

STATUTE I.

June 10, 1812.

[Obsolete.]

Time of embargo not to be computed as part of the time during which goods may be exported.

Act of April 4, 1812, ch. 49.

CHAP. XCVII.—*An Act to extend the time for exporting, with privilege of drawback, goods, wares and merchandise entitled thereto by law.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time during which the act entitled "An act laying an embargo on all ships and vessels in the ports and harbors of the United States for a limited time," shall continue in force, shall not be computed as making part of the term of twelve calendar months, during which goods, wares or merchandise imported into the United States, must be re-exported in order to be entitled to a drawback of the duties paid on the importation thereof.

APPROVED, June 10, 1812.

STATUTE I.

June 10, 1812.

Act of Feb. 3, 1809, ch. 13.

CHAP. XCVIII.—*An Act supplemental to an act entitled "An act for dividing the Indiana territory into two separate governments."*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall and may be lawful for any person or persons in whose favour there now are or hereafter may be rendered, any final judgment or judgments, decree or decrees, in the general court or court of chancery of the territory aforesaid upon any suit or suits, pleas, process or proceedings which were pending in the said courts on the first day of March one thousand eight hundred and nine, to sue out of the office of the clerk of the general court or court of chancery aforesaid, without delay, any writ or writs of execution, upon the judgments or decrees aforesaid, and to cause the said judgments or decrees to be fully executed by the same officers, and in the same manner as if the Indiana territory had remained undivided.

APPROVED, June 10, 1812.

Execution to issue as usual.

STATUTE I.

June 13, 1812.

CHAP. XCIX.—*An Act making further provision for settling the claims to land in the territory of Missouri.*(a)

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

(a) 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.*

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

claims, to town or village lots, out lots, common field lots and commons, in adjoining and belonging to the several towns or villages of Portage des Sioux, St. Charles, St. Louis, St. Ferdinand, Villago a Robert, Carondelet, St. Genevieve, New Madrid, New Bourbon, Little Prairie and Arkansas, in the territory of Missouri, which lots have been inha-

Rights to certain lots adjoining to certain towns, confirmed.

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.

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.*

The act of Congress passed 13th June, 1812, confirming the titles and claims of certain towns and villages to village lots and commons, gave a title which is paramount to a title held under an old Spanish concession confirmed by Congress in 1836. *Chouteau v. Eckhart*, 2 Howard, 344.

But not to affect rights of others, confirmed.

Deputy surveyor to mark boundary lines, &c.

And make out plats.

Expense not to exceed three dollars per mile.

Lots to be reserved for support of schools.

Proviso.

Claims to donation lands, under certain circumstances, confirmed.

Subject to certain limitations.

Other claims to be confirmed.

Recorder to make extract of claims from books.

To transmit a copy to general land-office, and furnish deputy surveyor with descriptions, &c.

bited, cultivated, or possessed, prior to the twentieth day of December, one thousand eight hundred and three, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto: *Provided*, that nothing herein contained shall be construed to affect the rights of any persons claiming the same lands, or any part thereof, whose claims have been confirmed by the board of commissioners for adjusting and settling claims to land in the said territory. And it shall be the duty of the principal deputy surveyor for the said territory as soon as may be, to survey, or cause to be surveyed and marked, (where the same has not already been done, according to law) the out boundary lines of the said several towns or villages so as to include the out lots, common field lots and commons, thereto respectively belonging. And he shall make out plats of the surveys, which he shall transmit to the surveyor general, who shall forward copies of the said plats to the commissioner of the general land-office, and to the recorder of land titles; the expense of surveying the said out boundary lines shall be paid by the United States out of any moneys appropriated for surveying the public lands: *Provided*, that the whole expense shall not exceed three dollars for every mile that shall be actually surveyed and marked.

SEC. 2. *And be it further enacted*, That all town or village lots, out lots, or common field lots, included in such surveys, which are not rightfully owned or claimed by any private individuals, or held as commons belonging to such towns or villages, or that the President of the United States may not think proper to reserve for military purposes, shall be, and the same are hereby reserved for the support of schools in the respective towns or villages aforesaid: *Provided*, that the whole quantity of land contained in the lots reserved for the support of schools in any one town or village, shall not exceed one twentieth part of the whole lands included in the general survey of such town or village.

SEC. 3. *And be it further enacted*, That every claim to a donation of lands in the said territory, in virtue of settlement and cultivation, which is embraced by the report of the commissioners, transmitted to the Secretary of the Treasury, and which by the said report, shall appear not to have been confirmed, merely because permission, by the proper Spanish officer, to settle, has not been duly proven; or because the tract claimed, although inhabited, was not cultivated on the twentieth of December, one thousand eight hundred and three, or not to have been confirmed on account of both said causes; the same shall be confirmed, in case it shall appear that the tract so claimed was inhabited by the claimant or some one for his use prior to the twentieth day of December, one thousand eight hundred and three as aforesaid, and cultivated in eight months thereafter, subject, however, to every other limitation and restriction prescribed by former laws in respect to such claims; and in all cases where it shall appear by the said report or other records of the board that claims to land have not been confirmed merely on the ground that the claim was for a greater quantity than eight hundred arpens, French measure, every such claim to the extent of eight hundred arpens, shall be confirmed.

SEC. 4. *And be it further enacted*, That the recorder of land titles for the said territory shall, without delay, make an extract from the books of the said board of commissioners of all the claims to land which are, by the preceding section, directed to be confirmed, a copy of which he shall transmit to the commissioner of the general land-office; and he shall furnish the principal deputy surveyor with a proper description of the tracts so to be confirmed, wherein the quantity, locality, boundaries and connexion, when practicable with each other, and those tracts that have been confirmed by the board of commissioners shall be stated. And whenever plats of the surveys as herein after directed, shall have

been returned to the said recorder's office, it shall be his duty to issue for each tract to be confirmed, as aforesaid, to the person entitled thereto, a certificate in favour of the party, 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 has been 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 the other lands of the United States.

