Benton v Vasseur

137/19

October 1821 St Louis County

Thomas H. Benton

vs

Regis Vasseur

Ejectment

1 Affirmed: After Early Confirmation, Courts decide competing claims

2 Land; Possession; Title; Deed; Survey

3 Recorder can not make title any better

State of Missouri
Third Judicial District } The State of Missouri to the Sheriff of the County of St Louis - Greeting —

Because in the Record and Procep and also in the rendition of Judgment of a Plea which was in our Circuit Court within and for the County of St Louis before the Judge Thereof between Thomas H. Benton Plaintiff and Regis Vapeur Defendant in an action of Ejectment whereof the said Regis Vapeur is convict, as it is said manifest Error hath happened to the great damage of the said Regis Vapeur as by his Complaint is alledged, the Record and Procep of which said Judgment We have commanded should be brought before our Supreme Court for the District aforesaid for certain causes of Error - and We being willing that the Error if any hath been, should be duly corrected and full and speedy Justice done to the parties aforesaid as is reasonable - Command you that by good and lawful men of your bailiwick You cause the said Thomas H. Benton to know, that he be before our said Supreme Court to be holden at St Louis on the fourth Monday of October next to hear the Record and procep aforesaid, if he shall think fit, and further to do and receive what our said Court shall then and there consider concerning him in this behalf - and have You then and there the names of those by whom you shall give him notice and this Writ —

In testimony whereof Arthur Nelson Clerk of the Supreme Court for the third Judicial District have hereunto affixed my hand and Seal of office at St Louis this twelfth day of August Eighteen Hundred and twenty one, and of the Independence of the United States of America the forty sixth —

A Nelson Clk

No.

Supreme Court 3d Jud. District
October Term 1821—

Regis Vasseur } Sci Fa—
v
Thomas H Benton }

Sep. 14th 1821. I acknowledge service of this writ.

Thos. H. Benton.

Executed this writ on Thomas H. Benton as will appear from the above acknolegement of Said Benton in the Presence of Charles S. Hempstead & Robert P. Farris in the Township of St Louis Date above mentioned.

Jno Simonds Jr D.Sff
Service & Travel 90 Cents

filed [illegible]

filed 24th Oct. 1821.

J. Nelson Clk

State of Missouri } ss:
third judicial District }

The State of Missouri to the Judge of the circuit court in and for the third judicial District sitting —

For as much as in the Record and process and also in the rendition of Judgment in a certain cause which was in our circuit court of the county of St Louis before You by your writ between Thomas H Benton Plaintiff and Regis Vasseur defendant in an action of Ejectment, as it is said, manifest error hath happened to the great damage of the said Regis Vasseur as by his complaint we are informed, and being willing that the error aforesaid, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf, do command You that if Judgment be thereupon given then to the parties aforesaid in this behalf, do command You that if Judgment be thereupon given then transcript of the Record of the Judgment aforesaid, together with this writ You certify and send to our Supreme Court to be held in and for the third judicial District at the Town of St Louis on the fourth Monday in October next, that the our Judges of our said court inspecting the Record of the Judgment aforesaid may cause to be done thereupon for correcting the said error what to them of right and according to law shall seem meet to be done

Witness Arthur Nelson clerk of the Supreme court for the third Judicial District at St Louis this twentieth day of August in the year of our Lord one thousand eight hundred and twenty one and of the Independence of the State of Missouri the first —

A Nelson Clk

No

Supreme court Judicial District

October Term 1821

Regis Vasseur

vs

Thomas H Benton } court of Error

State of Missouri
County of St. Louis } Set.

