of circumstances must be shown that notice would be implied. And it is true that this charge makes no reference to notice whatever. But when we look into the facts of this case, as shown by the bill of exceptions, we discover a very plain reason why this was omitted. The question of notice, as a fact, could not be disputed, and therefore did not arise as a matter on which the jury required instructions.

The city authorities, in converting the part of the Park already mentioned into a street, had cut down a tree, and left the stump standing from six to eight inches above the surface, and from fourteen to eighteen inches inside the curbstone, on the sidewalk. This was done in 1847; and this stump, thus left by the city authorities, who had cut down the tree, remained in that condition until the time of the accident to plaintiff, in 1857.

These facts were uncontradicted, and stronger proof of notice could not be given. It closed the question, and the omission in the judge's charge of any reference to that subject was justified by the testimony. It would have been superfluous.

JUDGMENT AFFIRMED.

CHRISTY v. PRIDGEON.

1 The Mexican colonization law of August 18th, 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new State, as much so as if it had originated in her legislation. The interpretation, therefore, placed on it by the highest court of the State, must be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be the opinion of this court of its original soundness. If in courts of other States carved out of territory since acquired from Mexico, a different interpretation has been adopted, the courts of the United States will follow the different ruling, so far as it affects titles in those States.

2 The interpretation within the jurisdiction of a State of a local law, becomes a part of that law, as much so as if incorporated in the body of

it by the legislature. If different interpretations are given in different States to a similar law, that law, in effect, becomes, by the interpretations, so far as it is a rule for action by this court, a different law in one State from what it is in the other.

ERROR to the District Court of the United States for the Eastern District of Texas; the case being essentially thus: By the Mexican colorization law of August 18th, 1824, and the legislation of Coahuila and Texas authorized by it, the Governor of the State just mentioned had power to grant lands for colonization; but it was declared that the territory comprised within twenty leagues of the boundaries of a foreign nation, or within ten leagues of the sea-coast, could not be colonized without the previous approval of the supreme executive power.

In this state of the law, one Miguel Arceniga, a resident of Bexar, made his petition for concession of eleven leagues of land. The petition was dated March 31st, 1831, and the concession of the Governor, granting the quantity asked for, was made on the 6th of April of the same year, accompanied with a direction to the proper local officers to give possession of the land to the grantee, and to issue to him the proper title. Neither document designated the land. A petition to the alcalde, for survey, possession, and title, of the eleven leagues, in the vicinity of the "Red River of the Nachitoches," was followed by the appropriate action of the officer for that purpose, and on the 22d of September, 1835, by the issue to the grantee of a formal certificate of possession and title of the land thus situated. This was before the annexation of Texas to the United States, and the land thus granted laid within twenty leagues of what was then the northern boundary between Texas and the United States. Texas having become part of the Union, one Christy, claiming under the grantee, brought trespass to try title for these eleven leagues, now situated in Harrison County, Texas.

The court ruled that the grant being issued without the previous assent or approval of the supreme executive power of Mexico, was illegal and void, and excluded it from the jury. Thereupon, the jury found for the defendant. The

alleged error in this ruling was the only question before this court.

Mr. T. Ewing, Jr., for the plaintiff in error:

The title, on its face, being valid and complete—its genuineness unquestioned—it comes within the principle declared by this court in *Fuentes* v. *United States*,* that "the public acts of public officers, importing to be exercised by public authority, shall not be presumed to be usurped, but that a legitimate authority had been previously given, or subsequently ratified;" and in *Delassus* v. *United States*,† that the concession, being regular in form and made by the proper officer, is *primâ facie* evidence that it was within the power of the officer to make it, and that he who alleges that an officer intrusted with an important duty has violated it, must show it.

The chief object of the colonization law, as is known, was to encourage the immigration of foreigners, and their establishment in colonies with liberal bounties of lands. It was decided in *Arguello* v. *United States*,‡ and affirmed in *Cruz Cervantes* v. *The Same*,§ that this law did not restrict the distribution by the States to Mexican citizens of public lands within the littoral and the frontier leagues. As there is no other provision of the constitution or laws of Mexico requiring the assent of the national executive to the disposition of vacant lands in Coahuila and Texas, it was therefore settled by those cases that the State *had* the power, without the assent of the supreme executive, to make the grant in question.

Mr. Adams and Mr. Leech, contra:

The invalidity and nullity of the Mexican grants within the ten coast, and twenty border, leagues of Texas, unless the assent of the supreme executive of Mexico was affirmatively shown to such grants, have been repeatedly and

* 22 Howard, 459.
† 9 Peters, 117, 133.
‡ 18 Howard, 546.
§ Id. 555.

firmly settled by the Supreme Court of Texas, in a series of cases.*

These decisions have, for years, been acquiesced in by the bar and the people, and constitute a rule of property for a very large portion of the State.

