

The Supreme Court, Florida Land Claims, and Spanish Colonial Law

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I. INTRODUCTION

After Florida became a U.S. territory in 1821, Congress established commissions to determine private land ownership in the territory.¹ A series of federal laws on this subject followed until the mid-nineteenth century. Commissioners and the decisions of territorial courts, such as the Superior Court of East Florida, determined many claims. Some large claims were appealed to the Supreme Court of the United States where Spanish colonial law, more properly “*derecho indiano*” as used in this

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1. Louise Biles Hill, *Introduction*, in 1 SPANISH LAND GRANTS IN FLORIDA i-lvii (Florida Works Progress Administration ed. 1940).

Article, was employed to decide questions of title to land.² With the bulk of these appeals in the 1830s and 1840s, the Supreme Court was the final arbiter in approximately sixty cases of titles to land in Florida. The stakes were high. Disputed grants often exceeded 10,000 acres and some claims exceeded one million acres. The largest successful claim was for 1,200,000 acres, approximately the size of the state of Rhode Island. Two larger claims for 1,850,000 and 12,000,000 acres were denied. The Supreme Court confirmed grants totaling nearly two million acres.³ These cases have received very sparse or no treatment in the standard histories of the Court during this period.⁴

This study focuses on the way the Supreme Court dealt with these cases with special attention to its use of *derecho indiano*, an early and unusual example of the Court's necessary use of foreign law. It examines the Court's sources, skill, limitations, and biases when addressing complex issues of land title under a foreign legal system. Some lawyers developed a level of expertise in these matters and were consulted in such cases. Although focusing on the Supreme Court, this contribution notes that the records of lower courts and claims commissions are promising and neglected sources for studying the development of comparative law and legal methodologies in U.S. tribunals.

Part II of this Article describes the applicable treaty provision, the commissions established by statute, and the Supreme Court's jurisdiction in these cases. Part III analyzes the cases determined by the Supreme

2. For a brief discussion of the terms "Spanish colonial law" and "*derecho indiano*," see M.C. Mirow, *Pre-Constitutional Law and Constitutions: Spanish Colonial Law and the Constitution of Cádiz*, 12 WASH. U. GLOB. STUD. L. REV. 317 (2013).

3. These cases are listed in the Appendix. While most cases of Florida land claims before the Supreme Court worked their way up through the levels of the commissioner or the Superior Court of the Territory, some cases were not filed before these lower levels and not reflected in SPANISH LAND GRANTS IN FLORIDA, *supra* note 1, or the excellent database of claims found in *Spanish Land Grants*, FLA. MEMORY: ST. LIBR. & ARCHIVES FLA., <https://www.florida-memory.com/collections/spanishlandgrants/>. Studies assessing the number and extent of grants confirmed or the total amount of land in question subject to confirmation in Florida should survey these cases in addition to the published compilations of the work of the Florida land commissions. See, e.g., PAUL E. HOFFMAN, FLORIDA'S FRONTIERS 240, 245 n.7, 253, 270-72, 292-93 (2002). Using footnotes in the Appendix, I have attempted to find the related files for claimants before commissioners in the Spanish Land Grants database and match them to the related Supreme Court case.

4. DAVID P. CURRIE, THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS 1789-1888, at 277-81 (1985); FELIX FRANKFURTER & JAMES M. LANDIS, THE BUSINESS OF THE SUPREME COURT: A STUDY IN THE FEDERAL JUDICIAL SYSTEM (1928); ROBERT G. MCCLOSKEY, THE AMERICAN SUPREME COURT 53-59 (2000); BERNARD SCHWARTZ, A HISTORY OF THE SUPREME COURT 32-104 (1993); CARL B. SWISHER, THE TANEY PERIOD 1836-64, at 18, 750-1754 (1974); 1 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 781-85 (1926); G. EDWARD WHITE, THE MARSHALL COURT AND CULTURAL CHANGE 1815-1835, at 897 (1988).

Court, and Part IV delves into the Court's use of *derecho indiano* to decide claims to land.

II. THE ADAMS-ONÍS TREATY AND FLORIDA LAND CLAIMS

After Spanish control of Florida for nearly three hundred years, the transfer of the region to the United States was accomplished by the Adams-Onís Treaty of 1819.⁵ Spain's monarch ceded:

to the United States, in full property and sovereignty, all the territories which belong to him, situated to the Eastward of the Mississippi, known by the name of East and West Florida. The adjacent Islands dependent on said Provinces, all public lots and squares, vacant Lands, public Edifices, Fortifications, Barracks and other Buildings, which are not private property, Archives and Documents, which relate directly to the property and sovereignty of said Provinces, are included in this Article.⁶

Inhabitants of Florida who wanted to leave were permitted to sell and to transport their property without duty.⁷ Those who stayed would become citizens of the United States.⁸ Claims to property were specifically provided for in Article 8 that divided Spanish grants into two groups, those made before January 24, 1818, and those made after this date. Grants after January 24, 1818, the date cession to the United States was first proposed, were of no effect. Grants before this date were valid under the same conditions required under Spanish law; conditions tied to grants had to be satisfied within the period specified in the grant from the time of the treaty.⁹ Diplomatic crisis was averted when three massive

5. The Treaty was signed in Washington on Feb. 22, 1819, ratified by Spain on Oct. 24, 1820, and entered into force on Feb. 22, 1821. In addition to ceding Florida to the United States, the Treaty established the United States' western border under the Louisiana Purchase and the relinquishment of its claim to Texas. Treaty of Amity, Settlement, and Limits, Between the United States of America and His Catholic Majesty (Adams-Onís Treaty), U.S.-Spain, art. 8, Feb. 22, 1819, 8 Stat. 252 [hereinafter Adams-Onís Treaty].

6. *Id.* art. 2.

7. *Id.* art. 5.

8. *Id.* art. 6.

9. Adams-Onís Treaty, *supra* note 5, art. 8 states:

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. But the owners in possession of such lands, who by reason of the recent circumstances of the Spanish Nation and the Revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same respectively, from the date of this Treaty; in default of which the said grants shall be null and void—all grants made since the said 24th of January 1818, when the first proposal on the part of His Catholic

Spanish grants made after the date, but predated to appear within the compass of the treaty, were cancelled.¹⁰

The treaty gave a mechanism to resolve claims by those who had interests held from Spain. The United States obligated itself to pay claims up to a total of five million dollars through a commission of three commissioners appointed by the President. The commission was to sit in Washington within three years of the treaty.¹¹ The commission was to decide claims “according to the principles of Justice, the Laws of Nations, and the stipulations of the Treaty between to the Parties of 27th October 1795.”¹² The treaty also required that grants were to be recognized as valid if they were valid under Spanish law. This activity was taken up by commissions created under various Acts to determine the validity of land claims in East Florida.

Private lands under Spanish grants continued to be privately held and not part of the lands ceded directly to the United States in the Treaty. It was estimated that the territory contained approximately thirty million acres with three million acres granted to individuals as private property.¹³ Unresolved private claims were the main obstacle to selling public lands, and their resolution became a priority in establishing U.S. control of the territory.¹⁴ Some mechanism was needed to carve out these privately held lands from all the public lands that passed from the Spanish crown to the United States. This was accomplished through an array of institutions created under federal law. The general structure of the statutory scheme was to allocate smaller claims, those under 1000 or 3500 acres depending on the date, to commissions whose reports would be accepted by act of Congress to validate claims determined to be valid by the commissions. Larger claims and unresolved claims at the commission level went to territorial courts with final appeal to the Supreme Court of the United States.¹⁵ Thus large claims and claims where there was not a

Majesty, for the cession of the Floridas was made, are hereby declared and agreed to be null and void.

10. George C. Whatley & Sylvia Cook, *The East Florida Claims Commission: A Study in Frustration*, 50 FLA. HIST. Q. 40 (1971).

11. Adams-Onís Treaty, *supra* note 5, art. 11.

12. *Id.*

13. United States v. Percheman, 32 U.S. 51, 89 (1833).

14. HOFFMAN, *supra* note 3, at 292-93. Spanish land grants had a lasting effect on property titles in Florida. Joe Knetsch, *The Impact of Spanish Land-Grants on the Development of Florida and the South Eastern United States*, FIG (2002), https://www.fig.net/resources/proceedings/fig_proceedings/fig_2002/HS3/HS3_knetsch.pdf.

15. Glenn Boggs, *Florida Land Titles and British, Not Just Spanish, Origins*, 81 (3) FLA. BAR. J. 26 (July-Aug. 2007) [hereinafter Boggs, *Florida Land Titles*]. Even some British grants

final determination on the merits often wound up before the Supreme Court. This was not a novel situation for the United States that had to determine private land claims in Georgia and after the Louisiana Purchase in areas including Orleans, the district of Louisiana, and Missouri and Arkansas.¹⁶

A. *Commission Established for Florida Land Claims: The Act of 1822*

Federal legislation established the first commission in 1822. The act required the President to appoint three commissioners to adjudicate claims for West Florida in Pensacola and for East Florida in St. Augustine.¹⁷ A secretary to the commission who had to be familiar with Spanish was to record the proceedings of the commission and the reasons for the commission's admission or rejection of claims.¹⁸ A surveyor and deputies were also to be appointed to survey and to record plats.¹⁹ The session in St. Augustine was to run until the end of June, 1823, when the commission would forward its work to the Secretary of the Treasury for submission to Congress.²⁰ Claims dated before January 24, 1818, and not rejected by the treaty were to be submitted to the commission for determination. Claims based on British and Spanish grants were to be forwarded to the Treasury.²¹ The Act empowered the commission to confirm claims based on the records and to determine if conditions placed on the grants had been performed. Confirmation of a claim released it from the United States' assertion of an interest in the property. The commission was granted jurisdiction over claims up to 1000 acres; claims exceeding this size were to be reported to the Treasury for determination by Congress.²²

The Act of 1822 was amended the following year to apply its provisions exclusively to claims in West Florida.²³ Under the amendment of 1823, the President was to appoint three new commissioners for East

from 1763 to 1783 could be caught up in this process if they had been confirmed by Spanish authorities and were thus arguably valid under Spanish law. *Id.* at 28-30.

16. *United States v. Arredondo*, 31 U.S. 691, 708, 718, 725 (1832).

17. An Act of ascertaining claims and titles to land within the territory of Florida, May 8, 1822, 3 Stat. 709, ch. 129, § 1 (1822); Hill, *supra* note 1, at xxxii-xxxvii (East Florida).

18. 3 Stat. 712-714, ch. 129, § 2 (1822).

19. 3 Stat. 718, ch. 129, § 6 (1822).

20. 3 Stat. 716-717, ch. 129, § 3 (1822).

21. 3 Stat. 717, ch. 129, § 4 (1822).

22. 3 Stat. 718, ch. 129, § 5 (1822).

