

**United States Vs. D'Auterieve**

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**Court :** US Supreme Court

**Decided On :** 1853

**Appeal No. :** 56 U.S. 14

**Appellant :** United States

**Respondent :** D'Auterieve

**Judgement :**

United States v. D'Auterieve - 56 U.S. 14 (1853)  
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**United States v. D'Auterieve**

**56 U.S. (15 How.) 14**

*APPEAL FROM THE DISTRICT COURT OF THE UNITED*

*STATES FOR THE EASTERN DISTRICT OF LOUISIANA*

*Syllabus*

The heirs of D'Auterieve claimed a tract of land near the River Mississippi, upon two grounds, viz., 1st, Under a grant to Duvernay by the Western or Mississippi Company in 1717, and a purchase from him by D'Auterieve, the ancestor, accompanied by the possession and occupation of the tract from 1717 to 1780, and 2d, under an order of survey of Unzaga, Governor of the Province of Louisiana in 1772, an actual survey made, and a confirmation thereof by the governor.

With respect to the first ground of title, there is no record of the grant to Duvernay nor any evidence of its extent. It is therefore without boundaries or location, and, if free from these objections, it would be a perfect title, and therefore not within the jurisdiction of the district court under the acts of 1824 and 1844.

With respect to the second ground of title, if the proceedings of Unzaga be regarded as a confirmation of the old French grant, then the title would become a complete one and beyond the jurisdiction of the district court.

If they are regarded as an incipient step in the derivation of a title under the Spanish government, then the survey did not extend to the back lands which are the property in question, but only included the front upon the river, which was surrendered to the governor in 1780.

Neither the upper or lower side line nor the field notes justify the opinion that the survey included the back lands. A letter addressed to Unzaga by the surveyor is so ambiguous that it must be controlled by the field notes and map.

The neglect of the parties to set up a claim from 1780 to 1821 and the acts of the Spanish government in granting concessions within the limits now claimed furnish a presumption of the belief of the parties that the whole property was surrendered in 1780.

The history of the claim is fully set forth in the opinion of the Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

The heirs of D'Auterive filed their petition under the Act of Congress of the 17th June, 1844, which provides for the adjustment of certain land claims against the government, setting up a claim to a large tract in the Parish of Iberville, on the west bank of the Mississippi River, at a place called Bayou Goula, some thirty leagues above the City of New Orleans. The decree below is in favor of the heirs, and the case is now before us on an appeal by the United States.

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The petition sets out a charter from the King of France in August, 1717, by which the Province of Louisiana was granted to the Western or Mississippi Company, and also a grant from that company in the same year to Paris Duvernay, a wealthy capitalist of France, of a tract of land fronting on the western bank of the Mississippi opposite Bayou Manchac, having four leagues front on the river and extending back in the rear to the River Atchafalaya. That soon after this, Duvernay fitted out a company of sixty men, under the direction of his agent Dubuisson, all of whom arrived at New Orleans in the spring of 1716, and immediately thereafter settled upon the tract; the settlement was known as the "Bayou Goula Concession," the principal establishment being in the neighborhood of the village of the Bayou Goulas Indians. That the settlement was kept up by Duvernay for many years at great expense, and under many difficulties, and contributed materially towards the establishment of the French dominion in Lower Louisiana.

The petition further states that in 1765, Duvernay, through his agent, Tremonay De Chamfret, sold the tract in question to Bernard D'Auterive, the ancestor of the present claimants, and delivered to him the possession. That in 1769, after O'Reilly had taken possession of the province on behalf of the King of Spain in pursuance of the treaty of 1762, he gave orders that the Bayou Goula Concession should be reduced from four leagues to twenty arpens front, but that Unzaga, his successor, in 1772, enlarged it to forty-four arpens on the river, and ordered a survey of the same by Luis Andry, the government surveyor, which was made accordingly on the 12th of March, 1772, and approved by the governor 12 July of the same year. D'Auterive continued to occupy and improve the tract, making it his place of residence, from 1765, the date of his purchase, till his death 24 March, 1776. That the widow remained in possession with her children till 1779, when she married Jean Bapliste Degruys, who resided at Attakapas, to which place they removed.