Be it remembered that heretofore (To wit) on the Seventeenth day of November in the year of our Lord, one thousand, eight hundred and nineteen, Thomas H. Benton, filed in the office of the clerk of the circuit court, for the county of St Louis his Declaration against Regis Vasseur of a plea of ejectment, which said Declaration is the in the words and figures following. To wit. "In the circuit court, County of St. Louis, ss. To December Term 1819. Thomas H. Benton complains of Regis Vasseur of a plea of ejectment, for that the said Thomas H. [redacted] heretofore, To wit, on the twenty eighth day of April in the year of our Lord one thousand eight hundred and eighteen, To wit, at the Town of St. Louis in the county of St. Louis aforesaid, was legally entitled to a certain lot or piece of ground, situate and being in the said Town of St. Louis & lying on the South side of a cross street between the residence of the said Regis and that of James Irwin, containing one hundred and fifty feet french measure, in front, on said cross street, by one hundred and twenty feet, french measure in the rear beginning at the northwest corner of a lot belonging to the said Regis, at a point on said cross street, one hundred and fifty feet french measure West of the third principal street in said Town of St. Louis and running Southwardly on the western boundary line of the said last mentioned lot one hundred and twenty feet, french measure, thence Westwardly at right angles with the said line, one hundred and fifty feet french measure, thence northwardly at right angles with the last mentioned line, one hundred and twenty feet french measure to said cross street, and thence one hundred and fifty feet french measure, eastwardly with said street to the place of beginning; and the said Thomas H. being so legally entitled to the said above described premises and in the peaceable and lawful possession thereof, he the said Regis, afterwards, To wit, on the same day and year aforesaid, To wit, at the Town of St. Louis aforesaid, with force and arms, ejected the said plaintiff therefrom, & then & there wrongfully and forcibly entered in & upon the said premises & still

continues unjustly and forcibly to keep posession thereof against the legal right and title of the said plaintiff- And whereas also on the first day of December in the year one thousand eight hundred & ninety. To wit. afterwards, To wit, at the Town of St. Louis, aforesaid, he the said plaintiff was legally entitled to a certain other lot of ground, lying and being situate in the said Town of St Louis, containing one hundred and fifty feet, french measure in front on a cross street which runs between the dwelling house of the said defendant & that of James Irwin in said Town of St Louis, by one hundred and twenty feet french measure in the rear, bounded on the north by said cross street, and on the east by a line which is one hundred and fifty- feet french measure west of third street, and running Southwardly, separates the said premises, from a lot belonging to the said defen= =dant, the other boundary lines, being respectively parralell to those last described. And the said plaintiff having as a legal title to the above described lot with full and perfect right to enter,— upon and posess the same, he the said defendant, afterwards, To= wit, on the same day & year aforesaid, To wit, at St. Louis aforesaid wrongfully, and with force and arms, kept the said plaintiff out of the posession thereof, & then & there forcibly ejected the said, plaintiff- & still unjustly & with force withholds from him the use and posession of the said premises. Wherefore to recover, as well the posession of the said several premises as five hundred dol= =lars in damages, which he says he has sustained by the said ejectments & wrongfull posession of his property by the said defendant, the plaintiff brings his suit &c. And whereas also afterwards, To wit, on the day and year last aforesaid. at the Town of St Louis aforesaid the said plaintiff was legally entitled to a certain other lot lying in the said Town of St. Louis, on the south side of a cross street, which passes between the present residence of the said defendant and James Irwin, beginning at a point of said cross street one hundred and fifty feet french measure, west of the Third principal street, being the north west corner of Regis. Vasures lot, thence, Southwardly, one hundred and twenty feet french measure, with Vasures rear line, thence turning a right=

angle and running Westwardly one hundred and fifty feet french measure, thence turning a right angle and running northward=ly one hundred and twenty feet french measure to the cross street above mentioned, and being so legally entitled thereto, the said de=fendant afterwards, To wit, on the day and year last aforesaid, at the county of St Louis entered in and upon the said premises, with force and arms and ejected him therefrom.. S. H. Benton. On which said Declaration the nature of the action was endorsed in the words following To wit "This is an action of Ejectment for a lot in the Town of St Louis. And afterwards to wit on the day of filing said Declaration. our clerk endorsed thereon a writ of summons. in the words following (To wit Territory of Missou=ri county of St Louis. The United States of America to the sheriff of St Louis county. Greeting. We command you to sum=mon Regis Vaseur that he be and appear before the Judge of our circuit court at the next term thereof to be held at the town of St Louis within and for the county of St Louis, on the first monday of December next, then and there to answer unto Thomas H. Benton of a plea of Ejectment, to the Damage of said Thomas H Benton of Five Hundred Dollars. and have you then there this writ. Witness Archibald Gamble clerk of our said court at office this seventeenth day of November in the year Eighteen hundred and nineteen and of our Independance the forty=fourth. Archibald Gamble clerk by John C Long. D clerk. and afterwards To wit, on the return day of said writ the sheriff to whom the same was directed, returned the same into court with his return thereon endorsed in the words and figures following To wit." Served this writ on Regis Vaseur by leaving a copy hereof with his wife, at his place of residence in the Town of St Louis on the 18th day of November 1819 John K Walker Dshff. And afterwards To wit, on the first monday of December in the year one Thousand eight hundred & nineteen, came the defendant by his attorney, and filed his plea, in the words following To wit." In the circuit court. December=Term 1819. Regis Vaseur ads Thomas H Benton, And the said Regis Vaseur by Barton his attorney comes and defends

