Chevalier, Helene vs. Choteau, Pierre March 1821 St. Charles County 91/6

Helene Chevalier Mar. 1821
vs St. Ch
Pierre Chouteau
Replevin

STATE OF MISSOURI, COUNTY OF ST. CHARLES, sct.

The State of Missouri, St. Louis

To the Sheriff of ~~said~~ county—Greeting.

You are hereby commanded to summon Macky Wherry, Helene Laroux, & Josette Berger

that all excuses and delays set aside they be and appear before the Judge of our ~~Cir-~~ Supreme Court ~~suit~~ Court, at the ~~next~~ April Just term, ~~on the~~ On the 4th Monday in said Month ~~day thereof~~, to testify the truth of their knowledge touching a certain matter of controversy, in the said court depending, between Helene Chaveliere plaintiff, and Pierre Chouteau defendant, on the part of the plaintiff Hereof they are not to fail, and fail not at your peril, and have you there this writ.

WITNESS, *WILLIAM CHRISTY, Junior, Clerk of our said Court, at St. Charles, this* third *day of* April *in the year of our Lord, one thousand eight hundred and* twenty two, *and in the forty sixth year of the Independence of the United States.* ~~sixth~~ with my private seal affixed their being no seal of court yet provided.

Wm Christy Jr.

St. Charles Cty.
Supreme Court —
In a Judicial district

April Term 1822 —

Helene Chavelière
vs. Sub —
Pierre Chouteau

Summon
Macky Wherry —
Helene Laroux &
Josette Berger for
pleff —

J. Barton Attny.

Executed this writ on Mackey Wherry April 11th 1822 in the Town of St Louis by reading the same to him — Not Executed on Helen Laroux and Josette Berger by Order of Joshua Barton Atty for Plaintiff

In Simonds p. D.S.ff
Service $1.50

No 1)

State of Missouri }
County of St Charles } ss Be it remembered that on the twen-
-ty fourth day of March in the Year One thousand eight
hundred and twenty One The Clerk of the Supreme Court
in the third Judicial District made and certified to the
Circuit Court of Saint Louis County in the third Judicial
District A transcript of the minutes and proceedings had
in a case pending in the said Supreme Court between
Helene Chevallier Plaintiff and Pierre Chouteau
Defendant in a plea of Replevin for a Mulatto Boy
named Paul, in the Words and figures following, to Wit

State of Missouri }
Third Judicial District } ss Be it remembered that pursuant
to the twenty third section of an act of the General Assembly
of the State of Missouri entitled "an Act regulating the
proceedings of the Supreme Court" I Joseph C Garnier
Clerk of the Superior Court of the Territory of Missouri
for the Northern Circuit, have made and herewith
certify a Complete transcript of the minutes and pro-
-ceedings had in a certain Case pending in the said
Court Between Helene Chevallier Plaintiff and Pierre
Chouteau defendant in Replevin for Paul in the Words
and figures following, to Wit,-

Missouri Territory } In the Superior Court September Term
Northern Circuit } in the Year Eighteen hundred and Sixteen
Helene Chevalier by her Attorney Complains of Pierre Chouteau
of a plea Why he took from her a Mulatto boy named
Paul the Slave of her the said Helene and unjustly de-
-tains the same from her against Sureties and pledges
And whereon the said Helene complains that on the
thirtieth day of July in the Year Eighteen hundred and
nine in the district (no County) of Saint Louis the said
Mulatto Boy named Paul of the Value of Six hundred

Dollars, the Slave of the said Helene, and the Son of a Mulatto woman named Celeste the Slave of the said Helene he the said Chouteau then and there took from her the said Helene and from her yet unjustly detains the same mulatto boy against sureties and pledges, Wherefore the said Helene says that she is prejudiced and hath sustained damages to the value of one thousand dollars and therefore she sues

W. M. Girk Atto for plaintiff

St Louis- Helene Chevalier the above named plaintiff being solemnly sworn on oath says that she verily believes the Mulatto Boy in the foregoing declaration mentioned named Paul is her property and she further says that said Boy is worth the sum of five hundred dollars —

Helene Chevalier

Sworn to & subscribed the 29th august 1816 before the undersigned Judge of the Circuit Courts of the Northern Circuit of Missouri Territory- David Barton

Copy of Bail Bond in the words & figures following, to wit,

Know all

Whereupon a Writ of Replevin issued in the usual form upon which said writ the Sheriff made the following return viz- Executed this writ by replevying the within named mulatto boy named Paul & causing a copy of the within writ & declaration to be left at the house of Pierre Chouteau in the Town of Saint Louis with his wife & informing her of the contents on the thirty first day of August 1816.

Will Sullivan D. S.

Service $1.50
Travelling in search of the Boy 20 miles 1.20
$2.70=

Copy of Bail Bond in the words and figures following, to wit

Know all men by these presents that We Helene Chevalier and Jacque Chouine acknowledge ourselves to be indebted to Pierre Chouteau in the sum of one thousand dollars for the payment of which we bind ourselves jointly and severally

our heirs executors and administrators well and truly to be made On the following condition, to wit, that whereas the said Helene Chevalier has this day commenced an action of replevin against the said Chouteau for a Mulatto Boy named Paul in the Superior Court of the Territory for the Northern Circuit Now if the right to said Mulatto Boy named Paul shall by said Court be adjudged against said Helene then she shall restore to said Chouteau the said Mulatto boy named Paul then this above obligation to be void otherwise to remain in full force and virtue. Witness our hands and seals the 29th day of August in the Year One thousand eight hundred and Sixteen

Helene Chevalier L.S.
Jacque Chauvine Pere L.S.

Test. Will Sullivan

St Louis County
Missouri Territory } I Jacque Chovine being solemnly sworn do say that after my just debts are paid I am in my opinion worth One thousand dollars and more

Sworn to & subscribed 29th August 1816 before me Judge of the Northern Circuit of Missouri Territory
D Barton

Jacque Chauvine Pere

September 1816 - Then received of John W Thompson Sheriff of the County of St Louis a Mulatto boy named Paul which he has taken out of the possession of Pierre Chouteau by replevin, Witness my hand

Helene Chevalier

{Signed}

September Term 1816
September 21st

And now at this day comes the said Pierre Chouteau by Edward Hempstead his Attorney and Excepts to the sufficiency of the replevin bond filed in the case and to the security in the same -

Pierre Chouteau
Adsm.
Helene Chevalier } In the Superior Court of the Territory of Missouri, Northern Circuit. September Term 1816. - And the said Pierre Chouteau

comes and craves oyer of the Writ & declaration in this Case And the same is read to him in the words and figures follow-ing To Wit, Missouri Territory. Northern Circuit } In the Superior Court, September term, In the Year Eighteen hundred and Sixteen —

Helene Chevalier by her Attorney complains of Pierre Chouteau of a Plea, Why he took from her a Mulatto boy named Paul the Slave of her the said Helene and unjustly detains the same from her against Sureties and Pledges: And wherein the said Helene complains that on the thirtieth day of July in the Year Eight-een hundred and nine in the District (now County) of Saint Louis the said mulatto boy named Paul of the value of Six Hundred dollars the Slave of the said Helene, and the Son of a Mulatto woman named Celeste, the Slave of the said Helene, he the said Chou-teau then and there took, from her the said Helene and from her yet unjustly detains the same mulatto boy against Sureties and pledges, Wherefore the said Helene says that She is pre-judiced and hath sustained damages to the value of One thousand Dollars And therefore She Sues.

H. M. McGirk Atty for Pltff

St Louis. Helene Chevalier the above named plaintiff being solem-ly sworn on oath says that She verily believes the Mulatto boy in the foregoing declaration mentioned named Paul is the prop-erty, and She farther says that said boy is worth the sum of Five Hundred dollars. —

Helene Chevalier

Sworn to & subscribed the 29th August 1816.
before the undersigned Judge of the Circuit
Court of the Northern Circuit of Missouri
Territory —— David Barton

Territory of Missouri
Northern Circuit
& the Superior Court } ss. The United States of America to the Sheriff of the County of Saint Louis Greeting

We Command you that if Helene Chevalier makes you Secure as well her Clame to prosecute as for the return of a certain mu-latto boy named Paul the Slave of the said Helene Chevalier which a certain Pierre Chouteau took and unjustly detains

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from her against sureties and pledges, as it is said, Then you cause to be replevied the said Mulatto Boy named Paul and deliver without delay to the said Helena Chevalier; And that you summon the said Pierre Chouteau that he be and appear before the Judges of our Superior Court aforesaid, for our Northern Circuit of our said Territory at the Town of St Louis; on the third monday in September next, then and there in our said Court, before our Judges aforesaid to answer unto the said Helene Chevalier in a plea Wherefor he took the said mulatto boy Slave named Paul and him injustly detains from her the said Helene without sureties and pledges to the damage of the said Helene one thousand dollars. And have you then and there this writ. And Certify to our said Court how you execute the same

Witness the Honorable Silas Bent Esquire presiding Judge of our said Court at St Louis this twenty ninth day of August A D 1816. and of our independence the forty first

J. V. Garnier Clerk

And he also prays oyer of the return made to and on the said writ & process and it is read to him in the Words & figures following to Wit, Executed this writ by replevying the within named Mulatto boy named Paul & causing a copy of the within writ and declaration to be left at the house of Pierre Chouteau in the Town of St Louis with his wife and informing her of the contents, on the thirty first day of August 1816.

(Signed) Bill Sullivan D.S.

