

8-8-1876

## On the Relief of E. and S. Clark

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S. Rep. No. 528, 44th Cong., 1st Sess. (1876)

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IN THE SENATE OF THE UNITED STATES.

AUGUST 8, 1876.—Ordered to be printed.

Mr. THURMAN submitted the following

REPORT :

[To accompany bill S. 791.]

*The Committee on Private Land-Claims, to whom was referred the bill (S. 791) for the relief of Ethan Ray Clarke and Samuel Ward Clarke, report :*

That on May 20, 1805, Jehu Underwood petitioned the governor of Florida, then a province of Spain, for leave to erect a saw-mill on Black Creek, about three-quarters of a mile south of Saint Mary's River, in that province. On the same day the governor granted him the privilege asked for, with the right to "make use of all the lumber contained within the haulage of two and a half miles on all sides, the quantity he calls for, and the same will then be confirmed his property, free from any defalcation whatever." The effect of this concession was to grant to Underwood a right to build his saw-mill and take timber for its use; it was no concession of a title to the land. This will be seen from the documents hereinafter quoted and facts hereinafter stated, and was so found by the board of land commissioners on January 2, 1824. (3 Am. State Papers, Duff Green's ed., p. 702.) On May 13, 1818, said Underwood presented the following petition to Don José Coppinger, governor of said province :

[Translation.]

To His Excellency the GOVERNOR :

Don Jehu Underwood, an inhabitant of this province, respectfully represents to your excellency that in the year 1805 he erected a water saw-mill on the place known as Black Creek, about three-quarters of a mile south of the river Saint Mary's, for which purpose he had obtained permission from this government, as will appear by the certificates herewith presented. In said certificates the place called Deep Run is designated instead of Black Creek, which mistake must have proceeded from a slip of the pen or error of the person who drew the petition; for it is certain that the petitioner erected the mill on Black Creek. He invested many thousands of dollars in finishing the work, so that, when completed and in full operation, he was offered for the same and for the negroes and horses thereon thirty thousand dollars.

It is well known and easily proven that the said machine sawed daily a considerable number of feet of lumber, and that it was in operation from that time, without interruption, until the year 1812, when the insurrection of this province occurred, at which time he had the misfortune of having his habitation burned by the Indians, losing, by the rigor of this element, the product of his industry and labor. In that enterprise he had invested all his capital, and, moreover, contracted large debts with Don Fernando de la Maza Arredondo; and yet, not despairing of reviving this useful and profitable establishment, did not lose a moment until he succeeded in rebuilding it, so that at present he is able to saw ten thousand feet of boards every twenty-four hours. In virtue of which, and as this branch of industry is calculated to promote the welfare of the province, and as your petitioner is entitled to some consideration on account of the losses he has sustained—

He therefore prays your excellency will be pleased to permit him to introduce proof of all he has herein stated, and, the proof being sufficient, order that a title of absolute

property be issued in his favor, for a five-mile square of land at the place where the said mill is situated, bounded on one side upon the said river Saint Mary's, and upon the other sides by vacant lands—this being the portion, as he is informed, which the government has designated and allowed those who apply themselves to the erection of such useful establishments in order that they may enjoy the advantage of the timber thereon for sawing, and as a reward for the expense incurred in the construction thereof—a favor which he hopes to receive from the justice of your excellency.

JEHU UNDERWOOD.

SAINT AUGUSTINE, FLA., May 13, 1818.

On this petition the following action was had:

SAINT AUGUSTINE, May 14, 1818.

The accompanying documents being received, the petitioner is permitted to make the proof which he offers, after which the corresponding decree will be made.

COPPINGER.

Before me.

JUAN DE ENTRALGO.

In Saint Augustine, on the same day, month, and year, I notified Don Jehu Underwood of the preceding decree. I attest.

ENTRALGO.

Here follows the testimony of George Fleming, Fernando de la Maza Arredondo, jr., and Ellis Stafford:

SAINT AUGUSTINE, May 16, 1818.

Whereas the foregoing testimony proves that Don Jehu Underwood built a water saw-mill at the place known as Black Creek, situated about three-quarters of a mile south of the river Saint Mary's, since the year 1805, permission was granted him by the government for that purpose, which mill continued in operation until the year 1812, when it was burned and destroyed by the Indians and afterward rebuilt by him, as stated, and proven by one of the witnesses: Therefore, and in consideration of the losses he has sustained, and the beneficial influence the establishment of said works must have toward the settlement of the province, it is hereby granted him *the use of the pine trees and other timber embraced within a five-mile square, in order that he may enjoy the profit thereof, excluding any other person from taking anything therefrom.*

Let these proceedings be filed, and the said Underwood provided with a copy of this decree, that it may serve him as evidence and proof of this grant.

