

Delassus v. United States.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel : On consideration whereof, it is adjudged and ordered by this court, that the judgment of the said circuit court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said circuit court, with directions to award a *venire facias de novo*.

*CHARLES DEHAULT DELASSUS, Appellant, v. UNITED STATES. [*117

Missouri land-claims.—Spanish treaty.

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 25th 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 1st 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 the 14th of December 1799. The petition stated, that all the laws for the preservation of his rights had been observed; that his father was dead, and the title vested in him, and prayed that it might 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 25th 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 the 10th day of 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 the 30th of 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 *immunities of citizens of the United States." The perfect inviolability and security of property is among these [*118 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 conces-

¹ For a further decision, resulting in another reversal, see 13 Pet. 89.

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sion 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 intrusted with an important duty has violated his instructions, must show it. The cases of the United States v. Arredondo, 6 Pet. 691; Percheman v. United States, 7 Ibid. 51; United States v. Clarke, 8 Ibid. 436, cited and approved.

The instructions of Governor O'Reilly, relative to granting lands in Louisiana, were considered by the court, in 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."

APPEAL from the District Court of Missouri. On the 18th of 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 within 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 the third day of March 1795, Don Pedro Dehault Delassus De Luzieres, *the father *119] 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 7056 arpens, 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 the 1st day of April 1795 aforesaid, grant to said De Luzieres, and his heirs for ever, a tract of a square league, situated on a branch of the river St. Francis, called Gaboury, and by said decree, ordered François Vallé, the captain-commandant of the port of St. Genevieve, to put the said 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 the 15th day of April, in the year aforesaid, the said De Luzieres was formally put into possession of said square league, by said François Vallé, 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 the 14th day of 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,

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said official instruction of said governor-general, the certificate of delivery of possession by said François Vallé, 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 the 5th day of 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, *was a resident of the province of Upper Louisiana. [*120 Your petitioner further showeth, 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 south-east quarter of section No. 25, township No. 35, north of range No. 5, east, at a post, a corner of John Capehart's survey, and runs thence S. 8° W., 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 S. 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 south-west corner of W. Murphey's survey ; two hundred and forty-five chains, to a point in the north-west quarter of section No. 13, in township No. 35, north, of range No. 5, east ; thence N. 82° W. 245 chains to a point in the south-west quarter of section No. 9, in township No. 35, north, of range No. 5 ; N. 8° E. 245 chains, to a point in the south-east quarter of section No. 28, in township No. 36, north, of range No. 5, east ; thence S. 82° E. 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 south-east corner, on the west boundary of John Capehart's survey ; thence S. 38° W., with Capehart's survey, one chain and thirty-two links to his south-west corner ; thence S. 82° E., with Capehart's line, thirty-one chains and fifty links, to the place of beginning. Your petitioner further showeth, that said league square, and all claim and title thereto, since the decease of said De Luzieres, who *departed this life some years since, has been legally vested in [*121 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

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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; denied the allegations of the petitioner, and required 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 order 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 *122] for said exploration, provided *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 8th, 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 defence, 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 20th, 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

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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 *the mineral, and other necessaries; under these considerations, your petitioner humbly prays you, sir, that in conformity to the intentions of [*123 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. François, 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.

"New Bourbon, March 3d, 1795.

DELIASSUS DE LUZIERES."

"St. Genevieve, Illinois, March 10th, 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 is extent fixed to a league square, is indispensable and necessary to secure the timber for melting of mineral and other necessary supply.

FRANÇOIS VALLÉ."

"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!

"New Orleans, May 7th, 1793.

EL BARON DE CARONDELET."

"To Mr. Dehault Delassus:—I send you back the primitive titles of the concession granted *Mr. François Vallé, of St. Genevieve, who transferred to Mr. Dodge, one moiety of which this last ceded to Mr. [*124 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!

"New Orleans, May 8th, 1793.

EL BARON DE CARONDELET."

"Sir Don Peter Dehault Delassus de Luzieres:—The Baron de Carondelet, governor-general of this province, has manifested to me, in his letter of the 27th of February last, the zeal and activity with which your lordship (although laboring under a weak state of health) has manifested in exciting

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the inhabitants and Indians to join in the common defence 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."

"Havannah, May 20th, 1794.

"St. Louis, Illinois, April 1st, 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 *125] which he testifies that the land petitioned for is *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. François, 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 François Vallé 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 15th, 1795.