23. An Act amending, and supplementary to, the "Act for ascertaining claims and titles to land in the territory of Florida," 3 Stat. 754, ch. 29, § 1 (1823); Hill, *supra* note 1, at xxxvii-xxxviii.

Florida who would conduct their adjudication under the provisions of the Act of 1822.²⁴ This amendment raised the maximum claim before the commission to 3500 acres and loosened the evidentiary requirements for “actual settlers,” an operative term in the legislation, to establish their claim.²⁵ The commissioners might seek legal opinions from the district attorney.²⁶ Claims were to be filed before December 1, 1823, or were barred.²⁷ A second amendment extended the date for filing claims to September 1, 1824.²⁸ The requirements for documents to assert a claim were loosened and the term “actual settler” was defined to include only those people who cultivated or occupied the land.²⁹

Subsequent amendments extended the time to file claims and restructured institutions and schemes for settling claims. For example, on March 3, 1825, Congress extended the sessions of the commission to continue until January 1, 1826, with additional time to file claims.³⁰ The Act also created new keepers of public archives for East and West Florida who were charged with maintaining property records, translating them, and providing copies or translations to parties.³¹ An Act in 1827 required that the commission deliver all its records to a newly created register and receiver for East Florida who would accept future claims, determine them, and report his activities to the Treasury for confirmation by Congress.³² Thus, the commission was replaced with a register. This Act also delineated the procedure for creating surveys, claimants’ certificates, and patents for the land.³³ Additionally, it stated the way claims larger than 3500 acres were to be surveyed and reserved from public sale pending their resolution.³⁴

24. 3 Stat. 754-755, ch. 29, § 1 (1823); Hill, *supra* note 1, at xxxiv-xliv (East Florida).

25. 3 Stat. 755, ch. 29, § 2 (1823).

26. *Id.* § 4.

27. *Id.* § 5. The amendment also called for the appointment of surveyor for the territory of Florida and the creation of land offices in East and West Florida to dispose of surveyed public lands. 3 Stat. 755-756, ch. 29, §§ 7-10 (1823).

28. An Act to extend the time limited for the settlement of private land claims in the territory of Florida, Feb. 28, 1824, 4 Stat. 7, ch. 25, § 6 (1824).

29. *Id.* § 3.

30. An Act to extend the time for the settlement of private land claims in the territory of Florida, 4 Stat. 125, ch. 83, §§ 2-3 (1825).

31. 4 Stat. 126, ch. 83, §§ 9-12 (1825).

32. 4 Stat. 202 and 203, ch. 9, §§ 4-5 (1827).

33. 4 Stat. 203, ch. 9, §§ 7-8 (1827).

34. 4 Stat. 204, ch. 9, § 12 (1827).

B. Further Congressional Action

A number of claims could not be satisfactorily resolved through the mechanisms provided for in these acts, and in 1828, Congress addressed this situation with new legislation.³⁵ It stated that claims that were not “finally decided,” larger than the tracts within the jurisdiction of the commission, and larger than the tracts confirmed by the Act of 1822 were to be decided by judges of the territorial courts under the similar act for lands for claimants in Missouri.³⁶ It also provided a summary method of confirming grants up to one square league (approximately 4400 acres) of land within a claim with the claimant releasing the excess amount.³⁷ The Act also importantly gave a method for resolving claims over 3500 acres. These claims were to go to the judge of the superior court of the district and were to be resolved the same way claims in Missouri were handled under the legislation for Missouri.³⁸ Appeals were to the Supreme Court.³⁹ Claims were to be barred if not filed within one year from the passage of the act, May 23, 1828.⁴⁰

Congress hoped Florida land claims would be resolved by 1830. An Act of that year confirmed claims determined by the register and referred pending claims to the system established in the Act of 1828. It also explained the method for employing the square league settlement option and extending the deadline for using it.⁴¹ On winding up its activities, the register was required to deliver its records to the keeper of

35. 4 Stat. 284, ch. 70 (1828).

36. Section 6 of the Act of 1828 states that:

all claims to land within the territory of Florida, embraced by the treaty, which shall not be finally decided and settled under the previous provisions of the same law, containing a greater quantity of land than the commissioners were authorised to decide, and above the amount confirmed by the act, and which have not been reported 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 to the district judge, and claimants in Missouri, by the act of the 26th May 1824.

Either party, the United States or the claimant, was granted an appeal to the Supreme Court. 4 Stat. 285, ch. 70, §§ 7, 9.

Denial of a claim by the commission or by the register was not a final action that deprived the territorial court jurisdiction over the claim. *United States v. Percheman*, 32 U.S. 51, 95 (1833).

37. An Act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, 4 Stat. 284, ch. 70, §§ 1-2 (1828); Hill, *supra* note 1, at xlv-li.

38. 4 Stat. 285, ch. 70, § 6 (1828).

39. *Id.* §§ 7, 9.

40. 4 Stat. 286, ch. 70, § 12 (1828).

41. An Act to provide for the final settlement of land claims in Florida, May 26, 1830, 4 Stat. 405, ch. 106, §§ 1-4, 7 (1830).

the public archives.⁴² Claims not falling under the provision of the Act for smaller grants were barred if not filed with the Superior Court before May 26, 1831.⁴³ A final act on this subject, in 1832, clarified the issuing of patents to heirs or others in the regular chain of title from the original claimant.⁴⁴

Thus, instead of meeting in Washington as mentioned in the treaty, commissions were created in St. Augustine in East Florida and in Pensacola for West Florida. After his arrival in East Florida in 1822 as attorney general for the territory, Alexander Hamilton, a Columbia graduate and second son of the Federalist and eponymous Broadway hit, assessed the problems and complexity of land holding in the region. Faced with in his estimation 1200 Spanish claims and 500 British claims, including many fraudulent claims, Hamilton requested the creation of the new land commission for East Florida established by Congress on March 3, 1823. He, David Floyd, and William W. Blair were appointed the first commissioners.⁴⁵

Validity of the grants in the United States required their validity under Spanish law.⁴⁶ This meant that the commissioners had to consider what Spanish law would apply to the claims presented. The construction of the applicable rules of *derecho indiano* was no easy task even for highly trained lawyers of the Spanish colonial empire.⁴⁷ Precisely how the commissioners accomplished this difficult task remains to be studied.⁴⁸ It appears that the commissioners focused on a provision from the *Recopilación de las Leyes de Indias* (1680) in which the governor was empowered to assign lands to settlers who would cultivate, reside on and settle grants of different sizes dependent upon the social class of the grantee.⁴⁹ Substantive rules of law related to claims were also drawn from “royal orders made with particular reference to Florida, the decrees

42. 4 Stat. 406, ch. 106, § 5 (1830).

43. *United States v. Marvin*, 44 U.S. 620, 622-24 (1845) (claim filed by Marvin in 1843 was barred by the Act of 1830). Similarly, appeals from the Superior Court had to be brought to the Supreme Court within four months of the decision. *Villabolas v. United States*, 47 U.S. 81, 89-91 (1848).

44. An Act to direct the manner of issuing patents on confirmed land claims in the territory of Florida, Jan. 23, 1832, 4 Stat. 496, ch. 10, § 1 (1832).

45. Whatley & Cook, *supra* note 10, at 41-42.

46. Adams-Onís Treaty, *supra* note 5, art. 8.

47. M.C. MIROW, *LATIN AMERICAN LAW: A HISTORY OF PRIVATE LAW AND INSTITUTIONS IN SPANISH AMERICA* 11-94 (2004).

48. Hill, *supra* note 1, at liii-lviii (summarizing reasons for not confirming grants).

49. Whatley & Cook, *supra* note 10, at 44 (citing *RECOPIACIÓN DE LAS LEYES DE INDIAS*, Lib. 12, Tit. 3 (1680)).

and regulations of the local governors, and the customs and usages of the local administrations.”⁵⁰

While the rules of application governing the substance of property claims were a significant hurdle for the commission, disagreement over the procedural aspects of how to conduct the adjudication of claims led Hamilton to refuse to deliberate in claims, although he continued to attend the sessions. He claimed that the commission failed to examine and to apply Spanish law and to consult original documents. Hamilton tendered his resignation to President Monroe on January 23, 1824, but it was not accepted. He continued to complain of the commission’s lack of established procedure, substantive rules, and systematic record keeping. He asserted that the other commissioners acted in favor of one claimant, John H. McIntosh, almost as counsel for the claimant, and asserted that under Spanish colonial law governors had nowhere near the comprehensive power to grant “fee simple” interests in land and in such quantities as asserted by the other members of the commission.⁵¹ Furthermore, the documents upon which claims could be determined were in disarray, and obtaining adequate translations for the commission was an additional obstacle to substantive determinations.⁵²

Nonetheless, after the first two years of operation by the beginning of January 1826, the commission had taken action on over 780 claims. Of these, approximately 470 had been confirmed. An additional approximately 530 claims awaited determination. At the same time, the committee on public lands sent a report to the House of Representatives describing the work of the East Florida commission as unsatisfactory, and requested a different method for the resolution of claims. This led to the new register of public lands for East Florida, but this new office did

50. Whatley & Cook, *supra* note 10, at 45.

51. *Id.* at 45-47. Referring to the *Recopilación* as the “Codes of India” and citing to a royal order from 1813, he wrote:

It is evident, from the extract taken from the Codes of India [Book 4, Title 12], through all the royal orders and official correspondence, to the change of the Intendancy of Florida, in 1817, the Intendant of the island of Cuba, that the Governors possessed a very circumscribed and limited authority.

Id. at 47 (citing Letter from Hamilton to Crawford (Mar. 31, 1824), in III AMERICAN STATE PAPERS, PUBLIC LAND 767 (Washington, Duff Green 1834)). This was most likely the same John H. McIntosh who was a Patriot leader in the Patriot War in 1812, see M.C. Mirow, *The Patriot Constitution and International Constitution-Making*, 21 TEX. REV. L. & POL. (forthcoming).

