

SPANISH LAND GRANTS: A PROBLEM FOR SURVEYORS
THE CASE OF GEORGE J. F. CLARKE

The problems of surveying the Spanish land grants in Florida are almost continuous with the total history of the State. From the very first attempts until the final disposition of the grants by their private owners, the land grants have been a source of disagreement, court battles and fraud. The Land Commissions of East and West Florida, set up to settle some of the smaller grants in 1822-23, found the records disjointed, obliterated, non-existent or removed to Spanish territory elsewhere. It appears that from the moment that Spain undertook to negotiate with the United States the transfer of the Territory of Florida, there was an attempt to defraud. Richard Kieth Call, representing the United States in Federal Court on many occasions, noted: "In the case of Clark, 8 Peters, we find the following remark: 'It is stated that the practice of making large concessions commenced with the intention of ceding the Floridas, and these grants have been treated as frauds on the United States.' 'The increased motives for making them, have been stated in argument, and their influence cannot be denied.'" [House Report No. 1348. 24th Cong., 1st Session. December 16, 1835. 252.] Call states that the Supreme Court recognized this attempt to defraud, but refused to disclaim responsibility and accepted many claims as valid, despite the lack of bonafide evidence. Claims were accepted that had never been surveyed or marked on the ground, which meant that the U. S. Deputy surveyors would have to "create" these grants without the benefit of physical evidence and take the word of the grant holder or some other witness as to the land desired by the claimant. This lack of information, the questionable character of some of the witnesses, the non-existence of physical evidence, etc. place tremendous pressures upon the shoulders of those responsible for separating the private grants from the public lands in Florida. How did such a state of affairs come about in Florida? The primary answers are the decisions of the United States Supreme Court in declaring many of the grants valid, the lack of a usable source of Spanish land laws [not until Joseph M. White's work, in 1828, did any court or Land Commission have the benefit of this information], the political pressures applied by some of the grant holders [original grantees or purchasers], and the very liberal interpretations of the Spanish Surveyor General of East Florida, George J. F. Clarke regarding his powers. In West Florida, the problems were not with Surveyor General Pintado's surveys, as with the lack of cooperation by the local inhabitants and the "loss" of many of the records, many of which were removed to Cuba, contrary to the treaty of cession. It is in the assumptions of power by George J. F. Clarke that many of the more well-known problems in East Florida begin. Because of the lack of reliable authority(ies) for Spanish land law, questionable witnesses, and Clarke's own statements regarding his powers, those hearing cases involving the grants were at a distinct disadvantage in attempting to judge what was valid and what was not. Little wonder that historians George C. Whatley and Sylvia Cook entitled their article, "The East Florida Land Commission: A Study in Frustration." [Florida Historical Quarterly. 50(1971).] It is an apt title. The Supreme Court came under question by Richard K. Call when he argued, as noted above, that the Court was operating with the knowledge that some of the grants, especially those after 1815, were done with intent to defraud the United States. Call also pointed out that some of the grants that were confirmed were done so with only copies admitted as evidence, a clear contradiction of the rules of evidence of that day. (Copies could be admitted only if the original were clearly not available and the copies were certified as to their authenticity.) He further questioned the authority under which many grants were made, especially those made under Governors Coppinger and Kindelan. Call believed that the power to make large grants rested with the Intendant, stationed in Havana, and not with the provincial governor. He observed that the

Court considered the powers of the governor to equal to that of the King of Spain, because they derived their office from him and allegedly reported to him all of their actions. This assumption, Call declared, was absurd and that the governors reported to Havana and other officers, but not directly to the King. As he put it: "In 9 Peters, 735, the court decided, that `by the laws of Spain is to be understood the will of the King, expressed in his orders, or by his authority, evidenced by the acts themselves, or by such usages and customs in the province as may be presumed to have emanated from the King, or to have been sanctioned by him, as existing authorized law.' Thus, the `acts themselves' of the Spanish officers, in making grants, is evidence of the law conferring the granting power." [House Report No. 1348. 24th Cong., 1st Session, December 16, 1835. 258.] This became the standard of action for the court, and not Call's, much to his chagrin.