The petition further states that about this time, Galvez, the then Governor of Louisiana, desirous of introducing some Spanish families from the Canary Islands as colonists and to provide a settlement for them, made contracts with various persons for the construction of small houses, and, among others, with Degruys, who undertook to build a number on the Bayou Goula Concession and to give up the front on the river to the use of these colonists, with forty arpens in depth; that he built a number of these houses and delivered them to the governor and was paid for them, but not in accordance with the agreement. That, the government having become engaged in a war

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against the province of West Florida, the governor changed his purposes in behalf of the Spanish families and assigned a different location for their accommodation, but subsequently set apart this tract with the cabins erected to a number of Acadian emigrants, who had been some years previously driven from their ancient possessions in Nova Scotia by the British government. The petition states that Degruys and his family continued to reside at Attakapas, where they had other property; that the backland in Bayou Goula Concession, being either low swamp land or nearly inaccessible and of little value, was neglected by the family, and especially by Degruys, the head of it, and some portions were subsequently granted to others by the Spanish government in ignorance of the rights of the ancestors of the present claimants. The petitioners admit that no claim was set up to these back lands from the time the front was surrendered to governor Galvez, which must have been about the year 1780, down till 1821 or 1822, when the heirs employed the late Mr. Edward Livingston, as their attorney, to inquire into their claims. They state that the children of D'Auterive at the time of his death were under age; that there were four of them; and at the time of the removal of the family from the Concession to Attakapas, the eldest, Antoine, was only fourteen years old, the second, Louis, twelve, the third, Marigny, six; the fourth, Dubrelet, died in infancy. Antoine died in 1812, leaving four children; Marigny in 1828, leaving no issue; Louis, in 1814, leaving four children. These descendants of D'Auterive have instituted the present proceedings. The widow died in 1811. Degruys, the husband, was living at the commencement of this suit, and had been examined as a witness on behalf of the claimants.

These are the facts substantially as stated in the petition, and the title of the petitioners, as will be seen from the statement, is founded 1st upon the grant or concession to Duvernay by the Western or Mississippi Company, in 1717, and the purchase from Tremonay de Chamfret, his agent, in 1765, by D'Auterive the ancestor, together with the possession and occupation of the tract, from 1717 down to 1780, when the family left it, and removed to Attakapas, and 2d, upon the order of survey of Unzaga in 1772, the survey made accordingly by Andry, and the approval of the same by the governor in the same year.

As it respects the first ground of title, the grant to Duvernay in 1717, no record of it has been produced, and after a thorough examination of the archives of that date both at New Orleans and at Paris and in the appropriate offices for the deposit of such records, none can be found. The only proof furnished is to be found in the historical sketches given to the public of the

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first settlement of Louisiana by the French government under the direction of the Western or Mississippi Company, together with some documentary evidence relating to the settlement of the plantation by Duvernay, through his agents, such as powers of attorney, and some intermediate transfers of the titles in the course of the agency. But unfortunately, neither the historical sketches nor documentary evidence furnishes any information as to the extent of the grant or its boundaries.

