Charleville, Victoria, et al vs. Chouteau, Gabrielle et al 1853 St. Louis Co 306/a

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Victoire Charleville et al) In the Supreme Court &c.
v & Statement of appellants) Abstract of original petition -
Gab.l S. Choutteau et al.)

The petition in this behalf substantially states that Victoire Richelet Verdon, mother of plaintiff, V. Charleville, about 29th Sept. 1796. died seized & possessed of the land in controversy viz: 1 × 40 arpens, being Survey 1464, (referring to exhibits) and according to the plat & survey of Jos. C. Brown, on file in the Surveyors office of s.d district in Book C. p.p. 94 & 95. - (exhibited.)

That on same day she duly executed a will, wherein she appointed Auguste Chouteau her testamentary executor - (a copy thereof is part of the record.) -

That said will having been duly probated & allowed, said Auguste Chouteau at once undertook a double trust, as Executor of s.d will; and as Guardian of the minor children of Mad. Verdon then living, viz: Henriette, Joseph, Louison, Victoire, Pelagie, & Godfrey - & reference is made to his official account in such capacity dated July 20. 1799. made part of the petition - That s.d Mad. Verdon had therefore been out of mind &c. been seized & possessed, by and through those under whom she claimed, absolutely in her own right of s.d property, and was so seized at her death -

That s.d Auguste Chouteau never sold said land under the will, but took & kept possession thereof without right & against equity - for his own benefit, in violation of his trust, & died in possession thereof & that defts his descendants are now in possession of the same, claiming title thereto, and denying any right or title in plff. -

That s.d Auguste Chouteau in breach of his trust & sold portions of said land, without accounting therefor & his descendants (defts) refuse to account for same.

Petition asks that such Sales & all interest & profits arising therefrom may be taken account of before some proper officer of Court &c.

Petition further states there has been no lawful divestiture of title to Sd estate out of them (petrs.) and that their interests are protected by the Treaty of 1803.

That Sd Exr took charge of all said children then minors, removed them to his house, and then took possession of all the estate, & on Oct. 30. 1796. proceeded to make public sale thereof & continued the same until 6th Novr as appears by Exhibit C.

That said sale was unlawful - that its notice & advertisement was not pursuant to Law - that the Executor did not file his inventory pursuant to Law - nor lawfully obtain a decree for the sale thereof - nor otherwise comply with the law in such cases made and provided.

That in his account said Executor fraudulently represented said estate as one half arpent in front by forty in depth -

That said Exr purchased at his own sale the land in controversy, the same then being in his possession & control & sold by virtue of his own office as Exr - and under such purchase defts claim possession.

That Sd Exr never accounted, although claiming under such purchase, & keeping possession thereunder, (and as his heirs & legal representatives have since done) nor paid into said estate, nor to any person entitled thereto, any consideration therefor - & that he has never accounted for any rents or profits thereof -

That after Sd Exr so came into possession of said land, & after Sd pretended sale and purchase, the territory in which it was being transferred to the U. States, Sr Auguste Chouteau on 4th March 1806. & thereafter presented said lot for confirmation to

himself before the Board of Commissioners to adjudicate respecting titles to Lands in the District of which St. Louis was a part. This, to his own use, contrary to good faith and against right.—

That he obtained a confirmation & patent therefor by "erroneous representations then and there made before the said Commissioners & in breach of his s.d trust."

That he, to his death, & his heirs, since, refuse to assign or release or convey same &c to plffs,—the heirs & legal representatives of Testatrix — & have always refused &c to sell the same according to the will aforesd & to the law — or to account for sales, or rents or profits of s.d land, and for the value of Testatrix estate rec.d and disposed of by him as Ex.r aforesd — or in any manner duly & lawfully to fulfil &c the trusts aforesd.

That before s.d Commissioners as Executor & Guardian aforesd he should by virtue of s.d trusts or either of them, have presented the claims of the 1st mentioned Lot, as Agent or Trustee of s.d estate, to the use & benefit of the heirs & devisees of s.d Testatrix — and should have obtained confirmation thereof in the name and for the benefit of the heirs of Madame Verdon — they being justly, lawfully, & equitably, entitled thereto.

But he has never discharged his trust, nor have his heirs since — But they have been realizing great profit and advantage therefrom ever since.

Petition then sets forth the parties defts — and the position of the original petitioner viz:—

That Mad. Verdon, (Testatrix) died leaving 6 minor children before named, all of whom died in infancy and unmarried other disability — except Complainant — who is then sole heir & the sole survivor of the heirs of s.d testatrix.—

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that she, pltff, while a minor, July 4. 1798, was married to Joseph Charleville of St. Louis - whose lawful wife she continued to be, until the 10th December 1843. when he died -

That she is of French descent as well as her brothers & sisters - all unable to speak or understand the English Language or comprehend proceedings therein involving their rights.

That S. Auguste Chouteau was a leading & prominent citizen of St Louis, acquainted with both Languages, wealthy, in whom Mad. Verdon reposed (& so have her heirs done) perfect confidence. That he had great influence with the French & Spanish officers & civil authorities at St. Louis. while the heirs were minors, & ignorant of proper knowledge to protect their rights, & destitute of influence -

Petition then shows petitioner Madame Victoire Charleville sole inheritrix of S. lot of land -

Claims an account to be taken &c, & prays for a restoration of her estate with mesne profits &c -

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Charleville
vs
Chonteaus Heirs

Circuit Court

Kenny & Gabriel Answer. (?)

First Denies the seigin and possession of Mrs Verdon, in any right in fee or otherwise. of the 34 2/100 acres described. survey N 1464. Denies that it was ever confirmed to La Roches Reps. Affirms a confirmation 7th June 1810. to Auguste Chonteau and exhibit a copy (A. C. No 1.) and say the defendants are heirs and representatives of Auguste Chonteau: under act of congress 3rd March 1807 § 2 which vested the absolute fee in him free of all equity or right of plaintiff, or those whom she represents: and he took a Patent therefor issuing to him 16th June 1813 (A. C. No 2) made upon Silas Bents survey, incorporated into the confirmation See exhibit (A. C. No 3)

— Denies that Verdon's Reps, or La Roche's Reps ever filed notice of their claim with the Recorder, as required by law and thereby their incohate rights if any are bared. Affirms the pretended confirmation to La Roches Reps to be a nullity And any action of Recorder or Congress subsequent to confirmation to Chonteau to be void: — and that Plff is in no way assignee or Repve of La Roche

Second.

Answer also states. That from 1793 Auguste Chonteau had possession of said tract, claiming

it in his own right; and so continued in possession ever since. Under Spanish government he claimed it "under various titles, namely" Under a sale and public adjudication to Auguste Chinteau, as the property of Jacques Labbé or Noie on the 29th of Apl 1792: and also under a sale and order of the Lieut Governor, as to one half of said arpent, of the effects of said Victoire Richelet Verdun, made in the fall of the year 1796. made in due form and by proper legal authority. whereat the same was struck off and sold to said Chinteau, at the price of the incumbrances on it. much and fair full value of the land" vested in Auguste Chinteau all Mad Verdons interest and title at her death, and all title that her children had "and was for the advantage of her estate and of her children".

(Jacq Noisé Exhibit A.C. No 4)
(Verdun do A.C No 5).

Third In Apl 1797. fence not having been erected along said 1/2 arpent which by law and custom the owner was bound to erect at his expense, the Lieut Gov. made a further order that "the fence should be put up at the expense of Verdons estate or the property to be disposed of to whomever could take it "on condition of payment for said fence and back incumbrances on the same" And Au Chinteau as he had the right to do, made said fence and paid said incumbrance and became the equitable owner of all the right of said Verdon or of her children if he had not so become before
[Exhibit of order A. C. No 6]

South States custom for each claimant to build fence in front of his lot in common fields or the land could be and usually was declared forfeited and

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and transfered to person pay in charges for repairing or putting up said fences and who would keep it up for the future - lands were then of such small value as to be frequently forfeited. This not worth enough to induce bidder for amount of expenses already accrued and necessary to be immediately advanced and thus the same was struck off to Chouteau at the sale at the amount of said charges and expenses.

That he still neglecting to make the necessary disbursements to erect said fence said order was made compelling him to act at once, and either pay out of the funds of the estate, or abandon the land to whom would pay, and so Chouteau owning land adjacent, took it in his own account which act was lawfull and right, and no injury to the estate of Richelet Veron but for the probable benefit of the same even had the title such as it was been in her at the time of her death which these defendants deny and assert there was no title whatever and that no conveyance was ever made to her and no title inchoate or otherwise, ever existed in her or her children, to said land, and the allusion to it was either a mistake at the time in the confusion of things at that period, or a wrong location has been made in latter times;

Fifth That even if Veron had an inchoate title at her death, the confirmation was a grant to Chouteau, and pltf can't go behind it, and as acts of congress cut off all claims not presented prior to 1st July 1808 and as La Roches Reps made no claim prior, Pltf is barred:

That if pltf could go behind those acts and the grant and Patent, yet as the title is vested in Chouteau and his Reps. by government and as no wrong or inequitable conduct is shown to have existed

on behalf of Auguste Chouteau Pltff can have no relief in this action,

Sixth = That by defts supposition, bona fide, and adverse under color of title" Verdons children and subclaimants were barred" before, and at the time "when" the Spanish law of prescription as to real estate was repealed

Seventh = "As Chouteau settled his accts with" proper judicial authorities of that day" embacing all his transactions as Exr of Verdon's will: which was after said sales and said orders of the Lieut Govr which settlement & adjustment was approved of by him the Lieut Govr and was made about 20th July 1799 [and here acknowleges the truth of our transactions filed] and then ballance struck. showing ballance in his hands and to credit of children = 1109 livres due to each. all which has been paid: and they or their agent received in full of all their claim on him, as Reps of said Verdon, they being aware of all that had been done by him as to the effects of said estate": Three receipts given in 1800 before Delapsus, among which was that of plaintiff and that of her husband = that of Henriette (Saye) before same in June 1801; that of Louis Verdon. 8th Nov 1804 before subscribing witnesses [Documents filed: A.C. Nos 7.8.9.10.11 Godfreys share was fully paid and over paid, the las payment having been made on his account to Pltffs husband [a copy of Godfreys acpt [A.C. No 13 from Aug Chouteaus books filed] and that these are under the circumstances complete admissions of Aug Chouteaus rights to said land, and its proceeds; and satisfaction of all claims of children against him

Eighth, Defts insist on lapse of time as

complete defence against each of plffs claims:
"By Spanish law such right was paraphernal,
as to which a married woman, owning
it was under no disability" And after fifty
years "unjust" & suspicion" and contrary to
equity principals "to open an age" or receive an
equity as to land" where no actual fraud no
concealment from those concerned and after
co temporaries have passed away
Ninth = To give relief now, after such lapse of
time and in this county where there are such
immense and rapid changes in value of
property, will lead to great public and priva-
te inconvenience: The land is now chiefly
in the limits of St Louis; a considerable portion
of it disposed of and divided out, in a judici-
al partition of real estate among the very nu
merous descendants and representatives of
said Auguste Chouteau many years since
without any knowledge or notice on this part
of plffs claim: That plffs recovery here "must
inevitably disturb the settlement of that estate
and the partitions of the lands" "bringing anoy-
ance, lawsuits and controversies, and probably great expense & loss": and all this in a
case very uncertain to the Court, whether they
would not be doing great injustice &c
Tenth

That they do not know whether Auguste Chou-
teau was guardian of all or any of Verdin's
children nor can they form a belief
Deny seizin of Mad Verdin, or any whom she
represents, of the land at her death, or any other
time.
Alleges the land to have been sold under the

the will in due form order and notice valid and binding by those laws, to said Aug Chouteau, who took possession of same and openly held it until his death in 1828.

