

14377

REPORT
OF THE
SOLICITOR OF THE TREASURY,

WITH DOCUMENTS

In relation to the claim of the Catholic church at St. Augustine to certain property held by the United States at that place.

JANUARY 30, 1849.

Referred to the Committee of the Judiciary, and ordered to be printed; and that 100 copies, in addition to the usual number, be printed for the use of the Senate.

OFFICE OF THE SOLICITOR OF THE TREASURY,
January 27, 1849.

SIR: I have the honor to communicate herewith the following papers, viz:

1. The submission and accompanying documents, in the matter of the claim of the Catholic society of St. Augustine to the military barracks at that place, and other property there, held by or under the United States, to Stephen R. Mallory, esquire, of Key West, Florida, as arbitrator;
2. The testimony taken by him as such arbitrator;
3. The agreement of the Rev. B. Madeore, vicar general of Florida, thereon in behalf of the claimants.
4. The remarks of the Solicitor of the Treasury on the claim;
5. The opinion of the arbitrator on the questions submitted to him;
6. His decision thereon.

By reference to the latter, it will be seen that the arbitrator confirms the United States in their title to the property claimed by the church. The reasons for this determination are so clear and satisfactory, that it would seem there is no room for further doubt concerning the title to the property in question.

It is proper that I should remark, that Mr. Mallory was selected as arbitrator in this case without any solicitation on the part of himself or friends. On receiving the appointment, he immediately left his business, on the nineteenth of September last, and devo-

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ted himself assiduously to it. His labors closed this day in this city. In the whole business the course pursued by him has been such as to meet the approbation of this office. He was selected for his talents, learning and fidelity, and because he understood the Spanish language, and was versed in the laws of Spain. Such a combination of qualifications is not easily found.

Although Congress directed this service to be performed, it made no appropriation to meet its expenses. Mr. Mallory's actual disbursements for clerk hire, copies of public documents, &c., amounts to \$759 29, of which \$250 has been paid out of the judiciary appropriation, and the proper officer has been requested to pay the residue out of the same fund. But he cannot be compensated for his services without appropriation by law. Congress is, therefore, respectfully requested to provide him a compensation commensurate with the value of his services, which, in the opinion of this office, have been of great value to the public.

I have the honor to be, respectfully, your obedient servant,
R. H. GILLET, *Solicitor.*

HONORABLE GEORGE M. DALLAS,
Vice President, and President of the Senate.

WASHINGTON, December 9, 1848.

SIR: In compliance with your written instructions to me, as arbitrator, appointed under the joint resolution of Congress of the 11th of August last, (*see Senate doc., 1st sess. 30th Cong., Rep. 195,*) I left Key West on the 19th of September, visited St. Augustine and Havana, and obtained the following proofs, documents, laws, &c., relative to the trust confided to me. Your instructions have been accurately complied with; and in submitting them for your examination, I have the honor to say that I await only the arguments of parties to enable me to deliver my award:

1. Submission.
2. Joint resolution.
3. Memorial of the vicar general.
4. Memorial of wardens and congregation of St. Augustine church.
5. Patent of Pedro Ruiz.
6. Manuel Jose Justis, to governor of Havana.
7. Transfer of property to John Gordon.
8. Transfer of property to Jesse Fish.
9. Destruction of old barracks, and occupation of the convent.
10. Senate document as to submission to arbitrator.
11. Governor of East Florida to Don Pedro Acuna, relative to building the Parochial church.
12. Answer to the above, authorizing the completion of the church.
13. Jose Antonio Calaleas, on the same.
14. Governor of East Florida, on the same.
15. Manuel de Hita.
17. Expense of church, building, &c.

- 17½. Act of incorporation—church of St. Augustine.
18. Disposition of certain public lands.
19. Captain-general of Cuba relative to archives.
20. Arbitrator to bishop of Havana.
21. Opinion of H. Desdien, doctor civil law, &c.
22. Notes on operation of laws of Spain.
23. References to laws of the Indies, royal orders, &c.
24. Prescription as to church property, &c.
- 24½. Suppression of Cuba convents, 1841.
- 24¾. Laws on church property.
25. Commentaries of Deroti on canon law.
26. Commentaries of Walter on canon law.
27. Testimony of the inhabitants of St. Augustine as to the property in question, character, value, &c.
28. Colonel Harvey Browne, United States army, testimony as to character, condition, and value of the convent.
- 29–31. Correspondence between Rev. Mr. O'Reilly and the governor of East Florida.
32. Sales of property in St. Augustine, 1790.

With great respect, I have the honor to be, your obedient servant,

S. R. MALLORY, *Arbitrator.*

R. H. GILLET, Esq.,
Solicitor of the Treasury.

Whereas, Benedict Madeore, vicar general of the Catholic church of Florida, and the church wardens of the Roman Catholic church at St. Augustine, East Florida, preferred at the last session of Congress their respective memorials, claiming certain property now occupied by the United States in the said city of St. Augustine, and which claims are disputed by the United States, copies of which said memorials and other papers connected therewith, and of the proceedings in and before Congress thereon, are hereto annexed, and which specify the said property, and reference to which said copies being had, the contents of said papers will more fully appear; and whereas Congress at said session passed a joint resolution respecting said claims, which was approved by the President August 11, 1848, a copy of which is hereto annexed.

Now, in pursuance of said resolution, said parties and the Solicitor of the Treasury, by and with the approval of the Secretaries of the Treasury and War Departments, have agreed and do hereby agree to and do nominate, select, and appoint Stephen R. Mallory, esquire, counsellor at law, of Key West, Florida, as the arbitrator authorized in and by said joint resolution, to do all things and to decide said differences as authorized in and by said joint resolution, as such arbitrator; and to whom said matters are fully submitted, according to said resolution, and in the mode, manner, and form following. He shall examine the following questions and decide—

1st. As to the title of the claimants to the respective lots or

tracts of land and buildings specified in their memorials, whether legal or equitable.

2d. As to the value of the said property, and of each portion thereof, at the time of the delivery thereof to the United States, and particularly of the buildings thereon at that time.

3d. The value of the use and occupation by the United States since.

4th. The cost and the value of the improvements since placed on each separate portion of said property.

5th. The present condition and value of each separate portion of said property.

6th. If said property, or any part thereof, is decided to belong to said claimants or either of them, the amount that the United States should in equity and justice pay to such claimant for the relinquishment of the title thereto, and to whom the same should be paid, and for whose or what use.

7th. If the property should be given up to said claimants, the amount, if any, that should be paid to the United States for said improvements, as indicated in the report of the Committee on Private Land Claims of the Senate at the late session, June 29, 1848, report No. 195, a copy of which is hereto annexed.

And it is agreed that said arbitrator, being first duly sworn (before some judicial officer in Florida authorized to administer oaths) to act in this case and decide the same fairly, justly, and impartially, to the best of his abilities; shall proceed forthwith to obtain such testimony in said case as he may be notified of by the parties, at as early a day as practicable, or that he may deem important in said dispute to either party.

2d. That the said arbitrator shall proceed to Havana, Cuba, and endeavor to obtain all authentic evidence either documentary or of witnesses, that can be procured in favor of or against either party; and for this purpose he shall be furnished with a proper commission and authority by the Solicitor of the Treasury, or some other officer of the government of the United States.

3d. That said arbitrator shall also proceed to St. Augustine, obtain like evidence on the points above specified.

4th. That the United States may file with said arbitrator as evidence, at any time, the originals or official copies of any papers or documents or maps on file in any of the public departments or offices, certified by the head of such department or office.

5th. The depositions of witnesses shall be reduced to writing and signed by witnesses, and the truth thereof shall be sworn to before some judicial officer authorized to administer oaths, or before said arbitrator; and said arbitrator shall in all cases fully cross-examine said witnesses, as either of said parties may desire, and as to him shall seem proper.

6th. The decision and report of the arbitrator shall contain all the evidence to be made, as required by the joint resolution, before or during the next session of Congress. But one report or decision need be made, to which all the parties can have access.

7th. The arguments of the parties shall be in writing, and said

arbitrator may adopt such rules as to notices, by the parties to each other, of any matter in which notice should be given, as he may deem proper.

In witness whereof, the said Solicitor of the Treasury, B. Madeore, vicar general, and said wardens of the Roman Catholic church, at St. Augustine, by their attorney, B. Madeore, have hereunto set their hands and seals, this 15th day of August, 1848, and five copies are made; one for the Solicitor of the Treasury, two for said arbitrator, one for said B. Madeore, and one for said wardens, which said parties respectively have in their keeping.

R. H. GILLET, [L. s.]
Solicitor of the Treasury.

B. MADEORE, [L. s.]
Vicar general.

The wardens of the C. C., at St. Augustine, by their attorney,
B. MADEORE, [L. s.]

Executed in presence of—

J. D. WESTCOTT, JR.

R. M. GAINES.

Approved 16th August, 1848.

R. J. WALKER,
Secretary of the Treasury.

W. L. MARCY,
Secretary of War.

A RESOLUTION authorizing the submission of certain claims to arbitration.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Solicitor of the Treasury be, and he is hereby authorized, by and with the approval of the Secretaries of the Treasury and War Departments, to submit the differences between the United States on the one part, and the Catholic congregation of St. Augustine, Florida, and Benedict Madeore, vicar general of the Catholic church of Florida, of the other part, as to certain property specified in the memorials to Congress of the claimants at this session to arbitration, and to agree for the United States to such impartial and disinterested citizen, learned in the law, as said solicitor and said parties may select, to decide said differences on such terms and conditions, and in such mode, manner, and form, as may be deemed just and proper by said solicitor and said parties, to be set forth in such submission, and that said solicitor be directed to defend the rights and interests of the United States before such arbitrator, and to obtain from Havana, or elsewhere, such papers as may be necessary therefor; the decision of said arbitrator to be made before or during the next session of Congress, and, with the evidence on which the same is founded, be laid before Congress at its next session, for its approval and ratification thereof, or dissent therefrom, and for its further action thereon.

Approved August 11, 1848.

To the honorable the Senate and House of Representatives of the United States of America, in Congress assembled.

The memorial of the Very Reverend Benedict Madeore, vicar general of Florida, and pastor of St. Augustine's church,

RESPECTFULLY REPRESENTS :

That before and at the time of the cession of the Floridas to the United States of America, by his Catholic Majesty the King of Spain, under the treaty of the 22d February, 1819, the Catholic church was the lawful and rightful owner of

1. Saint Augustine's church;
2. The convent of Saint Francis;
3. The bishop's house, and,
4. The church of our Lady of the Milk.

That by the terms of the second article of the said treaty, all of the said property, being "private property," was reserved and excepted out of the property transferred to the United States; and that by the terms of the fifth article of the said treaty, "the free exercise of their religion, without any restriction," was secured to the inhabitants of the ceded territories, by which not only the right to worship Almighty God according to the dictates of their conscience, but also the right to retain and hold all of their church property for the uses and purposes of their religion, was intended to be secured to the Catholics of Florida.

Your memorialist further shews that, according to the usages and constitution of the Catholic church, as set forth in the decrees, pars secunda, causa xvi., questio vii., and recognized by the council of Trent, sess. xxii. chap. 8, 9, and 11, churches and church property are generally held under the authority or control, that is, in the name of the bishop of the diocese for the uses of the church, each bishop being a corporation sole, in his particular diocese; which rule of discipline of the church hath been sanctioned in several of the States of this Union, and particularly in Maryland, by act of 1832, chapter 308.

That this law of the church was always recognized by the Spanish government, the king being the protector of the church in the new world, and having caused an episcopal see to be approved by the pope for the city of Havana, in the island of Cuba, whose jurisdiction extended over and included the Floridas.

That the order of the Franciscans was established in Florida, at the invitation of the bishop, to serve the missions there, with the approval of the pope, the council of the Indies, and the king, and it was called the mission of St. Helena, the head-quarters being the convent at St. Augustine.

That the said convent property was placed in the possession of the Franciscans, *for the time that they should, under the direction of the bishop, serve the missions*; but the "right of property" was always reserved to the bishop, for the uses of the Catholic church of his diocese. It was kept in repair with the ecclesiastical revenues,

and not by the order of Franciscans. In the year 1764, when the Floridas were in the possession of the British, the convent, and the bishop's house, were sold without mention of the order of the Franciscans, and purchased in private trust for the benefit of the true owners, and when the Floridas were again under the Spanish dominion, the convent was occupied by the missionaries who attended the mission, as *church property*, under the control of the bishop, to return to his direction whenever for any cause the missionaries should cease to attend the missions.

In the confusion which occurred upon the cession of the Floridas by Spain to the United States, a part of this church property was taken into the possession of other than the legal and equitable owners, and has so remained out of the possession of the Catholic body to the present time. It is well here to remark, that this misapplication of the private property of the Catholic body of the Floridas, and diversion from its proper uses, may have arisen in part from a mistake as to its true ownership; from the fact that the convent was at the time occupied by the king's garrison and troops; but this *temporary* occupation of the church property by the military under the civil power, was entirely with the *consent* of the bishop, which consent was given because of the destruction of the king's barracks by fire, and *was never claimed as of right*. The explanation will be found more at large in the documents which accompany this memorial.

Your memorialist presents this his memorial, in his official capacity, as ecclesiastical chargé, or vicar general of Florida, and in conjunction with the memorial of the Catholics of the territory assigned to his charge; and he most respectfully prays that your honorable body will, by act of Congress, provide for and direct the restoration of his church property so wrongfully withheld, or make such other compensation therefor as in your wisdom may seem meet and proper; and your memorialist is prepared with proper documentary and other evidence to substantiate his claim, when, &c. And, as in duty bound, he will ever pay.

BENEDICT MADEORE.

[February 8, 1848. Referred to the Committee on Private Land Claims.]

To the Senate and House of Representatives, in Congress assembled.

The undersigned, the Trustees and the members of the Catholic church of St. Augustine, in conjunction with its vicinity, beg leave

RESPECTFULLY TO REPRESENT:

That a large amount of valuable property belonging to the said church, of which a description will be found in the documents herewith sent, was, at the time of the cession of the Floridas, in 1821, to the United States, either through a culpable negligence, or a wilful disregard of the claims of its rightful owners, included in with the lots and buildings, and other public property, delivered

over to the United States government, by the Spanish authorities at the above period.

Your memorialists, therefore, relying on the generous toleration and equitable principles professed, and hitherto so nobly acted on, by the American government and people, herewith submit to your honorable body, the claims, and the proofs that establish their claims, to the property in question, and confidently trust to your justice for a restitution of their rights. The urgent wants of the church, and the aggravated character of the wrong of which it complains, induce the undersigned respectfully to request the early attention of your honorable bodies to their claims, or the objects of this memorial, and to press for an early decision upon the same. And your memorialists, as in duty bound, will ever pray.

JOHN M. FONTANE,

President board of Wardens, R. C. C. of St. Augustine.

Pedro Benet,	} <i>Wardens R. C. C. of St. Augustine.</i>	Isabella Marin
Francis P. Ferreira,		John Pallicier
Jose E. Pomar,		Rophina B. R. Pallicier
Thomas Andrew,		Florentina Pallicier
Antonio J. Noda,		Florrene Pallicier
Jos. S. Sanchez		Ciliclono Pallicier
Manuel Crespo		Mary Pallicier
Antonio Solano		Venancio Sanchez
F. Bridier		Fred'k Houghton
Andres Papy		Alonzo A. Bravo
Christobal Bravo		Manuela Bravo
Henry Thomas		A. B. M. Pacetty
Joseph P. Delespine		C. P. Sanchez
Rophina Pallicier		M. H. Rogero
Rosa Leonardy		Malana Papy
Rosalia Leodardy		Virginia Papy
Luciana Leonardy		Mathias Papy
Jane Leonardy		Ann Llambias
Jane N. Lacy		Barbara Llambias
Theodosia A. M. Leonardy		Chas. Haagar
Laurean Munson		Florencia Haagar
Raphæla Usina		Dominga Lopez
Genobeba Usina		Mary Solana
Catalina Solona		Angelina Solana
Eulogia S. Rogero		Isabella Thynne
Josefa Papy		Frances Solana
Ana Papa		Mary R. Solana
Lasdila Reyes		Jane Purvis
G. N. Papy		Sarah Purvis
M. Papy		Lorenzo Purvis
John Canovas		Benansio Purvis
Antonio Canovas		John Rogero
Antonio P. Marin		
Rosalia Marin		
Geronima Solana		

Manuela Rogero
 Ramon Rogero
 Lauriana Ferreira
 Gabriel Pomar
 Mariana Pomar
 Margarita Pomar
 Maria Usina
 Jane Bugell
 Mary Andrew
 Joseph Andrew
 Petronilo Lopez
 Malana Lopez
 Bartolome Lopez
 Vicente Pacetty
 Margaret Pacetty
 Betruna Pacetty
 Mary Pacetty
 Mary Rogero
 Mary Canovas
 Landreu Andrew
 Antonio Rogero
 Anthony Pomar
 Mary Pomar
 Antonio Lopez
 Juana Triye
 Francis Triye
 Bartolo Pacetty, jr.
 Bartolo Pacetty, sen.
 Louisa Pacetty
 Rafaela Bayar
 Jane Bayar
 Dolores Bayar
 M. Fermina Garey
 Fecla I. Pacetty
 Merced B. Pacetty
 Rosalia Reyes
 Foustina Pacetty
 Mary Reyes
 Mary Ponce
 Mary Reyes, jr.
 Antonia Pallicier
 Clementine Sabate
 Mary Sabate
 Antonia Sabate
 Marcella Sabate
 Leonardes Palicier
 Anthony Palicier
 Juana A. Andrew
 Juan A. Andrew
 Margarita Pomar
 Rafaela Goff
 Ana M. Goff

Jane Goff
 Francis Pallicier
 Thom Pallicier
 Jane Hernandez
 Antonia Hernandez
 Mary Hernandez
 Diego Hernandez
 Diego Hernandez, sen.
 Mary N. Avice
 Caroline Avice
 Alexander Avice
 Beatrice Pallicier
 Merceul Zelhmar
 Mary Andrew
 Mary Andrew
 Honora Andrew
 Ildelfonso Andrew
 Mary Norris
 Pedro Capella
 Catherine Capella
 Catherine Capella, jr.
 Anastasio Capella
 Hulia Capella
 Joseph Benet
 Maria C. Benet
 Clara E. Hurlburt
 Antonio Hitchcock
 Esteban Arnau
 Margarita D. Arnau
 John Carreras
 Francisco Carreras
 Gasparito Carreras
 Maria Carreras
 Antonica Lorenzo
 Mary Manusy
 Paula Ferreira
 Joseph Lopez
 Jane Lopez
 Paul Arnau
 Catherine Leonardy
 Catherine Leonardy, jr.
 Roque Leonardy
 Sabina Leonardy
 John Leonardy
 Mary Lopez
 Jane Lopez, sen.
 Fernanda Oliveros
 Gabriel Maestro
 Agraphina Cercoply
 Frederica Cercoply
 Clara Cercoply
 Peter Copy

Thomasine Hogan
 Manuel Andrew
 Gastina Andrew
 Francisca Andrew
 Juan Andrew
 Geronimio Andrew
 John Andrew
 Bartolo Segui
 Margarita Segui
 John Capo
 Mary Capo
 John Capo
 Benansia Capo
 Claudia Capo
 Rafaela Cammel
 Jane Cammel
 Catherine Cammel
 Mary Pacetty
 Domingo Cercopoly
 Antonia Manusy
 John Segui
 Jane Segui
 Jose Bayar
 Catalina Bayar
 Joseph Manusy
 Juana Manusy
 Magarita Martin
 Juana Manusy, jr.
 Joseph Manusy, jr.
 Maria Manusy
 Felix Manusy
 Manuel Manusy
 Diego Hernandez
 Juliana Hernandez
 Antonio Andreu
 Maria R. Andreu
 Antonio Lopez
 Maria Lopez
 Martina H. Pomar
 Gabriel Capo, sen.
 Margaret Capo
 Jose Capo
 Gabriel Capo, jr.
 Malina Capo
 Andres Pacetty
 Sally C. Mason
 Maria T. C. Mason
 Ann Mason
 Elizabeth Smith
 Matilda Mason
 Frances Lloyd

Malina Hernandez
 Joseph Andreu
 Joseph Pacetty
 Juana Benet
 Rafael Benet
 Francisca Gonzales
 Antonio Andreu
 Severina C. Andreu
 James Hernandez
 Dominge J. Hernandez
 Anna Hernandez
 Estanislada T. Benet
 Maria C. Benet
 Antonia Alvarez
 Jacob Toras
 Joseph Barbara
 Frances Hernandez
 Demetrio Salas
 Frances Salas
 Andres C. Pacetty
 Catalina A. Pacetty
 Eml. J. Medicis
 Josephine Medicis
 Juan S. Pacetty
 Fecla Y. Pacetty
 Petronilo R. Lopez
 Mary I. Lopez
 Catalina Aguiar
 Eusebia Russell
 Eudorah Nelson
 Mary A. Cooper
 Victoria Cooper
 F. Weedon
 F. J. Weedon
 Wm. H. Weedon
 John M. Manusy
 Geo. B. Weedon
 Jas. B. P. Haskins
 Ann M. Hernandez
 S. H. Williams
 Jeremiah Hallisy
 Richard Dillon
 Dennis Hallisy
 D. John Dioyre
 John Coloole
 Ellen Dillon
 Francis Mone
 Zachariah J. Hogans
 Jane Rany Linsey
 Thomas Mone
 James Fagan

Joachim Roman
Thos. H. Mone
James Fagan
John Hallisy
Sarah Fagan
Charles Byrne
Henry Hartley
Henry F. Hartley
Susanah Hartley
Thomas Bowden
John M. Bowden
Mary Ann Bowden
Mary Z. Hogans
John M. J. Bowden

Charles Summers
Camila C. Sanchez
Clara Gracesca
Rafaela Papy
Josefa Gue
Joseph Noda
Felicia Y. Mitchell
Leocadia Gomez
John A. Rose
Mary B. Rose
S. P. Anderson
M. W. Beard
William P. Haskins
M. A. Haskins.

<div style="text-align: center;">[SEAL.]</div> Isab. p. l. g. de Dios y la Const. Reyna de Esp.	<div style="text-align: center;">(STAMP.)</div> Sello. 30.—As. 1846 y 47. 2 Rs.
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Sor. Alcl. Mayor 40.

Pbro. D. Benedicto Madeore, cura y vico gral. de la yga. de Sn. Augustin la Florida, respetuante ante vs. dice: Que receutando p.a sa, yga. tener constancia autentica de la Cedula q.e inserta la adjunta obra titulada Cronica de la Orden de S. Franco. la cual le ha sido concedida p.r el actual Guardian del convento de esta ciudad, y se halla en la pag. 114 al numo. 177, asi como de la patente que le precede al p. 110, numo. 174, p.a q.e de ambos recados integros se le de testimo. en forma p.r uno, de los Escribanos publicos con las desmas legalizciones de estilo, cree el exponente indispensable la autorisacion judicial, afin de q.e se le ministre con la economica posible, toda la ver que se versa sobre el sevicio de una yga. pobre; en cuya virtud.

A. V. S. supca. Se sirva acceder a lo q.e se solicita, acompananda la obra a q.e se contrae, q.e se le devolvera, en lo q.e recibia merced. Haba. y Abril 9, de 1847.

BENEDICTO MADEORE.

HABA., Abril nueve de 1847.

De se el testimo q.e se solicita en el orden q.e corresponde.

PADILLA.

Patente del reverendisimo padre, comisario general de Yndias, Fray Bernardo de Salva, sobre los conventos de Bayamo y Cuba.

Fray Bernardo de Salva, padre de la provincia de Cataluna, comisario general de las Yndias, con plenitud de potestad por nuestro reverendisimo padre fray Arcangelo de Mesina, ministro general de toda la Orden de nuestro padre San Francisco.

Al padre fray Pedro Ruiz, sacredote y confesor, salud y paz en el Senor

Habiendo algunos anos, que paso V. R. a la custodia de la Florida, tocado de la centella del divino amor y lo del aprovechamiento de las almas de aquellos infieles con Espiritu, y deseo de reducirlos, y traerlos al gremio de la Santa Madre yglesia Romana y conocimiento de la Fe Catolica; y de hacerles capaces, y obedientes a los mandamientos de Dios, con la confesion de los sacramentos, sacandolos de la ceguedad, y esclavitud del Demonio; y habiendo con su doctrina, cristiandad, y buen ejemplo hecho muchos servicios a nuestro Senor en aquella tierra, como por

<div style="text-align: center; margin-bottom: 5px;">[SEAL.]</div> Isabel Second, by the grace of God and the Constitution, Queen of Spain.	<div style="text-align: center; margin-bottom: 5px;">(STAMP.)</div> 3d stamp—1846-'47. 25 cts.
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To the principal (4th) Alcalde or Judge.

The presbiter Benedict Madeore, pastor and vicar general of the church of Saint Augustine, in Florida, respectfully sayeth: That the interest of his church requires an authenticated copy of the royal ordinance, which will be found inserted in the accompanying work, entitled, "Chronicle of the Order of Saint Francis," which has been conceded to him by the actual guardian of the convent in this city, and will be found on page 114, of number 177. In like manner, he requires a copy of the patent which precedes the foregoing, found at page 110, number 174.

Your petitioner believes it indispensably necessary that the judicial power should interpose and authorize true copies of both articles to be made out, with all the formalities required by law, by a public notary, to the end that it may be furnished with that economy usual in all cases where the service is rendered to a poor church.

He begs that you will be pleased to accede to his solicitation, and that the accompanying work may be returned to him, for which favor, he will be obliged.

BENEDICT MADEORE.

HAVANA, *April 9, 1847.*

Give the copies required, with all the formality the law requires.

PADILLA.

HAVANA, *April 9, 1847.*

Patent of the most Reverend Father, commissary general of the Indies, Friar Bernardo de Salva, over the convents of Bahama and Cuba.

Friar Bernardo de Salva, father of the province of Catalonia, commissary general of the Indies, with full power through our most reverend father friar Archangel de Mesina, the general minister of the entire order of our father St. Francis.

To the father friar Peter Ruiz, priest, and confessor, health and peace in the Lord.

Some years have elapsed since your reverence went to take charge of Florida, being touched by a spark of divine love to seek the salvation of the souls of those infidels, and animated with a spirit and desire to bring them into the fold of our holy mother the Church of Rome, by making them acquainted with the Catholic faith, and thus make them capable of understanding and obeying the laws of God, acknowledging his sacraments, removing them from the blindness and slavery of the devil, and having, by your doctrine, christianity and good example, rendered many services

el leiones de personas fidedigans consta a por testimonio y cartas del gobernador, Pedro de Ybarra; y habiendo venido a nuestra preferencia para pedir, y suplicar a S. M. y a su real consejo de las Yndias, que se doliesen de aquellas almas redimidas con la Sangre de Cristo, que por falta de ministros del Evangelio, pasan naufragio por la ignorancia de ley, perecen, y se mueren viejos sin sacrementos, y ninos sin el baptisimo; y atendiendo al grande afecto de animo, que V. R. hapuesto en la prosecucion de esta tan Santa obra, y a su mucha religion, celo, y prudencia en las cosas de observancia de nuestro estado, y profesion, le handado licencia para llevar ciertos religiosos, de los cuales por orden de S. M. le hemos hecho comisario, para que los que conocier ser a proposito para aquella tierra los lleve consigo, como por otra patente particular para esto consta. por tanto deseando el bien, y aumento de nuestra religion, y que las cosas de ella vayan de bien en mejor, y habiendo consultado con algunos religiosos de buena conciencia, y satisfaccion practics en aquella tierra y ultimamente con los padres de la orden congregados de San Juan de los Reyes de Toledo, a catorce de Junio, de mil seiscientos y nueve; y habiendoles parecido no solo conveniente, pero muy del servicio de nuestro Senor: que el convento de la Habana, Santiago de la Ysla de Cuba, y el del Bayamo se tovasen al gobierno de este officio, por estar tan lejos de prelado, que les pueda mirar con propios ojos, y proveer de remedio en las cosas que lo pidieren, como estuvo en tiempo del padre fray Francisco de Guzman nuestro antecesor, y que asi para el bien particular de la religion, como por otros particulares, y justos respectos convenia, que los dichos conventos se juntasen con los de la Florida, y de todos se hiciese una y muy buena honrada custodia, que este inmediatamente aneja a este officio, gobernando la de aqui, y proveyendo la de prelados y sudditos; y de todo lo que conviniere para la edificacion, aumento y conservacion, asi de lo corporal, come de lo espiritual; y que efectuandose esto, se conseguira conmas facilidad el fin deseado, que es la paz y concordia con los gobernadores, que por no haberla hávido los anos atras, han sucedido muchos inconvenientes, los cuales, cesaran con poder mudar un religioso de la Florida a la Habana, y se cobrara el buen nombre, y reputacion, Dios sera servido, el pueblo y tierra edificado, y la religion aprovechada, y que S. M. y su real consejo de las Yndias, tendran esto por mas acertado gobierno, y le sera grata la resolucion de este negocio, confiando mucho de su cristiandad, prudencia, y rectitud, y que bien, y fielmente haran lo que fuere servicio de nuestro Senor, y

to our Lord in that country, as appeareth from the information of many creditable persons, as well as from the letters of the governor Peter Ibarra, and having come to seek our preference to the end that we should invoke and supplicate his majesty and his royal council of the Indies to take pity upon, and compassionate the situation of those souls who, redeemed by the blood of Christ, are likely to suffer shipwreck for want of ministers of the Gospel to dispel their ignorance of the law, under which the aged die and perish without the sacraments, and the children without baptism.

Taking into consideration the zealous spirit which animates your reverence in the prosecution of this holy work, your profound religion, and the prudence which you observe in everything relating to our State and profession; the liberty of carrying with you certain religious persons, has been conceded to you, over whom we have made you commissary, by order of his majesty; you will, therefore, select such persons as you may deem proper for that duty, and take them with you, for which purpose another special patent shall be given to you. Desirous of the prosperity and advancement of our religion, and that everything appertaining thereto may proceed from good to better, we have consulted with some religious persons of good conscience and practical experience in the affairs of that country, and particularly with the fathers of the congregated order of St. John of Toledo, on the fourteenth day of June, one thousand seven hundred and nine; and it having appeared to them not only, but necessary to the service of our Lord, that the convents of Havana, St. Jago de Cuba, and the Bahamas, should be taken under the government, of which commissary, because they are distant from any prelate who may personally watch over them, and provide the proper remedies to such evils as may present themselves, as was the case in the time of father friar Francis Guzman, our antecessor—We esteem it convenient for the particular good of religion, as well as for other particular and just reasons that the aforementioned convents should be united to those of Florida; and, from the whole thus united, a good and honored custody, or charge, should be formed, which shall be subject to this office, from whence it shall be governed and provided with prelates, subjects, and everything that may be necessary to the edification, augmentation, and conservation of it, both in a corporal and spiritual sense; this being effected, we will obtain, with more facility, the desirable object of restoring peace and concord between their different governors; among whom, for want of this measure, many differences have arisen, all of which will cease with the introduction and exercise of power to remove religious persons from Florida to Havana, by which the good name and reputation of the different convents will be recovered, the service of God promoted, the people and country edified, and religion advanced. His majesty and his royal council of the Indies, will esteem this to be the best mode of government, and he will cheerfully ratify and confirm it. Confiding in your piety, prudence, and rectitude, that you will, well and faithfully, labor in the service of our Lord,

descargo de nuestra conciencia en lo que toba al buen gobierno, y aprovechamiento de los Naturales; por la presente en la mejor forma, y manera, que podemos, y derecho devemos, nombramos, creamos, y elegimos a Vuestra Reverencia por custodio de la dicha nuestra custodia de Santa Elena de la Florida, a la cual desde luego unimos, aplicamos, e incorporamos el convento de San Salvador de la Habana, Santiago de la Ysla de Cuba, y el del Bayamo: y porque en esta Santa obra Vuestra Reverencia no pierda el merecimiento de la Santa obediencia, por ella, en virtud del espiritu Santo le mandamos, que con los dichos siete religiosos se parta para alla, y segun la gracia, y talentos, que le ha dado nuestro Senor ejercite su oficio; y para que mejor lo pueda hacer, *in utroque foro* le damos toda nuestra auotoridad, sobre los conventos, y doctrinas de la dicha custodia, conviene a saber el convento de la concepcion de Nuestra Senora en la ciudad de San Augustin, el convento de San Salvador de la Habana, el convento de Santiago de la Ysla de Cuba, el convento de Nuestro Padre San Francisco del Bayamo, el convento de Santa Catalina de Guale, el convento de la Ysla de San Pedro, el convento de San Juan del Puerto, el convento de San Buenaventura de Guadalquivi, el convento de Santo Domingo de Asao, el convento de San Antonio de Guadulce, el convento de Santa Ana de patano, y sobred todos los religiosos de ellos, asi subditos, como prelados, para que en virtud de esta nuestra patente les pueda consolar, y acariciar, corregir, castigar, ligar con censuras, y absolver de ellas, y encarcelar, y sacar de la carcel en casos leves con sola su autoridad, y en los graves con consejo de los Definidores, desterrar, y reducir, privar, suspender, y habilitar, recibir novicios en el convento de San Agustin, y en el de la Habana, y admitirlos a profesion; fundar conventos de nuevo, precediendo licencia de S. M. y de su real consejo de las Yndias, y de prelado obispo, o Arzobispo en las partes, y lugares donde entendiere, que sera mas conveniente. Hacer constituciones, mudar Frailes de un convento a otro, dar licencias para ordenes, invocar capitulo a su tiempo, presidir en el, y hacer eleccion, y selecciones de difinidores, guardianes, instituir confesores, y predicadores, y los demas oficios, y hacer, disponer, y concluir todo lo que fuere necesario al buen gobierno de la dicha custodia, reformation de lo caido, y conservacion de lo perfecto; aumento de la pura observancia de nuestro estado, y regla, teniendo gran advertencia, que en las doctrinas se pongan frayles de ejemplo, y virtud, y que a lo menos puedan confesar en la lengua, y lo principal sin codicia; pues los hijos de nuestro padre San Francisco tan agenos, y limpios debemos estar de ella, guardando en todo lo ordenado por el concilio Tridentino, y lo que disponen las constituciones generales de la orden, y las particulares de la custodia; y lo hace

and satisfy our conscience in regard to the good government and careful attention to the interests of the natives, we do, by these presents, in the best form and manner we can, and of right ought to do, nominate, create, and elect your reverence as director of our aforesaid custody, or charge, of St. Helen, in Florida, to which, from this moment, we unite, apply, and incorporate the convent of St. Saviour, of Havana, Santiago of the island of Cuba, Bahama, and, in order that your reverence may not lose the merit of, or be undeserving of that holy obedience which this work requires, we, by virtue of the Holy Ghost, command you to depart for that country with the seven religious persons mentioned, and there, according to the grace and talents with which God has endowed you, discharge your official duty. In order that you may better be enabled so to do, we give you, in *utroque foro*, all our authority over the convents and religious meetings comprised within the aforementioned custody, or charge, viz: The convent of the Conception of our Lady in the city of St. Augustine, the convent of St. Saviour, in Havana, the convent of St. James, in the island of Cuba, the convent of our father St. Francis, in Bahama, the convent of St. Cataline, of Guadaloupe, the convent of the island of St. Peter, the convent of St. John of the Port, the convent of St. Bonaventure of Guadalquiver, the convent of St. Dominick of Asao, the convent of St. Anthony of Guadalce, the convent of St. Ana of Patano, and over all the religious persons contained therein, both subjects and prelates, to all of whom, by virtue of this patent, you can console, caress, correct, punish, bind and censure, and absolve them therefrom, and to imprison and take them out of prison by your own authority in trivial cases and in grave cases, by and with the consent of your definitive councillors; to banish, and reduce, deprive, suspend, and restore; to receive noviciates in the convent of St. Augustine, and that of Havana, and admit them to profess. To found new convents, with the previous permission and license from his majesty and his council of the Indies, and with the consent of the prelate, bishop, or archbishop of the port or place understood to be most convenient. To make constitutions, to change friars from one convent to another, to give permission to take orders, to invoke a chapter at the proper time, over which you will preside, to make election or elections of definitive councillors, guardians, institute confessors and preachers, and all other officers. To do, dispose, and conclude all that may be necessary to the good government of the said custody, or charge, to the reformation of the fallen, and conservation of those who are perfect. To increase the rigid observance of our State and regulations. Having great care to place in all religious meetings friars of the most exemplary virtue, who may be able to hear the confession of penitents in their own language, and be particular that they be not avaricious, for the sons of our father St. Francis should eschew that vice, and keep themselves free and clean from it, observing, with exactitude, all that is ordered by the council of Trent, as well as all that is ordered by the general constitution of the order, and constitution of the particular custody, or charge, to which we belong. We

mos a V. R. y a los religiosos de ella, inmediatos a Nos, y a nuestros sucesores sin que ningun superior inferior Nuestro se entremeta en su administracion, y gobierno: para cuya debida ejecucion exortamos, y a mayor merito mandamos por Santa Obediencia en virtud del espiritu Santo, y pena de escomunion mayor al guardian, y frayles de nuestros conventos de la Habana, Ysla de Cuba, y del Bayamo, como el custodio, difinidores, y demas religiosos de nuestro convento de la Florida, obedescan a V. R. en todo y por todo, como a su legitimo prelado y custodio criado por Nos, para la refermacion, bien, y aumento de la religion en la dicha custodia, sin que se ponga impedimento, ni estorvo por los provinciales de la provincia del Santo Evangelio de Mejico, Santo Domingo de Venezuela, por nuestros comisarios generale, ni por otra persona alguna, a los cuales, y a cada uno de ellos, mandamos por la misma Santa Obediencia, y sopena de escomunion mayor tengan los dichos conventos de San Salvador de la Habana, Santiago de la Ysla de Cuba, y San Francisco de Bayamo por desunidos, divididos, y separados de las dichas provincias, y por aplicados, unidos e incorporados a la dicha nuestra custodia de Santa Elena de la Florida con las Fundaciones, mandas, limosnas, que al presente tienen, y tuvieren de aqui adelante, y a V. R. per su prelado, y custodio; a quien, y a sus sucesores toca y pertenece el gobierno y administracion de ellos, y de lo demas de la dicha custodia.

Dada en San Francisco de Madrid a diez y ocho de Noviembre de mil, seiscientos, y nueve anos, firmada con el sello mayor de nuestro oficio, y refrendada de nuestro secretario, fray Bernardo de Salva, comisario general de Yndias.

Por mandado de Nuestro padre Reberendisimo; fray Diego de Cecilia, secretario.

Cedula de su Magestad, para que los conventos de la orden fundados por otras provincias en la Ysla de Cuba, se den a la custodia de Santa Elena de la Florida.

El Rey. Todos y cualesquiera mis jueces, y justicias de las islas, y provincias, que se comprenden en las Yslas de Barlovento, y demas partes de mis Yndias Occidentales, y cada uno, y cualquiera de vos en vuestra jurisdiccion. Sabed que por parte del comisario general de las Yndias de la Orden de San Francisco, que reside, en mi corte, se me ha hecho relacion, que por causas, que a ello movieron, se acordo en la ultima congregacion general de su orden, que se tuvo en la ciudad de Toledo, que se hiciese una custodia de los coventos de las provincias de la Florida, y de la Ysla de Cuba, que antes eabants separados; que el cumplimiento de ello habia mandado poner en ejecucion por una patente suya dada en Madrid a diez y ocho de Noviembre del ano pasado de mil, seiscientos, y nueve, suplicandome, que para que esto pueda tener el buen efecto, que conviene, le mandase dar mi cedula, pora que por vuestra parte lo favorecie-

make your reverence and those religious persons within said custody, or charge, near or next to us and our successors, and will not permit any person, either superior or inferior to you, to meddle with, or disturb your administration or government; and for the faithful observance of this, we exhort, or to give it more force, we command, by virtue of the Holy Ghost, the perfect obedience, under pain of excommunication, of the guardian and friars of our convent in Havana, and island of Cuba, of the Bahamas, as well as the director or superintendent of our convent in Florida, to the end that they obey your reverence in all and for all, as their legitimate director or superintendent created by us, for the good and augmentation of religion in and within the limits of said custody or charge. Nor shall any impediment or embarrassment be offered to you by our provincial of the province of the Holy Evangelist of Mexico; nor by him of St. Dominick, in Venezuela; nor by our commissary generals; nor by any other person whatsoever; to all of whom we command by the same holy obedience, under pain of major excommunication; that they consider the aforesaid convents of the Saviour, in Havana, St. James, of the island of Cuba, and St. Francis, in Bahama, to be disunited, divided, and separated from their respective provinces; and applied, united, and incorporated to our said custody or charge of St. Helen, in Florida; together with the foundations, commands, and alms, which they at present have, or may have hereafter, and of which your reverence is the prelate or director; to whom and to your successors it belongeth and appertaineth to administer upon and govern them, as well as everything else within the limits of your custody or charge.

GIVEN in St. Francis, in Madrid, this eighteenth day of November, one thousand six hundred and nine years, signed with the great seal of our office, and countersigned by our secretary friar Bernard Salva, commissary general of the Indies.

By order of our most reverend father friar, James Cecilia, Secretary.

Royal order of his majesty to annex to the custody or charge of St. Helen, in Florida, the convents on the island of Cuba, which were founded by, and hitherto attached to other provinces.

The king, to all and every one of his judges and justices in the islands and provinces in the Windward Islands and other parts of his Indies in the west, to each and every one of you in your proper jurisdiction: Know ye, I am informed by the commissary general of the Indies, of the order of St. Francis, who resides in my court, that, for causes by which they were incited, it was determined in the last general meeting of the order, held in the city of Toledo, that there should be made a custody or charge of the convents of Florida and the island of Cuba, which were heretofore separated. In compliance with that determination, their patent has been issued in Madrid on the eighteenth day of November of the past year,

sedes; y habiendose visto por los del mi consejo de las Yndias juntamente con la dicha patente, que originalmente se presento en el mi ha parecido ordenaros, como por la presente os lo ordeno, y mando que todos, y cada uno, y qualquier de vos en vuestra jurisdiccion, como dicho es, deis al padre fray Pedro Ruiz de la dicha Orden de San Francisco, custodio nombrado por la dicha patente todo el favor, y ayuda en lo que se le ofreciere, y hubiere menester para su mejor cumplimiento, que de ello me tendre por servido. Fecha en Selina, a cinco de junio de mil, seiscientos, y diez anos. Yo el Rey, por mandado del Rey Nuestro Senor, Juan Ruiz de Contreras.

