on vessels seized and condemned by the government of Spain. The owner had abandoned for a total loss, which the insurer had paid; and was the successor to the rights of the assured. The sentences of the Spanish prize courts were conclusive as to the right to the things condemned; and no claim existed on part of the insurer, that did not depend on the discretion and pleasure of the Spanish government. The equity was as remote, to say the least of it, in that case as in the one before us. By the treaty of 1819, Spain stipulated with this government to pay $5,000,000 in full discharge of the unlawful seizures; leaving the United States to distribute the indemnity. Vasse had awarded to him $8846. Comegys was the surviving assignee of the bankrupt. Vasse instituted suit against him, to try the right to the money. This court held, that although the illegal sentences of the Spanish prize courts were irreversible, the party had not lost all right to justice, or claim, upon principles of international law, to remuneration; that he had a right both to the justice of his own and the foreign sovereign; and that this right passed by the general assignment of the bankrupt. The treaty in that case (as the act of congress in this) operated on a pre-existing claim on a government. It follows, if the doctrine of donation did not apply in that case, neither can it in this.

Had a similar claim on the part of Milnor existed against an individual, instead of the government, then there can be no doubt, he could have recovered by suit; or it would have been the subject of set-off; or could have been assigned. So, it would have passed to his administrator, in case of death. As the government was equally bound to do its debtor justice, in a different mode, with an individual, we think no sound distinction exists in the two cases; and therefore, order the decree to be affirmed.

Decree affirmed.

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*United States, Appellants, *v.* Heirs of George *v.* F. Clarke and Heirs of George Atkinson, Appellees. [*228

Florida land-claims.

A grant of 15,000 acres, by the Spanish governor of East Florida, in consideration of important services performed on behalf of the government of Spain, to George Atkinson, confirmed by the supreme court.

By the eighth article of the Florida treaty, no grants of land, made after the 24th of January 1818, were valid; nor could a survey be valid on lands other than those authorized by the grant; still the power to survey, in conformity to the concessions, existed up to the change of flags.

Spain had the power to make grants founded on any consideration, and subject to any restrictions, within her dominions; if a grant was binding on that government, it is so on the United States, the successor of Spain. All the grants of land made by the lawful authorities of the king of Spain, before the 24th of January 1818, were, by the treaty, ratified and confirmed to the owners of the lands. Arredondo's Case, 6 Pet. 706; Percheman's Case, 7 Ibid. 51; and Sibbald's Case, 10 Ibid. 321, cited.

The grant to 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 specially mentioned in the grant, but at other places: *Held*, that these surveys were valid, notwithstanding that they were made at different places.

Appeal from the Superior Court of East Florida. This was an appeal from the decree of the superior court of East Florida, confirming the

claims of the heirs of Clarke and Atkinson to 15,000 acres of land, under the acts for the adjustment of land-claims in Florida. The claim was founded on a petition of George Atkinson, merchant, of Fernandina, dated October 8th, 1816; and a decree of Governor Coppinger thereon, dated October 20th, 1816. The petition stated many services rendered to government, and benefits conferred on the province; and prayed that his excellency would be pleased "to grant him, in property, fifteen thousand acres of land in Cedar Swamp, and on the west of the lake named Upper Little Lake." The governor's decree stated, that, in consideration of the merits cited, he granted him, in property, the lands he solicited in the petition; and that
*229] the surveyor-general would run them for him, in *the places he mentioned, or in others that were vacant, and of equal convenience to the party.

The originals of the petition and decree were not produced in evidence, neither are they to be found in the archives at St. Augustine. A certified copy, under the hand of Tomas de Aguilar, secretary of the government (whose handwriting was proved), stated to be faithfully drawn from the original in his office, was alone offered; and was objected to on the part of the appellants. The objection was overruled.

There were also produced four several plats and certificates of survey, made by George J. F. Clarke, surveyor-general, for George Atkinson. 1. Dated 20th January 1818, for 4000 acres of land, northwardly of Dunn's creek, which runs from Dunn's lake to the river St. John's, and above the crossing-place of said creek. 2. Dated 12th March 1818, for 3000 acres of land, on the middle arm of Haw creek, which empties itself into Dunn's lake, toward the east. 3. Dated 21st March 1818, for 2000 acres of land, in the place called Dupon's hammock, south-easterly of Bowlegs' prairie, and south-westwardly of Paynestown. 4. Dated 24th January 1818, for 6000 acres, on Darcey's creek, and entending from the natural bridge of Santa Fe, on the road called Ray's trail.

The petition to the court in this case was filed on the 22d day of May 1829, in the name of George J. F. Clarke, for himself, and the heirs and legal representatives of George Atkinson, deceased, and set forth the grant; and that the claim of Atkinson had been filed before the land board of East Florida, who rejected the same, but did not report it forged or antedated; and that he had legal right, under the said George Atkinson, to —— acres, parcel of the said land.