Denies that he detained the same against Verdon's heirs without right and equity and against his duty as trustee &c but claimed and possessed it equitably and lawfully,

Denies that the Louisianna treaty gave or preserved any rights in said land to pl&ff or those under whom she claims; and any right she or they had at that sale was neither increased nor diminished by that treaty, but remained as therefore

Asserts that any right they might have had has been barred by sundry acts of Congress, by the confirmation, and by the acts and laches of the claimants as aforsaid.

Dont know and cant believe, whether Chouteau took charge of the children at the death of of Verdon or of any of them.

Admits he took possession of and administered on the Verdon's property, and did it lawfully and says tis now too late to enquire into irregularities and informalities in his acts,

Asserts said sale was lawful and in due notice and advertisement and was approved by the proper judicial authority p Lieut Govr that there was an inventory and appraisment in proper form which is among the archives of the country" and Chouteau had full authority to make the sale.

Saw that in Inventory of sale and Returns of sale this land if indeed it be the same

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nm claimed is said to be 1/2 Arpent by forty and such "is no mistake" And Verdon had no claim, title, or shadow of it, to more than that: and as to that had no legal right or title: Affirms, that he "violates no law or duty in his course as to said land," but did what was permitted by the laws and customs then in force and what was just and proper, and for the benefit of Verdon's estate, in bidding off said property and taking it at price of incumbrances on it and keeping up and reparing the public fence in front of it and even if he did mistake the law & custom yet he acted honestly and bona fide and with the concurrence and ratification of the Lieut Gov. the special authority having jurisdiction of said sales and settlements of estates and paid the full value of said land for it and nm after United States giving him, after 40 years possession, of title Court cant cant go behind and look into equities of parties and decree that United States erred in placing title in Aug Chouteau—

Eleventh.—Denies that Aug Chouteau made erroneous representations to board of Commissioners and he did not thereby obtain confirmation to him, nor was the procuring to himself a breach of his trust or duty as Executor or Guardian

Twelfth Says that after A. Chouteau's death such parts of this land as he had not sold in his life time was divided in partition among his heirs and representatives by decd in this Court to which Defts refers (in record) Then they had no notice or knowledge of Verdon's or of La Roche's Reps. nor never had until

about the time of bringing this suit (?)
That portions of it have since been sold, but they dont know by whom and for what prices and have no sufficient knowledge &
nor how much of said one by forty aspects remain unsold" nor can they tell unless a survey be made and lines traced to designate said Common Field lot,
That they suppose rents received by A. C. and by Reps & heirs "but how much and when and on what portions and who received them dont know and no sufficient knowledge &. And deny the plff has any right to an ape of them, That they have never been called on to ape until this suit; but if they had been would have refused. That no heir or representative of Verdon ever notified Au Chanteau of this said claim or right to land or proceeds.
Thirteenth = Said Aug Chanteau did account for and pay over all the proceeds of the sales of said estate property and lawfully to said heirs of Richelet Verdon, from all of whom he received full acquittances as before stated, except Godfrey who failed by premature death.
That "twas not his duty to present claim" for confirmation in name of Verdon's heirs, As Ex he did his duty and acted for interest of estate, and under special authority and ratified by it and no complaint made then when land was worth next to nothing and when expenses of putting up and keeping up the fence was more than full value of land Nor have these heirs put forth their claim till all these claims have been borne by Aug Chanteau and after payment of taxes many years

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when land was unproductive they all the time have been in the enjoyment of that portion of the funds of the estate saved to them by the sale of the said land for the amount of the incumbrances on it [Exhibit A. C. No 12 Inverty and Appt. of 1796.] [Do. No 5 Sale & Adjn. of 1796]
Fourteenth = Dont know and sufficent knowledge &c who were heirs and devisees of Verdon nor when born, married or died or residence or issue: believe all resided in St Louis know nothing of plffs right as heir of all the brothers & sisters. Suppose Plff was and is able to understand English. Aug Chouteau did not improperly exert his influence with Spanish authority. Suppose Verdon's heirs were on a par with the mass of St Louis population as intelligent as the rest: and were not misled defrauded or oppressed by said Auguste: unless it be oppression to buy a shadow of right to land, at the full value of the land at the time"
Fifteenth — Denies Plff right to any asc prayed for in Petition, from any of the Defts of land sold, or amount sales or rents &c
Says she is not entitled to relinquishment or conveyance, of lands now possession of Defts nor to have them sold.
Dont know whether assets enough, but this will depend on asc to be taken if plff recovers
Sixteenth Since suit begun, Amelia Ham, wife of Peter N Ham, one of Defts has died leaving minor children.
And Defts pray for judgment &c

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An amended petition was subsequently filed by leave of Court, by which the co-plaintiffs were made parties, they being children of the marriage between St. Joseph Charleville & Victoire Verdon, and producing a certified copy of a marriage settlement just discovered in the archives by which all the interest of St. Victoire in the lands aforesaid were by said Chouteau himself placed in Community for certain trusts therein created, which Coplaintiffs insist enure to them, and pray for joint relief accordingly with their mother Victoire -

And subsequently a supplemental petition was filed by plffs, setting forth a Conveyance by Madame Victoire Charleville plff. being a deed of gift & distribution equally amongst all her children, the coplffs herein, of her interest in this & other estates owned by her -

Defts filed a joint answer to both amended & supplemental petitions in substance denying knowledge of the marriage contract, nor whether A. Chouteau was present thereat: and that plffs have no interest thereby - and are entitled to no relief - the matters set forth in the original answer being insisted on -

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The plaintiffs offered in evidence the following testimony.

1. A plat & description of a Survey of $34\frac{2}{100}$ acres of land under the confirmation of 40 arpens to Laroche's representatives by the 2d Section of the Act of Congress of 29th Apl: 1816. being Survey No 1464.

2. A certified copy & translation of Mad: Verdon's will, in which she states that she leaves 6 children Henriette, Joseph, Louis, Godfrey, Victoire & Pelagie; appoints Auguste Chouteau, Executor, & makes her 6 children equal legatees.

3. A certified copy & translation of Auguste Chouteau's account of settlement of the Estate of Madame Verdon, the same containing no mention of the lot in question,

4. A certified copy of A Chouteau's auction sale of Mad Verdon's property, in which he states that he himself became the purchaser of this lot, in consideration of having to enclose the same, &c.

5. Extracts from Documents filed by Auguste Chouteau, with the Recorder of Land Titles, in support of his claim to the land known as the "Mill Tract."
containing among other things – "An authorization by Lieutenant Gov: Trudeau to A. Chouteau Exor of the Estate of Mrs Verdon to abandon the ½ arpent belonging to that estate to whomsoever is willing to take it, in order that it may be enclosed before the season of sowing grain." ~~also states~~

6. Exhibit – containing a certified transcript of Chouteau's claim to the Mill Tract. only part of which was offered by plffs – so much only as referred to their tract. –

7. Certified copy & translation of Duralde's Survey of the Laroche 40 arpent lot, situated in the prairie adjoining this village & immediately joining that of Mr Condé. & on the other side that of Amable Dion & on the other two sides by the Kings Domain.

8. Certified copy & translation of Duralde's Survey of the adjoining lots of Condé & Dion, above mentioned

9. Plat of Survey No 1464

10. Plat of Survey of Township 45. R. 7. E.

11. Survey of land in controversy made by order of the St Louis Circuit Court.

12. Deed from Condé to Vachard, 4th July 1776, in which Condé describes his land as bounded by Laroche –

12½ Deed from Vachard to Chouteau. 19th Oct: 1784 for land in the prairie adjoining the village bounded on one side by land of Nicholas Boche-nau & on the other by land of Louis Ride.

13. Deed from N. Bucho to Mad: Victoire Verdon 20th Nov: 1788. ½ arpent by 40 arpents situated in the big prairie adjoining this town bounded on one side by land of Santiage L'abbé,

14. Deed – Gnion or Dion to L. Ride. 14th Jan. 1809 1 × 40 arpents in prairie adjoining village.

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15. Louis Rides official Sale of his father's property - Mentioning the Sale of the last mentioned lot to Jacques Labbé.

16. ~~Sale of~~ Certified Copy of Sale of said last mentioned lot, April 15. 1792. by L'abbé's Estate, to Auguste Choateau.

17. The Marriage Contract between Joseph Charleville & Victoire Verdon, creating a community of property real & personal.

18. Victoire Charleville to J.B. Charleville & others, Deed. 15th May 1851. Conveying property in question to her Children.

19. Inventory of A Chonteau, Exer testamentary of Mad Verdin's Estate, Containing mention of the land in question.

20. Marriage Contract between Joseph Verdon & Victoire Richelet, 9th May. 1772.

21. Article of separation between Verdon & wife 7th March 1785. by which She became sole owner of the property then owned by the parties, excepting a few small articles specially reserved to the husband.

The following testimony was then produced orally by witnesses.

Plaintiffs then introduced Charles Edward Schultze, as a witness, who testified in substance as follows:

Schultze

In obedience to the order of this Court I as Deputy County Surveyor, commenced my Survey of the United States Survey number 1464, on its South East corner, I found there no corner, but by given courses and distances and filed notes I established it near the middle of Fourth and Market streets, thence I ran North Seventy four degrees fifty five minutes West, one hundred and twenty chains, thirty nine links, which brought me to the middle or centre line of Pratte Avenue and which corner is in a pond. The original filed notes called for a pond, and I found one there, Thence I ran South 26½° W. two chains 97 links with the Centre line of Pratte Avenue, and found no corner there, and no bearings given. I established a corner. Thence I ran South 74° 55' East, one hundred and twenty chains, twenty Six links, which brought me back to Fourth street, on the side walk. And I there drove an Iron stake, Thence I ran North 28¾° East three chains, seven ½ links to the place of begin=ning. The lot contains forty Superficial arpens, and in linear measure one by forty arpens, My commen=cing point was the South East corner of U.S. Survey 1265. The Northern boundary line of the tract has been made the Northern boundary line of the Chouteau Mill tract Survey numbered 363 under S. Segueat and others. This northern line being extended, I found, one two and three stones, being part of the Northern line of Survey No. 363. Three stones are now in what now is Laclede Avenue, about forty feet from the Southern, and about twenty feet from the Northern line of said Avenue. This proved to me my line was correct. I can test the accuracy of my Survey by these stones. I made my Survey from

the field notes as shown me in Exhibit K of plaintiffs petition, and also by the record of Duralde's Original Survey, This last as I recollect agrees with the United States Survey on file, by Brown.

Cr Cross Examination.

