in this case below two thousand dollars, the appeal must be dismissed.

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*THE UNITED STATES, PLAINTIFF IN ERROR, *v.* RICHARD KING AND DANIEL W. COXE, DEFENDANTS.[1] [*773

The certificate of survey alleged to have been given by Trudeau, on the 14th of June, 1797, and brought forward to sustain a grant to the Marquis de Maison Rouge, declared ante-dated 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.[2]

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.[3]

An equitable title is no defence 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.[4]

The act of Congress of the 29th 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 was brought up, by writ of error, from the Circuit Court of the United States for East Louisiana.

It 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 the 1st of January, 1795, he obtained the following passport:

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[1] See *United States* v. *King*, 7 How., 833, *n.* (1).

[2] FOLLOWED. *United States* v. *Philadelphia and New Orleans*, 11 How., 653; *United States* v. *Turner*, Id., 664. CITED. *Doe* v. *Eslava*, 9 How., 448; *Doe* v. *City of Mobile*, Id., 469.

[3] FOLLOWED. *Magwire* v. *Tyler*, 8 Wall, 660; *D'Auterive* v. *United States*, 11 Otto, 707.

[4] APPLIED. *Un'ed States* v. *Hughes*, 11 How., 568. CITED. *Fremont* v. *United States*, 17 How., 576; *Tyler* v. *Magwire*, 17 Wall., 280.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

"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., &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 1st day of January, one thousand seven hundred and ninety-five.

"Signed, THE BARON DE CARONDELET,
ANDREW LOPEZ ARMESTO."

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

[*774 * "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 * whom, that it may be made plain, a certified copy shall be furnished. [*775

"Signed, THE BARON DE CARONDELET.
FRANCIS RENDON.
JOSEPH DE ORUE.
THE MARQUIS DE MAISON ROUGE.

"*New Orleans, the 17th of March*, 1795."

On the 14th of 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 the 25th of 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*th of July*, 1795.

"The Intendant of Louisiana."

On the 12th of 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 the 25th 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 Relè, and James Fèret.

"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."

*776] *On the 26th of 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*th August*, 1796."

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

"Figurative plan of the thirty leagues of superfices 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 [*777 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 14th of June, one thousand seven hundred and ninety-seven.

"Signed, CARLOS TRUDEAU.

"Noted in book A."

On the 20th of 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 *778] *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, the 20th of 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 on the 26th of 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 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, the 26th of 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 the 14th July, 1795.

Congress having passed an act for the purpose of ascertaining the rights of persons to land within the district and terri-

tory of New Orleans, the commissioners appointed under that act reported upon Bouligny's claim as follows:

*"*Claims to land in the county of Washita.* [*780

	Reported No.	Register's No.	By whom claimed.	Original proprietor or claimant.	Quantity claimed.	Nature and date of title or claim.	Class
	* *	* *	* *	* *	* *	* *	*
Extract B.	16	11	Louis Bouligny.	Marquis de Maison Rouge.	30 square leagues.	Spanish grant 20th June, 1797.	B.
	* *	* *	* *	* *	* *	* *	*

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 the 29th 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 Legaré, under date of 22d December, 1841.

On the 13th of February, 1843, the United States, by Bailie Peyton, their 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., &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 the 10th of 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 the 20th 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, *and in the schedule 'A,' and that they be quieted in the ownership and possession of the same.

*781]

"Signed, THEO. H. McCALEB, 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 re-stated, 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 the 29th 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.

Nelson, (attorney-general) for the United States.
Coxe, for the defendants.

Nelson, after referring to and explaining the papers above cited, laid down four propositions which he proposed to maintain.

1. That the paper relied upon by the defendants is not a grant.

2. That assuming it to be so, it was to take effect upon conditions which were not complied with.

3. That the paper purporting to be a survey by Trudeau is a forgery, and covers land not covered by the grant.

4. That the grant is void from indefiniteness, and cannot be located. (As the decision of the court turns upon one of

these points only, it is deemed unnecessary to report the arguments of the respective counsel upon the other points.)

