

Delassus Vs. United States

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Appellant : Delassus

Respondent : United States

Judgement :

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Delassus v. United States

34 U.S. (9 Pet.) 117

APPEAL FROM THE DISTRICT COURT OF THE

UNITED STATES FOR THE MISSOURI DISTRICT

SYLLABUS

Missouri. A claim was made by C.D.D., by a petition filed in the District Court of the United States for the District of Missouri, under the Act of Congress of 25 May, 1824,

"enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."

The tract of land claimed was a league square, and was granted to the father of the petitioner by Don Zenon Trudeau, Lieutenant Governor of the Province of Upper Louisiana, on petition addressed to him for that object, the decree for that purpose being dated 1 April, 1795. The land was situated on a branch of the River St. Francis, &c.; The decree ordered the captain commandant of the post of St. Genevieve to put the grantee in possession of the land, which was done on the 15th of the same month. It was surveyed on 14 December, 1799. The petition stated that all the laws for the preservation of his rights had been observed; his father is dead, and the title is vested in him, and prays that it may be enforced. Regular documents in support of the concession accompanied the petition, and among them a letter from the Baron Carondelet, Governor General of Louisiana, recommended the grant to be made by the Lieutenant Governor Trudeau and stating that the object of the petitioner was to open lead mines, and that he had contracted with the intendency to deliver a quantity of lead. After the concession should be made by the lieutenant governor, the grantee was to present a memorial to the governor general to have a decree confirming the same. The District Court of Missouri refused to confirm the grant, and the petitioner appealed to this Court. The grant was confirmed and the decree of the district court reversed.

The Act of 25 May, 1824, gives the district court authority to hear and determine all questions arising in any cause brought before it by the petition of any person claiming lands within the State of Missouri

"by virtue of any French or Spanish grant, concession, warrant, or order of survey, legally made or issued before 10 March, 1804, by the proper authorities, to any person or persons resident in the Province of Louisiana at the date thereof, and which was protected and secured by the treaty between the United States and France of 30 April, 1803, and which might have been perfected into a complete title under and in conformity to the laws and usages and customs of the government under which the same originated had not the sovereignty of country been transferred to the United States."

The stipulations of the treaty ceding Louisiana to the United States, affording that protection or security to claims under the French or Spanish government to which the act of Congress refers, are in the first, second, and third articles. They extended to all property until Louisiana became a member of the Union, into which the inhabitants were to be incorporated as soon as possible, "and admitted to all the rights, advantages, and

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immunities of citizens of the United States." The perfect inviolability and security of property is among these rights.

The right of property is protected and secured by the treaty, and no principle is better settled in this country than that an inchoate title to lands is property. This right would have been sacred independent of the treaty. The sovereign who acquires an inhabited country acquires full dominion over it, but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes any idea of interfering with private property.

The concession to the petitioner was legally made by the proper authorities.

A grant or concession made by that officer who is by law authorized to make it carries with it *prima facie* evidence that it is within his powers. No excess of them or departure from them is to be presumed. He violates his duty by such excess, and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it.

The cases of [United States v. Arredondo](#), 6 Pet. 691; [Percheman v. United States](#), 7 Pet. 51; [United States v. Clarke](#), 8 Pet. 436, cited and approved.

The instructions of Governor O'Reilly relative to granting lands in Louisiana were considered by the court in [33 U. S. 8](#) Pet. 455. These regulations were intended for the general government of subordinate officers, and not to control and limit the power of the person from whose will they emanated. The Baron De Carondelet

must be supposed to have had all the powers which had been vested in Don O'Reilly, and a concession ordered by him is as valid as a similar concession directed by Governor O'Reilly would have been.

The act of Congress on which this case depends contains no reservation of lead mines. It extends the jurisdiction of the court to all claims "by virtue of any French or Spanish grant, concession, warrant, or order of survey legally made by the proper authorities."

On 18 May, 1829, Charles Dehault Delassus, legal representative of Pedro Dehault Delassus, under the authority of the act of Congress, entitled "an act enabling the claimants to lands with the limits of the State of Missouri and the Territory of the Arkansas to institute proceedings to try the validity of their claims," filed in the office of the clerk of the District Court of the United States for the District of Missouri, the following petition.