The Angle at Fourth street of the North and East line measured by degrees and minutes is 76°. 30'. And the other angle is 103°. 10'. I have made an allowance for the variation of the Compass from Brown's Survey. I Know what the variation was at the time of Brown's Survey, but not at the time of Duralde's. I made my Survey by the true Meridian. Duralde's Survey calls for an angle of 101°. 15, at the North East corner of Survey No. 1464. The variation of the Compass is now 7°. 45' East from North, and is yet going East. I had Survey 363 before me when I made this survey. I was able fully to fix my points so as to fix the East line and the corner. I found a house was called for at one corner. It was gone. But on examination of the City Engineer's Office, I found it had been there, but was removed, to widen the street. If I were to commence at the N. E. corner of the Lot & make an Obtuse Angle of 101°. 15'. with the East line, so as to change the North line, the North line would cross Market street to Chesnut, in a different direction from the Surveys, When I made the Survey, a Mr. Hunt was present. No defendant was present that I Know of, Mr. Hunt gave me no directions I acted before both opponents. The Mr. Hunt was not Charles Hunt. I dont recollect whether he had one eye or not. No one was present for Mr. Lucas. I am deputy Surveyor for the County & made the map referred to.

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Plaintiff then introduced William H. Cozzens. Sur=
=veyor &c. who testified in substance.

Cozens.

I was raised by All the old Surveyor's here. I am now one myself. The old Surveyor's have shown me all these corners. I have been on the lines of many of these fields with Surveyors Joseph C. Brown, René Paul and Charles D. Ward. They are all dead. I have learned many of these lines. I have in Company of Joseph C. Brown twice run, the North line of A. Chouteau's tract under Ainable Dion being U. S. Survey No. 1265. I also ran it once in Company with René Paul. Also with both of them I have run the Northern line of extension of A Chouteau's Mill tract in La=
=clede Avenue. The Mill tract calls for 8 by 80 arpents. On the North line of Survey U. S. No. 1265 there were many old Stones. These old Surveyors recognized them as lines. This line between Chouteau & Lucas being thought very important. I ran it for the last time in 1846, with Joseph C. Brown. He was then crippled and surveying on horseback for John C. Lucas. We at that time found many old stones West of Sixteenth street. East thereof the Opening of streets and roads had removed the marks. We then found the North West corner of U. S. Survey No. 1265, a flat Stone. Our compass was adjusted to a variation of 7°. 30'. East of North, Brown's was reported at the office at 8°. I have read over many of Duralde's documents. He notes 7°. 30', but does not adjust it officially. At that day Compasses were not made to adjust the same as they now are. In Duralde's time they ran with

the needle only not noticing the variation. I have had before me Duralde's Official Account of the Survey of the land in the Map made in this case by H. Schultze the preceding witness. It does not conform exactly to Duralde, Brown died in 1848.
Cross Examined.

There is a difficulty about Chonteau's Sur=
=vey under Lequest. The present Surveyes made to contain too much but it is believed the error is on the South side. The lines of all the Sur=
=veys correspond in ~~Diameter~~ direction with those reported by H. Schultze. His report corresponds with All the others which have been settled under Du=
=ralde's Surveys; And just as they have been invariably recognized by all United States and other Surveys. These lines do not strictly correspond with the Courses of Duralde but the Angles are precisely the Same. The courses followed in Schultze's Survey, are those of all others parallel therewith, yet which are similarly described in Duralde's Survey with his Survey of No. 464.

Plaintiffs then offered the testimony of H. Charles San=
=guinette who stated in substance as follows.

Sanguinette

I have lived here Sixty nine years. I Knew Madame Verdon and her family. She died about fifty Six or 57 years ago. She left Six children. Her Sons were Joseph, Louison & Godfrey, Madame Bour=
=gillon was her daughter. Pelagie another, and Ma=
=dame Charlenlle the plaintiff in this Suit another. I dont remember their ages. Madame Bourgellon is dead without family as I believe. Joseph died unmar=
=ried about forty years ago. Louison, I have heard, died

many years ago unmarried. Pelagie left the County 35 or 36 years ago I dont Know whether she is alive or dead. She married a Spanish Officer named Molina, And left here about fifteen years after the change of Government. Godfrey is generally said to be dead, and never was married. I believe the family is all dead except Mrs Charleville, I Knew her husband Joseph Charleville. He died nine or ten years ago. Madame Charleville did not speak English, and has had a limited education if any I Knew Auguste Chouteau very well. He was skilful in business & pretty well educated. He had the confidence of the old french people as being an honest Gentleman.

Cross Examined.

Pelagie went to New Orleans And I was told to Havanna. I dont Know whether she is alive or not. I was told Joseph died in New Orleans. Louisiana Arkansas. Pelagie had no children, when she left here. She was then between fifteen & twenty years old. Madame Bourgillon lived with her Sister on the River Des Peres. It is 30 or 40 years since I saw her. She died 15 or 16 years ago. I went to the Rocky Mountains when I was 28 or 29 years old, Spent about 6 years there, and 6 years amongst the Indians. Old Madame Verdon ran boats or barges between St Louis and New Orleans. She used to buy goods there and bring them here to sell, Joseph lived at different places, I cant say what time he died. He did not go to reside in New Orleans. He went there with the Spanish troops in 1804, or 1805. He died there the same year.

He was perhaps 35 or 40 when he died. He was the oldest of the sons. Louison was next oldest. Madame Bourgillon was older than Joseph. She was married twice. Her first husband, Bourgillon who died before the Change of Government, and before Mr Verdon. She then married Mr Clermont. Godfrey was the youngest child, some 15 or 20 years younger than myself. Pelagie was older than him. I knew their father and mother, but dont know which died first. They lived separately & had done so some years before her death, I have no recollection of their living together. My memory goes back 60 or 65 years. I was born here and lived here until I was 20 years old. Madame Verdon had a house in the Village, I was at her house several times ~~four~~ or five years before her death. I have been told Godfrey died many years back. Mr Charleville told me so 15 or 16 years ago. I had also heard of it before, perhaps 2 or 3 years. Certainly more than 20. I dont know exactly. It might be between 20 & 30 years, I dont recollect any other relations telling me so. I dont know of my own knowledge where he died. It was near or about New Orleans. There was a difference of 2. 3. 4 years between the ages of Pelagie & Godfrey. Madame Char-leville was, I believe, older than Pelagie and next older than her. Some 2 or 3 ~~years~~ or more years difference. My wife is related to Madame Charleville. One of my sons married her grand daughter. I dont know if Pelagie had children or not. Mr Aug. Chouteau lived here in St Louis up to his death some ten or 12 years ago.

Re Examined.

I went to the Mountains in 1807, was absent five years & more. Some time after my return I heard of Godfrey's death. I return=ned in 1812, One or two years after that I heard of it. It was a general rumor cur=rent through St Louis that the Sons all were dead. My wife is a Cousin of Madame Char=leville's deceased husband.

Plaintiffs next introduced Charles Roderman who testified in substance as follows:

Roderman

I Know Ma=dame Charleville the plaintiff well. Have Known her since 1834. She does not speak English. I Knew her husband, was at his fu=neral. He was burried out here in Graves. He died in 1842 or 1843. I believe in 1843. I Know Madame Bourgeillon. She is dead without husband or children so far as I Know. I never Knew any other of her brothers or sisters. She died a short time either before or after Mr. Charleville. Madame Charleville the plaintiff is illiterate. She cannot read nor write, except she once learned to write her own name and that was all. I never Knew Auguste Chouteau.

Crop Examined

The husband of Madame Clermont (Bourgillon) died before I came here, When I came here she was a widow. Joseph Char=leville was an intelligent man. Madame Charleville is a woman of good intelligence. When

I came here Mr Charleville And his wife resi=
=ded on the River DesPeres, 10 miles from the City,
Mrs Charleville has told me she used formerly
to write her name, but had forgotten it from
want of practice.
R Examined.

Mrs Charleville was a woman of sound,
good, strong Sense, on a par with old French la=
=dies here. The old French here were not generally
well educated.

Antoine Smith

Plaintiffs then introduced Antoine Smith, who
testified in Substance as follows: I was eighty
years old on the 6th of January 1852. I live at
Florissant, I came to St Louis Sixty three years
ago. on the 5th August last. I Knew Madame
Victoire Richelet Verdon, during her lifetime.
She left six children, tree boys and three
girls. Joseph was the oldest. Louison the Second,
Godfrey the 3d. The oldest of her daughters was
Madame Bourgillon. Madame Charleville
the Second, And Madame Moulina the
third, Mrs Bourgillon was the eldest. I
dont remember her christian name. Joseph
was the neat oldest, Madame Charleville neat.
Louison next, Madame Moulina next, And
Godfrey the Yaungest. I cant Say whether Ma=
=dame Bourgillon is dead or not. I have not
seen her for many years, have not heard of
her for ten years. I have never Known any
children of her. Her husband died at New
Orleans forty or fifty years ago. She afterwards
married a Mr Clermont, About twenty five years

ago. I dont Know whether she had any children by him. Joseph died forty Seven years ago in New Orleans, I dont Know whether Mr. Clermont is dead or not. Joseph was never married.
Pelagie, Madame Moulina, went to Havanna when she got married, which happened five or Six years before the change of Government. I think, Moulina was Captain of a Revenue Barge under the Spanish Government, manned by about 25 men, and employed on the Mississippi. They, Moulina & wife, went to Havanna. I have never heard them spoken of Since that time. Laveau is dead. He died about forty one or two years ago, on the River St. Francis; he was not married.

Godfrey died at Sea, forty Six or forty Seven years ago. He was not married. He was with Lafitte (the pirate)

I Knew Joseph Charleville the husband of Mrs. Victoire Charleville. He died, when, I do not Know. He may have been dead four or five years before. I Knew anything of his death.

I Knew Madame Verdon from the time that I came to St. Louis until her death. She lived on Main street at the corner of Myrtle. She and her husband lived ~~together~~ apart. She lived with her children. She had a lot of ground containing about one arpent by forty. It extended to the fort. This lot was in the Common Fields, adjoining the town. The fence which separated the Common fields from the town passed by the side of the Fort, leaved

on it. By saying that "she had a lot of ground" I mean to say that at the time of, and before her death, it was cultivated by her children, who lived with her, I saw no one at work upon it after her death. That lot of ground was North of the Fort, and near it. This Fort stood with its West corner on Fifth street, And its East corner on Fourth street. The Fort abutted on Walnut street, & extended Northwards. A part of the Old powder Mill, & half of the Old fort are still standing. One fence enclosed all of the Common Fields. Her children lived with her & cultivated this lot before her. Fifi Bour-
Beaugeron -gillon cultivated the lot, North of this. I do not Know whether he was guardian of L'abbé. I was not present at L'abbé's Sale. L'abbé had several lots and worked on one belonging to Fifi Bourgillon I speak of Horse, the father
Beaugeron of François L'abbé, a Witness in this cause

Cross Examination.

Godfrey left here a long time ago, before the change of Government. He was about fifteen or Sixteen years old when he left. He left about one year before the change of Government. He never returned to St. Louis. I Know the time of his death from having heard it stated by those who were with him. Godfrey was about twelve years old when his mother died. He may have been older Godfrey Survived Joseph. Joseph was the first of the boys that died.

