Statute II.
March 3, 1821.

CHAP. XXXIX.—*An Act for carrying into execution the treaty between the United States and Spain, concluded at Washington on the twenty-second day of February, one thousand eight hundred and nineteen.* (*a*)

President authorized to take possession of

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the

(*a*) See note to the act of March 3, 1819, for the acts passed relating to the territory of Florida.

The decisions of the Supreme Court upon the treaty between the United States and Spain of 22d of February, 1819, by which Florida was ceded to the United States, and upon the act of March 3, 1821, have been:

By the stipulations of a treaty, are to be understood its language and apparent intentions, manifested in the instrument; with a reference to the contracting parties, the subject matter and persons on whom it is to operate. United States *v.* Arredondo et al., 6 Peters, 710.

The judiciary is not that department of the government to which the assertion of its interest against foreign powers is confided; and its duty, commonly, is to decide upon individual rights according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. However individual judges might construe the treaty of St. Ildefonso, it is the province of the Supreme Court of the United States to confine its decisions to the will of the legislature, if that will has been clearly expressed. Foster and Elam *v.* Neilson, 2 Peters, 307. United States *v.* Arredondo, 6 Peters, 710.

A treaty of cession is a deed of the ceded territory; the sovereign is the grantor, and the act is his; so far as relates to the cession the treaty is his act and deed, and all courts must so consider it; and deeds are construed in equity by the rules of law. *Ibid.* 738.

The Spanish version of the Florida treaty was in the words of the king, and expressed his intention; and though the American version showed the intention of the American government to be different, the Supreme Court cannot adopt it to decide what was granted by the king of Spain, what accepted and what reserved: the rules of law are too imperative to be disregarded or mistaken. The true interpretation of the Spanish language of the treaty is, that the grants of lands in Florida, made before the treaty, except those specially excepted, is that these grants remain confirmed.—The proprietors of such grants could bring suits to recover them without any action of Congress; and any question arising would be purely a judicial question. *Ibid.* 741.

The object of the treaty with Spain, which ceded Florida to the United States, dated 22d May, 1819, was to invest the commissioners with full power and authority to receive, examine, and decide upon the amount and validity of asserted claims upon Spain, for damages and injuries. Their decision, within the scope of this authority, is conclusive and final, and is not re-examinable. The parties must abide by it, as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot be brought again under review in any judicial tribunal. But it does not naturally follow that this authority extends to adjust all conflicting rights, of different citizens, to the fund so awarded. The commissioners are to look to the original claim for damages and injuries against Spain itself; and it is wholly immaterial, who is the legal or equitable owner of the claim, provided he is an American citizen. Comegys et al. *v.* Vasse, 1 Peters, 212.

After the validity and amount of the claim has been ascertained by the award of the commissioners, the rights of the claimant to the fund, which has passed into his hands and those of others, are left to the ordinary course of judicial proceedings, in the established courts of justice. *Ibid.* 212.

The treaty with Spain recognised an existing right in the aggrieved parties to compensation; and did not, in the most remote degree, turn upon the notion of donation or gratuity. It was demanded by our government as matter of right, and as such was granted by Spain. *Ibid.* 217.

Even in cases of conquest, it is very unusual for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right, which is acknowledged and felt by the whole civilized world, would be outraged, if private property should be generally confiscated, and private rights annulled on a change in the sovereignty of the country, by the Florida treaty. The people change their allegiance, their relation to their ancient sovereign is dissolved; but their relations to each other and their rights of property remain undisturbed. Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign. United States *v.* Percheman, 7 Peters 51.

The language of the second article of the treaty between the United States and Spain, of 22d February, 1819, by which Florida was ceded to the United States, conforms to this general principle. *Ibid.*

The eighth article of the treaty must be intended to stipulate expressly for the security to private property, which the laws and usages of nations would, without express stipulation, have conferred. No construction which would impair that security, further than its positive words require, would seem to be admissible. Without it, the titles of individuals would remain as valid under the new government as they were under the old. And those titles, so far at least as they were consummated, might be asserted in the courts of the United States, independently of this article. *Ibid.*

The treaty was drawn up in the Spanish as well as in the English languages. Both are original, and were unquestionably intended by the parties to be identical. The Spanish has been translated; and it is now understood that the article expressed in that language is, that "the grants shall remain ratified and confirmed to the persons in possession of them, to the same extent," &c.; thus conforming exactly to the universally received law of nations. *Ibid.*

If the English and Spanish part can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. *Ibid.*

No violence is done to the language of the treaty by construction which conforms the English and Spanish to each other. Although the words "shall be ratified and confirmed," are properly words of

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east and west Florida.