Service	$1.50
Travelling in search of the boy 20 miles	1.20
	$2.70

Which being seen and heard, the said Pierre comes & defends the force & injury, and prays judgment of the said writ and process because he says that the said writ and process is not, appears by said return served according to the provisions of the laws of this Territory, which require that "the service of a Summons shall be by reading the writ, declaration "petition or Statement to the defendant, or delivering him a copy "thereof, or leaving such copy at his usual place of abode with "some person of the family above the age of fifteen years and "informing such person of the contents thereof" all which he is ready to verify & prove. Wherefore because the Sheriff of

the said County of Saint Louis, hath not certified that he hath executed the said process either by reading the said writ, declaration, Petition or Statement to the said defendant; or delivering him a copy thereof, or by his leaving such copy at his usual place of abode, with some person of the family above the age of fifteen Years, and informing such person of the contents thereof, the said Pierre Chouteau prays judgment, that the writ of process aforesaid be quashed abated & dispunished, and he allowed his costs

E Hempstead of counsell with Carr & Benton for Deft.

Peter Chouteau Jr. being duly sworn on his oath saith that the matters of fact contained in the foregoing plea are true

P. Chouteau Jr

Sworn to and subscribed before me a Justice of the Peace for the County of Saint Louis September 20th 1815

Ch. Gratiot J.P.

October 4th

On Plea in abatement to the return of the Sheriff to the said writ of replevin; Plea confessed and on motion, leave given to the Sheriff to amend his said return.

Helen Chevalier
vs
Pierre Chouteau

Amended return of the Sheriff to a writ of Replevin, to wit,

Executed this writ by replevying the within named mulatto boy named Paul by taking him from the possession of Pierre Chouteau the defendant in the Town of St Louis on the 31st day of August 1815

William Sullivan D Sheriff

I Andrew S McGirk Deputy Sheriff for John W Thompson did on the 31st Day of August 1815 leave a Copy of the writ and declaration hereunto annexed at the usual place of abode of the said Pierre Chouteau in the Town of Saint Louis with one of his family above the age of fifteen years, to wit, his wife and informed her of the contents thereof

Andw S McGirk D Shff

Service	$1.50
Travelling in search of the boy 20 miles	1.20
	$2.70

October 7th. 7

It is agreed by and between the parties by their attornies to wit, Mr McGirk for plaintiff and Hempstead for the defendant, that the said plaintiff shall file security as well to prosecute to effect her action of replevin; as to return the said mulatto boy if adjudged against her, on or before the first day of december next, or in default thereof that the said writ of replevin be dismissed, and that the said Bond be filed in the office of the Clerk of the Superior Court for the Northern Circuit.

Know all men by these presents that we Helena Chevalier and
all of the County of St Louis and Territory of Missouri are held and firmly bound unto Jno W Thompson Sheriff of the said County of St Louis in the penal sum of One thousand dollars Currency of the United States to be paid to the said Jno W Thompson or his successor in office for the true and faithful performance of which payment to be well and truly made we bind ourselves jointly and severally, firmly by these presents sealed with our seals and dated this twenty sixth day of July one thousand eight hundred and thirteen. The condition of the above obligation is such that whereas the above named Helena Chevalier have sued out of the Genl Court of the Territory aforesaid her writ of replevin bearing date the tenth day of July eighteen hundred and thirteen, and made returnable to next october term of said Court, against Pierre Chouteau to replevy the property mentioned in said writ, Now be it known that in case the said Helena Chevalier, will well and truly return all the property mentioned in said writ of replevy to the aforesaid Pierre Chouteau in the same good order that it was in at the time it was replevied in case return thereof shall be decreed & adjudged, by the Court and shall furthermore pay all costs charges and other damages in consequence of and arising out of the said deliverance of the property to her the said

Helena Chevalier in consequence of keeping the said property to her the said Helena Chevalier or in consequence of keeping the said property out of the possession of Pierre Chouteau, and finally do pay and perform all the decree and adjucations of the Court relative to the said replevin and deliverance of property then and in that case the above obligation to be void otherwise to be and remain in full force and virtue in law and equity - In testimony whereof we have hereunto set our hands and seals this twenty sixth day of July eight-een hundred and thirteen -

Signed Sealed and delivered in presence of Hubert Guion
temoin

Helene Chevalier LS
Jgne Chauvine Pere LS
J. Chauvine fils LS

Pierre Chouteau
Ads.
Helene Chevalier

October 8th 1816 -
Superior Court Northern Circuit

And the said defendant by his attornies comes & defends the charge of the force and injury when &c and saith that he did not take and detain the said Mulatto boy Paul as alledged in the said declaration and of this he puts himself on the Country - Barton Hempstead & Carr pray and for further plea in this behalf the said defendant saith that he did not take & detain the said mulattoe boy named Paul at any time within five years next before the date and suing forth of the plaintiffs writ, And this he is ready to verify and prove, wherefore he prays judgment of the said Helene her action thereof against him ought to have and maintain; that a return of said Mulattoe boy may be adjud-ged to him & his damages & costs - Benton Carr & Hempstead for defl

And for farther plea in this behalf the said defendant further defends the charge charge of the force and injury when &c, And saith that the said Helene her action aforesaid thereof ought not to have and maintain, because he says that heretofore, To wit, on the twenty ninth day of October in the Year One

thousand eight hundred and five before the judges of the Gen-
-eral Court of the district of Louisiana, at a General Court
holden at the Town of Saint Louis in and for the District afore-
-said; a certain Writ of Habeas Corpus was issued to the said
Helene, under the Seal of the said Court and requiring the said
Helene, to produce before the said judges the body of Celeste in
the declaration aforesaid mentioned, and who is the Mother of
Paul before the same judges, and the said Helene then &
there made a return to the same, that she had the body of
the within named Celeste, and return in obedience thereto that
the said Celeste was not detained for any cause whatsoever
she being an Indian Woman, and free and stays and resides
with the said defendant (Helene) of her own free voluntary
will, consent and accord & without any kind of compulsion
whatsoever and which was subscribed by the said Helene
and which is the same Celeste the Mother of Paul in the
declaration aforesaid mentioned, all which the said Peter
is ready to verify & Prove by the records aforesaid. Wherefore
the said Pierre saith that the said Helene is thereby estop-
-ped from holding or claiming the said Celeste and Paul
as Slaves. And the said Pierre also prays judgment that
the said Paul may be adjudged to be returned to him
and allowing his damages Costs

Barton Carr & Hempstead for Deft.

Pierre Chouteau
ads.
Helene Chevalier

October 8th 1816.
In the Superior Court of the Territory of Missouri
Northern Circuit. September Term 1816.

Fourth plea

And the said defendant by his attornies comes and
defends the force and injury when &c And saith that the
the charge of
said Helene her said action thereof against him the said Pierre
ought not to have or maintain, because he says that at the
County of Saint Louis aforesaid on the third day of July in the year
one thousand eight hundred and six and for a long time be-
-fore the property of the said mulatto boy Paul was in one Joseph
Tayon, and that the said Joseph Tayon then and there for

a valuable consideration, to wit, the Sum of Two hundred
Dollars did grant bargain and sell and deliver to the said
Pierre the said Paul as a Slave (as by the Bill of Sale of
said boy from the said Joseph Sayon, of that date, under
his hand & seal to the said Pierre then & there delivered and
now here to the Court Shewn, more fully and at large appears)
by virtue whereof the said Pierre then and there had delivered
to him said Mulatto boy named Paul as his property by
the said Joseph Sayon, by virtue whereof the said Pierre then
& there the said Paul as his Property to had and Kept at the
time and Place of the detainer in the declaration mentioned.
To Wit, on the thirtieth day of July one thousand eight hundred
& nine, when & where the Property of the said Mulatto boy named
Paul was in him the said Pierre; Without this that the said
Mulatto boy named Paul, was then & there the son of a Mu-
-latto woman named Celeste the Slave of the said Helene, and
the said Paul the Slave of the said Helene as the said Helene
by her declaration and writ supposed; and this the said
Pierre is ready to verify. Wherefore he prays judgment of the same
writ & declaration, and a return of the said mulatto boy named
Paul to be adjudged to him and the damages & Costs to be ad-
-judged and allowed him. E Hempstead of Counsel with
Benton Carr for Defr.

October 9th 1815.

On Motion of the Plaintiff by her Attorney, Dedimus
awarded to the said Plaintiff to take the deposition of
Witnesses —

Know all Men by these Presents, that we Helene Che-
-valier as principal and Jacques Chauvin as Surety all of
the County of St Louis in the Territory of Missouri are held
and firmly bound in the just and full sum of One thousand
dollars, to be paid to Pierre Chouteau his heirs and assigns, to
which payment well and truly to be made, we bind ourselves
our heirs, executors and administrators firmly by these Presents

Sealed with our seals and dated this nineteenth day of November in the year of our Lord Our thousand eight hundred and sixteen — Whereas the above bounden Helene Chevalier is now prosecuting against the said Pierre Chouteau, a certain writ of replevin for a mulattoe boy named Paul the slave of her the said Helene Chevalier — Now the condition of the above obligation is such, that if the said Helene Chevalier shall prosecute to effect her said action of replevin against him the said Pierre Chouteau, and shall return to him the said Pierre Chouteau, the said Mulattoe boy named Paul (if return of the same be adjudged against her, and shall moreover pay unto the said Pierre Chouteau such damages as may be adjudged against her for the replevying from him the said Pierre, the said mulatto boy Paul, together with all the costs and charges about that suit expended - then this obligation to be void, else to be and remain in full force and virtue

Signed Sealed and delivered in the presence of Marie A Rimm
Andw J. McGirk

Helene Chevallier L.S.
Jacque Chauvin Pere L.S.