The several historians of the transactions of the Western Company in Louisiana of that date concur in stating that agriculture was one of the first objects of encouragement in the colony; that the company thought the most effectual mode of accomplishing it would be to make large concessions of land to the most wealthy and powerful personages in the Kingdom. Accordingly, one of four leagues square, on the Arkansas River, was made to John Law, the famous projector of the company, and its Director General, together with twelve others in different places in the province, and among them, one on the right bank of the Mississippi, opposite Bayou Manchac, to Paris Duvernay, the grant in question. The extent of these grants is given only in the instance of Law. Duvernay at the time was one of the counselors of the King, and Intendant of the Royal Military Academy in France. In the course of the first year after the grant was made, he shipped with his agent, Dubuisson, some sixty emigrants, and settled them upon the tract, with the necessary provisions and implements for clearing the plantation, for the erection of cabins, and for husbandry, and in a few years after, 1724, he purchased and sent to Louisiana, some fifty slaves to supply labor upon it. Large sums of money were also expended by him in other improvements. But notwithstanding the exertions and large expenditures of the proprietor, the establishment turned out unprofitable, became embarrassed through the neglect and dishonesty of the agents, and involved in litigation, so that in 1765 he made a sale of part of it to D'Auterive, as already stated, and in the next year, 1766, gave the residue and all his interest in the concern, to Claude Tremonay, his nephew, he agreeing to indemnify him against any claims or demands arising out of it, and for which he might be liable.

Now as it respects this branch of the title set up, and relied on by the petitioners, there are two objections to their proceedings under the act of 1844, either of which is fatal to a recovery. In the first place, the title, as derived from Duvernay, if still a subsisting one in them, is a complete and perfect one, and consequently not within the first section of that act, which confers the jurisdiction upon this Court. The place to litigate it is in

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the local jurisdiction of the state by the common law action of ejectment, or such other action as may be provided for the trial of the legal titles to real estate. For, although we are not able to speak of the nature or the character of the title from the terms of the grant, in the absence of that instrument, all the evidence which has been furnished in relation to it leads to the conclusion that the full right of property passed to the original grantee. Even the length of possession, which is relied on, lays a foundation for the presumption of such a grant, and cannot therefore avail the petitioners here.

And in the second place, the tract claimed as derived from Duvernay is without boundaries or location. The only description that has been referred to, or which we have been able to find, after a pretty thorough search, even in historical records, is

that it was a grant of a large tract upon the right bank of the Mississippi River, opposite Bayou Manchac, a point some thirty leagues above New Orleans. In the intermediate transfers and powers of attorney, found in the record, it is referred to as a plantation or concession, known by the name of "Le Dubuisson," the name of the first agent, or by the name of "Bayou Goula Village," the name of an ancient Indian village at that place on the river. We have no evidence of the extent of the concession on the river, or of its depth back, or of any landmarks designating the tract, by which it can be regarded as severed from the public domain.

Without, therefore, pursuing this branch of the case further, it is sufficient to say, that no title or claim of title has been made out under the French grant, or concession, to Duvernay, that could have been recognized or dealt with by the court below, under the limited jurisdiction conferred by the act of 1844, and of course no ground for the decree in that court, in favor of the petitioners under it. The title, if any, is a legal one, not cognizable under this act.

The next branch of the title set up and relied on by the petitioners, is that derived from the Spanish government in 1772.

It appears that O'Reilly, who first established the Spanish authority in Lower Louisiana in 1769, after the cession by France in 1762, assumed the right to reform and modify several of the large grants that had been made by the old government upon the Mississippi River, and required of the occupants to confine themselves within fixed and determined boundaries. His avowed object was to secure a denser population upon the margin of that river, especially above New Orleans, with a view to protect the province against the incursions of hostile Indians, and also against the border settlements of the English, in case of a war between Great Britain and Spain. Amongst others,

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he reduced the possession of D'Auterive under the grant to Duvernay, to twenty arpens front on the river. Unzaga, however, who succeeded him as governor of the province in 1772, enlarged it to forty-four arpens front, and ordered a survey of the same by Andry, the public surveyor. This survey was made, returned, and approved by Unzaga in the same year.

These acts of O'Reilly and Unzaga have been urged as a confirmation by the Spanish government, *pro tanto*, of the French grant to Duvernay, and it may be admitted that they are entitled to great weight in that aspect of the case. But this view cannot avail the petitioners here, as the effect would be simply the confirmation of a complete and perfect title, which we have seen cannot be dealt with under this act of 1844. The title thus confirmed must necessarily partake of the nature of the one derived under the French concession or grant.