"To the honorable the Judge of the District Court of the United States for the State of Missouri."

"Respectfully sheweth Charles Dehault Delassus, of the County of St. Louis, State of Missouri, that on 3 March, 1795, Don Pedro Dehault Delassus De Luzieres,

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the father of your petitioner, addressed his petition to Don Zenon Trudeau, Lieutenant Governor of the Province of Upper Louisiana, praying that a concession or grant should be made to him and his heirs of a tract of land containing seven thousand and fifty-six arpents, French measure, being a league square. That said lieutenant governor, in compliance with said petition and in obedience to an official instruction addressed to him by the Governor General of the Province of Louisiana, the Baron of Carondelet, did, by decree bearing date 1 April, 1795, aforesaid, grant to said De Luzieres and his heirs forever a tract of a square league situated on a branch of the River St. Francis, called Gaboury, and by said decree ordered Francois Valle, the captain commandant of the port of St. Genevieve, to put the De Luzieres forthwith into possession of said tract, and also

directed that said tract should be surveyed in due form by the surveyor, then about to be appointed for the Province of Upper Louisiana."

"That on 15 April in the year aforesaid, the said De Luzieres was formally put into possession of said square league by said Francois Valle in pursuance of said decree. That some time elapsed from the said delivery of possession until the appointment of a surveyor for said Province of Upper Louisiana, and by which delay and other unavoidable difficulties the said De Luzieres was prevented from obtaining a survey of the said tract until 14 December, 1799, on which day the Surveyor General of Upper Louisiana, Don Antoine Soulard, in pursuance of an order to him specially directed by the lieutenant governor of said province, surveyed said tract and located the same according to the terms of the above mentioned decree of concession, and the possession delivered as aforesaid to said De Luzieres, all which will more fully appear by said original decree of the lieutenant governor, said official instruction of said governor general, the certificate of delivery of possession by said Francois Valle, the said order of survey by the lieutenant governor, and lastly by the official return and certificate of survey by the surveyor general, which certificate bears date 5 March, 1800, and which original documents are here brought into court and ready to be produced and proved, and to which your petitioner begs leave to refer. That said De Luzieres, at the date of said decree of concession and until his decease,

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was a resident of the Province of Upper Louisiana."

"Your petitioner further sheweth that said concession and claim thereunder having been submitted to the board of commissioners for the adjustment of Spanish and French land claims, was rejected on the ground that the land intended in the said concession contained a lead mine, and on no other. That said tract of a league square has been reserved from sale in the public land office until a decision shall be had thereon by the proper tribunal, and that said tract, as laid down on the general plat in the office of the register, is situated and bounded as follows, viz. beginning in the southeast quarter of section number twenty-five, township number

thirty-five, north, of range number five, east, at a post, a corner of John Capehart's survey, and runs thence south eight west, with Capehart's line, five chains eighty-three links to Capehart's and D. Murphey's corner; sixty-four chains sixteen links to D. and S. Murphey's corner; one hundred and seven chains ninety-one links to St. Murphey and Coen's. corner; one hundred and thirty-seven chains and forty-one links to Coen and W. Murphey's corner; two hundred and five chains and thirty-two links to the southwest corner of W. Murphey's survey; two hundred and forty-five chains to a point in the northwest quarter of section number thirteen, in township number thirty-five, north, of range number five, east; thence north eighty-two west two hundred and forty-five chains to a point in the southwest quarter of section number nine, in township number thirty-five, north, of range number five, east; thence north eight east two hundred and forty-five chains, to a point in the southeast quarter of section number twenty-eight, in township number thirty-six, north, of range number five, east; thence south eighty-two east one hundred and sixty-three chains ninety-eight links to the south-west corner of Joseph Murphey's; seventy-two hundred and thirteen chains and forty-five links to Joseph Murphey's southeast corner, on the west boundary of John Capehart's survey; thence thirty-eight west, with Capehart's survey, one chain and thirty-two links to his southwest corner; thence south eighty-two east, with Capehart's line, thirty-one chains and fifty links, to the place of beginning."

