

STATUTE I.

CHAP. CLXXX.—*An Act for the final adjustment of private land claims in Missouri.* (a)

July 9, 1832.

1833, ch. 84.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of the recorder of land titles in the state of Missouri and two commissioners

All unconfirmed land claims to be examined.

(a) Notes of the decisions of the Supreme Court on 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 burden of showing that the officer has transcended the powers conferred upon him; or that the transaction is tainted with fraud. *Ibid.*

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, 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 intrusted 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

3 B

Claims to be
classified, &c.

Time for tak-
ing testimony.

Office of re-
corder to re-
main open for
two years.

Recorder, &c.,
to proceed, &c.

to be appointed by the President of the United States, by and with the advice and consent of the Senate, to examine all the unconfirmed claims to land in that state, heretofore filed in the office of the said recorder, according to law, founded upon any incomplete grant, concession, warrant, or order of survey, issued by the authority of France or Spain, prior to the tenth day of March, one thousand eight hundred and four; and to class the same so as to show, first, what claims, in their opinion, would in fact have been confirmed, according to the laws, usages, and customs of the Spanish government, and the practice of the Spanish authorities under them, at New Orleans, if the government under which said claims originated had continued in Missouri; and secondly what claims, in their opinion, are destitute of merit, in law or equity, under such laws, usages, customs, and practice of the Spanish authorities aforesaid; and shall also assign their reasons for the opinions so to be given. And in examining and classing such claims, the recorder and commissioners shall take into consideration, as well the testimony heretofore taken by the boards of commissioners and recorder of land titles upon those claims, as such other testimony as may be admissible under the rules heretofore existing for taking such testimony before said boards and recorder: and all such testimony shall be taken within twelve months after the passage of this act.

SEC. 2. *And be it further enacted*, That the office of the recorder shall be open for the purposes of such examination for the term of two years from the date of the organization of the board of commissioners and no longer; and the recorder and commissioners shall proceed in the examination in a summary manner, with or without any new application 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.

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.*

Under the act of February 17, 1815, ch. 45, a New Madrid certificate could be located upon lands before they were offered for sale under a proclamation of the President, or even surveyed by the public surveyor. *Barry v. Gamble*, 3 Howard, 32.

The act of April 26, 1822, ch. 40, recognised locations of this kind, although they disregarded the sectional lines by which the surveys were afterwards made. *Ibid.*

Under the acts of 1805, 1806, and 1807, it was necessary to file the evidence of an incomplete claim under French and Spanish authority, which bore date anterior to 1800, as well as those which were dated subsequent to that day; and in case of neglect, the bar provided applied to both of these classes. *Ibid.*

A title, resting on a permit and warrant of survey, dated before the 1st of October, 1800, without any settlement or survey having been made, was an incomplete title, and within those acts. *Ibid.*

And although the acts of 1824 and 1828 remove the bar as it respected the United States, yet having excepted such lands as have been sold, or otherwise disposed of by the United States, and saved the right or title of adverse claimants, these acts protected a New Madrid claim, which had been located while this bar continued. *Ibid.*

the claimants; and shall, at the commencement of each session of Congress during said term of examination, lay before the commissioner of the general land office a report of the claims so classed, stating therein the date and quantity of each, whether there be any, and what, conflicting claims, and the evidence upon which each claim depends, and the authority and power under which the said claim was granted by the Spanish or French governor, commandant or sub-delegate, to be laid before Congress upon their final decision upon the claims contained in such first class.

SEC. 3. *And be it further enacted*, That from and after the final report of the recorder and commissioners, the lands contained in the second class shall be subject to sale as other public lands; and the lands contained in the first class shall continue to be reserved from sale as heretofore, until the decision of Congress shall be made thereon; and if the decision of Congress shall be against the claims, or any of them, the lands so decided against shall be, in like manner, subject to sale as other public lands: *Provided*, That actual settlers being housekeepers upon such lands as are rejected, claiming to hold, under such rejected claim, or such as may waive their grant, shall have the right of pre-emption to enter within the time of the existence of this act not exceeding the quantity of their claim, which in no case shall exceed six hundred and forty acres, to include their improvements, who shall give notice and prove their right of pre-emption, and in all things conform to the regulations as have been or may be prescribed by the Secretary of the Treasury under the existing laws relative to pre-emption; and it shall be the duty of the Secretary of the Treasury immediately to forward to the several land offices in said state, the manner in which all those who may wish to waive their several grants or claims, and avail themselves of the right of pre-emption, shall renounce or release their said grants.

SEC. 4. *And be it further enacted*, That the recorder and commissioners shall each receive the sum of fifteen hundred dollars per annum, to be paid quarter yearly by the United States, in full compensation for their services under this act; and may, when necessary, employ an interpreter of the French or Spanish language, for a reasonable compensation, to be allowed by the Secretary of the Treasury, and paid by the United States.

SEC. 5. *And be it further enacted*, That it shall be lawful for the heirs of Carlos de Villemont to submit the evidence of their claim to a tract of land in Arkansas territory, to a place called "Chicot point," to the said recorder and commissioners, and it shall be the duty of said recorder and commissioners to report upon said claim in the manner that other claims provided for in this act are to be reported and proceeded upon.

APPROVED, July 9, 1832.

A report of claims to be laid before commissioner, and presented to Congress.

Provisions relating to sale of certain lands.

Proviso.

Pay of recorder and commissioners.

Interpreter may be employed.

Heirs of Carlos de Villemont may submit evidence of claim. Report thereon.

STATUTE I.

July 9, 1832.

CHAP. CLXXXI.—*An Act to amend an act entitled "An act for the relief of purchasers of the public lands that have reverted for non-payment of the purchase money, passed twenty-third day of May, one thousand eight hundred and twenty-eight."*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in all cases where public lands have been purchased, on which a further credit has been taken under the provisions of the act of the second March, one thousand eight hundred and twenty-one, or under any other act of Congress granting relief to the purchasers of the public lands, and have reverted to the United States for failure to pay the purchase money, or have been sold by the United States by reason of such failure to pay, it shall be the duty of the register of the land office where the purchase was made, to issue

Act of May 23, 1828, ch. 71.

Register to issue certificates to purchasers of public lands for amount paid, &c.

1821, ch. 12.