And remove Spanish troops, according to treaty.

United States be, and he is hereby, authorized to take possession of, and occupy, the territories of east and west Florida, and the appendages and appurtenances thereof; and to remove and transport the officers and soldiers of the king of Spain, being there, to the Havanna, agreeably to the stipulations of the treaty between the United States and Spain, concluded at Washington, on the twenty-second day of February, in the year one thousand eight hundred and nineteen, providing for the cession

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contract, stipulating for some future legislation, they are not necessarily so. They may import that "they shall be ratified and confirmed" by force of the instrument itself. When it is observed that in the counterpart of the same treaty, executed at the same time, by the same parties, they are used in this sense, the construction is proper, if not unavoidable. *Ibid.*

In the case of Foster and Elam *v.* Neilson, 2 Peters, 253, the Supreme Court considered those words importing a contract. The Spanish part of the treaty was not then brought into view, and it was then supposed there was no variance between them. It was not supposed that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, it is believed it would have produced the construction which is now given to the article. *Ibid.*

By the law of nations, the inhabitants, citizens, or subjects of a conquered or ceded country, territory, or province, retain all the rights of property which have not been taken from them by the orders of the conqueror; and this is the rule by which we must test its efficacy according to the act of Congress, which we must consider as of binding authority. United States *v.* Clarke, 9 Peters, 168.

A treaty of cession is a deed or grant by one sovereign to another, which transferred nothing to which he had no right of property; and only such right as he owned, and could convey to the grantee. By the treaty with Spain, the United States acquired no lands in Florida to which any person had lawfully obtained such a right, by a perfect or inchoate title, that this court could consider it as property under the second article; or which had, according to the stipulations of the eighth article of the treaty, been granted by the lawful authorities of the king; which words, grants, or concessions, were to be construed in their broadest sense, so as to comprehend all lawful acts which operated to transfer a right of property, perfect or imperfect. *Ibid.*

The effect of the clauses of the confirmation of grants made was, that they confirmed them presently on the ratification of the treaty, to those in possession of the lands; which was declared to be, that legal seisin and possession which follows title, is co-extensive with the right, and continues till it is ousted by an actual adverse possession, as contradistinguished from residence and occupation. *Ibid.*

The United States, by accepting the cession under the terms of the eighth article, and the ratification by the king, with an exception of the three annulled grants to Allegon, Punon Rostro, and Vargas, can make no other exceptions of grants made by the lawful authorities of the king. *Ibid.*

The meaning of the words lawful authorities, in the eighth article, or competent authorities in the ratification, must be taken to be, "by those persons who exercised the granting power by the authority of the crown." The eighth article expressly recognises the existence of these lawful authorities in the ceded territories, designating the governor or intendant, as the case might be, as invested with such authority: which is to be deemed competent till the contrary is made to appear. *Ibid.*

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 usage 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 local laws. *Ibid.*

In addition to the established principles heretofore laid down by this court as the legal effect of an usage or custom, there is one which is peculiarly appropriate to this case. The act of Congress giving jurisdiction to this court to adjudicate on these causes, contains this clause in reference to grants, &c., "which was protected and secured by the treaty, and which might have been perfected into a complete title, under and in conformity to the laws, usages and customs of the government under which the same originated." This is an express recognition of any known and established usage or custom in the Spanish provinces, in relation to the grants of land, and the title thereto, which brings them within a well established rule of law: that a custom or usage, saved and preserved by a statute, has the force of an express statute, and shall control all affirmative statutes in opposition, though it must yield to the authority of negative ones, which forbid an act authorized by a custom or usage thus saved and protected; and this is the rule by which its efficacy must be tested, according to the act of Congress, which must be considered of binding authority. *Ibid.*

By the eighth article of the treaty ceding Florida to the United States, the same time is allowed to the owners of land granted under the authority of Spain, to fulfil the conditions of their grants, after the date of the treaty as was limited in the grants. It has been decided by this court, in the case of Arredondo, that as to individual rights, the treaty is to be considered as dated at its ratification. United States *v.* Sibbald, 10 Peters, 313.

