stipulations respecting the titles to lands in the ceded territory.

It may not be unworthy of remark, that it is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern

rule, even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change; it would have remained the same as under the ancient sovereign. The language of the second article conforms to this general principle: 'His Catholic Majesty cedes to the United States in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, by the name of East and West Florida.' A cession of territory is never understood to be a cession of the property belonging to its inhabitants. The king cedes that only which belonged to him; lands he had previously granted, were not his to cede. Neither party could so understand the cession; neither party could consider itself as attempting a wrong to individuals, condemned by the practice of the whole civilized world. The cession of a territory, by its name, from one sovereign to another, conveying the compound idea of surrendering at the same time the lands and the people who inhabit them, would be necessarily understood to pass the sovereignty only, and not to interfere with private property. If this could be doubted, the doubt would be removed by the particular enumeration which follows: 'The adjacent islands, dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks and other building which are not private property, archives and documents which relate directly to the property and sovereignty of the said provinces, are included in this article.'

This special enumeration could not have been made, had the first clause of the article been supposed to pass not only the objects thus enumerated, but private property also. The grant of buildings could not have been limited by the words 'which are not private property,' had private property been included in the cession of the territory.

This state of things ought to be kept in view, when we construe the eighth article of the treaty, and the acts which have been passed by congress for the ascertainment and adjustment of titles acquired under the Spanish government. That article, in the English part of it, is in these words: 'All the grants of land made before the 24th of January 1818, by his Catholic Majesty, or by his lawful authorities, in the said territories ceded by his majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty.'

This article is apparently introduced on the part of Spain, and must be intended to stipulate expressly for that security to private property which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old; and those titles, so far at least as they were consummate might be asserted in the courts of the United States, independently of this article.

The treaty was drawn up in the Spanish as well as in the English language; both are originals, and were unquestionably intended by the parties to be identical. The Spanish has been translated, and we now understand, that the article as expressed in that language, is, that the grants 'shall remain ratified and confirmed to the person in possession of them, to the same extent,' &c.--thus conforming exactly to the universally received doctrine of the law of nations. If the English and the Spanish parts can, without violence, be made to agree, that

construction which establishes this conformity ought to prevail. If, as we think must be admitted, the security of private property was intended by the parties; if this security would have been complete without the article, the United States could have no motive for insisting on the interposition of government in order to give validity to titles which, according to the usages of the civilized world, were already valid. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words 'shall be ratified and confirmed,' are properly the words of contract, stipulating for some future legislative act; they are not necessarily so. They may import that they 'shall be ratified and confirmed,' by force of the instrument itself. When we observe, that in the counterpart of the same treaty, executed at the same, time by the same parties, they are used in this sense, we think the construction proper, if not unavoidable.

In the case of *Foster v. Neilson*, 2 Pet. 253, this court considered these words as importing contract. The Spanish part of the treaty was not then brought to our view, and we then supposed, that there was no variance between them. We did not suppose, that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, we believe it would have produced the construction which we now give to the article.

This understanding of the article must enter into our construction of the acts of congress on the subject.

The United States had acquired a territory containing near thirty millions of acres, of which about three millions had probably been granted to individuals. The demands of the treasury, and the settlement of the territory, required that the vacant lands should be brought into the market; for which purpose, the operations of the land-office were to be extended into Florida. The necessity of distinguishing the vacant from the appropriated lands was obvious; and this could be effected only by adopting means to search out and ascertain pre-existing titles. This seems to have been the object of the first legislation of congress.

On the 8th of May 1822, an act was passed, 'for ascertaining claims and titles to land within the territory of Florida.'

The first section directs the appointment of commissioners for the purpose of ascertaining the claims and titles to lands within the territory of Florida, as acquired by the treaty of the 22d of February 1819.

It would seem, from the title of the act, and from this declaratory section, that the object for which these commissioners were appointed, was the ascertainment of these claims and titles. That they constituted a board of inquiry, not a court exercising judicial power and deciding finally on titles. By the act 'for the establishment of a territorial government in Florida,' previously passed at the same session, superior courts had been established in East and West Florida, whose jurisdiction extended to the trial of civil causes between individuals. These commissioners seem to have been appointed for the special purpose of procuring promptly for congress that information which was required for the immediate operations of the land-office. In pursuance of this idea, the second section directs, that all the proceedings of the commissioners, the claims admitted, with those rejected, and the reason of their admission and rejection, be recorded in a well-bound book, and forwarded to the secretary of the treasury, to be submitted to congress. To this desire for immediate information, we must

ascribe the short duration of the board. Their session for East Florida was to terminate on the last of June in the succeeding year; but any claims not filed previous to the 31st of May in that year, to be void and of no effect.