Es conforme a sus originales que se hallan colocados a la pagina ciento diez numero ciento setenta y cuatro, y pagina ciento catorce numero ciento setenta y siete de un libro impreso que setitula Chronica de la Religion de N. P. S. Francisco, libro primero Capitulo Viente cinco, cuyo libro contiene al principio las aprobaciones y licentia competentes, suci fhas. en Madrid a nueve, y diez y nueve de Mayo de mil Setecinetos cincuenta y cicinto y en Roma a Veinto y seis de Febrero, y viente de Marzo de mil Setecinetos cincuenta y seis, el cual me fue puestro de manifiesto a efecto de sacar el presente testimonio que encumplimento de lo mandad padre el mo. alcalde, mayor, cesant Dr. Ramon Padilla, signo y firmo en la Habana a doce de Abril de mil Ochocientos cuarenta y siete renglones-ciento vale.

JUAN DE ENTRALGO,

Secreto. Hono. de S. M.

Los escribanos de la Reyna Nuestra Senora (Q. D. G.) que signamos y firmamos certificamos y damos fe: que D. Juan de Entralgo, por quien aparece autorizado el testimonio que antecede, es secretario honorario de S. M. y escribano publico del numero de esta ciudad, fiel, legal, y de confianza; y a sus semejantes siempre se les hadado y doi enterar fe y credito en ambos juicios. Y para constancia damos la presente sellada conel de Nuestro Real Colegio en esta siempre fidelisima ciudad de la Habana a trece de Abril de mil ochociento cuarenta y siete.

FRANCISCO DE ESCOVEDO, [L. s.]

MAN. VIDAL ALARCON, [L. s.]

FELIX LARRIN, [L. s.]

CONSULATE OF THE UNITED STATES,

Havana, April 28, 1847.

I, Robert B. Campbell, consul of the United States of America for the city of Havana, do hereby certify that Francisco de Escovedo, M. V. Alarcon, and Felix Larrin, whose signatures appear to

one thousand six hundred and nine, and in order that it may be carried into full effect my royal order is required, in order that you, on your part, should sustain and support it; the said determination has been submitted to my council of the Indies, together with the original patent. It has appeared to me proper to order and command you, as I do by these presents order and command you, each and every one in your appropriate jurisdictions, to give to the aforesaid father friar Peter Ruiz of the said order of St. Francis, nominated director or superintendent by the said patent, all the favor and aid which he may require or find necessary for the better fulfilment thereof, by which I will consider myself well served. Given in Selma on the fifth day of June, one thousand six hundred and ten years.

I, the king, by order of the king our Lord, John Ruiz, Contreras.

The foregoing is a true copy of the original which is found located at page one hundred and ten, number one hundred and seventy-four, and page one hundred and fourteen, number one hundred and seventy-seven of a printed book, entitled "Chronicles of the religion of our father St. Francis," twenty-fifth chapter of the first book; which book contains, at the beginning, the appropriate approbation and licenses, dated in Madrid on the nine and nineteenth day of May, one thousand seven hundred and fifty-five, and in Rome the twenty-sixth day of February, and twentieth of March, one thousand seven hundred and fifty-six, which was placed before me in order that I might extract from it this certified copy in compliance with the order of the major alcalde or judge Ramon Padilla, which I sign and seal in Havana, this twelfth day of April, one thousand eight hundred and forty-seven.

JOHN ENTRALGO,

Honorary Secretary of her Majesty.

The notaries public of the queen, our lady, (whom may God preserve,) who sign and seal beneath, certify, and give faith, that John Entralgo, by whom the foregoing was authorized and sealed, is the honorary secretary of her majesty, and one of the public notaries of this city, and to his acts, as such, full faith, credit, and confidence have always been given in both tribunals. In order that it may so appear, we give these presents, sealed with the seal of our royal college, in this ever faithful city of Havana, on the thirteenth day of April, one thousand eight hundred and forty-seven.

FELIX LARRIN, [L. s.]
 MAN. VIDAL ALARCON, [L. s.]
 FRANCISCO ESCOVEDO, [L. s.]

CONSULATE OF THE UNITED STATES,

Havana, April 28, 1847.

I, Robert B. Campbell, consul of the United States of America for the city of Havana, do hereby certify that Francisco de Escovedo, M. V. Alarcon, and Felix Larrin, whose signatures appear

to the foregoing certificate, are notaries public of the Royal College of Notaries Public of the city of Havana.

In testimony whereof, I have hereto set my hand and affixed [L. s.] my seal of office, at Havana, on the day of the date above written.

ROBERT B. CAMPBELL.

Al Govr. de la Havana, con fha de 22 de Marzo, de 1737.

MUI SENOR MIO: * * * * *
* * * * *

El propio dia (todavia desde el Castillo) le requeri tercera vez en nombre de S. M. reproduciendo y esforzando los dos antecedentes, con lo que vinieron los oficiales Rs. a enterarse del motivo de mi venida y Rs. ordenes; y habiendolas reconocido estos ministros le llevaron copia en cuya vista tomo la atentada resolucion de refugiarse en el Convento de San Francisco, y aunque no me falto este aviso de acuerdo con dho Yllmo. Senor Obispo no procedi a aquella hora a diligencia publica alguna por ser de noche, y estar todavia el Pueblo en confusion y aun en vandos no obstante que temia alguna fuga u ocultacion de sus bienes, por lo que di algunas ordenes secretas a los oficiales que fueron viniendo poco a poco en virtud de la carta de V. S. que les remiti y otros que sagazmente fui ganando. * * * * *

Y considerando las perniciosas consecuencias que debian esperarse acia el Servicio de ambas Magestades (de que no pueden ocultarse a la alta comprehension de V. S.) si el dho Dn. Francisco hiciese fuga (en observancia de la instruccion) mande al Capitan. Dn. Phelipe Yturrieta con veinte y quatro granaderos que cercasen el Convento e incontinenti libre suplicatorio a Su Yllma. a fin de que me allasse la inmunidad para extraer de ella a el enunciado, y habiendole requerido su Ylla. segun su obligacion respondio que no estaba refugiado, sino que un accidente le tenia alli con otras razones cuya anfibologia ya afirmaba ya negaba su refugio. Tolere estos equivocos per espacio de quatro horas hasta que viendo se acercaba la noche, la ninguna seguridad del Presidio y demas graves inconvenientes que a V. S. no pueden ocultarse repeti el Suplicatorio a el Yllo. Senor Obispo y se consiguio el allanamiento con el qual pase al Convento y se me entrego el enunciado Dn. Francisco del Moral diciendo no lo hacia como refugiado sino voluntariamente. * * * * *

Dios Guarde a V. S. muchos anos como deseo y he menester. San Augustin, de la Florida, y Marzo 22 de, 1737.

B. L. M. de V. Sa. su mas rendido y obligado servidor.

DON MANUEL JOSEPH DE JUSTIS.

Senor Don JUAN FRANCISCO DE GUEMES Y HORCASITAS.

the foregoing certificate, are notaries public of the royal college of notaries, of the city of Havana.

In testimony whereof, I have hereto set my hand and affixed [L. s.] my seal of office, at Havana, on the day of the date above written.

ROBERT B. CAMPBELL.

To the Governor of Havana, under date of March 22, 1737.

MY DEAR SIR: * * * * *

The same day (still from the castle) I notified him again, a third time, in the name of his majesty, repeating and fortifying the two antecedent notifications upon which the royal officers came to inform themselves of the motive of my arrival, as well as the royal orders; and having recognized those ministers, they took a copy to him, in view of which he took the prudent resolution to take refuge in the convent of St. Francis; and, although I was not unadvised of this, yet, by virtue of an agreement with the most illustrious bishop aforesaid, I did not, at that hour, proceed to take any public measures against him, because it was night, and the town was in confusion, the people being yet collected in bands. I was not without fear that he might fly or secrete his property; for which reason I gave some secret orders to the officers, who gradually commenced to come over, in virtue of your letter, which I remitted to him; some others I gained by sagacious measures. * * * *

In consideration of the pernicious consequences that might result to the service of both their majesties (which cannot be to the high comprehension of your lordship) if the said Doctor should fly, (in obedience to your instructions,) I ordered Captain Philip Iturrieta, with twenty-four grenadiers, to surround the convent, and forthwith I despatched an official supplication to the most illustrious bishop, desiring him to waive the prerogative of the church immunity, in order that he might be taken therefrom; in conformity with his obligation, took him to task, and he answered that he had not taken refuge in the church; that he was there by accident; to which he added other equivocal reasons, sometimes affirming, and at other times denying that he had sought refuge. I tolerated these equivocations for the space of four hours, until, upon seeing that the night approached, the insecurity of the garrison, and other grave considerations, which will readily present themselves to your lordship, I repeated the supplication to the bishop, who suspended the church's immunity; upon which I went to the convent, where the said Francis Moral delivered himself up, saying he did it voluntarily, and not as a refugee. * * * *

God preserve your lordship many years, is the wish and desire of your obedient servant, who kisses your hands. St. Augustine, n Florida, May 22, 1787.

MANUEL JOSEPH JUSTIS.

To JOHN FRANCIS GUEMES & HOREASITAS.

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true abstract from a book on file in my office, in which are copied the official letters from the governor of East Florida to the captain general of the island of Cuba, from 1737 to 1741.

Witness my hand and seal of office, at the city of St. Augustine, [L. s.] State of Florida, this nineteenth day of November, A. D. one thousand eight hundred and forty-seven.

ANTONIO ALVAREZ, K. P. A.

[No. 1,010, Cua. La: 42, de Memorandum.]

{ Isab. p. l. g. de Dios y la Const. Reyna de Esp. }	[SEAL.]	{ Sello 3o.—As. 1846 y 47. 2 rs. }	[STAMP.]
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Escmo Sor. Yntendente de Escto. Supdte. General de Real Hacienda.

Pbro. Dn. Benedicto Madeore cura y Vicario general de la yglesia de San Augustine de la Florida, respetuosamente ante V. E. dice: Que necesita para sus fines particulares y de puro ministro, que por el archivero general de real hacienda se le provehea en copia certificada de los documtos. qe. jurtifican haber sido vendidos en confianza, en el ano de 1764, el convento de San Francisco la casa Episcopal, y la yglesia de Ntra. Sra. de la Leche de la provincia de San Augustin de la Florida, cuyos documentos obran originales en la depende. del archivo enunciado; proveyendose igualmente certificacion relativa a la enagenacion del solar y paredes de la yglesia nueva, hecha tambien en confianza, e insertandose a la letra asi la declaracion del comprador, como cuanto conduzca al mayor esclarecimiento del asunto; en tal virtud.

Suplica se sirva acceder a la solicitud referida en la precedte. instancia, en lo qual recibira merced. Hab., y Mayo 14, de 1847.

Exmo Sor.

BENEDICTO MADEORE.

HABANO, 18 de Mayo, de 1847.

Informe el sor archivero gral.

(Rubric and initial of P. G. A.)

ESCMO SOR:

Entre los diferentes fechos del archivo particular de la Florida Oriental, ecistentes en este gral. de real hacienda de mi cargo, se hallan les correspondientes a la comision que en el ano pasado de 1763, confrio el Escmo. Sor. Conde de Riela, gobernador y capitán

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true abstract from a book on file, in my office, in which are copied the official letters from the governor of East Florida, to the captain general of the island of Cuba, from the year 1737 to 1741.

Witness my hand and seal of office, at the city of St. Augustine, State of Florida, this nineteenth day of November, anno domini one thousand eight hundred and forty-seven.
ANTONIO ALVAREZ.

[No. 1,010, Book 42, Memorandums.]

{ Isabel Second, by the grace of God and the Constitution, Queen of Spain.	[SEAL.]	{ (STAMP.) 3d stamp—1846-'47. 25 cts.
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To the most excellent Paymaster General of the army, and Director General of the Royal Treasury.

The presbiter Benedict Madeore, curate and vicar general of St. Augustine, in Florida, respectfully appears before you and sayeth: That, for the particular and pure purposes of his ministry, he requests the keeper of the general archives of the royal treasury may be instructed to furnish him with a certified copy of the documents which prove that, in the year 1764, the convent of St. Francis, the Episcopal House, the church of our Lady of Milk, in the province of St. Augustine, in Florida, were sold, in confidence; which documents exist in the original, now among the aforesaid archives; and that, in like manner, he may be instructed to furnish him with a certification of the sale of the lot and walls of the new church, which was also made in confidence, inserting word for word the declaration of the purchaser, together with whatever may conduce to throw light on the subject. I beg that your excellency will be pleased to accede to the request set forth in this petition, by which I will receive a favor.

BENEDICT MADEORE.

HAVANA, *May 14, 1847.*

Let the keeper of the archives give information on the subject.
(*Rubric and initial of P. G. A.*)

HAVANA, *May 18, 1847.*

MOST EXCELLENT SIR: Amongst the different dates of the particular archives of East Florida, which now exist in these general archives of the royal treasury under my charge, are found that which appertains to the commission which the most excellent count of Riela, governor and captain general of the island of Cuba, in

general de esta Ysla, al Sor. Don Juan Jose Eligio de la Puente, para que recojiese los efectos y propiedades, asi de S. M. como de los diferentes individuos particulares que quedaron en la ciudad de San Agustin; de cuyos antecedentes se deduce, que la evacuacion en todas sus partes en el siguiente año, produciendo cuenta justificada de lo permutado vendido y conducido a este puerto con toda distincion y claridad.

Pero grandes dificultades le impidieron realizar tan de pronto como se requería por el ultimo tratado de paz con la Gran Bretaña, muchas de las propiedades asi del Estado como de los vecinos que habian emigrado a esta Ysla, y queriendo salvarlas todas antes que cayeran en poder de aquella nacion, como se declaraba por el articulo 20 de los preliminares de dicho tratado, estipulo con D. Juan Gordon, traspasarle en confianza, el dominio de la casa Episcopal, por la cantidad de mil pesos fuertes, el convento de San Francisco por mill quinientos, y la yglesia de Nuestra Sra. de la Leche por trescientos; y con D. Jesse Fish el solar y paredes de la yglesia Nueva por cien pesos, lo mismo que todas las casas y Solares de los vecinos al Sud y Norte, desde la portada de la de los gobernadores, suscribiendose por ambos compradores la obligacion en que quedaban de venderlas por cuenta del Estado y de sus duenos, y declarando no haber pagado cosa alguna al Comisionado Eligio de la Puente.

Asi consta de los instrumentos originales otorgados por Gordon y Fish, en 20 y 28 de Julio, de 1764, de los que el Sor. esponente pide copia certificada; y si V. E. no tuviere inconveniente, podra servirse disponer se le faciliten, o determinar lo q. fuere desu su por. agrado. Archivo gral. 19 de Mayo, de 1847.

NATTES.

HABANA, 20 de Mayo, de 1847.

Atendido el precedente informe vuelva este espedte. al archivo gral. para que a continuacion espida la certificacion solicitada por el promovente a quien la entregara.

VILLANUEVA.

Don Jose del Rosario Nattes, Yntendente honorario de Provincia, y Archivero general de Real Hacienda de la Ysla de Cuba, y de su Real Junta de Fomento, pr. S. M.

Certifico: Que entre los papeles pertenecientes al archivo particular de la Provincia de San Angustin de la Florida, que obran en el general de Real Hacienda a mi cargo, se encucutran origina les, los documentos que a la letra son como sigue.

“San Angustin y Julio dos de mil setecientos sesenta y cuatro—confieso por este haber recibido de Don Juan Jose Eligio de la

the year 1763, conferred upon Don John Joseph Elijah Puente, in order that he might collect the effects and property of his majesty, as well as of private individuals, which remained in the city of St. Augustine, from which it may be deduced that the entire province was evacuated in the following year; there are on file regular accounts of all that was permuted, sold, or conveyed to this post, and substantiated in the most clear and satisfactory manner.

There was found great difficulty to realize, with that promptitude which the last treaty of peace with Great Britain required, much of the property of the State, as well as that of citizens who had emigrated to this island; and, being desirous to save it all before it should fall into the power of that nation, as set forth in the 20th article of the preliminaries of said treaty of peace, it was stipulated with Mr. John Gordon to sell or pass over to him in confidence, the dominion of the Episcopal-House for one thousand dollars, the convent of St. Francis for one thousand five hundred dollars, the church of our Lady of Milk for three hundred dollars, and to Jesse Fish the lot of ground and walls of the new church for one hundred dollars, to whom was, in like manner, sold in confidence, all the houses and lots belonging to citizens situated to the north and south of the entrance to the governor's house. An obligation was subscribed by both purchasers, obliging themselves to sell them for and on account of the State and owners of said property; declaring, at the same time, that they had not paid anything to the commissioner, Elijah Puente. Such are the facts as set forth in the original documents executed by Gordon and Fish, on the 20th and 28th of July, 1764, of which the petitioner requires a certified copy; and, if your excellency esteems it proper, they may be furnished to him, or your excellency may determine what, in your opinion, is most proper.

Office of General Archives, May 19th, 1847.

Most excellent sir,

NATTES.

HAVANA, *May* 20, 1847.

In virtue of the preceding information, return these proceedings to the keeper of the general archives, in order that he may furnish to the petitioner the certified copies which he solicits, and deliver to him.

VILLANUEVA.

Joseph Rosary Nattes, honorary superintendent of the province, and keeper of the general archives of the royal treasury of the island of Cuba, and member of the royal society for the encouragement of industry, by order of her majesty,

Certifieth that amongst the papers belonging to the particular archives of the province of St. Augustine, in Florida, now existing in the general archives of the royal treasury, under his charge, are found the originals, of which the following is a copy, word for word, and letter for letter:

“San Augustine, July second, one thousand seven hundred and sixty-four. I acknowledge to have received from John Joseph Eli-

Puente, un instrumento de venta a mi favor, del Convento de San Francisco, en cantidad de un mil quinientos pesos fuertes; y otro igual documento de la Yglesia de Nuestra Senora de la Lechetrescientos pesos, ambos en este; y sin embargo de ellos ofrezco y prometo el venderlos, y disponer, de dicho Convento e Yglesia, con las mayores ventajas que me sean posible en beneficio de cuenta de sus propietarios, y remitir su importe al supradicho Don Juan, o pagarlo a su orden."

"JOHN GORDON."

"San Augustin y Julio veinte de mil setecientos sesenta y cuatro. Confieso por este haber recibido de Don Juan Jose Eligio de la Puente, un instrumento de venta a mi favor, de la Casa Episcopal en esta, por la cantidad de un mil pesos fuertes, y sin embargo de el ofrezco y prometo el vendēr y disponer de la dicha casa con la mayor ventaja que me sea posible, en beneficio y de cuenta de su propietario o propietarios, como de remitir el importe al supradicho Don Juan, o pagarlo a su orden."

"JOHN GORDON."

Certifico asi mismo, que por otro documento encabezado asi Razon de las Casas y Solares que se hallan a la fecha sin vender, por no haber habido ni haber ninguno que quiera comprarlas, en cuya virtud, las traspaso bajo de confianza a Don Jesse Fish, vasallo de S. M. B., poniendole solo para la formalidad de la precisa escritura de venta, el valor de las cortas cantidades que se citaran al margen del nombre de cada persona a quien corresponden, y son a saber. Al sur desde la portada de la casa de los gobernadores," aparece incluso en las ciento ochenta y cinco posesiones, el solar y paredes dela yglesia Nueva, con valor de cien pesos; y al pie la declaracion del citado Don Jesse Fish, concebida en los terminos siguientes. Digo yo Don Jesse Fish, vasallo ne S. M. B., que confieso haber recibido de Don Juan Jose Eligio de la Puente, apoderado general para la venta de los bienes raices y muebles de los vecinos espanoles que fucron de este presidio, dos escrituras fechas a veinte y cuatro y veinte y siete del corriente mes y ano, en que me otorga venta Real de todas las Casas y solares pertenecientes a dichos vecinos que se espresan en la razon antecedente; y por lor bajos precios que van citados al margen del nombre de la persona a quien corresponde cada casa o solar; sobre que declaro por este no le he pagado cosa alguna a cuenta de las referidas casas y solares, pues las mencionadas dos escrituras solo son de confianza, y para el fin de asegurarles el derecho a sus legitimos duenos, cuando lo pierdan, segun lo prevenido en el articulo veinte de los preliminares de la ultima paz; anadiendo tambien q. me obligo desde ahora y hasta que lo cumpla, a dar al enunciado Don Juan Jose Eligio de la Puente, o a su voluntad, la mas puntual cuenta y

jah Puente an instrument of sale, in my favor, of the convent of St. Francis, for the sum of one thousand five hundred dollars cash, and likewise another document of the same class, for the church of our Lady of thê Milk, for three hundred dollars, both in this place; notwithstanding which I offer and promise to sell and dispose of said convent and church to the best possible advantage for and on account of their proprietors, and remit the proceeds to the above-mentioned Puente or pay it over to his order."

"JOHN GORDON."

"St. Augustine, July the twentieth, one thousand seven hundred and sixty-four. I acknowledge to have received from John Joseph Elijah Puente an instrument of sale, in my favor, of the Episcopal house in this city, for the sum of one thousand dollars in coin, and notwithstanding which I offer and promise to sell and dispose of said house to the best possible advantage for the benefit of and on account of its proprietor or proprietors, and to remit the proceeds thereof to the aforementioned Puente, or pay it over to his order."

"JOHN GORDON."

I further certify that another document, whose caption is as follows, sayeth:

"Account of the houses and lots, which, up to the present, have not been sold for want of purchasers, for which reason they have been sold or passed over in confidence to Jesse Fish, a vassal of his Britannic majesty, giving him only for the precise formality of the case a deed of sale upon the margin, of which is cited the value of each property and the name of the proprietor. They are as follows: to the south of the front entrance of the governor's house there appears to be included one hundred and eighty-five possessions, amongst which are the lot of ground and the walls of the new church, valued at one hundred dollars. At the foot of that statement is found the declaration of the aforementioned Jesse Fish in the following terms: I, Jesse Fish, a vassal of his Britannic majesty, do hereby acknowledge to have received from John Joseph Elijah Puente, general commissioner for the sale of property, both moveable and immoveable, belonging to Spanish subjects who left this garrison, two deeds, dated one on the twenty-fourth and the other on the twenty-seventh of this present month and year, in which a real sale is executed to me of all the houses and lots belonging to the aforesaid subjects as expressed in the preceding account or note, and at the low prices stated in the margin, giving the names of the proprietors of each house and lot of ground, upon which I do hereby declare that I have not paid to him anything on account of the said houses and lots, and that the aforesaid deeds or contracts of sale were made in confidence, and for the purpose of securing to the legitimate owners their right therein, which they were about to lose under the provisions of twentieth article of the preliminaries for peace. I further add, that both now and hereafter I oblige myself to give to the aforesaid Puente, or to

pago, del procedido de las nominadas casas y solares, cuya venta ofrezco ejecutar, luego que haya compradores, con el mayor adelantamiento y estimacion que me sea posible; y para que asi conste firme el presente en San Augustin de la Florida, a veinte y ocho de Julio de mil setecientos sesenta y cuatro anos; Jesse Fish.”

Finalmente certifico, que del espediente instruido en esta ciudad, a consecuencia del auto de seis de Febrero del propio ano de mil setecientos sesenta y cuatro, del Ylustrisimo Sor. Dr. Don Pedro Augustin Morel de Santa Cruz, Dignisimo obispo de le Santa yglesia catedral de Santiago de Cuba, para que se inventariasen los ornamentos, altares, efigies, campanas y alhajas pertenecientes a la yglesia Parsoquial y Cofradias de San Augustin de la Florida, que se trajeron a esta Plaza por Don Simon de Hita en la goleta titulada Nuestra Senora de la Luz, que la Ermita de Nuestra Senora de la Leche, estaba edificada estramuros de aquel presido, conforme a las declaraciones ministradas por Don Juan Crisostomo de Acosta, vecino que fue de dicha ciudad de San Augustin de la Florida, y notario de su Curia Ecleciastica, y Mayordomo tambien de la yglesia Parroquial, remitiendose a los Libros de su cargo, y a todos los antecedentes del asunto.

Y en cumplimiento del precedente decreto del Escmo. Sor. Conde de Villanueva, superintendente general delegado de Real Hacienda de esta isla, espido la presente, teniendo a la vista los precitados documentos, que quedan en esta oficina de mi cargo, y a que me remito. Habana y Mayo veinte y uno de mil ochocientos cuarenta y siete.

JOSE DEL ROS: NATTES.

CONSULATE OF THE UNITED STATES,
Havana, May 21, 1847,

I, Robert B. Campbell, consul of the United States of America for the city of Havana, do hereby certify that the signature to the foregoing instrument of writing is the true signature of Jose del Rosano Nattes, the keeper of the records of the royal hacienda of the Island of Cuba, and his official acts are, in my opinion, entitled to faith and credence.

In testimony whereof, I have hereunto set my hand, and affixed
[L. s.] my seal of office, at Havana, on the day of the date
above written.

ROBERT B. CAMPBELL.

EXMO SENOR:

Con mucho sentimiento mio, tengo que participar a V. E., que ayer manana a las nueve y media, al instante que salir por esta Barra, con destimo a esa, la Balandra Santa Catalina del cargo de Don Vicente Lardivol, con los pliegos del real servicio, y correspondencia publica, me sorprendio la noticia de fuego en los Cuarteles viejos o Ingleses.

his order, a most punctual account, and payment of the proceeds of the said houses and lots—the sale of which I promise to verify as soon as purchasers may offer, and to the best possible advantage. In order that it may so appear, I sign these presents in St. Augustine, Florida, on this twenty-eighth day of July, one thousand seven hundred and sixty-four years.

“JESSE FISH.”

Finally, I certify that in the proceedings instituted in this city in consequence of the decree, dated February sixth, one thousand seven hundred and sixty-four, of the most illustrious Doctor Peter Augustine Morel, of Santa Cruz, the most worthy bishop of the holy Cathedral church of St. James, in Cuba, ordering an inventory to be made of the ornaments, altars, effigies, bells, and jewels, belonging to the parish church and religious associations of St. Augustine, in Florida, which were brought to this place by Simeon Hita, in the schooner named our Lady of Light, it appears that the hermitage or chapel of our Lady of Milk was built without the walls of the garrison of St. Augustine, which fact is substantiated by the declaration of John Crisostom Acosta, who was a citizen of said city of St. Augustine, in Florida, ecclesiastical notary and majordomo of that parish church, who refers to the books under his charge for the antecedents in the case

In fulfilment of the decree of the most excellent count of Villanueva, delegated superintendent general of the royal treasury of this island, I have executed these presents, having before me the aforesaid documents, which remain in this office under my charge, and to which I refer. Havana, May the twenty first, one thousand eight hundred and forty-seven.

JOSE DEL ROS: NATTES.

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[The above signature is duly authenticated by R. B. Campbell, United States consul at Havana.]

MOST EXCELLENT SIR: With great regret I have to inform your excellency, that yesterday morning at nine and half o'clock, being the same instant in which the sloop St. Catharine was crossing the bar, on her voyage to Havana, under the command of Vincent Lardisol, with despatches for the royal service and public correspondence, I was surprised with the information that the old or English barracks were on fire. In five minutes thereafter, notwithstanding

En cinco minutos, sin embargo de estar indispuerto, me halle en el sitio, y conoci, a primera vista, que la voracidad de las llamas, se habia apoderado de tal suerte de la parte superior del edificio, que seria imposible atajarla aun exponiendo y perdiendo vidas, por cuyo motivo, y por la constante poca utilidad de la fabrica dedique mi cuidado a salvar los efectos de Artilleria, almacenados en los Cuarteles vajos, lo que se logro en la mayor, parte, como asimismo el retirar todo lo perteneciente al destacamento de dragones, alojado alli, a escepcion de una porcion de maiz, y a cortar la comunicacion del fuego a las inmediatas Hayas, Cercas, y parque de Lena de provision, que tambien se logro, quedando, en dos horas, convertidos en ascuas ambos altos del expresado Cuartel, compuestos de madera, de las piezas vajas, y las Chimineas que son de ladrillo, con los Pilares de piedra, que sortenien las Galerias de maderamen, que en el primero y segundo alto daban buelta al edificio entero.

La oficialidad, y tropa del Batallon de Cuba trabajaron en su respectiva clase con esmero; debiendose lo que se ha salvado de efectos a su actividad y aun arrojo, sin que individuo alguno se haya desgraciado.

En primera ocasion detal are a V. E. todo el suceso, y sus resultas; siendome imposible agecutarlo en la presente; pero importa el hacer desde ahora presente a V. E., que a los apuros que me cercaban antes, se ha aumentado, con este estrago, el de la falta de Almacen para los efectos de artilleria de Cuartel para los dragones, y de Galera para los forzados, que es donde se conjetura principio el fuego, bien que se ignoran las circunstancias.

Dios guarde a V. E. muchos anos San Agustin de la Florida, 26 de Mayo, de 1792.

SEÑOR DON LUIS DE LAS CASAS :

[Se copio a la Capitania General y al Exmo Sor. Ministro de Hacienda en 15 de Noviembre, de 1800.]

I, Antonio Alvarez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original rough draught, on file in my office, of an official letter, marked No. 270, from the governor of East Florida to the Captain General of Cuba.

Witness my hand and seal of office, at the city of St. Augustine, State of Florida, this eighth day of December, A. D.

[L. s.]

one thousand eight hundred and forty-seven.

ANTONIO ALVAREZ, K. P. A.

my indisposition, I was upon the spot, and at once saw that the devouring flames had taken such complete possession of the upper story of the building that it was impossible to arrest their progress, even at the expense of life, for which reason, together with the well known trifling value of the edifice, I devoted all my care to saving the effects belonging to the artillery, which were stored in the lower apartment, which was, in a great measure, effected. Almost all that belonged to the detachment of dragoons, who were quartered therein, was in like manner safely gotten out, except a lot of corn, which was destroyed. The fire was arrested in its progress to attack the neighboring buildings, in which were deposited the fixed ammunition, provisions, and wood for the use of the garrison. In two hours everything inflammable about the building was converted into cinders; the upper story being of wood, was all destroyed, and of the lower story nothing now remains except the walls and chimnies which were of brick, together with the stone pillars which supported the galleries on all sides of the building.

The officers and men of the Cuba battalion, all in their proper sphere, labored with great zeal and activity, to which alone we are indebted for all that was saved. No person was injured.

At the earliest opportunity I will give your excellency the details of the affair, together with the results, which I find it impossible to do at present. It is important that I should make known to your excellency that the difficulties which before surrounded me have been greatly augmented by this misfortune, which has left me without a place to secure the artillery property, and without quarters for the dragoons, nor have I any place for the prisoners who are forced to labor. It is conjectured that the fire commenced in their quarters, but how or in what manner has not been ascertained.

God preserve you many years. St. Augustine, in Florida, May 26, 1792.

Sir Don Louis Cusas.

[This was copied for the captain general and for the most excellent minister of the treasury, on the 15th of November, 1800.]

I, Antonio Alvorez, keeper of the public archives of East Florida, do hereby certify the foregoing to be a true and correct copy of the original rough draught, on file in my office, of an official letter, marked No. 270, from the governor of East Florida to the captain general of Cuba.

Witness my hand and seal of office, at the city of St. Augustine, State of Florida, this eighth day of December, A. D. one thousand eight hundred and forty-seven.

ANTONIO ALVAREZ, *K. P. A.*

WASHINGTON, April 12, 1848.

The foregoing translation from the Spanish language, of various documents which accompany the memorial of the Rev. Benedict Madeore, addressed to the Senate of the United States, is correct.

—JOHN BALDWIN.

IN SENATE OF THE UNITED STATES.—June 29, 1848.

The Committee on Private Land Claims, to whom were referred the report of the Solicitor of the Treasury, and sundry documents, respecting the claims of the Rev. Benedict Madeore, vicar general of the Catholic church of Florida, and of the Catholic congregation of St. Augustine, Florida, to certain lots or tracts of land in or near said city, report:

That the committee approve of the suggestion of the Solicitor of the Treasury, that these claims should be submitted to arbitration, and, therefore, report a joint resolution authorizing the same.

The submission should be—

1. As to the *title* of the claimants to the respective lots or tracts of land, and buildings specified in their memorials, whether legal or equitable.

2. As to the value of said property, and of each portion thereof, at the time of the delivery thereof to the United States, and particularly of the buildings thereon at that time.

3. The value of the use and occupation by the United States since.

4. The cost and the value of the improvements since placed on each separate portion of said property.

5. The present condition and value of each separate portion of said property.

6. If said property, or any part thereof, is decided to belong to said claimants, or either of them, the amount that the United States should, in equity and justice, pay to such claimant for the relinquishment of the title thereto; and to whom the same should be paid, and for whose or what use.

7. If the property should be given up to said claimants, the amount, if any, that should be paid to the United States for said improvements.

The committee further report that the following papers, not heretofore printed, relating to said claims, should be printed for the use of the Senate, according to its order:

I. Letter of the Solicitor of the Treasury to Hon. G. M. Dallas, enclosing reports and papers, June 23, 1848.

II. Report of Solicitor, dated June 21, 1848, to Senate.

III. Circular of Solicitor to departments, asking for information.

IV. Letter of Secretary of State to Solicitor, May 15, 1848.

V. Acting Secretary of the Treasury to Solicitor, May 11, 1848.

VI. Commissioner of General Land Office to acting Secretary of the Treasury, May 8, 1848.

- VII. Secretary of War to Solicitor, May 3, 1848.
 VIII. Engineer office to Secretary of War, May 2, 1848.
 IX. Secretary of Navy to Solicitor, June 3, 1848.
 X. Surveyor General of Florida to Solicitor, May 31, 1848.
 XI. United States Attorney for northern district of Florida to Solicitor, dated Washington, June 13, 1848.

OFFICE OF THE SOLICITOR OF THE TREASURY,
 June 23, 1848.

SIR: I have the honor to enclose you a report, under the resolution of the Senate, of the 21st of March last, on the claim of the Rev. B. Madeore, to certain lands occupied by the government at St. Augustine, Florida.

I have the honor to be, very respectfully, your obedient servant,
 R. H. GILLET,
Solicitor.

Hon. GEORGE M. DALLAS,
Vice President and President of the Senate.

OFFICE OF THE SOLICITOR OF THE TREASURY,
 June 21, 1848.

To the Senate of the United States:

On the 18th of April, I received a resolution of the Senate in the following words, to wit:

IN THE SENATE OF THE UNITED STATES.—March 21, 1848.

Resolved, That the memorial of B. Madeore, vicar general, and the memorial of the trustees and members of the Catholic church at St. Augustine, Florida, and all the accompanying papers, be printed for the use of the Senate; and that the secretary of the Senate cause the translations of papers filed to be corrected and verified before the same are printed; and all said documents to be transmitted to the Solicitor of the Treasury, who is directed to examine the same, and investigate said case; and procure copies of all documents and papers relating thereto, in the public departments or offices, and other testimony that he can obtain, relating to the title of the United States to the property claimed, and communicate the same to the Senate; and make report, as to the merits of said case, as early as practicable, during the present session.

Attest:

ASBURY DICKINS,
Secretary.

A circular, a copy of which is annexed, was immediately

addressed to the heads of the several departments, calling for any information within their control. Similar calls were made upon the United States district attorney and surveyor general of Florida. Their answers are annexed. By reference to the petition, it will be seen that the Rev. Mr. Madeore claims certain real property at St. Augustine, in Florida, which is now occupied as military barracks. The question submitted is purely one of title. The evidence before me shows that prior to the destruction of the king's barracks, in 1792 or 1795, the Catholic church establishment was in the occupancy of the property in question. From that time until 1821, this property was principally occupied by Spanish troops, and since then under the direction of the War Department, for military purposes.

1. The first question in the case is, did the Spanish government, prior to the use of the premises for military purposes, invest the clergy with title to the premises? Long possession by the latter may be said to raise the presumption of title in their favor.

2. In the second place, possession from 1792, or thereabouts, to 1821, by the Spanish government, and by ours since—a period of half a century—may be said to repel this presumption, and raise one in favor of the government title. Then it becomes material to know in what character the Spanish government entered in 1792, whether as owner or tenant.

Without an intimate knowledge of Spanish laws and usages, in relation to churches and church property, I cannot properly pass upon the first question. The second must materially depend upon facts which are not before me, but which can probably be fully ascertained at St. Augustine.

If the Spanish authorities entered as purchaser, or owner, in 1792, and held as such, the present claimant can have but little to rest upon. But if it entered as a tenant, under the clergy, it would be an admission of paramount title in the latter, which must prevail, until the United States prove a superior title in themselves. But there are not facts enough before me to enable me to determine this question. The testimony is all *exparte*, and taken apparently without much professional skill. At best it can only raise presumptions, without establishing facts. I cannot believe it just, either towards the claimant or the United States, that the question of title should be disposed of, and Congress act upon the present testimony. The claim of Mr. Madeore to be the lawful representative of the church title, I have no reason to doubt; but it is not fully and legally established by the evidence. This, it is fair to infer, he can easily establish. The question of title, from the application before the Senate, is not the only one necessary to be considered in this case. If the title of the claimants is held to be good—if the government wishes to retain the property, its value, as well as its past use, and the extent of improvements upon it by the United States, becomes important. I would respectfully suggest that this whole subject be referred to some person well versed in Spanish laws and customs in relation to public domain and church property, and who can collect all the testimony bearing upon the questions

involved, and report it with his opinion thereon, to the end that Congress may act with a full knowledge of all the essential circumstances connected with the case.

The papers sent me from the Senate are herewith returned.

R. H. GILLET,
Solicitor.

No. 3.

OFFICE OF THE SOLICITOR OF THE TREASURY,
April 18, 1848.

SIR: I have the honor to enclose you a copy of a resolution of the Senate, this day received, concerning the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augustine, Florida. In order that you may the better understand the nature and extent of the claim, I also enclose you a copy of Senate report No. 99, dated March 21st, 1848. You are respectfully requested to furnish me, as early as practicable, "copies of all documents and papers relating thereto," and all other information applicable to the case, in your department, or in offices under your control, in order that I may be able to make the report contemplated in the resolution.

Respectfully, your obedient servant,

R. H. GILLET, *Solicitor.*

To the SECRETARY OF STATE.

[The same was addressed to the heads of all the departments.]

No. 4.

DEPARTMENT OF STATE,
Washington, May 15, 1848.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th ultimo, enclosing copy of a resolution and a printed document of the Senate, of the 21st March last; and requesting to be furnished with copies of all documents and papers in the Department of State relating to the claim of the Rev. Benedict Madeore, vicar general of Florida, to certain property now held by the United States, at St. Augustine, to which the resolution of the Senate refers.

In reply, I have to inform you that, after a diligent search, no papers connected with the claim in question have been found on file in this department.

I am, sir, respectfully, your obedient servant,

JAMES BUCHANAN.

R. H. GILLET, Esq.,
Solicitor of the Treasury.

No. 5.

TREASURY DEPARTMENT,
 May 11, 1848.

SIR: In reply to your letter of the 18th ultimo, asking for copies of such papers, and other information as this department might be able to furnish, touching the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augustine, Florida, I enclose a copy of a communication from the Commissioner of the General Land Office, under date of the 8th instant, upon the subject of the claim in question.

Agreeably to the commissioner's suggestion, I have directed him to call on the surveyor general, at St. Augustine, to furnish you with whatever information he may have touching this claim; and I would suggest that you should make a similar application to the United States district attorney for the *northern* district of Florida.

Printed Senate report, No. 99, 1st session 30th Congress, is herewith returned.

Very respectfully, your obedient servant,

McC. YOUNG,
Acting Secretary of the Treasury.

R. H. GILLET, Esq.,
Solicitor of the Treasury.

No. 6.

GENERAL LAND OFFICE,
 May 8, 1848.

SIR: I had the honor to receive from you the letter of the 18th ultimo, from the Solicitor of the Treasury, with a copy of the Senate's resolution of the 21st March last, and the printed Senate report No. 99, 1st session 30th Congress, relative to the memorial of the vicar general of the Catholics of Florida, and pastor of the Catholic church of St. Augustine, Florida.

These papers I herewith return; and, pursuant to your call of the 6th instant, as endorsed on Solicitor Gillet's letter, I beg leave to refer to my communication of the 29th February, 1848, to the Hon. Henry Johnson, United States Senate, printed on pages 46 and 47 of said Senate report, No. 99, herewith, as containing, with the references, all the information in my possession in the case.

I respectfully suggest, however, that it would be proper to enclose to the surveyor general, at St. Augustine, a copy of the Senate report, and also one to the United States district attorney for the eastern district of Florida, and to make a call on those officers

for such information and data as they may be able to furnish touching the title and merits of the case.

With great respect, your obedient servant,
 RICHARD M. YOUNG,
Commissioner.

McCLINTOCK YOUNG, Esq.,
Acting Secretary of the Treasury.

No. 7.

WAR DEPARTMENT,
 Washington, May 3, 1848.

SIR: I have the honor to return herewith the papers referred by you to this department on the 18th ultimo, for information respecting the merits of the claim of the trustees of the Catholic church of St. Augustine to certain property occupied for military purposes. The report of the acting chief engineer, herewith, will inform you that there is no information on the subject of any value on the files of this department.

Very respectfully, your obedient servant,
 W. L. MARCY,
Secretary of War.

To R. H. GILLET, Esq.,
Solicitor of the Treasury.

No. 8.

ENGINEER DEPARTMENT,
 Washington, May 2, 1848.

SIR: In reply to the letter of the Solicitor of the Treasury, of April 18, 1848, returned herewith, asking for copies of all documents and papers relating to the claim interposed by the Rev. Benedict Madeore, vicar general of Florida, to certain property now occupied for military purposes by the United States, at St. Augustine, Florida, and all other information applicable to the case, I have the honor to report:

That, after a careful examination of the papers in this office, and consultation with the Solicitor for information, there appear to be no documents or papers in this office referring to the claim, of any value in determining its value.

Very respectfully, your most obedient,
 FRED. A. SMITH,
Captain Engineers, A. C. E.

Hon. W. L. MARCY,
Secretary of War.

No. 9.

NAVY DEPARTMENT, *June 3, 1848.*

SIR: In reply to your letter of the 18th of April, enclosing a copy of a resolution of the Senate in relation to a claim of the Rev. Benedict Madeore, you are informed that there are no papers in the Navy Department concerning the subject of inquiry.

I am, very respectfully, your obedient servant,

J. Y. MASON.

R. H. GILLET, Esq.,
Solicitor of the Treasury.

No. 10.

SURVEYOR GENERAL'S OFFICE,
St. Augustine, May 31, 1848.

SIR: By the last mail I was placed in receipt of the commissioner's letter of 12th instant, pursuant to a letter from the acting Secretary of the Treasury, of the 11th instant, and accompanied by a printed report, made to the Senate of the United States by Mr. Johnson of Louisiana, dated March 28, 1848; and also (a copy of a copy) of the Senate's resolution, of same date, requiring the report and documents accompanied to be transmitted to you, with directions "to examine the same and investigate said case, and procure copies of all documents and papers relating thereto in the public departments or offices, and other testimony that he can obtain relating to the title of the United States to the property claimed, and communicate the same to the Senate, and make report as to the merits of said case, as early as practicable, during the present session."