SEC. 5. *And be it further enacted*, That the principal deputy surveyor shall survey, or cause to be surveyed, under the direction of the surveyor general, so much of the lands in the said territory, to which the Indian title has been extinguished, as the President of the United States may direct, into townships of six miles square, by lines running due north and south, and others crossing these at right angles; and also the lands, the claims to which are directed to be confirmed, by the third section of this act; and the lands, the claims to which have been confirmed by the board of commissioners, where the same has not already been surveyed under the authority of the United States. And the said principal deputy surveyor shall make out a general and connected plat of all the surveys directed by this act to be made, or which have already been made under the authority of the United States, which he shall transmit to the surveyor general, who shall transmit copies of the said plat or plats to the recorder of land titles and the commissioner of the general land-office. The expense of surveying shall be paid by the United States: *Provided*, the same shall not in the whole exceed three dollars a mile for every mile that shall be actually surveyed and marked.

SEC. 6. *And be it further enacted*, That in all cases where by reason of the indefinite description of the local situation and boundaries of any tract, the claim to which has been confirmed by the commissioners, the same cannot be ascertained by the principal deputy surveyor, it shall be the duty of the recorder of land titles, on the application of the said principal deputy, to furnish such precise description thereof, as can be obtained from the records in his office, and the books of the said board of commissioners; and for the purpose of the more correctly ascertaining the locality and boundaries of any such tracts, the said principal deputy, shall have free access at all seasonable hours to the books and papers in the recorder's office, relating to land claims, and be permitted to take copies or such extracts therefrom, or any of them, as he may think proper and necessary for the discharge of his duty in executing such surveys. And the said recorder shall be allowed twenty-five cents for the description of each tract which he shall furnish to the principal deputy surveyor as aforesaid.

SEC. 7. *And be it further enacted*, That every person or persons claiming lands in the territory of Missouri, who are actual settlers on the lands which they claim, and whose claims have not been heretofore filed with the recorder of land titles for the said territory, shall be allowed until the first day of December next, to deliver notices in writing, and the written evidences of their claims to the said recorder; and the notices and evidences so delivered within the time limited by this act, shall be recorded in the same manner, and on payment of the same fees as if the same had been delivered before the first day of July, one thousand eight hundred and eight; but the rights of such persons as shall neglect so doing within the time limited by this act, shall, so far as they are derived from, or founded on any act of Congress, ever after be barred and become void, and the evidences of their claims never after admitted as evidence in any court of the United States, against any grant derived from the United States.

SEC. 8. *And be it further enacted*, That the said recorder of land titles, shall have the same powers, and perform the same duties in rela-

Recorder to issue certificates.

Patents to be granted.

Deputy surveyor to survey.

Townships to be laid off.

Plat to be made.

Expense not to exceed three dollars per mile.

Recorder to furnish descriptions.

Access to be allowed to books and papers in recorder's office.

Recorder's fee.

Actual settlers allowed till first December, 1812, to furnish evidence of claims, &c.

Act of March 3, 1813, ch. 44. Barred forever after.

Power and duty of recorder.

tion to the claims thus filed before the first day of December next, and the claims which have been heretofore filed, but not decided on by the commissioners, as the board of commissioners had by former laws respecting claims filed prior to the first day of July, one thousand eight hundred and eight, except that all of his decisions shall be subject to the revision of Congress. And 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 shall be thus filed before the first day of December next, and of the claims which have been already filed but not decided on by the said commissioners; together with the substance of the evidence in support thereof, 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 by the commissioner of the general land-office before Congress, at their next session, for their determination thereon. The said recorder in addition to his salary as fixed by law, shall be allowed fifty cents for each claim which has been filed, but not decided on by the commissioners; or which shall be filed according to 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.

APPROVED, June 13, 1812.

Additional
fee to the re-
corder.

Further allow-
ance.

STATUTE I.

June 17, 1812.

CHAP. C.—*An Act authorizing the remission of forfeited recognizances within the District of Columbia.*

President au-
thorized to remit
forfeitures, &c.
in the District
of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States shall have the power to grant remissions of the forfeitures of all recognizances acknowledged and taken or to be acknowledged and taken, before any court, judge, justice of the peace, or other magistrate within the District of Columbia, either in the course of any criminal prosecution, or for surety of the peace.

APPROVED, June 17, 1812.

STATUTE I.

June 17, 1812.

CHAP. CI.—*An Act authorizing the cutting and making a Canal from the river Potomac around the west end of the dam or causeway from Mason's Island, and for other purposes.*

Common council
of Alexan-
dria empowered
to appoint
agents to lay out
and superintend
cutting of canal,
&c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the common council of Alexandria shall have power to appoint one or more agents to lay out and superintend the cutting and making a canal from the river Potomac around the west end of the dam or causeway from Mason's island to the western shore of the said river, into that arm of said river which passes around the western side of said island, in the manner and under the restrictions herein after directed; and from the river Potomac along the west side of Alexander's peninsula into said river, below the lower end of said peninsula, and through any other points of land between Mason's island and Alexandria, which may improve the boat navigation of said river; and also that the said common council of Alexandria have power to levy a tax upon the real property of the said town, and upon the personal property and the occupations of the citizens thereof, for the purpose of defraying the expense of cutting and making said canals, and after-

May levy a
tax.