"Your petitioner further sheweth that said league square, and all claim and title thereto since the decease of said De Luzieres, who

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departed this life some years since, has been legally vested in your petitioner, and that no part of said tract is occupied or claimed by any person or persons adverse to the claim or title of your petitioner. Wherefore your petitioner prays that the validity of said concession and claim to confirmation of said tract may be inquired into and decided upon by this honorable court, and that inasmuch as said concession and survey might have been perfected into a complete title under and in conformity to the laws, usages, and customs of the government under which the same originated, had not the sovereignty of the country been changed or

transferred to the United States, your petitioner prays that his title and claim be confirmed to said league square, located and bounded as aforesaid. And your petitioner prays that a citation be directed to the district attorney of the United States requiring him to appear and show cause, if any he can, why the confirmation prayed for by your petitioner should not be decreed to him. And your petitioner will ever pray, &c.;"

"CHARLES DEHAULT DELASSUS"

The answer of the attorney of the United States was filed at the June session, 1829, of the district court, denies the allegations of the petitioner and requires proof of the same.

At the January session of the court in 1830, the district judge made a decree against the claim set forth in the petition, and this appeal was prosecuted by the petitioner.

The documents annexed to the petition were the following.

"To Don Zenon Trudeau, lieutenant governor of the western part of Illinois &c.;"

"Pierre Charles Dehault, Knight, Lord of Delassus Luzieres, and Knight of the Great Cross of the Royal of St. Michael, residing in New Bourbon, dependency of the post of St. Genevieve, has the honor to represent that when he was at the City of New Orleans in May 1793, he resolved to come up in the Illinois country on the positive assurance given him by his Lordship, the Baron De Carondelet, Governor General of Louisiana, that he would order and authorize you to grant him a tract of land for the exclusive exploration of lead mines, and of a sufficient and convenient extent for said exploration, provided

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it should not be formerly granted to another, which warranty and assurances of the government are to be found formally expressed in a letter here subjoined, and directed to your petitioner by the said baron under the date of May 8, 1793, and which you have been pleased to assure me was exactly conformable to the official

letter you received on that subject from the governor general."

"The long and cruel disease which your petitioner experienced on his arrival in Illinois in August, 1793, the hostile threats of an invasion on the part of the French against the country some short time after, the orders you gave to the inhabitants not to go to any distance from their post, and the care and trouble which, to your knowledge, I have taken in that time to countenance the wise and efficacious means you have taken so successfully in putting the posts of Illinois in a state of defense in case of an attack, of which care, endeavor and zeal on my part his Lordship Luis de la Casas, Captain General of Havana, being informed, I received from him a letter, bearing date May 20, 1794, by which he gives me the most honorable evidence of his satisfaction, as appears by copy of said letter here subjoined. That the occurrence of several circumstances hindered your petitioner to make a search of a tract of land containing lead mineral; he now, with the assistance of his children and son-in-law, and persons acquainted with the country, visited a place situated on one of the branches of the River St. Francois, called Gaboury, in the District of St. Genevieve, and about twelve leagues from this post, which has not been yet granted, makes part of the King's domain, and where it is ascertained some mineral had been anciently dug, besides the external and internal appearance, according to the mineralogical principles, indicates that the spot contains lead mineral; therefore your petitioner has resolved to try in that place a general exploration of lead mine; he is so much induced to prosecute such an undertaking that he expects the arrival of his eldest son, now emigrated to Germany, who is well learned in mineralogy, having studied it particularly and having been engaged in a similar branch in Europe with your petitioner, and will be very useful in exploring and conducting the one now solicited."