3. That the paper purported to be a survey is a forgery; and, apart from that paper, the grant contains no description.

It is remarkable that no one ever saw this survey, although professing to have been made in 1797, until 1803. It was not appended to the grant. In 1802 there was a grant by Trudeau to Filhiol, of land below Fort Miro, and yet the survey, made in 1797, calls for Filhiol's line which was not established until 1802.

Moreover, this grant to Filhiol says that his land is bounded on every side by vacant lands, and yet if the former survey were genuine, Filhiol's grant was in the midst of land which had been granted to Maison Rouge.

(Mr. *Nelson* then examined minutely the testimony of various *persons; of Mr. Filhiol, the commandant of [*782 the post of Washita, from 1783 to 1800; of the widow Bayergeon; of Mr. Pomier, a settler under the contract; of Mr. Belin; of Mr. McLaughlin, who said that Trudeau was never on the spot, and never had any other deputy-surveyor than himself.)

In 1802, Bouligny went out to the spot and had a plat made by McLaughlin, who says, that the "plat dated 14th June, 1797, is copied" from the one which he made in 1802.

Coxe, for defendants, gave a history of the case, and referred to various state papers: Report of a Committee, Senate U. S., July 20, 1842; Instructions of Solicitor of the Treasury, December 23, 1842; 2 American State Papers, June 9, 1813; Land Laws, 744, 745; 3 Greene's Public Lands, 247.

In 1 Laws U. S., Brown's edition, 549, this title is set out just as it is in the present record.

In 2 Land Laws, (American State Papers,) 771, 774, there is a copy of the very plat which we have.

It is objected that no one ever saw Trudeau's certificate of survey until 1803. At the foot of the grant, in Spanish, which is in the record, are these words: "Anotado en el libro A, No. 1, vergo 38, y copia sicada."

What became of the book A, we do not know.

In American State Papers, Public Lands, vol. 2, page 774, there is a translation of Trudeau's certificate of survey, with the following remark:

"*Land-office, Opelousa, Aug.* 15, 1812.

"The foregoing is the substance of the *procès verbal*, (cer-

tificate,) of the surveyor-general, subjoined to the plat, (of which the annexed is a copy,) filed in the claim of Louis Bouligny, holding under Maison Rouge.

"S. SCHACIRE, Translator to the Commissioners.
L. POSEY, Clerk of the Board."

If there is any defect in the record, the government must bear the consequences, for all the Spanish books were handed over to the public authorities. It is the first time that this paper was ever denounced as a forgery. The grant itself says, "Marked in the plan annexed," showing that some plan was annexed to it. The evidence of Tessier verifies it. He was a principal clerk in the office for making grants of land under the Spanish government, and this grant is in his handwriting. He says he "cannot recollect whether he had or had not Trudeau's figurative plan and *procès verbal* before him, but he is certain that he performed his duty, either by dictation or written instructions of his superiors, or by seeing the document B, though he cannot say in which of the three respective modes he acted upon this occasion."

*783] *The decision of the board of commissioners is final against the United States. In the case of *McDonogh* v. *Millaudon*, decided at this term, the court say that a complete grant requires no confirmation by Congress. The limit to a league square in the confirmatory act does not negative the residue of the title; there are no words to that effect. The proviso was put in because it was thought that Spanish governors could not grant more than a league square. This court entertained the same doubt. 4 Pet., 511.