The commissioner instructs me to communicate, as early as practicable, to you such information and data as I may be able to furnish on this claim, to aid you in complying with the resolve of the Senate aforesaid. In compliance, I respectfully advise you that early in the year 1821 I was clothed with powers, by Major General Andrew Jackson, under authority derived from Colonel Monroe, then President of the United States, to receive East Florida from the Spanish authorities, which I accomplished, as commissioner, on the 10th day of July, 1821, and immediately thereafter transmitted to the Secretary of State, at Washington, copies of the correspondence, the manifest of reception, with copies of the documents, inventories and plans therein enumerated (see Laws of the United States, volume 6, by John B. Colvin, published 1822, page 638.) The property received, as thus delineated, was considered by the Spanish authorities, under their instructions, as the property of the crown, never alienated, and embraced by the treaty of 1819; and if this was not the case, would they have unnecessarily incurred

the anathema set forth in a document embodied in the Senate report, chapter 11, page 33? I have carefully read the report and documents, and, to prevent misconstruction of the Rev. Mr. Madeore's memorial, in the outset I state that the inventories and plans transmitted will show minutely what were taken and held as the property of the United States. The Rev. Mr. Crosby, then the spiritual father of the Catholic church here, was urged by me to remain in charge of the church and take care of his flock, assuring him that the government would never disturb them in their occupancy; and, after considering the subject, said he would take my advice and remain. Again, if the crown had granted to the church the eminent domain, why was it deemed necessary to make sale thereof to a Mr. Jesse Fish? and, as it appears from the printed report, without paying any compensation therefor, would not the title, under British rule, have been more secure than under a fictitious sale? Admit, for a moment, that Spain had granted to the church the eminent domain, where is the evidence of such grant? and if existing, why such palpable violation of it by her high functionaries? If not granted to the church, but transferred to the United States, under the treaty of 1819, as crown property, then apply the principle established by the Congress of the United States, found in State Papers, (Duff Green, printer,) vol. 4, page 674, case No. 557, from which I quote the following:

“Individual property may, by virtue of the *eminent domain* residing in the sovereign, be disposed of without the consent of the owner, and the citizen or subject affected thereby can only look for compensation to the government granting, whilst the thing granted is absolutely disposed of, and no obligation rests upon the government to which it is transferred.”

When I reached Pensacola, whither I proceeded on the 14th of July, 1821, I made report to General Jackson, furnishing him, also, with the manifest of reception, with copies of the documents, inventories, and plans, and I am impressed with the belief that I have, among my old papers, the originals filed at my residence in Middle Florida, not accessible till I shall make a contemplated visit in October. By application to the engineer department at Washington I presume you can obtain the necessary information of the amount and character of the ruins upon which that department (or quartermaster's) built the present United States barrack, at very great expense. The site is without the last street in the plan of the city, on the common, south of which stands the magazine received by me. Under instructions from the department, some years since, I had a survey made of this city and environs by sworn deputy surveyors, a copy of which was transmitted to the General Land Office, one other to the city authorities here, with a request to convene the citizens with a view to test its correctness on the subject of individual rights, apart from that of the rights of the general government, and I was pleased to learn that it gave universal satisfaction.

If there are any points of information touching this subject with

which I am supposed to be informed on, by your stating them you shall have a prompt reply.

I have the honor to be, very respectfully, your most obedient servant,

ROBERT BUTLER,
Surveyor General.

To the SOLICITOR OF THE TREASURY.

No. 11.

WASHINGTON CITY, June 13, 1848.

SIR: Your letter of the 15th ultimo, enclosing a report made by a committee of the United States Senate on the petition of the Rev. Benedict Madeore, vicar general, &c., asking information on the subject of the petition, was not received by me until my arrival here on the 11th of the present month, having been forwarded to me from Florida.

Never having had my attention directed to the investigation of the title of the United States, to the premises in question, I cannot, at this time, give any information or opinion on the subject.

If, however, it is deemed necessary I can at once repair to St. Augustine and devote myself to the investigation of the title, and to the collection of such facts as will be furnished by the Spanish records, in the office of archives, and the old inhabitants of the town.

I have honor to remain, sir, very respectfully, your obedient servant,

C. C. YOUNG,
United States Attorney.

To R. H. GILLET, Esq.,
Solicitor of the Treasury.

SAN AUGUSTIN DE LA FLORIDA, 16 de Sepr., 1793.

EXMO SENOR: Consequente a Rl. orden de 17 de Marzo, de 1790, comunicada por esa via reservada a mi antecesor, al Brigadier Don Vicente Manuel de Zespedes, y recogido ya el producto de las alhajas de la antigua iglesia de esta ciudad y solares que, correspondientes a ella, existen en la plaza de la Havana, cuyo producto ascendio a 3,978 ps., deviendo aumentarse otros 850 a que ascenderan las limoseras oforcidas por este miserable vecindario en dinero, Maderas, calle Jornales, &c., y 800 ps. en que calculo el Ingeniero que entonces estaba en esta plaza, Don Mariano de la Rocque, el valor de la piedra de las dos iglesias antiguas, y desvaratadas, cuyas tres cantidades ascienden a 5,628 ps. dispuse yo en primeros de Abril de este ano dar principio a la fabrica de la nueva iglesia tanto mas urgente quanto la casa alta que provisionalmente

sirve ahora de tal esta del todo inutil desplomada por varias partes, llena de puntales, y condenado su uso en algunos parages por evitar en una ruina la desgracia de los fieles que se hallen dentro, como ya sucedio en el ano pp: a poco dias de trabajo empece a conocer que el calculo hecho por el antedho Ingeniero en no. de 11,358 ps. por todo el costo de la obra no podia alcanzar a las dos terceras partes de ella; y hallandose nombrado para venir a relevar a este oficial el ordinario Don Pedro Berrio espere su arribo, y verificado, le previrse hiciese nuevo computo del valor a que podria ascender la citada obra y en efecto me ha traído el que acompaño a V. E. con No. 10 y asciende a 16,615 ps. 4rs. 20 mrs. de que revejados 2,053 ps. 6 rs. 21 mrs., en que se regulan los ahorros que se le aplican con los advitrios que sin mayor perjuicio proporciona el rey, y constan del No. 2, y los 5,628 ps. con que se cuenta en las partidas detalladas anteriormente faltaran para la conclusion de tan util, como indispensable edificio, 8,923 ps. 5 rs. 33 mrs., sin cuya cantidad es moralmente imposible concluir la obra, que hoy se halla a la tercera parte de su altura, pues la absoluta pobroza de estos vecinos, los ningunos recursos que ofrece la constitution de la provincia, y la limitacion de candaes que siempre hay en sus caxas, no permiten al gobierno ensanche alguno, ni estrechar a los moradores a que aumenten sus esfuerzos por mas que lo desean, y ver concluida la obra.

En este estado no me queda otro recurso que el de apelar al piadoso corazon del rey por el conducto de V. E. cuya notorio zelo, el mejor servicio de ambas Magestades, y su poderoso influxo, espero alcansaran de S. M., que por un efecto de su magnanimidad mande librar la espresada cantidad, a favor de tan laudable objeto, de que el Pueblo y yo por lo que me intereso en su alivio quedaremos eternamente agradecidos.

Dios guarde a V. E. ms. as.

Exmo Señor DON PEDRO DE ACUNA.

I certify the foregoing to be a true copy of the original draft of a letter from the governor of East Florida to the secretary of the department of grace and justice at the court of Spain, on file in the public archives. San Augustine, 9th October, 1848.

ANTONIO ALVAREZ,

In charge of public archives.

ST. AUGUSTINE IN FLORIDA, *September 16, 1793.*

MOST EXCELLENT SIR: Consequent to the royal order of 17th March, 1790, communicated through that secret source to my predecessor, the brigadier Don Vincente Manuel de Tespedes, and there being already collected the proceeds of the ornaments of the old church of this city, and lots of land which belonging to it, exist in the city of Havana, which proceeds amounted to \$3,978, there must be added \$850 more, the probable amount of donations offered by these wretched inhabitants in specie, lumber, lime, labor, &c., and \$800 at which the engineer who was at that time in this place,

Don Mariano de la Rocque, calculated the value of the stone in the two old and dilapidated churches, which three sums make up in all \$5,628. I ordered, in the first part of April this year, the commencement of the building of the new church, the more urgent as the high house which is now serving provisionally as such, is entirely useless, fallen to the ground in various parts, full of posts to support the walls, and its use stopped in some places to avoid, in case of ruin, the destruction of the faithful who may be in it, as it has already happened last year. A few days after commencing the work, I began to suspect that the calculation made by the before mentioned engineer, of \$11,358 to cover its whole cost, would not be sufficient for two-thirds of it, and as the Ordinary Don Pedro Berrio had been appointed to come and relieve that officer, I awaited his coming, and on his arrival I ordered him to make a new calculation of the amount which would be needed to complete the work, and he has actually brought me the one which I now accompany to your excellency, marked No: 1, amounting to \$16,615 4rs. and 20 maravedies; from which deducting \$2,053 6rs. 21ms., which it is calculated the savings will amount to, and which are applied to this purpose, with the resources supplied by the king, appearing in No. 2, and the \$5,628 on which we can depend, as before specified, there will be wanting for the conclusion of so useful as well as indispensable a building, \$8,923 5rs. 33ms., without which sum it is morally impossible to finish the work that is now about one-third high; as the absolute poverty of the inhabitants here, the scarcity of resources offered by the constitution of the province, and the limited amount of monies always existing in its coffers do not allow the government any extension, nor to compel the inhabitants to increased efforts for all that they desire it, for the purpose of seeing the work done. In this state, there is no other resource left me but to appeal to the pious heart of the king through your excellency, whose notorious zeal, the best service of both majesties, and your powerful influence, I hope will obtain from his majesty, that by an effect of his magnanimity, he will order the remission of the said amount in favor of such a praiseworthy object, for which the people, and myself for the interest I feel in their relief, will be for ever grateful.

God preserve your excellency many years.

To his excellency, Don PEDRO DE ACUNA.

ARANJUEZ, y Febrero 7, de 1794.

En vista del nuevo calculo, que V. S. hizo formar para la fabrica de la Parroquia de esa plaza, con la experencia de haver empleado y consumido en un tercio de ella los cortos candales, que habia recogido de sus ventas y de las limornas, que voluntariamente ofrecio el vecindario: ha venido el rey en aprobar los arbitrios propuestos por V. S. y en aplicar al mismo objeto del ramo de vacantes maiores y menores de Nueva Espana los 8,924 pesos, que V. S. ha pedido en carta de 16 de Septiembre del ano proximo pasado n. 24,

y que necesita, segun el calculo referido, para concluirta. Con esta fha expido el aviso correspondiente al ministerio de hacienda a fin de que tenga efecto quanto antes esta soberana resolucion, y prevengo a V. S. de orden de S. M. qui inmediatamente que perciva el todo el parte de aquella suma dedique su zelo y actividad a concluir una obra tan necesaria y urgente, procurando su solidez, la economia posible, y la buena inversion de los candaes destinados a ella, y dando a su tiempo cuenta justificada. Dios que a V. S. ms. as.

EUGO. DE LLAGUNO.

Senor Governador de San Augustin de la Florida.

I certify the foregoing to be a true copy of an original letter from the secretary of the department of grace and justice at the court of Spain, to the governor of East Florida, on file in the public archives. St. Augustine, 9th October, 1848.

ANTONIO ALVAREZ,
In charge of public archives.

[Translation.]

ARANGUEZ, *February 7, 1894.*

In view of the new calculation which your lordship had made for the building of the parish church of that city, with the experience of having employed and consumed for one-third of it the small amounts which had been collected out of the revenue, and the contributions offered voluntarily by the inhabitants, the king has been pleased to approve of the means proposed by your lordship, and to apply to the same object, out of the branch of larger and lesser vacancies of New Spain, the \$8,924 asked for by your lordship in your letter of 16th September of the last year, No. 24, and which you need according to the said calculation to finish it. Under this date I issue the corresponding advice to the ministry of finances, to have this sovereign resolution duly carried into effect, and I inform your lordship, by order of his majesty, that immediately you receive the whole or part of said sum that you must use your zeal and activity to have so necessary and urgent a work finished; procuring the utmost solidity, all possible economy, and a good investment of the monies destined for that purpose, and render in due time a certified account.

God preserve your lordship many years.

EUGO. DE LLAGUNO.

To the GOVERNOR OF SAN AUGUSTINE IN FLORIDA.

SAN AUGUSTIN, DE LA FLORIDA,
1º de Abril, de 1807.

El aseo y umpieza, tan necesario, dentro de la distancia de 1,500 varas de la fortificaciones me ha conducido a discurrir el modo de

practicarlo en esta Plaza, conuinando con el local las Rs. ordenanzas, maximas militares y politicas y la economia del Rl. Erario.

Como esta tierra estaria naturalmente Uena de Bosque seria muy costoso al Rey el haberta de mantener limpia y aun difiicil atendiendo a la ninguna putualidad con que vienen aqui los situados y de consiguiete la falta de dmo. y de credito.

Dividida, pues, la tierra entre particulares con condicion de que solo siembren hortalizas, y de ningun modo planta alguna que levante mucho de tierra se conseguira el objeto tan importante, resultando todavia utilidad y como didad al recindario. No devera darse la propiedad de la tierra, pues quando el Rey la necesitase habria de quedar franca y sin derecho de remuneracion el usufructuario.

Para que obras particulares comigan el fruto de su trabajo les es indispensable el formar cercas, pues de lo contrario el ganado vacuno y Caballar les imposibilitaria toda ventaja. Tambien necesitan en donde recogerse, para evitar robos, &c. Toda fabrica es contraria pero en la obligacion de discurrir lo mas conveniente al espiritu de la ordenanza y maximas militares, represento a V. S. ge. en el local en que nos hallamos puede hacerse un camino ancho de 24 varas desde puerta de tierra hasta las 1,500 varas corriendole a uno y otro lado una Barrera de postes sencillos con tres varas horizontales, y en el limite de las 1,500 varas cercar del mismo modo. Todavia, para que pueda interesarles la tierra es indispensable convenir tambien en que tengan un albergue, y anteponiendo esto a la formacion de un Bosque creo preferible permitirles una choza de guano a cada individuo de los que esten en el repartimiento: dha choza podra limitarse a q pies de ancho, 12 de largo, y 10 de alto. todas ellas ge. a lo mas pueden ser 20 deveran estar formadas sobre la barrera del camino para ge. en un caso de necesidad un hombre vaste para prender fuego a todas en una carrera.

Para mantener la Linea atrinchera da ge. corre desde el Castillo al Cubo sera bueno conservar un espacio de tierra de 200 varas de ancho y todo el largo de obra Linea para que sus tepes puedan sostenerla.

El repartimiento de obras tierras divera verificarse en revanadas perpendiculares al camino para ge. todos tengan la comodidad que el proporciona con independencia del vecino; cuya forma contribuiria a hermosear la salida del Pueblo.

Todo lo qual represento a V. S. en virtud delarto. 23, tit. 6º, tomo 1º, pag. 86.

Dios gue a V. S. ms. as.

MANUEL DE HITA.

Senor Don ENRIQUE WHITE.

ST. AUGUSTINE, *October 9, 1848.*

I certify the foregoing to be a true copy of an original letter on file in the public archives, from the chief engineer to the governor of East Florida.

ANTONIO ALVAREZ,
In charge of the public archives.

SAN AUGUSTIN, 1° de Abril, de 1807.

Apruebo quanto vrnd me propone en oficio de hoy relativo al modo con que ha de sembrarse y cercarse el terreno comprehendido en la distancia de 1,500 varas de las fortificaciones, por los individuos a quienes les esta concedido temporalmente te por el gobierno.

Dios guarde a vrnd. muchos anos.

SENOR DON MANUEL DE HITA.

ST. AUGUSTINE, October 9, 1848.

I certify the foregoing to be a true copy of the original draft of a letter from the governor of East Florida to the chief engineer, on file in the public archives.

ANTONIO ALVAREZ,
In charge of the public archives.

[Translation.]

ST. AUGUSTINE, April 1, 1807.

The neatness and cleanliness so necessary within the space of 1,500 yards from the fortifications, has induced me to contrive the means of effecting it in this city, adapting to the ground the royal ordinances, military and political rules, and bearing in mind the economy of the royal finances.

As this land would be naturally full of trees it would be very expensive to the king to keep it clean, and even difficult if we consider the little punctuality with which the allowances arrive here, and consequently the want of money and credit.

Therefore, if the land is distributed amongst individuals with the condition that they are to plant on it only vegetables, and on no account any tree that grows much from the ground, the object will be attained, and redound to the benefit and comfort of the inhabitants. No right of property to the land will be given, as when the king should need it, it must remain free, and the possessor will have no right to claim any remuneration.

So that these individuals may reap the fruits of their labor, it is indispensable for them to make fences, as without them the cattle of all kinds would destroy all the advantages. They, likewise, require a place of shelter to avoid robberies, &c. All kinds of buildings are impediments; but being obliged to contrive some plan in conformity to the ordinances and military rules, I represent to your lordship, that in the place where we now are, a road 24 yards broad can be made from the Puerta de Tierra to the 1,500 yards, running on both sides of it a barrier of simple posts with three horizontal yards, and hedging the boundary of the 1,500 yards in same manner. Moreover, to make the land of any interest to them, it is indispensable to agree to their having a dwelling house, and considering that this is better than that a forest should grow there,

I believe it preferable to allow them a palm hut for each individual to whom ground has been allotted; said hut can be limited to nine feet wide, twelve long, and ten high; all of them, which are not to exceed twenty, must be built upon the barrier of the road, so that, in case of necessity, one man may be sufficient to set fire to the whole at one run.

To keep up the entrenched line running from the castle to the Cubo, it will be prudent to leave a piece of ground 200 yards wide and all the length of the line, so that the green sods may sustain it.

The distribution of said grounds must be made in slices perpendicular to the road, so that every one may have the advantage offered by it, and independent of his neighbor; which form will contribute to give a better appearance to the environs of the town.

All of which I report to your lordship in virtue of the article 23, title 6, volume 1, page 86.

God preserve your lordship many years.

MANUEL DE HITA.

Sr. Dr. ENRIQUE WHITE.

ST. AUGUSTINE, *April 1, 1807.*

I approve all that you propose in your official communication relative to the manner in which the ground, embraced in the distance of 1,500 yards from the fortifications, must be planted and hedged by the individuals, whom it has been temporarily granted to, by the government.

God preserve you many years.

Sr. Dr. MANUEL DE HITA.

[Extracts.]

Inventarios formados por el Ingo. mto. del Detalle Don Ramon de la Cruz Tente. del Regimto Expedicionario de Malaga 31 de Linea y Comandte. de las obras de Fortificn. de esta Plaza, y el primer Ayerdante de ella Don Pablo Rosete Tente. de Esto, de todas las fortalezas y edificios publicos ge. se conocen son pertenecientes a la Nacion, pa. la correspondente entrega de allas el Gobierno ge. ha de hacerla al comisionado de los Estados Unidos de America.

Cuartel de San Francisco, No. 5.

Esta edificio tiene su figura como manifiesta el plano particular de la plaza, esta cituado junto al terreno ge. ocupavan los cuarteles guemados. Forma dos quadrilong. unidos por otra, de suerte ge. tiene figura de Martillo por el L. y O. en todo el se comprehenden cocinas y pilares del corredor temendo de longitud guarenta y dos varas, y dos pies y de latitud doce y un pie y sus pulgadas cada

cuadrilongo de los dos. El otro ge. correspondia a las cortinas, contando desde el muro de divicion la longitud es de treinta y sus varas pie y la latitud de nueve varas dos pies. De estos dos cuerpos ge. formaban el edificio nada existe ge. pueda darse por util sus escaleras corredores, Pisos, Puertas, embigados, techos y tejados estan completamente destruidos y solo quedan algunos muros con su completa elevacion y espesor y ge. conservan el nivel sobre sus simientos, hay tres cuerpos con el piso natural, el primero es de quatro varas y sus pulgadas todo de mamposteria y los otros de tabique. La altura del segdo. cuerpo es de quatro varas en el qual marcan ocho pavellones con sala alcoba y chiminea. En el centro marca un pasadizo de comunicacion a los corredores, ge. se forman con el mismo numo. de Pilares de quatro pulgadas menos grueso ge. los del piso natural con su baranda todo destruido.

La altura del 3er. cuerpo es de dos varas dos pies seis pulgadas en donde hay senalados seis aposentos con sus chimineas. El hueco que forma el tesado encimadel tercer piso es de una vara un pie seis pulgadas corre una cerca de piedra formando patio temindo para comunicacion exterior un vastrillo de madera en buen uso con su herrage completo.

Iglesia viesa, No. 16.

En la plaza manzano No. 23 solar 164, se hallaba cituado como manifiesta el plano particular, obra Iglesia hoy no existe mas ge. el terreno, su extencion ocupa tres cuadrilateros unidos, los de los testereros, su longitud nueve varas un pie y ocho pulg. su latitud catorce y un pie. El del centro la longitud es de diez y ocho varas dos pies y ocho pulgadas y la latitud ocho varas un pie y dos pulgadas.

Iglesia Parroquial, No. 18.

Se senala en el Plan particular en la manzano 18 junto al solar de la Escuela cuyo plan y perfil se demuestra en el plano No. 6.

SAN AUGUSTIN, DE LA FLORIDA, 4 de Junio de 1821.

Entregue,

RAMON DE LA CRUZ.
TABLO ROSETE.

Recibi,

T. W. J. BAIRD,
Lieutenant, 3d regiment United States artillery.

Intervine,

JOSE COPPINGER.

ST. AUGUSTINE, *October 9, 1848.*

I certify the foregoing to be true and correct extracts of so much of the original inventory of the public property in East Florida, transferred by Spain to the United States, as relates to St. Francis barracks and the old and new Catholic churches of St. Augustine, which inventory is on file in the public archives of East Florida.

ANTONIO ALVAREZ,

In charge of the public archives.

[Extracts.]

Inventories made by the engineer of the detail, Don Ramon de la Cruz, lieutenant of the Malaga regiment, and commandant of the works of fortifications of this city, and the first adjutant, Don Pablo Rosete, a lieutenant of the army, of all the forts and public buildings known as belonging to the nation, for the delivery of them to the government, which is to transfer the same to the commissioner of the United States of America.

St. Francis Barracks—No. 5.

This building is shaped as shown in the special design of the place. It is situated near the ground which used to be occupied by the burnt barracks.* It forms two oblong squares, connected by another, so that it has the shape of a hammer on the south and west. It comprises kitchens and pillars of the corridor, each one of the two squares being forty-two yards two feet long, and twelve yards one foot and six inches broad; the other, which belonged to the ramparts, reckoning from the wall of division, is thirty-six yards one foot long, and nine yards two feet broad. Of these two bodies, which formed the building, nothing exists which can be considered useful. The staircases, galleries, floors, doors, tops, roof and tiled roof, are completely destroyed; and there are only some walls with their complete height and thickness, and which preserve their level upon their foundations. There are three bodies with a ground floor; the first has four yards and six inches, all of stone, and the rest of thin walls. The height of the second body is four yards; and in it are marked eight lodgings, with parlor, chamber and chimney. In the centre it marks a passage of communication to the galleries, which are formed with the same number of pillars, of four inches less thickness than those with the ground floor, with its railing all destroyed.

The height of the third body is two yards two feet six inches, where there are six chambers and their chimneys marked. The open space formed by the tile roof over the third story, is of one yard one foot six inches; and there runs a stone fence, forming a

* *Cuarteles* means barracks, quarters, districts, ward of a city.

court yard, having a wooden portcullis in good state, with the iron work completed to communicate with the outside.

Old Church—No. 16.

In the square, area No. 23, lot 164, said church existed, as shown in the special design. Nothing exists, this day, but the ground. Its extensions occupies three united quadrilaterals. Those of the fore part are nine yards one foot and eight inches long, and fourteen yards one foot broad; that of the centre is eighteen yards two feet and eight inches long, and eight yards one foot and two inches broad.

Parochial Church—No. 18.

It is marked in the special design in the area No. 18, near the school lot, the draught and outline of which is shown in design No. 6.

ST. AUGUSTINE, (Florida,) June 4, 1821.

I delivered,

RAMON DE DA CRUZ,
PABLO ROSETE.

I received,

T. W. J. BAIRD,
Lieutenant, 3d regiment U. S. artillery.

With my intervention,

JOSE COPPINGER.

Por la carta de V. S. fha 1st de Noviembre delano proximo parado y documentos que la acompanon, queda enterado el rey de estar concluida la fabrica de la Iglesia Parroquial de esa Plaza habiendo sobrado 995 rs. y 21 mrs. plata purte de los 106 743 con 33 mrs. de la propia moneda que estaban depositados pa. dicho objeto en vitrud de Rs. ordenes, con lo demas que en dha. carta se expresa, y S. M. ha tenido a bien conformarse con lo expuesto por el ingeniero director de la obra relativo a que los mencionados 995 r. y 21 mrs. plata fuerte se empleen en las Planchas de Plomo que falta colocar en las Limas y Cumberas de la cubierta de la Yglesa para preservarlás de la humedad; lo que de en Rl. drn. participo a V. S. para su inteligencia y complimiento. Dios que a V. S. ms. as. Aranguez, 11 de Marzo, 1799.

JOSEF ANTO. CABALLERO.

SEÑOR GOVERNOR DE SAN AUGUSTINE, *de la Florida.*

I certify the foregoing to be a true copy of an original letter from the secretary of the department of grace and justice, at the

court of Spain, to the governor of East Florida, on file in the public archives. St. Augustine, 9th October, 1848.

ANTONIO ALVAREZ.

In charge of the public archives.

By your lordship's letter of 1st November, of last year, and documents accompanying it, the king has been informed that the building for the parish church of that city is completed; there being a residue of 995 rials, 21 ms. silver out of the 106,743 rials, 35 ms. silver which were deposited for said purpose, in virtue of royal orders, with all the rest expressed in the said letter; and H. M. has been pleased to agree to what is reported by the engineer director of the work, that the above mentioned 995 rs. 21 ms. be used for lead plates which have yet to be placed on the channels and tops of the roof of the church, to preserve them from dampness, which by royal order I communicate to your lordship for your intelligence and fulfilment. God preserve your lordship many years. Aranguez, 11th March, 1799.

JOSEF ANTO. CABALLERO.

SEÑOR GOVERNOR OF ST. AUGUSTINE, *in Florida.*

SAN AUGUSTIN, DE LA FLORIDA,
1^o de Noviembre, de 1798.

EXMO. SEÑOR: Es la adjunta relacion de los gastos hechos en la obra de la Iglesia Parroquial de esta Plza que de real orden se empenzo en Abril de 92, y se ha concluido en Agosto, del presente ano.

Los nuevecientos noventa y cinco reales y veinte y un mrs. de plata fuerte que en otra relacion se expresan sobrantes del fondo depositado en Caxas reales, me dice el Ingeniero Comandante de estas reales obras de fortificacion, deveran emplearse en Planchas de Plomo que vayan a colocar en las Limas y Cumbreras de la Cubierta para precaverlas de humedad, bein que interinamente se ha tomado la precaucion, por no hallarse plomo en los Almacenes del Rey su en los de particulares, de colocar unos pedazos de Plancha en las uniones de las piezas, y dar a le vestante de ellas tres manos de Pintura.

So que comunico a V. E. para q. le ponga en noticia de S. M. Dios guardea a V. E. ms. as.

H. W.

EXMO. SEÑOR D. GASPARD MELCHOR DE JOVELLANOS.

ST. AUGUSTINE, October 9, 1848.

I certify the foregoing to be a true copy of the original draft of a letter from the governor of East Florida to the secretary of the

department of grace and justice, at the court of Spain, on file in public archives.

ANTONIO ALVAREZ,
In charge of the pub. archives.

[Translation.]

ST. AUGUSTINE, IN FLORIDA,
1st November, 1798.

MOST EXCELLENT SIR: The annexed is a report of the expenses incurred in building the parish church of this city, which, by royal order, was commenced in April, '92, and finished in August, of the present year.

The nine hundred and ninety-five reals and twenty-one maravedis of silver which appear in said report as a residue out of the funds deposited in the royal treasury, the engineer commandant of these royal works of fortifications informs me, must be invested in the purchase of lead plates which have yet to be placed in the channels and tops of the roof to preserve them from dampness; although for the time being, the precaution has been had, there not being any lead in the depots of the king or stores of individuals, to place some pieces of plate in the joints of the pieces, and to give the rest of them three coats of paint.

Which I communicate to your excellency to convey it to his Majesty.

God preserve your excellency many years.

H. W.

To His Excell'cy, Ser. D. GASPAR MELCHOR DE JOVELLANOS.

To incorporate the Roman Catholic congregation of the city of St. Augustine.

Be it enacted by the governor and legislative council of the Territory of Florida, That Bernardo Segui, William Travers, Peter Miranda, Eusebio Tomez, Joseph B. Lancaster, and Francis J. Fatio, church wardens, and their successors in office, shall be, and they are hereby, declared to be a body corporate, by the name and style of "The Church Wardens of the Roman Catholic Church of St. Augustine, called St. Augustine's Church;" and they, the said Bernardo Segui, William Travers, Peter Miranda, Eusebio Tomez, Joseph R. Lancaster, and Francis J. Fatio, church wardens, as aforesaid, shall be invested with all manner of property, both real and personal, all moneys due, or to grow due, donations, gifts, hereditaments, privileges, and immunities whatever which may belong to the said church, or which may be made or transferred to them or their successors in office, to have and to hold the same for the proper use and benefit of the said church; and the said church wardens and their successors in office shall be, and they are hereby

declared to be, capable of suing and being sued, and of using all necessary legal steps for recovering and defending any property whatever which the said church may hold, claim, or demand, and is herein secured, or otherwise; and also with power to make all necessary regulations and rules, and to recover in their own name or otherwise, as well the said moneys as other property, with all rents, issues, and profits of the same, or of any lands, moneys or other estate belonging thereto, or of any part thereof: Provided, nevertheless, That if the property owned by the said church shall at any time exceed twenty-five thousand dollars, in addition to the property at present owned by said church, the overplus shall accrue to the territory.

SEC. 2. *Be it further enacted*, That the members of the said church shall, on the first Monday of April, in every year, elect six discreet persons; from among the members of the said church, to act as wardens of the said church, who shall be, and hereby are declared to be, vested with all necessary powers to carry the purposes intended by this act, fully into effect.

SEC. 3. That in case no election shall, be held from unavoidable causes, at the time appointed by this act, the charter of the corporation shall not on that account be forfeited, but it shall be the duty of the said church wardens to name another day for holding the election, as near as convenient to the one appointed by this act, and which said election shall be as valid and legal as if the same had been held at the time prescribed by this act.

SEC. 4. *And be it further enacted*, That the act entitled "An act to incorporate the Roman Catholic Congregation of St. Augustine," approved July 2, 1823, be, and the same is hereby, repealed.

Approved December 30, 1824.—(*Florida Laws, 1828, No. 192, page 105.*)

Consequente a la resolucion de V. S. en oficio que se servio pasarme en el 1 de Abril, en contestacion a otro mio de la misma fha, relativo a el asco y limpreza dentro de la distancia de las 1,500 varas de las fortificaciones al Norte de esta Plaza, se ha dividido el terreno entre los individuos a quienes les esta concedido temporalmente por el Gobierno vaso esta forma. El terreno de la derecha saliendo por puerta de tierra a Nicolas Perez $85\frac{2}{3}$ varas de frente sobre el costado del camino, a Sebastian Garcia $51\frac{5}{6}$, a Juan Yanopoli $60\frac{1}{2}$, a Pedro Estopa $60\frac{1}{2}$, a Juan Villalonga $341\frac{1}{2}$, a Jose Carmona 25, a Anastacio Mambromati $235\frac{1}{4}$, a Agustin Santana $70\frac{3}{4}$, a Juan Gonzales $144\frac{1}{3}$, a Thomas Andrew $45\frac{3}{4}$, a Francisco Arnau 158, a Benito Segui 57. El terreno de la izquierda saliendo por puerta de tierra, a Jose Pezo de Burgo $50\frac{1}{2}$ varas de frente sobre el costado del camino, a Juan Triay $219\frac{1}{3}$, a Pedro Frajada $119\frac{1}{2}$, a Bartolome Lopez $58\frac{1}{2}$, a Miguel Villalonga $154\frac{5}{6}$, a Jose Balla $281\frac{5}{6}$, a Pedro Triay $452\frac{1}{6}$. El terreno de cada individuo es una revanada de tierra paralela a la Linea, y se les ha prevenido que los lindes sean mar-

cados con una senda de una vara de ancho. Los individuos de la derecha estan alindabos por su espalda con el Rio del Norte, y los de la izquierda con el Rio de San Sebastian. A unos y a otros se les ha dado la tierra despues de tomar una rebanada de 200 varas de ancho para los tepes que han de servir al entretenimiento de la linea.

Como las medidas agraviadas en esta Provincia son Inglesas, se han hecho las mediciones indicadas por la vara inglesa.

Dios guarde a V. S. ms. as. San Agustin de la Florida, 26 de Mayo de 1807.

MANUEL DE HITIA.

Sor. Dn. ENRIQUE WHITE.

SAN AGUSTIN, 3 de Junio, de 1807.

Apruebo el presente reparto de tierras, y en su consecuencia despachese por la secretaria a los interesados, las correspondientes certificaciones, vago las condiciones que manifiesta el mismo Ingeniero Comandante en oficio de 1 de Abril ultimo. Y respecto a que posteriormente han ocurrido varias alteraciones dimana das de haver algunos desado las tierras que se les midieron, y haver otros pretendido las que aquellos desaron: se pasara al expresado Ingeniero Comandante copia autorizada de este decreto, manifestandose a continuacion dichas variaciones y alteraciones.

WHITE.

Se cumplio el anterior decreto pasandoze la copia certificada ge. en el se expresa al Ingeniero Comandante con fecha de 17 del citado mes.

PIERRA.

Individuos ge. han hecho dexacion de los tirrenos ge. se les midieran y que dan vacantes.

Pedro Estopa,
Tomas Andreu,
Benito Segui.

Variaciones.—El terreno de Pedro Fuxada se ha concedido a Andreas Paceti, el hijo.

El de Pedro Triay a Juan Lorenzo.

El de Jose Carmona y el de Anastacio Mambromaty a D. Jose Llorente.

El de Agustin Santana, a Juan Mestre.

PIERRA.

ST. AUGUSTINE, October 9, 1848.

I certify the foregoing to be a true copy of an original letter from the chief engineer to the governor of East Florida, and other proceedings attached thereto, on file in the public archives.

ANTONIO ALVAREZ,
In charge of the public archives.

[Translation.]

ST. AUGUSTINE, FLORIDA,
May 26, 1807.

Consequent to the resolution expressed in the official communication which your lordship was pleased to address me in answer to mine of the 1st April, relative to the neatness and cleanliness of that part of the ground situated within a space of 1,500 yards from the fortifications on the north side of the city, the ground has been distributed amongst the individuals to whom it was temporarily granted by the government in this form. The ground to the right, going out by the puerta de tierra (a gate) to Nicolas Perez, 85 2-3 yards, fronting on the road; to Sebastian Garcia, 51 5-6; to Juan Yanopoli, 60 1-2; to Pedro Estopa, 60 1-2; to Juan Villalonga, 341 1 2; to Jose Carmona, 25; to Anastasio Mambromati, 235 1-4; to Agustin Santana, 70 3-4; to Juan Gonzales, 144 1-3; to Thomas Andreu, 45 3-4; to Francisco Arnau, 158; to Benito Segui, 57. The ground to the left, going out by the puerta de tierra (a gate) to Jose Pezo de Burgo, 59 1-6 yards, fronting on the road; to Juan Triay, 219 1-3; to Pedro Frajada, 110 1-6; to Bartolome Lopez, 58 1-2; to Miguel Villalonga, 154 5-6; to Jose Balla, 281 5-6; to Pedro Triay, 452 1-6. Each individual's ground is a slice of land parallel to the line; and they have been cautioned that their landmarks must be traced with a path one yard broad. The individuals having the grounds to the right, have for limit on the back part the Rio del Norte; and those on the left, the Rio San Sebastian. The land has been allotted on both sides, after taking a slice of 200 yards broad for the green sods which have to serve as a boundary to the line.

As all agrarian measures in this province are English, the above mentioned measurements have been practised by the English yard.

God preserve your lordship many years.

MANUEL DE HITA.

SR. DON ENRIQUE WHITE.

ST. AUGUSTINE, *June 3, 1807.*

I approve the present distribution of land; and, in consequence, issue, through the secretary's office to those concerned, the corresponding certificates, on the conditions expressed by the same engineer commandant in his communication of 1st April last. And whereas several alterations have occurred afterwards, caused by some having left the grounds allotted to them, and others having asked for the grounds that were left, pass to the engineer commandant a certified copy of this decree, expressing said changes and alterations in continuation.

WHITE.

The foregoing decree has been complied with, and a certified copy, as expressed therein, passed to the engineer commandant, under date of the 17th of the said month.

PIERRA.

Names of the individuals who have abandoned the grounds measured out to them, whose grounds are unoccupied:

Pedro Estopa,
Tomas Andreu,
Benito Segui.

Alterations.—Pedro Fujada's ground has been granted to Andres Paceti, the son.

That of Pedro Triay, to Juan Lorenzo.

Those of Jose Carmona and Anastasio Mambronati, to Jose Llorente.

That of Agustin Santana, to Juan Mestre.

PIERRA.

SECRETARIA MILITAR,
Habana, Noviembre 13, de 1848.

No he contestado a la comunicacion de V. S. del 6 del corriente mes, en que me dice haber sido comisionado por su gobierno el Hon. S. R. Mallory, para obtener en esta ciudad puebas relativos a ciertos reclamos de tierra en la Florida del Este, por el vicario general en la Yglesia Catolica en San Augustin, y me pide en su consecuencia le permita su acceso en estos archivos pa. comprobar con los originales las copias de los papeles que tiene sobre este particular, por que deseaba antes de darle dicha contestacion requerir antecedentes en los casos de igual naturaleza que hasta ahora se habiesen presentado para efectuar lo mismo que se hubiese hecho en otras ocasiones.

No obstante pues de que estoy conveniendo no haberse ofrecido hasta el dia semefante reclamacion, deseo de manifestar en esta parte mi deferencia a su gobierno, y a V. S. mismo, he dado orden pa. que el oficial de mi secretaria Don Pedro Alcantara de la Paz, que ha ordenado y arreglado todos los papeles procedentes de los Floridas que aqui existen, acompana al Senor Mallory en el registro que desea practicar, con cuyo objeto podra V. S. decirle se persone en este Palacio de Gobierno en cuales quier dia desde las nueve de la manana hasta las dos de la tarde para tomar copia a haur la comprobacion de los documentos que se desean, en el caso de que se encuentren en el archivo.

Dios guarde a V. S. muchos anos.

EL CONDE DE ALCOY.

Senor CONSUL DE LOS ESTADOS UNIDOS EN ESTA PLAZA.

[Translation.]

MILITARY SECRETARY'S OFFICE,
Havana, November 13, 1848.

I have not answered your lordship's communication of the 6th inst., informing me that the Hon. S. R. Mallory has been commissioned by his government to obtain in this city evidence in relation to certain claims to land in East Florida, made by the vicar general of the Catholic church in St. Augustine, and requesting of me to permit his access to the archives, for the purpose of comparing with the originals the copies of the papers in his possession, upon the matters in question; because I wished, before sending you my reply, to acquire information of the cases of equal nature which have happened before now, so as to do the same as may have been done on other occasions.

Notwithstanding, I am convinced that a similar reclamation has not been offered to this day, being desirous of showing in this affair my deference to your government and to your lordship, I have given orders for the officer of my "Secretaria," Don Pedro Alcantara de la Paz, who has put in order and arranged all the papers which came from the Floridas, existing here, to accompany Mr. Mallory in the search which he desires to effect; for which purpose your lordship may tell him to appear in person at the Government Palace, on any day from 9, a. m., to 2, p. m., to take copies or make comparisons of the documents which he may desire, should they exist in the archives.

God preserve your lordship many years.

THE COUNT OF ALCOY.

To the CONSUL OF THE UNITED STATES IN THIS CITY.

[Translation.]

HAVANA, 10th November, 1848:

RIGHT REVEREND FATHER: When, on the tenth day of July, A. D. one thousand eight hundred and twenty-one, the Floridas were transferred to the United States by virtue of the treaty of eighteen hundred and nineteen, the Spanish commissioners charged by their government with the duty of delivering the country, transferred to those of the United States the parochial church of St. Augustine, the St. Francis barracks, (also known as the convent of St. Francis,) and two lots of land in St. Augustine, all as the property of the king; and the government of the United States thereafter regarded and treated all this property as its own.

The vicar general of the Catholic church of Florida has lately claimed this property in behalf of his bishop, for his flock, alleging that at the time of its transfer to the United States it was the property of the church, and not of the king; that the king, in fact, could not confer, nor could the United States receive, any

title by such transfer, and that it was executed by mistake, ignorance, or a wilful disregard of the vested of the rights church.

The Congress of the United States, with an earnest desire to render full justice to the church, entertained the petition of the vicar general, and his claims are now undergoing investigation. In proof of his allegation that his church could rightly hold property, independent of the crown of Spain, the vicar general asserts that it did actually thus hold, in its own right, ten lots of land in this city of Havana, the rents of which were received by the church of St. Augustine, until the transfer of the Floridas to the United States, and that after that period they continued to be received by the bishop of Havana.

I have had the honor of being appointed, as well by the vicar general as by the United States, the arbitrator to do justice between the parties; and my business here is to procure all information, documentary or otherwise, which may enable me to do so, and to determine whether the property in question belongs to the United States or to the church.

It is in your excellency's power to inform me:

1st. Whether the allegation of the vicar general, relative to the lots in this city be correct or not; and the said lots are now held whether independent of the crown or not.

2d. As to the legal right of the Catholic church of St. Augustine, under the government of Spain, (previous to 1821,) to hold property separate and independent of the king.

3d. Whether the king of Spain could, without violating the rights of the church, cede to the United States the church and its property.

The Congress of the United States will be convened early in the approaching month of December, when the claim in question will be disposed of, if the testimony which I seek can be procured in time. But a brief time is allowed me to collect it, and I am most anxious to have your excellency's opinions regarding them, as highly important.

Had I heard less of the piety, zeal, and learning of your excellency, I might hesitate thus to intrude upon the precious time devoted to the welfare of your people; but these very attributes induce me frankly to invoke your aid in doing justice.

I trust that your excellency will perceive that nothing is sought by this application but the discovery of information which may enable me to do justice between the government and the church.

I have the honor to be, respectfully, your obedient servant,

S. R. MALLORY,

*Arbitrator between the Government of the
United States, and the Church of Florida.*

HABANA, y Noviembre 15, 1848.