Plaintiffs then introduced Jacques (François) Horse dit Labbé, who in substance as follows:

François Noisé. } I am Seventy years old, I live at Cahokia, I was born in St Louis & have Known it ever Since. My father's name was Jacques Noisé dit L'abbé. Jacques Noisé and Jacques L'abbé were the Same person. My father lived below here on Second street. I Knew Madame Victoire Richelet Verdon, She dived with her children, Her husband lived on Second street, They did not live together. Madame Verdon left Six children living at the time of her death, three boys and three girls. Mrs Charleville is the only one of the Children now living, Mrs Mou=lina went to Havanna, Godfrey died at sea, He was the yougest. I have understood from Some one that accompanied her that Madame Mou=lina is dead. I heard three or four years after his death that Louison was dead. None of the boys were married, the girls were. I dont Know when Godfrey died. I only heard that he ~~died~~ was dead. This was about twenty years ago. Seven or eight years after the change of Government, it may have been later or sooner. I Knew Madame Bourgillon, She was daughter of Madame Verdon. She had one child; it is dead. Her husband went to New Orleans. She afterwards married Clermont. He is dead. They had no children. I Knew Joseph Charleville, husband of Madame Char=leville He died about nine or ten years go.

On Cross Examination

I never learned from any one except the person above named, of the death of Mrs Moulina. She left here immediately

after her marriage. I dont Know whether she had any children afterwards. She had none before she left.

Plaintiffs then introduced Joseph LaBarge who testified in substance as follows:

LaBarge. I will be sixty years old on the 4th of July next. I have been in this Country forty eight years. I came after the change of Government, the year after the Spanish left. I was not acquainted with Mr Verdon. I Knew Mrs Charleville and Mrs. Clermont who was first married to Bourgillon. I Knew Joseph Charleville husband of Mrs Charleville.

William H. Cozzens. Plaintiffs then reintroduced W. H. Cozzens, who testified as follows: The Old Fort stood at the intersection of Walnut & Fourth streets, near the South West corner of the intersection of the two streets. The Laroche Arpent stands North and West of this fort. It does not touch the fort, but extends as far as the line of fortification immediately in rear of the fort, and was the adjoining arpent. There was no other fort on that vicinity.

Cross Examination.

This fort used to be called Fort St Louis, and is represented on the Spanish Survey of Charleau by Soulard, which is filed as part of Exhibit A. C. No. 1. I am acquainted with the lines of Bent's survey. It was made in 1809 I think. I was acquainted with & saw run the North lines of the Charleau tract

It was surveyed first by Bent, under order of the Commissioners preparatory to Confirmation. Secondly by Joseph C. Brown in 1817, in order to ascertain the boundaries of the Confirmations. And thirdly by Rene Paul in 1825 under instructions dated 1824. I did not attend either of these Surveyors on their official Surveys, but they have subsequently pointed out the Stones and other marks to me. The North line of this Survey Commences nearly with the South line of Market street, & running westward bears South of Market street. The North line of Survey No. 363, and No 1464, are identical. This property has been improved. There are very few vacant lots on it until you reach the Western portion of it. I remember it from my infancy. It was early improved. I went to school in a house located on it. Where Wyman's Hall now stands, when I was seven years old, Mrs Charless' house was then built on it, & several others on 6th street. There was no house on it beyond 7th street. I was born in 1819. Gidding's house was the one in which I went to school. This property was laid out by Lucas & Chouteau as the first addition to St Louis in 1816.

The present value of the Laroche Arpent without the improvements is about $200,000. The improvements are probably worth $30,000.

Objected to by Plaintiffs

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Charleville et al

v { Statement
agreed on

Chouteau et al

Filed 4th November 1852
W.S. Glanville
Clerk

Charleville & al
vs
Chouteau & al
} In Supreme Court

The said plaintiffs by their attorneys come and say that in the record and proceedings in this case the Judge of the Circuit Court committed manifest error to the prejudice of the plaintiffs and that they set down and assign the following errors to wit.

1st The court erred in refusing to grant a new trial and rehearing in this case on the motion of the plaintiffs

2nd The court erred in refusing to strike the name of Victoire Charleville from the record as plaintiff in this case.

3rd The court erred in granting the instruction asked by the defendants

4th The court erred in refusing to permit the plaintiffs to withdraw from the evidence the document marked (Exhibit A. C. No 1 of defendants answer)

5th The court erred in regarding as testimony in the case any part of said document (Exhibit A.C. No 1.) except that part relating to the claim of Auguste Chouteau to the land in controversy under Madam Verdon, they having offered no other part thereof as testimony for Pltffs.

6th The Court erred in admitting incompetent evidence

7th The Court erred in dismissing the case

8th The Court erred in rendering a decree dismissing the case as the same was contrary to the law and evidence of the case

9th The Court erred in dismissing the case on the motion of the defendants

10th The decree of said Court ought to have been in favor of plaintiffs and not for defendants.

11th The decree of said Court was in ~~violation~~ Contravention of private rights of plaintiffs protected by the Treaty of Cession of 1803.

12th The decree of S. Court was in violation & contravention of the Acts of Congress in such cases made and provided –

All which the plaintiffs are ready to verify by the record & proceeding in said case wherefore they pray judgement &

Buckner & Delafield ~~[illegible]~~ attorneys for Plffs, appellants –

There is no error

Haight & Shepley –

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Charleville et al

vs } Assignment of Errors.

Cholteau et al

Filed 4th November 1862
Wm S. Glanville
clerk.

Clearwater et al
v Agreement —
Chouteau et a

In this cause it is agreed by both parties that the cause now on appeal to the Supreme Court of Mo. be tried as though it had been in the Court below a trial by Jury, and shall be tried on its merits on the case as thus presented to the Court — The case to be heard as though it were a jury trial & the Court at the close of plaintiffs case had given an instruction that the plaintiff had not made out a case entitling to any verdict decree or judgment in his favor & plaintiff ~~had thereupon submitted to a nonsuit judgment for defendants — with leave to move to set aside &c.~~ the Court ~~decree gave~~ dismissed the case and entered judgment for the

defendants -

Hengst & Field
for ~~deffts~~ deffts -
appellees

Buckner & Delafield
p. ~~deffts~~
appellants

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Charleville et al.

vs.

Charleau et al.

Agreement of parties to try this cause in this Court as if before a jury.

Filed 5th November 1852
Wm. S. Glanville, Clerk.

Also, another half arpent of land by forty arpents, situated back of the fort, and between Don Agusto Chouteau and one Marly, and having been proclaimed [offered for sale], on the two preceding Sundays, and on this [Sunday], without any bidder's presenting himself, and the said land being subject to the charges of fences, which are now indispensable, and would be costly, — — to the said estate, and prejudicial to the creditors and heirs, Don Augusto Chouteau offering to bear said charges, as the value of the land; the which was adjudged [knocked down] to him, in order that he should pay for or cause to be made, the said fences. And there being no more to sell, this present auction was concluded, and its amount was Twenty Thousand Two Hundred and Forty Four Livres, current money of the country, the collection of which has been left in charge of the executor, Don Augusto Chouteau, who signed it, with the witnesses present, Don Manuel Gonzales Moro, and Juan Fernandez, and the Lieutenant Governor, I who certify. —

Manuel Gonzales Moro
Auguste Chouteau
Juan Fernandez. Zenon Trudeau -

Translated (literally, bad grammar included). by.
Hos. C. Reynolds. Decr. 15th/52.

Charleville

to

Chanteau

Translation by

J. C. Reynolds.

Charleville Lottiers

vs

Chouteau

As the only evidence given in this case was given by the plaintiffs and the Court on motion decided that they had not made a case upon which they could recover we are confined to the consideration of that case.

It sufficiently appears from the statements of the petition and the plaintiffs evidence that the land now in controversy was embraced in a larger tract claimed by Auguste Chouteau before the first board of Commissioners for his own benefit and as his own property and that his claim was confirmed by the board on the 7 June 1810 and that a patent issued on that confirmation dated the 16th June 1813. The plaintiffs claim that Chouteau being Executor of the will of Madame Rechelet Verdun their ancestor, authorised by the will to make sale of her property, ~~at a public~~ became the purchaser of the property now claimed, at a public sale of her effects and that such purchase was in violation of law and void: that the title thus acquired was exhibited before the Commissioners by Chouteau and became the foundation of the confirmation which was made to him. This allegation states the foundation of the present suit, for if Madame Verdun did not own the property, or if Chouteau did not illegally acquire her title, or if that title was not the foundation of the confirmation made by the board, the plaintiffs have no pretence of right to the property. In support of the allegations in the petition the plaintiffs gave in evidence the account of the pub-

-he sale of Madam Verdons property signed by the Lieutenant Governor and his assisting witnesses and which comes from the Spanish archives. The last entry is in these words as translated "also another half arpent of land by forty arpents situated back of the fort and between Don Augusto Chouteau and one Marly, and having been offered for sale on the two preceding Sundays, and on this, without any bidder presenting himself, and the said land being subject to the charges of fencing which are now indispensable and would be costly to the said estate and prejudicial to the creditors and heirs Don Augusto Chouteau offering to bear said charges as the value of the land, the which was adjudged to him in order that he should pay for or cause to be made the said fences. And there being no more to sell the present auction is closed"

The land involved in this suit is described in the petition as a tract of one by forty arpents confirmed to the representatives of Laroche the survey of which is number 1464 situated in the common fields of St Louis. There is shewn in the evidence no conveyance from Laroche to any person but there are conveyances in evidence for the lots originally surveyed as adjoining that of Laroche. As surveyed under the Spanish Government Laroche had one arpent by forty, On one side was a tract of one by forty arpents surveyed for Dion and on the other a tract of similar dimensions surveyed for Conde both of these ~~adjoining~~ surveys called for Laroche as adjoining. Several conveyances were given in evidence with the design of tracing the titles of these adjoining tracts to Chouteau and ~~that~~ shewing that in at least one of them Madam Verdun was named

as the proprietor of adjoining land. It impossible from the descriptions and recitals in these deeds to say how much land Madam Verdun owned there if she really owned any, for the Conde title is represented as covering three arpents by forty when he sells it, and when his grantee conveys to Chouteau it is described as two arpents by forty and Dions tract which appears to have been sold by his heirs for a cow and calf is called one arpent by forty but ~~before~~ in the public sale made of it afterwards it is described as having one arpent and a half in front. ~~This is the result of an~~ It is apparent upon an examination of these conveyances that the parties to them were either ignorant of the real quantity of land they owned or that they had acquired title to a larger quantity than was originally surveyed for Dion and for Conde by purchasing adjoining lands. There is nothing to indicate that such increase of their quantities was not by the acquisition of that originally surveyed for Laroche. The only direct conveyance made to Madam Verdun was made by Vucho for a tract of one half arpent in front by forty in depth. It is true that when Chouteau filed his claim before the Commissioners for the large tract which was surveyed for him under the Spanish government and which included the land now in controversy according to a plat filed with his claim he also stated the titles to different parts of the larger tract and while he claimed a large tract which had been originally conceded to Laclede Leguest he also stated his right ~~acquired~~ to one half arpent under the order made by the Lieutenant Governor in relation to the fence which the representatives of Madam Verdun were bound to make

If the acts of Chonteau shall be held to amount to the admission that any title to any land of this was ever in Madam Verdun the admission cannot be extended beyond the half arpent in front for which she had a conveyance from Vucho and it is difficult if not impossible to ascertain that the title of Laroche had ever become vested in her for any of the tract originally surveyed for him. But for the present the farther consideration of the question whether any title was shewn in Madam Verdun to any of the Laroche tract may be waived as it will hereafter appear that Chonteau already owned the tract of Laclede Legueste which interfered with the Laroche tract and the title to which was confirmed by the board.