52. Whatley & Cook, *supra* note 10, at 48-50. For the eventual migration of these documents to the Library of Congress, see M.C. Mirow, *Law in East Florida 1783-1821*, 55 AM. J. LEG. HIST. 89, 90-91 (2015). It appears many documents related to real property were transported to Cuba. Diplomatic and even military efforts to obtain them were unsuccessful. Glenn Boggs, *The Case of Florida’s Missing Real Estate Records*, 77 (9) FLA. BAR J. 10, 10-17 (Oct. 2003).

little to alleviate the problem, and many claims wound up before the Supreme Court of the United States.⁵³

In 1860, another act attempted to provide a final adjustment of Florida claims that had been rejected at some point but not finally resolved.⁵⁴ At least one case was resolved favorably for the petitioners under this act in 1887.⁵⁵ Other cases, from the early twentieth century, generally did not recognize the interests asserted by the petitioners under Spanish grants. In 1901, Chief Justice Fuller writing for the Court, invalidated the claim of the heirs of Jesse Fish, a notable figure in nineteenth-century Florida, to the island of Anastasia. Fish's heirs had not asserted their claim in a timely fashion under any of the federal acts and were barred.⁵⁶ Similarly, in 1906, under the Act of 1860, Justice Holmes found fraud in a petition for 1,850,000 acres and determined that the claim was not valid.⁵⁷ By the 1920s, two claims under Spanish grants were barred by adverse possession and laches.⁵⁸

III. FLORIDA LANDS IN THE SUPREME COURT

A wide variety of cases concerning Florida lands under the Adams-Onís Treaty and the Congressional acts establishing commissions to determine claims found their way to the Supreme Court. Core aspects of the treaty were interpreted to determine the jurisdiction of the Court in particular cases, and Spanish colonial law was applied to ascertain the validity of claims under Spanish, and therefore under U.S. law. Spanish law was consulted to determine the authority of grantors, usually governors, as agents of the Spanish crown and to determine the validity and nature of conditional clauses attached to Spanish grants that may or may not have been fulfilled by grantees. Cases were usually brought by the grantees or their heirs. Some claimants had amassed several parcels through speculation and sought the Court's confirmation of the validity of their title. For example, Moses Levi had purchased tracts totaling 65,000 acres, which were confirmed by the Court.⁵⁹

53. Whatley & Cook, *supra* note 10, at 51-52.

54. Act of June 22, 1860, 12 Stat. 85, 87, ch. 188, sec. 11 (extended by Act of June 10, 1872, 17 Stat. 378, ch. 421).

55. *United States v. De Morant*, 123 U.S. 335, 335-45 (1887); *United States v. De Morant*, 124 U.S. 647, 647-48 (1887).

56. *Mitchell v. Furman*, 180 U.S. 402, 439-40 (1901).

57. *United States v. Delcour*, 203 U.S. 408, 425-29 (1906).

58. *Del Pozo v. Wilson Cypress Co.*, 269 U.S. 82, 84-90 (1925); *Sanchez v. Deering*, 270 U.S. 277, 228-30 (1926).

59. *United States v. Levi*, 33 U.S. 479, 482 (1834). Levi was a Sephardic Jew who arrived in East Florida in 1818 and planned a Florida settlement for European Jews. This effort was not successful, and he purchased African slaves for labor. He was the father of attorney,

Apart from claims where the nature and origin of documents were in issue, there were four major categories of cases: treaty interpretation, the power of governors to make grants, the performance of conditions attached to grants, and the validity of grants of land beyond the Indian boundary of 1763. These are discussed in order.

A. *Self-Executing Treaties in U.S. Law*

These cases have been recognized mostly for their development of the law of treaties and the development of the doctrine of self-executing treaties in U.S. law.⁶⁰ Their interpretation and refinement of U.S. law of treaties have little to do with *derecho indiano*. *Foster & Elam v. Neilson* is the canonical case in U.S. international law that established this unusual doctrine of self-executing treaties.⁶¹ The court was faced with the following language:

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.⁶²

Determining on one hand that the words in the treaty were words of contract rather than legislation, the Court noted that further legislative action was required for the language to be enforceable in a domestic court. On the other hand, treaty language that spoke directly to tribunals could be rules of judicial application without intervening legislative action and was, therefore, self-executing.⁶³

While this doctrine has become a mainstay of U.S. international law and treaty interpretation, substantially reworked in 2008 in *Medellín v. Texas*, the Supreme Court reduced its application significantly in the years immediately following *Foster & Elam* in the context of Florida land claims.⁶⁴ The same language found not to be self-executing in *Foster & Elam* was found to have direct application to the petitioner's claim in 1832 when Don Fernando de la Maza Arredondo's award of nearly

planter, and Florida politician David Levy Yulee. Daniel L. Schafer, *U.S. Territory and State*, in *THE HISTORY OF FLORIDA* 227 (Michael Gannon ed., 2013).

60. ERNEST F. DIBBLE, JOSEPH M. WHITE: ANTI-JACKSONIAN FLORIDIAN 119-29 (2003).

61. 27 U.S. 253 (1829).

62. Adams-Onís Treaty, *supra* note 5, art. 8; *Foster & Elam v. Neilson*, 27 U.S. 253, 310 (1829).

63. MARK WESTON JANIS, *INTERNATIONAL LAW* 89-91 (6th ed. 2012).

64. See Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 621-67 (2008).

290,000 acres in the Superior Court of the Eastern District of Florida was challenged in the Supreme Court.⁶⁵ Justice Baldwin focused on the subsequent legislation as removing the defect in *Foster & Elam* because Congress treated the grants as having been confirmed and gave this congressional action due regard as a rule to be respected by the courts.⁶⁶ Furthermore, in perhaps the most interesting passages related to the self-executory nature of the treaty, Baldwin interpreted the treaty in light of Spain's intent and made specific reference to the differences in the original English and original Spanish texts of the treaty.⁶⁷ The English text used the future tense related to confirming Spanish grants; the Spanish texts used both the past and present tense for the same idea in the treaty. Baldwin concluded that the obstacles of *Foster & Elam* were not present in this case:

We consider that the grants were confirmed and annulled respectively—simultaneously with the ratification and confirmation of the treaty, and that when the territory was ceded, the United States had no right in any of the lands embraced in the confirmed grants.⁶⁸

Justice Thompson dissented from the majority's determination of self-execution. He found it unthinkable to reject the plain English text that would require legislative action to confirm grants in favor of the Spanish text yielding a self-executory treaty provision on this question, especially when the United States had been relying on the English version for over ten years.⁶⁹ Even within the ambit of treaty interpretation, the Supreme Court was confronted with different legal systems and terminology. Other aspects of the Florida land grants presented deeper questions of Spanish law.

B. The Power of Spanish Governors To Grant Land

Grants were valid to the extent that they were valid under Spanish law. If the governor exceeded his authority in making a grant, it was void; thus, the Supreme Court had to determine the appropriate scope of governors' power to grant land. At least one Spanish lawyer, José Ugarte, asserted in 1829 that the power of Spanish governors was unlimited. Because, in practice, a governor might suspend the

65. *United States v. Arredondo*, 31 U.S. 691, 734-42 (1832). For Fernando de la Maza Arredondo and his son, also Fernando, see M.C. Mirow, *The Constitution of Cádiz in Florida*, *FLA. J. INT'L L.* 271, 292-93, 296-98, 308 (2012).

66. *Arredondo*, 31 U.S. at 735.

67. *Id.* at 736-42.

68. *Id.* at 742.

69. *Id.* at 750-56.

implementation of a royal order or send it back for additional instructions based on local conditions, Ugarte argued that the governor had absolute power. Referring to the well-known and oft-debated Spanish colonial response to a royal order of “I obey but do not execute,” Ugarte surmised that governors of East Florida “acted with absolute power, and without intervention of any other authority.”⁷⁰ Not everyone agreed with Ugarte’s conclusions, and the commissioners and the Supreme Court necessarily explored the scope of Spanish governors’ power to grant land as it related to the validity of grants.⁷¹

In 1834, Chief Justice Marshall examined the authority of and limits imposed on Spanish governors to grant lands.⁷² His opinion confirmed in part a grant of 16,000 acres to George Clarke who sought to construct a saw mill on the St. Johns River.⁷³ Using Joseph M. White’s book on Spanish land law and *Clark’s Land Law*, Marshall traced nearly one hundred years of Spanish legislative changes related to governors’ powers to grant land in East and West Florida.⁷⁴ By examining the Spanish provisions and the royal practice of apparently always confirming grants by governors, Marshall’s research in these sources overcame the position of the United States that the governor did not have the authority to make the grant in dispute.⁷⁵

Questions of geographic jurisdiction of governors might arise when the United States argued to invalidate grants by stating that the governor was acting beyond the geographical scope of his authority. For example, to such a claim in *Mitchel* and despite the boundaries created by the British, the Court closely examined the historical practice of Governor Folch and Governor-General of Louisiana Galvez to determine that the lands in question were within West Florida and subject to a valid

70. T. Frederick Davis, *Pioneer Florida: An Interpretation of Spanish Law and Land Titles*, 44 FLA. HIST. Q. 113, 114-15 (1945). Ugarte’s opinion was published in the *Florida Herald* on July 8, 1835, in the midst of the Supreme Court’s most active period for Florida land claims. *Id.* at 114.

71. Hill, *supra* note 1, at xxvi.

72. *United States v. Clarke*, 33 U.S. 436, 448-64 (1834); *see also* MIROW, *supra* note 47, at 235-36 (describing the colonial practice of “I obey but do not execute”).

73. *Clarke*, 33 U.S. at 436-37, 468-69.

74. *Id.* at 452-53. These works are JOSEPH M. WHITE, A NEW COLLECTION OF LAWS, CHARTERS AND LOCAL ORDINANCES OF THE GOVERNMENTS OF GREAT BRITAIN, FRANCE AND SPAIN, RELATING TO THE CONCESSIONS OF LAND IN THEIR RESPECTIVE COLONIES (Lawbook Exchange facsimile ed. with introduction by Agustín Parise, 2010) (1839), <https://archive.org/details/anewcollection01rogoog>, and MATTHEW ST. CLAIR CLARKE, LAWS OF THE UNITED STATES, RESOLUTIONS OF CONGRESS UNDER THE CONFEDERATION, TREATIES, PROCLAMATIONS, SPANISH REGULATIONS, AND OTHER DOCUMENTS RESPECTING THE PUBLIC LANDS (Washington, D.C., 1828).

75. *Clarke*, 33 U.S. at 457-59.

confirmation of Governor Folch.⁷⁶ Similarly, grants in the region to the west of the Perdido River led to debates concerning the power of Spain to make such grants in this contested area.⁷⁷

C. *Conditions and Their Performance*

With the exception of grants made to individuals for their services to the crown, grants in the Floridas were often made with conditions attached to them. These conditions were either expressed through royal legislation or in the grants themselves. The royal provision found in the *Recopilación* of 1680 that was to serve as a guide to commissions and courts interpreting Spanish land claims in Florida made absolute ownership in lands conditional upon the grantee “having made on them their residence and place of labor, and resided in those townships four years,” a requirement that the lands would be farmed and improved.⁷⁸ Other grants were made with specific conditions. For example, the grant in *United States v. Arredondo* required that the grantee establish 200 Spanish families on the land and that such establishment should begin within three years of the date of the grant.⁷⁹ Conditions for settlement by a number of families were often attached to large grants.

Courts placed these conditions into their familiar, common-law, framework. Justice Baldwin stated of these conditions, “there can be no doubt that they are *subsequent*, the grant is in full property in fee, an interest vested on its execution which could only be divested by the breach or non-performance of the conditions.”⁸⁰ Translating the restrictions employed in the Spanish grants to common law property concepts, the grantees obtained fee simples subject to a condition subsequent, and the common law courts thought of them this way.

In *Arredondo*, the first case considering the effect of these conditions, Baldwin was satisfied that the settlement of families on the land had commenced within the required time on the facts, but meeting

76. *Mitchel v. United States*, 34 U.S. 711, 738-39 (1835).