the force and injury when &c and says he is not guilty of the said supposed Trespasses and ejectment above laid to his charge, or of any part thereof in manner and form as the said Thomas H Benton hath above thereof complained against him. and of this he the said Regis Vasseur puts himself upon the country &c I Barton atty - And the plaintiff likewise Benton & Farris. Thereupon the same was continued, untill the First monday of April in the year of our Lord one thousand eight hundred and twenty one, on which said first monday of April come the parties aforesaid by their respective attornies aforesaid, and thereupon come a Jury to wit. Elijah Beebe, John D Dagget. John Magoon Thomas McKay, George H. C Milody, Thomas English, John B Smith Hortis, Christopher M Price, Elkana English, John Nicholson, Henry Rollins & William H, Pococke, twelve good and lawful men who being duly elected tried and sworn, well and truly to try the issue within Joined between the parties aforesaid upon their oath do say that the said Defendant is guilty of the said Trespass and ejectment above laid to his charge and of every part thereof in manner and form as the said Thomas H. Benton hath above thereof complained against him and they assess the Damage of the said Thomas H. Benton, by him sustained by reason of the premises to the sum of one cent. Therefore it is considered that the said Thomas H, Benton recover against the said Regis Vasseur the premises in the declaration mentioned together with his damages aforesaid in form aforesaid by the Jury assessed, and also his costs and charges by him about his suit in that behalf expended, and that he have thereof execution. The defendant by his attorney files his bill of Exceptions in this case which is by the court signed and ordered to be made part of the record, which said Bill of exceptions is in the words & figures following. To wit. "In the circuit court April Term 1821 Regis Vasseur ads Thomas H Benton, Ejectment. Be it remembered, that on the trial of this cause, which was brought to recover a lot of one Hundred and fifty feet in length by one hundred and twenty in width. being the north West quarter of the square on which the defendant Vasseur resides lying west of Third main street

and South of the Square on which Rufus Easton, James Irvine and Oliver C. Smith resides; and on the trial the plaintiff produced and proved the following title, to wit; An abstract from the Books of the Recorder of land titles in the words and figures following to wit "Opinions "of the Recorder of land titles for Missouri Terry. as to claims entered "under the act of 13th June 1812. & proven before 1st Jany 1814 as "provided by the act of the 3rd March 1813, comprehending also "the claims in the late District of Arkansas, which by act of 2nd "August 1813 were permitted to be entered until the 1st Jany 1814 "together with the extensions of quantity provided by 4. sec. of the "act of 3rd March 1813. and confirmations under the act of 12th "April 1814.

"Warrant & order of survey.	Survey	notice to the Recoder by whom.	quantity claimed	where situated	Posn. Inhab or cult.	opinions of the Recorder
None.	None	Representatives of Antoine Rivierre.	F 12. 300 by 300 feet.	Lot in Town of St Louis	Posn. & Impi for the last 26 years	Granted 300 by 300. survey Dec 8 to popn

The plaintiff then proved that the said Antoine Rivierre had for=merly lived in St Louis some where on second main street, and that for about twenty six years next preceding the date of the above confirmation, he had and used a barn built on the South west quarter of the above mentioned square, being the quarter of the square or lot lying South of and adjoining, the one now sued for. The plaintiff then read in evidence a deed from the said Antoine Rivierre to Rufus Easton bearing date July one thou=sand eight hundred and fifteen, in the words and figures follow=ing to wit. "Sachent tous ceux qui ces presentes verront "que moy Antoine Riviere de St Ferdinand dans "la compté de St Louis Territoire du Missouri "declare reconnai et confesse qu'ayant vendu "verbalment au sieur Charles Gratiot un terrein de "trois cents pieds quarré, plus ou moins sur lequelle