filed November 25th 1816 - J. V. Garnier - Clerk

Helene Chevaliere vs Pierre Chouteau } In replevin Superior Court Northern Circuit
And the said Helene as to the first plea of the said Pierre by him in this behalf first pleaded at the September term of this Court and whereof he puts himself upon the Country, doth the like — M McGirk &
H S Geyer Attys for Pltff

And the said Helene saith that the second plea of the said Pierre at the September term of this Court pleaded and the matters and things therein contained in manner & form as the same are in said plea in this behalf by said Pierre pleaded are not sufficient in law to bar the said Helene from having & maintaining her aforesaid action hereof against said Pierre and that she the said Helene is not bound by the law of the land to answer the same in any manner and this the said Helene is ready to verify, Wherefore as to said second plea of the said Pierre, the said Helene prays judgment and her damages by reason of the taking and detaining unjustly the aforesaid Mulatto Boy named Paul by the said Pierre to be adjudged to her

together with the Costs of her aforesaid suit

M M Girk &
H S Geyer Attos for plff

And the said Helene saith that as to the third plea of the said Pierre in this behalf pleaded at the last September term of this Court in bar of the said action of replevin of the said Helene and the matters & things in bar & by way of estoppel therein pleaded in manner and form as therein pleaded and set forth are not sufficient in law to bar and preclude her from having and maintaining her aforesaid action against the said Pierre and that she is not bound by the law of the land to answer the same and this she is ready to verify, Wherefore for want of a sufficient plea in bar in this behalf, she the said Helene as to the said third plea prays judgment and that her damages and costs occasioned by the premises may be adjudged to her — — — —

M M Girk &
H S, Geyer Attos for plff

And the said Helene for replication to the fourth plea of the said Pierre says that for any thing alledged in the said fourth plea of him the said Pierre in this behalf at last September term of this Court pleaded, she ought not to be barred and precluded from having her said action thereof against the said Pierre because she says that on the twenty ninth day of June in the Year One thousand eight hundred and six at St Charles (to wit at St Louis) and within the jurisdiction of this Court she the said Helene was possessed of the aforesaid Mulatto boy named Paul a Slave as of her own proper goods and chattels and that the said Pierre the defendant and the said Joseph combined and confederated to and with each other and with divers other persons to injure, oppress and defraud the said Helene, did of their own wrong and under color and pretence of title seize on the said Mulatto boy named Paul and the said Pierre and the said Joseph Tayon afterwards, to wit, on the said third day of July mentioned in said plea of said Pierre at St Louis without the knowledge, approbation or consent of her the said Helene did tortiously, fraudulently and of their own covin a wrong Execute the said instrument in writing mentioned

No 4

in the said plea of said Pierre under color and pretence of title and right being in the said Joseph to the said Mulatto boy named Paul And the said Helene in fact avers that the right and title to the said Mulatto boy named Paul now is and always has been in her and to her rightly belong Wherefore she says that the said bill of sale mentioned in the said fourth plea of the said Pierre in this behalf is void in law and this she is ready to verify Wherefore she prays judgment if she ought to be barred & precluded from having her aforesaid action against the said Pierre and that her damages occasioned by the taking and the detention of the said Mulatto boy named Paul by the said Pierre may be adjudged to her together with the costs of her said suit in this behalf expended

M M Gurk &
H. S. Geyer Attys for plff

Filed February 5th 1817 – J. V. Garnier Clk –
Delivered Copy to E Hempstead Esqr feb 4th 1817. H S Geyer

Pierre Chouteau
Ads.
Helene Chevalier } Joinder in demurrer to Second plea

And the said Pierre saith that the said second plea of him the said Pierre at the September term of this Court by him secondly pleaded and the matters and things therein contained, in manner and form as the same are in the said plea pleaded and set forth, are sufficient in law to bar and preclude the said Helene from having and maintaining her aforesaid action thereof against the said Pierre, which plea and the matters and things therein contained he is ready to verify and prove as the Court shall award. And because the said Helene doth not answer to the said plea nor in any manner deny the same, the said Pierre prays judgment and his damages and costs and a return of the said Mulatto boy Paul, to be adjudged to him

Benton Carr & Hempstead attys:

Filed March 24th 1817. J. V. Garnier clk –

Pierre Chouteau
Ads
Helene Chevalier } Joinder in demurrer to third plea

And the said Pierre saith that the said third plea of him the said Pierre in this behalf pleaded at the last September term of this Court in bar of the said action of

replevin of the said Helene and the matters and things therein contained in manner and form as the same are therein pleaded and set forth are sufficient in law to bar and preclude the said Helene from having and maintaining her aforesaid action against the said Pierre, which said third plea & the matters and things therein contained he the said Pierre is ready to verify and prove, as the Court shall award, And because the said Helene doth not answer to the said plea, nor in any manner deny the same the said Pierre prays judgment &c

Filed March 24th 1817. J. C. Garnier Clk — Benton Carr & Hempstead atts.

Pierre Chouteau } In replevin
ads } Rejoinder to Plaintiffs Replication
Helene Chevalier }

And the said Pierre Chouteau says that as to the fourth replication of the said Helene Chevalier he ought to be barred by any thing therein alledged from avowing the taking of the said Slave in said declaration mentioned because he says, protesting that the said Hélène was not possessed of the said Slave on the 29th June 1806, and that he has not always, and still does belong of right to the said Hélène and protesting also that the said Pierre and Joseph Sayon did not combine and sine the said Slave on the said 3rd day of July, the said bill of sale was not executed of fraud and coven by the said Joseph Sayon to the said Pierre; and this he prays may be enquired of by the country.

filed March 26th 1817 — Hempstead Et multos alios

Helene Chevalier } And the said Helene for replication to
vs } the fourth last plea of him the said Pierre
Pierre Chouteau } says she ought not to be barred or precluded from having & maintaining her aforesaid action thereof against him by reason of any thing in said plea alledged because she says the said Mulatto boy named Paul is the Slave of her the said Helene as she the said Helene by her declaration and writ supposes and this she prays may be enquired of by the country — McGirk & Geyer for Plff

filed March 26th 1817 — J. C. Garnier Clk

March Term 1817

26th

On a Demurrer to the defendants plea of non capit infra quinque annos

And now at this day comes the parties afore-
- said by their attornies and thereupon as well the said plea of the
defendant of non capit infra quinque annos, as the matters afore-
- said above for demurrer to the plea aforesaid alledged, being by
the Court here seen and fully understood and mature delibe-
- ration thereupon had, the Court sustain the said demurrer to
the plea aforesaid.

On motion of Mr McClirk attorney for the plaintiff, leave
is given to withdraw the replication to the third plea of the
defendant, the said plea being withdrawn leave given to file
an amended replication to the said defendants fourth plea
on payment of costs. which being done accordingly, the Sheriff
to Wit, John O Thompson Sheriff of the County of St Louis in obe-
- dience to the commands in the writ of venire facias to him directed
in this case, returns the said writ of venire facias together with a
pannel of twelve good and lawful men summoned out of the
townships of Point Labadie and Bonhomme in his said County who
being elected, tryed and sworn were impannelled as follows to Wit
Hiram Cordel, John Cunningham, Joseph Conway, John Kin-
- kaid, George W Booth, Thomas Mason, Richard Caulk, Gabriel
Long, Henry Steel, Mordicai Bell, and Uriah Maddock, who be-
- ing sworn well and truly to try the issues joined between the
parties aforesaid and having heard a part of the evidence adduc-
- ed, a motion was made on behalf of the defendant aforesaid
by his attorney, that an issue be made up between the parties
aforesaid, to try the custom of the country within certain lim-
- its in the District of St Louis as to gifts of slaves. The Court di-
- rects the issue aforesaid to be made up and a venire to issue
for thirty six good and lawful men of the County of St Louis
to form a jury of the country to try the issue aforesaid, the same
returnable on Wednesday the second day of April next, and
by the Consent of Parties by their attornies the jury impannelled

to try this Cause on its merits, is adjourned to Monday the
Seventh day of April next

April 2d

And now at this day come the Parties aforesaid by their attornies and the Sheriff to wit, John W Thompson Esquire Sheriff of the County of St Louis in obedience to the Commands in the writ of venire facias to him directed, returns the said writ together with a pannel of thirty six good and lawful men of this County, twelve of whom being duly elected, tried and Sworn well and truly the following issue to Wit, whether during the time of the Spanish Government, and at the time of the Change of government on the twentieth day of december in the Year One thousand eight hundred and three, a Special usage or custom was in force in St Louis in that part of the Province of Louisiana Stiled St Louis des Illinois by which the Sale or gift of a Slave to be valid, must have been in writing, before a Notary public public Writer or the Commandant of the place, were impannelled as follows to Wit Risdon H Price, Adam Martin, Alfred Crytzinger, George Wilson, Branch W. Mays. William Martin, Thomas Brady, Charles Boseron, Thomas Worthington, William M Kenney, Richard Wells, and Henry Von Phul, who having heard the evidence adduced, upon their oaths do say, That the usages of transfer of Negroes in St Louis, Ste Genevieve & New Orleans, must be acknowledged before a Notary public, Public Scrivner or the Commandant of the Place where the transfer may have taken Place during the Spanish Government

April 7-

And now at this day come the Parties aforesaid by their attornies and the Jurors impannelled for the trial of this cause on the 2d Instant, being called come, who having heard part of the Evidence adduced the Court adjourned to tomorrow

April 8th

The Parties appeared by their attornies and the jurors being called and appearing who having heard the Evidence adduced and part of the argument, were adjourned to tomorrow

April 9th

The Parties appeared by their attornies, and the jurors being called also come, who having heard the evidence adduced and arguments of Counsel had withdrawn to their room, where after remaining

for two days and the Court being obliged to adjourn to attend the Southern Circuit at Jackson they discharged the said Jurys—

On Motion by the Attorney for plaintiff, venire awarded for a Jury from the County of Washington

August Term 1817

September 4th

And now at this day come the Parties aforesaid by their attornies and the Sheriff, to wit, D Dunklin Esquire Sheriff of the County of Washington in obedience to the writ of venire facias to him directed, returns the said writ together with a Pannel of twelve good and lawful men of his County, Ten of whom appearing were impannelled as follows to wit, Louis Lastouixe, John H. Weeber, John Swan, John F Vanmeters, John B. Valle, Alexander Craighead, Richard W. Todd, John Munn, Stephen Lamarque and James Scott and the Sheriff of the County of St Louis having returned as tales five good and lawful men of his County two of whom to wit, John McKnight and Hinkaid Caldwell being also impannelled to form the jury aforesaid, and the said jury being sworn well and truly to try the issue joined between the Parties aforesaid who having heard part of the Evidence adduced, they were adjourned to tomorrow—

September 5th

The Parties appeared by their attornies, and the Jurors aforesaid being called come who having heard the arguments of Counsel they were adjourned from day to day to the 12th Sept.

