STATUTE I.
May 8, 1822.

CHAP. CXXIX.—*An Act for ascertaining claims and titles to land within the territory of Florida.* (a)

The President, &c. to appoint three com-

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

(a) The decisions of the courts of the United States upon claims and titles to land in the territory of Florida, have been :

After the acquisition of Florida by the United States, in virtue of the treaty with Spain, of 22d of February, 1819, various acts of Congress were passed for the adjustment of private land claims, within the ceded territory. The tribunals authorized to decide on them, were not authorized to settle any which exceeded a league square ; on those exceeding that quantity, they were directed to report, especially, their opinion, for the future action of Congress. The lands embraced in the larger claims were defined by surveys, and plats retained ; these were reserved from sale, and remained unsettled until some resolution should be adopted for a final adjudication of them, which was done by the passage of the law of the 22d of May, 1828. By the sixth section it was provided, " that all claims to land within the territory of Florida, embraced by the treaty, which shall not be finally decided and settled under the provisions of the same law, containing a greater quantity of land than the commissioners were authorized to decide, and above the amount confirmed by the act, and which have not been reported as antedated, or forged, shall be received and adjudicated by the judges of the superior court of the district in which the land lies, upon the petition of the claimant, according to the forms, rules and regulations, conditions, restrictions and regulations prescribed to the district judge, and to the claimants, by the act of 26th May, 1824. By a proviso, all claims annulled by the treaty, and all claims not presented to the commissioners, &c., according to the acts of Congress were excluded. United States *v.* Arredondo et al. 6 Peters, 706.

The grant of the king of Spain to F. M. Arredondo and Son, for land at Alachua, in Florida, gave a valid title to these claimants under the grant, according to the stipulations under the treaty between the United States and Spain, of 1819. By the laws of nations, of the United States, and of Spain, a concession or condition becomes absolute, where the condition is performed. *Ibid.* 691.

The original concession by governor Coppinger, on the petition of George J. F. Clarke, was made on the 17th of December, 1817, of twenty-six thousand acres of land, in the places he solicited in his petition, and a complete title was made of twenty-two thousand acres, part of the same, in December, 1817. Twenty thousand acres, part of the whole concession, were sold by the appellee. The other four thousand were surveyed in conformity with the decree of 17th December, 1817, and a complete title to the same was made by governor Coppinger, on the 4th of May, 1818. By the court—The claimant cannot avail himself of the grant of the 4th of May, 1818, made after the 24th of January, 1818, the time limited by the Florida treaty. He must rest his claim on the concession made on the 17th of December, 1817, United States *v.* Clarke, 8 Peters, 436.

The validity of concessions of land, by the authorities of Spain, in East Florida, is expressly recognised in the Florida treaty, and in the several acts of Congress. *Ibid.*

The eighth article allows the owners of land the same time for fulfilling the conditions of their grants from the date of the treaty, as is allowed in the grant from the date of the instrument. And the act of the 8th of May, 1822, requires every person claiming title to lands under any patent, grant, concession, or order of survey dated previous to the 24th of January, 1818, to file his claim before the commissioners, appointed in pursuance of that act. All the subsequent acts on the subject, observe the same language ; and the titles under these concessions have been uniformly confirmed, when the tract did not exceed a league square. *Ibid.*

A claim to lands in East Florida, the title to which was derived from grants by the Creek and Seminole Indians, ratified by the local authorities of Spain, before the cession of Florida by Spain to the United States, confirmed. Mitchel et al. *v.* The United States, 9 Peters, 711.

It was objected to the title claimed in this case, which had been presented to the superior court of Middle Florida, under the provisions of the acts of Congress for the settlement of land claims in Florida, that the grantees did not acquire, under the Indian grants, a legal title to the land. Held : that the acts of Congress submit these claims to the adjudication of this court as a court of equity ; and those acts, as often and uniformly construed in its repeated decisions, confer the same jurisdiction over imperfect, inchoate and inceptive titles, as legal and perfect ones ; and require the court to decide by the same rules on all claims submitted to it, whether legal or equitable. *Ibid.*

In the case of the United States *v.* Arredondo, 6 Peters, 691, the lands granted had been in the possession and occupation of the Alachua Indians, and the centre of the tract was an Indian town of that name. But the land had been abandoned, and before any grant was made by the intendant, a report was made by the attorney and surveyor general on a reference to them, finding the fact of abandonment ; on which it was decreed that the lands had reverted to, and become annexed to the royal domain. *Ibid.*

By the common law, the king has no right of entry on lands which is not common to his subjects ; the king is put to his inquest of office, or information of intrusion, in all cases where a subject is put to his action ; their right is the same, though the king has more convenient remedies in enforcing his. If the king has no original right of possession to lands, he cannot acquire it without office found, so as to annex it to his domain. *Ibid.*

The United States have acted on the same principle in the various laws which Congress have passed in relation to private claims to lands in the Floridas ; they have not undertaken to decide for themselves, on the validity of such claims, without the previous action of some tribunal, special or judicial. They have not authorized an entry to be made on the possession of any person in possession, by colour of a Spanish grant or title ; nor the sale of any lands as part of the national domain ; with any intention to impair private rights. The laws which give jurisdiction to the district courts of the territories to decide in the first instance, and to this court on appeal, prescribe the mode by which lands which have been possessed or claimed to have been granted pursuant to the laws of Spain, shall become a part of the national domain ; which, as declared in the seventh section of the act of 1824, is a " final decision against any claimant pursuant to any of the provisions of the law." *Ibid.*

missioners for ascertaining claims and titles to lands in Florida.

ascertaining the claims and titles to lands within the territory of Florida, as acquired by the treaty of the twenty-second of February, one thousand eight hundred and nineteen, there shall be appointed, by the President of the United States, by and with the advice and consent of the Senate,

---

One uniform rule seems to have prevailed in the British provinces in America, by which Indian lands were held and sold, from their first settlement, as appears by their laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them as their common property, from generation to generation, not as the right of the individuals located on particular spots. Subject to this right of possession, the ultimate fee was in the crown and its grantees; which could be granted by the crown or colonial legislatures while the lands remained in possession of the Indians; though possession could not be taken without their consent. *Ibid.*