The plaintiff in this action undertook a course of litigation to overthrow these decisions; but they have been reiterated and affirmed both in the Supreme Court of Texas,† and in this court, in *League* v. *Egery*,‡ and *Foote* v. *Egery*,§ until it is not possible to conceive a more fixed and settled course of decisions and rule of property than the nullity of grants of this character.

Reply: 1. All the matters necessary to a consideration of the question do not seem to have been presented to this court in *League* v. *Egery*, and *Foote* v. *Egery*, acquiescing in the Texas decisions, and were not considered in its opinion when pronounced.

The first of the Texas decisions was at the December Term, 1848—one year before plaintiff brought this suit. He was the purchaser of the land from the State of Coahuila and Texas, in 1835, and had received complete legal title. Neither Mexico, nor the State of Coahuila and Texas, nor the Republic, nor the State of Texas, ever questioned his title by proceeding for forfeiture, or by a conveyance to a third person, or otherwise. The *custom* of the states and territories of Mexico, while the national colonization law of 1824 was in force, to sell to Mexicans lands in the border leagues, without the assent of the national executive, which is referred to in the Arguello case, and shown in the Texas and California Reports, and in the colonization law of Tamaulipas‖—undisputed as it was by Mexico—shows that the law was never interpreted by the national, state, or territorial

* Edwards *v.* Davis, 3 Texas, 321; Republic *v.* Thorn, Id. 499; 5 Id 410; 9 Id. 556; 10 Id. 316.

† Smith *v.* Power, 14 Texas, 146; Same *v.* Same, 23 Id. 29.

‡ 24 Howard, 264. § Id. 267.

‖ Paschal's Annotated Digest, 769, p. 218.

authorities to impose the condition of national assent on such sales to Mexican citizens. This court, in the Arguello and Cervantes cases, in opinions from which there was no dissent, declared that this interpretation of the law by the national, state, and territorial authorities was right. It may, therefore, be assumed that such is the true interpretation of this law.

Hence, from 1835 to 1849, when this erroneous interpretation was first declared by any judicial tribunal, the plaintiff had a valid legal title by executed contract of purchase.

This court, in the Egery cases, takes the decisions of the Texas courts as *a rule of property in that State.* The court say, "We do not inquire whether a more suitable rule might not have been adopted, nor whether the arguments which led to its adoption were forcible or just. We receive the decisions as having a binding force almost equivalent to positive law." But we submit, that unless those Texas decisions have a binding force, more than equivalent to positive law, they cannot control this case. When the first of these erroneous decisions was made, Texas was a State of this Union, bound by the Constitution, and could not, even by a law, impair the validity of this contract, much less by a decision of its courts, or a series of decisions, which are only "almost equivalent to positive law." If, then, the plaintiff had a valid title before the earliest of these decisions, he has it still unimpaired by them. Decisions settling a rule of property cannot give or take away property, except in the very cases involved in them. They may, and of right ought to have, a persuasive influence on other courts deciding cases which originated in the past, but cannot control them any more than a statute law can control titles acquired in the past.

2. If the constitutional objection were removed, it seems to us not sound policy to give this effect to the Texas decisions. In 1855, nearly contemporaneous with the earliest of these decisions, this court, in the Arguello case, settled the construction of this part of the Mexican colonization law. That decision, affirmed in the Cervantes case, has stood for eleven years as an exposition of the settled law of such

titles in all those states and territories which were acquired from Mexico.

It is, doubtless, still the received construction in those states and territories. Now, because the Texas courts refused to adopt that construction, and pertinaciously adhered to their own, will this court, by adopting the construction of the Texas courts, reverse its decision in the Arguello case, and destroy the titles resting on it? If the interpretation in the Arguello case is to be adhered to in deciding on titles in the states and territories acquired from Mexico, it cannot be abandoned in titles in Texas; for if a grant within the border leagues in California be not impaired by want of assent of the Mexican government, a like grant in Texas cannot be, without conceding to the Texas courts the power of establishing, by a train of decisions, a rule of property which destroys the obligation of contracts.

Mr. Justice FIELD delivered the opinion of the court.

This was an action to try the title to a tract of land situated in the County of Harrison, in the State of Texas.

The plaintiff relied for recovery upon title derived under a grant from the Governor of Coahuila and Texas, made whilst Texas was a province of Mexico. The defendant rested his defence upon the invalidity of the grant in question, and this invalidity was asserted upon the admitted fact that the land it embraces was situated, at the time the grant was made, within the twenty frontier leagues bordering on the United States, and the absence of any evidence tending to show the assent to the grant, or its approval by the national executive of the republic. The court held the grant, without such assent or approval, to be illegal and void, and excluded it from the jury. The ruling in this respect constitutes the only error assigned, which is properly before us for consideration.