The question whether Chonteau illegally acquired the title to the land which Madam Verdun claimed rests upon the ground that being executor of her will he could not purchase any part of the property which it was his duty to administer. In 1838 in the case of McNair vs Hunt 5 Mo R 301 it was decided, that under the Spanish law a person who was an executor and the guardian of minors might purchase the land of the deceased at a judicial sale when the purchase was made with the consent of the judge and that unless the minors impeached the sale within four years after they came of age they were barred by the prescription of four years. In Richond & others vs Elrod & others 4 Howard 55 the Supreme Court of the United States expresses a different opinion in relation to the right of an executor to purchase any of the property of the estate which he is to administer. The opinion delivered by Mr Justice Wayne after stating the rule as recognised in the English and

American courts of equity, that one occupying a fiduciary relation shall not be permitted to purchase the subject of the trust, shews that the same rule prevails under the civil law, and very briefly states the Spanish law on the question. It is not thought necessary to consider the question in this case for it is apparent that we have not before us an ordinary case of the sale of property belonging to a succession to the executor of the deceased.

We are to take the act of the Lieutenant Governor transferring the property to Chouteau as truly stating the facts of the case. It is there stated that the land had been offered for sale on two Sundays in succession without any bidder, and that on the day of sale there was no bidder, and that as there existed a necessity for the repair of the fence of the common field, and Chouteau was willing to take that burden upon himself for the land, it was accordingly adjudged to him. It is obvious that this transaction has connexion with some municipal regulation existing in the village of St Louis in relation to the common field of the villagers, and although the regulations adopted by the syndics with the approbation and sanction of the Lieutenant Governor are not spread out upon the record yet we find them in Mackay vs Dillon 4 Howard 431. The common field cultivated by the inhabitants was protected from the cattle and horses by a fence running in front of the common field, which inclosed the village and such part of the adjacent land as was used in common for pasturage each owner of a common field lot being obliged to maintain the fence in front of his own lot. Instead of inclosing the field with a fence the animals were

were confined within a fence which enclosed the village and common. This fence was made in part along the front line of the common field lots. The mode of maintaining this fence, is seen, so far as there were written regulations, in those which are published in Mackay vs Dillon In Strother vs Lucas 12 Peters 458 it is said "it appears from the evidence that there was an officer in the village called by the inhabitants a Syndic and in the Spanish laws a regidore whose duty and authority were to see that the common fences of the forty arpen lots were kept in repair. He would direct them to be inspected, and if found out of repair, would direct the owner of the lot in front of which it was defective to make the repairs: if the owner were on a journey the syndic would have the repairs made and make the owner pay his share on his return, otherwise he would give the land to another person who would make the share of the fence. This was a regulation in villages by the authority of the commandant and municipal authorities in conformity with the laws of Spain" We have then an idea of the existence of regulations, in the enforcement of which village communities were interested, and which were made the grounds for transferring the title of such property from one person to another and we can understand the public considerations which induced the Lieutenant Governor to transfer this land to Chorteau. When it had been offered for sale and no person was willing to purchase it and when there was a public necessity that there should be an owner who would bear the burden of making the fence the Lieutenant Governor transferred it to one who was willing to bear the charge. When we are considering the effect of such an act we are liable to fall into great errors if we

allow ourselves to be influenced by the ideas we now have of the regular and formal mode of disposing of valuable property in a regulated and matured condition of society under fixed and known laws administered by officers belonging to different departments each with prescribed powers. The officer who made this disposition of the property vested in himself the powers which under our system would belong to distinct offices. He was the chief executive officer and at the same time he was the highest judicial officer in this part of Louisiana. He made concessions of the royal domain, he ~~con~~ ordered and conducted judicial sales he acted as a notary and seems to have taken the control of all public affairs ~~whatever~~ in the province. The inhabitants looked to him as the representative of their sovereign. Such an officer, at a post where there were collected a small number of inhabitants, where property was to be had for the asking, disposes of a piece of land, some twenty arpens belonging to the estate of a deceased individual for which no person will bid, and being subject to a public burden he gives it to the executor if he will bear its share of the public charge. To this case it is attempted to apply the rule that an executor cannot purchase the property of the estate he is required to administer and ~~it~~ after the title has been confirmed by the United States and forty years after it has been patented, after the principal part of it has been for many years in a flourishing city and covered with costly structures it is said the Lieutenant Governor who disposed of the property more than fifty years ago, simply made an ordinary sale of it to the executor and the whole title was and is but a mere nullity -

The most natural and as we think the ~~most~~ most correct view to take of the act of the Lieutenant Governor is that it was a governmental act transferring the property upon considerations affecting the public as well as from regard for the interests of those concerned in the estate and therefore we hold that the rule in relation to an executors purchase at his own sale occupying the position both of seller and purchaser does not apply to the present case

It is also believed to be but a regular and natural consequence of this view, that no court in the succeeding government, after the act of the Lieutenant Governor has been recognised, and the title under it confirmed by the United States, can review and annul the act and the title thus recognised and confirmed. So that if the land was held by Chouteau under the confirmation of his claim originating in the act of the Lieutenant Governor his title could not be disturbed by the plaintiffs.

But the case presents another aspect as decided by unfavorable to the claim of the plaintiffs. When Chouteau presented his claim for confirmation he filed as it was required the documentary evidence of his title and the first document in date and that which seems to be chiefly regarded in the subsequent action of the commissioners was a concession signed by St Ange and Labuxiere dated 11 August 1766 in which there was conceded to Laclede Laguest a tract of ~~eight~~ arpens in front by eighty arpens deep extending from the land of Dion to the little river and having ~~forty~~ eighty arpens in depth. The title to this tract was acquired by Chouteau at a judicial sale of the property of the grantee. He filed the plat of a survey made under the Spanish government in 1803 of the

tract thus granted and that plat comprehends the land involved in this controversy. In the minutes of the proceeding of the Board of September 12th. 1808 ~~it~~ the claim of Chonteau is thus noticed on the record "Auguste Chonteau agpnee of Laclede Legnest claiming a tract of eight arpens more or less in front by eighty arpents in depth situated in the prairie of St Louis produces a concepion from St Auge Lieutenant Governor dated August 11th 1766 and a certificate of survey of said land dated 23 august 1803 for 1336 arpens" At the same time as appears from the entries in the minutes he was claiming two smale ~~tracts~~ tracts which had been granted to him adjoining the larger tract one of which was of two by ten arpents and the other four by thirteen. On the 24th January 1809 the Board order a survey to be made of the three tracts the larger according to the concepion to Legnest the other two according to the concepions to Chonteau. The survey was accordingly made and returned to the board. The final action of the board upon the ~~claim~~ claim was had on the 7 June 1810 and there it is represented as the claim of Auguste Chonteau agpnee of Laclede Legnest claiming eight by eighty arpents and the decision of the board is in these words "The Board grant to Auguste Chonteau one thousand and thirty one acres of land under 2d section of the act of Congress &c as described in the plat of survey ordered by the board and returned by Silas Bent principal deputy surveyor dated 29 November 1809. This survey made by Bent as appears not only by its calls but by the subsequent United States surveys and plats given in evidence includes the land in controversy in this action. The confirmation is according to the survey of Bent and that survey is according

to the concepion to Laclede Legnest. Under this survey the land was patented to Chouteau. Now it is clear that neither the orginal title of Laroche nor any title derived from the estate of Madam Verdun formed any part of the basis of this confirmation nor is either noticed in the proceedings before the Board. It appears by the documents filed with Chouteaus claim that he had purchased the tract of Laclede Legnest on which was a mile as early as 4 July 1779 and therefore any subsequent purchase of any other part of the same tract was but the extinguishment of an opposing title. The case is thus presented of a concepion and ~~survey~~ a confirmation of the claim under it, located in the act of confirmation by reference to a particular survey; the confirmation made by the ~~the~~ first board of commissioners in 1810 and a patent issued thereon in 1813 and an attempt to distrust the title under this confirmation and patent for the ground that ~~the~~ Chouteau had illegally purchased the claim of Madam Verdun to a part of the land although such purchase was not in any measure the ground of the confirmation. If the plaintiffs had shewn satisfactorily, that Madam Verdun owned the tract orgnally surveyed for Laroche, and had then relied upon the confirmation to Laroches Representatives under the act of 29 April 1816, their case would not have been strengthened, for as between such confirmation, and the previous confirmation of an opposing title by the Commissioners, the law is well settled by numerous decisions of the Supreme Court of the United States that the elder confirmation is the better title both at law

and in equity. The doctrine of the different cases is summed up in Sanders vs Brant 10 Howard 370 in this language "According to the former decisions of this Court, the controversy was concluded by the confirmation as regarded two questions:— First, it settled that Clamorgan (the claimant before the board) was the true and proper assignee of Dodier (the original grantee) through the various mesne conveyances by which Clamorgan claimed; Secondly, that Clamorgan had the oldest and best claim to the land, as against every other claimant under the Spanish government. In explanation of our former decisions it is proper to remark, it is held, that as between two claimants under that government, setting up independent imperfect claims, the Courts of justice had no jurisdiction; that in such cases, it appertained to the political power to decide to whom the perfect title should issue; and when this was done, no controversy could be raised before the Courts of justice impeaching the confirmation." As between the Laroche claim as confirmed by the act of 1816 and the confirmation of the claim of Chouteau under Laclede Legueste by the first board of Commissioners the confirmation of Chouteau is not to be disputed. Nor can any person come into the Courts of justice setting up title under the Laroche grant and claim that he shall have the benefit of a confirmation which was made upon the title of Laclede Legueste even if he could shew that the person who owned the Legueste title made an illegal or

even a fraudulent purchase of the Laroche title. The proper department of the government in discharge of its political duties and obligations has papsed the fee in this land to person owning the title originally given to Ladede Segnest we are not at liberty to say that it ~~shall~~ pass from him to the person owning the Laroche claim.

The other ground of defence of the lapse of time ~~would~~ would deserve consideration ~~if~~ and would be paped upon if enough had not already been said upon the two points which have been considered

We hold that there was no such vice in the act of the Lieutenant Governor by which Chonteau acquired the land which was mentioned in the report of sale as the property of Madam Verdun as to render it void: and: Secondly that Chonteaus title confirmed under Ladede Segnest cannot be disturbed by the plaintiffs claiming under Laroche or Madam Verdun

The judgment of the Circuit Court is with the concurrence of the other judges affirmed

H R Gamble

53

Charleville

v

Chanteau

Opinion

Gamble

Filed 9th May 1853

Wm. S. Glanville

Clerk.

6/

Charleville et al
v
Chouteau et al.

In Supreme Court of Mo.
Brief of Appellants -
From St Louis Co. Mo.

1. The territory of which St. Louis is part, was ceded in 1801 to France by Spain which had theretofore held jurisdiction - Altho' thereby no express clause established pre-existing rights, yet this was implied and no change was made under French dominion touching the relations of inhabitants as to private rights or wrongs.