On the 21st May 1830, the district-attorney filed his answer, which, *inter alia*, stated, that "the petitioner had not shown whether or not the said George Atkinson died intestate, or who were the legal heirs of the said George Atkinson, whether they are minors or otherwise, if any such there were; nor, indeed, had he expressly alleged that the said George Atkinson left any legal heirs or representatives, or that any such now existed; nor had
*230] he *shown any title in himself to the said tract of land, or any part thereof; nor had he stated or set forth in his petition any bargain, sale, deed or deeds of conveyance from the said George Atkinson, in his lifetime, or from any of the said legal representatives of the said George Atkinson, since his death, to the said petitioner, to all or any part of the said lands, or in what right he claimed, whether by gift, descent, devise, conveyance or otherwise; and respondent relied upon the aforesaid defects

in the petition or bill of complaint, as matter of defence on the hearing of this cause."

Clarke having died, his heirs, on the 13th day of July 1840, filed a petition to revive the suit, which was ordered accordingly, on the 16th of July 1840; and the cause came on to be heard on the 20th day of the same month. The counsel for the claimants then moved the court that the cause might also proceed in the name of Philip R. Younge and Mary Younge, his wife; Samuel Humphries and Letitia Humphries, his wife; Jane Gains, widow of Dr. Joseph Gains; and Letitia Atkinson; heirs and legal representatives of George Atkinson; and with the assent of the attorney of the United States, it was ordered accordingly.

No deed or conveyance, nor evidence of any kind, was offered, to show that either Clarke or his heirs had any interest whatever in the lands. After hearing testimony, the court made a decree in favor of the claimants, from which the present appeal was taken.

The case was argued by *Legaré*, Attorney-General, for the United States. For the United States, it was contended, that the decree ought to be reversed, on the following grounds: 1. That there is no evidence that Clarke, or his heirs, had any interest in the lands; and the petition, so far as regards them, ought to have been dismissed. 2. That the time limited by the acts of congress, for the commencement of the proceedings in court, having expired, before the heirs of Atkinson were made parties, the court had no jurisdiction as to the validity of the grant, so far as they were concerned. 3. That there was no sufficient evidence that the said alleged grant or concession was ever made by Governor Coppinger. *4. That Governor Coppinger had no authority to make such a grant. 5. That the description of [*231 the lands, in the said alleged grant, was too vague to be the foundation of a valid survey. 6. That there was no authority in the said alleged grant to survey four different tracts of land. No counsel appeared for the appellees.

Catron, Justice, delivered the opinion of the court.—In 1816, George Atkinson set forth to the governor of East Florida, various important services, through a series of years, performed in behalf of the government, and also many losses; in consideration of which, he solicited a grant in property of 15,000 acres of land, in Cedar swamp, and on the west of Upper Little Lake. The governor granted the lands in property; and added, "consequently, the surveyor general will run them for him in the places he mentions, or in others that are vacant and of equal convenience to the party."

Two places were designated where the lands were to lie, by the petition. They were surveyed in four places: the first survey for 4000 acres, near Dunn's creek; the second, for 3000 acres on Haw creek; the third, for 2000 acres in Dupon's hammock; and 6000 acres on Darcey's creek. One bears date the 20th of January 1818; and the other three in March of that year. None of them are on the lands solicited in the petition. The court below affirmed the surveys; and if this court concurs in the decree, the United States will be bound to issue patents for the four tracts. That the complainants are entitled to the lands in two surveys, at the places described

in the petition, is not questioned; the difficulty is, could the interested party elect to abandon his first locations, and then multiply the tracts?

