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### Report : Mr. Benjamin

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IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1854.—Ordered to be printed.

MR. BENJAMIN made the following

REPORT.

[To accompany Bill S. 103.]

*The Committee on Private Land Claims, to whom was referred the petition of Charles Derbigny, et al., submit the following report:*

The petitioners are assignees by numerous mesne conveyances of certain lands, known as the claim of C. J. B. Fleurian, No. 213, of the old board of commissioners for the eastern district of Orleans territory. The history of this claim is as follows: On the 1st of June, 1763, Joseph Villars Dubreuil presented his petition to Mr. de Kerlerrec, governor of the province of Louisiana, and Mr. Foucault, the commissary of marine, stating that he purchased, in the year 1744, from the Ouacha and Chaouacha tribes of Indians, certain lands, for the purpose of establishing *Vacheries*, or dairy and stock farms; that his purchase embraced two tracts, viz: 1st, a tongue of land near the Lafourche of Chatimachas, at the bottom of Lake Perrier, having about twenty-five arpens front of high land, bounded on one end by the Bayou des Chaïque Machas, on the other by the Lake Perrier, and on both sides by trembling prairies; and 2d, another tongue of land separated from the first by the said Bayou des Chaïque Machas.

It appears from the same petition, that Villars Dubreuil had commenced clearing the ground, in the year 1754, and that in 1755 he had established his farm by stocking it with fifty breeding cows, and a number of other animals, so that at the date of his petition, in 1763, he was able to supply the market of the colony with fresh beef.

The petition closes with a prayer that the purchase from the Indians be approved, and that the approval of the officers of the crown be testified by an order at the foot of the petition, which might quiet the petitioner in his possessions, and serve him for a title.

The order of the authorities, at the foot of the petition, approves of the purchase, confirms the petitioner in his title, but reserves to the king the right of taking from the land such wood as might be required for the construction of forts, magazines, ships, &c. It further directs that the lines of the tracts be designated by posts to be fixed in the soil, that an official statement of this operation be drawn up and annexed to the petition and order, after they shall have been registered in the office of the intendant. The registry was made, but the statement of the operation of fixing the limits by posts does not appear in the papers.

In 1771, after the province of Louisiana had been taken into the possession of Spain, by virtue of the secret treaty of Fontainebleau, the Spanish Governor Ungaya, on the death of Villars, superintended the administration of his succession and ordered an inventory to be made, in which this tract was included, and it was inventoried under his directions as having three leagues front on the bayou. In 1772, the property of Villars' succession was sold by order of the Spanish authorities, and Charles J. B. Fleurian became the purchaser of this stock farm.

Fleurian seems to have enjoyed undisputed possession of the property, and nothing further was done in the premises, till the year 1809, when Potier, a sworn surveyor, went on to the farm, at the request of Fleurian, surveyed it, and made a plan, from which it appears that the lands were bounded, almost entirely, by natural boundaries, and the contents of the tract are stated to be 45,986 arpens. In 1809, the commissioners of the United States confirmed this claim, as containing the above mentioned superficies, describing it by its natural boundaries (See claim No. 213, Green's edition of American State Papers, vol. 2, page 272.)

In the year 1839, A. F. Righter, a deputy surveyor of the United States, executed a survey of the claim, and his plat gives a superficies of 121,029 acres, but fully two-thirds of this survey embrace what are called "prairies tremblantes" or "trembling marshes," being nothing but tracts of which the substratum is a liquid mud, and the superficies a thin crust of vegetable mould, composed of the matted roots of the prairie grass, tracts totally valueless for any purpose, so that the extent of what may be properly termed "land," was by this survey not materially different from the quantity established by the survey of Potier. Righter's survey was approved and certified by H. T. Williams, surveyor general of the State of Louisiana, on the 14th December, 1839.

Since Fleuriot's death the property has been subdivided amongst many parties, who, according to the testimony on file, have settled and improved the land. Many miles of levees and canals have been made, draining machines erected, sugar plantations established on the lands reclaimed, by expensive artificial works, brick sugar houses built, furnished with steam engines and costly machinery, and the petition is signed by between thirty and forty proprietors, who seem to have invested their fortunes in the purchase and improvement of the property.

It further appears, by a letter of the Commissioner of the General Land Office, of the 27th October, 1852, that orders were issued that none of the lands claimed by petitioners were liable to selection by the State of Louisiana, under the act granting swamp lands to that State, inasmuch as, by the terms of that act, the grant was not to take effect in relation to lands claimed by individuals, until such claims were disposed of.

The preceding statement of the title of the memorialists shows the approval of the purchase from the Indians to have been made by the officers of the French crown, on the 1st June, 1763. Now it will be remembered that the province of Louisiana was ceded by France to Spain, by secret treaty, on the 3d November, 1762, but it was made known in Louisiana only on the 21st April, 1764, and actual possession

sion taken by Spain on the 18th August, 1769. See Roch Traite's de Paix, vol. 3, p. 109.

The action of the French authorities on the petition of Villars Dubreuil took place, therefore, after the treaty of cession; but before it was known, and whilst the former remained in the actual possession of France.

The land officers of the government seem to be of the opinion that, under the decisions of the Supreme Court of the United States, the grant by the French authorities was a nullity; and they refer to the cases of Foster & Elam *vs.* Nelson, 2 Peters, 253; Garcin *vs.* Lee, 12 Peters, 511; United States *vs.* Reynes, 9 Howard, 127; Davis *vs.* Police Jury of Concordia, 9 Howard, 280; United States *vs.* D'Auterive, 10 Howard, 609. None of these cases accord precisely in their circumstances with that under consideration, for in none of them was the grant made prior to the publication of the secret treaty. And in the case of Davis *vs.* The Police Jury of Concordia, the court says, in reference to this very treaty of the 3d November, 1762, that it was not complete at its date, and that "nothing passed until the acceptance of the king, to whom the cession was offered, and not even then until the convention was completed, stipulating the measures, and the time to be fixed, by common accord, for the execution," 9 Howard, 293.

The title of the memorialists, however, under the evidence before the committee, is completely saved by the operation of the 1st section of the act of 2d March, 1805, confirming titles to lands lying within territories to which the Indian title had been extinguished, and granted prior to the 1st October, 1800, by the French and Spanish governments during the time either of said governments had the "actual possession of said territories," 2 Statutes at Large, 324.

The committee is therefore of opinion that the memorialists stand upon unimpeachable legal grounds in the assertion of their title to the land in question; but whether this be so or not, the committee cannot hesitate, under the circumstances, to recommend the confirmation of the claim known as the Fleurian claim. It is now more than one hundred years since the purchase was first made from the Indians. Its validity was never questioned by the successive governments which in turn acquired possession of the province of Louisiana. The claim was reported more than forty years ago as entitled to confirmation by the commissioners of the United States. The survey was made by an officer of the government, and approved, after supervision, by his superior. The land has been reclaimed, so far as it is now cultivated, by the labor and at the cost of the memorialists, or those under whom they claim; and even if their title be not maintainable as a strictly legal one, it is such as all considerations of equity forbid the government from contesting.

The committee, therefore, report a bill confirming the title of the memorialists, and recommend its passage.