77. *De La Croix v. Chamberlain*, 25 U.S. 599 (1827); *Foster & Elam v. Neilsen*, 27 U.S. 253 (1829); *Garcia v. Lee*, 37 U.S. 511 (1838); *Pollard’s Heirs v. Kibbe*, 39 U.S. 353, 368-422 (1840) (Baldwin J., concurring); see also Seán Patrick Donlan, *Entangled Up in Red, White and Blue: Spanish West Florida and the American Territory of Orleans, 1803-1810*, in *ENTANGLEMENTS IN LEGAL HISTORY: CONCEPTUAL APPROACHES* 213-50 (Thomas Duve ed., 2014).

78. *RECOPILACIÓN DE LAS LEYES DE INDIAS*, Lib. 12, Tit. 4 (1680), quoted in Whatley & Cook, *supra* note 10, at 44.

79. *United States v. Arredondo*, 31 U.S. 691, 745 (1832).

80. *Id.*

the condition of 200 families on the land was another question.⁸¹ On this second question, Baldwin turned to the doctrine of impossibility of performance based on the land now lying within the United States. To require the settling of 200 Spanish families on the property was now impossible and would work a forfeiture: “[T]he performance of this condition had become impossible by the act of the grantors; the transfer of the territory, the change of government manners, habits, customs, laws, religion, and all the social and political relations of society and of life.”⁸² Although a strict application of the common law might yield a different result, Baldwin found for Arredondo. He stated:

The proceeding is in equity according to its established rules our decree must be in conformity with the principles of justice, which would in such a case as this not only forbid a decree of forfeiture but impel us to give a final decree in favor of the title conferred by the grant.⁸³

Not all claimants could avail themselves of impossibility. For example, in 1815, Elizabeth Wiggins was granted 300 acres to farm. The grant was conditioned upon her taking possession and cultivating the land within six months of the grant and upon a continued occupation and cultivation for ten years.⁸⁴ Although the ten-year period was not closely adhered to when improvements had been made and when the disrupted nature of the region was considered, Justice Catron found that Wiggins had not fulfilled the conditions imposed on the grant and wrote:

[As] Mrs. Wiggins, however, never cultivated, or occupied the land claimed, she took no interest under the rule, or any exception made to it; and it is free from doubt, had Spain continued to govern the country, no title could have been made to her; nor can any be claimed from the United States, as successors to the rights and obligations of Spain.⁸⁵

A common form of conditional grant was for a tract of land on a water course to build a water saw mill.⁸⁶ Such grants became prevalent after 1793 as part of an aggressive land policy to increase settlement.⁸⁷ These grants were usually for five square miles of land to supply the necessary timber and were conditioned on the construction of an operational mill to saw wood. In one case, the Court had to determine

81. *Id.* at 745-46 (1832). Justice Thompson, dissenting, found there was little activity to establish possession or settlement. *Id.* at 758-59.

82. *Id.* at 746.

83. *Id.*

84. *United States v. Wiggins*, 39 U.S. 334, 334-35, 349, 351 (1840).

85. *Id.* at 351-52.

86. Hill, *supra* note 1, at xxvi-xxvii.

87. HOFFMAN, *supra* note 3, at 244-45.

whether the interest transferred in the five square mile tract was a conditional grant or merely a license to remove timber. Resolving the issue in favor of the claimant, the Court found that the mill was constructed and in operation, fulfilling the condition.⁸⁸ All subsequent cases viewed such grants as conditional grants of land, usually for 16,000 acres, based on the condition of constructing a mill. Where the petition and grant mentioned a mill, but did not make the grant conditional upon construction of the mill, the Court might interpret the grant as an absolute grant without condition.⁸⁹ Furthermore, where a mill was mentioned in the grant but the grant was supported by services to the crown or for earlier losses by the grantee, the construction of a mill was not a condition of the grant.⁹⁰ The construction of a mill, which was subsequently destroyed within one or two years, was sufficient to satisfy the condition and grant absolute title in the grantee.⁹¹ And various acts or successive constructions and destructions of several mills over the period from 1819 to 1829 led in one case to satisfaction of the condition through the application of “performance of the condition *cy pres*.”⁹²

In the mid-1830s, Justice Wayne began to issue opinions for the Court on these cases, and he appeared to be more demanding when considering the performance of a condition to build a mill. In *Kingsley*, he found that no attempts to build a mill had been undertaken until 1835 and rejected the claimant’s assertions of impossibility by stating “there was no more danger after the appellee petitioned for the land, than there had been before and at the time of his application.”⁹³ He also noted that similar claimants had, in fact, been able to construct their mills.⁹⁴ For the same reasons, Justice Wayne denied William Mill’s heirs their claim for lands for a saw mill despite their claiming that delays in constructing the mill were due to “threats to their persons and property, by hostile Indians, negroes and marauders.”⁹⁵ The Court denied several subsequent claims for lands granted for the construction of a mill based on non-performance of the condition.⁹⁶

88. *United States v. Richard*, 33 U.S. 470, 470-71 (1834).

89. *United States v. Segui*, 35 U.S. 306, 306-07 (1836).

90. *United States v. Rodman*, 40 U.S. 130, 138-39 (1841); *United States v. Hanson*, 41 U.S. 196, 199 (1842).

91. *United States v. Seton*, 35 U.S. 309, 311 (1836).

92. *United States v. Sibbald*, 35 U.S. 315, 323 (1836).

93. *United States v. Kingsley*, 37 U.S. 476, 484 (1838).

94. *Id.* at 486.

95. *United States v. Mill’s Heirs*, 37 U.S. 215, 216 (1838).

96. *United States v. Burgevin*, 38 U.S. 85, 85-86 (1839); *United States v. Drummond*, 38 U.S. 84, 84 (1839); *United States v. Delespine*, 40 U.S. 319, 333 (1841).

Other grants merely required possession within six months. If the lands were not placed in actual possession by then, the grant was not valid.⁹⁷ Thus, in all cases with valid conditions, the Court closely analyzed the factual bases for the satisfaction of the conditions associated with the grant. The juridical leap from a conditional grant under Spanish law to a conditional grant in common law was not too great for the Court to take, and conditions in Spanish grants were transposed into similar conditions under common law which were then scrutinized for their performance.

D. Lands Granted in Indian Territory

Spanish grants to individuals might also be challenged by the United States through an assertion that the grant was for land that was the property of indigenous peoples under Spanish law.⁹⁸ Thus, arguments were propounded that the British line of 1763 between British and Indian territory continued to be in effect after Spain assumed the territory in 1783 and grants west of this line were ineffective.⁹⁹ The tacit recognition of this boundary by Spain after it retook the territory in 1783 provided a possible justification for the United States to invalidate claims by grantees from Spain. A trilogy of cases in the Supreme Court—*Arredondo, Mitchel, and Fernandez*—addressed the variety of situations in which claims of lands in Indian territory were challenged by the United States.

In *Arredondo*, the Supreme Court confirmed a grant of more than 289,000 acres with the Indian town of Alachua serving as the center of the grant.¹⁰⁰ The United States argued,

The land in controversy was, at the time of the grant, within the Indian boundary established by the government of Great Britain during its occupancy of the Floridas, and subsequently acknowledged by the government of Spain; and was therefore not subject to be disposed of by the subordinate officers of the crown.¹⁰¹

97. *O'Hara v. United States*, 40 U.S. 275, 279 (1841) (The Court wrote, “We hear nothing of the memorialist, or of any other attempt to settle the land, from the spring of 1804 until 1819.” *Id.* at 282.).

98. *United States v. Arredondo*, 31 U.S. 691, 701-02 (1832).

99. *Id.* at 705 (arguments of counsel for the United States).

100. *Id.* at 749. The case was given over to lengthy oral argument on March 2-7, 1832, and was watched carefully by the public and President Jackson who disapproved of the Court's conclusion that the claim was valid and who later lectured Justice Baldwin in person about it. 1 CHARLES WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 782-84 (1926).

101. *Arredondo*, 31 U.S. at 705 (argument of United States).

To overcome the objection that the lands were within the Indian boundary, the Court relied on an official sentence by the Spanish intendant based on a judicial inquest that the lands in question had been abandoned by the Indians and, through abandonment, had rejoined the royal domain again subject to alienation by the crown. This determination of abandonment by Spanish judicial authority was taken by the Court as a factual question that was *res judicata* by a foreign tribunal and would not be re-examined.¹⁰² Thus, where Indians had abandoned the land and the abandonment was judicially recognized by Spain before the grant, the land returned to the royal domain and could then be effectively granted by the crown. Not all lands granted by the Spanish crown from beyond the Indian boundary could be cured by a judicial finding of abandonment.

In *Mitchel*, the claimant sought confirmation of 1,200,000 acres purchased from John Forbes, the Indian trader and principal of Panton, Leslie & Co.¹⁰³ These lands were also beyond the Indian boundary, but Forbes's claim was based originally on deeds from Indians in satisfaction of business debts owed his firm. The United States objected to the validity of these deeds: "The Indian deeds to Panton Leslie & Co. did not, either in themselves, or with the confirmation thereof by governor Folch, convey to the grantees therein named, any legal right to the land in question."¹⁰⁴ Justice Baldwin relied on several factor to find that the grant, although within the territory beyond the Indian boundary, was valid. He found that the grants by the Indians and their subsequent confirmation by governor Folch were not gratuitous actions but were undertaken to compensate Panton Leslie for business losses and to reward it for its services to the Spanish crown. The grants and confirmation were made with the highest level of formality and documentation, and both Indians and Spain recognized Panton Leslie as a private holder of the lands. The Court set out its understanding of possession and occupation of land by Indians under the British and noted that there were many instances in which Indians at public councils granted lands to purchasers and that the participation of royal officials

102. *Id.* at 747-48.

103. *Mitchel v. United States* 34 U.S. 711 (1835); see Blake A. Watson, *Buying West Florida From the Indians: The Forbes Purchase and Mitchel v. United States (1835)*, 9 F.I.U. L. REV. 361-90 (2014). For Panton Leslie and Co., see WILLIAM S. COKER & THOMAS D. WATSON, *INDIAN TRADERS OF THE SOUTHEASTERN SPANISH BORDERLANDS: PANTON, LESLIE & COMPANY AND JOHN FORBES & COMPANY, 1783-1847* (1986). White published his argument in the case and the Superior Court record and briefs exceeded 700 pages. DIBBLE, *supra* note 60, at 128 n.34, 129 n.37. He published similar arguments in several of these cases. *Id.* at 183-92.

