one year; another third of said residue with interest, within two years, and the remaining third of said residue with interest within three years after the expiration of the time for completing the payment on account of such purchase, according to former laws; and in case of failure, in paying either the arrears or interest, or any of three instalments of principal with the accruing interest, at the time and times above mentioned, the tract of land shall be forthwith advertised and offered for sale, in the manner and on the terms directed by law, in case of lands not paid for within the limited term, and shall revert in like manner, if the sum due with interest be not at such sale bidden and paid: *Provided*, that the benefit of this act shall not extend to any person or persons on account of any purchase of any tract or tracts of land made at any of the land-offices northwest of the river Ohio, prior to the first day of April, one thousand eight hundred and eight.

Proviso. Limitation of the act.

Approved, March 3, 1813.

Statute II.

March 3, 1813.

Chap. XLIV.—*An Act allowing further time for delivering the evidence in support of claims to land in the territory of Missouri, and for regulating the donation grants therein.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person or per-

(a) Lands in Missouri.—An act making further provision for settling the claims to land in the territory of Missouri, June 13, 1812, chap. 99.

An act allowing further time for delivering the evidence in support of the claims to land in the territory of Missouri, and for regulating the donation of grants therein, March 3, 1813, chap. 44.

An act giving further time for registering claims to lands in the late district of Arkansas, in the territory of Missouri, and for other purposes, August 2, 1813, chap. 59.

An act for the final adjustment of land titles in the state of Louisiana, and territory of Missouri, April 12, 1814, chap. 52.

An act for the confirmation of certain claims to land in the western district of the state of Louisiana, and in the territory of Michigan, April 29, 1816, chap. 159.

An act explanatory of an act entitled, "An act for the final adjustment of land titles in the state of Louisiana, and territory of Missouri, March 3, 1819, chap. 85.

An act to perfect certain locations and sales of public lands in Missouri, April 26, 1822, chap. 40.

An act enabling the claimants to lands within the limits of the state of Missouri, and the territory of Arkansas, to institute proceedings to try the validity of their claims, May 26, 1824, chap. 173.

An act supplementary to the act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled, "An act making further provision for settling claims to land in the territory of Missouri," May 26, 1824, chap. 184.

An act to continue in force for a limited time, and to amend an act entitled, "An act to enable claimants to lands within the limits of the state of Missouri, and territory of Arkansas, to institute proceedings to try the validity of their claims," May 24, 1828, chap. 90.

An act further supplemental to the act entitled, "An act making further provision for settling the claims to land in the territory of Missouri, passed the thirteenth of June, eighteen hundred and twelve," January 27, 1831, chap. 12.

An act for the relief of certain holders of certificates issued in lieu of lands injured by earthquakes in Missouri, March 2, 1831, chap. 92.

An act for the final adjustment of private land claims in Missouri, July 9, 1832, chap. 180.

An act supplemental to the act entitled, "An act for the final adjustment of land claims in Missouri," March 2, 1833, chap. 84.

An act confirming the claims to land in the state of Missouri, and for other purposes, July 4, 1836, chap. 358.

An act authorizing the issuing of a patent to the heirs and legal representatives of Francis Rivard, deceased, and for other purposes, August 29, 1842, chap. 229, sec. 2.

Land titles in Missouri:—

The state of Missouri was formerly part of the territory, first of France, next of Spain, then of France, who ceded it to the United States by the treaty of 1803, in full propriety, sovereignty and dominion, as she had acquired and held it; by which this government put itself in place of the former sovereigns, and became invested with all their rights, subject to their concomitant obligations to the inhabitants. Both were regulated by the law of nations, according to which the rights of property are protected, even in the case of a conquered country, and held sacred and inviolable when it is ceded by treaty, with or without any stipulation to such effect; and the laws, whether in writing, or evidenced by the usage and customs of the conquered or ceded country, continue in force, until altered by the new sovereign. Strother *v.* Lucas, 12 Peters, 410.