"We, Don François Vallé, 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. François, 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.

FRANÇOIS VALLÉ."

"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 *126] petitioner a concession of a league square of land, situate *on a branch of the river St. François, called Gaboury, with the exclusive right to explore the lead-mines on the same, as appears by his decree bearing date April 1st, 1795, of which concession and land your petitioner was put in possession by Don François Vallé, captain-commandant of the post of St.

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Genevieve, in whose district the land is situated, as appears by his act, bearing date the 15th day of 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. François, 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 25th, 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 the 7th and 8th of 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 1st 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 François Vallé, commandant *of St. Genevieve, [*127 bearing date April 15th, 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 29th, 1799.

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

The case was argued by *White*, for the appellant ; and by the *Attorney-General*, for the United States.

White, for the appellant, submitted the following points.—1. That this is a valid Spanish concession, made in obedience to the orders of the superior officers of the crown of Spain ; and in conformity with the laws of Spain. 2. That it is a claim protected by the treaty, and entitled to confirmation under the treaty and laws of the United States.

This was a petition in equity, presented under the act of 1824, authorizing claimants to lands under French and Spanish titles in Missouri, to institute proceedings to try the validity of their titles. The decision of the court below was against the title of the appellant here, who was the petitioner in that court. The grounds upon which the title was rejected nec

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not be stated, further than the recital in the judge's opinion and decree, which appears to be a *formula*, reduced to words applicable to, and employed in, every case presented to him. The claim of the appellants, like all the rest, is rejected, because it is not made in conformity to the ordinance transferring the jurisdiction and power of conceding and distributing lands, and the regulations made under it, in 1798 and 1799, to the *intendencia* of the province of Louisiana. The title of the petitioner originated in the year 1795; and it is not, assuredly, a valid objection to it, that it was not made by an authority created in 1798, and according to forms prescribed for the grant and concession of lands in 1799.

The royal order of 1798, and the regulations of the intendant Morales, published on the 17th of July 1799, have no application whatever to this case, and need not be further considered in the argument or decision of it. The rules and principles by which all the cases depending in this court, from Missouri, under the act of 1824, are to be decided, will be found in the first and second sections of that act. Clarke's Land Laws 871. 1. The laws of nations: 2. The stipulations of a treaty: 3. The proceedings under the treaty: 4. The laws and ordinances of France or Spain.

In regard to the first, the law of nations, it has been considered in the cases of *Arredondo*, *Percheman* and *Clarke*, under a similar law, and the principle has been established; that it is a universal principle recognised and acknowledged by all civilized states, that the property of the inhabitants of a conquered or ceded province is not affected by the change of sovereignty or dominion; and that the law of nations, as applied to the interpretation of treaties, in favor of individuals, is to be classed among things favorable, and therefore, liberally expounded.

The stipulations of the treaty refer only to the second article of the cession of Louisiana; in which *pro forma*, private property is reserved in the general transfer of the sovereignty, dominion and public domain of the government making the cession. Property has been defined by this court to be every species of title, legal and equitable, perfect and inchoate, existing at the time of the treaty. It will not be contended, that the title, under which the petitioner claims in this case, is a full and complete grant; but it will be contended, that it was held, at the time of the transfer to the United States, by an equitable title, which constituted in the petitioner a right of property, protected by the laws of nations and the treaty, which might have been consummated by complete grant; and ought to be confirmed.

The proceedings under the treaty, and the several acts of congress in relation to the same, mean nothing more than the legislative construction of congress upon that instrument; and the principles settled in the establishment of other claims of a similar character. The laws and ordinances of Spain are perhaps the most difficult to be ascertained of the several rules by which this court is to be guided, in its decision of these questions. The laws of all foreign countries are in a great measure inaccessible to, and difficult to be comprehended by, the courts of any other country. They consist of positive enactments, proclamations, letters of instruction, customs and usages, which often differ in the different provinces of the same country. In absolute governments, where the will of the prince is the law, it is still more difficult; and though power always loves to consider itself infallible,

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it is too often exhibited in the inconsistencies of caprice, and the wantonness of arbitrary authority.

In this particular case, however, passing over the presumption arising from the act of a foreign officer, that it is to be considered legitimate, and not a usurpation, which imposes on the appellee the obligation of showing the want of authority in the granting officer; it is easy to show, in this particular case, that he was vested with competent power to make the cession in question. To explain the condition of that district of country, known formerly as Louisiana, and now embracing two states and one territory, will require a brief historical view of them, prior to 1803.