Soulards case, 4th Peters
Punchumans 7th Do

2. In 1803 France ceded this territory to the U. States, but with express reservation of private rights -

New. Orleans. v. U. S. 10th Peters. 724.

2/

The sale and purchase of the estate in controversy by the executor Choteau, thereof occurred under Spanish jurisdiction, and the possession by Choteau continued under the two successive jurisdictions of France and the United States.

I. What then was the validity of the pretended sale and purchase itself?-

(a.) An executor is a trustee for heirs, devisees, and creditors. He can not hold the title divested of the trust. So long as he holds it, it is by virtue of his official capacity until an independant legal estate has been interposed between his Testators title and his own. The law declares that Administrators, Executors, & Guardians are forbidden to buy in their custodial property.

2. Sugden Vend. &c. 109. London Edition

Even Agents, Commissioners of Bankruptcy, Assignees, Solicitors & Attorneys, de hoc, & Arbitrators are also excluded therefrom.

1. Ball & & B. 96. —
2d do. — do 116. —
Story. Eq. I. §§. 312. — 318. —

Wormley v Wormley, 8 Wheaton 421.
Prevost v Gratz 6 " 481.
Ruiz v Binns 10 Peters 269 - 81. —
Church v M. I. Co. - 1. Mason. 341. -

The only opposing cases recollected are when the Trustee was also an heir, and his interest being divided, he took in a different capa-city.-

In this case, the Trustee was in a double capacity - Executor testamentary - and Guardian in both which trusts he equally violated his duty - a case Judge Story calls "the most impor-"-tant and delicate of trusts-"

1. Eq. Jur. § 317.-

But the Civil Law establishes the same rule. "Tutor rem pupilli emere non potest; idemque "porrigendum est ad similia, id est, ad Cura-"tores, procuratores, et qui negotia aliena gerunt.

Pothier on Pos.n No. 64-66.
Dig. Lib. 18. Ti. 1. l. 34.
Inst.- Lib. 1. Tit. 21. 23.-

Not recognized by Spanish law in America. Michaud v Girod IV Howard. S.C. 559

The only exceptions to this rule are when guardian palam et bona fide may purchase the wards property at public auction.

Code. Lib. 4. T. 38. l. 5.-

The rule was never relaxed in favor of Executors under any circumstances whatever.

4. Rob. R. 201.

See also

Dig. lib. 26. T. 8. l. 5. §. 3.
lib 26. l. 5. §. 5.
11. Mart. R. 298.
9. Lou. R. 48.
14. " " 114. 122.

The Spanish Law, under the Civil Code, originally [redacted], says;

" Guardians, and Executors can not purchase
" any of the property which they administer,
" unless a decree should be previously given by
" the judge, stating its advantage to the minor."
Rec. L. IV. Tit 5. p. 5.
Nov. Rec. — ib. —

But since that earlier Spanish above stated Code; the Law, under which the Executor sets up his pretended authority and claim in this case, expressly declares

" Guardians and Executors can not purchase
" any of the property which they administer —
Rec. L. 23. tit. 11. Lib. 5.
Nov. Rec. L. 1. tit. 12. lib. 10.

The newest (Novissima) Recopilacion also declares that such laws as are not contained in it, altho' found in the former Recs, are to be considered as obsolete.

But again, in this case it does not appear that any "previous decree of the Judge, stating its advantage to the Minor" was obtained — While it does appear it was not; for the Executor in his account reciting the sale & the reasons therefor not only makes no allusion to any decree of such kind, but states as the reason why it was struck off to him that " no other bidder presented himself." —

5/

But, still farther, the Law itself limits the exception of a trustees purchase to the sale of a Guardian only. - It requires the Decree to "state its advantage to the minor".

See - Michoud v Girod. IV. How. 559 - which case runs pari passu with that now presented to the Court and (mutatis mutandis as to names and location) is identical with the one here presented.

The purchase by the Executor as sold by himself was therefore void, as against the law of Spain, the Civil Law, and our own, recognizing those laws -

Strother v. Lucas. 12. Pet. 412. -

Before we go farther, some statements of Spanish Law should be made -

Until 14 years with males, and 12 years with females the Guardian was styled their "Tutor". After that, during their minority, their "Curator" -

Nov. Rec. L. 13. T. 16. p. 6.
" " L. 12. T. 16. p. 6.

Minority continued with both sexes until the age of 25 years -

Nov. Rec. L. 465. tit. 11. p. 5. -
" " L. 2. " 19. p. 6. -

Guardianship was of 3 kinds; - Testamentary, Lawful, & Dative -

1. Where the guardian was named in the will.
2d. Where the Minors nearest relation succeeded by rule of law.
3d. Where a Guardian assigned &c. by a Judge appeared with due formality.

The Dative Guardian was appointed only in default of the (1st) Testamentary and (2d) lawful, and then after the ages of 14 & 12 years, the wards had the privilege of rejecting at their will any persons appointed by the Court.-

L. 13. T. 16. p. 6.-

A "lawful guardian," was obliged by law, and Palacios says the "dative guardian" was by custom (and in this he is sustained by Gregorio Lopez,) to give security for the due execution of their guardianship, and to take an oath of faithful administration -

L. 9. t. 18. p. 6.
L. 94. t. 18. p. 3. et Pl^os notes ut supra-
Gl. 5. L. 9. t. 16. p. 6.

A "Dative guardian" (or one appointed only in default of "the testamentary," or the lawful") was subject to the confirmation of a Court - and the ward had at will the privilege of confirming or rejecting a person appointed by a Court-

L. 13. t. 16. p. 6.

A decree or confirmation of the Judge was necessary to the exercise of the office by a Guardian, of either of the kinds before mentioned

Ll. 4. 6. 8. tit. 16. p. 6.-

Both Tutors & Curators were obliged to make an inventory, with greatest care & particular specification of property real & personal- And the Guardian can not thereafter dispute it, tho' it embrace an excess of property-

Nov. R. L. 15. tit. 16. P. 4. - Dº L. 120. t. 18. p. 3.-

7/

The Guardian could not alienate the personality, still less the realty of his ward, without permission of the Judge of his domicile, upon cognizance of its utility to the minor, & the cause of sale.

L. 4. tit. 5. p. 5.-

Strother v. Lucas - 12. Pet. R. 414.-

The Guardian could not purchase any thing belonging to the minor, without express permission of the Judge; and even then it must appear of record for the manifest advantage of the minor, or he may at majority repudiate the sale. L. 23. t. 11. lib. 5. This exception is not made in L. 1. tit. 12. Lib. 10. of Novissima Recop.n and it is considered by best Writers that the prohibition is absolute, and without the exception above stated-

a tenth was allowed as compensation to the Guardian for his services, deducting from the principal, first, all the expenses incurred since the due commencement of his office

L. 2. tit. 7. Lib. 3. del Fuero Real.-

At the end of tutelage, the Tutor or Curator were obliged to render an account of their administration, and their property was bound to the minor and his heirs for their fidelity in office-

L. 21. t. 16. P. 6. ad fin.-

also,

(over)

8/

Wills were of two kinds, opened & closed -

An "open will" (or Nuncupative) must be executed before a public Escribano, and 3 witnesses of the neighborhood; - or five, if the Testator were blind, or there were no Escribano. -

Nov. Rec.ª L. 1. t. 18. lib. 10. -

A closed will, being made in secret, is de- -livered in an envelope, or enclosed, to the Escrivano, who attests it, & endorsed also by seven witnesses.

Nov. Rec.ª L. 2. t. 18. lib. 10.

A male above 14, & a female above 12. years might make a will, still under power of their fathers.

L. 4. t. 18. lib. 10. Nov. Recop.ª

Those, who could not make a testament, could not attest one; nor could women. -

L. 9. 10. tit. 1. p. 6. -

If he have descendants, they must be instituted his heirs in all respects, except as to one fifth of his property, which he may dispose of to strangers. And the fifth being deducted, he may better any one of his children or grandchildren by the pref- -erence of one third of the remainder - These are called (Forosos) the forced heirs -

L. 9. tit. 20. - Lib. 10. Nov. Recop.ª -

The inventory must be begun in 30 days after notice of the inheritance, & completed within 3 months, unless the property is abroad.

L. 5. t. 6. p. 6. - L. 100. t. 18. p. 3. Nov. Rec.ª

Property to be sold under a will, was to be sold by order of Court and after 30 days ad- -vertisement -

Gayoso v. Garcia - 1. Mart. Rep. N.S. 324.

See Ventriss v Smith 10. Pet. 161. -

9/

☞ An instrument to produce faith as full proof must be made by the hand of an Escribano, or public notary with due solemnities

Nov. Rec.ª L. 4. t. 20. p. 3. idem t. 13. l. 4 - Idem L. 1. t. 21. lib. 5. -

☞ The Spanish Governors and subordinate authorities, had no power to decide causes, or confer privileges, contrary to the Civil Laws of Spain - The Laws prevailed in the Colonies as in the mother Country, unless changed by custom, which in such case must be proved.

In 1682. (May 18.) a compilation of Law was ordered in Spain for use of the Indies - (Lib. II. t. 1. l. 2) and it therein ordered that the laws of Castile should govern, except in cases where special provisions existed. The oath of the Governors required them to keep and obey the Laws of the Kingdom.

Lib. 5. Ch. 2. -

The commission of Baron de Carondelet, who was Governor of Louisiana from 1791. to 1797, confers no special powers on him, but refers to precedents.

The Commission of Don Louis Unzaga y Ameriga dated Aug 1). 1772. commands him to observe in all judicial causes the Laws and proceedings of the Courts.

On receipt of Genl. O'Reilly's report to the King of Spain of the condition of Louisiana, submitted with sundry recommendations to the Royal Council, Feb. 27. 1772 - they speak of a brief compendium previously made by O'Reilly and order some

copies of the Recopilacion of the Laws of Castile for the Government of the Indies to be sent to the Colony for the instruction of the people. The Kings order issued in compliance therewith on Mch. 23. 1772.

The General theory of Colonial Government appeared to be, That the Vicezoy was Plenipotentiary, like the King, within his vicezoyalty. -

That he could delegate his authority in districts for the convenience of the Inhabitants.

That subordinate authorities, Lieut. Governors, Intendants of Posts &c. could adjudicate and execute the Laws, but had no shadow of power to legislate, modify, or violate the Laws. And Commandants of Districts were judicial officers within those districts.

2. White. 693.

The Commandant acted as Notary, or Escribano; and Kept the records of his District. These records always contained the original deed, passed by the Magistrate, or public Notary if there was one, giving to the parties certified copies. These originals were evidence in the Courts, as also were certified copies thereof.

24th Answer to Jefferson &c. 2. White. 695.

There were but 4 kinds of property known to the Spanish Law as held in reference to the marriage relation.

Dote - The gift from wife to husband in consideration of marriage.
Partidas (M & Castelon trans. 1. 507.)

Paraphernia - a separate estate expressly preserved to the wife (originally required to be recorded "in libello" a little book or schedule & delivered to the wife) Partidas (M & C. translation) 1. 523.

Arras - Jointure - "Donatio propter nuptias".
Partidas (M & C. transl.) 1. 508.