No principle can be better established by the authority of the supreme court, than "that the acts of an officer, to whom a public duty is assigned by his king, within the sphere of that duty, are prima facie taken to be within his power." The principles on which it rests, are believed to be too deeply founded in law and reason, ever to be successfully assailed. He who would controvert a grant executed by the lawful authority, with all the solemnities required by law, takes on himself the burthen of showing that the officer has transcended the powers conferred upon him; or that the transaction is tainted with fraud. *Ibid.*

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sons who had filed a notice of claim to any tract of land lying within the district of Louisiana (now territory of Missouri) with the recorder of land titles, according to law, and have not exhibited any testimony or written evidence in support of the same, and whose claim has not already

Further time allowed to claimants within the district of Missouri.

Where the act of an officer to pass the title to land according to the Spanish law, is done contrary to the written order of the king, is produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded: that the act was done on the motive set out therein; and according to some order known to the king and his officers, though not to his subjects: and courts ought to require very full proof, that he had transcended his powers, before they so determine it. *Ibid.*

In favour of long possession and ancient appropriation, every thing which was done shall be presumed to have been rightfully done; and though it does not appear to have been done, the law will presume that whatever was necessary has been done. *Ibid.*

The stipulations of the treaty ceding Louisiana to the United States, affording that protection or security to claims under the French or Spanish government to which the act of Congress refers, are in the first, second and third articles. They extended to all property until Louisiana became a member of the Union; into which the inhabitants were to be incorporated as soon as possible, "and admitted to all the rights, advantages and immunities of citizens of the United States." The perfect inviolability and security of property is among these rights. Delassus *v.* The United States, 9 Peters, 117.

The right of property is protected and secured by the treaty, and no principle is better settled in this country, than that an inchoate title to lands is property. This right would have been sacred, independent of the treaty. The sovereign who acquires an inhabited country, acquires full dominion over it; but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana, excludes any idea of interfering with private property. *Ibid.*

On the 18th of April, 1802, the lieutenant-governor of Upper Louisiana granted sixteen hundred arpents of land near certain rivers named in the grant, with directions to survey the same in a vacant place of the royal domain; but no survey was made before the cession of Louisiana to the United States. By the Court—As the grant contained no description of the land granted, and was not located within the time prescribed by the act of Congress of the 10th of March, 1804, it comes directly within the point decided by the supreme court in the case of John Smith, T., and cannot be confirmed. Wherry *v.* The United States, 10 Peters, 338.

In repeated decisions, the supreme court have affirmed the authority of local governors, under the crown of Spain, to grant land in Louisiana, before the same was ceded by Spain to France: and the court have also affirmed the validity of descriptive grants, though not surveyed before the 11th of March, 1804, in Missouri, and the 24th of January, 1818, in Florida. Mackey *v.* The United States, 10 Peters, 340.

A grant or concession made by an officer who is by law authorized to make it, carries with it prima facie evidence that it is within his powers. No excess of them, or departure from them, is to be presumed. He violates his duty by such excess, and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions, must show it. Delassus *v.* The United States, 9 Peters, 117.

The instructions of governor O'Reilly, relative to granting lands in Louisiana, were considered by the court, in 8 Peters, 455. These regulations were intended for the general government of subordinate officers, and not to control and limit the power of the person from whose will they emanated. The Baron De Carondelet must be supposed to have had all the powers which had been vested in Don O'Reilly; and a concession ordered by him is as valid as a similar concession directed by governor O'Reilly would have been. *Ibid.*

A concession of land was made by the lieutenant-governor of Upper Louisiana, at the time when the power of granting lands was vested in the governors of provinces. This power was, in 1799, after the concession, transferred to the intendant-general; and after this transfer, in January, 1800, the order of survey of the land was made by the lieutenant-governor. The validity of the order of survey depends on the authority of the lieutenant-governor to make it. The lieutenant-governor was also a sub-delegate, and as such was empowered to make inchoate grants. The grant was confirmed. Chouteau's heirs *v.* The United States, 9 Peters, 137.