104. *Mitchel*, 34 U.S. at 720.

indicated license from the crown.¹⁰⁵ Justice Baldwin found that Indians' right to lands was even greater under Spain:

But Spain did not consider the Indian right to be that of mere occupancy and perpetual possession, but a right of property in the lands they held under the guarantee of treaties, which were so highly respected, that in the establishment of a military post by royal order, the site thereof was either purchased from the Indians or occupied with their permission, as that of St Mark's [the fort within the grant in question].¹⁰⁶

Thus, the Indians held the land. And they validly granted it with royal license to Panton Leslie:

In the present case the Indian sale has been confirmed with more than usual solemnity and publicity; it has been done at the public council and convention of the Indians conformably to treaties, to which the king was a party, and which the United States adopted, and the grant was known to both parties to the treaty of cession.¹⁰⁷

Mitchel, as the purchaser from Forbes of Panton Leslie, had valid title to the 1,200,000 with the exception of the fort of St. Mark's and its appurtenant lands.¹⁰⁸ The confirmation by Spain and the treaty provision made all the difference in this case to distinguish it from the general rule established in *Johnson v. M'Intosh*, a rule that was widely accepted by then. Without the additional elements of the Spanish acceptance of the grant and the treaty provision, the grant would have failed.¹⁰⁹

In *Fernandez*, the United States argued that a portion of a grant within the Indian boundary was invalid because the Spanish governor lacked power to grant such land. *Arredondo* had resolved this issue by accepting that similar lands in question had been abandoned by the Indians. And *Mitchel* was easily distinguished because the first grant was made by the Indians to the claimants. *Fernandez* presented the most difficult case; a grant of lands within the Indian boundary that had never been officially decreed to be part of the royal domain.¹¹⁰ Justice Baldwin rapidly dispatched the objection citing Chief Justice Marshall's famous decision in *Johnson v. M'Intosh*:

This subject was so fully and ably considered in *Johnson v. M'Intosh*, that we have only to refer to the language of the court to show that every

105. *Id.* at 726-29, 746-47.

106. *Id.* at 752.

107. *Id.* at 759.

108. *Id.* at 761-63.

109. Watson, *supra* note 103, at 361, 362, 378-79, 388-89.

110. *United States v. Fernandez*, 35 U.S. 303, 304 (1836).

European government claimed and exercised the right of granting lands, while in occupation of the Indians.¹¹¹

The court affirmed the superior court's confirmation of the entire grant of 16,000 acres.¹¹² By confirming the private property interests based on Spanish grants, the Court bolstered U.S. rights over indigenous lands as the successor in interest to Spain's sovereign powers. Losing a little over a million acres to private claimants not only served to demonstrate that the U.S. was serious about complying with its treaty obligation but also was preferable to calling Spanish sovereignty and authority into question. Questioning Spanish sovereignty over indigenous lands was tantamount to questioning U.S. sovereignty over them. These cases were decided just as the Indian Removal Act was implemented and illustrated a consistent logic in U.S. approaches to Indian land.¹¹³ These three important cases dealing with Florida land in Indian territory confirmed the claim of the individual Spanish grantees in territory beyond the line of demarcation between British, then Spanish, sovereignty and Indian control. These were minor losses in the U.S. battle to gain control of all Indian lands.

IV. *DERECHO INDIANO* IN THE SUPREME COURT

The Supreme Court constructed the applicable rules of *derecho indiano* from a variety of sources and read Spanish documents related to claims in light of this body of law. Materials collected, translated, and published by Joseph M. White were frequently cited by the Court. In a few instances, the Constitution of Cádiz was cited to describe the power of the governor to make grants at particular moments in the Spanish colonial history of Florida.

A. *Records and Traditional Sources of Derecho Indiano*

The records presented to the Supreme Court on appeal usually contained English translations of the applicable Spanish documents such as the petitions of the grantees, certified copies of the governors' decrees ordering a survey, and the survey itself.¹¹⁴ Differences in the practices of keeping records related to land and the validity of certified copies as evidence of grants were often resolved with reference to Spanish law and

111. *Id.*

112. *Id.* at 304-05.

113. DIBBLE, *supra* note 60, at 84; TIM ALAN GARRISON, THE LEGAL IDEOLOGY OF REMOVAL: THE SOUTHERN JUDICIARY AND THE SOVEREIGNTY OF NATIVE AMERICAN NATIONS (2002); BLAKE A. WATSON, BUYING AMERICA FROM THE INDIANS: *JOHNSON V. MCINTOSH* AND THE HISTORY OF NATIVE LAND RIGHTS 320-22 (2012); Watson, *supra* note 103, at 374.

114. *See, e.g.,* United States v. Arredondo, 31 U.S. 691, 691-96 (1832).

colonial practice.¹¹⁵ In some cases, litigants undertook extensive searches for related documents. For example, in *Mitchel v. United States*, the United States requested delays in trial for years as it attempted to gather records from Madrid and Havana.¹¹⁶

From the early 1830s, attorneys and judges extensively used *White's Collection of Land Laws* as an important source for English translations of Spanish legislation.¹¹⁷ The author of this work, Joseph M. White, became the pre-eminent practitioner of Florida land claims. From Kentucky, White studied law at the College of William and Mary for parts of 1817 and 1818, and was admitted to the Virginia and Kentucky bars in 1818. In 1822, he was appointed to the Florida Legislative Council and later took on various positions of government within Florida including the Secretary to the Land Commission of West Florida and later Land Commissioner. Within the context of Florida politics, White became an enemy of Richard Keith Call who later was the Governor of Florida. Their professional rivalry lasted decades with Call often arguing opposite White and losing at the Supreme Court. White was elected the Florida Delegate to Congress six times from 1825 to 1837 where he advocated strenuously and successfully for roads, other internal improvements, and military installations. He also ensured the passage of land laws affecting Florida, especially the Act of 1828 described earlier. He was a consistent winner for his clients before the Supreme Court.¹¹⁸ His wife, Ellen Adair White, also known as “Mrs. Florida White” in Washington to distinguish her from another Mrs. White from another state, was better known than her husband. She was an important socialite and “southern belle” in Washington society.¹¹⁹ White died in St. Louis, Missouri, in 1839.¹²⁰

The origin of White's important collection of translated materials was the passage of the Act of 1828 and the Attorney General's opinion that a correct translation of Spanish and French ordinances was needed to settle land claims. White, as a commissioner for Florida land claims, was

115. *United States v. Percheman*, 32 U.S. 51, 84-85 (1833); *United States v. Wiggins*, 39 U.S. 334, 337-39, 345-48 (1840).

116. *Mitchel v. United States*, 34 U.S. 711, 723 (1835).

117. *See, e.g., Percheman*, 32 U.S. at 62 (Taney's argument), 78 (White's argument); *United States v. Clarke*, 33 U.S. 436, 452 (1834); *Mitchel*, 34 U.S. at 740-43; WHITE, *supra* note 74.

118. DIBBLE, *supra* note 60, at 8, 9, 12, 17-30, 103-37.

119. *Id.* at 139-57.

120. *Id.* at 163.

assigned the task, and his manuscript was given to the State Department. Congress was informed by the President of this on February 11, 1829.¹²¹

In 1839, White published a commercial edition of these materials as *A New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France, and Spain Relating to the Concessions of Land*.¹²² This was often referred to as White's *New Recopilation*.¹²³ It was *the* book for use in such cases. With approximately 1500 pages in two volumes, the work contained all the basic sources one would need in translation into English. It included extracts from the *Siete Partidas*, the *Teatro de Legislación*, the *Recopilación* of 1680, and the *Novísima Recopilación* of Spanish (Castilian) law of 1805. It contained various important ordinances and decrees, and even an essay on the Adams-Onís treaty.

Attorneys and judges might also make direct reference to the fundamental source of *derecho indiano*, the *Recopilación de las Leyes de Indias*, often referred to in the U.S. materials as the *Recopilación de las Indias*. For example, in 1841, the United States and the claimants referred to various laws in the *Recopilación* to determine the perimeter of lands transferred with a fort, and the Court accepted these materials to determine that a line established at 1500 *varas* around the fort defined the property that was included with the United States' possession of the military installation. Similarly, in the same case, numerous provisions of the *Recopilación* along with references to White's *New Recopilation* were cited to establish the nature of Spain's claim to land and its treatment of Indian lands.¹²⁴

This did not exclude other sources. For example, to explain better the power of Spanish governors to grant land, White offered the Court translated portions of Juan Solórzano Pereira's *Política Indiana* while correctly assuring the court that "This author is one of the most celebrated of the Spanish commentators."¹²⁵

121. United States v. Wiggins, 39 U.S. 334, 351 (1840); DIBBLE, *supra* note 60, at 157.

122. WHITE, *supra* note 74.

123. See, e.g., O'Hara v. United States., 40 U.S. 275, 277, 278, 282 (1841); United States v. Delespine's Heirs, 40 U.S. 226, 227 (1841); United States v. Rodman, 40 U.S. 130, 137 (1841).

124. Mitchel v. United States, 40 U.S. 52, 58, 60, 69, 70, 72 (1841).

125. United States v. Percheman, 32 U.S. 51, 82 (1833) (White's argument). For Solórzano Pereira, see M.C. Mirow, *Juan Solórzano Pereira*, in GREAT CHRISTIAN JURISTS IN SPANISH HISTORY (Rafael Domingo & Javier Martínez-Torron eds., forthcoming), and Ditlev Tamm, *De Indiarum iure*, in THE FORMATION AND TRANSMISSION OF WESTERN LEGAL CULTURE: 150 BOOKS THAT MADE THE LAW IN THE AGE OF PRINTING 182-84 (Serge Dauchy et al. eds., 2016).

In addition to general legislation, royal orders gave the governor power to make grants under specific situations and for specific services to the crown. For example, affirming the validity of Juan Percheman's claim to 2000 acres, Chief Justice Marshall examined closely a Royal Order of March 29, 1815, from the minister of the Indies granting land to Spaniards who repelled the U.S. and Patriot invasions in 1812 and 1813.¹²⁶ Marshall noted that the Royal Order singled out Percheman as one of a handful of individuals to be rewarded for their actions and interpreted the Order not to limit the discretion of the governor in granting land under its provisions.¹²⁷

Spanish customs, usages, and practices were occasionally averred by claimant but these were usually unsuccessful. For example, in 1839, Moses Levy hoped to have his survey reformed in light of the Spanish custom of excluding water and marshes from the acreage of a grant. The court was unpersuaded by the existence of the custom and noted that a new survey would be a new grant and invalid because it would be made after January 24, 1818, the date provided in the treaty.¹²⁸ Zephaniah Kingsley unsuccessfully put forth a Spanish custom of non-reversion to the crown of land for the non-performance of a condition to build a mill. The court responded that a release of a condition had to be granted by the crown in the same way the condition was imposed.¹²⁹

B. *The Constitution of Cádiz*

Many petitions and concessions for land were made in Florida when the region was under the Constitutional Monarchy of the Constitution of Cádiz from October 17, 1812, to August 9, 1814, and again from May 4, 1820, to July 10, 1821.¹³⁰ The governor continued to have the power to make effective grants under the Constitution and these changes did not affect such concessions of land. The Constitution of Cádiz and its institutions, as late constitutional manifestations of *derecho indiano*, appear in the records of grants.¹³¹ For example, one document in the

126. *Percheman*, 32 U.S. at 95-96. For the invasion, see JAMES G. CUSICK, *THE OTHER WAR OF 1812: THE PATRIOT WAR AND THE AMERICAN INVASION OF SPANISH EAST FLORIDA* (2007).