By the 8th article of the Florida treaty, no grants made after the 24th of January 1818, were valid; nor could a survey be valid on lands other than those authorized by the grant; still, the power to survey in conformity to the concession existed up to the change of flags. That Spain had the power
*232] to make grants, founded on any *consideration, and subject to any restrictions, within her discretion, is a settled question. If the act was binding on that government, so it is on this, as the successor of Spain. All the grants of lands, made by the lawful authorities of the king of Spain, before the 24th of January 1818, were, by the treaty, ratified and confirmed to the owners of the lands. Such is the construction given to the eighth article, by this court, in *Arredondo's Case*, 6 Pet. 706, and in *Percheman's Case*, 7 Ibid. 51; that is, imperfect titles were equally binding on this government, after the cession, as they had been on the Spanish government before. The grant to Atkinson was for the lands he mentioned, or for any other lands that were vacant; and the surveyor-general was especially directed to lay them off in either way; the grant giving him an unrestricted discretion over the entire vacant lands of the province, to satisfy the highly meritorious claim of the petitioner; for however doubtful the merits of many claims may have been, as presented to us, of the justice of this there can be no question; it had in it peculiar equities, and therefore, the party had conceded to him peculiar privileges in selecting the lands. The official and well-defined duties of the surveyor-general are set forth in *Hanson's Case*, and need not be repeated. He was acting for the government, when making the survey, and bound to protect the public domain, within the restrictions imposed by the governor's decree; he did not exceed the decree, by going to other places than those pointed out in the petition; and therefore, did not exceed his authority, unless it was in making more surveys than two. This point was settled in *Sibbald's Case*, 10 Pet. 321. His was a mill-grant for five miles square, on Trout creek; and in the event that situation would not permit the quantity of 16,000 acres, he asked, and had granted to him, an equivalent of the deficiency, not at a particular place, but generally. In 1819, a tract of 10,000 acres was surveyed at Trout creek. In February 1820, another of 4000 acres was surveyed thirty miles off at Turnbull's swamp; and the remaining 2000 acres at Bowleg's hammock, some thirty miles in a different direction. It was proved, that no more than 10,000 acres could be had at Trout creek, because of interfering elder claims, and injury to third persons. The court adjudged, in effect, that the equiva-
*233] lent referred to quantity rather than form *of survey; and that the 6000 acres deficient, could be surveyed on any vacant lands in the province, and in several surveys; the only authority for doing so, was that an equivalent was decreed in case of deficiency. The last two surveys were confirmed, on the precise ground, that, as to the equivalent, the party was not restricted to any particular spot, nor to any form or number of surveys; and therefore, might elect any vacant lands, and at different places. Sibbald's was a weaker case than the present, the words of the grant being less explicit; the principles presented being precisely the same in both, we cannot reverse the decree below, without overruling the former decision, to

which the court below was bound to conform. We, therefore, order the decree to be affirmed.

Decree affirmed.

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*The Mayor and Aldermen of the City of Mobile, Plaintiffs in error, *v.* Miguel D. Eslava, Defendant in error. [*234

Land-titles in Alabama.

A lot of ground, part of the ground on which Fort Charlotte had been erected, in the city of Mobile, before the territory was acquired from Spain by the United States, had been sold under an act of congress of 1818; the lot had been laid out according to a plan, by which a street, called Water street, was run along the margin of Mobile river; and the street was extended over part of the site of Fort Charlotte; the lot was situated west of Water street but when sold by the United States, its eastern line was below high-water mark of the river. The purchaser of this lot improved the lot lying in front of it, east of Water street, having filled it up, at a heavy expense, thus reclaiming it from the river, which at high-water had covered it; when the lot east of Water street was purchased, the purchaser could not pass along the street, except with the aid of logs and other timber. Water street was, in 1823, filled up, at the cost of the city of Mobile; taxes and assessments for making side-walks along Water street, were paid to the city of Mobile, by the owner of the lot; the city had brought suit for taxes, and had advertised the lot for sale, as the property of a tenant under the purchaser of the lot. On the 26th of May 1824, congress passed an act, which declared, in the first section, that all the right and claim of the United States to the lots known as the Hospital and Bakehouse lots, containing about three-fourths of an acre of land, in the state of Alabama, and all the right and claim of the United States to all the lots not sold or confirmed to individuals, either by that or any former act, and to which no equitable title existed, in favor of any individual, under that or any other act, between high-water mark and the channel of the river, and between Church street and North Boundary street, in front of the city of Mobile, should be vested in the corporation of the city of Mobile, for the use of the city for ever. The second section provided, "that all the right and claim of the United States to so many of the lots east of the Water street, and between Church street and North Boundary street, now known as water lots, as are situated between the channel of the river and the front of the lots, known under the Spanish government as water lots, in the said city of Mobile, whereon improvements have been made, be and the same are hereby vested in the several proprietors and occupants of each of the lots heretofore fronting on the river Mobile," &c. The city of Mobile claimed from the defendant in error the lot held by him, under the purchase from the United States, and the improvements before described; asserting that the same was vested in the city, by the first section of the act of 1824: *Held*, that under the provisions of the second section of the act, the defendant in error, claiming under the purchase made under the act of 1818, and under the act of 1824, was entitled to the lot.

The right relinquished by the United States was, to the water lots, "lying east of Water street and between Chuch street and North Boundary street, now known as water lots, as are situated between the channel of the river and the front of the lots, known under the Spanish government as water lots, in the said city of Mobile, whereon improvements have been made." The improvements referred to the water and *not to the front lots; a reasonable construction of the act requires the improvements to have been made or owned by the proprietor of the front lot, at the time of the passage of the act; being proprietor of the front lot, and having improved the water lot opposite and east of Water street, constituted the condition on which the right under the statute vested.[1] [*236

Error to the Supreme Court of Alabama. The plaintiffs in error instituted an action, called, in the language of the laws of Alabama, "a plea of trespass to try titles," against Miguel D. Eslava, the purpose of which was the recovery of possession, and damages for the detention, of a certain lot

[1] See Mobile *v.* Hallett, *post*, p. 261; Mobile *v.* Emanuel, 1 How. 95; Pollard *v.* Files, 2 Id. 591