The transfer of the power to make concessions of lands belonging to the royal domain of Spain, from the governor-general to the intendant-general, did not affect the power of the sub-delegate, who made this concession. The order in this case is the foundation of title, and is, according to the act of Congress on the subject of confirming titles to lands in Missouri, &c., and the general understanding and usage of Louisiana and Missouri, capable of being perfected into a complete title. It is property, capable of being alienated, of being subjected to debts: and is, as such, to be held as sacred and inviolate as other property. *Ibid.*

A concession of one league square of land, in Upper Louisiana, was made by Don Zenon Trudeau, the lieutenant-governor of that province, to Auguste Chouteau, and a decree made by him directing the surveyor-general of the province to put him in possession of the land, and to survey the same, in order to enable Chouteau to solicit a complete title thereto from the governor-general, who by the said decree was informed that the circumstances of Chouteau were such as entitled him to a grant of the land. The land was surveyed, and the grantee put in full possession of it on the 20th of December, 1803. He retained possession of it until his death. The objection to the validity of the concession was, that the petitioner had not as many tame cattle as the eighth regulation of governor O'Reilly, governor-general of Louisiana, required. That regulation required that the applicant for a grant of a league square of land should make it appear that he is possessed of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them, a proportion which shall always be observed for the grants, &c. By the Court—In the spirit of the decisions which have been heretofore made by the supreme court, and of the acts of confirmation passed by Congress, the fact that the applicant possessed the requisite amount of property to entitle him to the land he solicited, was submitted to the officer who decided on the application; and he is not bound to prove it to the court, which passes on the validity of the grant. These incomplete titles were transferable, and the assignee might not possess the means of proving the exact number of cattle in possession of the petitioner when the concession was made. The grant was confirmed. *Ibid.* 147.

been confirmed, shall be allowed until the first of January next, to deliver to the recorder of land titles for said territory the written evidence, or produce other testimony, in support of his or their claim, notice whereof had been filed as aforesaid; and the written evidence delivered to the said recorder within the time limited by this section, in support of claims filed as aforesaid, shall be by him recorded in the same manner, and on receiving the same fees allowed by former acts for recording written evidence of claims to lands in the said district, and the rights of any such person neglecting to deliver the evidence of their claims within the time above mentioned shall become barred and void, in so far as the same was derived from the United States, and the evidence thereof be incapable of being admitted in any court whatsoever.

Written evidence to be given.

Duties and powers of recorder.

Sec. 2. *And be it further enacted*, That the recorder of land titles for the said territory shall have the same powers, and perform the same duties in every respect, in relation to the claims, whereof notice had been filed as aforesaid, and the written evidence in support thereof shall have been delivered, or other testimony produced within the time limited by this act, as the board of commissioners for ascertaining the rights of persons claiming lands in said district would have had or should have performed if the evidence of such claims had been delivered before the first day of July, one thousand eight hundred and eight, except that his decision shall be subject to the revision of Congress.

Duties of recorder to report to the commissioners.

Sec. 3. *And be it further enacted*, That it shall be the duty of the said recorder to make to the commissioner of the general land-office a report of all the claims which had been filed, and in support of which evidence shall be received as aforesaid, with the substance of such evidence, together with his opinion, and such remarks as he may think proper, which report, together with a list of the claims which in the opinion of the said recorder ought to be confirmed, shall be laid before Congress at their next session for their determination thereon.

Claimants when to receive their grants in full.

Sec. 4. *And be it further enacted*, That every person whose claim to a donation of a tract of land in said district has been confirmed by the board of commissioners appointed for ascertaining the rights of persons claiming lands in said district, and is embraced in their report transmitted to the Secretary of the Treasury, or which has been confirmed by the recorder of land titles, under the third section of the act, entitled "An act making further provision for settling the claims to land in the territory of Missouri," approved on the thirteenth of June, one thousand eight hundred and twelve, shall be entitled to a grant for six hundred and forty acres, notwithstanding a less quantity shall have been allowed to him by the decision of the said commissioners, or recorder of land titles: *Provided*, that in no case shall the grant be for more land than was claimed by the party in his notice of claim, nor for more land than is contained within the acknowledged and ascertained boundaries of the tract claimed.

Act of June 13, 1812, ch. 99, sec. 3.

Limitations of grants.

Survey to be made.