" il se trouve une grange, située derière le terrein
" dernierment occupé par le nommé Joffrey
" Mulatre libre, et derière la troisième rue
" de cette ville de St Louis, et dans la
" Compté ci desus mentionné, et situé au
" nord ouest du terrien dernierment occupé par
" le nomme John Coons, lequel terrein et
" grange j'ay occupé depuis vingt-six ans,
" lequel terrein à été vendu publiquement à
" Pierre Chouteau, qui la vendu, depuis à
" Charles Gatiot, lequel Sr Charles Gratiot
" ayent vendu le même terrein au Sr
" Gregoire Sarpy qui l'a cédé par vente
" Speciale au Sr Rufus Easton, et ayent
" reçu plaine satisfaction pour le dit terrein
" et pour et en consideration de la somme
" de cinque piastres qui m'ont été bien
" payer par le sus nommé Rufus Easton par
" ces presentes je vend, cede, quitte delaisse,
" abandone, et transporte au dit Rufus Easton
" ses hoirs ou ayant causes tous les droits, titres,
" actions, Pretentions et proprietes, noms et
" raisons que j'ay ou puis avoir, au sus dit
" terrein pour lui en jouir, tenir et avoir à
" lui meme, et ses heritiers, pour toujours. en foy
" de quoy j'ai signé et scellé ces presentes —
" Juillet de l'anné de notre Seigneur mil
~~huit cens quinze~~ [illegible]

1 huit cens quinze — en presence de temoin

Antoine + Riviere
marque

To the reading of which said deed as evidence of title derived to Rufus Easton from said Rivierre, the Defendants counsel objected, on the ground that the recitals therein shewed a title out of Rivire, But the court overruled the objection, and the Defendants counsel excepted to the opinion. The plaintiff then gave in evidence to the Jury a deed from said Easton & his wife to Pryor Quarles conveying to him the lot which is the object of this suit by meets and bounds and describing it as a part of the three hundred feet by him purchased of Riviere — and also a Deed from said Quarles to the plaintiff for the same lot thus purchased of Easton, The plaintiff then gave in evidence a plat of survey made by the county surveyor under the order of this court, of the Three Hundred feet above confirmed, including the Southwest quarter of the square on which Rivieri's barn was, and also the lot or quarter of the square, which is now sued for. It was proved that this survey corresponded to a survey of the same ground made by the same surveyor under authority of the united states — On the part of the defendant it was proved that Antoine Rivieri never had any other, possession of any part of the square, than the stable on the South west quarter of it — that he never had actual possession of any part of the lot or quarter of the square, now in controversy — and that he was never known to claim this lot. It was also proved that as early as the year one thousand, seven hundred and eighty — the defendant, Regis Vasseur resided on the lot or quarter of the square lying east of the lot ~~or quarter of the square lying east of the lot~~ now sued for, and that he had a barn and small enclosure around it on the lot or quarter of the square now sued for — and claimed the two lots, That the defendant has constantly since that time had such barn and small enclosure, on this last lot — and that at the time of commencing the present suit — the defendant had the whole lot excepting five or six feet across the western end of it, actually enclosed, But it did not appear at what time the fence was extended so far to the West — through it was proved that a part of the lot was actually enclosed before and at the times of making each of the Deeds, read-

in evidence by the plaintiff. It was also proved by the surveyor that when he made the survey aforesaid - and when he made that under authority of the United States. the defendant was not present and that no evidence was furnished him of Riviere's possession of any part of the land included in the surveys. but that he made the same entirely according to the directions of Rufus Easton, without enquiry or regard to the possession of Riviere. and that at that time, Regis Vas= =seur was in actual possession of the lot now sued for. And there= =upon the evidence being closed the counsel for the defendant, pray= =ed the court to instruct the Jury. First. That under the above confir= =mation. no land or ground could be surveyed. or was confirmed to the said Antoine Riviere, which he had not actually possessed and improved prior to the twentieth day of december one thousand eight hundred and three. - Secondly. That the said confirmation did not confirm to the said Antoine Riviere - and that under it no land could be surveyed for him which for twenty years prior to and on the said twentieth day of december one thousand eight hundred and three was in the adverse possession of Regis Vaseur. Thirdly — That the survey above mentioned being made according to the direc= =tions of Rufus Easton - was no evidence that the land included, therein was the land confirmed to Riviere. Fourthly. That if the defendant had - had an adverse possession of the lot in question for thirty years. previous to the first day of June one Thousand eight= hundred and sixteen. it gave him title thereto as against the — plaintiff. and those under whom he claimed. Fifthly. That if the defendant was in the adverse possession of the lot in question or any part of it at the time of the execution of all or any of the deeds under which the plaintiff claims such deeds or deed. pas= =sed not the title to the part so adversely possessed and the plaintiff could not maintain ejectment for the same, under and by virtue of such deeds or deed - All which instructions the court refused to give to the Jury. But instructed them, that they should not regard any evidence of the primitive title to the premises. but a complete grant under the Spanish laws prior to the change of government - or such other title as should have been ascertain=