127. *Percheman*, 32 U.S. at 97-98.

128. *United States v. Levy*, 38 U.S. 81, 82-83 (1839).

129. *United States v. Kingsley*, 37 U.S. 476, 486-87 (1838).

130. M.C. Mirow, *The Constitution of Cádiz in Florida*, 24 FLA. J. INT'L L. 280, 303, 326 (2012).

131. Arguing for the United States in *Delespine*, Attorney General Gilpin provided information about the Constitution, the Cortes, and the application of its decrees to public lands in Florida. *United States v. Delespine*, 40 U.S. 319, 323-24 (1841).

claim by Delespine's heirs, affirmed by the Court for over 10,000 acres, was dated June 13, 1821, and noted that those signing a certificate, Francisco Fatio and Juan Huertas, were "members of this illustrious constitutional council."¹³²

In another case, the power of the provincial deputation of Cuba to grant lands under the Constitution and a Royal Order of January 4, 1813, issued by a decree of the Cortes of Cádiz was called into question by the United States as it sought to invalidate a grant of more than 92,000 acres. The United States argued that the grantee did not receive the final copy of his grant until June 30, 1814, and because all acts of the Cortes, including the Royal Order giving the provincial deputation the power to grant lands, were declared null and void by the King on May 4, 1814, then the underlying Royal Order upon which the grant was based no longer existed.¹³³ Therefore, the grant was invalid. The United States argued, "How could he receive his title in form, or perfect his grant, under a system which was totally annulled?"¹³⁴ Because the grant failed for other reasons, Justice Catron did not have to decide the issue of the power of the provincial deputation and assumed that the grant was issued by proper authority.¹³⁵

The Constitution of Cádiz was ingeniously yet unsuccessfully deployed to revive a claim by the Duke of Alagon to 12,000,000 acres, the largest single Florida land grant litigated before the Supreme Court.¹³⁶ This grant, along with two others, were specifically excepted from confirmation in negotiations of the Adams-Onís Treaty and were the main reason for setting the cut-off date for confirmation of grants at January 24, 1818. The Duke's grant dated from February 6, 1818.¹³⁷ These grants were made subsequent to the initiation of negotiations for the treaty and would have transferred substantially all of Spain's public lands into private hands essentially exempting them from the transfer of property to the United States. When the United States objected, Spain agreed to a date that would make the grants invalid, stated in negotiations that they were invalid, and agreed to annul the grants. In return, the grants themselves would not be named in the language of the treaty so

132. *United States v. Delespine's Heirs*, 40 U.S. 226, 230 (1841).

133. *Delespine*, 40 U.S. at 325-26, 333-34.

134. *Id.* at 325.

135. *Id.* at 330.

136. *Doe v. Braden*, 57 U.S. 635, 635 (1853).

137. *Id.* (Mayer's argument). The other grants were to the Count of Puñonrostro and Don Pedro de Vargas. *Id.* at 651 (Cushing's argument).

that the Spanish crown was not embarrassed at its attempt to circumvent the main purpose of the treaty.¹³⁸

Counsel for the Duke argued that the grants were made during the period when the King had absolute power and was not restrained from granting lands. Nonetheless, at the time of ratifying the treaty, the King was substantially limited by the provisions of the Constitution of Cádiz as a constitutional monarch deriving his powers only from the provisions of the Constitution. The Duke's counsel cited and translated Art. 172, section 10, of the Constitution this way, stating that the King:

Shall not take the property of any person or corporation, nor hinder nor impede the free possession, use, and benefit thereof, and if at any time it shall be necessary for an object of acknowledged public utility to take the property of an individual, nevertheless it shall not be done unless he be at the same time indemnified, and a fair equivalent be given him upon a sufficient inquiry made by fit and proper men.¹³⁹

Although the King annulled the grant, there was no finding of public utility and no compensation paid to the Duke. Furthermore, citing other provisions of the Constitution, Mayer correctly argued that determinations of eminent domain under the Constitution properly belonged in the legislative power exercised by the Cortes and King as holders of national sovereignty. Another provision of the Constitution required the nation to maintain and protect the right to property among other rights.¹⁴⁰ Mayer, arguing for the Duke, asserted, "We deny that even the king and cortes, in combined legislative action, or under any title of power, could have annulled the grant."¹⁴¹

It was a clever argument, but it did not carry water. Justice Taney noted that written ratifications of the treaty by the King of Spain acknowledged that both sides agreed that the three grants were annulled. This understanding and the cut-off date of the treaty itself invalidated the grant.¹⁴² Furthermore, Taney refused to entertain arguments based on the limitation of the King under the Constitution of Cádiz; the question was, in his view, nonjusticiable by the Court. He wrote, "But these are political questions and not judicial. They belong exclusively to the political department of the government."¹⁴³ The Duke was not entitled to the 12,000,000 acres, about one-third of the present land of Florida.

138. *Id.* at 654-55.

139. *Id.* at 646 (Mayer's argument citing Const. (Spain) of 1812, art. 172, § 10).

140. *Id.* at 647 (Mayer's argument citing Const. (Spain) of 1812, art. 4).

141. *Id.* at 648 (Mayer's argument).

142. *Id.* at 655-57.

143. *Id.* at 657.

The Court employed a range of sources to construct the applicable rule of law under *derecho indiano*. Most sources were found in translation in the works of Joseph M. White. Other sources, such as royal orders applicable to perhaps one or just a few grants were consulted as needed and as raised by counsel. Even Spain's short-lived Constitution of Cádiz found a place in the Court's jurisprudence and was cleverly yet unsuccessfully invoked as late as 1853 in the Supreme Court.

C. The Supreme Court Applies Derecho Indiano

The Supreme Court was also limited by its reliance on English translations and edited selections of Spanish legislation. And the Court was well aware of the difference between Spanish law and its own common law. The nature of Spanish colonial law, its reliance on the will of the Spanish crown, and its various sources with different names were captured well by Justice Baldwin in the first East Florida land claim before the Supreme Court.¹⁴⁴ Similarly, arguing for the validity of Juan Percheman's claim to 2000 acres, White emphasized the difference between the law of colonial Spain and nineteenth-century common law to the Court this way:

As well might we judge the life of Pythagoras by the law of the New Testament, or the philosophy of Zoroaster by that of Newton, as subject the administration of a Spanish governor to the test of *magna carta*, the bill of rights, the *habeas corpus* act, or the principles of American constitutional law.¹⁴⁵

Lawyers and the Court had a sense of the difference in legal sources and methods between Spain and the United States and attempted to exploit these differences for the benefit of their clients. Even when Spanish provisions were known, litigants attempted to place them into a context of legal disorder, colonial lawlessness, and poor enforcement. In 1833, White argued to the Court,

Even the laws of the Indies, obscure, perplexed, and sometimes even unintelligible, as they are hardly reached across the ocean; and the decline

144. *United States v. Arredondo*, 31 U.S. 691, 714 (1832).

The laws of an absolute monarch are not its legislative acts—they are the will and pleasure of the monarch expressed in various ways—if expressed in *any*, it is a law; there is no other law making, law repealing power—call it by whatever name—a royal order—an ordinance—a cedula—a decree of council—or an act of an authorized officer—if made or promulgated by the king, by his content or authority, it becomes as to the persons or subject matter to which it relates, a law of the kingdom. It is emphatically so in Spain and all its dominions.

145. *United States v. Percheman*, 32 U.S. 51, 77 (1833).

of the Spanish, like that of the Roman empire, was marked by absolutism of the distant prefects.¹⁴⁶

Such moments of dissonance between two legal systems call out for comparison, as in White's quotations above, and perhaps for the development of comparative methods themselves.¹⁴⁷ Despite the recognition of the complexity of *derecho indiano*, the Supreme Court approached Spanish sources with the assumption that its legal skill and training were sufficient to apply foreign law as needed to resolve the case presented to it.

Several key cases employed *derecho indiano* to determine the nature of documents accepted by the legal system as valid proof of a claim, the power of the governor to make different kinds of grants, and the performance required to satisfy conditions in grants. Once these aspects were settled in the jurisprudence of the court, most of the remaining cases turned on the quality of the survey and its correspondence to the governor's grant or concession.¹⁴⁸ For example, new surveys might be ordered in conformity with valid grants.¹⁴⁹

A recurring issue was grants that were allocated amongst several parcels by surveyors or claimants after the grant. Attempts to take other tracts or substitute tracts after the deadline provided by the treaty of January 24, 1818, led to the nullity of the new tracts and claimants sometimes obtained confirmation of only a portion of the total grant.¹⁵⁰ Before this date, surveyors were given significant discretion in assigning lands to concessions based on claimants' petitions, and even single grants of a certain amount might be divided into separate tracts totaling the amount granted.¹⁵¹ At times and against the objection of the United States, the Court permitted actions subsequent to the governor's concession, such as surveys, to occur after the treaty deadline and still provide good title to the claimant.¹⁵² Where broad discretion was given to

146. *Id.* (White's argument).

147. M.C. Mirow, *Foreign Law and the Birth of Comparative Law*, in 2 *RATIO DECIDENDI: GUIDING PRINCIPLES OF JUDICIAL DECISIONS: FOREIGN LAW* 229-36 (Serge Dauchy, W. Hamilton Bryson & M.C. Mirow eds., 2010).

148. *See, e.g.*, *United States v. Hernandez*, 33 U.S. 485, 486 (1834).

149. *See, e.g.*, *United States v. Huertas*, 34 U.S. 171, 171-73 (1835).

150. *See, e.g.*, *United States v. Huertas*, 33 U.S. 488, 489-91 (1834); *United States v. Breward*, 41 U.S. 143, 146-48 (1842); *Sibbald v. United States*, 43 U.S. 455, 455-57 (1844) (Petition to substitute public lands after January 24, 1818, for those in the original concession denied); *Chaires v. United States*, 44 U.S. 611, 611-20 (1845) (Petition to clarify and grant other lands after January 24, 1818, when surveyor refused to act dismissed).

151. *United States v. Sibbald*, 35 U.S. 315, 323-24 (1836).