September 12th

The Parties appeared and the Jurors aforesaid being called come who being asked about their verdict and not agreeing they were discharged by the Court— Whereupon On Motion of Mr McGirk for the plaintiff, It is ordered that the Sheriff of the County of St Louis upon a venire to be directed to him to that effect, cause a jury to come before the said Court on the first monday in April next, the same to be summoned from the Townships of Point Labadie, Joachim and Marramick, leave given to plaintiff to amend Narr—

18

Helene Chevalier } In Replevin Superior Court, Northern Circuit
vs
Pierre Chouteau } Amended Declaration

And the said Helene complains of the said Pierre Chouteau for that also heretofore to wit, on the thirtieth day of July in the Year One thousand Eight hundred and six at the then district now County of Saint Louis in said Circuit the said Pierre Chouteau took into his possession a certain other mulatto boy named Paul the Slave of her the said Helene and son of a Mulatto woman named Celeste also the Slave of her the said Helene, which boy is of great value, to wit, of the value of six hundred dollars lawful money and which boy before that time to wit, on the thirtieth day of June in the Year last aforesaid at the then district of Saint Charles now County of St Charles was actually taken from and out of the possession of her the said Helene by a certain Mackey Wherry of the last aforesaid place and the same mulatto boy he the said Pierre unlawfully detained and still does detain from said Helene against sureties and pledges, Wherefore the said Helene says she is injured and has sustained damages to the value of One thousand dollars and therefore she sues—

Filed January 19th 1818.
J. V. Garnier Clk S.C.N.C.

M McGirk &
Attd for Plff.

Jany 19th 1818. Received a Copy
F. H. Benton

In the Superior Court for the Northern Circuit August Term 1818

Pierre Chouteau } Demurrer to amended declaration
ads
Helene Chevalier }

And the said Pierre Chouteau by his attorneys comes and defends the wrong and injury when &c. And says that the said second Count of said declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said Hélène to have or maintain her aforesaid action thereof against him the said Pierre; and that he the said Pierre is not bound by the law of the land to answer the same; and that he is ready to verify; wherefore for want of a sufficient second Count in this behalf the said Pierre

prays judgment and that the said Helene may be barred from having or maintaining her aforesaid action thereof against him ——— Benton Atto

filed august 26th 1818 J.V. Garnier Clk

Helene Chevaliere vs Pierre Chouteau } Joinder in Demurrer

And the said Helene saith that the said second count of her the said Helena and the matters therein contained in manner and form as the same are set forth above are sufficient in law for her the said Helene to have and maintain her aforesaid action on said second count against him the said Pierre and the said Helene is ready to verify and prove the same as the Court shall direct and award. And in as much as the said defendant has not denied the said second count nor put in any sufficient answer to the same second count the said Helene prays judgment and that her damages be aseesed &c ——— M'll Girk Atto for Plaintiff

Filed August 26th 1818 - J.V. Garnier Clk

In the Superior Court for the Northern Circuit, August Term 1818

Pierre Chouteau vs Helene Chevalier } Pleas in Replevin

And the said Pierre Chouteau by his attornies comes and defends the wrong and injury when &c and says that he did not take and detain the Mulatto boy as alledged in the first count of the said declaration; and of this he puts himself upon the Country., and the Plaintiff also. M'll Girk Atto for Plaintiff

And for further plea in this behalf according to the form of the Statute in that case made and provided, by his attornies comes and defends the wrong and injury when &c. And says that the said Helene by any thing alledged in the said first count of her declaration ought not to have or maintain her aforesaid action thereof against him, because he says that the property of

the said mulatto boy Paul in said first count mention-ed, on the said thirtieth day of July in the Year One thousand eight hundred and nine was in him the said Pierre Chouteau, to wit, at the County of St Louis aforesaid; without this, that the property of the said Mulatto boy at the said time, when the said Pierre is supposed to have taken and detained the same, was in her the said Hélène Chevalier as by the said declaration is above supposed. And this he the said Pierre is ready to verify: Wherefore he prays judgment and a return of the said mulatto boy to be adjudged to him. Benton & others

Filed August 26 1818. J. V. Garnier Clk

Attys for Defl

Helene Chevalier vs Pierre Chouteau } Replication

And the said Helene by her attorney aforesaid for replication to the second plea of the defendant above pleaded to the first count of the plaintiffs said declaration above pleaded says that for any thing alleged in said second plea the said plaintiff ought not to be barred and preclu-ded because she says that the property in the said mulat-to boy Paul named in first count on the day therein stated was in her the said Hélène as she has in said first count alleged and this she prays may be inquired of by the Country

M. M. Girk attorney for plaintiff

Filed August 26th 1818. J. V. Garnier Clk

August Term 1818.
September 8th

On demurrer to the second count in the plaintiffs declaration, The Court overrules the demurrer and on motion leave given to defend-ant to plead & pleas filed

In the Superior Court for the Norther Circuit August Term 1818

Pierre Chouteau ads. Helene Chevalier } In replevin.

And the said Pierre by his Attorney comes and defends the wrong and injury when &c. And says that he did not take the mulatto boy Paul in the said

No 6

declaration mentioned in manner and form as the said Hélène hath above thereof complained against him. And of this he the said Pierre puts himself upon the country. And the plaintiff doth the like —

And for further plea in this behalf the said Pierre according to the form of the statute in such case made and provided, says that the said Hélène Chevalier ought not to have or maintain her aforesaid action thereof against him, because he says that the property of the said boy Paul in the said declaration mentioned, at the said time when he is supposed to have been taken, to wit, on the day mentioned in the said declaration, was in him the said Pierre, to wit, at St Louis in the Circuit aforesaid; without this that the property of the said boy Paul at the said time when he was above supposed to have been taken was in the said Hélène as by the said declaration is above supposed. And this he the said Pierre is ready to verify; wherefore he prays judgment and a return of the said boy to be adjudged to him.

Filed September 8th 1818. J. V. Garnier Clk

Benton. Carr
Attn

And the said Helene saith that she ought not to be barred or precluded by reason of any thing in said second plea alleged, because she saith, that the property of the said boy Paul at the said time when he was in her the said Hélène Chevalier in manner and form as she hath above in her declaration supposed, and this she prays may be enquired of by the Country &c. McGirk attn

And the defendant doth the like.

Filed September 8th 1818. J. V. Garnier Clk.

September 9th

On Motion by the attorney for the defendant this case is continued at the costs of the said defendant and on the affidavit of the plaintiff and motion for a change of venue, It is ordered by the Court that a venire issue to be directed to the Sheriff of the County of St Charles for the returning of a jury to be summoned out of his county, excluding therefrom the Inhabitants of the Town of St Charles and the Village of the Portage des Sioux —

21

April Term 1819 22

April 28th

The Pannel of Jurors returned by the Sheriff of the County of St Charles being on the motion of Mr McGirk for the Plaintiff, called and one of the jurors to Wit, William Primm appearing and the others to Wit John Hardy, Louis Barady, Thomas Piper, William Gaw, John Reel, Wallace Kirkpatrick, Joshua Fisher Joseph Brown, Louis Chancelier, Welcome Robins and David Smelcer being called and making default, the Court impose on each of the said jurors a fine of ten dollars, unless they shew cause on or before the first day of the next term of this Court why the same should not be made absolute—

September Term 1819—

September 28th

On motion of Mr McGirk for plaintiff, the Court award a venire to the County of St Charles for the summoning of a Jury, excluding therefrom the Inhabitants of the Towns of St Charles and Portage des Sioux

April Term 1820.