MUI SENOR MIO, Y DE MI MAYOR ESTIMACION: Correspondiendo a los deseos de V, procedo a manifestarle mi parecer acerca de los particulares que me indico en la ultima conferencia que turimos.

1º. Es indudable que la iglesia puede adquirir y posee en efecto bienes que ella misma administra, y que no se pueden enagenar sino en ciertos casos prefijados por muestras leyes, aplicandose esta observacion a los conventos, monasterios y demas casas pias.

Vease Fuero Real, Libro 1º, titulo 5º; Partida 1, titulo 14; Nov. Récompon., Libro 1º, titulo 5º; Decretalia Gregorii, Lib. III., titulus 13; Rebus Ecclesie alienandis vel non—in Sexto Decretalium, titulus 9, id. id.; Clementinarum, Lib. III., titulus 4, id. id.; L. Araragantium, Lib. III., titulus 4, id. id.

2º. No es menos dudoso que las cosas de la Iglesia no pueden perderse sino por la prescripcion de cuarenta anos, con buena fe, segun el Derecho Canonico, sin ella, segun el derecho civil.

Vease Partida III., titulo 26, ley XXI., comparada y modificada por la XXVI.; Decretalia Gregorii, Lib. II., tit. 26; De prescriptionibus—in Sexto Decretalium (Bonifacii) VIII., titulo 13, cap. 2.

Acerca de la noticia que de este asunto tengo, agregare a lo que le comunique.

1º. Que estoy perfectamente instruido de el, porque el mismo padre Madeore, a sa venida a esta ciudad, esturo a visitaime, me hablo del objeto de su viage y me suplico le recomendase al Sor Archivero Don Jose Rosario Nattes, para que lo atendiese en sus investigaciones; que el mismo Madeore se despidio de mi y me dijo que iba servido, habiendosele facilitado copia certificada de cuantos documentos se contraian al asunto, lo que ture ocasion de saber positivamente, por habermelo asegurado el mismo archivero, quien me indico de paso que el Sor de Morales se empeno fuertemente con el para que sirerese a Madeore.

2º. Me consta asi mismo, por lo que he sido referir en varias ocasiones, que parte de los archivos que vinieron de las Floridas, despues de la ratificacion del tratado en 1821, se perdieron a consecuencia del naufragio de uno de los buques que los traian, debiendo existir una Real Orden relativa al caso, si yo no estoy transcurado.

Es quanto se y puedo manifestar a Y, deseando que estas breves indicaciones puedan servirle en algo para la resolucion del importante nogocio que ha sido cometido a su prudencia y discrecion.

Soy de V su seguro y atento Servidor,

Q. B. S. M.,

ENRIQUE DESDIER, *Ldo.*

Senor Don ESTEBAN R. MALLORY.

Opinion of Henry Desdiere, esq., of Havana, lawyer of the royal council and of the illustrious college of the city and court of Madrid.

[Translation.]

HAVANA, November 15, 1848.

1. MY DEARSIR: It is undoubtable that the church can acquire and possess, in its own right, property, and administer the same, and that it cannot be alienated except in certain cases provided for by our laws; and this observation is also applicable to convents, monasteries, and other pious houses.

See Royal Law, book 1, tit. 5; 1 Partida, tit. 14; New Recompilacion, book 1, tit. 5; Decretalia Gregorii, book III.; Rebus Ecclesiæ, alienandis vel non—in Sexto Decretalium, tit. 9, ditto, ditto; Clementinarum, Lib. III., tit. 4, ditto, ditto; Le Aravaganium, Lib. III., tit. 4, ditto, ditto.

(To be found in the body of canon law.)

2. It is not less certain that the immoveable things of the church cannot be lost, but by forty years' prescription, and good faith, according to the canon law, and according to the civil law.

See III., Partida, tit. 26, law 21, compared and modified by the 26th; Decretalia Gregorii, Lib. II., tit. 26; Deprescriptionibus in Sexto Decretalium, (Bonifacii 8,) tit. 13, cap. 2.

Concerning this same subject, I will add the following to what I have already communicated:

1. I am well informed on this subject, because Father Madeore when he came to this city called upon me, and spoke to me of the object of his visit, and begged me to recommend him to the keeper of the archives, Mr. Joseph Rosario Nattes, that he might assist him (Madeore) in his investigations; and that when Madeore took leave of me he informed me that he had accomplished his object, he having received certified accounts and documents relative to the same, which I had occasion to know positively from the keeper himself, who also informed me that Mr. Morales urged him strongly to aid Mr. Madeore.

2. It is also known to me, from what I heard on various occasions, that a portion of the archives, while coming from Florida, after the ratification of the treaty of 1821, were lost in consequence of the shipwreck of one of the vessels which had them on board; there being a royal order relative to this matter, if I forget not. This is all that I can inform you of on this subject, trusting that these brief notes may serve you in the important matter which has been confided to your prudence and discretion.

Your obedient servant,

HENRY DESDIERE, *Ldc.* (lawyer.)

APUNTES,

El tito. 9 del lib. 1o. de la Nov. Rec. dico asi. “De los clerigos, sus privilegios, bienes y contribuciones.

El tito. 5 del lib. 1o. del Fuero Real se contrae a la guarda de las cosas de la Sta. Iglesia y contiene ocho leyes de las cuales la 1a. y 3a. dicen asi.

Ley 1a.—Todas las cosas dadas y que se dieren legitimamente por las Reyes y demas fieles a las Iglesias, se guarden siempre en ellas y se conserven en su poder.

Ley 3a.—No pueda el obispo, abad, ne otro Prelado vender, ni enagenar cosa alguna de las que adquiea por razon de su Iglesia; pero si, disponer como quisiere de lo que gane o herede por razon de si mismo.

Ley 2a. del mismo libro y tito.—Luego que el obispo o el electo confirmado quiera recibir las cosas de la Iglesia y de su obispado, lo haga ante el cabildo de ella, formalizando por escrito inventario de todos sus muebles raices, privilegios, escrituras, y de lo que deba, y le deban, de modo que por el pueda: el sucesor buscarlas, demandar la que hallare Enagenada sin derecho y restituirla a la Iglesia, pagando al comprador el precio que dio por ella, si se convirtio en utilidad de la Iglesia: pero si no, nada pague, y si se satisfaga, de las bienes propias del obispo Enagenante o de sus herederos. Esto mismo se guarde respecto de los monasterios y abadias.

[Translation.]

NOTES.

The 9th title of book I, of the New Recompilacion (*digest of civil law used in Spanish courts*) says as follows “of the clergy, their privileges, property and contibutions.”

The 5th title of the 1st book of Royal Law, relates to the care of the things of the holy church, and contains eight laws, of which the 1st and 3d are as follows.

Law I.: All the things given, or which may be lawfully given to the church by the kings and others of the faithful, must be always preserved in them, and in their power.

Law III.: Neither the bishop, abbot, nor other prelate can sell or dispose of any thing acquired through his church; but they may dispose of what they have acquired by themselves.

Law II., same book, 7 title: When the bishop or the elect confirmed, wishes to receive the property of the church, and of his bishopric, it shall be done before the chapter of the same, making a formal inventory, in writing, of all the moveables, real estate, privileges, deeds, and what it owes, and what is owing to it, in order that his successor may find them, demand what may be alienated without law, and restore them to the church; paying to the purchaser the price which he paid for them, if they have been converted to the use of the church; but if not, then nothing shall be

paid; and if paid, it must be out of the property of the bishop who disposed of it, or from that of his heirs. This is also to be observed with regard to the monasteries and abbeys.

Reference to laws of Spain, relative to building and endowing churches in the new world, and the conduct of the clergy. The titles of these laws only are given, as they distinctly express the object of each law.

From the compilation of the laws of the Indies, volume 1 and 2, title 1, page 7, passed 1574:

Law I.: "That the viceroys, presidents, and governors, give information of the churches founded in the Indies, and of those which it is expedient to found for teaching and converting the natives."

Original.

Que los Vireyes, presidentes y gobernadores informen sobre las iglesias fundadas en las Indias, y de las que conveniere fundar para la doctrina y conversion de las naturales.

Law II., passed 1552, same volume and title: "That for building cathedral churches, a distribution be made as ordained by this law."

Original.

Que para la fabrica de las eglesias catedrales se haga repartimento como est a ley dispene.

Previous to the existence of the above law of 1552, the crown of Spain had built and endowed the churches in her American possessions; and the object of this law was to devolve a portion of the expense upon the people. It reads thus: "Having built all the churches and cathedrals of the Spaniards and natives in our Indies since their discovery, at the expense of our royal estate, and applied to their service and maintenance that part of the tithes which pertains to us by apostolic gift, according to the division we have made, it is now our will and order, that henceforth and whenever it shall appear to us necessary to build churches for cathedrals, they shall be built in a convenient form, and that the cost thereof shall be divided into three parts; the one to be contributed by our royal treasury, the other by the Indians of the bishopric, and the other by the people."

Law III., 1558, same book and title: "That parochial churches be built at the cost of the king, inhabitants, and Indians.

Original.

"Que las iglesias parroquiales se edefiquen a casta del Rey, Vicinos e Indios."

NOTE.—This law of 1558 places the erection of parish churches, in the Indies, under the same regulations as cathedrals.

Law IV., 1559, same book and title: That the share to be contributed by the inhabitants, according to the preceding law, must be for the churches where they receive the holy sacraments.

Original.

Que la parte que han de contribuir las recinos conforme a la ley antecedente ha de ser para las iglesias donde reciben los santos sacramentos.

Law V., 1604, same book and title: "That the third part ordered to be paid by the royal treasury, for building churches, is to be understood as only for the first time."

Original.

Que la tercia parte que se manda dar de real hacienda para la fabrica de las iglesias se entienda por la primera vez.

Law VI., 1594: "That in the principal towns of the Indians the churches are to be built at the cost of the tributes."

Original.

Que en las cabeceras de los pueblas de Indias se edefiquen iglesias a costa de las tributos.

Law VII., 1598: "That to the churches built in the towns of the Indians, there shall be given ornaments, a chalice, with its paten, and a bell, once.

Original.

Que a las iglesias se hicieron en pueblos de Indias se les de por una vez un ornamento, caliz, con patena, y campana.

Law VIII.: "That the prelates send to the council two copies of the erections of their churches."

Original.

Que las prelados envían al consijo dos copias de las erecciones de sus iglesias.

Law IX., 1570: "That the prelates, in the distribution of the tithes, guard the erections of their churches, and that the viceroys give them all necessary protection."

Original.

Que las prelados en la distribucion de las diez mas guarden las erecciones de sus iglesias, y las vireyes les den el favor necesario.

Law X., 1618: "That the erection of churches is understood to commence from the day of division."

Original.

Que las erecciones de iglesias se entienda que commienzan desde el dia de la division.

Law XI., 1559: "That the part of the tithes, pertaining to the building of churches, must be expended in accordance with this law, and that the prelates see to their erection."

Original.

Que la parte de las diezmas que pertenece a las fabricas de iglesias se gaste conforme a esta ley, y los prelados guarden las erecciones.

TITULO TERCERO.

Recapilacion de leyes a Indias, 1. and 2. De los monasterios de religiosos y religiosas, hospiceos y recogimientos de hierfinos.

Ley I., 1653: "Que se penden monasterios de religiosos y religiosas, procediendo licencia del rey."

Translation.

TITLE THIRD.

Recompilation of laws of the Indies, vol. 1 and 2. Of monasteries for male and females, hospitals and retreats for orphans.

That there be founded monasteries for males and females, the king's license preceding.

"Ley II., 1556: Que no se tomen más sitios para monasterios de las que se pudiesen poblar, y no poblandose dentro del termino senalado, den a otra religion."

Translation.

Law II., 1556: That there shall not be taken more sites for monasteries than can be peopled; and if not peopled within the specified time, they shall be given to another order.

"Ley III., 1561: Que l s monasterios se edifiquen distantes seis leguas."

Translation.

That the monasteries be built six leagues apart.

"Ley IV., 1568: Que donde se hubieran de pendar monasterios sea la costa conforme a esta ley."

Translation.

That, where monasteries are to be founded, the cost is to be conformable to this law.

"Ley V.: Que a cada convento que de nuevo se fundare se de un ornamento, caliz cen su patena, y una campana."

Translation.

Law V.: That to every new convent that shall be founded, there shall be given an ornament, a chalice, with its paten, and a bell.

TITULO 14—LIBRO 1°.

“Ley XXII., 1630: Que un religioso de San Francisco pueda ir a Mejico y traer a la Florida con el situado lo que tocara a su orden.”

Translation.

Law XXII., 1630: That a monk of the order of St. Francis may go to Mexico, and bring to Florida, with the allowance of the province, that of his order.

“Ley XXIII., 1629: Que las audiencias en la ejecucion de las penas impuestas a las religiosos guarden el derecho, y Santo Concilio a Trento.”

Translation.

That the courts, in the execution of penalties imposed upon men of religious orders, be mindful of the law and the Holy Council of Trent.

“Ley XXXVIII., 1628: Que a los religiosos que salieren a misiones se les de el favor y amparo necesario.”

Translation.

Law XXXVIII., 1628: That the religious going as missionaries are to have all necessary favor and protection.

FERCERA PARTIDA—*Titulo veinte y ocho.—De las cosas en que ome puede aver senorio, e como lo puede ganar.*

Ley 41.—Como dene ome cobrar las despensas que faze en las cosas que compro a buena fe, si le son vencidas en tuzio:

“Heredades agenas compran, o ganan los omes a buena fe, e despues que las han compradas, fazen y de nuevo alguna cosa assi como torre, o casa o otro edificio; o si es heredad, plantan y a las regadas arboles, o ponen majuelos, o fazen y otras cosas semejantes destas menamente, como en lo suyo. Eienen despues desso los verdaderos senores, e vencenlos en juyzio, de aquello que assi han ganado. E porque puede acaescer contienda entre los omes, si las despensas que assi fuessen fechas, denen cobrar, o non, los que las fizieron; dezimos, que ante que sea entregado de la casa, e de la heredad, el que la venciere assi como sobredicho es, que sea tenuto de tornar al otro, todas las despensas que oniere fecho de nuero en ella: ca pues que ono buena fe en ganar la cosa e labro en ella assi como en lo suyo, derecho es, que cobre aquello que y despendio en esta manera. Empero, si algunos frutos, o rentas, o

esquilmos ono de la heredad; pñes que quiere cobrar las despensas assi como sobredicho es, derecho es, que descuento en ellas, aquello que gano, o esquilmo de la heredad. Mas si por aventura el señor de la heredad, que la venciesse en juyzio, fuesse tan pobre que non pudiesse pagar al otro las despensas que y oniesse fecho nuenamente, maguer quisiesse render todo quanto ania; dezimos, que estonce non seria tenudo de las pagar. Mas el otro que las ania de cobrar, puede sacar de la casa, o de la otra heredad, aquello que y metio, o labro, e llevarlo ende, e fazer dello su pro. Empero tenemos por bñen, e mandamos, que si el señor de la heredad le quisiere dar tanto por aquello que ende oniesse a tirar quanto el podria aner dello, pues que lo oniesse ende llevarlo: que sea tenudo de gelo dar por ello, e que lo non llene ende. E esso mismo dezimos que seria, si aquel que fizo la labor de nuevo en la casa o en la heredad agena, ono buena fe quando la gano e ante que comencasse a labrar, ono mala fe, sabiendo que aquel de quien la gano, non ania derecho de la enagenar. Ca si despues desso lo renciere el verdadero señor por ella en juyzio, non dene cobrar las despensas que y fizo, mas puede llenar ende aquello que y metio, o labro assi como sobredicho es.”

LA MISMA PARTIDA, TITULO VEINTE Y NUERE.—*De los tiempos por que ome pierde las sus cosas, tambien muebles como rayzes.*

•Ley 26.—Por quanto tiempo las Iglesias pierden las sus cosas.

Qual cosa quier (1) que sea de aquellas que son llamadas rayzes, (2,) que pertenezca (3) a alguna Iglesia o lugar religioso, (4,) non se puede perder por menor tiempo de quarenta anos. Mas las cosas muebles (5) que fuessen suyas, e de tal natura que se pudiesen perder por tiempo, poderlas yan ganar contra ellos por tiempo de tres anos, (6,) en la manera que diximos que las pueden ganar de los otros omes, Pero las otras que pertenciesen a la Iglesia de Roma (7) tan solamente non las podria ningun ome ganar por menor tiempo de-ciente anos.

(1.) Qual cosa quier. Concordat text. in authent. quas actiones, C. de sacrosanct, ecles. et in corpore unde sumitur, et cap. de quarta 4 et cap. ad aures 6 et cap. illud 8 de prescript, et cap. 1 de prescrit. lib. 6 et amplia, et limita, ut in tract. prescript. Balbi, fol. 41, per totum, et fol. 42, col. 1. et ibi, quid in servitutibus.

(2.) Rayzes Idem in actionibus personalibus, que de jure communi 30 annis tollebantur, sen. prescribebantur, ut in dict. authent. quas actiones, et in authent. hec constitutio innovat constitutionem, collat. 8.

(3.) Pertenezca. Quid in Publiciana, vide Bald. in 1 sicut, ad fin. pen. col. C. de prescript. 30 vel 40 annor. dicentem, quod prescribetur longo tempore etiam contra ecclesiam.

(4.) Olugar religioso Idem de hospitalibus, et locis pus, ut notat Abbas in cap. 1 de integr. restit: col. fin. et in cap. accedentibus,

de privileg. et idem si pauperibus, at in authent., de ecclesiast. titulis, S. pro temporalibus, Abb. et Fel. in cap. 2 de prescript.

(5.) Cosas muebles. Concordat. dict. authent. quas actiones, et procedit hoc etiam de jure Canonicis, ut notat. Toan. de Imol. et Abb. in cap. 1 de in integr. restit. et Fel. in cap. de quarta, circa fin. de prescript.

(6.) Tres anos. Idem habetur de prescriptione quadriennii in dict. authent. quas actiones; sed illa prescriptio non habet locum de jure Canonicis, ut est text. cum Gloss. in cap. qui cumque militum, in verbo consensu, 12 quest. 2 Gloss., et Doct. in cap. de rebus eccles., non alienand. Jas. in dict. authent. quas actiones, col. 1, versic. tertio pondera: et de redhibitoria, et quanto minoris, et ceteris actionibus annalibus, et semestribus, dic. quod remanent in statu suo contra ecclesiam, sicut contra privatum, ut in dict. authent. hec constitutio, et notat Gloss. in dicto § pro temporalibus, et per Gloss. et Abb. in cap. (ad audientiam) cum causa, de emptio. et vendit.

(7.) De Roma. Concordat cap. ad audientiam 13, de prescript. et dict. authent. quas actiones: et amplia et limita ut per Felin. in dicto cap. ad audientiam, col. antepen. versic. ulimo facias regulam, et in dicto tract. prescript. fol. 42, col. 2, 3, 4, et 5.

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*Comunicacion oficial de la Yntendencia al superior gobierno, de
15 de Noviembre, de 1841.*

EXMO. SR: En la necesidad de continuar la enagenacion de bienes que fueron de los regulares de esta isla, prevenida en real orden de 28 de Febrero, de 1839, asegurando simultaneamente su subsistencia, los gastos del culto, los de los establecimientos de beneficencia y educacion que corren a cargo de aquellos, he pensado muy seriamente sobre el mejor medio de llevarla a cabo en beneficio del estado, y sin desatender los indicados objetos tan recomendados en diferentes reales ordenes posteriores; y con tal motivo pedi informes a los gobernadores diocesanos y otras personas respetables; como V. E. vera por el espediente original que acompaño, sosture discusiones y procure esclarecer la materia por todos los medios posibles.

Del examen detenido de tantos puntos resulta, que es indispensable la reunion de comunidades religiosas, ya porque asi lo demanda el reducido mimero de individuos en algunas de ellas contra el tenor de sus mismos institutos, ya tambien porque de esta manera quedan a beneficio del estado bienes y edificios, de que puede sacar algun partido el gobierno en las actuales penurias del tesoro. Al tratar de estas reducciones y preferencias a la supresion absoluta de dichas comunidades, he tenido en cuenta la conservacion del culto, y establecimientos de beneficencia, y consultado a la subsistencia de tan importantes objetos. Los medios que para ello he adoptado son los mas naturales y sencillos; los religiosos cuentan con una sustentacion congrua y decente, y el culto se hallara con mas seguridad atendido. Ninguna de estas disposi-

ciones se hace estensiva a las religiosas, ni a sus bienes, ni a sus conventos. Se trata unicamente de las comunidades de varones; y V. E. autorizado como yo y conmigo para este arreglo, examinara y modificara si lo encuentra oportunos los siguientes artículos. 1º. Las diez y unere comunidades religiosas que existen en esta isla, se reduciran a ocho que se distribuiran en los puntos siguientes: Habana, Guanabacoa, Trinidad, Puerta Principe y Cuba, en la forma espresada en el estado adjunto. 2º. Los conventos que por la reunion de comunidades se suprimen, y quedan destinados para las atenciones del gobierno, son los siguientes: De la orden de predicadores, los de Guanabacoa, Bayamo y Santi Espiritu. De la de San Francisco los de la Habana, Bayamo, Santi Espiritu, Cuba y Villa Clara. De la Merced, el de la Habana. De la orden de Belemitas, el de la Habana y el de San Juan de Dios de Puerto Principe. 3º. Los religiosos que existen en los conventos suprimidos a que se refiere el articulo anterior, de ben trasladarse y reunirse en otros en la forma siguiente.

Los dominicos de Guanabacoa, Bayamo y Santi Espiritu en el de Ste. Domingo de la Habana; los Franciscanos de la Habana en el de Guanabacoa; los de Bayamo, Cuba, Santi Espiritu y Villa Clara en el convento de la misma orden en Trinidad; los de la Merced de la Habana en el de Puerto Principe; los Belemitas de esta ciudad en el de Cuba; los tres religiosos de S. Felipe Neri pasaran a ocupar el de Ste. Domingo de Guanabacoa; y los de San Juan de Dios de Puerto Principe, vendran al de la misma orden de esta capital. 4o. Todos los bienes y censos de los conventos suprimidos, y de los ocho no suprimidos quedaran a disposicion de la real hacienda, y las comunidades haran la entrega por inventario a un empleado de aquella el dia que seles designe. 5o. Los rasos sagrados, ornamentos y demas efectos dedicados al culto y servicio de la Iglesia en los conventos suprimidos seran inventariados escrupulosamente y distribuidos en los que quedan existentes, si lo necesitasen, y si no a las demas Iglesias pobres, en los terminos que acuerden con los respectivos diocesanos. 6o. El mismo inventario se hara en las Iglesias de comunidades no suprimidos, para que nada se distraiga del uso a que se destina. 7o. Las Iglesias de los conventos suprimidos que convenga dejar abiertas para el culto, se entregaran por la real hacienda mediante inventario al sacerdote autorizado para el efecto, y respecto a ellas no tendra lugar el contenido del articulo 5. 8o. A los ocho conventos que quedan abiertos se consignaran para el culto diez mil pesos anuales; la distribucion entre ellos de esta suma, se practicara oyendo a los prelados diocesanos por la junta de diezmos; pasando despues a la aprobacion del vice-real patrono y de la superintendencia. La indicada junta sera la consultiva en cualquier reclamacion o duda que se suscite, sobre la distribucion, y examinara cada trimestre las cuentas de las comunidades, para ver si la inversion es justa, economica y solo aplicada al objeto a que dicha suma se destina. 9o. El gobierno, a mas de la suma destinada al culto a que se refiere el articulo que precede, proporcionara de tesoreria a los religiosos para su congrua y decente sustentacion lo siguiente: a los provinciales y prelados mién-

tras ejerzan sus funciones, treinta pesos al mes, a los jubilados y sacerdotes que cuenten veinte y cinco años desde que cantaron misa, veinte y cinco, y a los que no cuenten aquella antigüedad, veinte, a los legos quince pesos, y por cada sirviente blanco donde no haya legos, en número de uno para cuatro sacerdotes, ocho pesos, y seis si son de color. 10. A los Belemitas y de S. Juan de Dios se les considera para estas pensiones en la clase de jubilados, de que habla el artículo anterior, si tienen veinte y cinco años de profesos, y si no cuentan esa antigüedad, como a los otros sacerdotes. 11. En cada comunidad habrá un encargada (por) nombrado por ella, para recibir de tesorería la cantidad que respectivamente le está asignada. 12. Esta encargada se presentará cada mes en las oficinas con una relación del prelado, visada por el provisor o gobernador de la mitra, con expresión de los individuos que permanezcan vivos en sus conventos. 13. En esta lista no serán incluidos los que después de la supresión de los conventos en la península, se han presentado en la isla, puesto que no disputan pensión en estas cajas, y pueden regresar a sus destinos. 14. Los religiosos que obtengan su secularización continuarán, recibiendo fuera de sus claustros la pensión que respectivamente les toque en la distribución del artículo 9o, con aumento de una cuarta parte sobre su pensión.

A la ejecución de las precedentes disposiciones fue consiguiente la orden espedita el mismo nueve de Diciembre de 1841 que se llevaban a efecto, y anuncio público inserto en el Diario, de que pasando el todo de los bienes urbanos y rústicos, censos y demás de los conventos, a ser propiedad del estado, con la obligación en la hacienda de dar a los individuos la asignada pensión alimenticia, cualquiera persona o escribano que hiciere o autorizase entrega de fondos en pago a ellos, sería responsable de su ascendencia a la real hacienda. Las casas religiosas en toda la isla eran 19, y de ellas se dejaban ocho con 8 prelados, 78 padres jubilados, 45 sacerdotes de 25 años, 27 de menos, 49 legos y donados, 21 sirvientes blancos, y 7 negros, cuyo importe anual de pensiones unido a 10,000 pesos que se asignaban para el culto, ascendía a 66,200 pesos. (1)

(1) Esta cantidad debe haber sufrido mucha rebaja después de cerrado el convento de padres predicadores de la Habana, uno de los 8, y otros más por excomunión de sus individuos.

NOV. REC. LIBRO I.—TÍTULO 5o.—*De los bienes de las Yglesias Monasterios, y de otras Manos-muertas.*

Ley 1a.—Ley 1a, tit. o 5o, lib. 1o, del Fuero Real.—*Las cosas legítimamente dadas a las Yglesias se guarden siempre en ellas.*

Si Nos somos tenidos dar galardón de los bienes de este mundo a los que nos sirven, mayormente debe mos dar a nuestro Salvador y Señor Jesucristo de los bienes temporales por salud de nuestras ánimas, de quien habemos la vida en este mundo, y todos los otras

bienes que en el tenemos, y esperamos haber galardón y vida perdurable en el otro; y no solamente lo debemos dar, mas aun guardar lo que es dado: por ende mandamos, que todas cosas que son o fueren dadas a las Yglesias por los Reyes o por otros fieles cristianos, de cosas que deben ser dadas derechamente, sean siempre guardadas y firmadas en poder de la Yglesia. (ley 5 tit. 2. lib. 1. R.)

LEY 5 DEL PROPIO TITULO.—Dn. Enrique 2 en Toro año 1371 pet. 3 de los Prelados; y Dn. Fernando y Da. Ysabel en Toledo año 1480, leyes 98 y 101.—*No se tomen ni ocupen las ventas de Yglesias, Prelados, Estudiois y Monasterois, ni se impida su arrendamiento.*

Ordenamos, que los Duques, condes ni Marqueses, ni otros cualesquier Senores en sus tierras y señorios, ni otra cualquier persona, de cualquier calidad o condicion que sea, en estos nuestros Reynos y Senorio no embarguen, ni tomen por fuerza, ni menoscabén los bienes y rentas y derechos de los Prelados y Cabildos, y fabrica e Yglesias y Monasterios y otras personas eclesiasticas, ni de los Estudios y Uiniversidades de nuestros Reynos, ni contra su voluntad les tomen en arrendamiento sus ventas, ni les impidan que no las arrienden libremente; ni sobre ello schagan estatutos, para que sus vasallos o otras personas no se las arrienden, y para que no les den posadas, ni las otras cosas que hobieren menester, por sus dineros, porque todo esto seria contra la libertad eclesiastica; so pena que el que lo contrario hiciere, por el mismo hecho pierda la mitad de sus bienes para la nuestra camara, y caiga e incurra en las otras penas en que incurren los que toman y ocupan las nuestras Rentas: y mandamos a los del nuestro consejo, que sobre esto les den las cartas y provisiones que menester hobieren. (Ley 11, tit. 2, lib. 1, R.)

LEY 8a DEL PROPIO TITULO.—Don Juan 2 en Burgos año de 1409 petición 8 y 9, y en Zamora año 432 pet. 25.—*La plata y bienes de las Yglesias no se tomen por el Rey sino en caso de necesidad, y con obligacion a restituir.*

La plata y bienes de las Yglesias el Rey no lo puede ni debe tomar; pero si acaesciere tiempo de guerra o de gran menester, que el Rey pueda tomar la tal plata, con tanto que despues la restituya enteramente sin alguna disminucion a las Yglesias, (ley 9, tit. 2, lib. 1, R.)

ARTICULO 80 DEL CONCORDATO de la Santa Sede y la Real Corona, su fecha en Roma a 26 de Setiembre de 1737.

Por razon de los gravisimos impuestos con que estan gravados los bienes de los legos, y de la incapacidad de sobrellevarlos

a que se reducirán en el discurso del tiempo, si aumentándose los bienes que adquirieren los Eclesiásticos por herencias, donaciones, compras o otros títulos, se disminuyese la cantidad de aquellos en que hoy tienen los seglares dominio, y están con el gravamen de los tributos Regios; hapedido a S. S. el Rey Católico, se sirordenar, que todos los bienes que los Eclesiásticos han adquirido desde el principio de su reynado, a que en adelante adquiriesen con cualquiera título, estén sujetos a aquellas mismas cargas a que lo están los bienes de los legos. Por tanto, habiendo considerado S. S. la cantidad y qualidad de dicha cargas, y la imposibilidad de soportarla a que los legos se reducirían, si por orden a los bienes futuros nose tomase alguna providencia; no pudiendo convenir en gravar a todos los Eclesiásticos, como se suplica, condescendera solamente en que todos aquellos bienes que por cualquier título adquiriesen cualquiera Yglesia, Lugar pio, o Comunidad eclesiástica, y por esto cayeren en Mano-muerta, queden perpetuamente sujetos, desde el día en que se firmase la presente concordia, a todos los impuestos y tributos Regios que los legos pagan, a excepcion de los bienes de primera fundacion; y con la condicion de que estos mismos bienes, que hubieren de adquirir en lo futuro, queden libres de aquellos impuestos que por concesiones Apostolicas pagan los Eclesiásticos, y que no puedan los Tribunales seglares obligarlos a satisfacerlos, sino que esto lo deban executar los Obispos.

[Translation.]

THIRD PARTIDA.

Title twenty eight.—Of the things in which man can have dominion, and how he can gain it.

Law 41: How man ought to recover the expenditures made on things bought by him in good faith, if they are rendered him at law: "Foreign hereditaments are purchased or gained by men in good faith; and after they have so purchased they make and renew any thing, such as tower, or house, or other edifice; or if it is hereditament, they plant and irrigate trees, or place vines, or make other things like these anew, as if of his own. After which come the true lords and heirs at law of that which they have so gained. And because contentions may arise between men, whether the expenditures which were so made should be recoverable or not by those who made them, we say, that before delivery be made of the house, and of the hereditament, he that gains it, as is stated above, be held to return to the other all the expenditures that he may have made anew on the same. Whereas, there was good faith to gain the thing, and he wrought in it as if the same were his own, right is, that he recover that which he has expended in this manner. But if any fruits, or rents, or harvests, had of the heredita-

ment, whereas he wishes to recover the expenditures as is above stated, right is, that he discount in them that which he gained, or harvest of the hereditament. But if, peradventure, the lord of the hereditament, so recovering the same at law, were so poor that he could not pay to the other the expenditures which he may have made anew, and whereas might wish to sell all thereof; we say, that in that case, he would not be held to pay them. But the other that was to recover can take from the house, or from the other hereditament, that which he placed there or wrought, and carry wherever, and do with them his pleasure. But we hold as right, and ordain, that if the lord of the hereditament should wish to give as much for that which he was about to remove as he could otherwise get for the same, provided he had not yet removed it: that he be held to give it for the same, and that he don't remove it therefrom. The same we say would be, if the one that made the improvements in the house, or on the foreign hereditament, acted in good faith when he gained it, and before he commenced to labor acted in bad faith, knowing that he from whom he gained it had not right to transfer it. And, if after that the lawful lord thereof should recover the same at law, he should not recover the expenditures which he made, but can carry wherever he who placed or labored them, the same as is above stated.

THE SAME PARTIDA.

Title twenty-nine.—Of the times for which men lose their goods, moveable as well as real.

Law 26 : For how long a time the churches lose their goods.

Any things (1) whatever of those which are called real (2) which may belong (3) to any church or religious place, (4) cannot be lost for less time than forty years. But the goods, moveable, (5) that might be hers, and of such nature that might be lost for time, hold and even gain against them for space of three years, (6); and in the manner we have said, they can gain them from other men. But the others that appertain to the church of *Rome*, (7) that alone can no man gain for less time than one hundred years.

Translation of the latin notes.

1. "*Qual cosa quier,*" agrees with the text, "what actiones" in the authorized standard collection, concerning the H. church, and in the body, whence it is taken, and in the 4th chapter, and in the chapter commencing "*ad aures,*" that is "to the ears," being the 6th and that 8th chapter on prescription, also the 1st chapter on prescription, book the 6th and so on. Likewise condensed, as in the treatise of Balbus on prescription, through the whole of the 41st vol., and in the 1st collection of the 42d vol., there also may be found what appertains to slavery.

2. "Reyses." The same in personal actions which for 30 years were taken from the common law, or were prescribed as in the above mentioned case, entitled "What Acciones," and in the case, "This constitution is an innovation upon the constitution," collection the 3d.

3. "Pertenezca." The same as you may find in Publiciana; see also Balbus, as before, towards the end of the Collection 6 on prescription, where you may find 30 or 40 annotations, specifying what shall or may be prescribed for a long time, even against the church.

4. "O lugar religiosa." The same concerning hospitals and religious places, as Abbas observes in the 1st chapter upon entire restitution, towards the end of the collection; also in the chapters concerning *things being added, privilege, and the poor*. But in the standard, instead of temporalities, it comes under the head of ecclesiastical titles. See Abbas, and 2d chapter on prescription.

5. "Cosas muebles." The concordat specifies what actions. This also is a principle of the canon law, as John de Imola and Abbas observe, in the 1st chapter upon entire restitution, and Jel in the chapter on the 4th part of restitution, towards the end of the collection upon prescription.

6. "Tres años." The same is the case concerning prescription of four years, in the concordat, specifying what actions; but this prescription does not derive its authority from the canon law, as the text has it in Glossius and Dort, in the 2d chapter concerning the non-alienation of church property. See also Jos. 1st collection, 3d verse, concerning what is to be restored, and other annual and semi-annual incomes; the principle is the same against the church as it is against a private individual, as Glossius observes, and Abbas in his chapter on buying and selling.

7. "De Roma." The chapter of the concordat *on hearing the case*, being the 13th upon prescription, also at large, likewise the remarks of Felin on the above mentioned chapter, the last verse towards the end of the collection, and in the treatise on prescription, vol. 42, collection 2, 3, 4 and 5.

SUPPRESSION OF THE CONVENTS IN CUBA.

Official communication from the administration to the superior government, of 15th November, 1841.

EXCELLENT SIR: In the necessity to continue the alienation of goods that were of the regulars of this island, advised in royal order of 28th of February of 1839, securing simultaneously their subsistence, the costs of the public worship, those of the establishments of beneficence and education that continue in charge of those, I have thought very seriously upon the best means to carry it out to the benefit of the State, and without disregarding the indicated objects so recommended in different posterior royal orders; and

with that motive I asked information of the governors, diocesans and other respectable persons, as your excellency will see by the accompanying original circular. I maintained discussions and endeavored to enlighten the matter by all possible means. From the examination obtained from so many points, results that the re-union of religious communities is indispensable, not only because the reduced number of individuals in some of them, contrary to the tenor of their own institutes, demands it, *but also because by this means remain, for the benefit of the State, goods and edifices, from which the government can obtain some help in the actual penurious state of the treasury.* Whilst treating of these reductions, and preferring them to the absolute suppression of said communities, I have had in view the conservation of the worship and establishments of beneficence, and advised as to the maintenance of such important objects. The means which for that I have adopted are the most natural and simple; the *religionists* count upon a competent and decent support, and the worship will be found with greater security attended. None of these dispositions are made to extend to the *female religionists*, nor to their goods, nor to their convents. We refer only to the communities of males, and your excellency, authorized as myself, and with me for this arrangement, will examine and modify, should you find it expedient, the following articles:

1st. The *nineteen* religious communities that exist in this island shall be reduced to *eight*, which shall be distributed in the following places: Havana, Guanabacoa, Trinidad, Porto Principe and Cuba, in the manner expressed in the adjoining statement.

2. The convents that by the re-union of communities are suppressed, and remain destined for the requirements of the government, are the following: of the order of Preachers, those of Guanabacoa, Bayamo, and Ste. Espiritu; of that of San Francisco, those of the Havana, Bayamo, Santi Espiritu, Cuba, and Villa Clara; of the Merced, that of the Havana; of the order of Belemitas, that of the Havana, and that of Saint Juan de Dios, of Port Principe.

3. The monks that exist in the suppressed convents to which the anterior article refers, ought to remove and re-unite themselves in others in the form following: the Dominicans of Guanabacoa, Bayamo, and Santi Espiritu in that of Saint Domingo of the Havana; the Franciscans of the Havana in that of Guanabacoa; those of the Bayamo, Cuba, Santi Espiritu, and Villa Clara, in the convent of the same order in Trinidad; those of the Merced of the Havana in that of Port Principe; the Belemitas of this city in that of Cuba; the three monks of Saint Felipe Neri will proceed to occupy that of Saint Domingo of Guanabacoa; and those of Saint Juan de Dios of Port Principe will come to that of the same order of this capital.

4. *All the property and revenues of the suppressed convents, and of the eight not suppressed, will remain at the disposition of the royal estate; and the communities will make the delivery by inventory to an employee of the same the day which may be designated them.*

5. The sacred vessels, ornaments, and other effects dedicated to the worship and service of the church in the suppressed convents, will be scrupulously inventoried and distributed amongst those that remain existent, if they should require them; and if not, to the rest of the poor churches, in terms to accord with the respective dioceses.

6. The same inventory will be made in the churches of communities not suppressed, so that nothing may be distracted from the use to which it is destined.

7. The churches of the suppressed convents that may be profitable to leave open for the worship, will be delivered by the royal estate, by means of inventory, to the minister authorized for the effect, and respecting them, what is contained in article 5 will have no effect.

8. To the eight convents that remain open there will be appropriated for the worship ten thousand dollars annually; the distribution amongst them of this sum will be effected by hearing the diocesan prelates, through the board of tithes, recurring afterwards to the approbation of the vice royal patron and of the superintendence. The indicated board shall be supervisory in whatever claim or doubt that may arise regarding the distribution, and will examine, every quarter, the accounts of the communities, to see if the fund is just, economical, and solely applied to the object to which said sum is destined.

9. The government, besides the sum appropriated to the worship which the preceding article refers to, will proportion from the treasury to the monks for their competent and decent sustenance, the following: to the provincialists and prelates whilst they exercise their functions, thirty dollars per month; to the superannuated, and priests that can count twenty-five years since they said mass, twenty-five—and to those that cannot count that antiquity, twenty; to the laymen, fifteen dollars—and for each white servant, where there are no laymen, in number of one for every four priests, eight dollars, and six, if they are of color.

10. The Belemitas and of Saint Juan de Dios will be considered, for these pensions, in the class of superannuates, of which the preceding article speaks, if they have professed for twenty-five years; and if they cannot count this antiquity, the same as to the other priests.

11. In each community there will be a person encharged, named by the same, to receive from the treasury the amount that respectively is assigned it.

12. This charge will present himself every month in the offices with a statement of the prelate, reviewed by the provisor or governor of the mitre, with expression of the individuals that remain alive in their convents.

13. In this list there shall not be included those who, after the suppression of the convents in the peninsula, have presented themselves on the island, because they enjoy no pensions from these funds, and they can return to their destinations.

14. The monks who may obtain their secularization, shall con-

tinue receiving beyond their cloisters the pension that respectively belongs to them in the distribution of article 9, with an augmentation of one-fourth part above their pension.

For the execution of the preceding dispositions, followed the order issued the same ninth of December of 1841, which carried them into effect; and public notice was inserted in the Diario, that all the goods, peculiar and rustic, revenues, and all others of the convents passed and become property of the State, with the obligation on the estate to give to the individuals the assigned alimentary pension; whatever person or notary that might make or authorize delivery of funds in payment of them, would be responsible for its ascendancy to the royal estate. The religious houses throughout the island were nineteen; and of them were left eight with 8 prelates, 78 superannuated fathers, 45 priests of twenty-five years, 27 of less, 49 laymen and lay brothers, 21 white servants and 7 negroes, whose annual aggregate of pensions amounted to \$10,000 that were appropriated for the worship, increased to \$66,200. (1)

(1) This amount probably has suffered much reduction after the closing of the Convent of Preachers of the Havana, one of the 8, and many others on account of the _____ of its individuals.

Nov. Rec.—BOOK 1ST, TITLE 5TH.—*Of the goods of the churches and monasteries, and of other mortmain.*

Law 1st, title 5, book 1st, of the royal privilege—*The goods legitimately given to the churches are secured always in them.*

If we are obliged to give recompense of the goods of this world to those who serve us, more so ought we to give to our Saviour and Lord Jesus Christ of the temporal goods for the health of our souls, of whom we have life in this world, and all the other goods which in it we possess, and expect to obtain recompense and life eternal in the next; and not only ought we to give, but secure that which is given: Wherefore, we command, that all things that are or might be given to the churches by the kings, or by other faithful christians, of things that ought to be given directly, be forever guarantied and secured in the power of the church.—[Law 5, title 2, book 1, R.]

LAW 5, OF THE SAME TITLE.—Henry 2d, in _____, year 1371, _____ 3, of the prelates; and Ferdinand and Elizabeth, at Toledo, year 1480, laws 98 and 101.—*Not to be taken nor occupied the revenues of churches, prelates, studies, and monasteries, nor is their renting to be impeded.*

We ordain, that the dukes, counts, nor marquises, nor other whatever lords on their lands and lordships, nor other person what-

ever, of whatever class or condition they may be, in these our kingdoms and lordships, shall not embargo, nor take by force, nor deteriorate the goods and revenues and rights of the prelates and charters and buildings of churches, and monasteries, and other ecclesiastical persons, nor of the studies and universities of our kingdoms, nor against their will to take in rent their revenues, nor impede them from renting them freely; nor on them to make statutes, so as to prevent their vassals or other persons from renting the same of them, and that may not give them lodgings, nor the other things which they may require for their moneys, because all this would be contrary to the ecclesiastical liberty; under penalty that he who to the contrary should do, for the same act shall forfeit one-half of his goods to our exchequer, and shall fall under and incur the other penalties which are incurred by those who take and occupy our revenues: and we command to those of our council, that regarding this they give them the orders and decrees that necessary may be.—[Law 11, Title 2, book 1, R.]