By the secret treaty of 1762, between France and Spain, all the territory west of the Mississippi river, including the island of New Orleans, was ceded to Spain, and designated as the colony of Louisiana, which cession was confirmed in the definitive treaty of 1763. Spain did not signify her acceptance of this province, until 1764. In the year following (1765), Don Antonio de Ulloa was appointed governor-general, and his instructions from the council of the Indies, were, to continue the laws in force in the province, which were then the laws of France. The colonists resisted the establishment of the Spanish authority; and on the 29th of October 1768, Lieutenant-General O'Reilly was commissioned by the king to proceed to the province, to suppress the insurrection, punish the rebels, and to organize the government. This lieutenant-general took possession of the province, visited various posts and commandancies, established Don Louis de Upzaga in the government, and returned to Spain. Lieutenant-General O'Reilly, upon his return to San Ildefonso, was directed to submit to the council of the Indies his plans of government for the province; and on the 18th of February 1770, he drew up some regulations for the concession of lands, which were approved by the king, on the 24th of March 1770. The first six articles of these instructions are confined to Lower Louisiana; the eighth and ninth, to Opelousas and Attacapas. The ninth contemplates a larger grant than of a league square; as to the quantity under that, there can be no question. It is doubtful, whether these instructions extended to St. Louis of Illinois, now Missouri; to the decision of this case, they are immaterial. The first six articles being confined to the Mississippi, it follows, that the power to grant to the same extent in Illinois existed, as that in Opelousas; and this claim being within the limit, is a valid order of survey or concession.

The royal order of the 28th of January 1771, incorporates Louisiana into the king's dominions on a footing with his other transatlantic possessions, and adopts the laws of the Indies. These laws, upon the principle that *leges posteriores priores abrogant*, control so much of O'Reilly's regulations as are inconsistent with them, being subsequent in date to the royal *cedula* which gave these regulations the force of law. Lieutenant-General O'Reilly drew up five sets of instructions for the government of Louisiana, as appears from a report of the council of the Indies, dated 27th February 1772; in which report they were recommended for the royal approbation, and were approved by a *cedula* of the king, on the 23d of March 1772. The commission of the governor and captain-general Galvez in 1779, refers to a *cedula* approving of one of O'Reilly's regulations, on the 21st of July 1776; from which it would appear, that all of the plans projected by Lieutenant-

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General O'Reilly, were not approved until 1776. There is a slight error in the translation of a royal order, in White's Compilation 152, referring to *three* sets of instructions for the government of St. Louis de Illinois. The word *las* has been mistaken for *tres*, and it should be read *the* instructions instead of *three* instructions. This is shown by a correct copy recently obtained from Spain.

It may be important, in other cases, to inquire, whether these instructions for Illinois are the same as those of 1770 in other cases; and, whether those for Upper Louisiana were not more liberal; but in this case, it is unnecessary. The effect too of the introduction of the laws of the Indies in 1772, and the ordinance of 1786 upon grants as gratuities, and for services, will be more properly considered when such cases are on trial. The commissions of Galvez and Miro show that the offices of governor and intendant were united in the same officer. They were divided at the instance of the Baron De Carondelet. The power of conceding lands was vested in the civil and military governors, until 1798, when it was transferred to the intendant. The lieutenant-governor of St. Louis de Illinois, after 1798, stood in the same relation to the intendant, as sub-delegate, as he had previously done to the governor-general, as deputy.

Whether this title is to be considered under the general laws of Spain, with the presumption arising from the concession or not, or whether it be considered under O'Reilly's instructions; being proved to be genuine, it must be confirmed. Cited in argument, Ordinance of 1754; Ordinance of 1786; Leyes de Espana, tit. Residencia; Ordinance directing Report of deputy-governors; Laws Indies; White's Com. 57, 58, 35; Royal order for delivery of Louisiana, White's Com. 162; Treaty for cession of Louisiana, White's Com. 168.