Congress could not annul the title to the land beyond a league square, because it rested on a treaty. The act does not profess to annul it, but leaves it where it found it, subject to judicial decision. This construction of the act reconciles it with justice and good faith, and these considerations were held to be operative in 2 Wheat., 203, 6 Pet., 718. The United States never claimed what was severed from the public domain. Our title, therefore, is equal to a patent, and can only be assailed on the ground of fraud. This is a charge which is easily made. It is not pretended that any was practised on Carondelet, nor is the signature of Trudeau denied, but it is said to be ante-dated. The United States knew all about these papers, but the petition in this case does not allege fraud. It is true that the defendants are said to have no title. But suppose we were in chancery, would the court permit a party to raise such a question upon the trial if it was not alleged in the bill? It ought to have been put in issue

and evidence taken upon it, and in that case the *onus probandi* would have been upon the United States. By the treaty they became possessed of all vacant domain and must make out their title. It will not do to claim all and make the defendant show his title. 9 Pet., 298; 2 Burchard's Land Laws, 669.

The fraud here is charged upon high functionaries of a foreign government forty-eight years ago. Fraud, for what purpose? There was no motive for it. Carondelet might have made the grant if he chose; he had the power to do it. Both these papers were before Congress in 1820, and the defendant met the accusations which were then brought against them. The United States have never attempted to rescind this patent for twenty years. If they were a private person, they would be bound by their acts. The accusation of fraud now made by the attorney-general rests on two grounds:

1. A pamphlet published by Giraud.
2. On evidence taken in another suit.

With regard to the pamphlet, it has been answered in the same way. With regard to the other, the evidence was taken under a notice served by a hostile party before another hostile party, all on the same day, and the suit then prosecuted.

(Mr. *Coxe* then examined this testimony.)

Nelson, in reply and conclusion.

This is a mere question of title, to be settled on principles of law. *The defendant claims under a grant [*784
from the Spanish government. The treaty gave the public domain to the United States. There is no contest about their title, if the land had not previously been granted by Spain. We concede freely that the United States only succeeded to the rights of Spain, and that all grants, perfect or imperfect, are binding. If the rights were imperfect, the United States are bound in equity to carry them out; but not this branch of the government, which can look only at the legal title. Is this such?

But first let us examine a proposition laid down by the other side, that this claim has been recognized by all the departments of the government. If so, the United States must be estopped. If Congress has conferred a title on the representatives of Maison Rouge, there is an end of the question. So, if the judiciary has recognized it. But no misapprehension of the executive on such a subject is binding on this court.

(Mr. *Nelson* here examined the papers and documents cited by Mr. *Coxe*.)

The laws requiring commissioners to report to Congress, cannot be construed as erecting them into a judicial tribunal whose decisions should be final.

The alleged legislative confirmation is equally defective.

(Mr. *Nelson* here referred to 2 Story, 1410, 1429.)

The executive department of the government has always resisted this claim from 1804. It offered the lands for sale, but withdrew them on account of the dispute. A survey had to be made to ascertain what was unclaimed.

There has been no regulation by any branch of the government, but the question is entirely open for this court.

It is said that no fraud was alleged in the court below. That is very true. But it would have been odd, if the United States, when instituting a proceeding similar to an ejectment, had gone on in their declaration to say that the title of the defendant was fraudulent.

It is also said that we have no right to supervise the action of the Spanish authorities. This is true, if they are *bona fide*, but not if they are fraudulent. Congress has always provided, in its laws, for cases of fraud. The fraud was concocted in 1802, after Carondelet had gone away.

It is true that a great part of the testimony was taken in another case; but it was introduced into this by consent, and the defendant must abide by it.

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
*785] the principles of law upon which it *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 the 14th of 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 Bouligny, 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 the 30th day of 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, * 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 [*786

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 Bouligny, 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 bounda-

ries, 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 [*787 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 15 Pet., 184, 215, 275, 319, and in 16 Id., 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.[1] 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 title 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 defence 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

[1] APPROVED. *Lecompt* v. *United States*, 11 How., 127.

was again fully considered and decided, at the present term, in the case of *Hickey and others* v. *Stewart and others*.[1] These decisions stand upon the ground that such titles are not confirmed by the treaty itself so as to bring them within judicial cognisance 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 *788] brought *by 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 defence.

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

[1] *Ante*, p. 750.

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.

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