The irregularities in the record mentioned by counsel we cannot notice, as they do not constitute the ground of any alleged error.

The absence of the signature of the judge of the court to

the bill of exceptions is not made the subject of objection by the parties, and we hence infer that its omission was a mere clerical error.

The doctrine, that prior possession is sufficient evidence of title to maintain the action against a mere intruder and trespasser, we do not find at all controverted or doubted by the court below.

The only question presented by the bill of exceptions, and this arises upon the ruling mentioned, relates to the validity of the grant produced. The petition to the Governor upon which the grant was made, solicited, by way of sale, eleven leagues from the vacant lands of the department. This bore date in March, 1831. The decree of concession, which followed in April of the same year, gave the quantity as solicited, and directed the proper local officers to give possession of the land to the grantee, and issue to him the appropriate title. Neither the petition nor the concession designated the land; and, in September, 1835, the grantee applied to the alcalde of the district to place him in possession, and to issue to him the title of the eleven leagues in the immediate vicinity of the "Red River of the Nachitoches." By order of this officer the land was surveyed, and on the 22d of the same month formal evidence of title was given to the grantee. The land thus ceded lay within twenty leagues of what then constituted the boundary between the province of Texas and the United States.

The power of the Governor of Coahuila and Texas to make the grant was derived from the Mexican colonization law of August 18th, 1824, and the legislation of the State, which that law authorized. The object of that law was to induce the settlement of the vacant lands of the Republic. To this end the several States were empowered, under certain restrictions, to provide for the colonization of the lands within their limits. Their legislation was, of course, subject to the provisions of the fourth article of the law mentioned, which declares that "those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the sea-coast, cannot be colonized with-

out the previous approval of the supreme general executive power."*

This law of 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new State—as much so as if it had originated in her legislation. It had at the time no operation in any portion of what then constituted the United States. The interpretation, therefore, placed upon it by the highest court of that State must, according to the established principles of this court, be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be our opinion of its original soundness. Nor does it matter that in the courts of other States, carved out of territory since acquired from Mexico, a different interpretation may have been adopted. If such be the case, the courts of the United States will, in conformity with the same principles, follow the different ruling so far as it affects titles in those States. The interpretation within the jurisdiction of one State becomes a part of the law of that State, as much so as if incorporated into the body of it by the legislature. If, therefore, different interpretations are given in different States to a similar local law, that law in effect becomes by the interpretations, so far as it is a rule for our action, a different law in one State from what it is in the other. "That the statute laws of the States," says Mr. Justice Johnson, in delivering the opinion of this court in *Shelby* v. *Guy*,† "must furnish the rule of decision of this court, as far as they comport with the Constitution of the United States, in all cases arising within the respective States, is a position that no one doubts. Nor is it questionable that a fixed and received construction of their respective statute laws, in their own courts, makes, in fact, a part of the statute law of the country, however we may doubt the propriety of that construction. It is obvious that this admission may at times involve us in seeming inconsis-

* See translation of the General Colonization Law of August 18th, 1824, in appendix to Halleck's Report, Executive Documents, Senate, of 1849.

† 11 Wheaton, 367.

tencies—as where States have adopted the same statutes, and their courts differ in the construction. Yet that course is necessarily indicated by the duty imposed upon us, to administer, as between certain individuals, the laws of the respective States, according to the best lights we possess of what those laws are."

In construing the fourth article cited from the colonization law of Mexico, the Supreme Court of Texas has repeatedly held that it operated as a prohibition of any grant of land within the littoral or coast leagues mentioned, without the previous assent of the federal executive of Mexico; that such assent was essential to the validity of a grant within those limits, and that such assent was not to be inferred from the existence of the grant, but must be affirmatively established. A series of decisions to this purport, from an early history of the State down to the present time, is found in the reports of her courts. These decisions have become a rule of property in that State, any departure from which would disturb titles to extensive and densely settled districts of country.* We receive them, therefore, to quote the language of this court, in *League* v. *Egery*, "as having a binding force almost equivalent to positive law."†

JUDGMENT AFFIRMED.

LANFEAR v. HUNLEY.

1. The act of Congress of August 16th, 1856, confirming claims in favor of Ambrose Lanfear, confirmed to him whatever he was entitled to by virtue of the original grant referred to in it, conceding that to have been valid. It neither enlarged nor diminished what the grant gave. It extinguished all claim on the part of the United States to the land covered by the surveys; but as regards adverse claimants, it determined nothing, and concluded no one.

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* Goode *v.* McQueen's Heirs, 3 Texas, 241; Edwards *v.* Davis, Id. 321; Smith *v.* Power, 23 Id. 32.

† 24 Howard, 266.