"Your petitioner flatters himself that you will not refuse to give this concession the extent of a league square in order to secure the necessary fuel for the melting of

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the mineral, and other necessities; under these considerations your petitioner humbly prays you, sir, that in conformity to the intentions of the government

manifested in the subjoined letters, of which you have been notified by the governor general himself, you have been pleased to grant for himself, his heirs and assigns in full property, the concession of a league square of land situated on said branch of River St. Francois, called Gaboury, in the District of St. Genevieve, with the exclusive right to explore the lead mines in the same, to cultivate and raise cattle on the said land if necessary; in so doing your petitioner will ever pray, &c.;"

"DELASSUS DE LUZIERES"

"New Bourbon, March 3, 1795"

"St. Genevieve, Illinois, March 10, 1795"

"We, the commandant of said post, do inform the lieutenant governor that the concession demanded in the within petition is part of the King's domain, and has not been granted to anybody, and that its extent fixed to a league square is indispensable and necessary to secure the timber for melting of mineral and other necessary supply."

"FRANCOIS VALLE"

"To Zenon Trudeau."

"The Knight Don Pierre Dehault Delassus has entered into contract with this intendency to deliver yearly during the term of five years thirty thousand pounds of lead in balls or bars. In order that he may comply with his contract, Your Worship will put him in possession of the land he may solicit for the exploration, benefit, and enjoyment of the mines, for which purpose he is to present a memorial directed to me, and which Your Worship will transmit, that I may give him the corresponding decree of concession, being understood in the meantime Your Worship will put him in possession. God preserve Your Worship many years."

"EL BARON DE CARONDELET"

"New Orleans, May 7, 1793"

"To Mr. Dehault Delassus."

"I send you back the primitive titles of the concession granted

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Mr. Francois Valle, of St. Genevieve, who transferred to Mr. Dodge one moiety of which, this last ceded to Mr. Tardiveau, who made a gift of it to your brother, with the approbation and advice you desired. By this opportunity I write to Mr. Zenon Trudeau to grant you the land where you will have made a discovery of lead mines, with adjacent lands of sufficient extent for their exploration, provided nevertheless that it should not be conceded to another."

"Your son-in-law and your sons shall have also, as you desire, a plantation in any place they will select in Illinois of an extent proportionate to the establishment and improvement they propose to make."

"This is my answer to your letter No. 3. God have you in his holy keeping."

"EL BARON DE CARONDELET"

"New Orleans, May 8, 1793"

"Sir Don Peter Dehault Delassus de Luzieres."

"The Baron de Carondelet, governor general of this province, has manifested to me in his letter of 27 February last, the zeal and activity with which Your Worship (although laboring under a weak state of health) has manifested in exciting the inhabitants and Indians to join in the common defense of those settlements, and more particularly the post under your command. I do hope that Your Worship will continue with the same efficaciousness in similar circumstances, and give me an opportunity to reward Your Worship. God preserve Your Worship many years."

"LUIS DE LA CASAS"

"Havana, May 20, 1794"

"St. Louis, Illinois, April 1, 1795"

"Decree. Having read the present petition, the subjoined of the Baron De Carondelet, directed to the petitioner under the date of May, 1793, also the official letter to us directed by said governor general authorizing and giving us order to grant the petitioner a concession in the spot selected by him, and of a sufficient extent to explore exclusively the lead mines in the same, also the above information of the commandant of St. Genevieve, by which he testifies that the land petitioned for is

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in the King's domain, and that it is indispensable that the quantity should be a league square; we, the lieutenant governor, in conformity with said orders and intentions of the government, have granted and do grant unto the petitioner and to his heirs and assigns in fee the concession demanded, situate on a branch of the River St. Francois called the Gaboury, in the place selected by him, the extent of which shall be a league square, to the end that he may explore exclusively the lead mines belonging to the same, and if necessary to cultivate and raise cattle, hereby commanding Don Francois Valle, captain and commandant of St. Genevieve, in whose district the land is situated, to put the petitioner in possession thereof, the regular survey of which will be done as soon as a surveyor will be appointed and commissioned for the upper Louisiana."

"ZENON TRUDEAU"

"St. Genevieve, Illinois, April 15, 1795"

"We, Don Francois Valle, Captain Commandant, civil and military, of the post of St. Genevieve, in compliance with the foregoing decree of Don Zenon Trudeau, Lieutenant Governor of the western part of Illinois, bearing date the 1st instant, have this day, the 15th of the same month, put the knight, Peter Delassus De Luzieres, in possession of a league square of land situated on a branch of the River St. Francois, called Gaboury, as granted to him by the aforesaid decree, conformably to orders, and with the approbation of his Lordship the governor

general of this province. The said concession, in future, to be regularly surveyed by the King's surveyor, who is soon to be named and appointed for this upper colony."