Individuals could not purchase Indian lands without permission or license from the crown, colonial governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license, or in conformity with the local laws; and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the crown by the license, the title of the purchaser became complete. *Ibid.*

Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way, and for their own purposes, were as much respected until they abandoned them, made a cession to the government, or an authorized sale to individuals. In either case their rights became extinct, the lands could be granted disencumbered of the right of occupancy, or enjoyed in full dominion by the purchases from the Indians. Such was the tenure of Indian lands by the laws of Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, and Georgia. *Ibid.*

Grants made by the Indians at public councils, since the treaty at Fort Stanwick's, have been made directly to the purchasers, or to the state in which the land lies, in trust for them, or with directions to convey to them; of which there are many instances of large tracts so sold and held; especially in New York. *Ibid.*

It was the universal rule that purchases made at Indian treaties, in the presence, and with the approbation of the officer under whose direction they were held by the authority of the crown, gave a valid title to the lands; it prevailed under the laws of the states after the revolution; and yet continues in those where the right to the ultimate fee is owned by the states, or their grantees. It has been adopted by the United States: and purchases made at treaties held by their authority, have been always held good by the ratification of the treaty, without any patent to the purchasers from the United States. This rule in the colonies was founded on a settled rule of the law of England, that by his prerogative the king was the universal occupant of all vacant lands in his dominions, and had the right to grant them at his pleasure, or by his authorized officers. *Ibid.*

When the United States acquired and took possession of the Floridas, the treaties which had been made with the Indian tribes before the acquisition of the territory by Spain and Great Britain, remained in force over all the ceded territory as the laws which regulated the relations with all the Indians who were parties to them; and were binding on the United States, by the obligation they had assumed by the Louisiana treaty, as a supreme law of the land, which was inviolable by the power of Congress. They were also binding as the fundamental law of Indian rights, acknowledged by royal orders, and municipal regulations of the provinces, as the laws and ordinances of Spain in the ceded provinces, which were declared to continue in force by the proclamation of the governor in taking possession of the province; and by the acts of Congress which assured all the inhabitants of protection in their property. It would be an unwarranted construction of these treaties, laws, ordinances and municipal regulations, to decide that the Indians were not to be maintained in the enjoyment of all the rights which they could have enjoyed under either, had the province remained under the dominion of Spain. It would be rather a perversion of their spirit, meaning and terms, contrary to the injunction of the law under which the court acts, which makes the stipulations of any treaty, the laws and ordinances of Spain; and these acts of Congress, so far as either apply to this case, the standard rules for its decision. *Ibid.*

The treaties with Spain and England before the acquisition of Florida by the United States, which guarantied to the Seminole Indians their lands according to the right of property with which they possessed them, were adopted by the United States; who thus became the protectors of all the rights they had previously enjoyed, or could of right enjoy under Great Britain or Spain, as individuals or nations, by any treaty, to which the United States thus became parties in 1803. *Ibid.*

The Indian right to the lands as property was not merely of possession, that of alienation was concomitant; both were equally secured, protected, and guarantied by Great Britain and Spain, subject only to ratification and confirmation by the license, charter or deed from the governor representing the king. Such purchases enabled the Indians to pay their debts, compensate for their depredations on the traders resident among them, to provide for their wants; while they were available to the purchasers as payment of the considerations which at their expense had been received by the Indians. It would have been a violation of the faith of the government to both, to encourage traders to settle in the province, to put themselves and property in the power of the Indians, to suffer the latter to contract debts, and when willing to pay them by the only means in their power, a cession of their lands, withhold an assent to the purchase, which by their laws or municipal regulations was necessary to vest a title. Such a course was never adopted by Great Britain in any of her colonies; nor by Spain in Louisiana or Florida. *Ibid.*

The laws made it necessary, when the Indians sold their lands, to have the deeds presented to the governor for confirmation. The sales by the Indians transferred the kind of right which they possessed; the ratification of the sale by the governor must be regarded as a relinquishment of the title of the crown to the purchaser; and no instance is known where permission to sell has been "refused, or of the rejection of an Indian sale." *Ibid.*

In the present case the Indian sale has been confirmed with more than usual solemnity and publicity; it has been done at a public council and convention of the Indians conformably to treaties, to which the

three commissioners, who shall receive, as compensation for the duties enjoined by the provisions of this act, two thousand dollars each, to be paid quarterly, from the treasury; who shall open an office for the adjudication of claims, at Pensacola, in the territory of West Florida, and St.

Their pay. To open an office at Pensacola.

king was a party, and which the United States adopted; and the grant was known to both parties to the treaty of cession. The United States were not deceived by the purchase, which they knew was subject to the claim of the petitioner, or those from whom he purchased; and they made no stipulation which should put it to a severer test than any other; and it was made to a house which, in consideration of its great and continued services to the king and his predecessor, had deservedly given them high claims as well on his justice as his faith. But if there could be a doubt that the evidence in the record did not establish the fact of a royal license or assent to this purchase, as a matter of specific and judicial belief, it would be presumed as a matter of law arising from the facts and circumstances of the case, which are admitted or unquestioned. *Ibid.*

As decided by the Supreme Court, the law presumes the existence in the provinces of an officer authorized to make valid grants; a fortiori, to give license to purchase and to confirm; and the treaty designates the governor of West Florida as the proper officer to make grants of Indian lands by confirmation; as plainly as it does the governor of East Florida to make original grants, or the intendant of West Florida to grant royal lands. A direct grant from the crown, of lands in a royal haven may be presumed on an uninterrupted possession of sixty years; on a prescriptive possession of crown lands for forty years. *Ibid.*

The length of time which brings a given case within the legal presumption of a grant, charter or license, to validate a right long enjoyed, is not definite, depending on its peculiar circumstances. *Ibid.*