These provisions show the solicitude of congress to obtain, with the utmost celerity, that information which ought to be preliminary to the sale of the public lands. The provision, that claims not filed with the commissioners previous to the 30th of June 1823, should be void, can mean only that they should be held so by the commissioners, and not allowed by them. Their power should not extend to claims filed afterwards. It is impossible to suppose, that congress intended to forfeit real titles, not exhibited to their commissioners within so short a period.

The principal object of this act is further illustrated by the sixth section, which directed the appointment of a surveyor who should survey the country; taking care to have surveyed and marked, and laid down upon a general plan to be kept in his office, the metes and bounds of the claims admitted.

The fourth section might seem, in its language, to invest the commissioners with judicial powers, and to enable them to decide as a court in the first instance, for or against the title in cases brought before them; and to make such decision final, if approved by congress. It directs, that the 'said commissioners shall proceed to examine and determine on the validity of said patents,' &c. If, however, the preceding part of the section to which this clause refers be considered, we shall find in it almost conclusive reason for the opinion, that the examination and determination they were to make, had relation to the purpose of the act, to the purpose of quieting speedily those whose titles were free from objection, and procuring that information which was necessary for the safe operation of the land-office; not for the ultimate decision, which, if adverse, should bind the proprietor. The part of the section describing the claims into the validity of which the commissioners were to examine, and on which they were to determine, enacts, that every person, & c., claiming title to lands under any patent, &c., 'which were valid under the Spanish government, or by the law of nations, and which are not rejected by the treaty ceding the territory of East and West Florida to the United States, shall file, &c.'

Is it possible, that congress could design to submit the validity of titles, which were 'valid under the Spanish government, or by the law of nations,' to the determination of these commissioners?

It was necessary to ascertain these claims, and to ascertain their location, not to decide finally upon them. The powers to be exercised by the commissioners, under these words, ought, therefore, to be limited to the object and purpose of the act.

The fifth section, in its terms, enables them only to examine into and confirm the claims before them. They were authorized to confirm those claims only which did not exceed one thousand acres.

From this review of the original act, it results, we think, that the object for which this board of commissioners was appointed, was to examine into and report to congress such claims as ought to be confirmed; and their refusal to report a claim for confirmation, whether expressed by the term 'rejected,' or in any other manner, is not to be considered as a final judicial decision on the claim, binding the title of the party; but as a rejection for the purposes of the act.

This idea is strongly supported by a consideration of the manner in which the commissioners proceeded, and by an examination of the proceedings themselves, as exhibited in the reports to congress.

The commissioners do not appear to have proceeded with open doors, deriving aid from the argument of counsel, as is the usage of a judicial tribunal, deciding finally on the rights of parties; but to have pursued their inquiries like a board of commissioners, making those preliminary inquiries which would enable the government to open its land-office; whose inquiries would enable the government to ascertain the great bulk of titles which were to be confirmed, not to decide ultimately on the titles which those who had become American citizens legally possessed.

On the 3d of March 1823, congress passed a supplementary act, which also provided for the survey and disposal of the public lands in East Florida. It authorizes the appointment of a separate board of commissioners for East Florida, and empowers the commissioners to continue their sessions until the second Monday in the succeeding February, when they were to return their proceedings to the secretary of the treasury.

This act dispenses with the necessity of deducing title from the original grantee, and authorizes the commissioners to decide on the validity of all claims derived from the Spanish government, in favor of actual settlers, where the quantity claimed does not exceed 3500 acres. The act 'to extend the time for the settlement of private land-claims in the territory of Florida,' passed on the 28th of February 1824, enacts, that no person shall be deemed an actual settler, 'unless such person, or those under whom he claims title, shall have been in the cultivation or occupation of the land, at and before the period of the cession.'

On the 8th of February 1827, congress passed an act extending the time for receiving private land-claims in Florida, and directing them to be filed on or before the 1st day of the following November, with the register and receiver of the district; 'whose duty it shall be to report the same, with their decision thereon,' on or before the 1st day of January 1828, to be laid before congress at the next session.

These acts are not understood to vary the powers and duties of the tribunals authorized to settle and confirm these private land-claims.

On the 23d of May 1828, an act passed, supplementary to the several acts providing for the settlement and confirmation of private land-claims in Florida.

This act continues the power of the register and receiver till the first Monday in the following December, when they are to make a final report; after which, it shall not be lawful for any of the claimants to exhibit any further evidence in support of their claims.