"FRANCOIS VALLE"

"To Don Charles Dehault Delassus, colonel of the royal armies and Lieutenant Governor of upper Louisiana."

"Humbly petition Peter Charles Dehault Delassus De Luzieres, Knight, &c., residing in New Bourbon, and has the honor to represent that in conformity to orders of the governor of this province, your predecessor, Don Zenon Trudeau, did grant to your petitioner a concession of a league square of land, situate

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on a branch of the River St. Francois, called Gaboury, with the exclusive right to explore the lead mines on the same, as appears by his decree bearing date April 1, 1795, of which concession and land your petitioner was put in possession by Don Francois Valle, Captain Commandant of the post of St. Genevieve, in whose district the land is situated, as appears by his act bearing date 15 April of said year, and whereas it is mentioned in said decree of Don Zenon Trudeau that said concession will be regularly surveyed by the surveyor who has to be appointed by the government for upper Louisiana, and whereas Don Antoine Soulard has been commissioned and appointed as such surveyor, therefore, under these considerations, your petitioner requests you, sir, that after mature consideration of the instruments here submitted relating to said concession, you be pleased to give the necessary orders to Don Antoine Soulard, Surveyor of upper Louisiana, to proceed without delay to the regular survey of said concession of a league square on the said branch of the River St. Francois, called Gaboury, to explore exclusively to any other, the land, &c., and of which land he has been already put in possession by the commandant of St. Genevieve, and has already begun the exploration; he hopes to obtain his demand, inasmuch as he did not hurry the surveyor, in order to give him the necessary time to attend to the surveying of

concessions belonging to other inhabitants, who wished to have their surveys quickly executed. In so doing, you will do justice."

"PIERRE DELASSUS DE LUZIERES"

"New Bourbon, November 25, 1799"

"By virtue of the contents of the above memorial and the accompanying documents, and also from what it appears by the official letter of the Baron De Carondelet, late governor of these provinces, bearing date 7 and 8 May, 1793, on file in these archives."

"The surveyor, Don Antoine Soulard, will survey the league square of land which was granted to the party interested by the decree of my predecessor, the lieutenant governor, Don Zenon Trudeau, dated 1 April, 1794, conformably to orders of his Lordship, the governor, and of which land he has been put in possession, as appears by decree of Francois Valle, Commandant

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of St. Genevieve, bearing date April 15 of the year last mentioned, to be hereafter surveyed by the surveyor of this upper Louisiana, when appointed and commissioned."

"CHARLES DEHAULT DELASSUS"

"St. Louis, November 29, 1799"

On 6 March, 1800, Anthony Soulard, Principal Deputy Surveyor of Upper Louisiana, certified that on 14 December, 1799, he made a survey and return of the land claimed by the petitioner in virtue of the decree of 29 November, 1799.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is an appeal from a decree pronounced by the Court of the United States for the District of Missouri by which the claim and title of the petitioner, Charles Dehault Delassus, to a tract of land in his petition mentioned, under a concession alleged to be authorized by the laws of Spain and protected by the treaties ceding Louisiana to the United States, was declared to be invalid.

The suit was instituted under the Act of 25 May, 1824,

"enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims. "

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The petition which is the institution of the suit states that on 3 March, 1795, Don Pedro Dehault Delassus De Luzieres, the father of the petitioner, addressed his petition to Don Zenon Trudeau, Lieutenant Governor of the Province of Upper Louisiana, praying that a concession or grant should be made to him and his heirs of a tract of land containing seven thousand and fifty-six arpents, French measure, being a league square. That said lieutenant governor, in compliance with said petition and in obedience to an official instruction addressed to him by the Governor General of the Province of Louisiana, the Baron Carondelet, did, by decree bearing date 1 April in the year 1795, grant to said De Luzieres and his heirs forever a tract of a square league situated on a branch of the River St. Francis called Gaboury, and by said decree ordered Francois Valle, the Captain Commandant of the port of St. Genevieve, to put De Luzieres forthwith in possession of the said tract of land, which was done on the 15th of the same month. A delay in the appointment of a surveyor for the province prevented the survey from being immediately made. It was made on 14 December, 1799. The petitioner proceeds to state that the requisites of the laws for the preservation of his right had been observed, that his father is dead, and the title is vested in the petitioner. He prays that his title and claim be confirmed.