LAW 8TH, OF THE SAME TITLE.—John 2d, at Burgos, year of 1409, petition of the 8th and 9th, and at Zamora, year 432, pet. 25.—*The silver and goods of the churches cannot be taken by the king, unless in case of necessity, and with obligation to restitute.*

The silver and goods of the churches the king cannot nor ought to take; but if there should happen in time of war or of great necessity, that the king may take the said silver, on condition that afterwards he restitutes it entirely without any diminution to the churches.—[Law 9, title 2, book 1, R.]

ARTICLE 8TH; OF THE AGREEMENT *of the Holy See and the royal crown, its date at Rome, the 26th of September, of 1737.*

By reason of the grievous taxes with which the goods of the laymen are grieved, and of the incapacity to alleviate the hardships to which they will be reduced in the course of time, if the goods that the ecclesiastics acquire, augmenting through inheritances, donations, purchases, or other titles, should diminish the quantity of those over which at present the seculars have dominion, and are under the obligation of the kingly tributes, has prayed of his majesty the Catholic king, to see fit to ordain, that all the goods that the ecclesiastics have acquired since the beginning of his reign, or which henceforth they may acquire, with whatever title, be subject to those same charges to which are the goods of the laymen. Wherefor his majesty having considered the quantity and quality of said charges, and the impossibility to support them, to which the laymen would be reduced, if by order as to future goods, some provision were not taken; not being able to agree to oblige all the ecclesiastics as is prayed, will condescend solely that all those goods, which by whatever title may be acquired by any church, pious place, or ecclesiastical community, and by this would fall into mortmain, remain perpetually subject, from the day

of the signing of the present agreement, to all the taxes and kingly tributes which the laymen pay, excepting the goods first established for charity; and with the condition that those same goods which they may acquire in the future, remain free of those taxes which, by apostolical concessions, the ecclesiastics pay and which the secular tribunals shall not oblige them to satisfy to them, unless the same be executed by the bishops.

En quanto duro el imperio del jentilismo, los bienes eclesiasticos fueron muebles por lo jeneral, para que en las continuos viesgos en que los fieles se haleaban; hubiese facilidad de esconderlos, traspardarlos y distribuirlos. Pero ne aun entonces deajo de poseer la Iglesia algunos bienes raices como lo prueba el edicto de Constantino y de Licinio, en que se mando a los jentiles que restituesen a los cristianos quanto las habian usurpado en la epoca precedente. Luego, que la Iglesia debro a Constantino dias pacificos, empiso a adquirir bienes en muebles en abundancia, ya por contratos *inter vivos*, ya por dispuoteciones testamentarias. Las mismos Emperadores cristianos adjudicaron a la Iglesia cierta cantidad de dinero en el erario publico; que Supremidad por Juliano, el apostata, fue revalledada por Marciano. Ademas de esto la hicieron donacion con mucha frecuencia de los templos del paganismo y de sus productos. Deroti, Institucion Canonicas 216, § 4.

Translation.

During the reign of paganism, the goods of the church were generally moveables, because, amid the dangers which surrounded the faithful, they were more readily disposed of, transported, and distributed. But it is found that even then the church possessed immoveable property, as is proved by the edict of Constantine and of Licinio, by which it was ordered that the gentiles should restore to the christians all they had usurped in the preceding epoch. By and by the church gave peaceful days to Constantine, and it began to acquire real estate rapidly, sometimes by contracts "*inter vivos*," sometimes by testamentary dispositions. The same christian emperors adjudged to the church a certain stipend of money out of the public treasury; and this, though suppressed by Julian, the apostate, was subsequently re-established by Marciano. Moreover, the church at this time received frequent donations of pagan temples and their products. See Deroti, page 216, § 4.

En un principio el ciudadano y administracion de los bienes de cada Iglesia estaba a cargo del obispo, el cual la delegata a un economo o al arcediano, las carees tenian que darle cuentas al fin de su comision. El fondo era unico, y de el se sacaba lo necesario.

para el obispo y demas clengos de la Iglesia, las limasnas para el socorro de los polres, y lo que se invertid en la falrica del tempeo, en su adorno, vopas, alhajas, y demas gastos precios. Pastereormente parecia mas oportuno dividir en partes los productos eclesasticas, destinand respectivamente la suga tanto al obispo y al clero, como a las polves y a la falrica de la Iglesia.

Devoti. Instituciones Canonicas, p. 217, § 6.

[Translation.]

To guard the goods of the church, they were placed under the charge of the bishop, who delegated their administration to a trustee or archdeacon, who had to give an account of their commission. The fund was undivided, and from it was taken what was necessary for the bishop, the clergy of the church, alms to the poor, and what was required in the erection and adornment and "alhajas" of the church, and other necessary expenses. Afterwards it seemed more convenient to divide the ecclesiastical goods, and to destine them respectively: so much to the bishop and clergy, to the poor, and to the building and repair of the church.

Devoti. Institutions Canonical, page 217, § 6.

(Walter) *Derechos Eclesiasticos.*

SECTION 248, III.—De la enjenacion de los bienes eclesiasticos.

Para evitar el estrario de los bienes de la Iglesia se-figaron y a en los tiempos primitiros todos los condiciones que habian de reunir una enajenacion para que el obispo la autorizase; y los emperadores Romanos, los reyes Francas, y los decretales, repetieron y ampliaron aquellos disposiciones. No es segun ellas licita una enajenacion de bienes eclesiasticos sin determinada y justa causa y sin ciertas formalidades imprecindibles. Se llamo justa causa, bien a una necesidad urgente, como la de pagar dendas de la Iglesia, la de rescatar esclaros, la de alimentar pobres en tiempos de hombre, cosas todas en los cuales es licito vender las cosas sagradas; o bien una conveniencia notable para la Iglesia. Uno de los requisitos legales es el consentimiento del cabildo, o capitulo que en otro tiempo no bastaba sin la aprobacion del concilio provincial. La extraordinaria facilidad con que en ciertas epocas de circunstancias politicas consentian los cabildas y los obispos en desprenderse de bienes eclesiasticos, forso a los papas a reservarse la aprobacion de los enagenaciones; pero ya sera raro el pais en que se cumpla esta formilidad. En todas se exige por el contrario el consentimiento del poder temporal. Las enajenaciones para pago de dendas estaban sujetas a las reglas del derecho Romano, y lo estan hoy a la de la legislacion vigente en cada pais. Sin los que han manejado el contrato han incurrido en alguna nulidad, tiene la Iglesia el derecho de restitucion. Si el contrato se ha consumado "vite et recte" cual suele decirse, no cabe mas causa que la de lesion para

pedirta Iglesia la restitucion de las cosas al estado que tenian. Tomase aqui la palabra aqui la palabra enajenacion en el sentido lato, a fin de comprender, no solo la transmision de plena propiedad, en la venta, permuta, y donacion, aunque sea esta para crear un establecimiento religioso, sino tambien la hipoteca, servidumbre, renuncia de herencia, legado o derecho, enfendamiento y tributacion de tienas en cultivo. Los mismos principios tienen los Protestantes en estas materias, sino que el consistorio en unas partes de Alemania y el gobierno en otros egercen las facultades de los obispos Catolicos.

[Translation.]

ARTICLE 248, III.—*Of the alienation of ecclesiastical property.*
(WALTER on *Ecclesiastical Law*, p. 359.)

To avoid the waste of the property of the church, all the conditions upon which the bishop might be authorized to alienate it were fixed in primitive times; and the Roman emperors, the French kings, and the decretals, repeated and amplified these arrangements. According to them it is not lawful to alienate ecclesiastical property without just cause and certain inseparable causes. *A just cause* is called an urgent necessity; as the paying of the debts of the church, ransoming slaves, feeding the poor in times of famine; in all which cases it is lawful to sell sacred property; or for the palpable convenience of the church. One of the legal requisites is the consent of the chapter, which, in other times, was not sufficient without the approval of the provincial council. The extraordinary facility with which, in certain ages, from political circumstances, the bishops and chapters consented to the disposition of ecclesiastical property, compelled the pope to reserve to himself the approbation of alienating it; but it is rare to find a country in which this formality is observed. In all of them, on the contrary, the consent of the temporal power is required. The alienations for the payment of debts were subject to the rules of the Roman law; and they are at this time, subject to the legislation of each country. If they who have managed the contract have incurred a nullity, the church has the right of restitution. If the contract has been consummated "*vite et recte*" as is said, there is no other cause of injury than to ask for the restitution of the things to the church in the state in which they were. The word alienation must here be taken in its widest sense, in order to comprehend not only the transmission of the entire right of property, as in a sale, permutation, and donation, although these might be for the creation of a religious establishment, but also the hypothecation, servitude, renunciation of inheritance, by legacy or by law, enfeoffment and contribution of lands in cultivation. The same principles are observed in these matters by Protestants, with the exception of some parts of Germany, where the consistory exercises the rights of the Catholic bishops, and in other parts, the government.

ST. AUGUSTINE, 25th September, 1848.

REVEREND FATHER: I have the honor to inform you that I have accepted the trust confided to me by authority of the joint resolution of the 11th August last; and that I will enter upon the collection of such testimony as may be important to a just and speedy decision of the matters it involves, at 11, a. m., Wednesday, 27th instant.

Should this time, however, prove inconvenient to yourself, or the wardens of your church, it will afford me much pleasure to conform in this respect to your views.

Yours, respectfully,

S. R. MALLORY, *Arbitrator.*

REV. BENEDICT MADEORE,
V. G. C. C., *Fa.*

ST. AUGUSTINE, 26th September, 1848.

GENTLEMEN: As the arbitrator, under the joint resolution of Congress of the 11th of August last, appointed by the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, claiming title to certain real estate in this city, and by the United States, contesting said claim, I am now collecting all testimony which may aid in a just and speedy decision of the matters submitted to me. The claim set up by the parties on behalf of the church and its congregation embraces, among other lots of land, that on which the P. Episcopal church of St. Augustine stands.

I have deemed it proper formally to notify you of this fact, and to request that you will furnish me with the names of any persons, unconnected with the Catholic church of St. Augustine, or its alleged property, from whom information may be obtained upon the following points, viz:

1st. Anterior to the transfer of East Florida to the United States, under the treaty of 1819, what was the general belief and understanding of the people of St. Augustine as to the title to the lot in question? Was it regarded as the property of the crown, or as church property?

2d. What was the said lot worth, in open market, in St. Augustine, when it was transferred to the United States; and what is its present value?

3d. Anterior to the change of flag, what was the general belief and understanding, among the people of East Florida, as to the title of the church to the property of which it had possession; and was there any general understanding that the church held any property in St. Augustine otherwise than as a tenant at sufferance under the crown?

By affording me the information indicated, and any other information touching the claim set up to the lot of your church, at as

early a day as your convenience will permit, you will oblige, gentlemen, your obedient servant,

S. R. MALLORY, *Arbitrator.*

To the WARDENS AND VESTRYMEN
of the P. Episcopal church of St. Augustine.

TRINITY CHURCH, ST. AUGUSTINE,
November 17, 1848.

At a meeting of the board of wardens and vestry of Trinity church, St. Augustine, a summons to appear before S. R. Mallory, esq., "the arbitrator under the joint resolution of Congress of the 11th of August last, appointed by the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, claiming title to certain real estate in this city, and by the United States, contesting said claim," was laid before the said board; whereupon the following action was had:

Resolved, That, as the board of wardens and vestry of said church, we do not recognize any power or authority of the commission appointed by the "vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine," "and by the United States," to require us to appear before such commission in relation to any matters pending before such commission; that we believe that the property held by Trinity church, St. Augustine, has been lawfully acquired and is justly held by her, nor has her possession thereof ever been molested or disturbed; that we do not recognize, under the constitution of the United States, or the constitution of the State of Florida, any mode, except by the legally constituted tribunals of the country, of investigating claims to real estate, or of examining the titles and rights of corporations or individuals, as between each other; that this church is involved in no controversy with the government of the United States or any body else; and, therefore—

Resolved, (with all due respect to the honorable commissioner,) That the wardens and vestry of this church protest, on behalf of said church, against any action, examination, or proceeding, before the said commission, whereby the rights, interests, or claims of the said Trinity church are to be in any way or manner affected or molested.

G. R. FAIRBANKS,
Warden.

B. R. CAN,
P. C. TRYLSTRA,
E. B. GOULD,
J. H. BRONSON,
GEORGE BURT,

Vestrymen.

To S. R. MALLORY, Esq.,
Arbitrator, &c., St. Augustine.

ST. AUGUSTINE, *September 26, 1848.*

SIR: The vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, claiming to be, severally, the rightful owners of the public barracks and other property in this city, transferred to the United States by the authorities of Spain under the treaty of 1819, and the United States, contesting such claim, have, under the authority of the joint resolution of Congress of the eleventh of August last, confided to me the trust, as arbitrator, of deciding the question of title to and value, &c., of the property, subject to the action of Congress—

As such arbitrator, I am here for the purpose of collecting all testimony that may conduce to a speedy and just decision of the matters submitted to me, and I will feel obliged to you if you will afford me such information as you may possess.

1st. As to the character of the occupation of the said barracks by the crown of Spain, previous to the transfer under the treaty of 1819, was the convent of St. Frances regarded generally as church property, or the property of the crown?

2d. What was the extent of the land generally understood to belong to said barracks, or the convent of St. Frances?

3d. What was the character, condition, and value of the said barracks, buildings, and land at this date of their transfer to the United States in 1821?

4th. From your knowledge of the value of real estate and property, generally, in St. Augustine, at the period of said transfer, what would the said barracks and land and the lot of the bishop's house, as then situated, have sold for at public auction in St. Augustine?

5th. What has the use and occupation of said barracks been worth to the United States to the present period?

6th. If it shall be your opinion that the said barracks, land, &c., was regarded by the people, generally, as church property, you will be pleased to throw whatever light you can upon the reasons or causes which produced the transfer thereof to the United States, under the treaty of 1819.

7th. Were the Spanish troops in East Florida frequently quartered upon church property, and, if yes, why and on what occasions were they so quartered?

8th. When and by whom was the present church of St. Augustine erected?

9th. To whom was the land, commonly known as the lot of the bishop's house, or old church, and the land commonly known as that of our Lady of the Milk, and the Catholic church of St. Augustine, supposed by the people at large to belong?

10th. Do you know any rents, or equivalents, in any shape whatever, granted or conceded by the crown to the Catholic church of St. Augustine or to its congregation, for the use and occupation of the said buildings or lands, or any of them?

11th. What is the present value of said barracks, land, and lot of the bishop's house?

As an officer of Spain, immediately engaged in the important events of the transfer of East Florida, your statement on these subjects will be regarded with peculiar interest.

I will feel obliged to you, also, if you will furnish me with the names of any persons unconnected with the Catholic church or its alleged property, from whom any information on the points stated may be obtained.

With great respect, I have the honor to be, your obedient servant,

S. R. MALLORY.

To General J. M. HERNANDEZ,
St. Augustine.

ST. AUGUSTINE, *September 29, 1848.*

SIR: Your communication of the 26th instant, making inquiries touching certain property claimed from the United States by the heads of the Catholic church of this city, together with one of the same date addressed to me and others, requesting them and myself to examine and furnish you, as arbitrator in the case, with a schedule and appraisement of the property alluded to, were on yesterday received.

The several questions which you have been pleased to propound to me, in the letter first quoted, I will endeavor to answer with all possible despatch; and, with the aid of the gentlemen with whom you have associated me, I hereby accept the trust of appraising the property you designate, in the hope of meeting your just and reasonable expectations.

With much respect, I have the honor to be, your obedient servant,

JOSEPH M. HERNANDEZ.

S. R. MALLORY, Esq.,
Arbitrator, Catholic church vs. the U. States.

ST. AUGUSTINE, *26th September, 1848.*

SIR: As the arbitrator appointed by the parties concerned under the joint resolution of Congress, of the 11th of August last, I am now collecting all testimony which may conduce to a just and speedy decision of the questions submitted to me. Among these questions, arising from the claim set up by the Catholic church of St. Augustine to the barracks which were transferred to the United States, under the treaty of 1819, are the following:

1st. What was the character, condition and value of the barrack buildings and lands, in this city, when received by the United States in 1821?

2d. Were said barracks tenantable or fit for the purpose for which they were designed?

3d. When were they first repaired by the United States, and what was the extent and character and value of said repairs?

Believing you to be wholly unconnected with the Catholic church and its alleged property, and understanding that you were in St. Augustine about the date of the transfer, I have taken the liberty to request that you will, as early as your convenience will permit, afford me such information as you may possess upon the above points.

Very respectfully, your obedient servant,

S. R. MALLORY,
Arbitrator.

Colonel JOHN M. HANSON,
St. Augustine.

ST. AUGUSTINE, 26th September, 1848.

SIR: As the arbitrator appointed under the authority of the joint resolution of Congress, of the eleventh of August last, to decide certain matters pending between the United States, the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, involving the title to the United States barracks and other property here, I am directed by the solicitor of the treasury to take your "deposition to the points indicated in your report" to that officer of the thirty-first of May, 1848, and to "notify you to produce the documents to which you therein refer."

I have the honor to state, that I am now collecting all testimony which may aid in a just and speedy decision of the questions submitted to me, and that, apart from the deposition and documents alluded to—which I respectfully request may be furnished at your earliest convenience—I will feel obliged to you for all the information which you can afford me as to the *character, condition and value* of the buildings and land, now known as the United States barracks, when received by the United States in 1821. As the officer charged by the United States with the important trust of receiving from the authorities of Spain the transfer of East Florida, under the treaty of 1819, your statement on this subject is important. I will feel obliged to you if you will also furnish me with the names of any persons, inhabitants of East Florida at the change of flag, and unconnected with the Catholic church or its alleged property, from whom information upon this subject may be obtained.

With great respect, your obedient servant,

S. R. MALLORY,
Arbitrator.

Colonel ROBERT BUTLER,
Surveyor general, Florida.

SURVEYOR GENERAL'S OFFICE,
St. Augustine, September 27, 1847.

SIR: Your communication of date yesterday, and handed this morning, is hereby acknowledged, and will meet attention shortly after my arrival in Middle Florida, for which place I expect to leave early in the ensuing month, and where I can have access to my papers touching the subject of your duty as arbitrator. My action thereon shall be addressed to you under cover to the solicitor of the treasury, open for his inspection. I would respectfully advise you that Lieutenant Colonel Harvey Brown, 4th United States artillery, (at Old Point Comfort,) was the officer who superintended the erection of the United States barracks, in the years 1821 and 1822, upon the ruins received from the Spanish government by me, as commissioner, and Colonel J. M. Hanson, a resident of this place, then the sutler of the troops, and Captain Hanham, resident in the barrack, are both cognizant of the state of those ruins immediately after their reception. The accounts of Lieutenant Colonel Brown, of that period, will develop most probably the entire expenditure of rebuilding the barrack aforesaid. That you may estimate what will be my probable opinion of the value of the ruins aforesaid, when sworn to, after seeing the papers believed to be in my possession, giving the extent of the ground occupied thereby, that the whole material and ground attached, would not on sale have brought one thousand dollars at the time of reception, and which opinion I formed at the time I received the property. I would not have given that sum for it if desirous to have purchased; at the same time remark, that the value of my estimate may be high or low, as not grounded on the knowledge of property value, having remained so short a period here.

Very respectfully, your obedient servant,

ROBERT BUTLER,
Surveyor General.

S. R. MALLORY, Esq.,
Arbitrator.

ST. AUGUSTINE, *September 26, 1848.*

SIR: As the arbitrator appointed under the joint resolution of Congress, of the 11th of August last, it becomes important to a just and speedy decision of certain matters submitted to me, involving the title to the United States barracks in this city, that the character, condition, and value of the barrack buildings, and land transferred to the United States under the treaty of 1819, at the date of their transfer, should be accurately understood.

I have this day learned from Colonel Butler, that information upon these points may, probably, be obtained from you; and, as it is to be used alone to aid a just decision of the matters pending between the claimants and the United States, I take the liberty of requesting you to afford me so much as you may possess upon the

subject, at your earliest convenience. I will either write your statement down as you may detail it, or you can submit it in any shape most agreeable to yourself.

Very respectfully, your obedient servant,

S. R. MALLORY,
Arbitrator.

To Captain HANHAM,
Ord. C., U. S. A., St. Augustine.

Testimony of James R. Hanham.

James R. Hanham, being duly sworn the truth to speak and true answers make to such questions as may be propounded by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the congregation of the church of St. Augustine, to the United States, barracks and other property in St. Augustine, E. Florida; thereupon deposes, and in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, profession, and residence.

Answer. My name is James R. Hanham, military storekeeper, &c., in charge of the military property belonging to the general government in St. Augustine, my age sixty-eight, and my residence is St. Augustine.

Interrogatory 2. Were you in St. Augustine at the time of its transfer in 1821?

Answer. I was not. I was at Pensacola at the transfer of East Florida; but I arrived at St. Augustine in August, 1821, with despatches from General Jackson for Colonel Butler, and was acting under General Jackson's appointment, as the sheriff of East Florida.

Interrogatory 3: In what condition did you find the barracks of St. Francis; describe them as accurately as you can, and state their character and apparent value at that time?

Answer. They were in a very dilapidated state until Col. Eustis put a new roof on a part of the main building, and floored the same part. He then moved in and occupied it with a part of his troops. I believe this was the south wing. The shingles of the roof were entirely decayed from age and use, and also the shingles of all the buildings of the barracks. There were three stone buildings. The main building, or barracks proper, is the present United States barracks, improved and repaired as it has been by the United States. I think, but am not certain, that the principal part of the rafters were decayed and had to be replaced with others, by Col. Eustis. These buildings were not habitable until they were repaired. The walls of these buildings were generally dilapidated and cracked, and according to my recollection, the walls had partially to be taken down and repaired; but I cannot speak positively as to this matter. Others know more on this particular point than I do. But I do know that the buildings were not tenantable until repaired. I

believe that the two buildings back of the main barracks were built on, the walls not being taken down; but I am not positive of it. Of the value of the barracks I cannot speak with any great degree of certainty. I purchased land in the town of St. Augustine, about one quarter of a mile from the barracks, in the year 1822, (after the change of flag,) for one hundred dollars per acre. I bought one acre. The land of the St. Francis barracks, which was walled in, at the change of flag, was from a half to one acre, I think. The value of real estate in St. Augustine was increased by the change of flag. Rents raised a great deal after the change of flag. I think I paid one hundred dollars per annum for a good dwelling, with a good orange grove attached to it; but I cannot positively say that it was one or two hundred dollars which I paid. I have given ten dollars, as well as thirty dollars per month for house rent in Saint Augustine.

Interrogatory 4. According to your knowledge of the value of real estate at that time, can you state what the barracks and the land on which they stood would have sold for at public outcry in St. Augustine, for cash, after due and proper notice?

Answer. At that time there was very little money in the place, and this property would have answered the purposes of but few people. But few persons would have been found as purchasers. I have thought of the matter, however, since I received your note, and I think that the land and buildings were worth five thousand dollars, though I would not have given it, as I had no use for it.

JAS. R. HANHAM,

M. S. K., in charge of post.

Subscribed and sworn to before me, this 2d October, 1848, at St. Augustine.

S. R. MALLORY,
Arbitrator.

ST. AUGUSTINE, 25th September, 1848.

GENTLEMEN: I have the honor to state that, having accepted the trust confided to me by yourselves, the vicar general of the Catholic church of Florida, and the United States, under the authority of the joint resolution of Congress of the 11th August, I am here for the purpose of collecting such testimony as may be important to a just and speedy decision of the questions submitted to me.

I will enter upon this duty at eleven o'clock, a. m., on Monday, the 27th instant; and I will be happy to receive from you all the information upon the subject which it may be in your power to afford.

Very respectfully, gentlemen, your obedient servant,

S. R. MALLORY, *Arbitrator.*

To the WARDENS OF THE CATHOLIC CHURCH,

St. Augustine, Fla.

Antonio Alvarez.

Antonio Alvarez, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks, and other property in St. Augustine, Florida, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, and residence ?

Answer. My name is Antonio Alvarez; I am a native of St. Augustine, Florida, where I have always lived, and I am fifty-seven years of age. Since 1829, I have been keeper of the public archives in St. Augustine.

Interrogatory 2. Have you any knowledge of the loss or destruction of any portion of said archives ?

Answer. Yes. During the year 1812, and the struggle known as McIntosh's revolution, Acting Governor Don Juan Estrada caused the public archives, for greater safety, to be removed from their depository in St. Augustine to the fort. In June, 1812, the successor of Estrada, Kindellan, transferred the archives from the fort to the office of the government secretary; but, in doing so, several bundles of the archives of the period previous to 1763, from eight to twelve bundles of papers, were left in the fort, as it was found that, through their age and the dampness of the fort, they were ruined and useless. Immediately after the transfer of East Florida to the United States, the archives were in possession of Mr. Low, at St. Augustine; and I, having occasion to examine them, called at his office, where they are kept, and where I found them heaped together loosely on a table, and subject to be scattered about by the wind. Very soon after this, say in 1824 or '25, I heard the complaint made, by persons seeking to establish their claims, that the evidences of the claims were thus lost among the archives. But I don't know whether any of them were really lost after 1821.

Interrogatory 3. State what you know relative to the origin of St. Francis's barracks, and their occupation by the Spanish crown ?

Answer. Of my own knowledge I know but little; my information has been derived from my association and conversation with the inhabitants of St. Augustine, where my life has been passed.

Interrogatory 4. What was the general belief and understanding of the people on this subject ?

Answer. That the barracks had originally been a convent belonging to the order of St. Francis, and hence it was called St. Francis barracks, and the street on its north side, St. Francis street. When a boy, in St. Augustine, I learned, from general report, that the crown took the convent for barracks, after the king's barracks were destroyed by fire, which were called pavillonas, or English barracks. As far back as I can remember, and up to the change of flag, St. Francis barracks were occupied by troops.

Interrogatory 5. State your knowledge of the extent of the land occupied with the barracks.

Answer. It was the same land as that occupied by the present United States barracks, with the exceptions following, to wit: The southern limit was the present southern wall of the guard-house and kitchens; the eastern limit was the eastern wall of the building itself, (the convent.) The land between the barracks of St. Francis and the old burnt barracks was, before the change of flag, always open, and criminals were sometimes executed there.

Interrogatory 6. At the transfer of these barracks to the United States in 1821, what was their *character, condition, and value*?

Answer. There were three barrack buildings. The main building, or barracks proper, was, when transferred to the United States, of the size and shape which it is at present, with the exception of the roof, which was altered in shape a few years ago, and with the exception also of two galleries which the United States have added. The second was, also, a stone building, one story high, with a flat roof, situated on the south side of the lot, and occupied and used as prison rooms, as I think. It occupied, I think, the whole south side of the lot. The third was also a one story stone building, twelve feet or more high, with an arcade supported by stone arches along its entire front, and it stood on the west side of the lot, of which it occupied about three-fourths. It was covered with shingles. These buildings were all in bad repair. The walls were all good; the frames of the roofs, plates, rafters, &c., were also, I believe, good; and I think that when the United States repaired them, but little alteration, in this respect, was made. The shingles of the roofs were in bad condition.

As to the value of these buildings and the land, at their transfer to the United States, I am unable to give an opinion, having no means of knowing. To arrive at any thing like their just value, it would be necessary and proper for me to examine carefully, with others, the value of real estate and property generally in St. Augustine at that time.

Interrogatory 7. From your knowledge of the value of property, generally, in St. Augustine, from the change of flag to this time, what has been the value to the United States of their use and occupation of said barracks?

Answer. I cannot say.

Interrogatory 8. Did the United States use these barracks before they were repaired?

Answer. I do not remember.

Interrogatory 9. From your knowledge of these barracks, and the value of property generally in St. Augustine at this time, what is the value of them?

Answer. I cannot form an opinion.

Interrogatory 10. Have you any knowledge of the old church of St. Augustine, or bishop's house? if so, state it.

Answer. Yes, I remember distinctly when a boy, that a building stood on the lot occupied now, in St. Augustine, by the protestant Episcopal church, which was called the old church, and also called

bishop's house; and that before the present Catholic church was built, the upper part was used as a church, and that one part of the lower story was used by the sacristan's family. A guard, called the governor's guard, was generally stationed in a portion of the lower story; and it was thus used and occupied until the new church was built, somewhere about 1798.

Interrogatory 11. Do you know what the general belief and received understanding among the inhabitants was, as to who owned this old church and its lot?

Answer. I do not know.

Interrogatory 12. As one of the oldest inhabitants of St. Augustine, can you recall any circumstance which would authorize the belief that it did or did not belong to the crown?

Answer. My impression was always that it belonged to the church; that, in other words, it was church property, but I cannot account for this impression.

Interrogatory 13. What were the dimensions of this lot?

Answer. The same in all respects as those of the present Episcopal church lot; it was the same lot.

Interrogatory 14. What was the value of it at the change of flag, in open market?

Answer. I do not know.

Interrogatory 15. What do you know of the church of our Lady of the Milk?

Answer. Nothing.

Interrogatory 16. What was the origin of the present Catholic church of St. Augustine?

Answer. I do not know of my own knowledge. It was supported by the king—by his exchequer; and in the same manner he sustained a free school, open to, and sufficient for all the people. The priests of the church, and there were generally three, were supported from the same source. In addition to what I have before said, relative to the repairs put upon the barracks by the United States, I would also say that the present chimneys have been added by the United States.

Interrogatory 17. State what interest real estate in St. Augustine paid in 1821, after the change of flag, and from what you form your opinion.

Answer. Real estate was increased in value by the change, and paid about ten per centum. I state this from my knowledge of what my father, who owned and was the lessor of real estate at that time, was in the habit of receiving for it.

Interrogatory 18. How long did real estate continue to pay ten per centum?

Answer. About four or five years, when it declined somewhat, and increased again at the outbreak of the Florida war, and during the Florida war it paid ten per centum and over. At the conclusion of the war, real estate decreased in value greatly, and at present it does not pay five per centum; but I cannot tell precisely what it pays, but rents are low.

Interrogatory 19. Can you give an idea of the rents of ordinary

dwellings, at and after the change of flag, before property declined in value.

Answer. Dwellings which at that time cost twelve or fifteen hundred dollars, paid about twelve dollars per month; and some buildings paid as much as three or four hundred dollars per annum. A large source of profit was from the orange groves, which were very valuable, and paid their holders handsomely. Mine paid me three hundred dollars per annum, and other groves paid much more.

ANTONIO ALVAREZ.

Subscribed and sworn to before me, this 2d October, 1848, at St. Augustine.

S. R. MALLORY,
Arbitrator.

Testimony of William H. Simmons.

William H. Simmons, being duly sworn the truth to speak and true answers make to all questions that may be propounded by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, Florida, thereupon deposes, and in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, residence and profession.

Answer. My name is William H. Simmons; I am a native of South Carolina, am a physician, and at present register of the land office at St. Augustine; my age is fifty-five, and I reside in St. Augustine.

Interrogatory 2. What was the character, condition and value of the St. Francis barracks in St. Augustine, at the time of their transfer to the United States in 1821?

Answer. I first saw these barracks immediately after the change of flag in 1821, and the walls of the building were in good preservation; I think that the joists and first floor of the main building were then existing, but I think there was no roof on either building; there was a good stone wall, about seven or eight feet, enclosing nearly all the lot of the barracks; if I remember rightly, there was a stone building with arches in front, also in the barrack lot, which was used for barrack purposes, guard-room, &c., and this building still stands; I cannot say with any degree of certainty what was then the value of these barracks. They were certainly worth the value of the materials of, and the labor employed in building them; what this might have been, I do not know; the walls, materials, &c., were available for the purposes of our government and were used; property, that is real estate, was valuable at St. Augustine at the change of flag; the orange groves were numerous and paid well; real estate thus improved paid about twenty per centum per annum.

Interrogatory 3. From your knowledge of St. Augustine, its business, and the value of its real estate in 1821, can you give an idea of what the barracks and the land belonging to them would have sold for at public auction, for cash, in St. Augustine, at that time, after due and proper notice?

Answer. I cannot; the barracks were particularly calculated for barracks, and there were probably but few persons whose purposes they would have suited; besides there was not much money in the place; the lot was susceptible of being converted into an orange grove, and groves were then very valuable.

Interrogatory 4. What was the usual rent of an ordinary dwelling house in St. Augustine at the change of flag and immediately after?

Answer. A dwelling which cost \$1,500 or \$2,000 would have rented, by itself, for six or eight dollars per month, and if it had a grove of the ordinary size of others in St. Augustine, it would have rented for considerably more; the usual way was to lease the house and the grove together.

W. H. SIMMONS.

Subscribed and sworn to, at St. Augustine, before me, this 4th day of October, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Bernardo Segui.

Bernardo Segui, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age and residence?

Answer. My name is Bernardo Segui; I am a native citizen of St. Augustine, where I have always lived, and my age is sixty-three years.

Interrogatory 2. Do you or not know whether, subsequent to the transfer of Florida, under the treaty of 1819, any portion of the archives of East Florida was lost or destroyed?

Answer. From personal knowledge I cannot say; but immediately after the change of flag I know that it was a common complaint in St. Augustine that, through the mismanagement of the person in charge of the archives, a part of them had been lost.

Interrogatory 3. Before the change of flag, to whom did the convent of St. Francis and its lot, afterwards known as the barracks, belong?

Answer. This property was held and occupied by the church pre-

vious to the British possession of Florida in 1763; and, as I always understood from my earliest associations with the old inhabitants of St. Augustine and the people generally, I always supposed that they regarded it as church property, as well during the British possession of Florida, as after its retrocession to the crown of Spain, in 1784; after the British left, it was again under the control of the church, as I understood, and was occupied by priests or monks; this occupation by the church thus continued until 1792, when the king's barracks (called, at the time, pavillonas, as well as English barracks) were destroyed by fire; then there were no barracks for the troops, and they took possession of the said convent and property, and used it as barracks down to the change of flag in 1821.

Interrogatory 4. From 1792 to 1821, to whom did these barracks belong, according to the general belief and conduct of the people?

Answer. The ignorant, I think, deemed them the property of the king, but the enlightened supposed them to be church property.

Interrogatory 5. Have you any knowledge of any rents, privileges or equivalents given or conceded to the church of St. Augustine or to its people by the king, for his occupation of the convent of St. Francis?

Answer. No, I have not.

Interrogatory 6. How was the St. Augustine church supported?

Answer. The oblata, that is, the sacred vestments, ornaments, candles, and all the accessories of the church, were usually brought from Havana, or sent from there to the church—but whether furnished by the crown or the bishop I do not know; the crown paid certain salaries to the priests of the church for their support.

Interrogatory 7. Was there a school in St. Augustine before the change of flag? If so, state its character?

Answer. Yes, there was a free school, called the king's school, open to the public generally, which was maintained by the king, and existed as far back as I can remember.

Interrogatory 8. Were not the oblata of the church usually sent, as you have stated, from Havana as well before the king's occupation of the convent as barracks, in 1792, as afterwards?

Answer. I cannot remember.

Interrogatory 9. Did the crown occupy, for its troops or otherwise, any other property in East Florida, supposed to be church property?

Answer. Yes; the lot in St. Augustine, on the south side of the public square, and on which the Protestant Episcopal church now stands, was always supposed by the people of St. Augustine, as I believe, to be church property; and upon this lot stood a building, in the Spanish time, called the "Old Church." When I was a boy the king quartered troops on this lot and in a part of the building, as a guard, and this guard existed there many years. In 1820 two companies of Spanish troops, of Malaga and Catalonia, arrived from Havana, and as the St. Francis barracks were then occupied by black troops, one of these companies was quartered in the school-house on the St. Augustine church lot, which was also

deemed to be church property, and it continued thus quartered until the change of flag.

Interrogatory 10. State your knowledge of the building of the present church of St. Augustine?

Answer. The present church was begun by the people, and raised by their individual contributions of money and labor until a certain elevation, when the crown came in and finished it.

Interrogatory 11. What was the general belief and understanding, as to the ownership of said church and its lot, among the people of East Florida?

Answer. The general belief was that they were church property, controlled by the bishop and protected by the crown.

Interrogatory 12. Have you any knowledge of the church known as "our Lady of the Milk?"

Answer. I know nothing of it, personally, more than that I remember seeing, when a boy, fragments of a tower or steeple of a building situated about a mile north of St. Augustine fort, near Milk creek, and which was usually called "our Lady of the Milk," and I heard, generally, that before the British occupation of Florida, in 1763, there was a church there.

Interrogatory 13. State the dimensions of the lot, the extent of the land used for barrack purposes, by the Spanish troops about the St. Francis barracks?

Answer. I have read over Mr. Alvarez's description of it, and to avoid unnecessary detail I will adopt that as my own, for it is correct. Mr. Alvarez resided opposite and near to the barracks.

Interrogatory 14. You will be pleased to state the *character, condition and value* of these barracks and their lot when transferred to the United States?

Answer. There were three buildings; the largest one, on the east side, and which building is the present barracks, was then as it is now, with this difference, that a new roof of a different shape from the original and two galleries have been added. The second building was of stone, one story high, running east and west, with a flat roof; but I do not remember its size. It was used as prison rooms; its walls were sound, but the wood work and roof were generally decayed. The third building, on the west side, of stone, used as kitchens, was in similar condition; I cannot give any definite idea of their value or of that of the land. The troops of the United States were moved into these barracks, and occupied them before any repairs were made.

Interrogatory 15. As a citizen of Florida, familiar with the value of real estate and property generally in St. Augustine at the change of flag, what do you think these barracks, and the lot of the old church described by you, would have severally sold for at the time the United States received them, in open market for cash, at St. Augustine, supposing the sale to be made after due and proper notice?

Answer. I think that the barracks would have brought from ten to fifteen thousand dollars, and the lot spoken of, about one thousand dollars.

Interrogatory 16. According to your knowledge of the value of real estate in St. Augustine since its transfer in 1821, what do you consider a fair rent for the use and occupation of St. Francis barracks by the United States?

Answer. I cannot form an opinion.

Interrogatory 17. What is the present value of the property specified?

Answer. I cannot say. At present, real estate has little or no value here in St. Augustine; and if judged of by this standard, the property is worth but little. Real estate, which, ten years ago, was worth here in open market \$5,000, would not bring half this sum now.

Interrogatory 18. What per centage has real estate in St. Augustine yielded upon the amount invested, as a general rule, since the change of flag?

Answer. I do not know.

B. SEGUI.

Subscribed and sworn to before me, at St. Augustine, this 9th day of October, 1848.

S. R. MALLORY,
Arbitrator.

Antonio Andreo.

Antonio Andreo, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, residence, and profession.

Answer. My name is Antonio Andreo; I am a native of St. Augustine, and have lived here most of my life; I am sixty-six years old, and am a ship carpenter.

Interrogatory 2. State your knowledge of the origin of the present church of St. Augustine?

Answer. I only know from my father and other old people that the people in St. Augustine built it by contribution, but what proportion of it was thus built, or how it was completed, I do not know.

Interrogatory 3. State what you know about the church of our Lady of the Milk.

Answer. I remember having seen the old stone building called the church of our Lady of the Milk, when I was eight or nine years old, situated north of Fort Marks, on Milk or Hospital creek.

Interrogatory 4. Can you say whether or not this building was

in fact, ever in the possession of the church, or occupied for its use.

Answer. No. I never knew it to be occupied at all.

Interrogatory 5. What was its origin? How did it come there, and for what purpose was it built?

Answer. I do not know.

Interrogatory 6. Describe the land on which it stood?

Answer. The lot of the old church was about one acre large—and was on the south side of the old lines of fortification, and on Hospital creek; it is the same lot which is now claimed by Mr. Davis, and is occupied and planted in part by Mr. Capo. The stone of the walls of this old church were used as I have always heard, to build, or rather to aid in building the new church.

his

ANTONIO + ANDREO.
mark.

Subscribed and sworn to before me, at St. Augustine, this 29th September, 1848.

S. R. MALLORY.

Arbitrator.

Testimony of John Masters, senior.

John Masters, senior, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, residence, and profession?

Answer. I am a native of St. Augustine, where I have always lived, with the exception of about two years; I am seventy years of age, and am a farmer.

Interrogatory 2. What do you know of the convent of St. Francis?

Answer. I remember when the Spanish troops occupied the barracks, situated a short distance from the present barracks, and which were called the pavillonas, and which were burnt down, and then the troops were moved into the convent of St. Francis. There were no troops ever quartered in this convent before the barracks, called the pavillonas, were burned. Before they were burned, I remember that some Capuchin friars were here in St. Augustine, established here from 1784; but whether they occupied the convent or not I cannot remember. I do not remember when these Capuchins left, but they remained here six or eight years, and left here with the bishop.

. Interrogatory 3. Do you, or not, know whether the church of St. Augustine made any use of this convent, or whether it was occupied for any religious purpose or use before the troops moved into it?

Answer. I cannot remember.

Interrogatory 4. Can you recall any circumstance authorizing the belief that this convent ever did belong to the church, or that the church ever had possession of it?

Answer. Of my own knowledge I know nothing, nor can I recall any such circumstance; but I can state from my conversations with my father and other old inhabitants of St. Augustine, and from the general belief and understanding among them at that time, when I was a young man, that the convent must have belonged to the church, inasmuch as the British did build barracks for themselves near to the convent, whereas, they might have occupied the convent for barracks, had it been crown property and transferred to them by the Spaniards; and furthermore, at the retrocession of Florida to the Spaniards in 1784, the Spanish troops did not go to the convent, but to the British barracks, and made no use, that I ever heard, of the convent until the destruction by fire of the English barracks or pavillonas.

Interrogatory 5. What proportion or part of the new church was built by the people of St. Augustine?

Answer. I do not know. It was begun and carried on by general contributions of the people, but how far they carried it towards completion I do not remember.

Interrogatory 6. What do you know of our Lady of the Milk?

Answer. I have seen the church standing near Milk creek, north of the Fort St. Marks, but I never saw it occupied except by troops. The lot of this old church was about an acre, more or less. I saw it occupied by regular and militia troops during the first McIntosh war, viz: the first revolution after the retrocession to Spain, and somewhere about 1794. The old church decayed, and I heard that its walls were used in building the present church. I have heard that the church was occupied for the missions, and used by the missionaries for the civilized or christianized Indians. It was also subsequently called the hospital, as the sick and infirm were carried there to be cured.

his
JOHN + MASTERS.
mark.

Subscribed and sworn to before me, at St. Augustine, this 29th September, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Philip Gomez.