Butler, Attorney-General.—The object of the argument on the part of the United States in this case, will be rather to lay before the court such views of the nature and extent of the titles set up in the cases which are before the court, by appeal from the district of Missouri, as are applicable to all these cases, than to resist the present case, which appears to be founded on equity, and in which, unless the documents are not genuine, or the court shall be compelled by some strict rule of law, the court will reverse the decree of the district court. The documents in the case show great merit in the claimant; who, in consideration of this merit, and of a contract to *furnish a certain quantity of lead to the governor of Louisiana, was *128] recommended to the special favor of the lieutenant-governor. This is shown by the letter of the Baron De Carondelet.

The court will observe, that as to all action in the case by the governor-general, the title of the claimants stops at these letters. There is not shown any application to the governor-general for a complete grant. The decision of the district judge was, that no complete grant was exhibited, and that the claim rested on an inchoate and imperfect title.

As to the first point presented by the counsel for the appellant, it is necessary to explain, what is intended by the United States, when it is said, this is not a valid concession. It is denied, that the lieutenant-governors of Upper Louisiana had a right to grant land in Upper Louisiana. Although the commandant of St. Louis and St. Genevieve might not have been sub-

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ordinate in other matters, yet he was, in reference to the grant of lands, subordinate to the governor-general of Louisiana, and in some respects subordinate to the governor-general of Havana. The supreme authority of the governor-general is fully established by the documents in this and the other cases before this court, on appeal from the district court of Missouri. The lieutenant-governors could not grant lands, without special authority from the governor-general. An express reference is made in the grant of Don Zenon Trudeau, to the authority given to him by the letter of the Baron De Carondelet. That letter states, that a memorial is to be presented by Mr. Delassus to the Baron De Carondelet, that a corresponding concession may be given to him. This clearly asserts the power to be in the governor-general; although it allows possession to be given of the lands for a concession, and negatives the authority of the lieutenant-governor to make a full grant.

The records in other cases, the examination of which will follow this now under consideration, will show the general understanding and practice of the officers of Spain in granting lands, and fully sustain the positions now assumed.

In 1798, the power to grant lands was transferred from the governor-general of Louisiana to the intendant. After the *transfer, the [*129 lieutenant-governor of Upper Louisiana acknowledged this transfer, and the obligation to apply to the intendant for the completion of grants; in the same manner as was before required to apply to the governor-general. This is fully established by the records in other cases before the court, and by repeated recognitions shown in state papers.

As to the second point presented by the counsel for the appellant, that there was a complete grant made to the appellant, it is not intended to deny, that if such a grant had been made, it was the duty of the court below and of this court to confirm the title. All the principles which have been decided in the cases of Spanish grants, which have been before this court, are not to be questioned. These decisions are sustained as well by the principles of international law, as by the treaty. It has been finally settled, that a claim for lands, founded on and conformable to the laws of Spain, if of such a character as that, by the laws of Spain, it would have ripened into a perfect title, will be confirmed by this court.

What is the real question in the case now under the consideration of the court? Certain regulations were made in 1770, by Don O'Reilly, which were intended to govern the granting of lands in all Louisiana; and these regulations were confirmed by a royal order of the King of Spain. White's Land Laws 204; Clarke's Land Laws 978. This confirmation was given on the 28th of January 1771. Documents relative to Louisiana and Florida 3. It will, therefore, be no longer disputed, that in the whole of Louisiana, these regulations were in full force, and applicable to the granting of lands, until they were altered.

The difficulty in this case grows out of the discrepancy of the grant, and the regulations of O'Reilly. The point intended now to be submitted, is, whether the lieutenant-governor of Illinois could make a larger grant than a league square. The grant does not conform to these regulations, and as they were in force, the grant would not have been confirmed under the laws of the Indies; and was, therefore, void, as against the United States.

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It is said, that the governor-general of Louisiana had been in the habit of confirming grants which were not in conformity *with these regulations. This is admitted. When this case was decided by the district judge of Missouri, the cases of *Arredondo* and of *Percheman* had not been decided; and it was not, until the decisions in these cases, considered, that an equitable title was sufficient to entitle a claimant to a confirmation of his grant. The proceedings below were founded on the law of congress of 1824. (4 U. S. Stat. 52.) The district judge decided in the language of the law; and it is contended, that although an inchoate grant is shown in this case, yet, as it was in opposition to the regulations of O'Reilly, he could not do otherwise.