Sec. 5. *And be it further enacted*, That the principal deputy surveyor for the said territory shall survey or cause to be surveyed, under the direction of the surveyor general, a tract of six hundred and forty acres of land, to each claimant of a donation tract, whose claim has been confirmed as aforesaid, except as provided by the last preceding section, where the quantity claimed by the party was less than six hundred and forty acres, and where the ascertained boundaries of the tract claimed does not include six hundred and forty acres, in which cases the survey

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If the court can trust the information received on this subject, neither the governor nor the intendant-general has ever refused to perfect an incomplete title granted by a deputy governor or a sub-delegate. *Ibid.*

The regulation made by Don O'Reilly, as to the quantity of land to be granted to an individual, is not that no individual shall receive grants for more than one league square, but that no grant shall exceed a league square. The words of the regulation do not forbid different grants to the same person; and, so far as the court are informed, it has never been so construed. *Ibid.*

shall contain only the land claimed, and the tracts thus to be surveyed shall consist of unappropriated lands, and shall in every case contain the improved lands, by virtue of the settlement on and cultivation of which the claimant's right to a donation has been confirmed, and in all cases where, by reason of adjacent prior claims, or the contiguity of the improvements of the persons entitled to donation grants, each claimant cannot obtain a tract of six hundred and forty acres, the vacant lands applicable to the object shall be divided between the claimants in such manner as shall appear to the principal deputy surveyor most equitable; and whenever plats of the surveys shall have been returned by the principal deputy surveyor to the office of the recorder of land titles, it shall be the duty of the recorder to issue for each tract, according to the survey returned to him, a certificate in favour of the party to each person entitled thereto, which shall be transmitted to the commissioner of the general land-office; and if it shall appear to the satisfaction of the said commissioner that such certificate was fairly obtained, according to the true intent and meaning of this act, then in that case patents shall be granted in like manner as is provided by law for other lands of the United States.

Grants and patents when to be issued.

Sec. 6. *And be it further enacted*, That the said recorder of land titles, in addition to his salary as fixed by law, shall be allowed fifty cents on each claim which had been filed, and in support of which evidence shall have been received, according to the first section of this act, and on which he shall make a decision, whether such decision be in favour of, or against the claim, and a further allowance of five hundred dollars, which shall be paid after he shall have made his report to the commissioner of the general land-office, which allowance of fifty cents for each claim decided on, and five hundred dollars on the completion of the business, shall be in full compensation for his services, including clerk hire, respecting the claims to be decided on according to this act.

Salary of the recorder augmented.

Fees and allowance of five hundred dollars on the completion of the business.

Approved, March 3, 1813.

Statute II.

March 3, 1813.

Chap. XLV.—*An act to alter the times of holding the District Court in the respective districts of New York and Massachusetts.*

Act of April 9, 1814, ch. 49.
Act of March 3, 1815, ch. 94.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That instead of the first Tuesdays of April and October, the district court for the district of New York, directed by law to be holden at Utica, shall be holden on the second Tuesday of May, and the fourth Tuesday of September, yearly.

Terms of the courts changed to second Tuesday in May and fourth Tuesday of September, at Utica.

Sec. 2. *And be it further enacted*, That all actions, suits, process, and proceedings, commenced or to be commenced, or now pending in said district court, and liable to be discontinued, or suffer prejudice from the foregoing alterations, may be returned to, and shall be continued to the district court, to be holden in pursuance of this act, in such manner as that the same shall suffer no discontinuance or prejudice by virtue of this act.

Process returnable accordingly.

Sec. 3. *And be it further enacted*, That the respective terms of the district court of Massachusetts district, which are now required by law to be holden at Salem, within said district, shall hereafter be holden at Boston, within said district, at the respective times now prescribed by law, and that all writs and processes, of whatsoever nature or kind, that have been or may be issued, and made returnable to the said court at Salem, shall be returnable and returned to the said court at Boston, any thing in any former law to the contrary notwithstanding.

Boston substituted for Salem, for the sessions of the court.

Writs and process returnable to the court at Salem, to be returned to the court at Boston.

Approved, March 3, 1813.