=ed by one of the tribunals appointed under the laws of the united States for that purpose, and recognized by such tribunals, that those tribunals were the sole Judges of the facts and of the rights, resulting under the laws of Congress, from the facts, in all cases of imperfect titles, subject only to the control of the Government of the united States that confirmations made by those tribunals in such cases were to be taken in this court to be rightly made, that it was for the Jury to enquire of the identity of the land confirmed in this case; and that for this purpose they should look as well to the survey and the circumstances under which it was made as to the other circumstan=ces in the case, and that if on the whole matter they found the confir=mation to Riviere, and a regular chain of conveyance from him to the plaintiff for the land confirmed, and if they should more=over find the premises to be parcel of the land confirmed as afore=said it would be their duty to find the title of the premises for the plaintiff, notwithstanding they might have been for thirty yea before the first day of June 1816 or at any time since in the actua possession of the defendant. To this opinion the defendant by his attorney excepts and prays the court to sign seal this his bill of exceptions which is done & the same ordered to be made part of the Record. R. B. Tucke [seal].

State of Missouri
County of St Louis } ss

I Archibald Gamble clerk of the Circuit Court for the County of St Louis do certify the above and foregoing to be a true transcript of the record and pro=ceedings in the case of Thomas H Benton versus Regis Vasseur &c remaining on file in my Office

Given under my hand & Seal of Office at St Louis October 6th 1821

Archibald Gamble Clerk

No 44 B (19) (25

October Term 1821

Thomas H. Benton

against Transcript

Regis. Vasseur

332

Examined

Fees for Transcript	$	4.05
		50
certificate		1.00
Paid		5.55
		6 95
		14.50

Regis Vasseur
agt
Thos H Benton } In Error

This was an action of Ejectment brought by the Deft in Error in the Circuit Court of St Louis against the plaintiff to recover possession of a lot ~~of Ground~~ of Ground in the Town of St Louis of ~~300 feet square~~ of 150 feet in length by 120 feet in depth, on which the Deft Vasseur resided. On the Trial of this Cause a Bill of Exceptions ~~which~~ was filed by the therein Deft to the opinion and Instructions of the Court to the Jury, who accordingly found a verdict for the plff to reverse which Judgment, this Writ of Error was brought.

The Bill of Exceptions states proof by the plff of the following Title, to wit an abstract from the Book of the Recorder of land titles as to claims entered under the Act of 13th June 1812 and proven before 1st January 1814 as provided by the Act of 3d March 1813 comprehending also the Claims in the late District of Arcanzas which by the Act of 2d August 1813 were permitted to be entered untill 1st January 1814, together with the Extension of quantity provided by the 4th Section of the Act of 3d March 1813 and Confirmations under the Act of 12th April 1814 — from this abstract it appears that ~~the~~ a Claim was entered with the Recorder by the Representatives of Antoine Riviere for 300 by 300 feet in the Town of St Louis by an Improvement and possession for 26 years, and that that quantity was confirmed by the Recorder & was ordered to be surveyed according to possession.

That the plff then proved that Antoine Riviere formerly lived in St Louis somewhere on 2d main street and that for about 26 years next preceding the date of the Confirmation he had & used a Barn built on the SW quarter of the above mentioned square being the quarter of the square or lot lying south of and adjoining the one now sued for — The plff then read in Evidence a Deed from Riviere to Rufus Easton dated July 1815 by which Deed Riviere confesses & declares that he had verbally sold to Mr Chas Gratiot a lot of 300 feet square more or less whereon there was a barn, ~~bounded as therein described~~ situate in rear of a lot of one Jeoffroy and in rear of the 2d street and north west of the lot lately occupied by one Coons; which lot and Barn he had occupied 26 years past, & which lot was sold by public sale to Pierre Chouteau, who sold to Chas Gratiot who sold to Gregoire Sarpy who conveyed it by a special Deed to said Rufus Easton, and he Riviere then conveys his right & Interest in said lot to Easton —

To the reading of which Deed in Evidence the Deft excepted on the grounds that the recitals therein shewed a title out of Riviere and the Court overruled the objection and the Deft excepted to the opinion of the Court.