It has been decided, in Arredondo's case, that that provision of the treaty as to the performance of the conditions in grants, is not confined to owners of land by occupancy or residence; but extends to persons who have a legal seisin and possession of land, in virtue of a grant; and that, in the situation of the province, and the claimants to land at the time of the cession, it was enough that they should show a performance of the condition cy pres. *Ibid.*

In the construction of the Florida treaty, it is admitted that the United States succeeds to all those equitable obligations which we are to suppose would have influenced his Catholic majesty, to secure their property to his subjects, and which would have been applied by him in the construction of a conditional grant, to make it absolute; and further, that the United States must maintain the rights of property under it, by applying the laws and customs by which those rights were secured, before Florida was ceded; or by which an inchoate right of property would, by those laws and customs, have been adjudicated by the Spanish authority to have become a perfect right. United States *v.* Mills' Heirs, 12 Peters, 215.

of said territories to the United States; and he may, for these purposes, and in order to maintain in said territories the authority of the United States, employ any part of the army and navy of the United States, and the militia of any state or territory, which he may deem necessary.

May employ the army, navy, and militia.

Sec. 2. *And be it further enacted*, That, until the end of the first session of the next Congress, unless provision for the temporary government of said territories be sooner made by Congress, all the military, civil, and judicial, powers exercised by the officers of the existing government of the same territories, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United [States] shall direct, for the maintaining the inhabitants of said territories in the free enjoyment of their liberty, property, and religion; and the laws of the United States relating to the revenue and its collection, subject to the modification stipulated by the fifteenth article of the said treaty, in favour of Spanish vessels and their cargoes, and the laws relating to the importation of persons of colour, shall be extended to the said territories. And the President of the United States shall be, and he is hereby, authorized within the term aforesaid, to establish such districts for the collection of the revenue, and during the recess of Congress, to appoint such officers, whose commissions shall expire at the end of the next session of Congress, to enforce the said laws, as to him shall seem expedient.

Organization of government, as the President may direct.

Revenue laws, and laws prohibiting the importation of persons of colour, to be in force.

President authorized to establish collection districts, and appoint officers.

Sec. 3. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to appoint, during the recess of the Senate, a commissioner and surveyor, whose commissions shall expire at the end of the next session of Congress, to meet the commissioner and surveyor who may be appointed on the part of Spain, for the purposes stipulated in the fourth article of said treaty; and that the President be, and he is hereby, further authorized to take all other measures which he shall judge proper, for carrying into effect the stipulations of the said fourth article.

President to appoint a commissioner and surveyor, &c.

President may take all other measures necessary, &c.

Sec. 4. *And be it further enacted*, That a board of three commissioners shall be appointed, conformably to the stipulations of the eleventh article of the said treaty: and the President of the United States is hereby authorized to take any measures which he may deem expedient for organizing the said board of commissioners, and, for this purpose, may appoint a secretary well versed in the French and Spanish languages, and a clerk; which appointments, if made during the recess of the Senate, shall, at the next meeting of that body, be subject to nomination for their advice and consent.

Board of three commissioners, according to 11th article of the treaty.

President may organize the board.

Secretary.

Clerk.

Sec. 5. *And be it further enacted*, That the compensation of the respective officers, for whose appointment provision is made by this act, shall not exceed the following sums:

Compensation.

The commissioner to be appointed conformably to the fourth article, at the rate, by the year, of three thousand dollars.

Of commissioner under the 4th article.

To the surveyor, two thousand dollars.

Of surveyor.

To each of the three commissioners to be appointed conformably to the eleventh article of the treaty, three thousand dollars.

Of the commissioners under the 11th article.

To the secretary of the board, two thousand dollars.

Of the secretary.

To one clerk, one thousand five hundred dollars.

Clerk.

Sec. 6. *And be it further enacted*, That, for carrying this act into execution, the sum of one hundred thousand dollars be, and hereby is, appropriated, to be taken from any moneys in the treasury not otherwise appropriated.

100,000 dollars for carrying this act into execution.

Approved, March 3, 1821.