COPPINGER.

Before me.

JUAN DE ENTRALGO,  
Notary of Government.

In Saint Augustine, on the same day, month, and year, I notified Don Jehu Underwood of the preceding decree. I attest.

ENTRALGO.

NOTE.—I gave the party interested on the same day the copy ordered. I attest.

ENTRALGO.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct translation of the original in the Spanish language, on file in my office.

Witness my hand and seal of office, at the city of Saint Augustine, Territory of Florida, this 26th day of June, A. D. 1844.

[SEAL.]

ANTONIO ALVAREZ,  
K. P. A.

On February 17, 1821, Governor Coppinger made the following concession to said Underwood:

[Translation.]

Don José Coppinger, colonel of the national armies, civil and military governor, and sub-delegate of the public exchequer in this city of Saint Augustine, and province of Florida:

Whereas, by royal order communicated to this government on the 29th of October, 1790, by the captain-general of the Island of Cuba and the two Floridas, it is provided, among other things, that to foreigners who, of their own free will, present themselves and swear allegiance to our sovereign, lands should be granted and surveyed gratis, in proportion to the laborers each family may have; and whereas Jehu Underwood, who had presented himself as one of them, solicited the title of absolute property of the land corresponding to a water saw-mill which he erected in the place

known as Black Creek, situated about three-quarters of a mile to the south of Saint Mary's, for the building of which he obtained permission from this government on the 20th of May, 1805, I thought proper, after the said Underwood had produced his proofs as respects said establishment, to grant him *only the use and benefit of the pine trees and timber comprised within a five-mile square; and whereas, in consequence thereof, he represented to me that he had not obtained any concession of land for cultivation, and solicited, therefore, a grant in absolute property of 600 acres of land round about the said saw-mill, I thought proper to accede to his petition by decree of the 18th of May, 1818, in consideration of the great damages and losses he suffered in said establishment, and his constancy in supporting the same with utility and the advancement of the province:*

*And whereas the said Underwood, for the purpose of obtaining the title of absolute property, has presented the plat of the said six hundred acres of land named in the aforesaid decree of concession, which lands, according to the above-cited plat made by the surveyor-general, Don Jorgé Clarke, and dated the first instant, are comprised within the following dimensions, to wit: the first line runs east seventy chains; the second runs south eighty-six chains, and the third runs west seventy chains, which plat is filed with the proceedings on this subject in the office of the notary (escrivano) of government. Wherefore, and in consideration of what has been set forth, and according to what is contained in the said proceedings, to which I refer myself, I grant, in the name of His Majesty, to the said Jehu Underwood, his heirs and successors, the aforesaid 600 acres of land in absolute property, and give him, as by these presents I do, the corresponding title, whereby I separate the national exchequer from the right and dominion it held to said lands, and cede and transfer them unto the aforementioned Jehu Underwood, that in virtue thereof he may possess, use, and enjoy the same, free from all incumbrance whatever, with all the inways, outways, uses, customs, rights, and appurtenances which belong or may pertain thereto, and sell, cede, transfer, and alienate them at his will and pleasure. To all of which I interpose my authority as far as I can and ought, according to law, in virtue of the will of the sovereign.*

Given under my hand, and countersigned by the undersigned, notary of government and national exchequer, in this city of Saint Augustine, Florida, the 17th day of February, 1821.

JOSÉ COPPINGER.

By order of his excellency.

JUAN DE ENTRALGO,  
*Notary of Government and Public Exchequer.*

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct translation of the original in the Spanish language, in my office.

Witness my hand and seal of office, at the city of Saint Augustine, Territory of Florida, this 26th day of June, A. D. 1844.