The plaintiff thereupon deduced a Title in himself by several mesne Conveyances to the lot in dispute, and then gave in Evidence a plott of survey made by the County surveyor under the order of the Court of the 300 feet above confirmed including the SW quarter of the ~~[illegible]~~ square on which Riviere's barn was and also the lot or quarter of the square sued for — It was also proved that

1

this survey corresponded to a survey of the same Ground made by the same surveyor under the authority of the US.

On the part of the Deft it was proved that Riviere never had ~~any other~~ possession of any part of the lot or quarter of the square in Controversy, and that he was never known to claim this lot — It was also proved that as early as the year 1780 the Deft Vasseur resided on the lot or quarter of the square lying East of the lot sued for, and that he had a Barn and small Inclosures on the lot or quarter of the square sued for and claimed the two lots — That the Deft had constantly since that time had such Barn and small Inclosures on this lot, and that at the time of commencing the suit the Deft had the whole excepting five or six feet across the western End of it actually inclosed, but it did not appear at what time the fence was ~~made~~ extended so far to the West, tho' it was proved that a part of the lot was actually inclosed before and at the time of making each of the said Deeds read in Evidence by the Plff — It was also proved by the surveyor that when he made the surveys the Deft was not present and that no Evidence was furnished him of Riviere's possession of any part of the land included in the surveys, but that he made the same entirely according to the Directions of Mr Easton without Enquiry or regard to the possession of ~~Ear~~ Riviere; and that Vasseur was at the time in the actual possession of the lot sued for — And thereupon the Deft prayed the Court to instruct the Jury

1st That under the above Confirmation no land or Ground could be surveyed or was confirmed to Riviere while he had not actually possessed and improved prior to 20th Decr 1803

2d That the said Confirmation did not confirm to Riviere, and that under it, no land could be surveyed for him while for 20 years prior to and on the said 20th Decr 1803 was in the adverse possession of Regis Vasseur

3d That the survey above mentioned being made according to the Directions of Easton was no Evidence that the land included therein was the land confirmed to Riviere

4th That if the Deft had had an adverse possession of the lot in question for 30 years previous to 1st June 1816 it gave him title thereto as agt the plaintiff and those under whom he claimed

5th That if Deft was in adverse possession of the lot in question or any part of it at the time of the Execution of all or any of the Deeds under which the Plff claims such Deed or Deeds passed not the title of the part so adversely possessed and the Plff could not maintain possession for the same under or by virtue of such Deed or Deeds —

All of which Instructions the Court refused to give to the Jury, but instructed them that they should not regard any Evidence of the primitive Title to the premises but a complete grant under the Spanish laws prior to the Change of Government, or such other Title as should have been —

ascertained by one of the Tribunals appointed under the laws of the U S for that purpose and recognized by such tribunals — That those Tribunals were the sole Judges of the facts and of the ~~laws~~ rights resulting under the laws of Congress from the facts in all cases of imperfect titles, subject only to the Controle of Congress — That Confirmations made by those Tribunals in such cases were to be taken in this Court to be rightly made — That it was for the Jury to inquire of the Identity of the land confirmed in this Case, and that for this purpose they should look as well to the survey and the Circumstances under which it was made as to the Circumstances in the Case — And that if on the whole matter they found the Confirmation to Riviere and a regular Chain of Conveyances from him to the Plaintiff for the land confirmed; and if they should moreover find the premises to be parcel of the land confirmed it would be their Duty to find the title of the premises for the plaintiff, notwithstanding they might have been for 30 years before 1st June 1816 or at any time since in the actual possession of the Deft — To which opinion the Deft excepted

The Errors assigned are founded on the Bill of Exceptions in general.

A decision on the Correctness of the first part of the Instructions to the Jury must depend on the true Construction of the Act of Congress of 13th June 1812 — By the 1st Section of this Act "all rights titles and Claims to town or village lots &c adjoining and belonging to the several towns or villages therein named (St Louis being one of them) which lots &c had been inhabited cultivated or ~~improved~~ possessed prior to 20th Decr 1803 were confirmed (the words being "shall be and the same are hereby confirmed") to the Inhabitants of the said respective Towns or villages according to their several rights in common thereto — And by the 2d Section all the Town or village lots (included in the surveys of the several towns &c which were thereby directed to be made ~~thereof~~) which were not rightfully owned or claimed by Individuals ~~were with~~ were reserved for the use of Schools in the respective Towns or villages. —