Juan Percheman claimed two thousand acres of land lying in the territory of Florida, by virtue of a grant from the Spanish governor, made in 1815. His title consisted of a petition presented by himself to the governor of East Florida, praying for a grant of two thousand acres, at a designated place, in pursuance of the royal order of the 29th of March, 1815, granting lands to the military who were in St. Augustine during the invasion of 1812 and 1813; a decree by the governor, made 12th December, 1815, in conformity to the petition, in absolute property, under the authority of the royal order, a certified copy of which decree and of the petition was directed to be issued to him from the secretary's office, in order that it may be to him in all events an equivalent of a title in form; a petition to the governor, dated 31st December, 1815, for an order of survey, and a certificate of a survey having been made on the 20th of August, 1819, in obedience to the same. This claim was presented, according to law, to the register and receiver of East Florida, while acting as a board of commissioners to ascertain claims and titles to lands in East Florida. The claim was rejected by the board, and the following entry made of the same. "In the memorial of the claimant to this board, he speaks of a survey made by authority in 1829. If this had been produced, it would have furnished some support for the certificate of Aguilar. As it is, we reject the claim." Held, that this was not a final action on the claim, in the sense those words are used in the act of the 26th of May, 1830, entitled "An act supplementary to," &c. United States *v.* Percheman, 7 Peters, 51.

A grant of land in Florida within the Indian boundary, by the governor, acting under the crown of Spain before the cession of Florida to the United States, was confirmed to the grantee, by the decree of the judge of the eastern district of Florida. The decree was affirmed on appeal. The United States *v.* Fernandez, 10 Peters, 303.

The subject of grants of land within the Indian boundary, which had not by any official act been declared a part of the royal domain, was fully and ably considered in the case of Johnson v. M'Intosh, 8 Wheat. 543; 5 Cond. Rep. 515. Every European government claimed and exercised the right of granting lands, while in the occupation of the Indians. *Ibid.*

The grants of lands in the possession of the Indians by the governor of Florida, under the crown of Spain, were good to pass the right of the crown. The grants severed them from the royal domain, so that they became private property; which was not ceded to the United States by the treaty with Spain. *Ibid.*

The Supreme Court cannot attach any condition to a grant of absolute property in the whole of the land. This grant was made by the governor of East Florida in absolute property, with a promise of a title in form. He was the exclusive judge of the conditions to be imposed on his grant, and of their performance. The United States *v.* Segui, 10 Peters, 306.

A grant of land by the governor of East Florida, in consideration of services to the Spanish government, made before the cession of the territory of Florida to the United States, confirmed. The United States *v.* Chaires, 10 Peters, 308.

Under a grant of the governor of Florida, prior to the cession of the same to the United States, of sixteen thousand acres of land, for the purpose of erecting a water-mill, a survey of five hundred and twenty acres was made; and at another place, a survey of fifteen thousand six hundred and thirty acres was also made. The Supreme Court held, that the first survey of five hundred and twenty acres was valid, and that the survey of fifteen thousand four hundred and eighty acres was invalid; but that the grantee has a title to fifteen thousand four hundred and eighty acres of vacant land; which he has a right to have surveyed, adjoining the survey of five hundred and twenty acres. The United States *v.* Seton, 10 Peters, 309.

Under a Spanish grant of five miles square, ten thousand acres were surveyed at one place, and six thousand acres were surveyed at another place, as the whole quantity of ungranted land could not be found together. The grant was confirmed. The United States *v.* Sibbald, 10 Peters, 313.

A grant of land was made by governor Coppinger, in June, 1828. The grant was made to the appellee, on his stating his intention to build a saw-mill. The decree grants to the petitioner "license to construct a water-saw mill, on the creek known by the name of Pottsburg, bounded by the lands of Strawberry Hill, and this tract not being sufficient, I grant him the equivalent quantity in Cedar Swamp about a mile east of M'Queen's mill, but with the precise condition that, as long as he does not erect said machinery, this grant will be considered null, and without value nor effect until that event takes

Augustine, in East Florida, under the rules, regulations, and conditions, hereinafter prescribed.

To appoint a secretary.

Sec. 2. *And be it further enacted*, That it shall be the duty of said commissioners to appoint a suitable and well qualified secretary, who

---

place; and then in order that he may not receive any prejudice from the expensive expenditures which he is preparing, he will have the facility of using the pines and other trees comprehended in the square of five miles, or the equivalent thereof, which five miles are granted to him in the mentioned place, the avails of which he will enjoy without any defalcation whatever." By the Court—The judge of the superior court construed this concession to be a grant of land, and we concur with him. United States *v.* Richard, 8 Peters, 470.

A grant of land in East Florida was made by the governor, before the cession of Florida by Spain to the United States, on conditions which were not performed by the grantee within the time limited in the grant; or any exertions made by him to perform them. No sufficient cause for the non-performance of the conditions having been shown, the decree of the Supreme Court of East Florida, which confirmed the grant, was reversed. United States *v.* Mills' Heirs, 12 Peters, 215.

A grant for land in Florida by governor Coppinger, on condition that the grantee build a mill, within a period fixed in the grant, was declared to be void; the grantee not having performed the condition, or shown sufficient cause for its non-performance. United States *v.* Kingsley, 12 Peters, 476.

Under the Florida treaty, grants of land made before the 24th January, 1818, by his Catholic majesty, or by his lawful authorities, stand ratified and confirmed to the same extent that the same grants would be valid if Florida had remained under the dominion of Spain; and the owners of conditional grants who have been prevented from fulfilling all the conditions of their grants, have time by the treaty extended to them to complete such conditions. That time as was declared by the Supreme Court in Arredondo's case, 6 Peters, 691, began to run in regard to individual rights, from the ratification of the treaty; and the treaty declares, if the conditions are not complied with, within the terms limited in the grant, that the grants shall be null and void. *Ibid.*

A grant by governor Coppinger of fourteen thousand five hundred acres of land, in East Florida, part of thirty thousand acres granted in consideration of services to the crown of Spain, and the officers of Spain, which had been surveyed by the appointed officer, confirmed. United States *v.* Levy, 12 Peters, 218.