152. *See, e.g.*, *United States v. Clarke*, 34 U.S. 168, 168-69 (1835); *United States v. Levy*, 38 U.S. 81, 82-83 (1839).

the surveyor to select the land to compensate the grantee for services to the crown, a survey after the date of January 24, 1818, was effective.¹⁵³ Nonetheless, where the surveyor did not have authority to change the location of the grant or to split the concession into distinct parcels, such actions did not create valid interests in the claimant.¹⁵⁴ In *Villalobos*, Justice Catron wrote:

From the long experience this court has had in the investigation of Spanish titles, as claimed in Florida, as well as from the practice in regard to which the witnesses depose, we are of opinion, that the Surveyor-General had no authority to change the location of the grant, and to split up the surveys, as was done in this instance.¹⁵⁵

Similarly, the Court upheld grants of several tracts when they could be readily identified, and a survey conducted after the cut-off date was acceptable.¹⁵⁶ The Court might even specify the call of the survey in great detail to confirm a grant lacking a survey, as it did for 38,000 acres to the heirs of Fernando de la Maza Arredondo in 1839.¹⁵⁷ The survey must have been made by the official surveyor. In *United States v. Hanson*, the claimant sought to have the United State recognize his claim to 16,000 acres based on a private survey. The Court found this defect readily curable by ordering a survey consistent with the concession.¹⁵⁸

Grants might fail because they were not specific enough to be identified by a survey. Thus, a grant of 50,000 acres to Augustin Buyck could not be confirmed by the Court because the locality of the grant could not be ascertained when only the phrase “at Musquito” was employed.¹⁵⁹ This doctrine was applied to invalidate large grants, such as the claim by Pedro Miranda to more than 368,000 acres along the “waters of Hillsborough and Tampa bays.”¹⁶⁰ Relying on a passage from *White’s New Recopilation*, Justice Wayne assured the parties that his decision was based on an application of the Spanish, and not the common law.¹⁶¹

153. *United States v. Clarke*, 41 U.S. 228, 232-33 (1842); *United States v. Acosta*, 42 U.S. 24, 26-27 (1843).

154. *Villalobos v. United States*, 51 U.S. 541, 555-56 (1850).

155. *Id.* at 555.

156. *United States v. Low*, 41 U.S. 162, 166-68 (1842).

157. *United States v. Arredondo*, 38 U.S. 88, 88 (1839); *United States v. Arredondo*, 38 U.S. 113, 133-35 (1839).

158. *United States v. Hanson*, 41 U.S. 196, 199-202 (1842).

159. *Buyck v. United States*, 40 U.S. 215, 222-25 (1841).

160. *United States v. Miranda*, 41 U.S. 153, 157 (1842).

161. *Buyck*, 40 U.S. at 224-25.

It is proper for us to remark, that in coming to our conclusion upon this point, we have not been influenced by any of the English common-law rules, which make grants void

These cases required a significant level of expertise in Spanish grants, legal sources, and *derecho indiano*. It is not surprising to find a handful of individuals specializing in these claims. Joseph M. White, author of the leading compilation and translation of applicable sources, was active in representing individuals and had already established a good reputation in the field by the early 1830s. White's rival was Richard Call who had challenged White to a duel in 1825 and served as opposing counsel to White in thirteen of the Florida land claim cases before the Supreme Court of the United States from 1832 to 1835. Blake Watson has captured the overlapping interest on the small group of attorneys who could handle these complex cases before the Supreme Court.¹⁶²

These were technical cases relying on Spanish documents and Spanish laws, not all of which were translated. This led to a small number of trained, repeat players who litigated these claims; experts in *derecho indiano* were sought-after lawyers for petitioners. The United State was usually represented by the Attorney General at the time. For example, Joseph M. White represented seventeen petitioners in the first twenty Supreme Court cases from 1832 to 1836. Individual justices on the Supreme Court appeared also to have developed specific expertise so

for uncertainty. . . . We apply to the case, the laws and ordinances of the government under which the claim originated; and that rule which must be of universal application in the construction of grants, which is essential to their validity, that the thing granted should be so described as to be capable of being distinguished from other things of the same kind, or be capable of being ascertained by extraneous testimony.

Similarly, *O'Hara v. United States*, 40 U.S. 275, 279 (1841) (“[t]he place called Nassau” too indefinite when “Nassau” was unknown); *United States v. Forbes's Heirs*, 40 U.S. 173, 180-81 (1841) (the “district of Nassau River” too indefinite); *United States v. Lawton*, 46 U.S. 10, 25-29 (1847) (“at the place called Dunn's lake on the river St. John's” too indefinite). The Superior Court also lacked the power to locate lands to satisfy a grant from public lands. *United States v. Delespine*, 40 U.S. 319, 334-35 (1841).

162. Watson, *supra* note 103, at 372-73. Summarizing the various interests and conflicts of lawyers in *Mitchel v. United States*, Watson writes:

To recap, during the *Mitchel* litigation the claimants suing the United States were represented by a former federal land commissioner (White), who was currently employed by the United States in other land grant disputes, and the United States Attorney General (Berrien), who otherwise supervised litigation for the federal government. The attorneys for the United States included Richard Call, the Tallahassee Land Office Receiver who had previously challenged White to a duel, and William Wirt, the father-in-law of Judge Thomas Randall [of the Superior Court of the Middle District of the Territory of Florida where the claim was initially filed—note by M.C. Mirow]. In addition to being married to the daughter of one of the lawyers representing the United States, Judge Randall was a friend of Call and had previously traveled to Cuba—on behalf of the government—to retrieve documents relevant to the validity of the Forbes Purchase!

Id. at 373-74. Furthermore, Joseph M. White later served as a trustee of the company that sold parcels from the land confirmed in the case. DIBBLE, *supra* note 60, at 162.

that their knowledge could be used in cases addressing Florida land claims. Justice Marshall wrote thirteen of the opinions studied; Justices Wayne and Catron wrote twelve opinions each; and Justice Baldwin wrote seven opinions.

V. CONCLUSION

After Florida's transfer to the United States in 1821 under the Adams-Onís Treaty, Congress appointed commissioners to determine the validity of private land claims arising from the Spanish period. These commissions adjudicated smaller claims that were later confirmed by Congress. The methods, sources, and particularly the use of *derecho indiano* in these commissions await study by legal historians investigating the application of Spanish colonial law in U.S. fora. Larger or unresolved claims were assigned to the territorial courts with appeal by right to the Supreme Court of the United States. The Court heard approximately sixty cases on Florida land claims between 1829 and 1926.

Supreme Court cases dealing with Florida land claims raised a number of legal issues. The nature and application of the Adams-Onís Treaty were examined and re-examined as the Court developed its doctrine of self-executing treaties. In this light, the Court turned to the official text in Spanish in addition to the official English text. Its consultation of and reliance on this non-English text are noteworthy examples of the Court employing comparative methods across the different legal cultures touching these grants.

Derecho indiano came into play when the court had to determine the validity of grants under Spanish law. It employed this body of law to examine grants of land in Indian Territory, the power of Spanish officials to make effective grants, and the satisfaction by grantees of conditions imposed on the grants. These complex legal sources were presented to the Court through a small cast of lawyers including Joseph M. White and his law partner Richard Henry Wilde, who had gained expertise in this area of law.¹⁶³ Similarly, Justices Marshall, Baldwin, Wayne, and Catron appear to have developed facility with the *derecho indiano* applicable to Florida land grants and authored the lion's share of opinions in these cases.

The Court took Spanish law and Spanish documents seriously in determining title to large tracts of land under its jurisdiction. The Court

163. DIBBLE, *supra* note 60, at 49. Born in Dublin, Ireland, Wilde was admitted to the Georgia bar in 1809 and served as the state's Attorney-General from 1811 to 1813. *Id.* at 151.

made reasonable efforts to understand and to apply *derecho indiano* to resolve petitioners' claims and appears to have dealt fairly with petitioners, although different justices brought approaches that may have been more favorable (Justice Baldwin) or less favorable (Justice Wayne) to claimants under Spanish grants. Of the cases studied here, thirty-three affirmed the grants to petitioners and twenty-two denied the validity of the grants. Others have noted the seriousness with which the Court addressed these cases in light of the treaty obligations imposed on the United States.¹⁶⁴ Florida land claims before the Supreme Court provide a fascinating window into the sources and arguments used by attorneys and justices in the Court, an unexpected forum for the application and interpretation of *derecho indiano*.

164. Watson, *supra* note 103, at 377.

APPENDIX

CASES CONSULTED FOR THIS STUDY¹⁶⁵

Case name	Year	Citation	Justice	Attorneys	Grant ¹⁶⁶	Confirmed
De La Croiz v. Chamberlain	1827	25 U.S. 599	Trimble	Plaintiff: Livingston Defendant: Owen	not specified	no
Foster & Elam v. Neilson	1829	27 U.S. 232	Marshall	Defendant: Jones Plaintiffs in error: Coxe & Webster	40,000 arpents	no
United States v. Arredondo ¹⁶⁷	1832	31 U.S. 691	Baldwin	U.S.: Call, Wirt, Taney, AG Appellees: White, Berrein & Webster	289,000	yes
United States v. Percheman ¹⁶⁸	1833	32 U.S. 51	Marshall	U.S.: Taney, AG Appellee: White	2000	yes
United States v. Clarke ¹⁶⁹	1834	33 U.S. 436	Marshall	U.S.: Call Appellee: Berrein & Wilde	16,000	8000 confirmed
United States v. Richard ¹⁷⁰	1834	33 U.S. 470	Marshall	U.S.: Call Appellee: White	14,400	yes
United States v. Huertas ¹⁷¹	1834	33 U.S. 475	Marshall	U.S.: Call Appellee: White	10,000	yes

165. This list supplements and expands upon the list of cases provided in Boggs, *Florida Land Titles*, *supra* note 15, at 31; *see also* DIBBLE, *supra* note 60, at 173-81 (a list of cases argued by Joseph M. White).

166. In acres unless otherwise indicated.

167. *Spanish Land Grants, Arredondo & Son, F.M.—Confirmed*, FLA. MEMORY: ST. LIBR. & ARCHIVES FLA., <https://www.floridamemory.com/items/show/232480> (last visited Apr. 12, 2017) [hereinafter cited by claimant and link].

168. *Percheman, John—Confirmed*, <https://www.floridamemory.com/items/show/232846>.

169. *Clarke, George J.F.—Confirmed*, <https://www.floridamemory.com/items/show/232573>.

170. *Richard, Francis—Confirmed*, <https://www.floridamemory.com/items/show/232871>.