According to the Construction we give to this Act, we are of opinion that the Claims to town and village lots which had been inhabited cultivated or possessed prior to 20th Decr 1803 are by the express words ~~of the~~ thereof (hereby confirmed) ipso facto confirmed as to the rights of the US, & which became thereby vested either in Individuals or reserved for the use of Schools therein — That therefore the recorder of land titles (whose powers extended no further than to give and report to Congress his opinions on Claims to land in which the US were only interested) had no authority ~~into~~ to enter into an Investigation of or decide on the titles of Individuals to those town lots — And that any conflicting Claims between them to any of those lots ought to be decided in a due Course of law according to their priority of possession, Cultivation or Inhabitation —

A contrary Construction ~~would in effect~~ would be predicated on the presumption that Congress had the power or at least that they meant which we are far from believing, to constitute a tribunal to judge of the private rights and Claims of contending Individuals, and it would in Effect be saying that he had the right of judging of those Claims not only between private Individuals, but also between them and the Inhabitants at large of the respective Towns &c to whom for the use of Schools, all lots &c not rightfully claimed had been reserved and given —

All legislative Acts are to be so construed as to endeavor if possible to give full Effect to every part of them — Taking this rule for our Guide, we clearly infer that Congress by making use of the words "shall be and the same are hereby confirmed" intended a full Confirmation of the Town and village lots, or they would not in the 3d and other Sections of the same Act, directing the Confirmation by the

Recorder in certain Cases of donation and other Claims to land have made use of the words shall be confirmed, in the future tense — Hence we conclude that as far as related to donation and other Claims to land, the recorder was vested with discretionary but limitted powers to judge and give his opinion on the merits of the different Claims as between the US and Individuals, but that he had no such authority as to the Town and village lots, they having by the former part of the act been confirmed.

The Instructions prayed for, "That the Confirmation by the "Recorder to Riviere did not confirm to him" ought in our opinion to have been given — The Confirmation given in Evidence and which the Court below admitted ~~as~~ conclusive as to the Title under it, vested in our opinion no better or other Title in Riviere or those claiming under him, than they had previously to such Confirmation — Priority of possession has a priority of right against all claiming by possession only.

~~other Instructions prayed for and refused were "That an adverse possession of the lot in question for 30 years past gave the Deft vassour a Title thereto as against the plaintiff and those under whom he claimed —~~

~~By the common law and uninterrupted possession for 20 years operates as a bar to a Recovery in an Action of Ejectment — these Instructions ought to have been given to the Jury, for their Consideration and Determination as to the fact and Judgment given according to their finding, for the defendant below if they found in the affirmative~~

The Evidence given to the Recorder must we presume have been fuller than that given on the Trial of the Cause, or he would not have confirmed a town lot of 300 feet square for such an Improvement as that of erecting a barn on part of a town square unaccompanied by Habitation or Inclosure, as far as appears by the bill of Exceptions, the act of Congress of 3 March 1813 providing that no Grant should be made by him for more land than was contained in the acknowledged and ascertained Boundaries of the tract claimed.

The Judgment of the Circuit Court is reversed with Costs ~~and the Cause remanded to that Court for a new Trial on the principles contained in this opinion~~

Mathias McGirk } Judges
Jno Rice Jones }

Vasquez No 9 332
vs
Benton } opinion

filed 17th Jany 1823
Th. Douglass Clk

332

In the Supreme Court.

October Term 1821.

Regis Vaspeau
vs
Thomas H. Benton } In Error.

And the said Regis Vaspeau by his attorney comes and says that in the record and proceedings and also in the rendition of the judgment aforesaid there is manifest error in this court; that the court erred in refusing to instruct the jury as required by Vaspeau's counsel on the several points set forth in the Bill of exceptions. and also in this that the court instructed the jury that no length of possession can give title to town lots in this country; that town lots and out lots were not confirmed by the act of congress unless the claimant has procured a confirmation from the Board of commissioners or recorder of land titles. Wherefore and for other errors in the record and proceedings aforesaid the said Regis prays that the judgment aforesaid may be reversed and held for nothing and that the said Regis may be restored to all things which

he has lost on occasion thereof.

J. Barton for Pltff
in error.

In nullo est Erratum

Geyer

for deft in Error

Regis bapem
vs Error assigned
Thos. H. Benton

filed April Sum 1821
A Nelson Clk.