The court refused to allow a survey of land to be made to make up for a deficiency in the survey of fourteen thousand five hundred acres, in consequence of part of the land included therein being covered with water, and being marshes. Even if a survey had not been made under the concession, it would not be competent for the superior court of East Florida, or for the Supreme Court, to designate a new location varying from the original concession, as any such variation would be equivalent to a new grant. *Ibid.*

A concession was made by the governor of Florida, before the cession of Florida to the United States, on condition that the grantee should erect a water saw-mill, "and with the precise condition, that until he executes the said machinery, the grant to be considered void, and without effect, until that event takes place." The mill was never erected, and no sufficient reason shown for its non-erection. The court held that the concession gave no title to the land. United States *v.* Drummond, 13 Peters, 84.

A grant of land in East Florida, by the Spanish governor, on the condition that a water saw-mill should be erected on the land, declared void; the condition of the grant not having been performed according to the terms of the grant. United States *v.* Burgevin, 13 Peters, 85.

A grant by governor Coppinger of fourteen thousand five hundred acres of land, in East Florida, part of the thirty thousand acres, granted in consideration of services to the crown of Spain and the officers of Spain, which had been surveyed by the appointed officer, confirmed. The United States *v.* Moses E. Levy, 13 Peters, 81.

The court refused to allow a survey of land to be made, to make up for a deficiency in the survey of fourteen thousand five hundred acres, in consequence of part of the land included therein being covered with water, and being marshes. Even if a survey had not been made under the concession, it would not be competent for the superior court of East Florida, or for the Supreme Court, to designate a new location varying from the original concession, as any such variation would be equivalent to a new grant. *Ibid.*

A grant of land by Estrada, the governor of East Florida, was made on the 1st of August, 1815, to Elizabeth Wiggins, on a petition, stating, that "owing to the diminution of trade, she will have to devote herself to the pursuits of the country." The grant was made for the quantity of land apportioned by the regulations of East Florida to the number of the family of the grantee. It was regularly surveyed by the surveyor general, according to the petition and grant. No settlement or improvement was ever made by the grantee, or by any one acting for her, on the property. In 1831, Elizabeth Wiggins presented a petition to the superior court of East Florida, praying for a confirmation of the grant; and in July, 1838, the court gave a decree in favour of the claimant. On an appeal to the Supreme Court of the United States, the decree of the superior court of East Florida was reversed. The court held, that by the regulations established on the 25th November, 1818, by governor Coppinger, the grant had become void, because of the non-improvement, and the neglect to settle the land granted. The United States *v.* Elizabeth Wiggins, 14 Peters, 334.

The existence of a foreign law, especially unwritten, is a fact to be proved like any other fact, by appropriate evidence. *Ibid.*

A copy of the decree by the governor of East Florida, granting land to a petitioner while Spain had possession of the territory, certified by the secretary of the government to have been faithfully made from the original in the secretary's office, is evidence in the courts of the United States. By the laws of Spain, prevailing in the province at that time, the secretary was the proper officer to give copies; and the law trusted him for this particular purpose, so far as he acted under its authority. The original was confined to the public office. *Ibid.*

shall record, in a well-bound book, all and every their acts and proceedings, the claims admitted, with those rejected, and the reason of their admission or rejection. He shall receive as a compensation for his services, one thousand two hundred and fifty dollars, to be paid quarterly, from

Duties of the secretary.

His compensation.

The eighth article of the Florida treaty stipulates, that "grants of land made by Spain, in Florida, after the 24th of January, 1818, shall be ratified and confirmed to the persons in possession of the land, to the same extent that the same grants would be valid, if the government of the territory had remained under the dominion of Spain." The government of the United States may take advantage of the non-performance of the conditions prescribed by the law relative to grants of land, if the treaty does not provide for the omission. *Ibid.*

In the cases of Arredondo, 6 Peters, 691, and Percheman, 7 Peters, 54, it was held, that the words in the Florida treaty, "shall be ratified and confirmed;" in reference to perfect titles, should be construed, "are ratified and confirmed." The object of the court in these cases was to exempt them from the operation of the eighth article, for that they were perfect titles by the laws of Spain, when the treaty was made; and that when the soil and sovereignty of Florida were ceded by the second article, private rights of property were, by implication, protected. By the law of nations, the rights to property are secured when territories are ceded; and to reconcile the eighth article of the treaty with the law of nations, the Spanish side of the article was referred to in aid of the American side. The court held, that perfect titles "stood confirmed" by the treaty; and must be so recognised by the United States, in our courts. *Ibid.*

Perfect titles to lands, made by Spain in the territory of Florida before the 24th January, 1818, were intrinsically valid, and exempt from the provision of the eighth article of the treaty; and they need no sanction from the legislative or judicial departments of the United States. *Ibid.*

The eighth article of the Florida treaty was intended to apply to claims to land whose validity depended on the performance of conditions, in consideration of which the concessions had been made; and which must have been performed before Spain was bound to perfect the titles. The United States were bound after the cession of the country, to the same extent that Spain had been bound before the ratification of the treaty, to perfect them by legislation and adjudication. *Ibid.*

A grant of land by the government of Florida, made before the cession of Florida to the United States by Spain, confirmed: every point involved in the case having been conclusively settled by the court in their former adjudications in similar cases. The United States *v.* Waterman, 14 Peters, 478.

The Supreme Court, in the case of the United States *v.* Clark, 8 Peters, 48, say "that if the validity of the grant depends upon its being in conformity with the royal order of Spain of 1790, it cannot be supported;" but immediately proceeds to show, "though the royal order is recited in the grant, that it was, in fact, founded on the meritorious consideration of the petitioner having constructed a machine of great value for sawing timber; the recital of the royal order of 1790, in this grant, is entirely immaterial, and does not affect the instrument." Held, the recital of the royal order, in this case, is quite immaterial. *Ibid.*

The case of the United States *v.* Wiggins, 14 Peters, 325, which decided that certain proof of the certificate of Aguilar, secretary of East Florida, was sufficient, cited; and the decision on that point affirmed. *Ibid.*

The Spanish governors of Florida had, by the laws of the Indies, power to make large grants to the subjects of the crown of Spain. The royal order of Spain of 1790, applied to grants to foreigners. These grants, before the cession of Florida to the United States, had been sanctioned for many years by the king of Spain, and the authorities representing him in Cuba, the Floridas, and Louisiana. This authority has been frequently affirmed by the Supreme Court. *Ibid.*