It is admitted, that although this grant does not conform to these regulations, yet grants of this kind have been confirmed by the Spanish authorities; and if this is a case within the same principles, this grant must be confirmed. But if the court hold the regulations of O'Reilly were the only authority to make such a grant, it will affirm the decree of the district judge. The act of congress gave powers to the commissioners to confirm grants, except those having lead-mines upon them. But the claim now before the court, is under the treaty with France, making a cession of Louisiana; and the court will decide whether the exception in the law can prevail against the treaty. The principal reliance of the United States to sustain the decree of the court below, is upon the non-conformity of the grant with the regulations of Don O'Reilly.

White, in reply.—The attorney-general admits that this is a genuine order or survey, dated in 1795, and that there is no evidence to impeach its date, or that the act, such as it purports to be, was duly executed at the date specified. He insists, that the lieutenant-governor of Upper Louisiana, or St. Louis of Illinois, was subordinate to the governor-general of Louisiana. It is admitted, on the part of the appellant, that he was subordinate to the governor-general; but *non constat*, that he had not authority to make the order of survey and concession. The governor-general himself (as all the transatlantic authorities were) was subordinate to the king; and it might with equal propriety be contended, that no grant was good, unless it emanated from the crown. Such a position, if maintained, would vitiate every title in upper or lower Louisiana.

He admits, that an order of survey and possession under it constitutes property; and as property is protected by the treaty, it must be conceded, that the claim of the appellant is embraced by the treaty, and entitled to confirmation. The distinction attempted to be drawn between incomplete titles and imperfect ones, or between full grants and inchoate titles, has been considered and rejected by this court. The correct principle of decision by the American government of Spanish titles, must be a recognition of perfect, and a completion of imperfect titles; as they would have been consummated by the former government, if the sovereignty had not been transferred to the United States. It cannot be denied, that the governor-general would have approved and confirmed this concession. The United States, taking the place of Spain, are bound, in the same manner, to ratify and confirm it, and that duty has been assigned by congress to this court.

It has been shown, that in all similar cases where applications were made

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to the governor-general, he invariably gave a title in form, or confirmatory grant. He could not refuse, because, by the ordinance of 1786, the deputy-governors were subjected to the *residencia*; which was the account given to the council of the Indies of the administration of their governments. They were required, equally with the governors, to make a regular report of their proceedings; and if the governor-general refused his approval, the party was entitled to his appeal. There is no instance in which such a confirmation was ever refused.

There was no law of Spain which forbade the concession of a lead-mine; and the act of congress which interdicted the confirmation of such a title, was in violation of the treaty and of the constitution. Cited, various documents, commissions and *cedulas* recently received from Seville, in Spain, certified by the American minister.

MARSHALL, Ch. J., 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 the 25th of 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 petition, which is the institution of the suit, states, that on the 3d of March 1795, Don Pedro Dehault Delassus De Luzieres, [*131 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 7066 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 the 1st of April, in the year 1795, grant to the said De Luzieres and his heirs for ever, a tract of a square league, situated on a branch of the river St. François called Gaboury, and by said decree, ordered François Vallé, the captain-commandant of the post of St. Genevieve, to put De Luzieres forthwith in possession of 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 the 14th of 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,

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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 *132] to the difficulty of finding a tract of land adapted to the *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. François 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 :

“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 !

“To Zenon Trudeau.

EL BARON DE CARONDELET.”

“New Orleans, May 7th, 1793.”

Other letters from the Baron De Carondelet, sustaining that above recited, were annexed to this petition ; and on the 1st of 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 the 26th of 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, granted or issued, before the 10th day of 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 the 10th day of March 1804, and which was protected or secured by the treaty between the United States of America and the French Republic, of the 30th day of April 1803, and which might have been perfected into a complete title, under and in *133] *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 Constul 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 principle of the federal constitution, to

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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 *made by the proper authorities;" "and might have been perfected into a [*134 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 the 1st of 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 re-vested 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 intrusted with an important duty has violated his instructions, must

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show it. This subject was fully discussed in *United States v. Arredondo*, 6 Pet. 691; *Percheman v. United States*, 7 Ibid. 51; and *United States v. Clarke*, 8 Ibid. 436. It is unnecessary to repeat the arguments contained in the opinions given by the court in those cases.

*The^{135]} 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 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 the 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 the 14th day of December 1799, and his certificate of the said survey, dated the 5th of 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 *of Missouri, and^{136]} 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 the 14th day of December 1799, and his certificate of the said survey, dated the 5th of March 1800, and appearing in the record of the proceedings of the cause.