171. *Huertas, Antonio—Confirmed*, <https://www.floridamemory.com/items/show/232735>.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
United States v. Gomez ¹⁷²	1834	33 U.S. 477	Marshall	U.S.: Call Appellee: White	12,000	yes
United States v. Levi ¹⁷³	1834	33 U.S. 479	Marshall	U.S.: Call Appellee: White	65,000	yes
United States v. Younge ¹⁷⁴	1834	33 U.S. 484	Marshall	U.S.: Call Appellee: White	5000	yes
United States v. Fleming ¹⁷⁵	1834	33 U.S. 478	Marshall	U.S.: Call Appellee: White	20,000	yes
United States v. Hernandez ¹⁷⁶	1834	33 U.S. 485	Marshall	U.S.: Call Appellee: White	20,000	yes
United States v. Huertas ¹⁷⁷	1834	33 U.S. 488	Marshall	U.S.: Call Appellee: White	6000 confirmed; 4000 denied	
United States v. Fatio ¹⁷⁸	1834	33 U.S. 492	Marshall	U.S.: Call Appellee: White	10,000	yes
United States v. Gibson ¹⁷⁹	1834	33 U.S. 494	Marshall	U.S.: Call Appellee: White	10,760	yes
United States v. Clarke ¹⁸⁰	1835	34 U.S. 168	Marshall	U.S.: Call Appellee: Wilde	22,000	yes
United States v. Huertas ¹⁸¹	1835	34 U.S. 171	Marshall	U.S.: Call Appellee: Wilde & White	15,000	yes
Mitchel v. United States ¹⁸²	1835	34 U.S. 711	Baldwin	U.S.: Butler, AG, & Call Appellants: White & Berrien	1,200,000	yes

172. *Gomez, Eusibio M.*—Confirmed, <https://www.floridamemory.com/items/show/232674>.

173. *Levi, Moses E.*—Confirmed, <https://www.floridamemory.com/items/show/232763>.

174. *Yonge, Philip R.*—Confirmed, <https://www.floridamemory.com/items/show/232992>.

175. *Fleming, Geo*—Confirmed, <https://www.floridamemory.com/items/show/232645>.

176. *Hernandez, Joseph M.*—Confirmed, <https://www.floridamemory.com/items/show/232712>.

177. *Huertas, John*—Confirmed, <https://www.floridamemory.com/items/show/232736>.

178. *Fatio, Francis P.*—Confirmed, <https://www.floridamemory.com/items/show/232629>.

179. *Fleming, Sophia/Gibson, William*—Confirmed, <https://www.floridamemory.com/items/show/232648>.

180. *Clarke, George, J.F.*—Confirmed, <https://www.floridamemory.com/items/show/232573>.

181. *Huertas, Antonio*—Confirmed, <https://www.floridamemory.com/items/show/232735>.

182. *John Forbes & Co.*—Confirmed, <https://www.floridamemory.com/items/show/232654>.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
United States v. Segui ¹⁸³	1836	35 U.S. 306	Baldwin	U.S.: Butler, AG Appellee: White	16,000	yes
United States v. Chaires	1836	35 U.S. 308	Baldwin	U.S.: Butler, AG Appellees: White	20,000	yes
United States v. Seton ¹⁸⁴	1836	35 U.S. 309	Baldwin	U.S.: Butler, AG Appellee: White	16,000	yes
United States v. Sibbald ¹⁸⁵	1836	35 U.S. 313	Baldwin	U.S.: Butler, AG Appellee: White	16,000	yes
United States v. Fernandez ¹⁸⁶	1836	35 U.S. 393	Baldwin	U.S.: Butler, AG Appellees: White	16,000	yes
United States v. Mills ¹⁸⁷	1838	37 U.S. 215	Wayne	U.S.: Butler, AG Appellee: none appeared	16,000? (mill)	no
United States v. Kingsley ¹⁸⁸	1838	37 U.S. 476	Wayne	U.S.: Butler, AG Appellee: none appeared	16,000	no
Garcia v. Lee	1838	37 U.S. 511	Taney	Defendant: Jones Plaintiff in error: M'Caleb, Southard	10,000 arpents	no
United States v. Delespine's Heirs ¹⁸⁹	1838	37 U.S. 654	Wayne	U.S.: Butler Appellee: none named	43,000	yes

183. *Segui, Bernardo*—Confirmed, <https://www.floridamemory.com/items/show/232908>.

184. *Seton, Charles*—Confirmed, <https://www.floridamemory.com/items/show/232911>.

185. *Sibbald, Charles F.*—Confirmed, <https://www.floridamemory.com/items/show/232917>.

186. *Fernandez, Domingo*—Confirmed, <https://www.floridamemory.com/items/show/232635>.

187. *Mills, William*—Unconfirmed, <https://www.floridamemory.com/items/show/233196>.

188. *Kingsley, Zephaniah*—Unconfirmed, <https://www.floridamemory.com/items/show/233161>.

189. *Delespine, Joseph*—Confirmed, <https://www.floridamemory.com/items/show/232594>.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
United States v. Levy	1839	38 U.S. 81	Wayne	U.S.: Grundy, AG Appellee: none named	not specified	reform of survey denied
United States v. Drummond	1839	38 U.S. 84	Wayne	U.S.: Grundy, AG Appellee: none named	26,000	no
United States v. Burgevin	1839	38 U.S. 85	Wayne	U.S.: Grundy, AG Appellee: Dent & Coxe	5 sq. miles	no
United States v. Arredondo's Heirs ¹⁹⁰	1839	38 U.S. 88	Wayne	none named	15,000	yes
United States v. Arredondo	1839	38 U.S. 133	Wayne	U.S.: Grundy, AG Appellees: none named	38,000	yes
United States v. Wiggins ¹⁹¹	1840	39 U.S. 334	Baldwin	U.S.: Gilpin, AG & Dent Appellee: Downing	300	yes
Pollard's Heirs v. Kibbe	1840	39 U.S. 353	Thompson	Plaintiffs in error: Test & Webster Appellee: Key	town lot	
United States v. Waterman's Heirs ¹⁹²	1840	39 U.S. 478	Baldwin	U.S.: Gipin, AG Appellees: none named	16,000	yes

190. *Arredondo, Sr., F.M.—Confirmed*, <https://www.floridamemory.com/items/show/232483>.

191. *Wiggins, Elizabeth—Confirmed*, <https://www.floridamemory.com/items/show/233394>.

192. *Waterman, Eleazer—Confirmed*, <https://www.floridamemory.com/items/show/232972>.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
Mitchel v. United States	1841	40 U.S. 52	Wayne	U.S.: Gilpin, AG Appellants: Ogden & Webster (printed argument for appellants by the late Joseph M. White)	1500 varas	yes
United States v. Rodman ¹⁹³	1841	40 U.S. 130	Wayne	U.S.: Gilpin, AG Appellee: Downing	16,000	yes
United States v. Forbes' Heirs ¹⁹⁴	1841	40 U.S. 173	Catron	U.S.: Gilpin, AG Appellees: Downing	10,000	no
Buyck v. United States	1841	40 U.S. 215	Wayne	U.S.: Gilpin, AG Appellant: Downing	50,000	no
United States v. Delespine's Heirs	1841	40 U.S. 226	Wayne	U.S.: Gilpin, AG Appellees: Downing	10,240	yes
O'Hara v. United States ¹⁹⁵	1841	40 U.S. 275	Wayne	U.S.: Gilpin, AG Appellants: Downing	15,000	no
United States v. Delespine ¹⁹⁶	1841	40 U.S. 319	Catron	U.S.: Gilpin, AG Appellee: Downing	92,160	no
United States v. Beward ¹⁹⁷	1842	41 U.S. 143	Catron	U.S.: Legaré, AG Appellee: Wilde	not specified	13,000 confirmed; 3000 not confirmed

193. *McHardy, Robert—Confirmed*, <https://www.floridamemory.com/items/show/232797>.

194. *Forbes, John—Confirmed*, <https://www.floridamemory.com/items/show/232653>.

195. *O'Hara [sic], Daniel—Unconfirmed*, <https://www.floridamemory.com/items/show/233221>.

196. *Delespine, Joseph—Unconfirmed*, <https://www.floridamemory.com/items/show/233059>.

197. *Beward, John—Confirmed*, <https://www.floridamemory.com/items/show/232529>.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
United States v. Miranda	1842	41 U.S. 153	Wayne	U.S.: Duvall & Legaré, AG Appellees: Garr & Ogden	368,000	no
United States v. Low ¹⁹⁸	1842	41 U.S. 162	Catron	U.S.: Legaré, AG Appellees: Berrien & Wilde	16,000	yes
United States v. Hanson ¹⁹⁹	1842	41 U.S. 196	Catron	U.S.: Legaré, AG Appellees: none appeared	16,000	yes
United States v. Clarke ²⁰⁰	1842	41 U.S. 228	Catron	U.S.: Legaré, AG Appellee: none named	15,000	yes
United States v. Acosta ²⁰¹	1843	42 U.S. 24	Catron	U.S.: Legaré, AG Appellee: none named	8000	yes
Sibbald v. United States ²⁰²	1844	43 U.S. 455	Story	none named	not specified	petition of other lands denied
Chaires v. United States	1845	44 U.S. 611	Catron	U.S.: Nelson, AG Appellants: Berrien	20,000	no
United States v. Marvin	1845	44 U.S. 620	Catron	U.S.: Nelson, AG Defendant in error: Marvin	7000	no
United States v. Lawton	1847	46 U.S. 10	Catron	U.S.: Mason, AG Appellee: Yulee	23,040	no
Villalobos v. United States ²⁰³	1848	47 U.S. 81	Taney	U.S.: Mason, AG, Clifford AG Appellants: Yulee	not specified	no

198. *Lowe, John W.*—Confirmed, <https://www.floridamemory.com/items/show/232777>.

199. *Hanson, John M. et al.*—Confirmed, <https://www.floridamemory.com/items/show/232697>.

200. *Atkinson, George*—Confirmed, <https://www.floridamemory.com/items/show/232485>.

201. *Acosta, Domingo*—Confirmed, <https://www.floridamemory.com/items/show/232464>.

202. *Sobbald, Charles F.*—Confirmed, <https://www.floridamemory.com/items/show/232917>.

203. Scrivener's error for "Villalobos." I thank Tom Baker for discussing this issue with me.

Case name	Year	Citation	Justice	Attorneys	Grant	Confirmed
Villalobos v. United States	1850	51 U.S. 541	Catron	U.S.: Crittenden, AG Appellants: Yulee & Berrien	16,000	no
Doe v. Braden	1853	57 U.S. 635	Taney	U.S.: Cushing, AG Plaintiff in error: Mayer & Johnson	12,000,000	no
United States.v. De Morant	1887	123 U.S. 335	Bradley	U.S.: Janks, SG Appellees: MacVigh, Line & Wintersteen	1600 arpents	yes
United States v. De Morant	1888	124 U.S. 647	Bradley	Movant: Lines no opposition	not specified	motion granted
Mitchell v. Furman	1901	180 U.S. 402	Fuller	Appellants: Dewhurst Appellees: Fleming, Bisbee, Rhinehart & Fleming	10,000 (Anastasia Island)	no
United States v. Dalcour	1906	203 U.S. 408	Holmes	U.S. - Hoyt, SG, & Howard Appellees: Blount, Hatfield, Dewhurst & Blount, Jr	1,850,000	no
Del Pozo v. Wilson Cypress Co.	1925	269 U.S. 82	Van Devanter	Appellee: Clark & Cooper Appellants: Dewhurst, Jones & Jones	5500	no
Sanchez v. Deering	1926	270 U.S. 227	McReynolds	Appellee: Hudson Appellants: Dewhurst	175 (Key Biscayne)	no