The Court also decided, first in the case of the Clarke Mill Grant of 16,000 acres, that this type of grant also gave title to the land. Call, argued against this concept most forcefully. He clearly state his case in his discussion of the Eusebio Bushnell and Seth Stubblefield grants: "It does not appear, in any part of the preceding case, the first of the mill grants, that the soil is asked for, or that any definite number of acres is granted on which the applicants may cut their logs. They may build a saw-mill at Moultrie, and may cut logs in the woods. This is all that is granted. ... no title to the soil was intended to be given." [Ibid. 267.] Again, Call lost his pleading in front of the Court. Mill grants, including many of the grants along the Indian River, were recognized as transferring title to the land also. Mill grants, because they were intended to be use grants, as Call recognized, were seldom surveyed out with any degree of accuracy, if at all. The result was confusion and headaches for those surveyors who attempted to find and lay out these grants.

The political pressures to have the grants surveyed during the Territorial Period [1821-1845] were great. Some of the most important citizens of the territory were holders, of these lands, mostly through purchase, and wanted to sell or develop them quickly. Moses Levy, Peter Mitchel, Benjamin Chairres, General Joseph Hernandez, and many other notables had all either been granted lands or purchased grants from the heirs or their agents. All of these men were powerful individuals whose word carried much weight in the councils of the Territorial government. The pressures on Deputy Surveyor, Henry Washington, when attempting to find the starting point of the Great Arredondo Grant, in modern Alachua, Marion and Levy Counties, demonstrates their attempts to shape the form and area of that survey. In this particular case, the Deputy Surveyor had the complete backing of the Surveyor General, Robert Butler. However, this did not prevent the pressure from showing in all of the correspondence between the grant's owners, Levy and Mitchel, and the Surveyor General, the General Land Office and various members of Congress. [See Knetsch: "The Big Arredondo Grant: A Study in Confusion." Micanopy Historical Society, Micanopy, Florida, 1991.]

The assumption of unusually liberal powers by the Surveyor General for East Florida, George J. F. Clarke, led to some interesting forms of surveys and even more confusion in attempting to locate them. When asked who maintained the documents related to surveys, Secretary of the Colony, Antonio Alvarez, under oath, stated that the office of the escribano, not the clerk, kept most of the surveys. This was contrary to what was presumed to be the practice as indicated by other Spanish authorities. Additionally, Alvarez testified that Clarke had, on "more than one instance" changed the location of the grants, "without the decree of the governor." This was clearly beyond the powers of the Surveyor General, as only the governor (if one accepts the arguments noted above) had the power to confer grants. [See House Report No. 1348. 24th Cong., 1st Session. December 16, 1835. 280-81.] It was also the Surveyor General's duty to accurately report if the conditions of the grants had been met, in cases

requiring such to be met, as in the case of mill grants or cattle ranching. This, again, was often done from the seat in an office and not by actual observation by the Surveyor General. Under oath, Clarke testified that: "In many instances he changed the location after actual possession, without special authority from the governor; where the claimant lived on his survey, the witness was not bound to respect the metes or bounds, but might give others. The plat and concession do not agree: ..." [House Report No. 412. 18th Congress, 1st Session. May 20, 1824. Reprinted in American State Papers. 634.] Grants changed, locations altered, no inspection of the claim by the Surveyor General, signing off on surveys not actually run by the signee, these were just some of the confusions caused by Clarke's administration as Surveyor General.

Clarke's office also did not keep accurate or complete records of the surveying done in the colony. When asked if the Spanish Government of East Florida kept any memorandum of where lands were located, Clarke replied: "No regular record. The surveys were generally handed into the Government office." When asked, further, "Was there ever a regular field book kept of the surveys in this country?" the Survey General answered, "There was not." When questioned as to the method used in laying out land grants on water courses or roads, Clarke testified, "I followed no rule, but governed myself by the localities." [Ibid. 635] This, of course, in direct violation of the long standing rule of Marrot's instructions and others, that along such waterbodies or public roads the grant is to be surveyed in a rectangular shape with one-third frontage and two-thirds in depth, with some minor adjustments to fill in spaces between grants. With few reliable records, whimsical changes in location, improper division of grants into numerous sections and no regular rules of surveying followed, George J. F. Clarke's tenure in office added greatly to the confusion found in Spanish land grant locations throughout East Florida.