The sixth section of this act transfers to the court all claims 'which shall not be decided and finally settled under the foregoing provisions of this act, containing a greater quantity of land than the commissioners were authorized to decide, and above the amount confirmed by this act, and which have not been reported as ante- dated or forged,' and declares, that they 'shall be received and adjudicated by the judge of the district court in which the land lies, upon the petition of the claimant, according to the forms,' &c., 'prescribed,' &c., by act of congress

approved May 26th, 1824, entitled 'an act enabling the claimants to land within the limits of the state of Missouri and territory of Arkansas to institute proceedings,' &c. A proviso excepts from the jurisdiction of the court any claim annulled by the treaty or decree of ratification by the king of Spain, or any claim not presented to the commissioners or register and receiver.

The 13th section enacts, that the decrees which may be rendered by the district or supreme court 'shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons.'

In all the acts passed upon this subject, previous to that of May 1830, the decisions of the commissioners, or of the register and receiver acting as commissioners, have been confirmed. Whether these acts affirm those decisions by which claims are rejected, as well as those by which they are recommended for confirmation, admits of some doubt; whether a rejection amounts to more than a refusal to recommend for confirmation, may be a subject for serious inquiry; however this may be, we think it can admit of no doubt, that the decision of the commissioners was conclusive in no case, until confirmed by an act of congress. The language of these acts, and among others, that of the act of 1828, would indicate, that the mind of congress was directed solely to the confirmation of claims, not to their annulment. The decision of this question is not necessary to this case. The claim of the petitioner was not contained in any one of the reports which have been stated.

On the 26th of May 1830, congress passed 'an act to provide for the final settlement of land claims in Florida.' This act contains the action of congress on the report of the 14th of January 1830, which contains the rejection of the claim in question. The first section confirm all the claims and titles to land filed before the register and receiver of the land-office, under one league square, which have been decided and recommended for confirmation. The second section confirms all the conflicting Spanish claims, recommended for confirmation as valid titles.

The third confirms certain claims derived from the former British government, and which have been recommended for confirmation.

The fourth enacts, 'that all remaining claims which have been presented according to law, and not finally acted upon, shall be adjudicated and finally settled upon the same conditions,' &c.

It is apparent, that no claim was finally acted upon, until it had been acted upon by congress; and it is equally apparent, that the action of congress on the report containing this claim, is confined to the confirmation of those titles which were recommended for confirmation. Congress has not passed on those which were rejected; they were, of consequence, expressly submitted to the court.

The decision of the register and receiver could not be conclusive for another reason. Their power to decide did not extend to claims exceeding one thousand acres, unless the claimant was an actual settler; and it is not pretended, that either the petitioner, or Francisco de Sanchez, his assignee, was a settler, as described in the third section of the act of 1824.

The rejection of this claim, then, by the register and receiver, did not withdraw it from the jurisdiction of the court, nor constitute any bar to a judgment on the case according to its

merits.

An objection, not noticed in the decree of the territorial court, has been urged by the attorney-general, and is entitled to serious consideration. The governor, it is said, was empowered by the royal order on which the grant professes to be founded, to allow to each person the quantity of land established by regulation in the province, agreeable to the number of persons composing each family.

The presumption arising from the grant itself of a right to make it, is not directly controverted; but the attorney insists, that the documents themselves prove that the governor has exceeded his authority.

Papers translated from a foreign language, respecting the transactions of foreign officers, with whose powers and authorities we are not well acquainted, containing uncertain and incomplete references to things well understood by the parties, but not understood by the court, should be carefully examined, before we pronounce that an officer, holding a high place of trust and confidence, has exceeded his authority.

The objection rests on the assumption that the grant to the petitioner is founded entirely on the allowance made in the royal order of the 29th of March 1815, at the request of the governor of East Florida; and the petition to the governor undoubtedly affords strong ground for this assumption; but we are far from thinking it conclusive. The petitioner says, 'that, in virtue of the bounty in lands which, pursuant to his royal order of the 29th of March of the present year, the king grants to the military who were in this place at the time of the invasion which took place in the years 1812 and 1813, and your petitioner considering himself as being comprehended in the said sovereign resolution, as it is proved by the annexed certificates of his lordship, Brigadier Don Sebastian Kindelan, and by that which your lordship thought proper to provide herewith, which certificates express the merits and services rendered by your petitioner, at the time of the siege, in consequence of which said bounties were granted to those who deserved them;' 'therefore, he most respectfully supplicates your lordship to grant him two thousand acres of land in the place,' &c. The governor granted the two thousand acres of land for which the petitioner prays.