It has also been urged that this order of survey by Unzaga may be properly regarded as an incipient step in the derivation of a title under the Spanish government, independently of any previous grant -- hence an incomplete title, and therefore an appropriate case for examination by the district court under the act of 1844. This we think, cannot be denied, and shall therefore proceed to examine the claim to the tract in question, under this survey by Andry.

We have before us the field notes of this survey, together with the lines protracted upon the map accompanying them. They furnish full evidence that the tract assigned to D'Auterieve by O'Reilly and Unzaga, was severed from the royal domain, and its boundaries determined; and, were there nothing else in the case, there would be but little difficulty as it respects the title within these boundaries. But, as we have already seen, it is admitted that the front of the tract on the river within the limit of this survey, and for forty arpens back, was given up to governor Galvez, in or about the year 1780, and was subsequently assigned by him to the Acadian emigrants, under whom it is still held. No part of this is claimed by the petitioners. But it is insisted that this survey extended back from the river beyond the forty arpens, and even to the Atchafalaya River, a distance of some twelve or fifteen miles. The claim is confined to this part of the tract. It becomes material, therefore, to ascertain the extent of this survey, especially the depth back from the river. The upper side line is the boundary between this and the adjoining lot, which then belonged to Vincente Delpino. This lot was surveyed by Andry, in February, 1772, the month previous to the survey of D'Auterieve in question, and it is stated in the field notes that the two lots are separated by a strait which appears to extend back from the river to the

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northwest, and will serve as a common boundary between the adjacent owners. Andry further states that no landmarks have been made upon the line, as the channel of the bayou or strait is taken as the boundary; and may serve as a common canal for both habitations to get wood from the mountains. In a note to this survey it is stated, that D'Auterieve and Delpino had agreed between themselves, that in case the said bayou instead of following the direction of the course of the line which was northwest, should incline more towards the west -- that is, upon the concession of D'Auterieve -- then this canal should remain the property of the latter.

This survey of Delpino's lot extended back from the river the usual depth, which was forty arpens, or one mile and a half. It was made in February, 1772. The survey by Andry of D'Auterieve's lot was made in the next month. The field notes of that survey adopts this bayou or canal as the common boundary between him and Delpino in case the course of its channel should be northwest; but if it should incline more west, then it was to belong exclusively to D'Auterieve. No other boundary was designated on this line, this bayou, as said by Andry, being supposed to be the division until its course may be perceived or ascertained after the land has been cleared. The bayou is drawn upon the map giving to it the course supposed; and the note of Andry appended, explaining it as follows: "Bayou or strait which separates the lands of the party interested from the lands of Vincente Delpino, under the stipulation expressed in the certificate."

Now this is the upper side line of D'Auterieve, which it is insisted on behalf of the petitioners, extends back from the river not only the depth of forty arpens, but back to the Atchafalaya River, a distance of some twelve or fifteen miles. This river is not mentioned in the field notes, nor is it delineated on the map, nor anywhere referred to as the terminus of the line. On the contrary, the lower side line of Delpino, the next neighbor above, is adopted as a common boundary between them, and that line, it is admitted, extends in depth but forty arpens, leaving, therefore, a very strong, if not controlling inference, that this was also the depth of D'Auterieve's.

In making the survey, Andry run out the two lots of D'Auterieve separately, that is the

twenty arpens as limited by O'Reilly, and adjoining these, the addition made by Unzaga, his successor. This mode was adopted as enabling the surveyor the better to make the requisite allowance for the sharp bend in the Mississippi River at this stretch of it. Accordingly, after ascertaining the lower point on the river, of the twenty arpens and course of the line back, Andry states in the field notes, that

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he traced the line back, marked E, B, X, as a common limit between the two aforesaid grants; but he says he placed no landmarks on it, as both the grants belonged to the same master, and the interested party so desired.