An application was made to the governor of Florida, in 1814, stating services performed by the petitioner for the government of Spain, and the intention of the petitioner to invest his means in the erection of a water saw-mill, and marking the place where the lands were situated which were asked for. The governor granted the land, referring to the merits and services of the applicant, and in consideration of the advantages which would result to the home and foreign trade by the use proposed to be made of the land. Held, that this was not a conditional grant; and that no evidence of the erection of a water saw-mill was required to be given to maintain its validity, or induce its confirmation. *Ibid.*

John Forbes by memorial to governor Kindelan, the governor of East Florida, set forth, that in 1799, there had been granted to Panton Leslie and company, for the purpose of pasturage, fifteen thousand acres of land, which they were obliged to abandon, as being of inferior quality. Forbes, as the successor to these grantees, asked to be permitted to abandon these fifteen thousand acres, and in lieu, to have granted to him ten thousand acres, as an equivalent, on Nassau river. The petition avers that the object was to establish a rice plantation. The petition was referred to the "Comptroller," who gave it as his opinion that the culture of rice should be promoted. Governor Kindelan permitted the abandonment of the fifteen thousand acres granted before, and in lieu thereof, granted to John Forbes, for the purpose of cultivating rice, ten thousand acres in the district, on banks of the river Nassau. Surveys of seven thousand acres of land, at the head of the river "Little St. Mary" or "St. Mary," and three thousand acres in "Cabbage Swamp," were made under this grant. No description of the locality of the land other than that in the certificate of the survey was given; nor do the surveys prove that the land surveyed lay in the district of the river Nassau. No evidence was given of the situation of "Cabbage Swamp." Held, that these surveys were not made of the land granted by governor Kindelan; and according to the decisions of this court on all occasions, the surveys, to give them validity, must be in conformity with the grants on which they are founded; and to make them the origin of title, they must be of the land described in the grant of the Spanish government. The United States *v.* Forbes, 15 Peters, 173.

The courts of justice can only adjudge what had been granted; and declare that the lands granted by the lawful authorities of Spain, are separated from the public domain: but where the land is expressly granted at one place, they have no power, by a decree, to grant an equivalent at another place,

Secretary must be acquainted with the Spanish language: and take an oath.

the treasury. He shall be acquainted with the Spanish language; and before entering on a discharge of the duties of his office, shall take and subscribe an oath, before some authority competent to administer it, that he will "*well and truly and faithfully discharge the duties assigned him,*

and thereby sanction an abandonment of the grant made by the Spanish authorities. The courts of the United States have no authority to divest the title of the United States in the public lands, and vest it in claimants; however just the claim may be to an equal value for land, the previous grant of which has failed. *Ibid.*

The decree of the superior court of East Florida, by which a grant for fifty thousand acres of land, made by governor White, the Spanish governor of East Florida, dated July 29, 1802, was rejected, affirmed. Buyck *v.* The United States, 15 Peters, 215.

The land had been granted by governor White, on a petition from the grantee stating his intention to occupy and improve the same with Bengal negroes, and native citizens of the United States; and stating that other grants of the same lands had been made, on condition of settlement, which conditions had not been performed, and such grants were therefore void. The petitioner promised to make the settlement within an early period after the grant. The governor granted the land, referring to the petition, also, with the condition that the grantee should not cede any part of the land, without the consent of the government. No endorsement or settlement was at any time made on the land by the grantee. Held, that the government of the United States were not bound under the Florida treaty, to confirm the grant. *Ibid.*

The description of the portion of the land asked for from the Spanish governor, "lands at Musquito to fifty thousand acres, south and north of said place," is not sufficiently definite: and from such a description no exception could be made from the public lands acquired by the United States under the Florida treaty. The regulations for granting lands in Florida by the Spanish authorities, required that grants should be made in a certain place: and there were no floating rights of survey out of the place designated in the grant; unless when the land granted could not be got there in its exact quantity, and an equivalent was provided for. *Ibid.*

The laws and ordinances of the government of Spain in relation to grants of land by the Spanish government, must be of universal application in the construction of grants. It is essential to the validity of such grants, that the land granted shall be described so as to be capable of being distinguished from other things of the same kind, or capable of being ascertained by extraneous testimony. *Ibid.*

The certificate of Don Tomas de Aguilar, secretary of the government and province, of the copy of the grant of the governor, stating the same "to be faithfully drawn from the original in the secretary's office under his charge," was legal evidence of the grant; and was properly admitted as such in support of the same. The United States *v.* Delespine, 15 Peters, 226.

A grant of ten thousand two hundred and forty acres of land by the Spanish governor of Florida, which recited among other things, that it was made under a royal order of the king of Spain, of 29th March, 1815, and which was not in conformity with the grant, but which was made in the exercise of other powers to grant lands which had been vested in the governor, was not made invalid by the recital of the royal order as the authority for the grant. The grant recited also, that it was made in consideration of military services, and was also in consideration of the surrender of another grant previously made, which surrender had been accepted by the governor. These were sufficient inducements to the grant. *Ibid.*

A claim for land in East Florida, granted by governor White to Daniel O'Hara, rejected by the superior court of East Florida, and the decree of that court affirmed. O'Hara *v.* The United States, 15 Peters, 275.