ANTONIO ALVAREZ,  
*Keeper of Public Archives.*

It is clear from these documents that the title granted to Underwood was for six hundred acres in fee, and a privilege to take timber for the use of his saw-mill on the remainder of a tract of five miles square, and nothing more. And so he understood it, for when he preferred his claim before the board of land commissioners aforesaid, it was for six hundred acres only. And this is further shown by a conveyance made by him on February 26, 1821, to Eleazer Waterman, as follows:

GEORGIA, Camden County:

Know all men by these presents that I, Jehu Underwood, for and in consideration of the sum of four thousand dollars to me in hand well and truly paid by Eleazer Waterman, at and before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, *hath granted, bargained, and sold, and by these presents, doth grant, bargain, and sell, unto the said Eleazer, one-half of a mill-site, containing 600 acres of land, with a mill thereon, and also one-half of the exclusive right of cutting timber on the pine land for five miles square about said tract, or its equivalent, according to the surveyor's lines designating it, situate on Black Creek, on the Florida side of Saint Mary's River. To have and to hold unto the said Eleazer, his heirs and assigns, forever. And, lastly, the said Jehu, his heirs, executors, administrators, and assigns, unto the said Eleazer, his heirs, executors, administrators, and assigns, the above-described property shall and will forever warrant and defend.*

In witness whereof I, the said Jehu, have hereunto set my hand and seal, at Saint Mary's, in said county, on the 26th day of February, 1821.

JEHU UNDERWOOD. [L. s.]

Signed, sealed, and delivered in the presence of—

B. A. COPP, *Notary Public.*

S. CLARKE,

GEO. I. F. CLARKE.

GEORGIA, *Camden County* :

Be it known that before me, Belton A. Copp, a notary public, duly appointed and sworn to act, in and for the county of Camden, residing and practicing in the town of Saint Mary's, on the 26th day of February, in the year of our Lord 1820, at Saint Mary's aforesaid, came Jehu Underwood, whose name is signed to the deed made in favor of Eleazer Waterman, on the first page of this sheet, who signed the said deed in my presence, and in the presence of Samuel Clarke and George I. F. Clarke, witnesses thereto, and, being solemnly interrogated thereto, acknowledged the same to be his true act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office on the day and year aforesaid, at Saint Mary's, in the county aforesaid.

[SEAL.]

BELTON A. COPP,  
*Notary Public.*

Don Jorge Clarke, vis-consul de su Magestad Catolica, residente en Santa Maria de Georgia, certifico que Don Belton A. Copp, de quien aparece firmado ento documents, es, como en el se expresa, notario publico en ente pueblo de Santa Maria, dia 8 de Marzo de 1821.

JORGE I. F. CLARKE.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of Saint Augustine, Territory of Florida, this 26th day of June, A. D. 1844.

[SEAL.]

ANTONIO ALVAREZ, *K. P. A.*

And it is still further shown by a mortgage made by said Underwood and Waterman to Ethan Clarke on the same day, as follows :

GEORGIA, *Camden County* :

Know all men by these presents that we, Eleazer Waterman and Jehu Underwood, copartners in trade in getting and sawing lumber, in the province of East Florida, for and in consideration of the sum of two thousand dollars due and owing from us to Ethan Clarke, which it is our intention by these presents more fully and completely to secure unto the said Ethan, and for and in consideration of the further sum of one dollar to us in hand, well and truly paid by the said Ethan, the receipt whereof is hereby acknowledged, have *granted, bargained, and sold*, and by these presents do *grant, bargain, and sell* unto the said Ethan the following property, namely, a mill-site on Black Creek, on the Florida side of the Saint Mary's River, containing 600 acres with a mill thereon, with the exclusive right of cutting timber on the pine land for five miles square, or its equivalent, according to the surveyor's lines designating it. To have and to hold unto the said Ethan, his heirs and assigns forever. And lastly, the said Eleazer and Jehu and each of them, their heirs, executors, and administrators, and assigns, unto the said Ethan, his heirs, executors, and administrators, and assigns, the above-described property shall and will forever warrant and defend : Provided, although, nevertheless, (and such is the true meaning and intention of these presents,) that if the said Eleazer and Jehu, their executors, or administrators, or either of them, pay or cause to be paid to the said Ethan, his executors, administrators, or assigns, on or before the first day of March, in the year of our Lord one thousand eight hundred and twenty-three, the sum of \$2,000 aforementioned, with eight per cent. interest, then and in that case everything herein contained and these presents shall become void and of no effect.

In testimony whereof each of us have hereunto set his hand and seal, at Saint Mary's, in Camden County, on this 26th day of February, 1821.

[SEAL.]

[SEAL.]

Sealed and delivered in the presence of—

S. CLARKE.

GEO. I. F. CLARKE.

JEHU UNDERWOOD.  
E. WATERMAN.

BELTON A. COPP,  
*Notary Public.*

GEORGIA, *Camden County* :

Received of Jehu Underwood and Eleazer Waterman the amount of interest, leaving only the principal sum of \$2,000 due and from the said Underwood and Waterman on the first day of March, 1823.