The attorney contends, that the royal order of the 29th of March 1815, empowered the governor to grant so much land only, as, according to the established rules, was allowed to each settler. This did not exceed one hundred acres to the head of a family, and a smaller portion for each member of it.

The extraordinary facts that an application for two thousand acres should be founded on an express power to grant only one hundred; that this application should be accompanied by no explanation whatever; and that the grant should be made without hesitation, as an ordinary exercise of legitimate authority, are circumstances well calculated to excite some doubt, whether the real character of the transaction is understood, and to suggest the propriety of further examination.

The royal order is founded on a letter from Governor Kindelan to the captain-general of Cuba, in which he recommends the militia as worthy the gifts to which the supreme governor may think them entitled; 'taking the liberty of recommending the granting of some, which may be as follows: to each officer who has been in actual service in said militia, a royal commission

for each grade he may obtain as provincial, and to the soldiers a certain quantity of land as established by regulation in this province, agreeably to the number of persons composing each family, and which gifts can also be exclusively made to the married officers and soldiers of the said third battalion of Cuba.'

The words 'and which gifts,' &c., in the concluding part of the sentence, would seem to refer to that part which asks lands for the soldiers of the militia; and yet it is unusual in land bounties for military service, to bestow the same quantity on the officers as on the soldiers. But be this as it may, the application of Governor Kindelan is confined to the privates who served in the militia, and to the married officers and soldiers of the third battalion of Cuba. The petitioner was in neither of these corps; he was an ensign of the corps of dragoons.

The royal order alluded to, is contained in a letter of the 29th of March 1815, from the minister of the Indies; who, after stating the application in favor of the militia, and the third regiment of Cuba, adds, 'at the same time that his majesty approves said gifts, he desires that your excellency will inform him as to the reward which the commandant of the third battalion of Cuba, Don Juan Jose de Estrada, who acted as governor *pro tem.* at the commencement of the rebellion, the officers of artillery, Don Ignacia Salus, Don Manuel Paulin, and of dragoons, Don Juan Percheman, are entitled to, as mentioned by the governor in his official letter. By royal order, I communicate the same to his excellency, for your information and compliance therewith, inclosing the royal commissions of local militia, according to the note forwarded by your excellency.'

The governor adds, 'I forward you a copy of the same, inclosing also the documents above mentioned, that you may give their correspondent direction, with the intention, by the first opportunity, of informing his majesty of what I consider just as to the remuneration before mentioned.'

It appears, then, that the part of the royal order which is supposed to limit this power of the governor to grants of one hundred acres does not comprehend the petitioner; that he is mentioned in that order as a person entitled to the royal bounty, the extent of which is not fixed, and respecting which the governor intended to inform his majesty.

The royal order, then, is referred to in the petition, as showing the favorable intentions of the crown towards the petitioner; not as ascertaining limits applying to him, which the governor could not transcend.

The petition also refers to certificates granted by General Kindelan, and the governor himself, expressing his merits and services during the siege. These could have no influence, if the amount of the grant was fixed.

In his grant, annexed to the petition, the governor says, 'whereas, this officer, the party interested by the two certificates inclosed, has proved the services which he rendered in defence of this province, and in consideration also of what is provided in the royal order of the 29th of March last past, which he cites, I do grant him,' &c.

Military service, then, is the foundation of the grant, and the royal order is referred to only as showing that the favorable attention the king had been directed to the petitioner.

The record furnishes other reasons for the opinion, that the power of the governor was not so limited in this case, as is supposed by the attorney for the United States.

The objection does not appear to have been made in the territorial court, where the subject must have been understood. It was neither raised by the attorney for the United States, nor noticed by the court.

The register and receiver, before whom the claim was laid by Sanchez, the assignee of the present petitioner, did not reject it, because the governor had exceeded his power in making it, but because the survey was not exhibited. 'If this' (the survey), say the register and receiver, 'had been produced, it would have furnished some support for the certificate of Aguilar; as it is, we reject the claim.'

It may be added, that other claims under the same royal order for the same quantity of land, have been admitted by the receiver and register; and have been confirmed by congress.

We do not think the testimony proves that the governor has transcended his power.

The court does not enter into the inquiry, whether the title has been conveyed to Sanchez or remains in Percheman. That is a question in which the United States can feel no interest, and which is not to be decided in this cause. It was very truly observed by the territorial court, that this objection 'is founded altogether on a suggestion of a private adverse claim;' but adverse claims, under the law giving jurisdiction to the court, are not to be decided or investigated. The point has not been made in this court.

The decree is affirmed.

Decree affirmed.