Philip Gomez, being duly sworn the truth to speak and true answers make to all questions that may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic Church of Florida, and the wardens of the Catholic Church of St. Augustine, to the United States barracks, and other property in the city of St. Augustine, thereupon deposes, and in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, residence, and profession?

Answer. My name is Philip Gomez; I am a native of St. Augustine, where I have always lived; I am now thirty-eight years old, and am a mason.

Interrogatory 2. State your knowledge of the character, condition, and value of the St. Francis barracks, in St. Augustine, when they were transferred to the United States, in 1821.

Answer. I will speak of the St. Francis barracks proper, that is, the building which now is called the United States barracks. At the transfer of this building to the United States, it was in the condition which it now exhibits, excepting that the roof has been renewed and altered in shape, and two or three (I am not certain which) galleries, also chimneys, which the United States have added. The shingles were decayed, but the rafters and plates, and the whole frame of the roof, or the greatest part of it, were in good order, and were retained when the officer of the United States first repaired it. The walls were good. When they were repairing the barracks first, a part of the walls, viz: the gable ends, were taken down; but it was to alter the shape of the roof, and not because they were unserviceable. The pitch of the roof was formerly greater than now.

PHILIP GOMEZ.

Subscribed and sworn to before me, at St. Augustine, on this 4th October, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of Michael Neligan.

Michael Neligan, being duly sworn the truth to speak and true answers make to such questions as may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic Church of Florida, and the wardens of the Catholic Church of St. Augustine, to the United States barracks and other property in St. Augustine, Florida, thereupon deposes, and in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, residence, and profession?

Answer. My name is Michael Neligan; I was born in New London county, Connecticut; I have resided in St. Augustine seventeen years; am a mason, and my age is forty-one years.

Interrogatory 2. State what you know about the repairs which have been placed on the United States barracks, St. Augustine.

Answer. In the fall of 1844, I worked on the barracks. They were then being repaired by the United States, under the superintendence of Lieutenant Shover. The old roof was then taken off, and a new roof, different in shape, was put on. The walls of the building were in pretty good order. The gable ends of the two buildings, running east and west, were taken down and made level with the rest of the walls; but no other part of the walls were taken down. These were the old Spanish walls of the convent or barracks of St. Francis. As a mason, I can say that the walls had been well built, and that all the old buildings, built by the Spaniards in Augustine, which I have inspected, exhibit much more faithful work than is done now. When the gable ends of the barrack walls were taken down, to give place to a heavier roof, it was questioned whether the walls would admit of it, but they have stood very well. There were then some iron clamps, three, I believe, found in the walls, but when put in I do not know. They were put in where a crack had exhibited itself; and when we plastered the walls I examined the crack and found that it had not enlarged from the time they were put in, and we plastered over it. To plaster the walls we pecked the old plaster off and found it very hard and firmly adhering to them. In furring on the inside of the walls, we had to cut or plug a great many holes in them throughout the building, and I do not think that a single unsound spot was found in them.

MICHAEL NELIGAN.

Subscribed and sworn to before me, at St. Augustine, this 4th of October, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of George Cla.

George Cla, being duly sworn on the Holy Evangelists of Almighty God, the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and in answer to the interrogatories following, says as follows, to wit:

Interrogatory 1. What is your name, age, residence and profession?

Answer. My name is George Cla, my age is sixty-three years, I am a native of St. Augustine, Florida, and have always lived there.

Interrogatory 2. What was the character of the occupation of the St. Francis barracks in this city by the Spanish authorities previous to their transfer to the United States?

Answer. My belief at the time was that the barracks were occupied as the property of the crown, and this belief was founded on seeing them occupied by the Spanish troops.

Interrogatory 3. What was the general belief of the inhabitants upon this subject at the time?

Answer. I do not know.

Interrogatory 4. Do you know any thing about the maintenance of a free school in St. Augustine while the barracks were so occupied? if so, state it.

Answer. I do; I went to it.

Interrogatory 5. How were the expenses of the church in St. Augustine defrayed at said time, and generally?

Answer. The expenses were defrayed by funds which were sent from Havana for the purpose; and, according to my belief, by the crown; but I am not certain of it.

Interrogatory 6. Did the congregation usually contribute towards the support of the church, or did it look to the king for such support?

Answer. I never knew or heard that the congregation of the church contributed anything towards its support?

Interrogatory 7. When was the St. Augustine church built?

Answer. I do not know, but it was when I was a boy.

Interrogatory 8. How was its construction paid for?

Answer. I learned from my father, who was an inhabitant of St. Augustine at that time, and employed by the government of Spain, that it was built in part by the people of St. Augustine, who generally contributed their money and labor, and that he had, as a citizen, contributed money for this purpose; and my impression is that the crown gave the other part.

Interrogatory 9. Whenever the church required repairs, who, as a general rule, paid for them, the king or the people?

Answer. The church, originally covered with slates, was newly roofed, but at whose expense I do not know.

Interrogatory 10. What was the general belief and understanding of the people as to the ownership of the church of St. Augustine?

Answer. My belief at that time was that it belonged to the congregation, and I believe that such was the general understanding of the people of St. Augustine.

Interrogatory 11. What was the general belief as to the ownership of the lot in St. Augustine where the P. Episcopal church is?

Answer. I do not remember.

Interrogatory 12. Where was the church, before that of St. Augustine was built?

Answer. The old church stood on the south side of the public square, and ran east and west, and was bounded, as I believe, by St. George street.

Interrogatory 13. What was the dimensions of its lot?

Answer. I do not remember; it was pretty long from east to west.

Interrogatory 14. Were you ever in this old church?

Answer. Yes; when a boy I attended religious services there?

Interrogatory 15. Did the crown of Spain, either for its troops or other purpose, at any time occupy this old church or any part of it?

Answer. I recollect that the government had a guard, called the governor's guard, established either in this building or in a small building annexed to it on the same lot; and that this guard continued thus located until it was transferred to the northeast corner of the public square. I do not know how long the old church was occupied as a church, but it was in the Spanish time.

GEORGE CLA.

Sworn to and subscribed before me, at St. Augustine, this 27th day of September, 1848.

S. R. MALLORY.

Arbitrator.

Testimony of Manuel Crespo.

Manuel Crespo, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, Florida, thereupon deposes, and in answer to the interrogatories following, says to wit:

Interrogatory 1. State your name, age, residence and profession.

Answer. My name is Manuel Crespo. I am a native of St. Augustine, where I have lived the best part of my life. I am fifty-one years old, and am a merchant.

Interrogatory 2. State what was the character, condition and value of the St. Francis barracks, the present United States barracks, when thus transferred to the United States in 1821.

Answer. When the St. Francis barracks were transferred in 1821, they consisted of the principal building and two out buildings, all of stone, standing within a stone wall, about from ten to fifteen feet high, which enclosed the barrack lot. The walls of all these buildings were good and sound. The roof of the present barracks (which was the principal building spoken of) was pretty good except the shingles, which were rotten. The frame of the roof, rafters, plates, &c, were all sound and good, and in repairing the building they were retained and shingled upon. The walls of this building were sound, but there was a crack at one corner; but nothing more than iron clamps were necessary to secure them, and guard against the effects of this crack, and these braces, three or four, were put in by the United States.

Interrogatory 3. What means had you of knowing the facts to

which you testify? Did you examine these buildings and walls particularly?

Answer. I know for this reason. My father was a first lieutenant in the Spanish army, stationed in St. Augustine under the Spanish government for many years previous to the change of flag, and down to the change. He came to St. Augustine in 1790, and resided there till the change of flag. From 1812 to 1818 I was a cadet in the Spanish service in St. Augustine, and my duties called me daily to these barracks, and I knew all about them. I continued to reside in St. Augustine down to the change of flag, and ever since.

Interrogatory 4. Was the frame of the roof (rafters, &c.) in its place on the building, or had it fallen into the building or from it?

Answer. The frame of the roof was entire, and in its place.

Interrogatory 5. What was the value of the land and building composing these barracks? What would the barracks have sold for at that time, 1821, in St. Augustine?

Answer. I do not think myself competent to answer this question.

MANUEL CRESPO.

Subscribed and sworn to before me, at St. Augustine, this 5th October, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Joseph Canova.

Joseph Canova, being duly sworn the truth to speak and true answers make to such questions as may be propounded by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks of St. Augustine, Florida, and other property, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, residence, and profession?

Answer. My name is Joseph Canova; I am a native of St. Augustine, where I have always lived; I am thirty-seven years old, and am a carpenter.

Interrogatory 2. State what you know about the repairs of the United States barracks in St. Augustine, the state of its walls, roof, &c.?

Answer. I worked as a carpenter, about 1829 or 1830, on these barracks. They were then being repaired by the United States. The walls of the main building, the present barracks, were the identical walls of the old convent or barracks of St. Francis, and were in good order; and, to the best of my knowledge, no mason work was then done on them. The roof required shingling only.

We took off the old shingles and put on new ones, leaving the rafters, roof, boards, &c., standing. The rafters, plates, &c., were in very good condition.

Interrogatory 3. Do you know whether, or not, these plates, rafters, &c., of which you speak, were the original rafters of the St. Francis barracks, or others put on by the United States after the change of flag?

Answer. I do not know. The rafters, plates, &c., were shaped by the axe and by the whip saw. There was also a building, which I remember, back in the barrack yard, of stone, one story high, used for guard-room, &c. There was also a high stone wall, eight or ten feet high, on the north and west side of the lots, and also on the east.

his
JOSEPH + CANOVA.
mark.

Subscribed and sworn to before me, at St. Augustine, this 4th October, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of John Leonardy.

John Leonardy, being duly sworn the truth to speak and true answers to make unto all questions that may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, Florida, thereupon deposes, and, in answer to the interrogatories following, answers, to wit:

Interrogatory 1. What is your name, residence, age, and profession?

Answer. My name is John Leonardy; I am a native of St. Augustine; I am seventy-two years of age, and am a laborer.

Interrogatory 2. State what you know about the origin of the present United States barracks in St. Augustine?

Answer. I remember very well the convent of St. Francis, afterwards called, during the Spanish time, (after the retrocession,) the St. Francis barracks, and now called the United States barracks. I, when a boy, saw monks or friars here in St. Augustine, of the Carmelite, Capuchin, and Dominican orders, who were here and about here, St. Augustine, in their vocations, acting as missionaries, &c. These friars, as I always heard, occupied the convent of St. Francis, and it always went by this name, the convent of St. Francis, until the barracks which the English had built during their possession of St. Augustine, and which the Spanish troops occupied after they repossessed, in 1784, were burned. Then, I remember, that the Spanish troops had no barracks, and the au-

thorities sent them to the convent. Here they continued until the change of flag in 1821.

Interrogatory 3. Did you ever see the convent in the possession of monks or friars, or used for any religious purpose whatever?

Answer. Never.

Interrogatory 4. What do you know about the old church or bishop's house?

Answer. The old church, or bishop's house, stood on the lot immediately south of the public square, and on the same lot which now belongs to the P. Episcopal church; and it was then bounded, as it now is, by St. George's street on the west, and was then used as the lot of the old church. I have many and many a time attended mass, and the services of the church there. This old church was two stories high. The services of the church were performed up stairs, and the "sacristan" resided with his family below, and resided there until the new church was built and completed. It belonged to the church, that is, the bishop owned the house and lot.

Interrogatory 6. How do you know to whom the old church and its lot belonged?

Answer. It was so understood at the time in St. Augustine. My father and mother told me so frequently.

Interrogatory 6. State what you know relative to the place called our Lady of the Milk?

Answer. I remember it well; it was an old stone building, and seemed from its character to have been expressly built for a church. I have attended mass there when it was used as a church, and it was called the church of our Lady of the Milk; it stood about one quarter of a mile north of Fort St. Mark, on Milk creek, also called Hospital creek, because this old church was sometimes used as a hospital.

Interrogatory 7. Did you ever see monks or friars living there, or any person belonging to the church?

Answer. No, I never did, that I remember; but it was a regular Catholic church, with the altar and the oblate of the church; and there were rooms suitable for the habitations of monks, if they did live there.

Interrogatory 8. Can you recall any circumstance, other than what you state, going to show to whom this old church belonged?

Answer. No, I cannot; the hospital established in it was a public one, used as well for private as for the patients of the government. I always thought it was church property.

Interrogatory 9. Describe more particularly where it stood?

Answer. It stood on the lot now cultivated by Mr. Capo, on Hospital creek, about a quarter of a mile north from the fort.

Interrogatory 10. Was all the land which Capo now cultivates on Hospital creek attached to the church?

Answer. Capo cultivates about three acres; but whether it all, or what portion of it, belonged to our Lady of the Milk, I do not know; but I remember about an acre was fenced in about the church.

Interrogatory 11. What became of this old church, and how has the land you describe been occupied since and up to this time?

Answer. I do not know what became of the church; but various persons have since occupied and cultivated the land.

Interrogatory 12. Who officiated, usually, in the mass and church services when you attended our Lady of the Milk?

Answer. The priests of the St. Augustine church.

Interrogatory 13. What was real estate in St. Augustine worth at the change of flag, and was it increased or decreased in value by the change of flag?

Answer. I cannot say what the value of real estate was, but it was increased in value by the change.

Interrogatory 14. Can you give any estimate of the condition and value of the St. Francis barracks at the change of flag?

Answer. The barracks were in pretty good condition, but wanted roofing; there were three buildings, built of stone; I do not know their value, nor can I say anything about it; I am not acquainted with such matters.

JUAN LEONARDY.

Subscribed and sworn to before me, at St. Augustine, 30th September, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Bartolo Pacetty.

Bartolo Pacetty, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your age, name, profession and residence?

Answer. My name is Bartolo Pacetty; I am a native of St. Augustine, where I have always lived, and I am fifty-seven years old.

Interrogatory 2. Were you acquainted with St. Francis barracks before the change of flag? If so, please state what you know relative to them, and, particularly, as to whether they were regarded as crown property?

Answer. I have known the barracks since I was a boy; the general report and received belief and understanding among the people of St. Augustine always was that the barracks were church property. At the change of flag, in 1821, three companies of Spanish troops, two of black and one of mulatto troops, were stationed in them; there were then three buildings; the principal one, which is the present barracks, was in general good condition, except the roof; the frame of the roof, rafters, &c., were good, but the shingles were decayed. The second building was of stone, one story high, very high, and was used as a kitchen; it was a very large

building, occupying more than one-third, north and south, of the depth of the lot, bounded on the west by Charlotte street. The third building, also of stone, was on the south side of the lot, had stone arches in front, and was used for the ordnance and for prisons. The walls and stone work of these two buildings were Spanish work, and very strong and in good condition, but the wood work was in decay.

Interrogatory 3. Did the United States troops occupy these barracks before they were repaired, or were they tenantable for troops or any other military purpose?

Answer. I do not know whether the American troops went into them or not at once; but they might have been occupied by them temporarily, and were in sufficient repair to be so.

Interrogatory 4. State your knowledge of the old church of St. Augustine, where it stood, the size of its lot, and who owned it?

Answer. I remember the old church well; before our present church was built, the old church, which was also called the bishop's house, stood upon the lot now occupied by the Protestant Episcopal church in St. Augustine, and, after the change of flag, the foundation of the old church stood there, and the lot of the old church was the one now known as the Protestant Episcopal church lot; it was always regarded as church property. After the change of flag this lot remained open and unenclosed.

Interrogatory 5. Do you know anything of the origin of the present Catholic church of St. Augustine?

Answer. Yes; the present church was built by the general contributions of the inhabitants; those who were able gave money, others worked upon it gratuitously, and others contributed poultry, which were sold to the hospital, and the proceeds paid towards the building of the church; at that time each fowl was valued at one dollar. The church was not entirely completed in this manner; money was sent from Havana to aid in its completion, but whether contributed by the crown or the bishop I do not know.

Interrogatory 6. According to your knowledge of the value of property in St. Augustine at the change of flag, what do you think the barracks and the lot of the old church would have sold for, in open market, for cash, after due and proper notice?

Answer. I suppose that the barracks would have sold for ten or twelve thousand and the said lot for about one thousand dollars.

Interrogatory 7. Was real estate increased or decreased in value, in St. Augustine, by change of flag?

Answer. Very much increased; it brought speculators and strangers here to purchase property.

Interrogatory 8. What was the usual annual rent of an ordinary dwelling house in St. Augustine at the change of flag?

Answer. About one hundred and fifty dollars per annum.

Interrogatory 9. What profit, as a general rule, has real estate paid on the investment in St. Augustine since the change of flag?

Answer. At the change of flag, and for five or six years subsequent, real estate in St. Augustine paid on its value about sixteen per cent. Then property fell greatly in value; afterwards, during

the existence of the Florida war, real estate and rents were very high, and continued so throughout the war; rents were very high, and generally amounted to about sixteen per cent. of the value of the houses rented.

Interrogatory 10. What is the present value of real estate in St. Augustine?

Answer. Very low, indeed—lower than it has ever been; property which ten years ago would have sold for one thousand dollars, would not now command four hundred.

his
BARTOLO + PACETTY, Sr.
mark.

Subscribed and sworn to before me, at St. Augustine, this 27th September, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of James Arnan.

James Arnan, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, profession, and residence?

Answer. I am a native of East Florida, and have always lived in St. Augustine; I am seventy-two years of age; I have been a pilot and a farmer, and my name is James Arnan.

Interrogatory 2. State your knowledge of the old Catholic church of St. Augustine?

Answer. The old church, before the present one was built, stood on the lot at present occupied by the P. Episcopal church, and the lot of the old church was the same as that now belonging to the Protestant church.

Interrogatory 3. To whom did the old church and its lot belong?

Answer. I cannot say positively; but the general report, belief, and understanding, among the people of St. Augustine, was that they were the property of the church.

Interrogatory 4. In what manner, and by whom, was the new church of St. Augustine built?

Answer. Before it was begun, Father O'Reilly, the principal priest, went around among the people, persuading them to build a new church. I was then a young man. The people agreed to do so, and the church was then commenced; all those of the people who were able, contributed money to build it; others gave their labor, and my father, with others, contributed poultry, which was

sold to the hospital, and the proceeds went towards building the church. The people did not complete it. Father O'Reilly sent to Havana and got money, as I understood, by a collection, wherewith to complete it.

Interrogatory 5. State what you know of the church of our Lady of the Milk?

Answer. When I was a boy, I was inside the old house called the church of our Lady of the Milk. It was abandoned, and stood about six hundred yards north of the fort, on the creek called Milk creek. When the present St. Augustine church was built, Father O'Reilly caused the walls of our Lady of the Milk to be demolished, and the stone thereof to be carried away and used in building the new church. The lot is still called after the old church among the old people, and it was always understood among the people that it was church property.

his
JAMES + ARNAN.
mark.

Subscribed and sworn to before me, at St. Augustine, this 27th September, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of John Andreo.

John Andreo, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him touching the claims of the vicar general of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, residence, and occupation?

Answer. My name is John Andreo; I am a native of St. Augustine, where I have lived all my life; I am sixty-six years of age, and am a pilot and fisherman.

Interrogatory 2. State your knowledge of the old church of St. Augustine, where it stood, to whom it belonged, and how it was supported?

Answer. The old church stood south of the public square, on the lot where the Episcopal church now stands, and I suppose it must have belonged to the king, but I don't know. The king supported it.

Interrogatory 3. State what you know about the origin of the new or present church of St. Augustine?

Answer. Of my own knowledge, I can say nothing. My father, who is dead, has frequently told me, as have others, that it was built by the contributions of the people at large.

Interrogatory 4. State what you know about the church of our Lady of the Milk?

Answer. I know nothing.

his
JOHN + ANDREO.
mark.

Subscribed and sworn to before me, at St. Augustine, this 27th September, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of Joseph Manucy.

Joseph Manucy, being duly sworn the truth to speak and true answers make to such questions as may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in St. Augustine, Florida, thereupon deposes, and, to the interrogatories following, says, to wit:

Interrogatory 1. What is your name, age, residence, and profession?

Answer. My name is Joseph Manucy; I am a native of St. Augustine, where I have lived always; I am fifty-six years old, and am a farmer.

Interrogatory 2. Have you any knowledge of the barracks in St. Augustine; if so, state it; and state what was the general belief among the inhabitants as to the ownership of them before the change of flag, and their condition and character when delivered to the United States?

Answer. Previous to the change of flag, I was a drummer in the Spanish army at St. Augustine, and stationed, much against my will, at St. Francis's barracks. I always heard, about St. Augustine, among the people, that the barracks belonged to the church; but that the Spanish government of St. Augustine, which was very despotic, had taken it for its troops. The large building, or the barracks proper, was, at the change of flag, the same that it is now, with the exception of some repairs, since put on by the United States. It accommodated, generally, five companies of Spanish troops. There were two other large stone buildings, for kitchens, bakery, calaboose, ordnance, &c. All the wood work of these buildings was generally decayed, but the walls and all stone work was first rate.

Interrogatory 3. What do you know about the old church or bishop's house?

Answer. The old church or bishop's house stood on the lot now occupied by the P. Episcopal church, and my mother has frequently led me there by the hand, when a child, to mass. I sup-

posed, from the general understanding that prevailed, that it belonged to the church.

Interrogatory 4. What was the origin of the new or present church?

Answer. The people built this church by general contribution, every one paying what he was able; and the prisoners in St. Augustine were also made to work on it.

Interrogatory 5. State what was the usual rent of an ordinary dwelling house in St. Augustine during and throughout the Indian war, and what per centage such property paid on its value?

Answer. I owned three dwellings in St. Augustine during the war; one rented for forty and the other two for fifteen dollars per month each. Such property paid, during the war, about from twenty to thirty-five per centum per annum on its value or cost.

his

JOSEPH + MANUCY.

mark.

Subscribed and sworn to before me, at St. Augustine, September 27, 1848.

S. R. MALLORY, *Arbitrator.*

Testimony of Andreas Pappy.

Andreas Pappy, being duly sworn the truth to speak and true answers make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks, and other property in St. Augustine, thereupon deposes, and in answer to the interrogatories following, says, to wit:

Interrogatory 1. State your name, age, residence, and profession.

Answer. My name is Andreas Pappy; I was born in St. Augustine, and had always lived here, and am a farmer.

Interrogatory 2. State what you know relative to the present United States barracks, their origin, occupation &c., before 1821?

Answer. Of my own knowledge I know nothing. What I know on this subject has been derived from conversations with the old people of St. Augustine, and particularly with Mr. Jeronimo Alvarez. This gentleman came to St. Augustine with the Spaniards in 1784, and afterwards occupied various official stations, such as a magistrate, officer of the militia, &c.; and he was the builder of the constitutional monument now in the public square of St. Augustine. He was always esteemed a man of great integrity and worth, and retained the full use of all his faculties up to the time of his death, which took place about two years ago, at the age of about ninety-one years. Before his death I had occasion to converse with him particularly upon the subject embraced by the question now submitted to me, and to make of him many inquiries about it. And I will state the general information conveyed to

me by him. In answer to my particular question, whether he had ever known the present barracks in St. Augustine as a convent, he replied that he had. That after he came to Florida, in 1784, the Spanish troops at once took possession of the barracks which the English had built and occupied, and that the present United States barracks were then called the convent of St. Francis, and were occupied by monks or Capuchin friars. He then described their appearance, as dressed like monks, having long beards, &c.; and I have heard the same facts for years in this city of St. Augustine, as coming from the old people; and I believe that the statement made by Mr. Alvarez and above recited has always been currently believed and received among the people of St. Augustine.

Interrogatory 3. State what was the value of real estate in St. Augustine, what per centage it paid upon its cost or value, what the rent of ordinary dwellings in St. Augustine in 1821?

Answer. I was married in St. Augustine in the month that the Americans took possession in 1821, and went to house keeping. I paid six dollars a month for a very little house, a mere shed, which I would not live in now if they were to give it to me. All real estate was increased in value greatly, by the change of flag. This is all I can say about the value of real estate.

Interrogatory 4. What was the *character, condition*, and value of the barracks in St. Augustine in 1821, and of each particular part of them?

Answer. When the St. Francis barracks were delivered to the Americans in 1821, there were three buildings of stone composing them, which buildings the Spanish troops, black troops, I believe, occupied at the time the transfer to the Americans took place. I do not know in what particular condition they were, only that the troops did occupy them until the Americans came. The present barracks, with the repairs put on by the United States, are those I speak of. As to the value of the buildings in 1821, or of either of them, I can say nothing.

Interrogatory 5. What would so much land and such buildings, collectively or separately, have sold for in open market for cash, after due and proper notice in 1821?

Answer. I can give no idea.

ANDREAS PAPPY.

Subscribed and sworn to before me, at St. Augustine, this 30th September, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Ramon Rogero.

Ramon Rogero being duly sworn the truth to speak, and true answer make to all questions which may be propounded to him by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic church of Florida, and the wardens of the Catholic

church of St. Augustine, to the United States barracks and other property in St. Augustine, thereupon deposes, and, in answer to the interrogatories following, says, to wit:

Interrogatory 1. What is your age, residence, name, and profession?

Answer. My name is Ramon Rogero; I am a native of St. Augustine, where I have ever lived; am sixty-three years old; no particular profession.

Interrogatory 2. State what you know relative to the old church of St. Augustine, where it stood, &c.?

Answer. The old church stood on the present Episcopal church lot, before the present Catholic church was built, and I remember it distinctly, and have frequently attended mass there when a boy, the lot on which it stood is the same in all respects as the present lot of the P. Episcopal church.

Interrogatory 3. How was the present Catholic church of St. Augustine built?

Answer. The church was built by the people generally. Those who were able contributed money, and others gave their labor, each according to his means. It was not wholly built thus, but the pastor obtained money from Havana to complete it; whether from the crown or bishop I know not.

RAMON ROGERO.

Subscribed and sworn to before me, at St. Augustine, this 27th September, 1848.

S. R. MALLORY,
Arbitrator.

Testimony of Jane Rodriguez.

Jane Rodriguez being duly sworn the truth to speak, and true answers make to such questions as may be propounded by S. R. Mallory, arbitrator, touching the claims of the vicar general of the Catholic Church of Florida, and the wardens of the Catholic church of St. Augustine, to the United States barracks and other property in the city of St. Augustine, thereupon deposes, and in answers to the interrogatories following, answers, to wit:

Interrogatory 1. What is your name, age, and residence?

Answer. My name is Jane Rodriguez; I am a native of East Florida, and have lived here in St. Augustine, always; and I am seventy-two years old.

Interrogatory 2. What do you know about the place called our Lady of the Milk?

Answer. I have been, when a young girl, in the old building called the church of our Lady of the Milk, which stood north of Fort St. Mark about six hundred yards, and there I have seen an altar, and a statue of the Blessed virgin.

Interrogatory 3. Do you know anything more about it?

Answer. No.

JUANA RODRIGUEZ.

Subscribed and sworn to before me, at St. Augustine, the 4th of October, 1848.

S. R. MALLORY,
Arbitrator.

The deposition of Colonel Harvey Brown, U. S. A.

Harvey Brown, brevet lieutenant colonel, United States army, being duly sworn, deposed and says:

I was at St. Augustine, East Florida, about two months after the change of flag, and was quartermaster of the American troops there, and saw and examined the barracks, commonly known as the Convent of St. Frances.

All the public property, excepting the parochial church and the court-house, was turned over to me by Captain Bell, 4th artillery, or another officer; and among the property thus transferred was the convent in question, with the condition of which I made myself acquainted. This building was in the form of the letter H, there being a centre structure with two ends, and the material was the concrete stone of St. Augustine or Anastasia island. The walls of it were standing and good, the rafters and plates were sound, and were used in its subsequent repair, but the shingles were entirely worthless. The main building had neither doors nor windows remaining; the south wing was in much the same condition, and the north wing was a little better. The floors below were of concrete, the floors above were of wood and very much decayed. The only part of it which could give any shelter to the American troops was the north wing below, before it was repaired, and this was unfit for the purpose. On the south side was a row of cells, the walls of which, about fifteen feet high, built like those of the convent, were standing and good, but the roof of tabia had fallen in. About a half an acre of ground was thus enclosed as a barrack yard by the walls of the convent, that of the row of cells and a stone wall which joined them. I considered the buildings of no value except for the materials of which they were composed, viz: the stone walls, and the rafters, and plates.

Property was of but little value in St. Augustine at that time. I was familiar with this subject. Some officers of the army purchased property there of which I was cognizant. The greatest value of the convent, including the land and every thing on it, could not have exceeded three thousand dollars.

Interrogatory. What do you think, from your knowledge of St. Augustine at that time, the price of real estate and property generally, rents of houses, and amount of capital afloat, the said barracks or convent, land included, would have sold for at public outcry, after fair notice, for cash?

Answer. I do not believe that it would have sold for fifteen hundred dollars; and when I say that the *value* could not have

exceeded three thousand dollars, I have reference alone to the value that appraisers should have affixed to it had it been purchased by the United States. An orange grove in the town, with a dwelling-house on it, which I would have preferred, in value, to the convent, sold at that time for seven hundred dollars, or thereabouts. I will add, that the inhabitants of the ceded provinces who possessed property in St. Augustine, as they were going to Cuba, seemed anxious to dispose of it.

I repaired these barracks in 1822 and 1823, for the United States. I added no new buildings, and placed no repairs on them but such as were required, and they were made with the greatest economy that the case admitted of, and the cost was about twenty-thousand dollars. They were subsequently again prepared by the United States. I do not consider, however, that the cupola was absolutely necessary, and perhaps one might have been dispensed with or erected at something less than its actual cost.

HARVEY BROWN,
Lieutenant Colonel U. S. army.

Subscribed and sworn to before me, at Washington, this 21st of December, A. D. 1848.

S. R. MALLORY, *Arbitrator.*

SAN AUGUSTIN DE LA FLORIDA, *Deciembre 20, de 1797.*

Cerciorado ya de que por parte de la Rl. hacienda, se intenta dar destino a la casa en cuyo alto, por falta de Iglesia, se ha celebrado los divinos oficios, desde mediados del ano de ochenta y quatro, hasta el dia ocho del corriente, en que se traslado con universal jubilo el sagrario, a la nueva parroquial aun no concluida. Y como quiera que dho edificio es de la clase de vienes cuya devolucion a sus duenos, previene la Rl. orden de 18 de Marzo, de 1791, derifida al Sor. Intendente de exto y Rl. hacienda de la ciudad de la Havana (de la que accompano copia simple) por la donacion de unas casas que enter vivos, hizo el Ber. Don Alonzo Leturiundo, cura y vico. eccl. que fue de esta dha Yglesia, a la purisima concepcion y a los curas propietarios que le sucedieran, para que sin salir de ellas, aposentaren a los Sres. Ylustrisimos y sus familias, quando viniesen a la santa vinta, segun la escriptura que otorgo en el ano de mil seiscientos noventa y uno y bajo la condicion que habian de hacer y costear una fiesta solemnisima a dha purisima concepcion, en su dia; cuya obra pia hizo poner en efecto el Illmo. y Revmo. Sor. Don Fr. Buenaventura Texada y Velasco, dignisimo obispo de Tricale auxiliar de Cuba por un auto que proveyo en 2 de Octubre, de 1737, dando providencia para el legal conocimiento de esta donacion, y vendiendo S. S. Y. a la Rl. hacienda las paredes de las casas donadas, para que se fabricase en ellas la Yglesia parroquial, en precio de quatro mil pesos, con los cuales fundo dha obra pia, para cuya conclusion tubo que suplir de sus ventas como mil y seiscientos pesos, como mas por menor ha de constar de los

autos del asunto, que deben existir con los demas papeles del archivo eccel. de esta Florida, en las curia episcopal de la Havana, por haverse trailadado a ella al tiempo de la evacuacion de esta provincia por la entrega que de ella hizo la corona de Espana, a la de la Gran Bretana. Por tanto en uso del derecho que me auste, en mi nombre, el de mis sucesores y demas internados protexto una dos y tres veces y todas las mas que puedo y devo, contra qualquiera inovacion que por parte de dha Rl. hacienda quiera executarse en dho edificio, por no pertenecerte en manera alguna, como obra pia que es, por los motiyos anunciados y ulteriores fundamentos que se daran en su oportunidad, luego que vengan los documentos citados, y demas que correspondan al asunto, que tengo reclamados, de donde debera resultar la puticia y derecho de esta exposicion y reclamo que hago en debida forma.

Dios guarde a V. S. muchos anos.

MIGUEL O'REILLY.

Senor Don ENRIQUE WHITE.

ST. AUGUSTINE, October 18, 1848.

I certify the foregoing to be a true copy of an original letter from the curate of the Roman Catholic church of St. Augustine to the governor of East Florida, on file in the office of the public archives.

ANTONIO ALVAREZ,

In charge of the public archives.

[Translation.]

Father O'Reilly to Governor White.

SAINT AUGUSTINE OF FLORIDA,

December 20, 1797.

I am informed that the royal treasury designs to dispose of the house in whose upper story, for the want of a church, divine service has been performed from the middle of the year eighty-four, till the eighth of the present month, on which day the holy sacrament was transferred, amid universal rejoicing, to the parochial church, though not yet completed; and, as this edifice belongs to that class of property which reverts to its owner, as per the royal order of the 18th of March, 1791, directed to the Intendent of the royal treasury at Havana, (an uncertified copy of which is herewith enclosed,) coming, as it does, by a donation of certain houses, made by the Rev. Alonzo Leturiundo, who was curate and vicar of said church, to the purest conception, and to the curates who might succeed him, upon the condition that, without leaving them, they should receive the most illustrious bishops and their families when they should come on a holy visit, (as per his deed of 1691,) and that they should likewise make and defray the expense of a feast in solemnization of the conception of the Virgin on the day

of the said feast. This pious work was carried into effect by the Right Rev. Fr. Buenaventura Texada and Velasco, worthy bishop of Tricall, assistant of Cuba, by an act dated the 2d of October, 1737. By this act he provided for the legal recognition of this gift, and sold to the royal estate the walls of the said houses for the sum of \$4,000, in order to build the parochial church in their place; and with this he founded this pious work, to finish which, he had to give about \$1600 of his own income, more or less, which may be seen in the Episcopal church of Havana, with the other archives of Florida, transferred there when the province was turned over to the British crown.

Hence, as far as the right which I have in my own name, in the names of my successors and others interested, I hereby protest, once, twice, and three times—and as many more as I can and ought to protest, against any innovation which the royal estate may design to make upon that building, the same not belonging to it in any manner or form whatever, it being, from its foundation, a pious work, according to the reasons already given in time when the documents alluded to can be cited, as well as others which I have applied for. From these the justice and right of this exposition will appear, and I ask that this be done in due form. May God preserve you many years.

ENRIQUE WHITE.

MIGUEL O'REILLY.

SAN AUGUSTIN DE LA FLORIDA, 2 de Enero, de 1798.

Para contestar el oficio de protestas de V. su ha 20 del corriente, que solo recibe en 30 me he instruido que la casa en cuyo alto se han celebrado los divinos oficios por defecto de Iglesia hasta que se concluyo en lo substancial a expensas de S. M. la que actualmente sirve de parroquia ha dependido spre de la Rl. hacienda desde que las armas Britanicas evacuaron esta ciudad y en prova. y las de uno soberano tomaron posecion de ella.

A mas de esto inquietiendo el titulo con que aquel edificio paso a la Rl. hazda. se me ha asegurado que consistiendo antiguamente en quatro paredes viejas fue construido y aumentado por aquella nacion, y que abandonandolo vino a recaer en S. M. consequenti a los tratados que mediaron entre ambas coronas por cuyo motivo con conocimiento y auencia de dha Rl. hazda. se destino su alto a aquel piadoso objeto y sus rajos a almacenes de harina del rey carzel provisional y vivak.

Vaxo de este concepto si V. intenta justificar que es de la clase de aquellos que habla la Rl. orn de 18 de Marzo, 1791, si obra Rl. disposicion que veru en la materia espero que lo ha de egecutar por elFor. debido para que con audiencia del que fuese parte legitima pueda yo administrar justa., desalojandolo entretanto pues queda la Rl. hacienda con el advitrio de ocuparlo quanto antes en servicio de S. Señor mayormte interesandose en el desempeo de

sus Rs. Caxas y con ello evita otros gastos que puede ahorrar en su beneficio.

Dios guarde a V. S. muchos años.

Senor Don MIGUEL O'REILLY.

ST. AUGUSTINE, *October 18, 1848.*

I certify the foregoing to be a true copy of the original draft of a letter from the governor of East Florida to the curate of the Roman Catholic church of St. Augustine, on file in the office of the public archives.

ANTONIO ALVAREZ,

In charge of the public archives.

ST. AUGUSTINE, *January 2, 1798.*

To reply to your official protest of the 20th instant, which I only received on the 30th, I am informed that the house in whose upper story divine services were celebrated for want of a church, until the parochial church was completed at the expense of his Majesty, has accrued to the royal estate since the arms of Great Britain abandoned, and that of our sovereign took possession of that city and province.

Furthermore, upon enquiring into the title with which this edifice passed to the royal estate, I have been assured that, anciently, it consisted of four old walls, which were improved and augmented by that nation, and when they abandoned, it again came to the possession of his Majesty, in accordance with the treaties between the two crowns, and then, with the knowledge and consent of the royal estate, the upper story was destined to this pious object, and the lower story to flour stores for the king, a provisional prison and barrack. Under this conception, if you intend to justify that it is of that character which is spoken of in the royal order of March 18, 1791, or other royal disposition which is to be seen relative to the matter, I hope you will proceed with due order, that the legitimate owner being shown, I may do justice in the premises. It will, in the mean time, remain as it was before, with the royal estate, in the service of the officer charged with the houses of the king, by which expenses will be avoided, which may result to its benefit.

May God preserve you many years.

[Copia.]

MADRID, *18 de Marzo, de 1791.*

Por la carta de V. S. de 27 de Noviembre proxo., parado No. 64, se ha enterado el rey de lo que V. S. informa sobre las instancias de Donna Lucia Escalona, Donna Maria de los Angeles Florencia, y otros familias originarias de la Florida, solicitanto la continuacion

de las limosnas que le señalaron; y examinados los medios que V. S. propone para lograr el fomento de aquella provincia, se ha dignado S. M. aprobarlos en todas sus partes, en inteligencia que los auxilios que deben facilitarse para las fabricas de las casas que se hallan derribadas, y qualquiera gasto que ocurra, deberá perfixarse con presente acuerdo de la junta de Rl. hacienda, y dar cuanta a S. M. para que recaiga su Rl. aprovacion, y deben restituirse a los duenos propietarios las haciendas que posehian antes de su salida de aquella provincia, però si huviesen pasado a otro dueno en virtud de concesion de aquel gobierno, autorizado por S. M. se aplicara y distribuira a las familias en terreno libre lo correspondiente a la accion que tenian de lo que antes les era propio, segun el objeto de lo propuesto por V. S. en el particular.

De todo me ha mandado S. M. instruya al virrey de Nueva Espana para que proporcione los medios convenientes a que se verifique cuanto V. S. propone. Y de su Rl. orden lo prevengo a V. S. para su inteligencia y cumplimiento.

Dios guarde a V. E. muchas anos. Lerena Sor. Yntendte. de Exto. de la Isla de Cuba.

HAVANA, 12 de Septiembre, de 1791.

DECRETO.—Respecto a que esta Rl. orden se ha transcrito al exmo. Sor. goberor. y capitán gral, con el objeto de tratar en junta el modo y forma con que se debe hacerse entender la resolución soberana a las familias Floridanas con lo demas que se porque necesario en el asunto, pase a la contada. prat. de exto. con copia de mi representacion para que conste y se archive, dirigiendo copia certificada de todo al tribunal de cuentas, y a la Secretaria de solo la orden. Hernani.

St. AUGUSTINE, October 18, 1848.

I certify the foregoing to be a true copy of a document on file in the office of the public archives of East Florida.

ANTONIO ALVAREZ,

In charge of public archives.

[Copy.]

MADRID, March 18, 1791.

By your letter of the 27th of November last, No. 64, the king has been informed of the petition of Mrs. Lucia Escalona, Mrs. Maria de los Angeles Florencia, and other native families of Florida, soliciting the continuation of the allowance which they received; and having examined the measures which you propose for the relief of that province, his majesty has deigned to approve them in toto, with the understanding that the aid is given to facilitate the building of the houses which have been ruined, and whatever expense may be incurred, must, with this document, be sent

to the counsel of the royal estate, and an account must be given to his majesty in order to obtain his royal approbation, and to the proprietors must be restored the estates which they possessed before leaving that province; but if they shall have passed into any other hands by virtue of a concession of that government, (the British,) authorized by his majesty, there must be applied and distributed to such families an equal tract of public land as proposed in your letter. His majesty has commanded me to direct the viceroy of New Spain to assign the means to execute what you propose; and of his royal order I inform you, that you may understand and comply with it.

God preserve you many years.

LERENA.

SENIOR MILITARY INTENDENTE

Of the island of Cuba.

Decree.

HAVANA, September 12, 1791.

Respecting this royal order, it has been transcribed to his excellency the governor and captain general, with the object to inform him in what manner and form must be made the sovereign will to the families of Florida, with the balance which will be necessary for this business. Pass it to the military treasurer, with a copy of my representation, that it may be authenticated and recorded in the archives; directing a certified copy of all to the tribunal of accounts, and the order only to the secretary.

Note by Arbitrator.

Juan de Quesada, governor of East Florida, on the 19th of August, 1790, issued an order that certain houses and lands in St. Augustine which had become the property of the king by the retrocession of the province, should be sold at auction; because the tenements were going to ruin. Some of the houses, and amongst them "*the bishop's house*," he reserved for public use. The sale took place at St. Augustine, on the 8th of April, 1791, "John Jose," a negro slave, being used as the auctioneer; and the following were purchasers, the houses being all numbered. Many of these crown lots were, however, also reserved; the citizens having built on them.

No. 15: House and lot sold to Rafael Deas, for.	\$470 00
No. 21: " " Don Miguel Sevallos, representing Capt. Don Sebastian Crea.....	550 00
No. 32: House and lot sold to Don Mateo Guadarama	740 00
No. 38: " " the adjutant of the place, Don Jose Fernandez.....	860 00
No. 45: House and lot sold to Rumualdo Micklafferrias	810 00

No. 66: House and lot sold to Don Bernardo Segui.	\$560 00
No. 77: " " Manuel Mareschal...	345 00
No. 80: " " Diego Carreras.....	196 05
No. 89: " " Captain Don Carlos	
Howard	650 00
No. 104: House and lot sold to Juan Sanches.....	300 00
No. 112: " " Don Miguel Hesnardi	620 00
No. 117: " " Juan Bautista Ferreira	100 00
No. 124: Walls of this house with lot, Bernardo Segui	252 00
No. 125: House and lot sold to Don Fadeo de Arribas, attorney for Donna Isabela Perpall	1,513 00
No. 127: House and lot sold to Pedro Trihay.....	312 02
No. 138: " " Juan Easten.....	300 00
No. 174: " " Raphael Espinosa....	450 00
No. 188: " " Antonio Llambias....	605 00
No. 192: " " Geronimo Alvarez...	400 00
No. 196: " " Antonio Palena.....	320 00
No. 222: " " Geronimo Alvarez...	610 00
No. 225: " " Antonio Maestre.....	200 00
No. 227: " " Pedro Cocefacio.....	955 00
No. 234: Lot only. Sold to Juan Hernandez.....	230 00
No. 250: House and lot sold to Antonio Mirandez....	502 00
No. 253: " " Mateo Guadarama, at- torney for John Rodriguez.....	400 00
No. 254: Lot only. Sold to M. Fernandez Bendichio	300 00
No. 255: House and lot sold to Nicola's Rodriguez...	358 06
Lastly, a house of wood, in the late plantation of Don- na Isabella Perpall, to Bernardo Segui.....	330 00
Total sales.....	\$14,248 05

The purchasers gave security to repair the houses in one year, and to pay five per cent. per annum interest, on the amount of their purchases.