Gananciás - Community of gains; and joint ownership of all property acquired during marriage by onerous consideration.
1. White. p. 61. and notes -

The Law of Community, as laid down in Coutumes de Paris - see Pothier Traité &c is not recognized in the Spanish Law, except where Custom has become that Law. Of this see the note to Law 25. Partida 4. Title XI. p. 533, 4. M & C. transl. vol. 1.

and for the force of Custom as a Law, see
Partidas 1. (M & C. transl.) Law 6. P. 1. Tit. 2. p. 14.

These customs were varied even in Spain - See note aforesaid -

NB Unless proved in America, they can not be acted on. No analogy to the French Law being in proof, none can be presumed -

II. If it be legally proved that by principles of Law common to the U. S. & to Spain, there was no lawful change of title to the land in question by the sale above referred to, the only remaining questions can be prescription as against the claimant, or the Statute of Limitations, or the staleness of the claim by analogy thereto in a Court of Equity.

Prescription having been done away with by the Act of 1818. - We have only to look to the position of matters at that time -

We might show, that under Spanish Law no prescription ran - for that,

1st. To constitute prescription, good faith, just "title, and capacity of the thing for the purpose, and of the person who prescribes are necessary, together with a continued or uninterrupted possession for a determinate time -

Inst. &c. Lib. 9. tit. 29 - p. 3. Nov. Recr.

2d There must be good faith at the commencement of possession; or prescription does not take effect.

L. 12. tit. 29. p. 3. Nov. Rec.

"Good faith" consists in the purchaser believing that the person from whom he received the thing had right to alien or transfer it.

Inst. Aso & Manuel Book. 2. tit. 2. Cap. 11. §. 1 -

In this case then, there was no good faith & no prescription could run - Again

"There will not exist good faith if one purchase a "thing from a minor -"

A & M. ut sup. - L. 11. Tit. 29. p. 2 -

Again,

"Just title" consists in the cause or consideration by which possession of the thing is obtained, being one of those by which dominion is acquired, as purchase, gift, inheritance &c.-

L. 9. 14. 15. tit. 29. p. 3. A & M. ut sup. § 2.-

Again

Any one in possession in the name of another can not prescribe - whether mortgagee, lessee, &c.- & this for want of Capacity in the person.

Nov. Rec.ª L. 1. tit. 8. lib. 11. A & M ut sup. § 4.

Nor can one jointly in interest (though solely in possession) with another against whom he seeks to prescribe.

L. 2. tit. Lib 11. Nov. Recª

Again

"Good faith is the persuasion in which the "possessor of the thing is, that the seller "or giver, was the owner of it."

Feb. Nov. IV. T. 11. 16.

"Where there is bad faith, even the age of Nestor "should not be sufficient to secure to the "usurper the fruits and rewards of his iniquity.

Idem ut sup.—

Again - The provisions of the Novissima Recopilacion are as follows.-

"Possessors of a thing pledged or deposited, "rented or forced, can not allege prescription "therein -

Lib. XI. t. 8. l. 1.

"Any one holding or possessing an inheritance,
"or other thing in pledge, or in charge,
"or rented, or hired, or forced, can not make
"his defence by time. because they are not
"possessors of themselves, but for those to whom
"the thing belongs.-

Rec.ª Lib. 4. tit. 15. Ley. 4.-

Again

Good faith & bad faith, in law, descend with the property to the heir - a principle adopted into the Spanish from the Roman Law-

Taylor v. Benham 5. How. U.S.R. 270.
see also Boone v Clinds 10. Pet. 214 - {our own law.}.-

Again,

"It is to be observed that where alienation is
"prohibited, prescription, or toleration is also
"prohibited, being a tacit alienation &c.

Febrero. Nov. §. 13.-

Again, "A prescription to be good must be in good
"faith under a legal title."

Inst. Lib. 2. t. 6. —
4. Pothier 586). 8. —
Code - Lib. 7. t. 34.-

In addition to what has been said, apply the legal maxims

1. Prescriptiones sunt odiosæ - et idis stricti sunt interpretandæ
2. Ignorantia legis neminem excusat.

It is admitted that perhaps all this learning as to the Spanish Law is unnecessary for two reasons -

1st That prescription is abolished -

2nd That in this case the disability of coverture, existing since the new Law took effect, was removed only in 1847. Until that time plff could not act - Until then no limitation could bar her right -

Mr Chouteau, in the marriage contract admits her minority - himself places in trust the property in dispute in such manner that she could not act in regard thereto, until her husbands death - And then acts not only in defiance of the trusts he himself assumed; but also of that he himself made as Guardian of plff -

Prescription therefore can not run -

Neither can the Statute of Limitations -

Nor can "staleness of the claim" -

because -

1. Prescription could not run but on the grounds above set forth -
2. In 1818, it was utterly abolished -
3. The Statute could not run against an express Trust, & that created by the wrong doer himself -
4. It could not run until the removal of disabilities created an adverse possession against her -
5. Equitas sequitur legem -

To say nothing of fraud, which is no small component part of this cause -

But it is said Choteau held adversely to the children he was guardian of - and to the estate of which he was Executor -

In reply -

1. He took possession of it under the will - (see his a/c sales. &c) (his pretended fence title) &c -

2. He pretends to claim it under Labbé. On the contrary Labbé's deed fixes our own boundary - It calls for Mad. Verdon on the South -
"Falsum in uno, falsum in omnibus".

A. Smith
J. Labbe. -
Chouteau a/cs. -

3. Parol proof shows our cultivation and possession until our death - He took it thereupon - His possession was for us - was ours - and not adverse - It was a trust estate -

4. He pretends to have abandoned it + bought it in for want of a fence -

(a.) His accounts show he had plenty of means of ours in his hands then to fence it - If necessary or advantageous, why not do so?

(b.) There is no evidence a fence was ever put up -

Mackay v Dillon
Iv. Howard. -

(c.) The syndics were the only officers having control thereof
(Mackay v Dillon IV How.)

(d.) This never could amount to an abandonment at all -

(over on this page)

(Page v Scheibel &c)

All grants subsequent to the treaty of St Ildefonso (Oct. 1. 1800) were void - and all subsequent proceedings giving title &c. are void - with a reservation in favor of actual occupants prior to 20th Dec. 1803.-

And again -

Chouteau is estopped from denying due title under Madame Verdon, because at the time of his confirmation he claims title under her &c.

Keene v. McDonough 8. Pet. 310.-

Chouteaus Confirmation rests on "in-habitation, possession & Cultivation" - Who inhabited, possessed & cultivated the same? The executor, and guardian of infants; and the trust makes it theirs.

Knowing the fallacy of these pretences, he finally presents to the Commissioners a claim under Liguest for arpens.— and brings forward Surveys not only not approved by the proper officer, but which our Gov.r not recognizing have ordered their investigation now to be made of. All this, without the knowledge of the children for whom he was Trustee — they, ignorant, uneducated, & without influence, & he, a man of wealth & powerful means.

Cozzens testimony

An ex parte proceeding resulted in a Confirmation to him.

This brings us to ask what is a confirmation?

" a conveyance of an estate, or right in esse whereby a voidable estate is made sure
" and unavoidable or whereby a particular estate is increased
Coke on Litt.

Here, rights accrued and were vested, which can not be taken away. They had been created by law, not by the certificate of commissioners, which was nothing more than that a title existed.
5. Martin — 197.

After the act of 29th April 1816. unconfirmed claims remained as they were, only protected from sale, until 1824.— By Act of 26th May 1824, a judicial tribunal was first created to try these titles.

In the period 1800 – 1804 while everything was in a state of transition, the necessity for the first U.S. act of March 2. 1805 became apparent – to ascertain, and adjust titles and claims to land. –

What lands? A separation from public domain of private property. –

What titles? Claimants, from Government. Not a contest between claimants. –

Is a Board of Commissioners to decide claims against the Govt (they the representatives of one party thereto) to decide & claims inter partes not before them; or, is it only as between Govt whom they represent and Conclude, and ~~transform~~ the claimant, without settling rights of parties not before them?

The Act of March. 3. 1807. only declares (Sec. 4.) That the decision of Comrs in favor of claimant shall be final "against the United States."

The certificate of the Commissioners is nothing more than an acknowledgment that a title existed.

(V. Martin. 197. –)

In the act of Congress July 4. 1836 it is provided that titles so presented, "are hereby confirmed, saving "& reserving to adverse claimants, the right to assert the validity of their claims in a Court "of justice." –

This shows the spirit and intention of the action of the U. States in all these cases.

11. Martin 207. –
Rachel et al v. Irvin & U. S. Martin - 331.
Delahoussage v. Saunders 4. L. R. 445.
Arredondo's case 6. Pet. 691.
Percheman's c. 7. Pet. 51. 1[illegible] – 89.

The Act of Confirmation is then a mere quit claim of the U. S. Government as a political act – a surrender – without deciding individual rights.

To show this, pari passu,

The Act of May 8. 1822. as to claims in Florida & providing for Commissioners &c expressly declares it "shall not be considered as affecting the rights of third persons.

But in this case there is an equitable title, as to which the legal title in Chouteau is but a resulting trust –

Are the Commissioners more than ministerial officers? not judicial?

The Constitution declares that judges (supreme or inferior) shall hold their offices during good behavior" –

But these officers are not so appointed. They are mere servants of the Executive. – They are functi officio – Why? when? how? (if judges) – & our Constitution states the only classes that are recognized as acting for the Federal Govt. – These are not so named as judicial – They are only Executive, to carry out a political Act which Courts may investigate, as to parties not before sd. ministerial officers.

The confirmation to Chouteau if valid is only a resulting trust for Pfff.

4 Mo. R. 113.
5 Mo. R. 154.
9 " " 14.
10 " " 254.
11 " " 164.

An agent taking title in his own name may be compelled to convey in to his principal.

Marin v Watts. 6. Cranch 148.
& in 2 Cond. R. 332.
Phillips v. Seamond. 2 Wash. C.C.R. 441.
Boone v Chiles 10 Pet. 205-6.

If Chouteau in trust capacity purchased an estate, it must by every rule of Equity, belong to the cestui que trust even though the legal title be in his own name.

They contend in conclusion

1. Want of location & designation –
2. Our right of inquiry precluded by confirmation
3. Stat. Limn.
4. Want of fraud –

—

1. Proved by Boundaries –
by estoppel –

2. Not so – Equitable title, recognized by Trudeau –
Eq. title, entitled by resulting Trust.

3. Stat. Limns.
does not run against a trust.
does not run but from discovy. of fraud
Prescripn. abolished, finds us sole owner
& disabilities just removed –

4 Fraud in obtaining confirmn.
Suggestio falsi. 1. ½ instead of whole.
2. under Labbe – see deed.
3 When obtained under Legnest.

Suppressio veri. 1. Mad. Verdons will & his trust.
2. His Guardianship

J. Delafield Jr
for appellants.

Parapherna –

Charleville et al

v. } Brief of Delafield for appellants

Chouteau et al

In the Supreme Court of Missouri.
October Term of 1852.

Charleville & others
v.
Chouteau & others

Due me for services in translating, by order of this court, a portion, in the Spanish language, of the record in this case — Ten Dollars.

Thomas C. Reynolds

Charleville
v.
Chouteau.