SAINT MARY'S, 10th June, 1821.

ETHAN CLARKE.

GEORGIA, *Camden County*:

Be it known that before me, Belton A. Copp, a notary public, duly appointed and sworn to act, in and for the county of Camden, residing and practicing in the town of Saint Mary's, on the 26th day of February, 1821, at Saint Mary's aforesaid, came Jehu Underwood and Eleazer Waterman, (whose names are signed to the mortgage made in favor of Ethan Clark, on the first and second pages of this sheet,) who signed the said deed in my presence and in the presence of Samuel Clarke and George I. F. Clarke, witnesses thereto, and, being solemnly interrogated thereto, acknowledged the same to be their true act and deed.

In testimony whereof I have hereunto set my hand and affixed my seal of office on the day and year above written.

[SEAL.]

BELTON A. COPP.

Don Jorge Clarke, vis-consul Su Magestad Catolica, residente en Santa Maria de Georgia, certificado que Don Belton A. Copp, ante quien ha sido otorgado este documto., es notario publico de este pueblo Santa Maria dia 8 de Marzo de 1821.

JORGE I. F. CLARKE.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original on file in my office.

Witness my hand and seal of office, at the city of Saint Augustine, Territory of Florida, this 27th day of June, A. D. 1844.

[SEAL.]

ANTONIO ALVAREZ,  
K. P. A.

On January 22, 1824, Underwood, for the consideration of \$50, released his equity of redemption in the premises to said Ethan Clarke. No release by said Waterman appears in the testimony submitted to your committee, nor is there any evidence presented to the committee that the mortgage was ever foreclosed against said Waterman.

Ethan Clarke by his will devised all his Florida property to Ethan Ray Clarke and Samuel Ward Clarke, the persons named in said Senate bill No. 791, and afterward departed this life. It does not appear that said saw-mill has been maintained at any time within the last fifty years.

From the foregoing it is perfectly clear that the only title of said Ethan Ray Clarke and Samuel Ward Clarke was a title to 600 acres of land, the timber-privilege being abandoned by the disuse of said mill. And this claim to 600 acres of land does not appear to have been prosecuted to confirmation. It was not confirmed, so far as your committee can discover, by the board of land commissioners. And although a special act was passed by Congress, and approved March 3, 1859, authorizing its adjudication in the district court of the northern district of Florida, no evidence has been produced to your committee that it ever was adjudicated. But by an act approved July 4, 1868, (15 Stat. at Large, p. 377,) it was enacted:

That the title of Ethan Ray Clarke and Samuel Ward Clarke to a tract of land five miles square on Black Creek, south of Saint Mary's River, in the State of Florida, and bounded as follows: Upon one side by the Saint Mary's River, and upon the other side by vacant lands, being the same lands to which an exclusive right to take timber was granted by the Spanish government to John Underwood, and upon which he erected a saw-mill in eighteen hundred and five, and which was kept up and continued for many years, be, and the same is hereby, confirmed: *Provided, however*, that nothing herein contained shall operate to the prejudice of any claim which may be set up to said land by reasons of any previous sale thereof. Nor shall this act in any way prejudice any claimant under the said John Underwood, or any persons deriving title or claim thereto under said Underwood, his heirs or assigns, or of any person or persons who may be entitled to pre-emption rights under any existing laws of the United States.

Your committee believe that this act was improvidently passed; but, be that as it may, it is not, in view of the facts, any recognition of a title in said Ethan Ray Clarke and Samuel Ward Clarke to a tract of land five miles square.

It only confirms whatever title they had, and, if their title was good for but 600 acres the confirmation is good only for the same amount.

We have shown that they had no title to more than 600 acres, and consequently they can take nothing more under said act. This is rendered still plainer by the proviso to the act. But were your committee wrong in this conclusion, there would yet be no foundation whatever for the bill under consideration.

If said Clarkes have title to the land in question, the courts are open to them for recovery of its possession.

If they have lost title by means of their own laches, the Government is under no obligation to indemnify them.

In any view that your committee can take of the case, the claim under consideration seems to be utterly destitute of any merit whatsoever. With the exception of said 600 acres, it is a claim to land never granted by the Spanish government to Underwood, nor by him to the ancestor of said Clarkes, and to which said Clarkes have not a shadow of title.

It is proper to note that this claim was reported upon adversely by this committee at the first session of the Forty-second Congress.

Your committee recommend that said bill be indefinitely postponed.