April 20th

Continued by consent

Which said transcript together with all the other papers belonging to the said Cause I have sent to the Clerk of the Circuit Court for the County of St Louis—

L. S.

In testimony Whereof I have hereunto set my hand and affixed the seal of the superior Court aforesaid at St Louis this twenty fourth day of March in the Year Eighteen Hundred & twenty one

J. V. Garnier Clk
S. C. N. C.—

Fees of Clerk in the Sup. Court $7.03
Search = .75
Transcript 1.25
Certificate & Seal .50
$9.53

State of Missouri }
County of St Louis } ss. Be it remembered that pursuant to the provisions of the twenty third section of an act of the General Assembly of the State of Missouri entitled an act regulating the proceedings of the supreme court, that Joseph V. Garnier Clerk of the Superior Court of the Territory of Missouri, for the Northern Circuit, sent down and filed in the office of the Clerk of the circuit Court for the County of St Louis in the Third Judicial Circuit, the record and proceedings of a certain Case pending in said Superior Court wherein Helene Chevalier is Plaintiff and Pierre Chouteau is defendant and the said Cause was accordingly docketed and set for trial by the Clerk of said St Louis Circuit Court at the April term in the Year Eighteen hundred and twenty One. At which said term the following order was made by the Court to Wit,

" Helene Chevalier }
by } It is ordered by the Court that the record
Pierre Chouteau } and proceedings in this Case, be certified to the Circuit Court within and for the County of St Charles at the next term thereof, because the Judge has heretofore been concerned as Counsel for the said Plaintiff "

And the Original record and a transcript of the proceedings in said Case, are by me hereby certified to said Circuit Court accordingly —

Given under my hand & Seal of Office at St Louis June 16 1821 —

Archibald Gamble Clerk

State of Missouri } 24
County of St Charles } At a Circuit Court began and held at the Court House in the Town of Saint Charles within and for said County of St Charles, on the third Monday in June It being the eighteenth day of said month and in the Year of our Lord One thousand Eight hundred and twenty one And in the Independence of the United the forty fifth Were present

The Honorable
Rufus Pettibone
Judge of said Court

In the Record and proceedings of said Court and the following viz Helen Chevalier } Replevin for Paul a Mulatto Boy
vs } Damages $1000. Continued
Pierre Chouteau }

State of Missouri
County of St Charles } At a Circuit Court began and held at the Court House in the Town of St Charles within and for the said County of St Charles, on the third Monday in October, being the fifteenth day of said Months, and in the Year of Our Lord One thousand Eight hundred and twenty One. And in the forty sixth Year of the independence of the United States_ Were present the Honorable

Rufus Pettibone
Judge of said Court

In the record Proceedings of said Court and the following viz Helen Chevalier Plff } Action of replevin for a Mulatto
vs } Boy — Damages $1000.
Pierre Chouteau Deft }

And now at this day came the Parties by their attornies And the defendants Counsel moved for a Continuance - which motion was overruled - Whereupon Came a Jury viz —

1 Benjamin Owen
2. James A Penrose
7. Aschel Storrs
8. Hercix du Rocher

Nay-

3. Augustus Kerr
4. Charles Denny
5. Robert McCloud
6. William Linck
9. John Silley
10. Patrick Flannagan
11. Ebenezer Ayres
12. Parson Wilmot, Twelve

Good & Lawful men of the County of St Charles who being elected tryed & sworn the issues well and truly to try, We the Jury upon our oath say as to the issues of non cepit that the said defendant did take the said boy Paul in manner and form as the said Plaintiff has alledged in her declaration, and as to the issues on the defendants pleas of property, say the property of the said boy was in her the plaintiff in manner and form as alledged in her declaration And assess her damages to Five hundred dollars- It is therefore considered by the Court that the Plaintiff do have and recover against the defendant Five hundred dollars for her damages- In manner and form as assessed by the Jury aforesaid together with her costs and charges in this behalf laid out & expended, and that she have thereof her execution

October 23d. 1821.

Pierre Chouteau ads. Helene Chevalier } Action of Replevin. Motion for a new trial. Affidavit & reasons filed as follows viz

The Defendant Pierre Chouteau, moves for a new trial in this case for the following reasons-

1st Because improper evidence was permitted to go to the jury, that is to say, a marriage contract without proof of its execution & authenticity-

2. Because the verdict was against law-

3. That the case stood upon Demurrer & the jury were sworn to try the issue without the demurrer having been disposed of and when there was no issue made up-

4. Because the damages were excessive & extravagant-

5. Because from the transcript it appears the case has not been regularly continued & Plaintiff was out of court-

2 C-

6. Because the party defendant was surprised at the trial and had no opportunity to procure his witnesses or their depositions, he having been for a long time confined to his bed and house; that it since the last term and was by accident deprived of the assistance of counsel on the trial - which matters will appear from the affidavit herewith filed. For which & other reasons he moves for a new trial by his attys Strotha & Smith

Chevalier vs Chouteau } October Term 1821. Pierre Chouteau being duly sworn saith that Auguste Chouteau, Charles Le Guerrier, Mortibez and material witnesses for him upon the trial of the above cause, that this affiant cannot prove the same facts by any other witnesses, that he has not been able to procure their attendance at the present term or take the necessary steps to take their depositions because he has been so sick for the last two months, that he has been unable to attend to business, or to leave his house and that this affiant can procure the attendance of the said witnesses at the next term of this Court, and that he cannot safely go to trial without the said witnesses, and that the said Auguste Chouteau is now at the Osage down & Mortibez is in Canada and that they are both expected to return to St Louis in a few months ——

Pre Chouteau

Sworn to and subscribed before me this 15th October 1821 —
Th Douglas J.P.

St Louis County, to wit, — This day Dr David Walker came before a Justice of the Peace for the County aforesaid and made oath that he as Physician has attended Pierre Chouteau at different periods since the month of July last & that he the said Pierre Chouteau has generally throughout the period from July to the present time been too

1

Whereupon William Stokes came into Court & acknowledged himself indebted to Nelson Chevalier plaintiff in the above Suit in the Sum of Fifteen hundred dollars

sick to superintend business
Sworn to & Subscribed this 20th day of October 1821 before me
J. V. Garnier J.P.

D. U. Walker

Pierre Chouteau
ads.
Helene Chevalier

October term 1821

Sylvester Labadie on his oath saith that Pierre Chouteau the defendant in this Court at the Suit of Helene Chevalier has been confined to his house and generally to to his bed since the rising of the last legislature of this State and has not been able to transact or attend to business untill within the last seven or eight days and that he is now confined to his house and that he has

Ste Labadie

Taken and Sworn to this twenty third day of October AD. 1821, before me a Justice of the peace within and for the township of St Charles

Ruluff Peck, J. Peace

October 24th 1821

Pierre Chouteau
ads
Helene Chevalier

Motion for a new trial
Under consideration

October 25th 1821

Pierre Chouteau
Adsm.
Helene Chevalier

Replevin for a Mulatto boy

And now at this day came the parties by their attornies at which time the Court took to consider of and concerning the premises, It is considered by the Court that the motion be overruled. Whereupon the defendant by his attorney prays for an appeal from the decision of the Circuit Court of the County of St Charles, to the Supreme Court for the second Judicial District of the State of Missouri which is granted on his entering into a recognizance in the sum of Fifteen hundred dollars on condition that if the judment of the Circuit Court shall be confirmed by the

Supreme Court, that Pierre Chouteau the defendant will pay the damages and costs and abide the condemnation of the Court, or that he will do it for him, then this recognizance to be void, Else to remain in full force

Helene Chevalier vs Pierre Chouteau } Action of replevin for a Mulatto boy Paul

On the trial of the above cause the Defendants Counsel tendered a bill of exceptions to the opinion of the Court, which is received signed and sealed by the Court and ordered to be made part of the record

Of which said Bill of Exceptions the following is a Copy

State of Missouri
County of St Charles
To Wit
Helene Chevalier
vs
Pierre Chouteau
Action of Replevyn

In the Circuit Court
October term 1821
Bill of Exceptions

On the trial of the above cause the Judge permitted to be read and go in evidence to the Jury a Paper purporting to be the record of a marriage contract between Helene Taillon the above plaintiff and Louis Chevalier in the following words. Pardevant nous Don Zara Perrault Lieutenant Gouverneur des etablissement des Illinoise et des dependances apartenant a sa Majeste Catholique furent presents en leur personnes le Sr Louis Chevalier garcon age de vingt trois ans commerocants voyageur etant de present au Port St Louis fils legitime de St Louis Chevalier et de Marie Reaume natif du porte de Mesilimakina Gouvernment de Canada stipulant pour luy et en son nom dune part et Damoiselle Helene Michel Taillon fille de Joseph Michel Taillon et de Marie Louise Bopet habitant de a dit porte St Louis province de La Louisianne dautre part stipulant pour la dite Helene leur fille Les quelles parties de la vis agreement et conseil de leurs parants et amis jay assembles et ez apres

N° 8 -

nommes savoir de la part d'mr Louis Chevalier, d'mr Jean Bte Guyon Charge du pouvoir verbal d'mr Jr Chevalier pere et le representant d'mr Gabriel Ceré tous deux negociants et amis d'mr p Chevalier fils et de la part de la dite Helene Michel d'mr Joseph Michel et de la dite Marie Louise Bosset ses pere et mere de Mr La Clede Liguest negociant d'mr Rene Kierierau habitant et Jean Marie Pépin la Chanse tous amis de la dite Helene Michel et temoins jastrumentaires appellés alt ifl Ct des presents - Lesquels on fait et accorde entreux le traité et convention du marriage cy apres savoir que le d'mr Joseph Michel et la dite Marie Louise Bosset ont promis et promesent Bursur la dite Helene Michel leur fille de son dit consentment et y y presente d'mr Louis Chevalier qui a promis de la prendre pour femme et legitime epouse et en faire celebrer et solemnizer le marriage en face de notre mere Ste Eglise Catholique apostolique Romaine lep turtose que faire sepoura du quelemi des parties en requerera lautre - Pour etre les dits futeurs Epouse vus et communs Entour bienmeme et comquets immeubles suivants et au desir de la coutume etablie et suivie en cette colonie selon laquelle leur communante sera règle queau bien meme ils feroient ontramporteroient leur domicile ou demeura en d'autre pays de loix et usage contraires auxquells ils ont expressment de roge et renoncé. ne seront neanmoins tenus de debtes lun, de laubre faites et crées avant la celebration du marriage et sil sen trouve elles seront payés et acquittées par celuy ou celle qui les aura faites et crées et sur son Bien sans que l'autre my des biens ensoient au currement tenues - Les dits futtrs epoux du consentement du Jr Michel et la dite Bosset pere et mere de la dite future epouze se prennent avel leurs biens et droits deux apartenants de ce jour et quels pourront acquerir par la suite pendant leur dite futeur mariage les quels bien de telle nature quils soient entrerront pour le tout en com-