The answer of the district attorney professes ignorance of the facts and insists that the petitioner be required to prove the validity of his claim.

The petition of Pierre Charles Dehault Delassus De Luzieres presented to Don Zenon Trudeau, lieutenant governor of the western part of Illinois, &c.;, states that in May, 1793, he resolved to come to Illinois on the assurance of his Lordship, the Baron De Carondelet, Governor General of Louisiana, that he would order and authorize him, the said Don Zenon Trudeau, the lieutenant governor &c.;, to grant him, the petitioner, a tract of land for the exclusive exploration of lead mines, &c.;, which assurance is fully expressed in a letter annexed to the petition, which, he adds, conforms to a letter addressed to the lieutenant governor on the same subject. The petition then ascribes the delay in its presentation to long and severe illness, and to the difficulty of finding a tract of land adapted to the

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object. This being at length accomplished, and having found a spot indicating that it contains lead mineral on one of the branches of the River St. Francois called Gaboury, the petitioner prays a concession thereof to the extent of a league square.

The letter of the Baron De Carondelet is in these words:

"To Zenon Trudeau."

"The Knight Don Pierre Dehault Delassus has entered into contract with this intendency to delivery yearly during the term of five years, thirty thousand pounds of lead, in balls or bars. In order that he may comply with his contract, Your Worship will put him in possession of the land he may solicit for the exploration, benefit, and enjoyment of the mines, for which purpose he is to present a memorial directed to me, and which Your Worship will transmit, that I may give him the corresponding decree of concession, being understood in the meantime Your Worship will put him in possession. God preserve Your Worship many years."

"EL BARON DE CARONDELET"

"New Orleans, May 7, 1793"

Other letters from the Baron De Carondelet sustaining that above recited were annexed to this petition, and on 1 April, 1795, Zenon Trudeau, the lieutenant governor of the province, granted the required concession.

The regular documents to prove the survey and the possession of the premises by Delassus were also laid before the district court.

The Act of 26 May, 1824, gives the district court authority to hear and determine all questions arising in any cause brought before it by the petition or any person claiming lands within the State of Missouri

"by virtue of any French, or Spanish grant, concession, warrant, or order of survey legally made, granted, or issued, before 10 March, 1804, by the proper authorities, to any person or persons resident in the Province of Louisiana at the date thereof, or on or before 10 March, 1804, and which was protected or secured by the treaty between the United States of America and the French Republic of 30 April, 1803, and which might have been perfected into a complete title, under, and in

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conformity to the laws, usages, and customs of the government under which the same originated had not the sovereignty of the country been transferred to the United States."

In the first article of the treaty referred to, the consul of the French Republic ceded to the United States, in full sovereignty, the Province of Louisiana, with all its rights and appurtenances. The second article declares that in this cession

"are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices which are not private property."

The third article stipulates

"That the inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the

federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

These are the stipulations which afford that protection or security to claims to land under the French or Spanish government to which the act of Congress refers. They extend to all property until Louisiana shall become a member of the union, into which the inhabitants are to be incorporated as soon as possible, "and admitted to all the rights, advantages and immunities of citizens of the United States." That the perfect inviolability and security of property is among these rights all will assert and maintain.

The right of property, then, is protected and secured by the treaty, and no principle is better settled in this country than that an inchoate title to lands is property.

Independent of treaty stipulation, this right would be held sacred. The sovereign who acquires an inhabited territory acquires full dominion over it, but this dominion is never supposed to divest the vested rights of individuals to property. The language of the treaty ceding Louisiana excludes every idea of interfering with private property; of transferring lands which had been severed from the royal domain. The people change their sovereign. Their right to property remains unaffected by this change.