This line is also drawn upon the map, and corresponds with the upper side line in depth, and of course with the rear line of Delpino's lot, which was but forty arpens back.

The field notes then set out in detail the survey of the remaining twenty-four arpens conceded to D'Auterieve by Unzaga, and after ascertaining the lower point on the river and course of the lower side line back, describes it as a line marked Q, R, S, and as separating the lot from Antonio Dorval, the neighbor below. On referring to the map, it will be seen that this line corresponds in depth with the two preceding back lines of the survey. Dorval's lot extended in depth only forty arpens.

The field notes further state that adopting this line as the true boundary between D'Auterieve and Dorval, his neighbor below, the former would be deprived of a road of four leagues in extent, which he had made through the mountains and swamps, to enable him to go to the Atchafalaya and attend to his cattle which he had on a vachary at Attakapas, and this being so, Andry changed this lower line so as to include the road within the limits of the lot.

This completed the survey, and it will be seen from the examination that there is not the slightest ground for the claim set up on the part of the petitioners that the tract as surveyed under the Spanish order extended back to the Atchafalaya or further than the usual depth of forty arpens. This river is not drawn upon the map as the boundary in the rear, nor is it designated or even referred to as such boundary in the field notes on the contrary the rear line of the tract as drawn on the map corresponds with the termini of the lines traced back from the Mississippi, and which we have already described.

Andry, in his report of the survey to Unzaga, mentions his departure in tracing the lower line of the lot from his instructions with a view to include the road, and observes, that he had bounded him in the said road and its adjoining lines as far as the River Atchafalaya, subject to the approbation of his Excellency. This survey was approved by Unzaga, and it is argued, that this communication of Andry implies that this lower line of the tract was intended to reach back to the Atchafalaya. The answer to this is that no such intention is to be found in the minutes of the survey kept at the time it was made, nor as indicated upon the map, but the contrary. And all that can be properly understood from the letter, is what Andry had previously stated in the field notes -- namely that the

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lower side line had been depressed so as to give to D'Auterieve, the benefit of his road of four leagues, which extended to the Atchafalaya. Had this alteration not been made, the road leading from the Mississippi back for the forty arpens would have fallen within the limits of Dorval's lot below, and thus D'Auterieve be deprived of the benefit of it for the mile and an half, the depth of that lot. Beyond that limit he could have used it as before, as it then ran through the royal domain.

We cannot infer from the ambiguous expressions in the letter to Unzaga, the object of which was to explain the reasons for the depression of this side line contrary to his instructions, so as to include the road, an intention to carry the survey back to that river when in contradiction of the description as given in the field notes and as delineated on the map. If Andry had intended the side lines should be thus carried back, it would have been a simple matter to have said so in the field notes and to have designated the river as the rear boundary on the map. The difference in the result is not so slight as to have been overlooked or accidental. The survey as actually made contains probably some twenty-five hundred or three thousand acres. As claimed under the construction attempted to be given to the letter, it would contain but little short of half a million, a difference depending upon the fact, whether the side lines which run northwest and southwest and widened therefore ninety degrees, should be extended back one mile and an half, or from twelve to fifteen miles.

We think the field notes and map should control, rather than this casual phrase in the letter accompanying them to Unzaga. The field notes described this lower line by letters Q, R, S, and we have the delineation of it on the map corresponding to these letters, and both fix the terminus in conformity with the upper back lines of the tract as already run and delineated, and all this without any mention or allusion to this river as the boundary in the rear. Instead of this, the rear line is protracted on the map at the termini of the back lines, thereby expressly excluding the idea of a river boundary.