These sales were all confirmed by the king on the 17th of June, 1801, and deeds were ordered to be given to the purchasers and their securities cancelled.

Argument of the Very Rev. B. Madeore, vicar general of Florida, and pastor of St. Augustine's church, in conformity with a joint resolution passed by Congress during the last session, and approved by the President, August 11, 1848, respecting certain property belonging to the Catholic church, but now occupied by the United States.

On the cession of Florida, in 1841, the Spanish officers delivered, by oversight, to the commissioners of this republic, the property of St. Augustine's church, with the property of the crown, under the common name of public property. That it was not intended,

it is evident from the treaty itself by which Florida was ceded to this union. The second and fifth articles show clearly the intention of the two high contractants; in the former, we read the names of the places to be transferred, and in the latter, we find a special reserve of church property. But whatever may be the cause for which the church was deprived, she cannot be forever bereaved of her property. The Spanish government had no right to take it from her; she holds property altogether independent of the civil power. The United States have, therefore, no title to it, as we will see hereafter.

The historians, both of Christianity and of the Roman empire, witness to the fact that our forefathers held, from the time of the apostles, places consecrated to the performance of the Christian religion. It is true, during three hundred years, the pagans robbed and destroyed them; but in the beginning of the fourth century, Constantine converted himself to the religion of Jesus Christ, and, in 312; he gave an edict to force the pagans to restore to the Christians their houses of prayer, as their own property different from the public domain. With his mother, St. Helena, he built many splendid churches, and endowed them richly, leaving to the clergy the care of the temporal, as well as the spiritual, concerns of religion. This edict is the ground work of the canon law, which is composed of the decrees of the councils, in matters of discipline, and of the decisions of the popes.

To believe that the canon law is the production of a mere ecclesiastic authority, would argue a very light acquaintance with the customs of our ancestors; for we all know that the city selected for a general council was a place of rendezvous for the temporal rulers of those times, in order that after the definitions of faith, they might in conjunction with the fathers frame laws for the Christian republic; as we see in almost every instance, but, perhaps, more particularly in the council of Lateran, under Leo X., where we read of ten crowned heads, either personally present or represented by their ambassadors and the council of Clermont, (France,) held in 1095, has been deemed worthy of the name of a general convention of Christendom; from the number of bishops, prelates, princes, dukes, generals, and of other distinguished personages who composed it. Hence, their regulations have for Catholic countries the force that the decisions of Congress have for the States and citizens of this Union.

There, as here, the rights of temporal power and the privileges of the church are authoritatively defined, and the line of demarcation between the civil and ecclesiastic clearly drawn. Church property can be forfeited neither by spoliation nor by prescription; and if the princes encroach on the privileges of the bishops, the pope can compel them to restitution, according to the canon law as set forth in the following councils: Aurelian 3, canon 17; Aurelian 5, cap. 13; Triburien 1, cap. 7; Turon 4, cap. 25; Maguntien under Leo IV., cap. 6 and 11; Aquisgran under Stephen V., cap. 88; Lateran under Leo X., and renewed by the fathers of Trent, in 1545, sess. 22, cap. 11. If any man, whatever may be

his dignity, should he be an emperor or a king, has usurped property or rights belonging to the church or to pious purposes, or has deterred the fruits thereof unto his own use, let him be under anathema till he will have restored to the church and have obtained the absolution from the Roman pontif.

It is on this law that are grounded all the concordates between the civil and ecclesiastic powers; when the former had encroached on the rights of the latter, the pope obliged him to restore either the object itself or an equivalent; hence the origin of the support given to Catholic clergy in some parts of Europe, as in France; for the church property sold during the revolution of 1793, the government of 1801 agreed with the Pope Pius VII. to pay yearly a certain amount of money to the church, and Napoleon complied first with this concordate in 1802.

To this general law of the church the king of Spain was subject as every other Catholic prince, and the title of the protector of the church, which the popes gave to him, bestows upon him limited privileges, and imposes considerable obligations, above all in regard to his possessions in the new world. For it is to be remembered that this title was intended to secure more and more, and not to destroy the rights of that church which granted to him the permission to conquer America; a permission which he accepted with gratitude, for "at that time it was thought that the Holy See could dispose of all the countries possessed by infidels, and therefore, Clement VI. erected into a kingdom the Canary or Fortunate islands, in the year 1344, and conferred it on Louis de la Cerda, descendant from the royal family of Castille," (History of America, by William Robertson; book 1, p. 51.)

In 1438, Henry of Portugal, under the same impression and for the same motives, received at the hands of the pope, Eugenius IV., a privilege, the purpose and the conditions of which are explained in the following quotation from the same historian. Ibid, p. 66.

"He besought the holy father, to whom, as the vicar of Christ, all kingdoms are subject, to confer on the crown of Portugal a right to all the countries possessed by infidels, which should be discovered by the industry of its subjects and subdued by the force of its arms; he promised that, in all their expeditions, it should be the object of his countrymen to spread the knowledge of the Christian religion, to establish the authority of the Holy See, and to increase the flock of the universal pastor."

It was on the same conditions that the Pope Alexander VII., granted, in 1493, a similar favor to Ferdinand, as we see by the very title of the Bull:

"*Insulæ novi orbis a Ferdinando Hispaniarum rege, et Elizabeth regina repertæ et reperiendæ, eisdem conceduntur propagandæ fidei Christianæ causâ.*" The islands of the new world which have been discovered and will be discovered by Ferdinand king and Elizabeth queen of Spain, are granted to them for the *propagation of Christian faith.* Bullar., Editio., Lugel., A. D. 1593, t. 1, p. 466.

Accordingly, the king of Spain obliged himself to establish

Catholic religion, to protect and endow the church. Thus, he received the donation of his conquest on the same *conditions* as the king of Portugal; both were bound to the same duty, namely, to *establish* in all their new possessions the *rights* of that *church* from which they *received* them.

The pope, according to the canon law, which is the expression of the civil and ecclesiastic authorities, and equally binds them both, is the only one who, as the head of the universal church, can fully dispose of her property. Each bishop is a corporation sole for his diocese. So it was decided by Urban II., in 1095, at the council of Clermont, (France,) and his decision is recorded in the *corpus juris canonici*, decret. pais secunda, causa xvi, questio vii.

"The bishops, say the fathers of the council of Trent, session 22, cap. 8, as delegates of the Holy See, are executors of all pious donations, wills, etc., made in favor of the church, and have a right to visit charitable institutions," *ibid*, cap. 9, and "to them, the administrators, either clergymen or laity, of fabrics of all churches, even of the cathedral, of hospitals, confraternities, mounts of piety, or of whatever charitable institution it may be, shall annually give an account of their administration."

The same regulation was made in 892, in the council of Vienna en Dauphine, (France) convened by Pope Formose. Consequently, no property can be accepted, no church built, no religious institutions or foundation established without the permission of the bishop, who accordingly is the only person vested with the right of property, by grant, donation, etc., for ecclesiastical purposes.

This law is sanctioned by the legislature of several of the States of this Union, and in particular by that of Maryland. See an act of 1832, ch. 308. But, with his permission, grants, donations, etc. can be made to every church, and even to every altar of his diocese, as it is demonstrated by the general custom, and such was the case for the church of Florida, for the bishop could receive and sell the church property, as it is proved by an authentic letter on file, from Rev. Mr. O'Reilly to Henry White, governor of St. Augustine, where it is mentioned that the Right Rev. Bonaventura Texada and Velasco, bishop of Tricale, coadjutor of Cuba, and special charge of Florida, sold, on the 2d of October, 1737, to the Real Hacienda, church property for \$4,000. Eleven lots, situated in the city of Havana, were given to that church, and the rent was yearly sent to its major-domo; as proved by authentic documents on file.

The church of St. Augustine was then entitled to hold property, and receive any grant lawfully made to her, as William Wirt stated, on the 19th of July, 1822, in a letter to Mr. Adams, Secretary of State, where he says:

"There can be no doubt of the power of the king of Spain to grant lands in Florida, while the province was his, nor of the capacity of the Roman Catholic church to take by grant. Our *treaty* with Spain recognizes and ratifies such grants made previous to a certain day." See opinions of attorney general, p. 1,390.

Now, we can prove that the property we claim was held by that

church long before the treaty of 1819, between this republic and the Spanish government.

We have not the title of the original grant, or of other modes of acquisition of the property we claim, it is true; but we can account for its loss. It is a fact of public notoriety, that a great amount of papers, all relating to church matters, were lost or destroyed at Havana. In 1812, from 8 to 10 large bundles of titles, all written before 1763, were destroyed in the fort of St. Mark, at St. Augustine, as stated in the affidavit of Mr. Antonio Alvarez, which affidavit is singularly corroborated by a fact of which the general government is aware; namely, that many certificates of title given by Mr. Aguillar can not be confronted, because the original has disappeared. From 1821 to 1823, the archives at St. Augustine were opened to the public at large; and, as proved by the affidavits of Mr. Bernardo Segui, Antonio Alvarez, and others, many papers were torn and lost; it is no wonder then, if the original title of our property has disappeared with many others; but, if it had never existed, so strong and so many evidences of its having existed, could not be furnished at times and places so different, and under so many forms. Besides, the places we claim were in the possession of the ecclesiastic authority since over two hundred years, when Florida was ceded to this Union, and during all that time, the civil authority attempted but once to interfere with a part of it, and was obliged to give up, as we will see hereafter.

As for the convent, to-day St. Francis barracks, it was founded at a very early period after the discovery of Florida, as a house of residence for the missionaries; the bishop of Havana, whose authority extended on the continent, was to provide for them. The Franciscans, having already a convent at Havana, since the year 1515, were thought well calculated for the mission of Florida, and in the year 1610 it was erected into a province, which they called St. Helena's province. See the charter of the king, in the documents laid before Congress, p. 10.

From that time, the convent remained in the quiet possession of the bishop, who had the entire control of it. On the 22d of March of that year a culprit took refuge in it, and the governor of St. Augustine, regarding the convent as an ecclesiastical property, where he could not go without infringing the canon law, asked three times the permission of the bishop. See his letter, *ibid.*, p. 21. This act proves that the convent was altogether in the power of the bishop, and that the Spanish government could not interfere with it.

In 1764, it was sold as a private property belonging to the church, in compliance with the treaty of 1763, between Spain and Great Britain. The same bill of sale contained the convent, the Episcopal house and the church of our Lady of the Milk. They were sold by the same authority, to the same gentleman, and under the same conditions. See the transaction, *ibid.*, p. 25. Now it is evident that the bishop's house was a private property, independent of the crown. It had been given to the clergy, in conjunction with

other houses, the walls of which were sold to the real hacienda in 1737 for \$4,000, in order to build the present church of St. Augustine, as it is proved by a letter of Rev. Mr. O'Reilly to the governor of that city. See it on file. In 1784, the convent, the house and the church of our Lady of the Milk were given back, according to the bill of sale, to their lawful owners, the clergy. The province of St. Helena having been suppressed, the Franciscans did not take charge of the mission of Florida. The bishop called other missionaries and placed them in his convent, as stated in the affidavits of Francisco Triay and Andrew Papy. In 1792 the barracks of the king were destroyed by fire, and no shelter remained for his soldiers, as stated by the governor of St. Augustine to that of Havana. See his letter, *ibid.* p. 29. "It is important," says he, "that I should make known to your excellency that the difficulties which surrounded me have been greatly augmented by this misfortune, which has left me without a place to secure the artillery property, and without quarters for the dragoons; nor have I any place for the persons who are condemned to hard labor."

As the friars were but few in the convent, the king applied to the bishop in order to occupy it till he would have fixed a place for his troops, and he paid for the use of it, in supporting the church and clergy, paying rent for the houses they occupied, as proved by affidavits on file. Of this transaction, however, we have nothing in writing; but we can prove that, till very lately, the Spanish government had never interfered in the least with church property, without the permission of the ecclesiastical authority, which permission has been commonly given to them in a bull from the Pope himself; and even in their last fits of disorder, in selling, against the law of their country, the property of the monks, the Spaniards confess their crime and iniquity, by paying to them an annual rent. This is a public fact, well known, and proved by an official letter of the honorable Mr. Calderon de la Barca, minister plenipotentiary of Spain to this republic, which letter will be joined to this document. Yet, with the property under the immediate authority of the bishops, the Spanish government has never pretended to interfere. But, besides this constant practice, in respecting the church property, we have a stronger proof of its having acted according to the canon law in this particular case; for, we have showed that the church had the same right on the convent as on the bishop's house; both places had been held in the same way by the bishop, sold together, restored together, etc., which proves an equal right to both. In 1797, the governor of Florida, mistaken on his ground, wanted to dispose of the bishop's house under some pretext, but reverend Mr. O'Rielly proved to him, "that this house had been given for pious purposes, and, therefore, the civil had nothing to do with it;" moreover, said he, "it belongs to that class of property which the king, by an edict of the 18th of March, 1791, commanded the authority to restore them to their lawful owners, and if they had been either sold or destroyed by the British, they had to give an equal extent of land, or a house,

as they had before leaving Florida." See the letter and the edict on file.

The governor did not deny the position of Rev. Mr. O'Reilly, as it may be seen by his letter on file; he only directed him to proceed according to the law, and the consequence was that he was compelled to remove his guard from the house, and leave it altogether to the clergy. (See the affidavits on file.) The class of property mentioned in the edict of the king, is that class of property sold by D. Eligio de la Puente. To that class belong the church of St. Augustine, the church of our Lady of the Milk, the convent and the bishop's house, with one hundred and eighty-five houses or lots, which he sold, by order of the government, to keep them from being lost. (See the documents laid before Congress last year, p. 27.)

It is to be remarked, that not a single lot or house from this large number belonged to the government; they are all private property, and they are to be preserved to their lawful owners, and if they are lost, they must be restored, or an equivalent is to be given. No exception for the property we claim; on the contrary, the government is particularly interrogated to know if the church property is comprised in the edict, and the answer proves that the governor has no right to interfere with church property. Thus the edict of the king decides the question concerning the validity of our title, and of our right on the property we claim.

As for the parochial church, the foundations and the lots round were sold with the other private property in 1764, and restored to ecclesiastic authority in 1784; the bishop furnished \$5,600, partly accruing from ecclesiastic property, sold to the real hacienda for the continuation of that building, (see the letter of Father O'Reilly, on file,) and the people contributed towards it, each according to his own ability, as proved by affidavits on file. The king furnished nothing of his own; he only sanctioned the application of the rent of eleven lots which that church had at Havana.

With the church of our Lady of the Milk the government has never interfered.

We have, then, established that the object of our claim was, before the cession of Florida to the United States, a private property, belonging to the bishop as corporation sole for his diocese; and the fifth article of the treaty of 1819, between Spain and this republic, secures the rights of the church, not to be modified, but, as they were, invested in the person of the bishop. "The inhabitants of the ceded territories shall be secured in the free exercise of their religion, without any restriction."

By this article the right of property is recognized in the church, and grants made to it are confirmed and ratified. (William Wirt, already quoted.) Congress cannot interfere with religion or church matters, according to the first article of the addition to and amendment of our constitution. "Nor shall private property be taken for public use without compensation"—*ibid*, article 5; and "whenever a right grows out of, or is protected by, a treaty, it prevails against all laws or decisions of the courts of the States; and *who-*

soever may have the right, under the *treaty*, is *protected*." (Public statutes of the United States, vol. 8, p. 2.)

B. MADEORE,
Vicar-general of Florida.

WASHINGTON, *January 10, 1849.*

HONORABLE SIR: My apology for addressing this note to you, and begging of you the favor of an answer, will be found, I hope, in the difficulty into which I am thrown by an oversight of the Spanish officers, who, in 1821, delivered up to the United States the property of my church as the property of the crown of Spain.

When I applied to this republic for its restoration, two questions arose: 1st. Did the Catholic church, under the Spanish government, hold property in the new world independent of the crown? 2d. Had not the king, according to the law and customs of his kingdom, a right to take any church property, or to turn it into his own use, without the consent of ecclesiastic authority?

In my humble opinion, I have fully demonstrated, from canon law, by historical facts, and treaties made by Spanish sovereigns, that they could never pretend to have any right on church property; but, honorable sir, a decision from you upon the question would, I think, altogether settle the matter. Being well qualified by your personal knowledge, and, in your capacity of minister plenipotentiary of Spain to this republic, being the organ of your government, no one would presume to be more competent than you to interpret its laws and customs.

I have the honor to be, honorable sir, very respectfully, your most obedient, humble servant,

B. MADEORE,
Pastor of St. Augustine, and vicar general of Florida.
To honorable Mr. CALDERON DE LA BARCA,
Minister plenipotentiary of Spain.

WASHINGTON, *January 11, 1849.*

REVEREND SIR: I have had the honor of receiving your letter of yesterday, and it would, indeed, afford me great pleasure, were I able to answer your questions with a thorough knowledge of the subject. To do so, I have neither sufficient personal information, nor, at such short notice, the time and opportunity necessary for consulting the sources from whence I could derive it.

I will, however, express, as correctly and candidly as I can, my opinion upon the two questions proposed by you.

1st. The different concordates between the court of Spain and the Holy See, prove that the kings of Spain, however perseveringly they supported their claims to the *patronat*, that is to say, to the presentation of bishops, to the conferring of benefices, and

the right of taxation on church property, yet always endeavored to enter into an arrangement with the Holy See.

2d. Although, in these later times, the property of the church (that is, of convents) has been sold for the use of the nation, there are many Spanish jurists who dispute the lawfulness of such sale; nor has it ever been effected without provision being made from the public treasury for the maintenance of the religious orders to which it belonged. And even in former times, as for example in the reign of Charles IV., when the property belonging to various religious institutions was sold, it was only done after a bull to that effect had been granted by the pope.

In the new world, the church undoubtedly held property independent of the State, as it does to this day in the South American republics. When the kings of Spain have found it expedient to tax this property, or to appropriate some part of it, they have constantly first obtained a bull from the pope.

With regard to any property, belonging to the church in Florida, being delivered up as common property when Florida was ceded by Spain to the United States, it seems to me that such a proceeding would have been contrary both to the spirit and to the letter of the treaty of cession; and also to the personal character of King Ferdinand VII., who made the cession, and, certainly, contrary to his own and to his ministers' views on the subject; since, during his reign, he declared null and void the sale which had taken place in virtue of laws enacted by the Cortes, and ordered all the property so sold to be restored to its former owners—a proof of the ideas on this matter of the Spanish king who made the cession.

Such is, reverend sir, all I can now say in answer to your questions. Should you wish for further and more available information, I shall gladly endeavor to procure it from more authentic sources.

I remain, with much esteem, respectfully, yours,

A. CALDERON DE LA BARCA.

Reverend B. MADEORE.

The foregoing quotations and decision of the courts, solve these three questions: Under what name must the rights of the church be claimed? To whom money should be paid, if any is to be paid? For what use?

We have seen that before and at the time of the treaty, the bishop was regarded as the rightful and lawful owner of church property; as such, he passed from the Spanish authority under the authority of this republic, according to the second and fifth articles of the treaty. From that time he has not been, he could not be, deprived of his right by our laws; on the contrary, they protect him. "Whoever may have the right under the treaty, is protected." (Decision of the courts.)

Hence, no one but the bishop is legally entitled to claim what

must be considered by the law of this Union, as his own private property, and he is, in fact, the only one who can dispose of it; to him, therefore, money must be paid, if any should be paid.

The crown of Spain having no right on church property, could transmit none to the United States, or to any individual or community, and did not intend to transmit any, since, by the treaty it sets her free, and "free without any restriction." If then, the bishop was deemed empowered to sell a part of the property of the church of St. Augustine to the Real Hacienda, in 1737, and to receive the price of it, as it is stated by Rev. Mr. O'Reilly, (see his letter on file,) his successor must to-day enjoy the same favor, for no law has disabled him, neither before nor after the cession of Florida.

As for the use of the money he may be entitled to, it is already decided. Our constitution gives no right to Congress to legislate on church matters, so that here all denominations necessarily stand in the same light; every one of them is allowed to make her regulations concerning the management of her funds, and, provided they do nothing against the law of the country, the government never interferes with them. We hope that no exception will be made for us, who are directed by a law as ancient as our church. As the Apostles, we give a part of our incomes for the support of the poor, the widow and the orphan, who have always looked up to the church as to their own mother, and at her hands, to-day as then, they receive their education, as it is well known; but in this dispensation we disclaim any interference whatever from the government, and the moment it is decided the property belongs to us, it must be given to us, to be held and used as it was held and used by the bishop under the Spanish government.

B. MADEORE,
Vicar-general of Florida.

OFFICE OF THE SOLICITOR OF THE TREASURY,
January 26, 1849.

SIR: I have read the evidence before you as arbitrator, appointed under a resolution of Congress, approved August 11, 1848, relative to the claim of B. Madeore to certain property in St. Augustine, in Florida, and also the argument of the claimant upon it. My remarks thereon will be brief. The claim made is to three pieces of land, described as the convent of St. Francis, the bishop's house, and the church of our Lady of the Milk. It is alleged that these belong to the Catholic church at St. Augustine, and that they have been wrongfully appropriated by the United States, or by others under their authority. The validity of this claim is denied by the United States, who insist that they became lawful owners thereof under their treaty with Spain, by which they acquired the Territory of Florida. The Catholic church also claim under Spain, contending that their title was derived from the crown at an early day. In addressing one who has collected the whole

evidence in the case, and who is familiar with it, I shall not go into the details of the evidence, but confine myself principally to laying down the general rules which must control the decision.

I. By our treaty with Spain, ceding Florida, the United States took the whole soil of the Territory, excepting that which had become private property. Hence, under the general terms of the treaty, all the real estate became *prima facie*, vested in the United States; Spain being conceded to have been the original general proprietor of the whole territory.

II. Those who seek to avail themselves of the exceptions, must show what they claim was, at the time of the cession, private property owned by the crown of Spain.

The claimants here seek to establish as true, that the lands in question, prior to the treaty, had become private property. In examining the claimants' testimony, I have found no direct evidence on this point. Several persons testify to their understanding, hearsay, and belief, but no one goes beyond. No grant from the crown of Spain is proved, nor any recognition by it in a definite form. It is sought to raise a presumption in favor of the claimants' title, by showing that at an early period church officers were in possession for clerical and religious purposes. Had they continued in possession to this time, they would have raised a presumption which could only be overcome by proof of positive title by the United States. But while they seek to avail themselves of the doctrine of presumptions, the claimants must be controlled by them when they make in favor of the United States. In the year 1792, the Spanish government took possession of what is now known as the United States barracks, then known as the convent of St. Francis. That possession continued twenty-nine years under Spain. Since the cession, the United States have occupied the same twenty-seven years, making in all fifty-six years. This changes the presumption against the claimants. By the laws of Spain, as well as of this country, such a period of uninterrupted possession, accompanied with a claim of title under conveyance good in form, would be a bar against persons not under disability to prosecute.

But the evidence discloses facts amply sufficient, without resorting to the aid of legal presumptions, to show that the claimants' have no just title to the lands in question. It proves, on the contrary, that it was in the crown of Spain, and that the claimant's predecessors actually sold some of the property claimed (the bishop's house) to the crown for a valuable consideration, and that even the church, which they now occupy, was mainly erected at the expense of the royal treasury.

It also appears that all the religious establishments, such as churches, convents, &c., were erected and maintained at the expense of the crown, under a general law. When they ceased to be used for the purposes for which they were erected, they were disposed of by the king as crown property. From the evidence, there can be no reasonable doubt but that the convent, bishop's house, and the church of our Lady of the Milk, as well as the church of St. Augustine, were erected and owned by the crown. If so, they

passed, under the treaty, to the United States. This position is much strengthened by the fact that the Catholic Society, at the time of the delivery of the property to the United States, in 1821, interposed no objections and gave no notice of any claim thereto; but, subsequently, they seemed to have sought and accepted from the United States a title to the church of St. Augustine, which they then occupied. They allow more than a quarter of a century to expire before they assert this claim. They stand by and allow the government to make repairs and improvements, amounting to a very large amount, before they give notice that they claim to be owners. The property was of trifling value when the United States took possession; now, by improvements, it is highly valuable. Good faith required the claimants to have asserted their claim before these expenditures were incurred by the government. Not having done so, they have no right to complain of the application of strict rules of law to their case.

The argument of Mr. Madeore seems to proceed upon the ground, that the pope of Rome was the first original proprietor of Florida, as well as of all the new world, and that all churches and convents and other ecclesiastical buildings were under his care, and inalienable without his consent; that when land had been once set apart and used for church purposes, Spanish power was unable to convey it without the sanction of the pope or his representative. He says, "The pope, according to the canon law, which is the expression of the civil and ecclesiastical authorities, and equally binds them both, is the only one, who, as head of the universal church, can lawfully dispose of her property." Other similar expressions are used by him. The power here claimed did not exist in the Spanish provinces. The Spanish crown never admitted this claimed supremacy of the pope. The laws of Spain are the reverse of this allegation. This is proved by reference to the extracts which are in the evidence. The pope, in his grant to Ferdinand and Isabella, parted with all his pretensions to such power. The claimants, in their petition to the Senate, state that when the Spanish government ceded Florida in 1763 to Great Britain, the lands in question were conveyed by Elijah Puente, the commissioner, in secret trust to John Gordon, to prevent the same falling into the hands of the British under the treaty, which permitted the Spaniards a certain time, within which to dispose of their property and to remove. Now, if these lots really belonged to the church, and were inalienable except by the consent of the pope, how could Puente convey them to Gordon? It is not shown that the pope gave him any power whatever. If he could convey without such power, and did so convey, it proves that Mr. Madeore's position is not tenable. It is clear by his own showing, that but for such conveyance, these lots would have passed to Great Britain at the end of the period for disposing of private property in Florida. If he could not convey, then the land went to the British crown under the treaty. If so, then it passed to the Spanish crown on the retrocession, and from the latter to the United States, under our treaty. Hence, by Mr. Madeore's own showing, the title is in the United States. But if Puente had power to convey, which does not appear, the trans-

fer, coupled with a fraudulent secret trust to defeat the treaty with the British, was utterly null and void. It is not shown, however, that he had authority from the church, or any one else, to make any conveyance. But if he had any such power, and actually conveyed the lands to Gordon, then in the absence of a re-transfer by Gordon to the Catholic church, it is certain that the latter have no title. No re conveyance is proved, or even pretended, so far as I can learn. Mr. Madeore shows the title out of the church and leaves it there, which proves that the claimants have no right to it. When Gordon or his heirs set up a claim under a fraudulent conveyance, they will be answered.

It is worthy of remark, that even the present church of St. Augustine, which was begun to be erected, was conveyed to one Jesse Fish, to prevent its passing to the British under the treaty; which proves that it was then thought that this, as well as the other buildings, would pass to her unless defeated by some conveyance.

No reason is assigned for not asserting this claim at an early day, nor why the Spanish officers inventoried and delivered it as the property of the Spanish crown, if it was not really such. It is not to be presumed that the Spanish officers did not know which was crown property, when they were in the act of transferring its possession to the United States. Although it is asserted that the Spanish crown held under the church and by its permission, no proof of the fact is made. On the contrary, any such pretence is repelled by the evidence, which shows that this property itself really belonged to the king and not to the church. He owned the soil, and made the erections thereon, and sustained the establishments which were formerly in them. As early as in the sixteenth century, laws were made in Spain regulating the erection of cathedrals, churches, and convents by the king, which were held as crown property, and when not used for religious purposes were, as they have been within a few years, disposed of for the benefit of the crown. The buildings which are claimed were erected under these laws. At a later period, the crown required the inhabitants to contribute toward the erection of churches, as they did to a small extent in the case of the present church at St. Augustine. On the suppression of the order of Franciscans, the convent not being longer needed, it of course devolved upon the crown, to be held and used as other public property. The church, not having erected it, could have no pretence of ownership. It could have no use for it. This accounts for their making no claim to it for more than half a century, during which time it has been occupied by the Spanish crown or by the United States.

On full consideration of this whole matter, I have fully satisfied myself, that the Catholic church of St. Augustine have no claim, in law or equity, to the lands in question, but that they are the lawful property of the United States.

All of which is respectfully submitted.

R. H. GILLET.

Solicitor.

TO STEPHEN R. MALLORY, Esq.,
Arbitrator, &c.

WASHINGTON, *January, 1848.*

SIR: Herewith I have the honor to hand you my decision, as the arbitrator under the joint resolution of Congress of the eleventh of August, 1848, between the United States and the vicar general of Florida and the wardens of the Catholic church of St. Augustine, upon the various questions embraced in their submission.

With great respect, I have the honor to be, your obedient servant,

S. R. MALLORY,
Arbitrator.

R. H. GILLET, Esq., *Solicitor of the Treasury.*

Decision of the Arbitrator.

Benedict Madeore, vicar-general of the Catholic church of Florida, and pastor of the church of St. Augustine, in behalf of his diocese and of the people over whom he specially presides, claims of the United States the following property, situated in and about St. Augustine, Florida.

“The church of St. Augustine.”

“The convent of St. Francis,” (*the present United States barracks,*) and the lots of the “bishop’s house,” and of the church of “our Lady of the Milk.”

He alleges that this property belonged exclusively to the church, that it was improperly transferred by Spain to the United States under the treaty of 1819, and he prays for its restoration to him as the spiritual head of the church in Florida, or that an equitable compensation be made for it.

John M. Fontane, Pedro Benett, Francis P. Herriera, Joseph E. Pomar, Thomas Andreo, and Antonio Noda, wardens of the church of St. Augustine, together with two hundred and eighty-six of its members, claim the same property; the memorials of both parties rely upon the same general statement of facts, and were presented to Congress together.

Under the joint resolution of the 11th of August, 1848*, the questions arising on these claims were submitted to arbitration, as well by the United States as by the claimants; and the mutual submission† required the arbitrator to decide specially,

1. “As to the title of the claimants to the respective lots or tracts of land and buildings specified in their memorials, whether legal or equitable?”
2. “As to the value of the said property, and of each portion thereof, at the time of the delivery thereof to the United States, and particularly of the buildings thereon at that time?”

*See Schedule 2.

†See Schedule 1.

3. The value of the use and occupation by the United States since.

4. The cost and value of the improvements since placed on each separate portion of said property.

5. The present condition and value of each separate portion of the said property.

6. If the said property, or any part thereof, is decided to belong to said claimants, or either of them, the amount that the United States should pay, in equity and justice, to such claimant for the relinquishment of the title thereto, and to whom the same should be paid, for whose or what use.

7. If the property should be given up to said claimants, the amount, if any, that should be paid to the United States for said improvements, as indicated in the report of the Committee on Private Land Claims, of the Senate, at the late session, June 29, 1848, report No. 195.

To possess myself fully of the testimony necessary for the decision of these questions, I visited St. Augustine and Havana in the months of September, October, and November, and carefully examined the archives of East Florida, transferred to the United States with that province, and so much of those in Havana as relate to the Floridas. I have also taken the depositions of a great number of persons, as to the origin of the property in question, the time and character of its occupation by the crown and the church, both anterior and subsequent to the cession of the Floridas to Great Britain, in 1763, and its character, condition, and value, at the time of its delivery to the United States, and also its present value; all of which testimony is herewith submitted.

It would appear somewhat surprising that but little is known relative the oldest religious establishment in the Floridas, and one of the oldest in the new world; and one, too, that must have exercised so decided an influence upon the civilization and settlement of the country, were we not aware of the fact, that portions of the records of the Floridas, have at various times, been lost or destroyed*. From the statements of Antonio Alvarez, keeper of the archives, at St. Augustine, and H. Desdeire, one of the most eminent lawyers of the city of Havana, it seems that about the year 1812, many of the oldest were destroyed in Fort St. Mark, that in their attempted transfer to Cuba, in 1821, others were lost by shipwreck, and that the Spanish authorities subsequently, finding many others to be illegible, caused them to be burnt.

In the old Spanish chronicles of the early settlements in the Floridas, we meet with frequent references to the labors and sufferings of the monks of St. Francis, in christianizing the Indians; and on some of the old Spanish charts several of their missions are designated, among which are those of San Pedro and San Luiz, in East Florida. "On an engraved map of the Floridas, in

(*) See the opinion and notes of H. Desdeire, 21, and the testimony of Anto. Alvarez, 27.

(†) See Barca and Escalante, tit. Florida and Franciscans.

the library of the Harvard University, one of the missions is designated near Lake Oke-chobee."* The narrative of Escalante, a Spanish seaman, who lived amongst the Florida Indians about twenty years, contains much interesting information relative to their improved condition under the Franciscan friars, and the happy effects of their religious establishments. Through their intimate association with the different tribes and their mild and patriarchal sway, the authorities of Spain generally had the affections of the Indians during their possession of the Floridas; and so permanent has been this influence that even throughout the late Seminole war their friendship for the Spaniards was frequently manifested, and the Spanish language is still a passport amongst the few who remain there.

The convent of St. Francis was, probably, one of the first founded in the new world. Its origin might be traced out were it necessary for the present inquiry. From the patent issued by the commissary general of the Franciscans to Pedro Ruiz, dated at Madrid, November 18, 1609, we learn that a convent then existed at St. Augustine. The patent created a custody of several convents in Cuba, including the one also at St. Augustine, and appointed Ruiz its supreme head.† It speaks of it as "*the convent of St. Augustine,*" and also as "*the convent of the Conception of Our Lady,*" and styles the mission "St. Helena." It directed Ruiz to take with him as many of the order as he might deem expedient, and to proceed to his charge. This patent, recorded at length in the chronicles of the order of St. Francis, page 110, one of the manuscript records preserved in the Franciscan convent at Havana, is the earliest reference to the convent in St. Augustine which I have been able to discover.

No proof of a grant from the crown of Spain for the convent exists that I know of; nor have we any positive proof that the identical building now spoken of ever was a convent, or that it is the same which the patent to Ruiz alludes to. It was known, however, for more than half a century back, as the convent of St. Francis.

Great Britain acquired the Floridas from Spain under the treaty of 1763. The following extract from the 20th clause of this treaty, shows the conditions to which the property of the inhabitants were reduced:

"His Britannic Majesty further agrees that the Spanish inhabitants, or others who had been subjects of the Catholic king in the said countries, may retire with all safety and freedom wherever they think proper; and may sell their estates, provided it be to his Britannic Majesty's subjects, and may bring away their effects as well as their persons without being restrained in their emigration under any pretence whatever, except for debts or for criminal prosecutions; the term limited for this emigration being fixed to

(*) See Senate report, No. 242, 30th Congress, 1st session, including the interesting report of B. Smith, esq.

(†) See schedule 5.

the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty. *It is moreover stipulated, that his Catholic Majesty shall have power to cause all the effects that may belong to him to be brought away, whether it be artillery or other things.*"

The "possessions," "rights," "sovereignty," and "property," which the Catholic king had over the Floridas and their inhabitants, including, of course, the private property of the inhabitants, were transferred to Great Britain; and the latter power then, in the same clause, conceded the terms upon which private property might be enjoyed by the holders. All the Spanish inhabitants that could leave the Floridas, immediately went to Cuba. After the British took possession of St. Augustine, Ricla, captain general of Cuba, commissioned Don Juan Jose E. Puente to proceed to East Florida, and to collect and dispose of all the crown and private property to the best advantage for the parties concerned, (*) and there are on file in the archives at Havana, detailed statements of the several sales and transfers, both of public and private property, made by Puente under this commission. Amongst these is the following relating to the convent of St. Francis:

"ST. AUGUSTINE, July 2, 1764.

"I acknowledge to have received from Juan Jose Eligio de Puente, an instrument of sale in my favor of the convent of St. Francis, for the sum of one thousand five hundred dollars, cash; and likewise another document of the same class for the church of our Lady of the Milk, for three hundred dollars, both in this place: notwithstanding which, I offer and promise to sell and dispose of said convent and church to the best possible advantage for and on account of their proprietors, and remit the proceeds to the above mentioned Puente, or pay it over to his order.

"JOHN GORDON."

The transfer of the bishop's house was separately made to the same person, as is shown by the following: (†)

"ST. AUGUSTINE, July 20, 1764.

"I acknowledge to have received from Juan Jose Eligio de Puente, an instrument of sale in my favor of the Episcopal house, in this city, for the sum of one thousand dollars in coin; and notwithstanding which, I offer and promise to sell and dispose of said house to the best possible advantage, for the benefit of and on account of its proprietor or proprietors, and to remit the proceeds thereof to the aforementioned Puente, or to pay it over to his order.

"JOHN GORDON."

(*) See schedule 7.

(†) See schedule 7.

By another schedule, also among the archives of Havana, whose caption is as follows: "*Account of the houses and lots which, up to this time, have not been sold for a want of purchasers, for which reason they have been sold or passed over in confidence to Jesse Fish, a subject of his Britannic Majesty, giving him, only for the formality of the case, a deed of sale, upon the margin of which is cited the value of each property and the name of the proprietor,*" it appears that Puente conveyed, by one deed, to Jesse Fish, a British resident of St. Augustine, one hundred and eighty-five parcels of real estate, amongst which was "*the lot of ground and the walls of the new church,*" the present church of St. Augustine. The acknowledgment of Fish, at the conclusion of the schedule, is in these words: "*I, Jesse Fish, a British subject, do hereby acknowledge to have received from Juan Jose Eligio de Puente, general commissioner for the sale of property, both moveable and immoveable, belonging to Spanish subjects who left this garrison, two deeds dated, one on the twenty-fourth and the other on the twenty-seventh of this present month and year, in which a real sale is executed to me of all the houses and lots belonging to the aforesaid subjects, as expressed in the preceding account or note, and at the low prices stated in the margin, giving the names of the proprietors of each house and lot of ground, upon which I do hereby declare that I have not paid to him anything on account of the said houses and lots, and that the aforesaid deeds, or contracts of sale, were made in confidence and for the purpose of securing to the legitimate owners their right therein, which they were about to lose under the provisions of the twentieth article of the preliminaries of peace. I further add that, both now and hereafter, I oblige myself to give to the said Puente, or to his order, a most punctual account and payment of the proceeds of the said houses and lots, the sale of which I promise to verify as soon as purchasers may offer, and to the best possible advantage. In order that it may so appear, I sign these presents at St. Augustine, Florida, on this twenty-eighth day of July, one thousand seven hundred and sixty-four.*"—Schedule 8.

JESSE FISH.

This pretended sale was in fraud of the treaty. The right of the Spaniards was the right to *sell* within eighteen months to British subjects. Failing to do this, their property became vested in the British authorities. No authority to create trusts was given. Such estates were what the stipulation sought to avoid as manifestly impolitic; and even if the trust were rightfully created, still, as Puente was commissioned by the governor of Cuba to collect and dispose of crown, as well as private property, the convent may or may not have been transferred as crown property. The transfer at least is no evidence of its having been *church property*.

The British held possession of the Floridas until 1784, when they were restored to Spain; and during their twenty years occupation, the "bishop's house" was repaired and enlarged and used for government purposes. This induces the belief that it was con-

sidered public property, and that the trustee, Gordon, had not the possession of it. We have no evidence that there was any Catholic church or congregation in St. Augustine during these twenty years, notwithstanding the guarantee for the free exercise of that religion which the treaty secured; and it may appear strange that, if the transfer of the "bishop's house" had secured to them its possession under the British rule, they would have abandoned it for so long a period to the British occupation, and permitted them to rebuild and enlarge it. That it was transferred to, and thus occupied, repaired, and enlarged by the British, is evident from the statement of Governor Henry White. (*Schedule 29 to 31.*)

By a royal order, dated at Madrid, 18th March, 1791, the king of Spain directed that, to those persons who had lost their lands in East Florida through their cession to Great Britain by the crown of Spain, under the treaty of 1763, other lands, equal in value, should be given from the public domain. (See the order annexed to the letter of Mr. O'Reilly to Governor White.)

In 1797, Father O'Reilly, at St. Augustine, priest, made a formal application to Governor White for the restoration to him, for the benefit of his flock, of the said bishop's house, which the governor had occupied for the king about thirteen years, and which he was then about to dispose of for the king's benefit. The application was refused. The governor claimed it as crown property, and continued to hold it, and we have no information that Mr. O'Reilly's claim was ever revived until this moment. (See the correspondence between Father O'Reilly and Governor White, pp. 29 to 31.) In making this claim, it will be noticed that he does not allude either to the convent or the lot of our Lady of the Milk, though the convent was then occupied as a barrack by the king's troops; and we have no evidence that any such claim was ever set up during such occupancy. It will also be noticed that Mr. O'Reilly states as one of the grounds of this claim to the bishop's house the royal order above alluded to, plainly implying that it had passed into the possession of the British in 1763, and became property of the crown at the retrocession in 1784. A strong presumption arises, from this correspondence alone, that the convent, bishop's house and the lot of our Lady, were the property of the Spanish crown, as well before the treaty of 1763 as after the retrocession in 1784.

It seems strange that Mr. O'Reilly, when making his claim to the bishop's house, did not name the convent. The present claimants have suggested that the free school, which the king maintained in St. Augustine, was a consideration for the use of the convent; but there is no proof of this. The maintenance of public schools out of the royal treasury, like the maintenance of churches, convents and other similar institutions, was a part of that wise system of policy established by the crown in the Indies, by which the loyalty of its people to Spain was rendered so remarkable and enduring. They were all maintained exclusively at the expense of the royal treasury; and the idea that the king of Spain maintained a school in consideration of the occupation of the convent cannot be sustained for a moment.

No use was made of the convent after the retrocession of the Floridas to Spain (in 1784) until 1792, when the governor of East Florida moved the king's troops into it, and it continued thus occupied until its delivery to the United States in 1821, as crown property. (9) Its probable value when thus delivered, in open market after due notice, in St. Augustine, has been differently estimated by two intelligent American officers who were there at the time of its transfer, and examined it particularly and repaired it; one placing it at five thousand and the other at fifteen hundred dollars. (27, 28.)

