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PIONEER FLORIDA
by T. FREDERICK DAVIS

AN INTERPRETATION OF SPANISH LAWS AND
LAND TITLES

When Florida was acquired by the United States from Spain through the treaty of cession concluded and signed in 1819 and ratified in 1821, one of the foremost questions arising was that of the confirmation of land titles. For a decade there was a strange uncertainty with regard to property, titles and judicial decrees, which, according to a contemporary writer in the *Florida Herald*, were "scattered about as floating objects in the wide ocean of Law." He goes on to say, "This confusion cannot be supposed to arise from any intention or design in the high contracting parties [the governments of the United States and Spain] of perplexing the terms or expression of that important instrument [Treaty of Cession], so as to afflict the inhabitants with vexatious law suits, or loss of property from its not being clearly and unequivocally expressed; it is more rational to suppose that this humiliating and vexatious evil originates from the intentional misconstruction of those whose interest is radically at variance with the public good, for this subject has hardly ever been agitated, or introduced into our higher Councils of State, without some wary substitution of terms by which it was to be explained, entirely foreign to the plain meaning of the document [Treaty of Cession], and there it has been left to shift for itself, like a motherless lamb among a pack of wolves."

This blast does not mean that there were no honest lawyers and judges in Florida in this period ; it was directed against those less scrupulous, in an effort, by public exposition, to lessen the evil. And for a like purpose, in 1829, one of the most respected

attorneys in Florida, who had practiced here in Spanish times, wrote a non-technical opinion upon the procedure in making Spanish land grants in East Florida, to show-up the method being used as a cloak for many of the law suits pending in the courts. This opinion was considered of such merit that several years later it was published in the St. Augustine *Florida Herald*, the issue of July 8, 1835. It is worth preserving as a document of historical value; the following is verbatim as published in the *Herald*, except for the correction of a few unmistakable typographical errors.

* * *

OPINION FROM ACTUAL PRACTICE OF LAW

The Province of East Florida was ceded by Spain to the United States, with the condition that all concessions of land made to the inhabitants previous to a certain date [January 24, 1818], agreed upon between the parties, by the Spanish Government, [would be confirmed by the United States] as if such change had taken place.

The King of Spain by virtue of his Constitutional authority, and by his policy, which governed his American Dominions, never subjected his Governor of East Florida to his laws and Royal Proclamations when the political state of the Province rendered it necessary to have resource to more liberal measures. So that the power of acting freely and without restriction was granted to the Governor of E. Florida.

The Governor of Havana, even now [1829], in time of peace, can enforce or suspend the execution of any law or royal order when he thinks that it will be for the good of the King's Government, and for the advantage of the island of Cuba, either extend, curtail or suppress such royal orders. From this it is evident that the Governor of East Florida acted

with absolute power, and without the intervention of any other authority.

Fixing this as a principle, the power of those Governors, either to extend or diminish the quantity of land granted to the inhabitants and new settlers, was optional, so that government regulated the quantity granted to each by its own judgment, keeping always in view the primary object of forwarding the growth of the province, by creating proprietors, whose industry and agricultural improvements would redound to the advantage of the Spanish Government.

Under these impressions, and assisted by our long experience of the successive progress of laws and regulations in this province with regard to donations of land and concessions of such as belonged to the King, we will endeavor to point out some things for the common advantage of those inhabitants to whom lands are granted, and should the merit of the present authority be appreciated, it may serve to settle some disputes concerning the priority of right of these concessions.

1. When concessions were made by government to individuals, pursuant to a memorial or petition, previous to their obtaining the title of absolute dominion, they did not have the right of absolute property or fee simple; but were exposed to the risk of being superseded by another new concession of the very same governor under pretext of any misdemeanor or fault on the part of the first grantee, or which might appear such to the Governor.

I have seen examples of concessions annulled, after more than one year's possession, and others who had purchased the concession or right of possession from another person, who, when petitioning the Governor for liberty to have the land surveyed

to him, had had his titles or concession taken away from him and the land granted to another.

2. The Governor never made any donation of land to any person previous to that person's having taken the oath of fidelity and vassalage to the King of Spain, if he was a foreigner, or of his domiciliation and settlement in the province if he was a Spaniard. The conditional right to cultivate and improve was one of those in which he was protected in by the law, after becoming a Spanish subject.

3. Until a grantee had acquired the royal title of dominion over a donation or concession of land, he did not under any circumstance acquire the right of property, so as to sell or dispose of it, therefore all such sales were illegal and exposed to the disapproval or resentment of the Governor, who alone could authorize such kind of sales or transfers, because the estimation of the degree of progress which the grantee had made towards complying with the conditions of his donation was entirely arbitrary with the Governor.

4. The plot or survey of any Surveyor General or private Surveyor, neither has, nor ever had any value without becoming authorized by a superior decree made upon some memorial or petition. The surveyor general appointed by the Spanish Government, Don Jorge Clarke, could upon sight of any concession or right of concession or royal title, measure its corresponding quantity of land and give a plot and certificate, but private surveyors, besides the grant or concession, required an order from the Governor to authorize them to survey it. Without the Governor's decree and consent, no lawful right of possession could exist within the province, as far as related to the King's land.