-munaute sans aucune reserve et quand au regard des biens que purront leur avenir et echoir pars les successions des S^rs et dame leur pere et mere au cas quil y ait des enfans dune futeur mariage tous les dits biens entreront parreillement au communauté et ne seront exclus de la communaute que lorsque lun ou lautre de conjoints viendroit à deceder sans enfans de leur legitime mariage auquel cas les biens que leur proviendront des dites successions retourneront aux parants ou heretiers du coté duquel ils proviendront, aura cependant le survivante des dites futurs Epouse le sufruit sa vie durante de tous les biens que pourront leur echoir des dites successions. Et pour la sincere amitié que led futur Epoux port a la dite future epouse, il a donnée et done par ces presentes de la somme de deux mille livres de donaire prefin vue fois payee a lavoir et prendre sitost que dnaire aura lien surtous les biens dud future Epouse que y demeurent des a present charges afecter et hypotequer et sauretre tenue den faire demande en justice pour enjouir par la dite future Epouse la vie durante et apres sa mort etre reversions aux heritiers dud futur Epoux. Le Recip ut sera reciproque au dernier vivants des dits futurs Epoux de la somme de mille livres a prendre par le dit survivant en biens, meubles de leur communaute suivant la prix de l'Inventaire qui en sera fait et sans crue ou la dite somme en argent au choix dud survivant sera loisible a la dite future epouse et aux enfans qui purront naitre dud futur mariage de renoncer a la dite communaute Ex en y renoncent de reprendre franchement et quietement de toutes debtes et hypoteques de la dite communauté tout ce quelle aura aporte au d'mariage ainsi que ses donaires Ex preup ut tel quils sont cy devant expliques dont aud cas de renonciation eller es ses dits enfans serons acquittes et ju demnyez des dites debtes et hypoteques de cette communaute par les heretiers et sur les biens dud futur

epoux encore quelle Ky fut oblige ou y en eté condamné pour la quelle clause il y aura hypoteque sur tous les biens presents et avenir dud future Epoux et pour le dernier de mutuelle preuves de leurs affections ils se font par ces presents du consentement de leurs parants et ainsi ici as-
-semblés donnation viagere mutuelle et reciproque au dernier vivant déux de tous les biens meubles immeubles propres acquets et conquets que le premier mourant aura et laiss-
-sera au jour et heure de sonderes pour enjouir par la survi-
-vant par usufruit sa vie durante a sa Cedestion pora a la charge par le dernier vivant d'entrerir les maisons Et autres heritages s'il s'en trouve de toutes reparation viageres et remetre le tout en bon etat lorsque l'usufruit constitue par la presente donnation finira laquelle donnation n'aura lieu que au cas quil ing aurait aucuns enfans nez ny a naitre du d futur mariage car au cas d'enfant elle sera nulle de plain droit et comme nor faiter et arrivant le dées dud futur Epoux avant celui de la dite future Epouse et quelle voudroit convoles en secondes voies alors l'usufruit constitue par la dite donnation sera aneantie et tous le biens a luy propres meme (paper torn) constitue retourneront au parants ou heretiers dud futur Epoux et nen auront la jouisance et usufruit que pendant Convenrage et viduite pareillement arrivant le dices de la dite future Epouse sans enfans le dit futur Epoux ne poura Convoler au secondes voies sans remettres au parans ou heretiers de la dite future Epouse les biens que luy seront avenus et echus pendant du marriage cequi a ete stipule par clause ex car ainsi ete convenu et accorde entre les parties prometant &c obligeant &c renonceant &c fait et passé a St Louis en la Chambre du Gouvernment aux Ilinois l'an mil sept cent soisante quatorze du vingtieme jour du mois de juin En presence du dits Sr parants et amis cy devant nommes dud Joseph

Labuniere ecrivaine et d'mr Nicolas Boubris temoins d'assistance qui ont accerlas parties et nous Lieutenant Gouverneur signe ces presents a la reserve d'mr Joseph Michel Taillon qui a dit ne le savoir et a fait sa marque ordinaire apres lecture faite signe a loriginal des presents Chevalier Helene Michel Taillon Guiliam Marie Louise Bosset La Clede Liquest Cerre, Rene Rierieau Laburniere Boubres et nous Lieutenant Gouverneur Delivre la presente pour copie conforme a loriginal depose aux archives du Gouvernment sur la partie Espagnol aux Ilinois a la requisition d'mr Louis Chevalier le vingt neuf jour du Juin mil sept cent soixante quatorze ——————

signez Pedro Piernas

The said paper was not proved to have been a Spanish record by any thing out of the paper itself nor was there any proof of the signature attached to said paper being the handwriting of the said Lieut Gouverneur nor was there any subscribing witnesses to said paper but the Court upon inspection was of opinion that the said paper was a record & admitted the same in evidence

2nd Exception - The Judge charged the Jury that an actual taking from the plaintiff by the defendant was not necessary to be proved but that an actual taking by a third Person and the property being found in the possession of the defendant were sufficient to support the action of replevin - Whereupon the said defendant excepts to the opinion of the Court and tenders to the Judge the foregoing statement to be signed by him, which is done accordingly and ordered to be made a part of the record.

Rufus Pettibone

№ 9—

State of Missouri }
County of St Charles } ss I William Christy Jr. Clerk of the Circuit Court within and for the County aforesaid Do hereby Certify that the above and foregoing is a transcript of the record and proceedings in the Case of Helene Chevalier Plaintiff and Pierre Chouteau Defendant lately pending in our said Court—

In testimony where of I have hereunto caused my Official Seal to be affixed at St Charles this Ninth day of April in the Year of our Lord One Thousand Eight hundred and twenty two and in the forty Sixth Year of the Independance of the United States—

Wm Christy Jr.

Oct 1823

(12) Bc 510

Helene Chevalier

vs. Transcript of Record

Pierre Chouteau.—

Filed the 9th April 1822.

Wm Chusty Jr. C.S.Ct.

Chouteau vs Chevalier

It is suggested that there is diminution of the record in this that no reference is therein made to a motion made in the Court where the suit commenced to dismiss the suit on account of the Repeal of the ~~Law~~ Statute authorising the sustaining of the action of Replevin.

And also in this that an affedavit presented to ~~made~~ in the Circuit Court for the County of St Charles upon a motion made by the defendant for a continuance, has not been certified up

Cozens for appellant

Pierre Chauteau
v. — appeal.
Hilaire Chevalier

Denunciation suggested —

24th april 1822.
Wm Christy P.C.S.C.

Pierre Chevalier
vs
Helene Chevalier
} Appeal

The appellant will take notice that as soon as counsel can be heard I shall move the supreme court to dismiss the appeal in this case -

Because there was no affidavit filed by the appellant at the time of praying the appeal

Because the ~~defendant~~ appellant did not enter into a recognizance as required by law, and the order of the court -

Helene Chevalier
by Guyon her atty

Served this the within on Arthur McGinis by giving him a copy of the same on the 24th day of April 1822 in the Township of St Charles

Shff's fees
1 service $ .50

W. N. Fulkerson D.S.

for Arrand H Bober Shff

Pierre Chouteau
R.S. appeal Notice
Helene Chevalier

24th April 1822
Wm Christy Jr. C.S.C.

Pierre Choteau

vs

Helene Chevalier } appeal

The appellee moves the court to affirm the Judgment in this case for the want of an assignment of errors

Geyer for appellee

Pierre Chouteau
v. appeal
Helene Chevalier —

Filed 24th April 1822
Wm Christy pr C.S.C. —

Pierre Chouteau
ads
Helen Chevallier

October Term 1821.

Sylvester Labadie on his Oath saith that Pierre Chouteau the defendant, in this Court at the suit of Helen Chevallier has been confined to his house and generally to his bed since the rising of the legislature of this State, and has not been able to transact or attend to business until within the last seven or eight days. and that he is now confined to his house and that he has—

Sr. Labadie

Taken and Sworn to this twenty third day of October A.D. 1821. before me a Justice of the Peace within and for the Township of St Charles

Rulof Peck. Peace

Filed the 23rd. October 1821. Wm Christy for Clk. C.C.

St Louis County. Towit. This day Dr David Walker came before a Justice of the peace for the County aforesaid: And made Oath that he as physician has attended Pierre Chouteau at different periods, since the month of July last and that he the said Pierre Chouteau has generally throughout the period from July to the present time been too sick to Superintend business. D. V. Walker

Sworn to & subscribed this 20th day of October 1821. before me

J. V. Garnier. J.P.

Filed the 23d Octr 1821. Wm Christy pr. C. C.C.

Chevallier
vs.
Chouteau

October Term 1821. Pierre Chouteau being duly sworn saith that August Chouteau, Charles LeGuerrier Vertibez are material witnesses for him upon the trial of the above cause, that this affiant can not prove the same facts by any other witnesses, that he has not been able to procure their attendance at the present term. or taken the necessary steps to take their depositions because he has been so sick for the last

two·

two months, that he has been unable to attend to business or to leave his house, and that this affiant can procure the attendance of the said Witnesses at this Term of this Court, and that he cannot safely go to trial without the said Witnesses, and that the said August Chouteau is now at the Osage Town & Vorlibez is in Canada and that they are both expected to return to St. Louis in a few months, — Pre. Chouteau

Sworn to and Subscribed before me this 16th Octobr. 1821.