Governor White, on the petition of Daniel O'Hara, soliciting a grant of fifteen thousand acres, made a decree granting "the lands solicited," "at the place indicated," "in conformity with the number of workers which he may have to cultivate them, the corresponding number of acres may be surveyed to him," "and that he will take possession of the said lands in six months from the date of said grant." Held, that this is a decree not granting fifteen thousand acres as asked for; but so much of the place where it is asked for as shall be surveyed in conformity with the number of workers the grantee may have to cultivate the land; the quantity could be determined by the regulation of the governor, made the month after the grant, and determining the quantity of land to be surveyed according to the number of persons in the family of the grantee, slaves included. That the grant was made before the date of the regulation, makes no difference. *Ibid.*

No settlement was made on the lands claimed under the grant. The building of a house on the land is but evidence of an intention to make a settlement, but was not a settlement; which required the removal of persons or workers to the land, and cultivating it. *Ibid.*

No claim for the land can be sustained under a grant, or confirmation of a prior grant, made by a decree of governor Coppinger in 1819, as the same was substantially a violation of the treaty with Spain, which confirms only grants made before the 24th January, 1818. The prior grant to O'Hara having become void by the non-performance of the conditions annexed to it, the decree of governor Coppinger, in 1819, was an attempt to make a new grant. *Ibid.*

If the grant were not void from the non-performance of the conditions of settlement annexed to it, the omission to have the land surveyed, and returned to the proper office, would make it void, unless the grantee had made a settlement; in which event, a survey would be presumed. The grant was made in the "district of Nassau," &c. This was an indefinite description of the land, as was held in Buyck *v.* The United States, decided at this term. *Ibid.*

A concession of lands, by the council at St. Augustine, was not authorized by the laws of Spain, relative to the granting and confirming land titles. The United States *v.* Delespine, 15 Peters, 319.

When a grant of land is indefinite as to its location, or so uncertain as to the place where the lands granted are intended to be surveyed, as to make it impossible to make a survey under the terms of the grant with certainty, the grant will not be confirmed. *Ibid.*

The act of Congress of 26th May, 1830, requires that all claims to lands which have been presented to

and translate all papers that may be required of him by the commissioners."

Sec. 3. *And be it further enacted,* That said commissioners, previously to entering on a discharge of the duties assigned them, shall,

---

the commissioners, or to the register and receiver of East Florida, and had not been "finally acted upon," should be adjudicated and settled, as prescribed by the act of 1828. There was no direct limitation as to the time in which a claim should be presented. *Ibid.*

When a petition for the confirmation of a claim to lands in Florida was presented, and was defective, and the court allowed an amended petition to be filed, it would be too strict to say the original petition was not the commencement of the proceeding, but that the amendment allowed by the superior court should be taken as the date when the claim was first preferred. *Ibid.*

When certain testimonials of title under a Spanish grant had been admitted, without exception, before the commissioners of the United States for the adjustment of claims to lands in Florida, and before the superior court in Middle Florida, without objection as to the mode and form of their proof; the Supreme Court, on an appeal, will not interfere with the question as to the sufficiency of the proof, or the authenticity of the act, relating to the title which had been admitted by the authorities in Florida, which was the tribunal to judge of the evidence. *Ibid.*

Breward petitioned the governor of East Florida, intending to establish a saw-mill to saw timber in St. John's river, for a grant of five miles square of land, or its equivalent; ten thousand acres to be in the neighbourhood of the place designated, and the remaining six thousand acres in Cedar Swamp, on the west side of St. John's river, and in Cabbage Hammock on the east side of the river. The governor granted the land asked for, on the condition that the mill should be built; and the condition was complied with. On the 27th of May, 1817, the surveyor general surveyed seven thousand acres under the grant, including Little Cedar Creek, and bounded on three sides by Big Cedar Creek, including the mill. This grant and survey were confirmed. The United States *v.* Breward, 16 Peters, 143.

Three thousand acres were laid off on the northern part of the river St. John's, and east of the royal road, leading from the river to St. Mary's, four or five miles from the first survey. This survey having been made at a place not within the grant, was void: but the court held that the grantee is to be allowed to survey under the grant, three thousand acres adjoining the survey of seven thousand acres, if so much vacant land can be found; and patents for the same shall issue for the land, if laid out in conformity with the decree of the court in this case. *Ibid.*

In 1819, two thousand acres were surveyed in Cedar Swamp, west of the river St. John's, at a place known by the name of Sugartown. This survey was confirmed. *Ibid.*

Four thousand acres, by survey, dated April, 1819, in Cabbage Hammock, were laid out by the surveyor general. This survey was confirmed. *Ibid.*

By the eighth article of the Florida treaty, all grants of lands made before the 24th of January, 1824, by his Catholic majesty, were confirmed; but all grants made since the time when the first proposal by his majesty for the cession of the country was made, are declared and agreed by the treaty to be void. The survey of five thousand acres having been made at a different place from the land granted, would if confirmed be a new appropriation of so much land, and void if it had been ordered by the governor of Florida; and of course it is void, having nothing to uphold it but the act of the surveyor general. *Ibid.*

In the superior court of East Florida, the counsel for the claimant offered to introduce testimony in regard to the survey of three thousand acres; and the counsel of the United States withdrew his objection to the testimony. The admission of the evidence did not prove the survey to have been made. Proof of the signature of the surveyor general to the return of survey made the survey prima facie evidence. *Ibid.*

The proof of the signature of Aguilar to the certificate of a copy of the grant by the governor of East Florida, authorizes its admission in evidence; but this does not establish the validity of the concession. To test the validity of the survey, it was necessary to give it in evidence; but the survey did not give a good title to the land. *Ibid.*

The United States have a right to disprove a survey made by the surveyor general, if the survey on the ground does not correspond to the land granted. *Ibid.*

On a petition from Pedro Miranda, stating services performed by him for Spain, governor White, the governor of East Florida, on the 26th November, 1810, made a grant to him of eight leagues square, or three hundred and sixty-eight thousand six hundred and forty acres of land on the waters of Hillsborough and Tampa Bay, in the eastern district of Florida. No survey was made under this grant while Florida remained a province of Spain, nor was any attempt made to occupy or survey the land, until after the cession of Florida to the United States. In 1821, it was alleged that a survey was made by a surveyor of East Florida. Held, that the grant was void; no land having been severed from the public domain previous to the 24th January, 1818, and because the calls of the grant are too indefinite for locality to be given to them. The United States *v.* Miranda, 16 Peters, 153.