5. A royal or absolute title being once given, the right of dominion over all other kinds of titles was

infallible, except another royal absolute title of older date should appear.

6. The time of possession of King's land under a concession or Memorial title that was required to authorize the possessor to petition for and obtain a Royal or King's fee simple of property was ten years, upon proving which occupation, and of his having performed the stipulated improvements required by government; a royal title of property was usually granted by the Governor as sole agent for the King; but until this title of property was given the possessor could neither sell, grant nor convey in any manner whatever, any right to the land for a very plain reason because the King had not yet ceded to him his right of property to the soil, therefore he had none to convey.

7. No memorial concession, survey or plot or certificate or any other kind of title whatever could litigate, contend or prevail at law over a King's title on property, which was the sole and only guaranty title under the Spanish Government of Florida, and to obtain this guaranty title, ten years of occupation were always required during the whole period of our residence here, viz: from the time that Governor Zespedes received possession of the province from the British Government [1784], until the arrival of Governor Kindelan [1812], who it seems had orders to remunerate those subjects who had proved their fidelity to Government by giving them Royal titles of property for lands at his own discretion, and this seems to have continued until the cession of Florida to the United States ; but at no period of the Spanish Government could any person ever be invested with any right of property so as to sell, convey or leave it by will to any one, nor could it be attached for debt, or levied upon in any way, in short it was a mere right of occupation similar to a lease from the King

until the occupier obtained the King's absolute title, which was infeasible.

8. The Spanish Government hardly ever denied to any person the right of changing his residence by petition, and granting a new Memorial title for other land in another place, but whenever the person moved his residence to that new place, the old place from which he moved was considered vacant and was open to be again granted by Government to any other petitioner whose memorial could obtain it: this new memorial canceled all the preceding ones: so that the last occupier under the last memorial had the exclusive right under the King to the land, and excluded all former memorials.

9. The Governor's authority was not participated by any one, he was alone, and absolutely exercised his jurisdiction and his commands, constituted the law within the province, no one could revoke them except he himself by a contrary command. His decree could only be called in question by appealing to higher courts out of the province. In all matters concerning the property of the King of Spain, of which the Governor was sole chief, and with the supreme administration of his interest (amongst which were the King's lands) the King alone could hear an appeal against the dispositions of the Governor of East Florida. But with regard to civil suits, appeals were heard in the Court of Chancery, or Royal Audience Patmaticipe, and with regard to military, rinters [*sic*] were made to the Captain General of Cuba so that the power of Governor in the province was the sole authority, superior to all besides within it, and represented, like all other Spanish Governors in America, in their respective Provinces, the Royal person and power, as absolute as the King himself, within the jurisdiction of the Government, without, as I have before stated, the possi-

bility of appeal to any other power within it from his orders. *

10. Superior officers, exercising any particular jurisdiction, were all under the Governor's orders, and nothing which concerned the King's property or interests, could be done without his superior permission and consent. He either extended or reduced the royal donations ; he augmented or diminished the concessions, according to his estimation of the greater or smaller deserts of him who solicited, or the greater or lesser tendency of the object towards the prosperity of the Province or the good of the State.

11. The renunciation of the royal right of domain in absolute titles given by the Governor for King's property to individuals, is just as necessary as it is in every kind of conveyance for the grantor to convey to and renounce all his right and title to the grantee, warrant and defend, &c.

12. Having resided in the Province of Florida upwards of thirty-four years, previous to this date [1829], and having lived under the Government of four different Governors, I have observed that every one of them followed his own independent rules, with regard to donations of King's lands, but more especially after the disturbances of 1812 [Patriot War and insurrection], the Governor took every pains to display to the people the munificence and generosity of the King of Spain's Government, as well as for the purposes of satisfying and attracting

* These powers were given Andrew Jackson when he was appointed provisional governor to take over the Floridas from Spain in 1821. He was commissioned "Governor of the Floridas, exercising all the powers and authorities heretofore exercised by the governor, and captain-general, and intendent of the island of Cuba, and of the governors of East and West Florida within the said provinces". It is probable that Governor Jackson never realized the extent of the power vested in him by his commission. - T. F. D.

every useful inhabitant, as for that of promoting and strengthening an agricultural Province ; which objects were best promoted by creating individual proprietors, whose labour tended to that purpose and whose interest taught obedience to the State. And I have uniformly perceived that all the King's subjects conformed to the Governor's regulations without complaint; nor is there one example of any appeal about land ever having been successfully made ; nor does there exist on the Records of this Province one example of any disposition or concession of King's land made by the Governor of Florida as ever having been annulled or refused by the King of Spain. The memorials of Col. Jose de la Torre and Don Z. Kingsley were returned from Madrid to Gov. White for his approbation.

13. If Gov. White [Spanish governor of West Florida, 1793-1796, and of E. Fla., 1796-1811] did try to contract the terms of concession of King's [lands] and make strict and rigorous rules, his successors took an opposite course in extending them to please the King's subjects and promote agriculture, in relation to which there has been royal orders, and quite sufficient to empower the Governor to practice whatever he conceived best in regard to that subject.

Signed, JOSE M. UGARTE

St. Augustine, of Florida,
13th April, 1829.

I certify to the truth of the above statement.

FERNANDO LA MAZA ARREDONDO.