Spanish grants were given on the ancient principle of "head-rights", i.e., the amount of land granted depended on the number of persons brought into the colony by the grantee. The amount of land varied also upon the age, sex and status of the person immigrating into the colony [Under Spanish rules enforced rigidly by Governor Enrique White, the male head of the family received 100 acres, the wife fifty, the children over 14 fifty, under 14 twenty-five acres. Male slaves over 14 brought fifty acres, all others only twenty-five acres. White changed these numbers to lower figures with approval from the Intendant.]. Under the law of 1815, allegedly to encourage development, the Spanish government gave permission for the colony to grant larger acreages for "service to the crown." It was these service grants that caused the concern and the charges of defrauding the United States. F. M. Arredondo, Sr., for example, received numerous grants throughout the colony for his services as Indian agent, negotiator with the rebels and the Americans, provisioner of the colony, etc. One grant to Arredondo covered most of today's Alachua County, totaling 289,645 and 5/7 acres. A 32,000 acre grant was conferred to him in today's Columbia County along with others. These grants were contested in the courts and finally confirmed by the Supreme Court of the United States, in spite of the arguments from Call and William Wirt, then Attorney General of the United States. Grants given under the size of 3,500 acres were to be decided by the East Florida Land Commission or local courts if applicable, this would include most granted under the ancient head-right system. [See: Spanish Land Grants in Florida. Volume 1-5, Introductions. Work Projects Administration. State Library Board, Tallahassee, Florida. 1941.]

Aside from testifying that he was not bound by the rules given him in 1811, or those of Marrot earlier (See readings), Clarke's administration also suffered from the actual want of physical surveys. Clarke admitted that he never re-ran the surveys of his deputies in the field and was, therefore, in no position to judge whether or not they had done what they attested to. Evidence from many of the letters of the United States Deputy Surveyors, points to the near total lack of monumentation in the field where grants were allegedly surveyed. Clarke, in

defiance of today's standard of disinterestedness, actually let his brother, and others, survey their own grants and report same to him. The testimony of Andrew Burgevin, a deputy under Clarke, is very revealing as to Clarke's administration. When asked if he was ordered to follow the instructions provided the Surveyor General, the deputy answered, "I was not." Queried as to whom he gave his returns, Burgevin stated, "To the owners of the lands." "Did you not," Commissioner Alexander Hamilton asked, "consider yourself bound, when you were called on to survey, to give one-third front, and two-thirds depth?" [Required along navigable waters or public highways] To which the surveyor replied, "I never received any instructions on the subject." Questioned as to his making the actual surveys in every case where he had given certificates, Clarke's deputy stated, "I went upon the land, but was sometimes prevented from making the survey, for fear of being murdered by the Indians." Asked specifically about the Alachua grants, Burgevin noted, "I did go to Alachua, but did not go round the land. I have not been in the Hammock." Finally, when questioned as to whether or not Clarke had instructed him that it was "unnecessary to make actual surveys," the deputy announced, "Yes, provided the survey could not be made." [House Report 412. 18th Cong., 1st. Session. May 20, 1824. Reprinted in American State Papers: Public Lands. 641.] Such damning evidence of the lack of professional standards and documentation of work demonstrates why Clarke's tenure in office caused so much confusion for the United States Deputy Surveyors when they were required to retrace Spanish land lines, most of which did not exist.