The settled doctrine of the Supreme Court, in respect to Florida grants, is, that grants embracing a wide extent of country, or with a large area of natural or artificial boundaries, and which granted lands were not surveyed before the 24th of January, 1818, and which are without such designation as will give a place of beginning for a survey, are not lands withdrawn from the maps of vacant lands, ceded to the United States in Florida, and are void; as well on that account as for being so uncertain that locality cannot be given to them. *Ibid.*

On the 6th of April, 1816, a grant was made by the governor of Florida, of five miles square, or sixteen thousand acres of land, on condition that a mill should be built. The grant of six thousand acres was for land on Doctor's branch, where the mill was intended to be erected. The ten thousand acres were granted on the north-east side on the lagoon and of India river. The six thousand acres were surveyed in 1819, on Doctor's branch, and the mill was built. The survey under this grant was confirmed. The United States *v.* Low et al. 162.

According to the strict ideas of conforming a survey to a location, in the United States, the survey of ten thousand acres should be located adjoining the natural object called for, there being no other to

Commissioners to take an oath, &c.

before the judge of the territorial court at Pensacola, or some other authority in his absence, competent to administer it, take an oath faithfully to discharge the duties of their offices, and shall commence and hold their sessions on or before the first Monday of July next, at Pensacola, and on the first

---

aid and control the general call; and therefore, the head of the lagoon would necessarily have formed one boundary. But it is obvious, more latitude was allowed in the province of Florida, under the government of Spain. The surveyor general having returned that the survey was made according to the grant, and in the absence of other contradictory proof, the claim was confirmed. *Ibid.*

A grant of five miles square, or sixteen thousand acres of land, was made by the Spanish governor of East Florida, at the mouth of the river Santa Lucia. The petition for the grant stated various merits and losses of the petitioner, and asked the grant of five miles square, for the construction of a water saw-mill. The grant was given for the purpose mentioned, "and also paying attention to the services and other matters set forth in the petition." No survey under the grant was made by the surveyor general of Florida; but a survey was made by a private surveyor. The survey did not follow the calls of the grant, and no proof was given that it was made at the place mentioned in the grant. The survey and plat were not made according to the established rules relative to surveys to be made by the surveyor general under such grants. Nor was the plat made with the proportion of land on the river required by the regulations. The superior court of Florida held that the grant having been made in consideration of services rendered by the grantee, as well as for a water saw-mill, it was valid without the erection of the mill; but the survey was altogether void, and of no effect. The decree of the superior court of Florida, by which the grant and survey were confirmed, was remanded to the superior court of Florida; that court to order the sixteen thousand acres granted, to be surveyed according to the principles stated in the opinion of the Supreme Court. It has often been held that the authorities of Spain had the power to grant the public domain in accordance with their own ideas of the merits and considerations presented by the grantee; and that the powers of the Supreme Court of the United States extend only to the inquiry, whether, in fact, the grant had been made, and its legal effect when made, in cases where the law by implication introduced a condition, or it was peculiar in its provisions. No special ordinance of Spain introduces conditions into mill grants. The United States *v.* Hanson, 16 Peters, 196.

The certificate of a private surveyor, that he had permission from the governor of the territory to make a survey of the land granted, is no evidence of the fact. There is a marked and wide difference in the effect of the certificate of the surveyor general and of a private individual, who assumes to certify without authority. *Ibid.*

A grant by a Spanish governor of Florida meant not, as in the states of the United States, a perfect title; but an incipient right, which, when surveyed, required confirmation by the governor. The duty of confirmation by the acts of Congress is deputed to the courts of justice of the United States, in execution of the treaty with Spain. *Ibid.*

The same credence that was accorded to the return of the surveyor general by the Spanish government, is due to it by the courts of the United States. Plats and certificates, because of the official character of the surveyor general, have accorded to them the force and character of a deposition. *Ibid.*

A grant of fifteen thousand acres by the Spanish governor of East Florida, in consideration of important services performed in 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. The United States *v.* Clarke, 16 Peters, 228.

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. *Ibid.*

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 the 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. *Ibid.*

A claim for eight thousand acres of land in East Florida, founded on a petition of Domingo Acosta to governor Coppinger, made on the 20th of May, 1816. The petition stated that services had been performed by the claimant for the defence, support and advancement of the town of Fernandina, which had never been rewarded. Governor Coppinger gave a decree in favour of the petitioner, "it being the will of the sovereign that the merits of his subjects should be rewarded." The originals of the petition and decree were not produced, they having been lost; but a certificate signed by Don Thomas Aguilar, the secretary of the government, was exhibited, which stated that the copies of the petition and decree, which were given in evidence, had been faithfully drawn from the originals in his office. Four plats and certificates of survey, made by Clarke, surveyor of the province; two of which surveys were made before the 24th January, 1818, and one on the 14th February, 1818; another on the 20th January, 1820; were given in evidence without objection, in the court below, to show the location of the land claimed. The decree of the superior court of Florida, in favour of the claimant, was affirmed. The United States *v.* Acosta, 17 Peters, 16.

The official certificates of the secretary of the government of Florida, during the dominion of Spain over the territory, after evidence that no originals could be found in the proper office, was sufficient evidence of the copies of the petition and decree of the governor; no proof having been given to contradict or impair the force of the same. *Ibid.*

The governor of the territory of Florida, as the deputy of the king of Spain, was the sole judge of the merits on which the claim stated in the petition was founded; and he had undoubted power to reward the merits of the grantee. This has been so decided in many cases. *Ibid.*

Although in the governor's decree, there may be no description of any place where the land granted

Monday of January thereafter, at St. Augustine, for the ascertaining and determining of all claims to land within said territories; notice of which shall be given, by said commissioners, in some newspaper printed at each place, or if there be no newspaper, at the most public places in said cities, respectively, of the time at which their sessions will commence, requiring all persons to bring forward their claims, with evidence necessary to support them. The session at St. Augustine shall terminate on the thirtieth of June, one thousand eight hundred and twenty-three, when said commissioners shall forward to the Secretary of the Treasury, to be submitted to Congress, a detail of all they have done, and deliver over to the surveyor all the archives, documents, and papers, that may be in their possession.

Time of the sessions of commissioners, &c.

Notice to be given of the time of the sessions, &c.

Session at St. Augustine to terminate on June 30, 1823.

Commissioners to forward a detail of their proceedings, &c.