A good deal of stress has been laid upon the idea that as the French grant extended back to the Atchafalaya, the order of survey by the Spanish authorities was intended only to limit or diminish the front upon the river, leaving the depth as before. But the difficulty in giving any force to the suggestion is that there is no evidence before us that the French grant extended back to this river. Even the historical records, mostly relied on in the case, furnish no such suggestion. This idea therefore cannot aid us in giving the construction claimed to the order of survey.

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The acts of the parties tend strongly to confirm the view we have taken of this order of survey. Two of the sons of D'Auterieve were of age at the time this concession was given up to Galvez in 1780, and the family removed to Attakapas, and the youngest became of age in a few years thereafter. The eldest died in 1812, the second in 1814, and the youngest in 1828.

All of them resided in the neighborhood of the tract, and during this whole period, a lapse of some thirty-three years, no claim was made to it; nor indeed ever by any of the members of the family who had the best opportunity of knowing the facts and circumstances under which it was surrendered, and of the extent and character of the title. The presumption is very strong, they must have been impressed with the belief that all the right that belonged to the family under the order of survey, had been



given up to Galvez by the arrangement entered into with him.

The acts of the Spanish government also in making concessions subsequently within the limits of the claim, as was done, show that no such right as is now set up was recognized by it.

In any view, therefore, that we have been able to take of the case, we think that the decree of the court below is erroneous, and should be

*Reversed.*

MR. JUSTICE CURTIS.

Justices McLEAN, WAYNE, CAMPBELL, and myself do not understand the opinion which has been delivered by MR. JUSTICE NELSON as intended to express the judgment of this Court upon the validity of the complete French grant, alleged by the petition to have been made by The Western Company to Paris Duvernay in 1717, or upon the effect of the alleged confirmation of such alleged complete French title, or any part thereof, by the Spanish governors, O'Reilly and Unzaga. The trial of such a title not being within the jurisdiction of this Court upon this petition, according to the repeated decisions of this Court and the plain terms of the Act of May 26, 1824, under which we derive our authority, it seems equally clear that the questions whether there is any sufficient evidence that such a grant was made, or whether it could be located, or whether it embraced the premises in question, or whether it had been in part or in whole confirmed, and how extensive such confirmation, if made, was are questions not judicially before us. For these questions belong exclusively to the trial of that legal title.

In our judgment, this embraces the whole case. It exhausts every allegation in the petition, which makes no claim to any incipient or imperfect French or Spanish title. It alleges only

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a complete French grant, and a confirmation to D'Auterieve, who was then in possession under it, of part of the land.

Now the first section of the act of 1824 provides that a person claiming lands by virtue of a French or Spanish grant, concession, warrant, or order of survey, which might have been perfected into a complete title, may present a petition to the district court, setting forth, fully, plainly, and substantially, the nature of his claim to the lands, particularly stating the date of the grant &c.;, under which he claims, and then it continues:

"and the said court is hereby authorized and required to hold and exercise jurisdiction of every petition presented in conformity with this act, and to hear and determine the same."

Unless, therefore, the petition is presented in conformity with this act, the special and limited jurisdiction which the act confers does not exist. The title shown by this petition being a complete title, derived from the Western Company, and confirmed by the Spanish authorities, and the petitioner not having shown, fully, plainly, and

substantially, or even by the most obscure suggestion, any other title, we cannot perceive how this Court has any jurisdiction under the act of 1824. We add, however, that if, as in the case of *Davenport's Heirs* at the present term, the petition did duly aver facts, constituting in point of law an imperfect title, we should not consider the petition defective, though it might state an erroneous legal conclusion from those facts, and call the title a perfect one. That is not this case, as may be seen by recurring to the petition.

Our opinion is that this petition should be dismissed for want of jurisdiction, without prejudice to any legal title of the petitioners, and that no opinion should be expressed by this Court upon any question of fact or law arising upon the evidence.

*Order*

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern district of Louisiana, and was argued by counsel. On consideration whereof, it is now here 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 that this cause be and the same is hereby remanded to the said district court with directions to that court to dismiss the petition of the claimants.