In one of the more important questions regarding land grants in Florida, a recent decision by the Florida Supreme Court upheld the State's title in lands covered with navigable waters inside of such grants. [See. *Webb v. Board of Trustees*.] This case, involving the waters of Orange Lake in Alachua and Marion Counties, brought to light many documents, including an 1851 decision [See. *Levy v. Smith*] which indicated that all of the grant's owners, of which Levy was one, were familiar with the law noting that they were not entitled to the lands under the navigable waters. On October 24, 1825, Peter Mitchel, who held the largest share of the land in the Arredondo Grant, stated that he understood that the grant, "consists of four leagues of land exclusive of land covered by water." (See readings) In their protests against the survey made by Henry Washington, the heirs of many of the owners, led by Horatio G. Prall, filed in the Superior Court of East Florida, clearly stated that, "... Henry Washington should also have excluded from each survey all lakes, navigable waters and all lands covered with water so that the same were unfit for use ..." [Peter Mitchel vs. Nehemiah Brush, Partition of Arredondo Grant, 1832-1843. St. Augustine Historical Society Archives, St. Augustine, Florida.] And, when questioned, "What was the rule where the land called for was discovered to be covered by water, or was not good?", George J. F. Clarke responded, "To locate elsewhere, upon application to the governor." [House Report No. 412. 18th Cong., 1st Session, May 20, 1824. Reprinted in American State Papers: Public Lands. 640.] Clearly, the lands under the navigable waters, by the historical record, were never intended to be included in any grant by the Spanish government in Florida and this was well understood by those who received and applied for grants of land. Clark, who was appointed Surveyor General by Acting Governor Estrada in 1811, had already had some experience in this office when John Purcell left office and never returned. It is speculated that he had some service as a deputy surveyor prior to his appointment, however, documentary evidence of this is lacking at this time. [L. B. Hill. "George J. F. Clarke, 1774-1836." *Florida Historical Quarterly*. 21(Jan. 1943.): 213.] His early life had been spent, after the age of twelve, in the offices of the Panton Leslie & Company as an apprentice, which gave him some experience in travel, trade and land issues. By 1802, he had begun purchasing property of his own, aside from slaves, in St. Augustine, first a

"marsh lot" and then a town lot which appears to have come with buildings. This lot was located strategically on Marine Street, between the barracks and the old powder magazine. This convenience to things military fitted into his role as a member of the Urban Militia. For whatever reason, he soon left St. Augustine for the confines of Fernandina, where the census of 1814 shows him with a wife and four sons. [Ibid. 212-13.] The famed Clarke Mill Grant was located there and shows clearly on the

official map of the town surveyed and drawn by George J. F. Clarke, in 1811-12. Clarke was instructed to make this map because of the unsanitary condition of the old town and its general unsightliness. According to the instructions of Governor Enrique White, Clarke was to lay down a regular plan of the city which would put the streets in proper alignment and all of the lots somewhat uniform. These same instructions also note that an individual who conformed to the new plan could freely move his house to the new lot and receive clear title, with the ability to sell the old lot (or remains thereof) as vassals of the King. Clarke was required to give certificates of proof before they could receive clear title. These lots, those now occupied, were reserved only for residents current to Clarke's survey, not newcomers. Numerous grants were made within the new plan, especially to Charles W. Clarke, Flora Clarke, William Garvin, Felicia "a free woman of color", Elizabeth Wiggins, a free mulatto and Anna Wiggins, all related to George J. F. Clarke, although not by marriage, as Clarke admitted that he had never married in his will. [Ibid. 199-200.]

Each of the above named individuals were related to Clarke as brother, children, concubine or married to one of these, as in the case of Garvin. It is interesting to note that these people received numerous grants of land from the Spanish authorities throughout Clarke's life. Garvin, as many know, received a grant mostly situated in Township 20 South, Ranges 34 and 35 East, just south of the Volusia and Brevard County line. The well-known Volusia County grant, the Clarke-Atkinson grant on Haw Creek, set some precedents when the Supreme Court ruled that:

The grant of Atkinson was for the land he mentioned in his petition, or for any other lands that were vacant. Three surveys were made of lands within the quantity granted, not at the place specifically mentioned in the grant, but at other places. Held, that these surveys were valid, notwithstanding that they were made at different places.