Sec. 4. *And be it further enacted*, That every person, or the heirs or representatives of such persons, claiming title to lands under any patent, grant, concession, or order of survey, dated previous to the twenty-fourth day of January, one thousand eight hundred and eighteen, which were valid under the Spanish government, or by the law of nations, and which are not rejected by the treaty ceding the territory of East and West Florida to the United States, shall file, before the commissioners, his, her, or their, claim, setting forth, particularly, its situation and boundaries, if to be ascertained, with the deraignment of title, where they are not the grantees, or original claimants; which shall be recorded by the secretary, and who, for his services, shall be entitled to demand from the claimants ten cents for each hundred words contained in said papers so recorded; he shall be also entitled to twenty-five cents for each subpœna issued: *Provided*, That if the amount so received shall exceed one thousand two hundred and fifty dollars, which is hereby declared the compensation for his services, the excess shall be reported to the commissioners, and be subject to their disposition; and said commissioners shall proceed to examine and determine on the validity of said patents, grants, concessions, and orders of survey, agreeably to the laws and ordinances heretofore existing of the governments making the grants, respectively, having due regard, in all Spanish claims, to the conditions and stipulations contained in the eighth article of a treaty concluded at Washington, between his Catholic majesty, and the United States, on the twenty-second of February, one thousand eight hundred and nineteen; but any claim not filed previous to the thirty-first day of May, one thousand eight hundred and twenty-three, shall be deemed and held to be void and of none effect: *Provided, nevertheless, and be it further enacted*, That in all claims submitted to the decision of the commissioners, where the same land, or any part thereof, is claimed by titles emanating both from the British and Spanish governments, the commissioners shall not decide the same, but shall report all such cases, with an abstract of the evidence, to the Secretary of the Treasury.

Persons, &c. claiming title to lands under any patent, &c. dated previously to Jan. 24, 1818, valid, &c. and not rejected by the treaty ceding the Floridas, to file their claims, &c.

Claims to be recorded.

Fees.

Proviso.

Claims not filed prior to May 31, 1823, void.

Proviso.

Sec. 5. *And be it further enacted*, That the commissioners shall have power to inquire into the justice and validity of the claims filed with them; and shall be, and are hereby, authorized to administer oaths, to compel the attendance of witnesses by subpœnas issued by the Secretary, and the adduction of such testimony as may be wanted; they shall have access to all papers and records of a public nature relative to any land titles within said provinces, and to make transcripts thereof. They shall examine into claims arising under patents, grants, concessions, and orders

Powers of the commissioners.

should be located, still it is binding as far as it went. The surveyor general having been ordered to survey the land solicited, on places vacant, and without injury to third persons, the acts of this officer came in aid of the decree. *Ibid.*

The surveyor general having executed the governor's decree before the flags of the United States and Spain were exchanged, all the surveys became valid. That there were several surveys, is no objection to their validity. *Ibid.*

The plats of the surveys having been read in the court below, without objection, the proofs authorized the decree. *Ibid.*

of survey, where the survey has been actually made previous to the twenty-fourth January, one thousand eight hundred and eighteen, whether they are founded upon conditions, and how far those conditions have been complied with: and if derived from the British government, how far they have been considered valid under the Spanish government; and if satisfied that said claims be correct and valid, shall give confirmation to them: *Provided*, That such confirmation shall only operate as a release of any interest which the United States may have, and shall not be considered as affecting the rights of third persons: *And provided*, That they shall not have power to confirm any claim or part thereof where the amount claimed is undefined in quantity, or shall exceed one thousand acres; but in all such cases shall report the testimony, with their opinions, to the Secretary of the Treasury, to be laid before Congress for their determination.—Every witness attending under any process from the commissioners, shall be allowed one dollar a day, and one dollar for every twenty miles travel; to be paid by the party summoning him: *Provided, nevertheless*, That the commissioners shall not act on, or take into consideration, any British grant, patent, warrant, or order of survey, but those which are bona fide claimed and owned by citizens of the United States, and which have never been compensated for by the British government.

Proviso.

Proviso; as to claims to be confirmed.

Fees to witnesses, &c.

Commissioners not to act on, &c. any British grant, &c., but those claimed and owned by citizens of the United States, &c.

Sec. 6. *And be it further enacted*, That there shall be appointed by the President of the United States, by and with the advice and consent of the Senate, a surveyor, who shall possess the power and authority, and receive the same salary, as by law appertains to the surveyor south of the State of Tennessee; but his duties shall not commence until the commissioners shall have examined and decided upon the claims in West Florida, who shall thereupon furnish the surveyor with a list of those admitted, and he shall thereupon proceed to survey the country, taking care to have surveyed, and marked, and laid down, upon a general plan, to be kept in his office, the metes and bounds of the claims so admitted; causing the same to be surveyed at the expense of the claimants, the price whereof shall be the same as is paid for surveying the public lands; but no surveyor shall charge for any line except such as may be actually run, nor for any line not necessary to be run. He shall appoint a suitable number of deputies, and shall fix and determine their fees: *Provided*, That the whole cost of surveying shall not exceed four dollars a mile: *And provided also*, That none other than township lines shall be run where the land is deemed unfit for cultivation: Said surveyor shall reside at such place as the President of the United States may direct, and shall keep his office there, and may charge the following fees, to wit: for recording the plat and surveys of private claims made by any of his deputies, twenty-five cents for each mile contained in the boundary of such survey, and twenty-five cents for any copy certified from the books of his office.

The President and Senate to appoint a surveyor, &c.

Surveyor's duties.

Surveys at the expense of the claimants, &c.

Surveyor to appoint deputies.

None other than township lines to be run; and surveyor to reside, &c. as the President may direct.

Surveyor's fees for recording, &c.

Approved, May 8, 1822.

RESOLUTIONS.

Jan. 11, 1822.

I. Resolution *providing for the distribution of the secret journal and foreign correspondence of the old Congress, and of the journal of the convention which formed the constitution of the United States.*

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be requested to cause to be furnished to each member of the present Congress, and the delegates from territories, who may not be entitled to the same under the resolution of Congress, of the twenty-seventh of March, one thousand eight hundred and eighteen, the President and Vice President of the United States, the executive of each state

The President requested to cause each member and delegate of the present Congress, not entitled under resolution of March