The inquiry, then, is whether this concession

"was legally

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made by the proper authorities, . . . and might have been perfected into a complete title under and in conformity to the laws, usages, and customs of the government under which the same originated had not the sovereignty of the country been transferred to the United States."

The concession was made in regular form on 1 April, 1795, by Zenon Trudeau, lieutenant governor of the western part of Illinois, in which the land lay, by special order of the Baron De Carondelet, governor general of the province, given in consequence of a contract entered into by De Luzieres with the government for the supply of lead.

By the royal order of 1774, the power of granting lands, which had been vested in the intendants by an order of 1768, was revested in the civil and military governors of provinces, who retained it till 1798. White's Compilation 218. In the execution of this power, the lieutenant governors or commandants of posts, as is fully shown by the proceedings before the various tribunals appointed under the authority of the United States, were employed to make the original concession and order of survey, and to put the grantee into possession. In 1795, then, when these acts were performed by the lieutenant governor under the authority and by the special order of the governor general, those officers were "the proper authorities," and had full power to make the concession and to perfect it by a complete title. Who can doubt that it would have been so perfected "in conformity to the laws, usages and customs of the Spanish government, had not the sovereignty of the country been transferred to the United States?"

A grant or a concession made by that officer who is by law authorized to make it carries with it *prima facie* evidence that it is within his power. No excess of them or departure from them is to be presumed. He violates his duty by such excess, and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it.

This subject was fully discussed in [United States v. Arredondo](#), 6 Pet. 691; [Percheman v. United States](#), 7 Pet. 51, and [United States v. Clarke](#), 8 Pet. 436. It is unnecessary to repeat the arguments contained in the opinions given by the Court in those cases.

The concession is unconditional; the land was regularly surveyed, and the party put into possession.

The objection made to this plain title is that the concession is not made in pursuance of the regulations of O'Reilly.

This objection was considered in the cases heretofore decided by this Court, and especially in [33 U. S. 8](#) Pet. 455. It is apparent that those regulations were intended for the general government of subordinate officers, not to control and limit the power of the person from whose will they emanated. The Baron De Carondelet, we must suppose, possessed all the powers which had been vested in Don O'Reilly, and a concession ordered by him is as valid as a similar concession directed by Governor O'Reilly would have been. Had Governor O'Reilly made such a grant, could it have been alleged that he had disabled himself by his instructions for the regulation of the conduct of his subordinate officers -- instructions which the power that created must have been capable of varying or annulling, from exercising the power vested in him by the Crown?

The lead mine has been mentioned. But the act of Congress on which this case depends contains no reservation of lead mines. It extends the jurisdiction of the court to all claims, "by virtue of any French or Spanish grant, concession, warrant or order of survey," legally made by the proper authorities, &c.; This is such a concession.

The Court is of opinion that the claim of the appellant is valid, and ought to be confirmed. The decree of the district court is

Reversed and annulled, and this Court, proceeding to pronounce such decree as the district court ought to have given, doth declare the claim of the petitioners to be valid and doth confirm their title to the tract of land in their petition mentioned according to the boundaries thereof as described in the survey made by Antonio Soulard, Principal Deputy Surveyor of Upper Louisiana, on 14 December, 1799, and his certificate of the said survey, dated 5 March, 1800, and appearing in the record of the proceedings of this cause.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District

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of Missouri, and was argued by counsel, on consideration whereof this Court is of opinion that the claim of the appellant is valid and ought to be confirmed. Whereupon it is ordered, adjudged, and decreed by this Court that the decree of the said district court in this cause be and the same is hereby reversed and annulled, and this Court, proceeding to pronounce such decree as the said district court ought to have given, doth declare the claim of the petitioner to be valid, and doth confirm his title to the tract of land in his petition mentioned according to the boundaries thereof as described in the survey made by Antonio Soulard, Principal Deputy Surveyor of Upper Louisiana, on 14 December, 1799, and his certificate of the said survey, dated 5 March, 1800, and appearing in the record of the proceedings of the cause.

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