[Peters 16. "The United States v. The Heirs of Clarke and Atkinson." 228-33.]

The grant was for a total of fifteen thousand acres, but because the Governor, in the words of the grant, stated: "Consequently the surveyor-general will run them in the places he mentions; or in others that are vacant and of equal convenience to the party." The U. S. Attorney General, Lagare' argued, in vain, that this description was too vague to be valid and that there was no interest in them held by the Clarke family and that there was no authority to survey four different tracts to make up the total acreage. These points held little weight with the Supreme Court, which held, in the last named objection, that as the grant was for any vacant land, there was no restriction on the surveyor-general in deciding where, in the interests of the Crown, he was to situate the final portions of the grant. [Ibid. 231.] Clarke, and his extended family connections, benefited from such liberal rulings by the Supreme Court. As Louise B. Hill noted in her biographical sketch of Clarke, "Indeed, so numerous were their grants, together with those confirmed to Honoria Clarke at an earlier date, that they fill four pages in American State Papers/Public Lands." [Hill. 217.]

It would be unfair to record only the land grabbing by Clarke and others during those confusing years without noting that the Surveyor General did accomplish a great deal on behalf of the Spanish Crown. Aside from his serving as Surveyor General, Clarke also had an important hand in helping to reestablish what passed for order at the end of the rebellion that lasted, off and on, from 1812 to

1816. Clarke served as a commissioner to the rebel leaders and even proposed a plan for a workable peace on the frontier. The fact that part of this plan was earlier put forth by Governor Kindelan does not detract from the accomplishment Clarke helped to bring about, namely local peace on the St. Marys River frontier. It was Clarke who proposed the idea in person and helped to make sure that it was carried out. For this feat, he was commissioned, "deputy governor of the northern and western divisions of Florida," i.e. the upper and lower regions of the St. Marys River. He also led Spanish militia forces in the attempt to dislodge the rag-tag outfits of MacGregor and Aury. It has been noted by Hill, that, "he was without doubt the chief factor in holding his section to its Spanish allegiance." [Hill. 226-231.] Other accomplishments of this rather remarkable man include the establishment of a postal route through St. Mary's, Georgia, and into East Florida and his service as Spanish vice consul for the Carolinas and Georgia. For all of these services to the Crown, he received grants of land from a monarchy strapped for any form of hard cash.

George J. F. Clarke was an unusual man, given to taking opportunity and running with it. He established a large family, whose heirs held the land for many years after his demise. His legacy on the land is innumerable land grants, surveyed or not, throughout East Florida, which bear his stamp or name. Clarke's approval of surveys which did not follow the rules laid down by Spanish authority has done much to add to the confusion of land titles in the State of Florida. Grants which were allegedly designed to not overlap, do in many places. Parcels which should have been surveyed in contiguous units were divided as "vacant" lands became available. Indeed, the landscape of Florida is literally dotted with repetitive names of grants, causing confusion for those looking to find a particular piece of property. And, finally, numerous court decisions added even more contention to the controversial nature of the man named George J. F. Clarke.

Although the above does not cover each and every problem created by the Spanish land grants, it does give an adequate overview of the major problems. Few areas of Florida surveying have caused as much trouble, confusion and acrimony as the surveying of the Spanish land grants. From lines never being run, to poor recording of the land plats, surveys and titles by the archivists of Colonial Florida, these grants have been the bane of Florida's surveyors. In East Florida, the lax administration of George J. F. Clarke caused many of the problems by simply ignoring each and every rule ordered through the office of the governor. The land commissioners were handicapped, as were the courts, in attempting to handle the problems created by these grants. From all of the confusion, it is easy to see why Whatley and Cook, stated, "As far as the commission could discover, there was no comprehensive Spanish code of land laws which it could use to determine the ultimate validity of the grants." [Whatley and Cook. 43.] Unfortunately for the United States Deputy Surveyors, it was their job to locate and accurately map the grants so loosely defined or questionably conveyed.

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