Thos. Douglass. J.P. —

State of Missouri } Ss.
County of St. Charles } William Christy Jr. Clerk of the Circuit Court within and for the County aforesaid. Do hereby Certify that the above and foregoing are truly extracted from the record and proceedings in the Case of Helen Chavellier against Pierre Chouteau lately pending in our said Court; which I Certify up to the Supreme ~~In testimony~~ Court as Commanded.

In testimony whereof I have hereunto Caused my official seal to be affixed at St. Charles this 12th day of September in the year of Our Lord, one thousand eight hundred and Twenty Two. And in the Forty Seventh year of the Independence of the United States. — Wm Christy Jr.

State of Missouri
County of St Charles } ss

The State of Missouri — To the Judge of the Circuit Court — In the Second Judicial Circuit of said State — and County of St Charles — Greeting — Whereas in a certain plea of Replevin between Helene Chauvetere plaintiff and Pierre Chouteau defendant — lately depending in the Circuit Court of St Charles County — wherein Judgment was given for the said Helene against the said Pierre and the said Pierre did appeal from the Judgment of the said Circuit Court, given against him as aforesaid, to the Supreme Court — In the Second Judicial District in said State — held at the town of St Charles on the fourth Monday in October next — And in pursuance of the said appeal a transcript of the record proceedings in the plea aforesaid was transmitted: And also whereas it hath been suggested on the part of the said Pierre that the said record is diminished. viz That an affidavit prepared to the Circuit Court of the County of St Charles upon a Motion made by the defendant — for a continuance has not been certified up. And for as much as the said Supreme Court are not satisfied that there is sufficient record set in the plea aforesaid: but that in the record there of there is diminution: You are therefore hereby commanded that without delay, a full transcript of the whole proceedings therein you cause to be transmitted to the said Supreme Court to be held at the Town of Saint Charles on the fourth Monday in October next — Without any diminution or addition — Whatsoever to the end that Speedy Justice may be done in the premises — according to law — And have you then & there this writ — Witness William Christy Jr. Clerk of our said Court — At Office this twenty second day of August in the year of our Lord one thousand eight hundred & twenty two — & in the forty seventh year of the Independence of the United States —

Wm Christy Jr.
"

Supreme Court —
2nd Judicial District —
October Term 1822 —

Pierre Chouteaux
Adm — Certiorari
Heline Chaveliere

Filed 12th Septr 1822 —
Wm Christy Jr. C.
Supreme Court —
2nd J. District.

State of Missouri } ss. The State of Missouri, To the Judges of the Superior Court of the
County of St Charles } Territory of Missouri In the Northern Circuit, And now Supreme
Court of the State of Missouri In the third Judicial District of said State — Greeting —
Whereas in a certain plea of replevin between Helene Chavelière plaintiff & Pierre Chouteau
Defendant lately pending — In the Court aforesaid — And Whereas it hath been suggested
on the part of the said Pierre — that the said record is diminished — viz — That no reference is
therein made to a motion made in the Court where the suit commenced to dismiss the suit on account of the re-
peal of the Statute authorising the sustaining of the action of replevin. And for as much as our Supreme
Court are not satisfied that there is a sufficient record sent up in the plea aforesaid but that in the
record thereof, there is diminution — you are therefore hereby commanded that without delay, a full
Transcript of the whole proceedings therein you cause to be Transmitted to our Supreme Court
to be held at the town of Saint Charles, On the fourth Monday in October Next — without any
diminution or addition whatsoever to the end that speedy Justice may be done in the premises according to
law. And sent you then & there this Writ — William Christy Jr. Clerk of the Supreme Court in the
Second Judicial District in said State, — At St Charles this third day of September
in the year of One thousand eight hundred & twenty two — And in the forty
Seventh year of the independence of the United States —

Wm Christy Jr.

State of Missouri
Third Judicial District } Supreme Court, Third Judicial District

By virtue of this writ to us directed, we do certify, that having searched the records of the late Superior Court of the late Territory of Missouri, we have not found in the same, that any motion was made "to dismiss the suit, on account of the repeal of the Statute Authorising the sustaining of the action of Replevin" between the within named Helene Chevalier and Pierre Chouteau, of the plea within mentioned. –

Witness Thompson Douglass Clerk of our said Court, for the Third Judicial District

In testimony whereof I have hereunto set my hand and seal of office at office this nineteenth day of September A.D. eighteen hundred & twenty two, and of the Independence of the United States the forty seventh –

Th. Douglass Clk

Searching Records	$1.25
Certificate & Seal	50
Tax on Seal	1.00
	$2.75

Supreme Court 2nd Judicial District – October Term 1822 –

Pierre Chouteau adm. Certiorari Helene Chevalier

Filed the 30th Sept. 1822.
Wm Christy Jr C.S.C.
Ins. F. L. O.

Gauzins & Mother

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Pierre Choateau
vs Opinion of Court
Helene Chevalcire

Filed the 28 Octob 1823.
Wm Christy Jr. C.S.C.

St. Louis. Towit

This day Prime Chouteau appeared before me a Justice of the peace for the County aforesaid and made Oath, that he has for some time and now is confined to his bed by Sickness & has not been & is not now able to prepare for the trial of ~~of~~ a suit depending in the Circuit Court of St Charles, where Madame Chevallier is plaintiff & he is defendant and that he does not make this affidavit for the sole purpose of delay.

P. Rocheblave P.

Filed June Term 1821.

Wm. Christy Jr. C. C. C.

Pierre Chouteau, appellant

vs

Helen Chevalier appellee

Appeal from St Charles Circuit Court.

This was an action of Replevin brought by the appellee for a negro slave Boy named Paul After a variety of pleadings, issues were joined on the following pleas 1st Non cepit to 2 counts 2nd Property in the Defendant, Verdict for Plff. $5'00. damages. During the trial of the cause two bills of exceptions were filed to the opinion of the Court, one for permitting to be read and go in evidence to the jury a paper purporting to be a ~~copy~~ marriage contract between the plaintiff and her husband Louis Chevallier. The said contract was executed in the presence of Pedro Piernas Lieut Governor and Spanish Commandant of Upper Louisiana and deposited among the archives of the said Territory of Upper Louisiana, and a copy given by the said Commandant to the said Louis Chevallier, together with his certificate that it was a copy of the original deposited among the archives &c and this copy ~~This certificate~~ was thereupon offered in evidence. The Court below admitted it in evidence without any other proof than what appeared upon the said paper. We do not consider the said contract as a matter of record, but as an ordinary contract, subject to the same rules of evidence as other contracts of like nature ~~but~~ as such papers according to the usages of

customs of the Spanish government were deposited among the archives of the government, and a copy merely delivered to the parties. We are disposed to admit such copies in evidence under some restrictions. We are disposed to admit sworn copies where the original is deposited among the archives - We are also disposed to admit of ~~certified~~ copies certified by the officers of our own government, who may have the custody of such papers. We are also disposed to admit copies certified by the Spanish authorities who had at the time the custody of the original papers, - with the additional proof, that the person certifying was acting in the office which he pretends to fill and that the signature to the certificate is in his hand writing. We feel at liberty to adopt these rules as these papers are rather sui generis, and could not, consistent with the interests of parties be governed by the rules of evidence now in force, as it respects ordinary contracts entered into since the change of government. We are therefore of opinion that the Judge erred in admitting the said paper in evidence, and that the judgment in the circuit court must be reversed and the cause remanded for new trial and that ~~the~~ appellant recover his costs on this appeal.

On the 2nd exception we think the Court below correct.

Rufus Pettibone
Jno Rice Jones

SUPREME COURT OF THE UNITED STATES.

No. 99—December Term, 1853.

Joseph Guitard, Frederick Steudeman and Mary his wife and George Brown and Julia his wife, *Plffs. in Error.*
vs
Henry Stoddard.

In error to the Circuit Court of the United States for the District of Missouri.

Mr. Justice CAMPBELL delivered the opinion of the court.

The plaintiffs, claim a lot of ground, in the cityof St. Louis, as representatives of Paul Guitard, an ancient inhabitant of that city, under a confirmation in the act of Congress of the 13 June 1812, for the settlement of land claims in Missouri. (2. Stat. at large 748.)

The record shows, that Guitard from 1785–6, till the common fence which surrounded and protected the field lots and commons of that city, was thrown down, in 1797 or 8, claimed and cultivated a parcel of land one arpen in width and forty in depth in the Cul de sac prairie. The tract claimed was called Guitard's Cul de Sac field to its whole extent and was in the usual form of field lots in that village. His cultivation did not extend over the whole claim, nor was it ascertained, whether the portion sued for, was within that part cultivated. There were eleven other lots of the same description, claimed and cultivated at that period by different persons in the Cul de Sac prairie, lying together, that of Guitard's being to the North of the others. The land sued for, is within the survey directed by the first section of the act referred to. The defendant produced a patent from the United States for the land in dispute, but as the case was determined upon the title of the plaintiffs, that becomes of no importance. The circuit court instructed the jury "that there having been no concession, nor grant, nor survey, nor permission to cultivate, or possess the land claimed by Paul Guitard, to said Guitard under and by the Spanish authorities or government; and no location of said claim by or under said government, nor under the French government, and no proof having been made at any time by said Paul Guitard, or those claiming under him, of any inhabitation, cultivation, or possession,or of the location and extent of said claim either under the provisions of the act of 1812, or those of the act of the 26th May 1824 either before the recorder of land titles or other U. S. authority; and there having been no survey or location of said land, by or under the authority of the United States, the said plaintiffs cannot now set up said claim and locate it, and prove its extent and inhabitation and cultivation by parol evidence merely." This instruction, comprehends the entire case, and the examination of this, will render it unnecessary to consider those, given or refused, upon the motions of the parties to the suit.