The actual value of the labor and the cost of the materials to place the edifice as it then was, has been estimated, by a highly competent and respectable board of survey, at \$27,000. The United States have expended about fifty thousand dollars in repairs upon the building, and have occupied it since 1821. The crown of Spain and the United States have thus held peaceable and uninterrupted possession of it for fifty-four years; and these claimants have now, for the first time during this period, suggested their right to it.

The Church of St. Augustine.

The United States acquired the Floridas from Spain by the treaty of 1819, and the change of flag took place on the 11th of July, 1821. The commissioners of Spain, charged with the duty of transferring East Florida, delivered to those of the United States a plan of the city of St. Augustine, with specifications of all the crown property which it contained; which plan and specifications particularly describe the convent of St. Francis, the parochial church, and the lot of the bishop's house—all of which were received by the American commissioners as crown property, and the United States have so regarded them. The fifth article of the treaty under which this property was thus surrendered, secured to the inhabitants of the ceded provinces "*the free exercise of their religion without any restriction.*" Now is it a reasonable presumption that Spain, after obtaining this concession from the United States, and securing it solemnly by treaty for the benefit of her subjects, designed to render it worthless or inoperative by the voluntary alienation of their churches, in which the "*free exercise of their religion*" could only be enjoyed? Such a supposition is at variance with that obstinate consistency with which, throughout her treaties, she has protected her subjects in the exercise of their religion, and with the fact that she has never, by treaty stipulation, deprived them of their churches. She had once before surrendered the Floridas. Under the treaty negotiated at Paris, the 10th of February, 1763, they were ceded to Great Britain, and the twentieth article contains this provision: "*His Britannic Majesty agrees, on his part, to grant to the inhabitants of the countries above ceded, the liberty of the Catholic religion; he will, consequently, give the most express and the most effectual orders that his new Roman Catholic subjects may profess the worship of their religion accord-*

ing to the rights of the Romish church, as far as the laws of Great Britain permit."

If the government of the United States could, consistently with this stipulation in the fifth article of the treaty, rightfully hold the churches of the people of the ceded provinces, then might it close them and treat as trespassers all who entered them, or convert them into barracks or utterly destroy them. Yet can it be said that such a conversion or destruction of their churches would be compatible with the "*free exercise of their religion?*" or create no "*restriction*" to its "*free exercise*"? It may perhaps, be supposed that this stipulation does not necessarily imply protection to their churches as *edifices*; no particular church edifice being essential to the worship of God. This objection is entitled to but little consideration.

To those familiar with the affection, reverence and awe with which, from the moment of its consecration, the edifice and all things in and about it, its sacred vessels, its relics and the tombs of its saints and martyrs, are regarded by a Roman catholic; the profound veneration with which he approaches the altar, whereon he believes is offered the veritable body of his crucified God; it would indeed seem strange that Catholic and intolerant Spain, after thus solemnly securing for her people the rights freely to "*exercise their religion without any restriction,*" should voluntarily deprive them of the very temples and altars essential to the performance of many of these exercises.

It may be questioned whether the United States could, without disregarding the spirit of this stipulation, have deprived the inhabitants of their churches, even if Spain had possessed the right to sell, and had specifically transferred them.

The delivery of West Florida was made at Pensacola on the same day; and it is worthy of remark, that neither the church, nor any of its property in that town, was delivered to the United States. Governor Copinger, of East Florida, assigned the duty of preparing a plan and specifications of the fortifications, magazines, public property, &c., which were to be transferred with the country to a military officer; and it is not improbable that the consideration that the king was identified with the church and its property as royal patron, and responsible for its maintenance, might have induced the belief that the parochial church was to be delivered as public property; or it may have been supposed, that by securing for the inhabitants the enjoyment of their religion, and transferring to the United States all the king's rights over the church, they would be to their new subjects, in all respects, what the crown had been, a protector and patron.

In 1822, Bishop England, of Charleston, learning that attempts were being made to deprive the people of St. Augustine of their church, addressed a letter to President Monroe on the subject, which I find on file in the Department of State, and from which I make the following extracts.

"I beg to apprise your excellency of this, in order to put you immediately in possession of the facts, and to submit that, when

the king of Spain or any other sovereign power gives property to any corporation, such as under Spain the Roman Catholic church of St. Augustine was, the sovereign divests himself thereof, and vests it in the corporation to whom it is given. At the cession of Florida, then, this property did not belong to the king of Spain, but to the Roman Catholic church of St. Augustine. It was not of course transferred to the United States, as the transfer to them was not the transfer of church property, which this was, and is, but of crown property which this was not." * * * * * "The Roman Catholics claim no privilege to which their fellow citizens are not entitled; they claim no favor or affection in the eyes of the State; but they do expect that, by becoming citizens of the United States, they shall not lose the property which they previously held and possessed until now."

Bishop England's letter was submitted, by order of the President, to Mr. Wirt, Attorney General of the United States, and his remarks upon it will be found among the opinions of Attorneys General, Doc. No. 123, 2d session, 26th Congress, page 1390. Mr. Wirt's opinion coincided with the bishop's upon the inferences of law, but he suggested that there was no proof before him that the king or any other sufficient authority had ever made the grant in question.

Upon the petition of the inhabitants of St. Augustine, the church was restored to its congregation by the act of Congress of the 8th of February, 1827, with the condition that no change should ever be made in its destination without the authority of Congress.

From its completion, in 1797, until its delivery to the United States, this church was in the possession of the Catholic priests of St. Augustine. It was founded by the royal patron, and constructed mainly by a grant specially made for it, and under the immediate superintendence of the crown officers.* This church then became an ecclesiastical property, controlled by the bishop (subject to royal patronage) for the use of its congregation. The laws of Spain, embracing the great body of the ecclesiastical law, of which the canons of many general councils, decrees of spiritual courts, compromises and compacts between the popes and christian princes, and especially the concordate (concordato) of Charles the III., formed a part,† followed the grant and secured the clergy in its possession. The crown could not, without disregarding the laws which governed equally the prince and the people not only in Spain, but in Catholic Europe, retrieve the grant thus made without the consent of the grantees. This is a principle of the civil law, founded in the purest equity; and, like many other of its principles, it was at an early date engrafted upon the common law. Whether, during the life of the bishop of the diocese, where the grant lay, the fee was in abeyance, according

* See schedules 11, 12, 13.

† See *Decretalia Gregori* and *Corpus Juris Canonici*, with the commentaries of *Devoti* and *Walter*. Schedule 24 to 25.

to the old common law doctrine,* or whether it ought to be considered as *quodam moda* vested in him for the benefit of his church and his successors,† is not material here; the whole fee passed from the crown, and could not be resumed at pleasure. The bishop of Havana exercised spiritual jurisdiction over East Florida, and the church was by him duly consecrated. All doubt, then, about the validity of the grant, even upon common law principles, must be discarded. The power of the crown to make, and of the bishop to receive, such grant, has always been recognized both by the civil and common law. The principle of the common law, that no general grant can take effect unless there be a sufficient grantee in existence, has never, I believe, been extended to grants made to congregations or churches, during the vacancy of their spiritual heads; and had there been no bishop of East Florida when this grant was made, it would not, I think, have been void for this cause, by the strict rules of the common law.‡

The king of Spain, then, in selling and delivering the church of St. Augustine to a foreign power, without the consent of its clergy or congregation, and without making compensation therefor, violated the laws of which he was the fountain head, and usurped the property of his subjects. But this was no uncommon construction of the royal prerogative. The history of Spain, for the last thirty years, furnishes many similar instances; and the necessities of the royal treasury have been such a fertile source of encroachments upon the rights of the church, that she can hardly be said, at this moment, to possess any temporal rights in Spain, independent of the crown. Had Spain followed up the transfer of this church with the usurpation of every church and monastery in her dominions, and the toleration of every protestant creed, the See of Rome would have been powerless to resist; and so rapidly has the church in Spain been stript of its temporal power, that we shall not be surprised to find it narrowed down, at no distant day, strictly to matters of doctrine.§

The United States, then, apart from the rights of patronage, acquired no title to this church from Spain, for she could convey none; and it must be considered as if no such transfer had ever been made, and be restored to the claimants. But, apart from the

* Litt. §646, 647, Co. Litt. 342, Com. Dig. *Abeysance*, a Com. Dig. Ecclesiastical persons, C.

† Co. Litt. 341, a Com. Dig. Ecclesiastical persons C. 9, Fearn, Cont. rem. 513, Christian's note to 2d Black. Com. 107, note 3. Bar. Gilbert's tenures, 113.

‡ If a man lay out a street for the public, there is, strictly speaking, no grantee of the easement, but the grant takes effect by way of dedication to public uses. *Ladevs. Shepherd*, 2d Stra. 1004. So if a stranger purchase and put up a bell with his own money, the property passes from him. *Kyd. Corp.* 29, 30. These ancient and well understood principles were argued in a modern case before Lord Hardwicke, in which that learned judge did not deny them. *Atty. Gen. vs. Foley*, 1 Dick. R. 363. And it was held by Lord Ch. Justice Dyer, that if the crown, by a statute, renounced an estate, the title was gone from the crown, *although not vested in any other person, but the fee remained in abeyance.* Com. Dig. *Abeysance*, A 1.

§ By the 14th section of the royal decree of 27th September, 1820, published at Madrid, 12th October, 1820, churches, as well as all other religious establishments, were prohibited from acquiring any immovable property by any means whatever in the dominions of Spain.

title of the claimants to this church on these grounds, the enlightened liberality of the American government, and that spirit of equal justice which constitutes its strongest hold upon the affections of its people, dictate such a construction of the fifth article of the treaty of 1819, as would effectually secure it to its congregation.

The church of St. Augustine being thus awarded to its congregation, it is necessary, in answer to the sixth point submitted, to determine which of the parties claiming is entitled to receive it; and to this question I will address myself as briefly as possible.

The relations between the people and the heads of the Catholic church in the United States, though readily understood by those at all familiar with the ecclesiastical law, have never, so far as I have discovered, been judicially defined. In the church of St. Francis of Pointe Coupie *vs.* Martin, 4 Rob. 62, and in the wardens of the church of St. Louis *vs.* Blane, bishop, 8 Rob. 51, they were argued to some extent by counsel, but only adverted to by the court.

I entertain no doubt, however, that the wardens of the church of St. Augustine are its legal owners, in their corporate capacity, and that their authority, rights and duties are co-extensive with their charter, (171 $\frac{1}{2}$.) They are not accountable to the bishop for their administration of its temporal concerns, among which are the custody, care, repairs, &c., of the edifice, its grounds and dependencies, and the allotment, curtailment, increase or cessation of a salary to their pastor. For the exercise of all and every power conferred by their charter they are accountable to their congregation, and to the congregation only; and this accountability may be enforced by the appointment of others in their stead.

The authority of the Holy See, its bishops and clergy, as such in the United States, is exclusively spiritual. None other has ever been recognized by their courts, except where the canon law has been admitted by express legislation. It is supposed and urged by the vicar general, that the great body of the canon law and the decrees of the council of Trent govern this question, and must be sustained by our courts; and that, by the canon law, the bishop is a "corporation sole," and entitled to hold and manage the church and its property for the benefit of his flock.

Assuming as a fact (though every reader familiar with this subject, knows to the contrary*) that all the decrees of this celebrated council, whose sessions, under the auspices of three different popes, were continued from time to time through a period of

* The decrees of the Council of Trent were not adopted in France, as far as they respected ecclesiastical discipline, and even Philip the Second, the most Catholic adherent of the church of all the monarchs of Europe, received and admitted them with many modifications. If they had been permitted to operate in full force, the liberties of the State and the prerogatives of the crown would have been, to a very great extent, dependent on the Papal See. France adopted them so far as they laid down the rule of faith; but never has, to this hour, adopted those relative to ecclesiastical liberties and franchises. The emperor Maximilian II. refused to publish them or to obtain their sanction by the diet of the empire. They claimed that all benefices were within the exclusive grant of the pope, and that the clergy were only amenable to him.

eighteen years, were received and submitted to by the Christian world. What application can they possibly have to the present case, or what operation can they possess in this country, apart from the *doctrine* of the church? From the earliest ages of Christianity may be dated the custom of calling together the followers of the cross. Originally these synods confined themselves exclusively to the adjustment of controversies respecting discipline or doctrine, and one of the earliest was assembled at Jerusalem soon after the crucifixion, and during the lifetime of four of the apostles, who participated in its labors. But after the reign of Constantine, when the Christians began to acquire property, and frequent donations of heathen temples were made to their churches, these synods began to regulate their temporal as well as their spiritual concerns. The council of Trent, celebrated as well for the piety, zeal, and learning of its numerous members, and the pontiffs who reigned during its sessions, and by the grave and important questions before it, as for its duration, was the last general council of the Catholic church; and with the onward movement of the reformation in Germany, and the feverish state of Christian Europe disturbing the harmony of its sessions, various canons prescribing the punishment of spiritual and temporal offences against the holy church, were decreed. Who will undertake to say which of these must be received and which rejected by us? or how far and by what authority they shall be applied? The ecclesiastical and canon law had reference to one *exclusive* church, whose temporal and spiritual welfare it guarded and perpetuated; and if we be governed at all by it, we must take it as a body, and not assume to discriminate. No argument, however, is necessary on the subject. The whole body, so far as it regulates temporalities, must be rejected as totally inapplicable to the genius of our institutions and repugnant to the principles of our government and the fundamental laws of the land. Our courts sit to determine civil rights, and to determine them according to the established and well understood laws of the country; and were they called upon to decide between these parties to which of them the legal possession of this property belonged, their judgment would, doubtless, be controlled by these laws, without reference to the canons of the church.

It may, perhaps, be suggested that under the civil law the bishop of the diocese was a corporation sole, endowed with all the real property of the church, as *persona ecclesia*, and alone capable of transmitting it to his successors; and that their right to the freehold being thus established, could not be destroyed by the transfer of the country to the United States. The debates on the tenth section of the first article of the constitution leave no doubt that *corporations*, created in the colonies of Great Britain, were embraced within the prohibition upon the States from passing any law "impairing the obligation of contracts;" and under this clause it has been decided by the Supreme Court, that the charter of a private corporation, whether civil or eleemosynary, is an *executed contract* between the government and the incorporators, and that the legislature cannot *repeal, impair or alter* it against the consent or with-

out the default of the corporation judicially ascertained and declared. See *Dartmouth College v. Woodward*, 4 *Wheat.*, 518; *the town of Pawlet v. Clarke*, 9 *Cranch*, 292, 2 *Kent's Com.*, 245, 246; *Green v. Biddle*, 8 *Wheat.*, 1 *Dawson's lessee v. Godfrey*, 4 *Cranch*, 323; *Terrett v. Taylor*, 9 *Cranch*, 43; *People of Vermont v. Society for propagating the Gospel*, 1 *Paine C. C. R.*, 653.) It will be observed, however, that in these cases, although the broad and exalted principle that the dismemberment of empire does not destroy the civil rights of individuals or corporate bodies, is fully recognized. A distinction is made between *private* corporations and those which are public, cities, towns, &c.; and which, existing but for public purposes, the legislature may modify or restrain, securing always the property to the use of those for whom it was granted or purchased. It will also be observed, that in separating from the parent country, the States adopted the common law of England, and that the action of our courts upon corporations established in the colonies by Great Britain, has interpreted the common law in connexion with the constitutional prohibition, as if no such separation had taken place.

The Catholic congregation of St. Augustine was incorporated by the legislature of Florida in 1823, and an act of Congress of the 8th of February, 1827, restored to it the church, which the wardens, elected under the charter, have continued to hold up to this time. As the original grant to the church, by the crown, was made for the benefit of the Catholics of St. Augustine at large, the legislature may, without impairing the obligation of a contract, create them a body corporate, and recognize the right of such body corporate to control and administer its property.

The act of incorporation, creating the wardens, and the act of Congress granting them the church, were conceded to the *earnest petitions* of the Catholics of St. Augustine; and under the stipulation in the fifth article of the treaty of 1819, pledging the United States to offer "no restriction to the free exercise of their religion," it may be doubted, not only whether they can be deprived of the administration of their own church and its property, but whether, also, the legislature would not be rightfully bound upon their petition to confirm and secure them in it. Deprive them of this power and confer it upon the bishop or vicar general, and how would then stand their rights under the treaty guaranty? As its sole temporal head, he would possess the undoubted right of closing its doors upon its congregation; or of establishing and maintaining amongst them a priest universally obnoxious to them; or of increasing or curtailing the stipend of the priest, and disposing of the income of the church generally, against their convictions of propriety or policy. We must suppose, as a matter of course, that the spiritual welfare of his people would be his chief concern; and we are not authorized to infer that, because he might possess these powers and many others, equally affecting the "*free exercise*" of religious duties in his diocese, he would necessarily abuse them. But it seems evident to me that, to "*enjoy the free exercise of their religion without any restriction*" the members of

the congregation themselves must possess these powers; and that they cannot therefore be legislatively conferred upon the bishop or vicar without disregarding this stipulation. The history of the two Louisiana cases, cited in this award, shows how bitter may be a controversy between a bishop and his flock where the administration of the temporal affairs of the church is in question. In one of these cases the bishop continued a priest in a church against the wishes of its congregation and wardens. They remonstrated, but he refused to make any other appointment. They then declined to make any provision for the payment of his salary, and this gave rise to a legal controversy, conducted on both sides with great obstinacy, during the course of which the wardens filed their complaints against the bishop at length. See *The wardens of the church of St. Louis, of New Orleans v. Antoine Blanc, bishop of New Orleans*, 8 Rob. R. 51., and *the congregation of the R. C. church of St. Francis of Pointe Coupee v. Martin*, 4 Rob. R. 62. The legislative power of the country have, I think, rightfully recognized the right of the congregation to administer the temporal affairs of their church, and I feel no hesitation in deciding that the church of St. Augustine be surrendered by the United States to the properly constituted wardens of said congregation, unconditionally.

The convent of St. Francis, Bishop's house, and the lot of our Lady of the Milk.

The vicar general and the wardens, though claiming this property severally, for the bishop and the congregation of the church of St. Augustine, trace their title to the same source, and unite generally in the same facts and arguments. They agree and allege, that it was originally a Franciscan monastery; and that the Catholics of St. Augustine are the rightful inheritors; the only question between them being, whether the bishop or the wardens are entitled to hold and manage it for them.

I think there can be no doubt that this is the convent alluded to in the patent issued to Ruiz, November 18, 1609, as that of the "Conception of our Lady;" and that it was the principal establishment of the monks of St. Francis in Florida; and as the claimants trace their title to this order, it may be proper to state briefly its origin and character.

The only evidence before me that this building ever was a convent, or connected in any way with the church, (which connexion is the foundation of the claim set up,) is derived from this patent, the transfer by Puente in 1764, and the general recollection of the old inhabitants of East Florida.*

The foundation upon which this order was reared—and the fundamental pre-requisite for the admission of its members, in maintaining which they endured a protracted persecution, and even

* See the patent of Ruiz, and the evidence accompanying this report.

exile and death, was absolute penury; the expropriation of every worldly profession.*

St. Francis, who was born at Assisi, A. D. 1146, was, at his baptism, named John; but he was subsequently, from his proficiency in the French language, called *Franciscus*.

In the year 1182 he proclaimed his mission from heaven, assumed the habit of a medicant, and declaring that the words of the Saviour "*provide neither gold, nor silver, nor brass in your purses, nor scrip for your journey,*"† enjoined poverty as the very essence of the Gospel, went about as a beggar, preaching penury and humility. His ardent piety, fearless zeal and startling doctrine, soon gained him numerous followers; and Pope Innocent III. approved the rising order. All preceding monastic societies had possessed moveable and immoveable property, collectively; the revenues of which supported the individual members.‡ But the absolute abnegation of all and every right to property was the great rule of the Franciscans, and the key to that influence which they rapidly acquired, and exercised in so remarkable a manner, throughout Christendom. Immediately after his death, however, in 1226, Gregory IX. pronounced a mild interpretation of this rule, relaxing its severity, and authorizing and sanctioning the Franciscans, as communities, in the enjoyment and possession of property, moveable and immoveable, but reserving the legal title of every thing they might possess or acquire to the holy see. A bitter controversy between the order and the Pope was the immediately result of this decree, the Franciscans regarding it as a blow aimed at their very existence; and after a struggle with Innocent IV. and Nicolaus III., sustained by the Franciscan writers with great ability, for more than fifty years, they succeeded in obtaining the constitution of the latter pontiff, in 1279, restoring them to their pristine state of happy-penury.§ But even this did not satisfy the more rigid, the *spirituals*, as they were called, who insisted upon the letter of the rule of St. Francis, which, according to the commentary of one of their most able writers,|| permitted only the beg-

* See Baluze, miscellanea, Tom. IV, 490, Tom. VII, 392, Bonaventura, 1, C. *Annales minorum* (by *Lucas Wadding*) vol. 1, wherein a perfect history of the order may be found; *Annales minorum*, Jose Maria Fonseca ab Eboræ, published at Rome in 1731, Tit. *Franciscus*, *Fratricellos*.

† Matthew x, 10.

‡ Sir William Temple, in his introduction to English history, (p. 175,) says: that William the Conqueror found above a third part of the lands of the kingdom in the possession of the clergy; and Sir Robert Atkins, in his Gloucestershire, (p. 11,) says: that \$28,000 knights' fees belonged to the clergy out of 60,000 in the whole kingdom. In the fourth year of the reign of Richard the Second, (1380,) the commons made an offer in Parliament, to grant the king £100,000, in the way of a poll tax, if the clergy, who occupied one third of the kingdom, would grant 50,000. (Archbishop Wake's Church and State, 312, 319.) As late as the 27th year of Henry VIII., the clergy enjoyed the fourth part of the revenue of the kingdom.—Prior to the reformation in England, the Pope granted several bulls and licenses to Henry VIII. to suppress monasteries. The whole number of monasteries and other similar establishments suppressed and confiscated to the royal treasury by Henry and Cardinal Wolsey was 3,182. (See *Burn's Ecclesiastical Law*, vol. 2, p. 540.)

§ *Annales minorum*, tom. v. p. 73, and *Corpus Quiris Canonici*, lib. VI, tit. XII., 1023, and is commonly designated by its first word "exit."

|| Peter John Olivia, also called Peter Beziers.

gaily use of things necessary,* (pauperem rerum necessariarum,) and the controversy was renewed, and continued as long as the order existed.

Such were the Franciscans; and at no period of their existence were they permitted to hold property. Like the Dominicans, they were mendicants, and devoted to poverty; and, through a century and a half, against persecution in every form, they maintained their right of living and dying possessed of nothing.

Former monastic societies were, in fact, corporations, and among the earliest corporations known to Christian Europe; but the Franciscans had no such organization, and could own no property individually or as a religious body. They were mendicant friars; and, as such, we find them in the twelfth, thirteenth, and fourteenth centuries, in China, Japan, the British islands, and North and South America, as well as throughout the south of Europe, where they not only preached and practised the expropriation of all and every species of property, but sealed their rigid adherence to the fundamental rule of their great founder with their blood.

The Franciscan friars who went out to the Indies enjoyed no peculiar exemption from the observance of this rule, but went there as mendicants, by the commands of the Spanish sovereigns, to teach and civilize the natives. The cross and the sword were equally the weapons of Spain in conquering and preserving her American possessions; and the establishment of churches, monasteries, free schools, and other eleemosynary institutions among the Indians went hand in hand with the conquest of their provinces. The king, by right of discovery and conquest, and the express recognition of the holy see, was the supreme head of its ecclesiastical as well as of its civil government; and he founded, endowed, and supported its churches, monasteries, schools, and hospitals, and maintained its priests and friars.

No bishop, priest, friar, or other churchman could go to the Indies; live with, teach or say mass among the natives, or found or establish any church, convent, or monastery without his express license. By express provision of law, all convents or monasteries founded or established there without the royal license were to be destroyed by the civil authority of the province in which they were. Convents and monasteries were erected, endowed, and supported out of the royal treasury, by a well adjusted system, under the supervision and control of the crown alone. Alms of oil, wine, flour, &c., and regular stipends of money, were given to the monks and friars of the different orders; and all and every expense incurred in christianizing the natives was borne by the crown. This system underwent some change about the middle of the sixteenth century, when the expense of erecting convents and paro-

* The following is the rule alluded to, "Fratres sibi nihil approprient, nec domum, nec locum, nec aliquam rem: sed sicut peregrini et advenae in hoc sæculo, in paupertate et humilitate famulantes domino, vadant pro eleemosyna (i. e. must beg) confidenter. Haec est illa celsitudo altissimæ paupertatis, quæ vos carissimos meos fratres hæredes et reges regni cælorum instituit.

chial churches was thrown in part upon the natives and Spanish citizens. Put the king of Spain was the royal patron of the Indies. To him belonged the power alone of suppressing convents and monasteries, of forfeiting their revenues, or recalling their monks.

Whenever a monastic institution became extinct, either by the action of the royal prerogative, or that of its own members, its property became vested in the crown. That the crown of Spain has always exercised the right of suppressing monasteries and convents in its American possessions, and disposing of them for the benefit of the royal treasury, cannot be doubted. The latest instance of the exercise of this right occurred in 1841, when the government took possession of many of the largest and wealthiest in the island of Cuba, and expelled the friars, allowing them a temporary and seemingly inadequate provision.*

A brief reference to a few of the laws of the Indies may serve to show how distinctly the details of the ecclesiastical establishment were provided for by the crown.

Under the second title of the Nuer. Recop., treating of the erection, endowment, and maintenance of monasteries and churches, the laws on this subject will be found.

The second law recites "*having built all the churches, cathedral and parochial, both of the Spaniards and the natives of our Indies since their discovery, at the cost and expense of our royal treasury, and applied to their service, and given the part of the tithes which belong to us by apostolic concession, according to the divisions by us made, &c.,*" and then proceeds to direct the manner in which cathedral churches (seats of bishops) shall be built.

The third law declares that parochial churches shall be built at the expense of the crown, the people and the natives; and the succeeding twenty-three laws are upon the same subject, and exhibit the exclusive authority of the crown over it.

The third title regulates the establishment and maintenance of monasteries, hospitals, and refuges for orphans. Convents could only be built by the royal license, and they were required to be a certain distance apart. The number in the different provinces was limited, and a bell, chalice, alms, &c., were to be furnished to each. The allowance to the Franciscans was always to be called alms, and it was forbidden to call it a revenue, stipend or rent. The viceroys of the different provinces were to see that pious houses for the native women were established, in which they were to be taught the Spanish language and the Catholic faith; and in which they were forbidden to speak their native language, "that the fruit of their good works might be felt throughout all the provinces."†

The sixth title treats of the "*royal patronage of the Indies.*"

The first law, entitled, "*The Royal Patronage of the Indies pertains to the king and to his royal crown, and cannot be diverted*

* See the royal order, schedule 24½.

† See the copies of laws, schedule 22, 23.

from it in whole or in part," begins thus: "For as much as the royal ecclesiastical patronage pertains to us in all our estate of the Indies, as well by having been discovered and acquired, and endowed with churches and monasteries at our cost, and that of the Catholic kings, our predecessors," &c., &c., and proceeds to declare that "this royal patronage of the Indies, one and indivisible, is forever reserved to us and our royal crown, and cannot be usurped in whole or in part," &c. "Neither by custom, prescription nor other title, can any person or persons, ecclesiastical or secular communities, churches or monasteries, use this right of patronage, unless it be a person in our name, and with our authority, for its exercise; nor can any person, secular or ecclesiastical order, convent, or religious community of any estate, condition, quality or pre-eminence, judicial or extra judicial, on any occasion or cause whatever, interfere with this right of patronage, &c., &c.

The second law, entitled, "*No church or pious place shall be erected without the license of the king,*" recites: "Inasmuch as it is our intention to erect, institute, found and establish all the churches, parochial and cathedral, monasteries, hospitals," &c., &c., "*we order that there shall not be erected, constituted or founded, any church, either parochial or cathedral, monastery, hospital,*" &c., &c., "*without our express license,*" &c., &c.

The succeeding laws, to the forty-fourth, of the same title, all treat of the royal ecclesiastical patronage; and provide, not only for the erection, endowment, and maintenance of churches, &c., but of the number of priests and teachers, their examination, presentation, qualifications, duties, rights, liabilities, &c., &c. The forty-fourth law permits any private person who may desire to establish, endow and maintain any monastery, church, or other pious work in the Indies, with the royal license to do so, and enjoy over it rights of presentation. The other eight laws, under this title, also treat of the rights of royal patronage.

The sixth title, law first, provides that every bishop and archbishop, before taking possession of his ecclesiastical presentation in the Indies, shall *take an oath before a public notary and witnesses to do nothing in contravention of the royal ecclesiastical patronage, and to conform in all respects to the laws of the crown on that subject.*

The laws under the fourteenth title, of which there are ninety-three, regulate the rights and duties of the various orders of missionaries and monks, Franciscans and others, as well in the Indies as in Japan and the Phillipine islands; and by these it may be seen that no such person could go to or return from the Indies, or perform any religious office there, nor publish or proclaim any apostolic breve, but by the authority of the crown.

A papal grant of the western world (Indies) was made to Ferdinand and Isabella; and a papal grant of all the tithes, patronage, and ecclesiastical benefices was subsequently made to the kings of Spain by Alexander VI. and the second Julius; and from the time of these grants the kings of Spain have exercised the rights of royal patron, to the exclusion of the holy see, in the Indies. The popes

have at various times sought to exercise the right of presentation to benefices, but such attempts have always been met and rebuked. The captains general and governors of provinces exercised these rights, within their respective governments, as vice-royal patrons; and even in Florida no churchman could exercise his functions without express authority of the governors.*

When Spain ceded the property in question to the United States, under the treaty of 1819, the rights of royal patronage were ceded with it, and it was competent for the United States to transfer them. So far as the church of St. Augustine was concerned, they did part with these rights, and bestowed them upon its wardens. It cannot be pretended that these rights, when the property was ceded, reverted to the bishop of the diocese. They pertained to the crown of Spain, and were exercised, at that time, immediately and thoroughly by Governor Coppinger, of East Florida, as vice-royal patron; and the bishop of the diocese could no more acquire these rights from the crown, without a special grant, than he could acquire any other royal prerogative without a grant. The bishop could not exercise any of these rights before the change of flag; and he could not, and did not acquire them by such change. At no time, since the concordates of Popes Alexander and Julius, mentioned above, up to this hour, has the holy see even the privilegē of appointing a parish priest, in the western world, without the permission of the crown; and the captains general of Cuba and Porto Rico still continue, as they have heretofore been, the heads of their ecclesiastical as well as of their civil governments, and their bishops still continue to be appointed exclusively by the crown.

I have said that the estates granted by the king of Spain to monastic or other religious societies, upon the dissolution or civil death of such societies, reverted to him; and in the exercise of the royal prerogative he has suppressed such societies and sequestered their estates in hundreds of cases. And this principle is well known to the common law; for, upon the dissolution of a corporation, all its real estate remaining unsold reverts to the original grantor; and the personal estate to the king, in Great Britain, and to the people, in the United States. (Co. Litt., 13 b.; 1 Black. Com., 484; 2 Kent Com., 247.)

The Franciscan order was dissolved *in all the Floridas* by a royal order in or about the year 1784, immediately after the treaty which retroceded the country to Spain went into effect. Hence no Franciscan society existed in the Floridas subsequent to that event; and, if the convent at St. Augustine had previously belonged to the order, it then became vested in the crown, which took actual possession in 1792. Against this possession, which continued until it was delivered to the United States, the church offered no objection. In 1797, we find Father O'Reilly, resident priest at St. Augustine, claiming the bishop's house as the property of his church;

* See Rob. America, vol. 2, pp. 223, 224.

and protesting against its alienation by the governor; but although the king's troops were then in the convent, and had occupied it for three years, he does not even allude to it. Is it probable that he or the bishop of East Florida, in the impoverished state of this portion of his episcopal charge, would have permitted the usurpation of its most important possession without remonstrance, and sanctioned, by his silence, its peaceable and continued occupation by the crown for twenty-seven years, if any doubt about the legality and propriety of that occupation had existed. I think not. Such a course, at least, cannot be deduced from the general conduct of the heads of the Catholic church, who have ever manifested a proper appreciation of their own duties and the just expectations of their people. The exemplary industry with which the present claim has been urged by the vicar general, from the moment he discovered what he conceived to be a just title in the church to this convent, and his consequent duty to present it—although it has been *occupied under the title derived from the crown fifty-four years, peaceably and uninterruptedly*—may afford an indication of what was the duty, and what would have been the course, of the Spanish bishop, had he doubted the title of the crown.

But there is still another view in which this subject properly presents itself.

The treaty of Paris, of 1763, by which Spain ceded the Floridas to Britain, fixed the term within which all public and private property should be removed at eighteen months. Spanish subjects were allowed to sell their property in East Florida, *but only to British subjects*. All property not removed or transferred, according to the terms of the treaty, became forfeited to Britain. Puente, commissioned by Captain General Ricla, went to St. Augustine in 1764 and sold to Fish and Gordon, two British subjects, a large number of lots and tenements, the property now claimed included. This was either a bona fide sale or a transfer in fraud of the treaty. If a bona fide sale, then the property in question was gone from its former Spanish owners, and their claims upon it ceased. But it was not a bona fide sale, as the records show. (See the transfer to Gordon and Fish, and their relinquishment.) It was made, not in accordance with the spirit or the terms of the treaty, but in direct violation and fraud of both. Fish and Gordon certainly acquired no title by this transaction. They paid nothing for it, and expressly say so. It was not sold to British subjects, therefore, within the term stipulated by the treaty, but remained, to all intents and purposes, as if no such sale had been made, and became forfeited to and vested in the British government. That this fictitious transfer was regarded neither by the Spaniards nor the English is abundantly evident.

The property consisted of the foundation and portions of the walls of the parochial church (afterwards built by a grant from the crown of Spain) in their first stages of construction; the convent, the lot of our Lady of the Milk, and the house, or the walls of the house (Governor White's letter to Father O'Reilly, No. —, is the only testimony on its then condition, and he calls it "ancient walls") of

the bishop. The British took possession of the latter, built upon and enlarged it, (see Governor White's letter to Father O'Reilly,) and occupied it for government purposes, until they retroceded the provinces to Spain, when they transferred it. The treaty of retrocession contained the stipulation relative to the removal of property from the Floridas which that of 1763 contained. By the third article, the public and private property of the crown and subjects of Britain was to be removed within eighteen months from the provinces, otherwise it became forfeited to the crown of Spain.* A large amount of real estate in East Florida was abandoned by its English owners, and became vested, under the article quoted, in the Spanish government; and the property now claimed was thus forfeited to the Spanish authorities, and if the church had ever possessed any title to it, or to any portion of it, that of the crown was now clear and unquestionable. About the time that the British were evacuating the province, they made several sales of real estate to Spanish subjects, but so watchful and jealous were the Spanish authorities, that such transfers were declared fraudulent and void, and the estates which they were designed to convey were forfeited. On the 8th of April, 1791, twenty-nine of the houses and lots in St. Augustine, thus acquired by Spain, were sold at auction in that city, pursuant to a royal order, because they were in a dilapidated condition. The purchasers bought them on the condition of paying for them in certain instalments, and repairing them within one year. They sold for \$14,248 5r. (See schedule 32.) The bishop's house (a portion of the property claimed,) was taken possession of at once by the crown. The governor of East Florida, residing at St. Augustine, authorized the services of the church in the upper story, and the lower apartments were used for stowing the king's flour, for a provisional prison, guard-house, &c. (See schedules 29 to 31.) The walls of this house were subsequently used by the Spanish authorities in building and repairing other edifices. By a royal order of 18th of March, 1791, upon the petition of certain inhabitants of St. Augustine, and the representations of the governor, authority was given him to restore to the Spanish proprietors the estates which they had formerly possessed, excepting such as had been otherwise disposed of with the authority of the crown. This order itself shows that the property left by the Spaniards when they abandoned Florida in 1763, became British property, and Spanish *crown* property by the retrocession in 1783, notwithstanding the fraudulent transfer to Fish and Gordon; and that when this order was issued it had been in the crown's possession seven years. We have no information as to how many of the old Spanish owners regained their property under this order; but that it did not embrace any portion of the property now claimed, appears to me to be evident. The king, of course, had the right of

* The right to cede away private property is one of the attributes of sovereignty. Spain and Britain exercised it in the treaties of 1763 and 1783. "*The necessity of making peace authorizes the sovereign to dispose of the property of individuals; and the eminent domain gives him the right to do it.*" Vattel, b. 4, c. 2, s. 12.

reserving all or any portion of it for public uses; it was all his; the church had not a shadow of a title to it. And he did reserve the bishop's house, as stated; the church made no claim to any portion of it.

In 1797 the parochial church was completed; and Father O'Reilly, finding that the governor was about to dispose of the bishop's house, addressed him a letter, claiming it for the church upon the ground that it had anciently belonged to it, and had again been vested in it by virtue of the royal order of 18th March, 1791. The governor replied, that it was crown property; and there the claim rested, (see schedule 31.) The manner in which this very claim was set up by Father O'Reilly is significant of its weakness. It will be observed, in the first place, that he made none whatever until the lapse of thirteen years after the crown took possession, during the whole of which time it was regarded and used as crown property; and that, upon the governor's reply, that it was crown and not church property, he made no further effort to obtain it. It seems not a little remarkable, too, that he made no claim whatever to the convent, although he knew that it was then held as crown property, and had been occupied by the king's troops several years without reference to the church; yet the convent was the most important possession of the two. The king's troops took possession of the convent, as I have shown, in 1792. That Mr. O'Reilly did not include the convent or the lot of "Our Lady" in his claim, is, of course, not conclusive evidence that his church had none to this property; but it certainly furnishes a strong presumption that none was then supposed to exist. My knowledge of, and respect for, the piety, zeal, and firmness of the Catholic clergy, preclude the idea that he omitted to urge the church's claim from any other cause than his own honest convictions that she had none to urge. The silence of all his successors on this subject, and the great lapse of time since this property was first occupied by the party from whom the title of the United States is derived, would alone be sufficient to throw much doubt about the right of the claimants to recover it, even if their title were otherwise unexceptionable; but when the relations existing between them and this property are considered in connexion with this lapse of time and adverse possession, there can be no doubt that, apart from every other objection, their claims are barred by prescription.

Prescription is a device of the *civil law*, that boundless field in which man's intellectual strength has labored for two thousand years in aid of human rights, and to which the invocations of the claimants' counsel are so often and so earnestly addressed.

Civil law writers define it to be, "*that mode of acquisition whereby one becomes proprietor of a thing on the ground that he has for a long time possessed it as his own.*"* This is either *ordinary prescription*, (*usucapio* or *longi temporis possessio*, s. *prescriptio*), which is completed in three, ten, or twenty years; or *extraordina-*

* Kaufmann's Makeldey, tit. prescription.

ry prescription, which is either limited to a certain, definite period, (*prescriptio 30 vel 40 annorum*, called *prescriptio longissimi temporis*;) or is not limited, as *immemorial* prescription, (*prescriptio immemorialis*.)

Without reference to the requisites of *ordinary*, I will briefly state those of *extraordinary* prescription. Things which cannot, under the civil law, be acquired by the first may become vested by the last; and prescription of thirty or forty years, according to the Roman law, takes place even where the requisites of ordinary prescription (i. e., *res habilis* and *justus titulus*) are wanting.

A term of *thirty* years, as a general rule, is necessary to establish extraordinary prescription; but, by way of exception, a term of *forty* years is requisite to establish a prescription: 1st, of property of the State or ruler; 2d, of immoveables belonging to churches and charitable institutions; 3d, of things belonging to cities, and 4th, of things for which a suit has been commenced but not continued; in which last case the defendant cannot acquire the thing in dispute until forty years after the last judicial act.—(See Kaufmann's *Mackeldey*, 292.) This is not only the Roman law and the present canon law of Germany, but Spain has enforced it by special enactment.—(See schedule 24.)

The peaceable occupation of this property (the *convent, bishop's house and lot, and lot of our Lady*) by Spain and the United States, has continued uninterruptedly fifty-four years. The claimants suffered Spain to enjoy quiet possession twenty-seven years, and then to transfer it to the United States. Throughout this long period of fifty-four years they and their fathers have lived constantly in sight of the convent; they have seen the United States twice repair it at an aggregate expense exceeding sixty thousand dollars; they were perfectly aware of its transfer to the United States by Spain, and yet have never set up any claim or indicated any doubt of the validity of the transfer. Their silence has not been the result of their ignorance of all the facts governing their supposed title, and they state no fact now relative to it which was not thoroughly within their control twenty-five years ago. They rely mainly upon the grounds that the barracks anciently belonged to the church, and was still its property on the return of the Spaniards to Florida in 1784; grounds that might possibly have been valid with the crown of Catholic Spain, had they been suggested above a half century ago, but which are entitled to less consideration from the United States at this distant day, and more especially as this delay is wholly unaccounted for.

It is possible that the St. Francis barracks, the bishop's house, and the lot of our Lady of the Milk, may have been at one time ecclesiastical property; though the evidence of this is by no means conclusive. But, be this as it may, they were ceded to Great Britain by the crown of Spain in 1763. Of the right of Spain thus to dispose of them, I presume there can be no doubt. If there be any persons who doubt such right, because they *were* church property, I may safely refer them to the treaties of Catholic Europe, and the practice under them for two hundred years; and to the opin-

ions of established writers upon the subject. This property, thus transferred to Great Britain by competent authority, became vested in the crown of Spain in 1783. It was not *restored* to the church. The church claimed but *one* portion of it, (the bishop's house,) and the Spanish authorities denied that the church had *ever possessed* it; and the position, therefore, that it was *restored*, and that with it were also *restored* the convent and the lot, which were *not* claimed, is totally unfounded and gratuitous.

But, admitting that these positions are erroneous, and that the claimants had exhibited a title, otherwise clear and unquestionable, prescription would effectually bar it.

In the investigation of this case, I have carefully examined the laws of the Indies; (a code constituting in itself an enduring monument to the wisdom of Spain;) the ordinances of the first counsel of the Indies; the royal orders and decrees relative to them; many old chronicles and historical records upon the Franciscans, in Florida, and its early church establishment and the ecclesiastical law, with the commentaries of some of its most able expounders. I also examined the archives at St. Augustine, and so much of those in the city of Havana as relate to the Floridas, and I have appended to this report the documents found there and to which it refers.

I have given to the subject much patient investigation and all the feeble ability I possess, and I am free to confess that I would have been pleased if they had conducted me to a different conclusion. As the result of my examinations, and in answer to the points submitted, I award—

1st. That the parochial Catholic church of St. Augustine is rightfully the property of its congregation, and that the wardens representing the said congregation are entitled to receive it.

2d. That the St. Francis barracks, the lot of the bishop's house, the lot of our Lady of the Milk, are all and singular the property of the United States; and that neither the congregation of the church of St. Augustine, nor the vicar general of Florida, have any right or title, in law or equity, to the same, or to any part thereof.

All of which is respectfully submitted by your obedient servant,
S. R. MALLORY,
Arbitrator.

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