The act of the 13 June 1812 declares, "that the rights titles claims to town or village lots, out lots common field lots and commons in adjoining and belonging to the several towns and villages, named in the act, including St. Louis, which lots have been inhabited, cultivated, or possessed, prior to the 20 December 1803, shall be and they are hereby confirmed to the inhabitants of the respective towns or villages aforesaid according to their several right or rights in common thereto."

This act has been repeatedly under the consideration of this court, and to ascertain what has been decided upon it will facilitate the present inquiry. In Chouteau vs. Eckhart (2 How 345) the defendant relied upon the title of the vilage of St. Charles to the locus in quo, as being a part of the commons of that

village, and confirmed to it by the act of June 1812. In that case, the right of the village was established from a concession made by the Lieut. Governor of upper Louisiana and a formal survey by the Spanish authority. The judgment of this court was. that a title of this description was confirmed by the act of 1812 and that this confirmation excluded a Spanish concession of an earlier date, which had been confirmed by a subsequent act of Congress.

In the case of Mackay vs Dillon (4 Howard 421) the defendant defended under the claim of St. Louis to its commons, and produced evidence of a Spanish concession—of a private survey which had been presented to the board of Commissioners, and of proof having been made before the recorder of land titles. Whether the private survey made in 1806 and submitted to the government was conclusive of boundary was the question before the court. Mr. Justice Catron in delivering the opinion of the court says "By the first section of the act of 1812 Congress confirmed the claim to commons adjoining and belonging to St. Louis, with similar claims made by other towns. But no extent or boundaries were given to show what land was granted; nor is there anything in the act of 1812, from which a court of justice can legally declare that the land set forth in the survey and proved as commons by witnesses in 1806 is the precise land Congress granted: in other words, the act did not adopt the evidence laid before the board for any purpose: and the boundaries of claims thus confirmed were designedly (as we suppose) left open to the settlement of the respective claimants by litigation in courts of justice or otherwise."

Again in the case of Les Bois vs. Bramell the same learned judge says of this act, ' that, this was a general confirmation of the common to the town as a community no one ever doubted, so far as the confirmation operated on the lands of the United States."

The questions settled by this court are, that the act of 1812 is a present operative grant of all the interest of the United States, in the property comprised in the act, and that the right of the grantee was not dependant upon the factum of a survey under the Spanish government.

No question before this, has been submitted to the court, upon the interpretation to be given to the "rights titles and claims" which were the subject of the confirmation of the United States.

The instruction given to the jury, by the circuit court implies that the confirmee, before he can acquire a standing in court must, originally have had, or must subsequently have placed upon his title or claim an additional mark of a public authority besides this act of Congres. That he must evince his right, or claim by some concession, survey, or permission to settle cultivate or possess—or some recognition of his claim under the provisions of some act of Congress, by some officer of the executive department, indicative of its location and extent. The laxity of the legislation in the act of 1812 is painfully evident, when the fact is declared that the large and growing cities of the state of Missouri have their site upon the land comprehended in this confirmation. Nevertheless an attempt to correct the mischief would probably create more confusion, and disorder, than the act has produced.

The act in the form in which it exists, was adopted by Congress upon the solicitation and counsel of citizens of Missouri, interested in the subject, and well acquainted with the conditions of its population. The towns and villages named in it, were then, and for many years continued to be small and the property of no great importance. During this time, conflicting rights and pretensions were adjusted, facts necessary to sustain claims to property ascertained, and the business and intercourse of the inhabitants accommodated to its conditions. The act itself, with all the circumstances of the inhabitants before and

dont cut this opinion

at the time of its passage have formed the subject of legal judgments and professional opinions upon which mighty interests have grown up and now repose. This court fully appreciates the danger of disturbing those interests and of contradicting those opinions and judgments.

The act of 1812 makes no requisition for a concession, survey, permission to settle, cultivate, or possess, or of any location by a public authority as the basis of the right, title, and claim, upon which its confirmatory provisions operate. It may be very true that there could have been originally no legitimate right or claim without some such authority. Congress however, in this act was not dealing with written or formal evidences of right. Such claims in Missouri have been provided for by other acts. These pretensions to town and village lots formed a residuum of a mass of rights, titles and claims, which Congress was advised, could be equitably and summarily disposed of, by the abandonment of its own rights to the property, and a reference of the whole subject to the parties concerned. Congress afforded no means of authenticating the rights, titles, and claims of the several confirmees—No board was appointed in the act to receive the evidence nor to adjust contradictory pretensions.

No officer was appointed to survey or to locate any individual right. All the facts requisite to sustain the confirmation—what were village or town lots, outlots, common field lots, or commons—what were the conditions of inhabitation, cultivation, or possession, to bring the claimant within the act, was referred to the judicial tribunals. The act has been most carefully and patiently considered in the Supreme Court of Missouri, and conclusions have been promulgated, which comprehend, nearly all the questions which can arise upon it.

In Vasseur vs. Benton, 1 Missouri R., that court says, "we are of opinion that the claims to town or village lots, which had been inhabited, cultivated, or possessed, prior to 20th December 1803, are by the express words of the act ipso facto confirmed as to the right of the United States." In Lazoye vs. Primm, 3 Miss. R 368, the court says, "the great object of the act was to quiet the villagers in their titles to property (so far as the government was concerned) which had been acquired in many instances by possession merely, under an express or implied permission to settle, and in which had passed from hand to hand without any formal conveyance. In such cases possession was the only thing to which they could look; and taking it for granted that those who were found in possession at the time the country was ceded, or who had been last in possession prior thereto, were the rightful owners—the confirmation was intended for their benefit." In Page vs. ~~Scheckel~~ Scheibel, 11 Miss. 167, the same court says "the whole history of the progress of settlements in the French villages, so far as it has been developed in the cases which have come up to this court shows that the villagers did not venture to take possession of the lots, either for cultivation or inhabitation, without a formal permission of the Lieutenant Governor, or the Commandant of the post. These permissions it is also probable were most generally in writing and accompanied by a survey made by an officer selected and authorized by the Government.

But the title of the claimants under this Government does not depend upon the existence or proof of any such documents. Congress did not think proper to require it. In all probability, the fact that possession, inhabitation, and cultivation could not exist under the former government without such previous permission from the authorities of that government was known to the framers of the act of 1812, and constituted the prominent reason for dispensing with any proof of this character in order to make out a title under that act. However this may be, the act requires no such proof, but confirms the title upon possession, inhabitation, or cultivation alone without regard to the legality of the origin of such title."

We have quoted these portions of the reports of those cases to express our concurrence, in the conclusions they present.

We shall now inquire whether it was necessary for the confirmee to present the evidence of his claim under the act of 1824 (4 stat at large 65) supplementary to the act of 1812?

This act makes it the duty of the claimants of town and village lots to proceed within eighteen months after the passage thereof. to designate them by proving the fact of inhabitation, &c., and the boundaries and extent of each claim, so as to enable the Surveyor General to distinguish the private from the vacant lots." No forfeiture was imposed for a non-compliance. The confirmee by a compliance obtained a recognition of his boundaries from the United States, and censequently evidence against every person intruding, or claiming from the government ex post facto. The Government did not by that act impair the effect and operation of its act of 1812.

Under the act of 1812 each confirmee was compelled whenever his title was disputed to adduce proof of the conditions upon which the confirmation depended. As the facts of inhabitation, possession and cultivation at a designated period, are facts in pais, it followed as a matter of course that parol evidence is admissible to establish them. In the case of Hickie vs. Starke, 1 Peters 98 a question arose upon an act of Congress which confirmed to "actual settlers" within a ceded territory all the grants legally executed prior to a designated day, and this court held that the fact of "a settlement on that day" must be established, and proof of occupancy and cultivation was adduced. In the city of Mobile vs. Eslava 16 Peters 235, certain water lots were confirmed to the proprietors of the front lots adjacent thereto, who had improved them before the passage of the act of Congress, and this court sustained the title upon parol proof of location and improvements. The court said "being proprietor of the front lot and having improved the water lot opposite and east of Water street, constitute the conditions on which the right, if any, under the statute vests. In his charge to the jury, the judge laid down these conditions in clear terms: and instructed the jury if the facts brought the defendant within them, that they should find against the plaintiffs. The jury did so find and this is conclusive of the facts of the case."

The question of boundary under the act of 1812, as it was decided in Mackay vs. Dillon was left open to the settlement of the respective claimants by litigation in the courts of justice, or otherwise. Nor has this court in any case decided that statutes, which operate to confirm an existing and recognized claim or title with ascertained boundaries, or boundaries which could be ascertained, are inoperative without a survey or made one necessary to the perfection of the title—A survey approved by the United States and accepted by the confirmee is always important to the confirmee, for as is said by the court in Menard's heirs vs. Massy, 8 Howard 294. it is conclusive evidence as against the United States, that the land granted by the confirmation of Congress was the same described and bounded by the survey; unless an appeal was taken by either party or an opposing claimant to the commissioner of the land office. This consideration depends upon the fact that the claimant and the United States were parties to the selection of the land; for as they agreed to the survey they are mutually bound and respectively estopped."

The cases of Harrison vs. Page, 16 Miss. 182; Gamache vs. Piquignot, 17 Miss. 310, which ~~has~~ have been affirmed at the present session of this court; and Soulard vs. Clarke, are in harmony with the views we have expressed upon the latter branch of the instructions of the circuit court.

We think it proper, to state, that we express no opinion upon the effect of the evidence to establish the plaintiff's title as a subsisting title and none upon the claim to such of the land as lies beyond the boundary line, settled by the survey of the United States under the first section of the act of 1812.

The judgment of the circuit court is reversed and the cause remanded.

Opinion in
Guitard vs Stoddard
U. S. Supreme Court-