Bill of Thos. C. Reynolds
for translation –

In Supreme Court: –
Charleville & al. Appts.
vs
Chouteau & al. Respts.

Field for respondents: –

I. The confirmation by the Board of Commissioners to Auguste Chouteau under whom the respondents claim is a conclusive bar to the relief sought by the plaintiffs.

Strother v Lucas 12 Peters 458
Bissell v Penrose 8 How. 340
Landes v ~~Perkins~~ Brant 10 How. 370
Landes v Perkins 12 Mo. Rep 255

II It does not appear that Chouteau made any claim before the Commissioners as the representative of Richelet Verdon. The lot claimed in this suit as belonging to her was in fact embraced by the concession to Laclede. This concession was presented by Chouteau & may be regarded as the ground of his claim

III. At any rate, no fraud was practised by Chouteau on the Commissioners in obtaining his confirmation. His claim was fairly presented in its true character.

IV. No claim was ever in fact presented to the Commissioners on behalf of the children of Richelet Verdon, & if such claim in truth existed it was barred by force of the acts of Congress.

V. Chouteau had cured to be tutor of the children at the date of his claim & the proceedings before the Commissioners. For his account was rendered as early as July 20. 1799.

By the Spanish law the tutor's account was to be rendered at the close of the tutorship

Schmidt's Civil law of Spain 37.

VI. Chouteau acquired a good Spanish title to the lot of Madame Verdon in the Common fields.

1. The lot was subject to publick charges & tho' three times offered for sale found no purchaser. It was unquestionably competent for Tudeau to transfer the lot to Chouteau to pay the publick charges.

The proceding is analogous to the strict foreclosure of a mortgage in English practice.

Our present administration law contains a provision founded on the same principle.

Rev° Statt. 1845 Title. administration, article III secs 4, 5.

The proceedings under the Spanish law in case of pledge are also analogous.

Schmidt 190.

2. Besides, the order of Tudeau was in substance the reuniting of the lot to the domain & conceding it to Chouteau. This power can not be questioned.

See Strother v Lucas 12 Pet. 450-7 & cases cited

The acts of a publick officer are presumed to be within his authority

U. S. v Clarke 8 Wheat. 452

VII. If there was any claim against Chouteau in respect to the lot of Richelet Verdon, the claim has been long since barred by force of the statute of limitations Dec 17, 1818.

1. There is no sufficient evidence in the record of the death of Mr Molina, so that her share may be left out of consideration

2. Mrs Bourguillon, ~~[illegible]~~ was in full life & under no disability when the act of 1818 was passed, so that ~~[illegible]~~ her share is undoubtedly barred

3. Victoria had married Chauville in 1796 and by marriage contract had placed her share in her mothers' succession in the hands of her husband as community property.

By the Spanish law the husband alone administered the community property, having power to alienate or otherwise dispose of it at his pleasure. Prescription against him unquestionably gave a perfect title

By the introduction of the common law the character of the property was not changed.

Twenty years possession adverse to the husband had the effect to divest the title of the husband as effectually as his deed of conveyance.

Hayward v United church

4. Godfrey died about 1810 & one fifth of his share descended to his sister Victoire. This succession however was paraphernal property. Joseph & Louison's shares descended in the same way as paraphernal property.

Paraphernal property in the Spanish law answers precisely to the definition of a wife's separate property in the English law. This property therefore on the introduction of the common law would be subject to the rules applicable to the separate estate of a married woman.

Now in respect to her separate property a married woman is regarded in equity as a feme sole and under no disability.

In the case at bar Charleville was the trustee of his wife's paraphernal property after the common law was introduced, and it seems now to be settled that where the trustee is under no disability, adverse possession will bar the cestui que trust tho' under disability.

Wych v E. I. Company 3 P. Wms 309
Hill on Trustees 267-8

Spanish prescription ran against paraphernal property.
Flower v O'Connor 8 Martin (N.S.) 556
Allen v Allen 6 Rob. 104 - Binte v Alva 2 La Rep 366

VIII. The plaintiffs claim has become stale by lapse of time, and independently of any positive statutes of limitations, on the principles adopted by Courts of equity, the plaintiffs ought not now to have the relief they seek.

Randolph v Ware 3 Cranch 503 ad finem
Prevost v Gratz 6 Wheaton 481
Piatt v Vattier 9 Peters 405
Bowman v Wathen 1 Howard 189
Mc Knight v Taylor Id. 161

Charleville v Chouteau

Brief for Respondents by
Field

Victoria Charleville
& others -
vs.
Gabriel S. Chateau
& others

Brief & points for Defts -

Statement of the case intended as substitute for case by plff -

The plaintiff Victoria Charleville is a daughter of Victoria Rochelet Verdun who was the wife of Joseph Verdun. Their marriage contract is dated 9th May 1772. On the 7th March 1785 a seperation took place by which as alleged the wife became sole owner of the property in question. Madam Verdun had ~~by her husband~~ before seperation six children three sons & three daughters. The sons were Joseph Jonson and Godfrey. The daughters were Harriet Victoria and Pelagie. The eldest daughter who was the eldest child was twice married and was a widow at her mothers death. Joseph died in 1805 unmarried Jonson died about 1810 or 1811 unmarried Godfrey died after Joseph and unmarried about 46 or 47 years ago and was the youngest child. The eldest daughter

was twice married but died before the commencement of this suit without issue another daughter Delogie who married a Spanish officer went to Havannah after the change of Government one witness says 15 years another Antoine Smith says he soon as married 4 or 5 years before the change of Government. The proofs leave it doubtful whether she is living or dead. The remaining daughter is the Plaintiff. Victoria Nicolet the Mother made a will 29th Sept. 1796 and died shortly afterwards. In the will her real estate is mentioned but no mention made of the property in question. She states the names of her children in the will & that she had been separated from her husband and property was divided & describes her property. She appointed Auguste Choteau executor with full power to sell all her effects and divide proceeds among her children.

On the 24th October 1796 there was an inventory made & appraisement in due form. In this inventory there is mention

of a field lot of 1/2 an arpent by forty.
& appraised at 10. Sis = $2.00 or
about that sum. On the 30th October
1796 sale of the property under the order
and direction of the Lt Governor was
commenced and continued until it
was finished. Among other things is
the following entry as translated.
"Another half arpent of land by forty
arpents deep situated in the rear
of the fortification and lying between
Auguste Choteau and one Marly,
and having been cried at public sale
for the two preceding sundays and
this one without any bidder having
presented himself and the said land
being subject to liens & charges for
fencing done upon the same and it being
today indispensable and since otherwise
there would be a loss to the said
estate and prejudice to the creditors
& heirs, and Auguste Choteau having
offered to take upon himself the
said liens & charges as the value of the
land the same was stricken off to
him on the consideration and condition
that he shall pay the said liens
and charges".

The sale was made under the direction & by the Lt Governor Trudeau and duly attested by him in the usual form.
15th July 1797 a marriage contract was entered into between Joseph Chauvin Charleville and Victoria Verdun minor & the present plaintiff. Her husband is dead & died about 10 years since.
In 1799 July 20 an account was duly rendered by Auguste Chateau & the balance ascertained to be distributed to each and received the judicial sanction of the Lt Governor.
After the change of Government and by the first Board of Commissioners a tract of land claimed by A. Chateau under Laclede Liguest of 8. by 80 arpents & two other tracts connected therewith were duly confirmed to him. The papers connected with the confirmation are in evidence.
The tract of 8 by 80 under Laclede included the premises in question and as part of his title among other claims was stated his purchase at the sale aforesaid of the Verdun property which seems to have been within

the concession to Laclede by St. Ange Labuxiere.
The plaintiff also gave in evidence a confirmation under the act of 29th April 1816 to Laroches representatives and various deeds & title papers the relevancy of which is not perceived. Upon this case the defendant asked the Court to declare the plaintiff had not made out any title to the premises in controversy and the Court being of that opinion dismissed the petition.

First. The confirmation is conclusive, it vested the title in the ancestor of the defendants and extinguished all prior claims legal or equitable. The confirmation was to Auguste Choteau upon his notice and in his own right
4th Mo. R. 458. 9 Mo. R. 716
6th Peters 770. 12th Peters 412 see pages 453-4. 2d Howard 344. see page 375. 4th Howard 449. at page 459. 11th Mo. R. 167. Page vs. Schibel

12 Mo. R. Clarmorgan case.
8th Howard 296 Menards heirs vs. Massy see pages 303-4-5-6-7-8-
7th Mo. R. page 7- 10th Howard at page 370. That confirmation is decisive of two questions to wit 1. That the inchoate title is in the applicant to whom confirmation is made and 2d. That he had the best claim under the Spanish Government. This point is decisive of the case upon authority.

Second. Executors & Guardians could purchase under the Spanish law with the assent of the Judge. This point has been expressly ruled in our Court in 5th Mo. R. page 300- McNair vs. Hunt

Third. The marriage contract between Victoria Verdun Pliff & Joseph Charleville created a community between them in moveables & immovables. and the plaintiff was barred by prescription before the introduction of the common law.
1. The prescription of 4 years-

Mc Nair vs. Hunt 300-5 Mo. before cited

3 Martin (O.S.) 446 8 Martin (O.S.) 679 - see pages 624-5-631 - 10 Mar. 726 - 5 Mo. 300 - 2 Moreau Partidas 1152. 1157 - 2 Febrero 137. No. 24 - 5 Febrero 92 No. 54 page 101 - No. 75 -

If the property was paraphernal and did not enter into the community prescription is equally effectual. prescription runs against a married woman. as to paraphernal property she is a feme sole -

4 Mo. R. 380 - 4 Febrero 471. No. 218 8 Mart. (N.S.) 228 - 4 Feb. 471. No. 218 - 5 Feb. 126. No. 145 - 146 - see also 2 Louisiana Rep. 366 -

at 18 years marriage is an emancipation & gives power to manage the estate - 3 Feb. R. 45. No. 79 -

Fourth - If Trustee purchases Trust property application must be made in a reasonable time or relief will be denied.

2 Powell on Mort. 500 - N. 1 -

4 Harr. & McH. 139 - 7 J.C.R. 90

14. S. & R. 333 - 4th John. Chan. R. 310
3. Ibid. 190 - 11 John. R. 446 - 3d John
Chan. Rep. 586. 4th Wendell 58 a
release presumed after 32 years -
Lewin on trusts 611 - citing 17 - Vesey 97
2d Schoales & Lefroy 633 - Ibid 617.
(22d law lib.) - Lewin on trusts 388
acquiescence of cestui que trust is
evidence of fairness of purchase 18 years
has been held too long & even less
time - Cooper 201. 8th Price 667 - 8th
8th Howard 210 - at page 221 stale claims
are noticed. 7th Smedes & Marshall
219 - Ibid 544 - denial by Trustee
of right of cestuy que trust limitations
begin - Trustee may disown his trust
& from that time holds adversely
4th Howard 289 -

F. M. Haight -

Boone vs. Chiles 10th Peters 177 - States the difference between direct and constructive trusts as to the effect of time -

Victoria Charleville & others.
vs.
Gabriel L. Chateau & others

Brief.

F. M. Haight for Deft.

Charleville
vs.
Choteau

In this case the plaintiff gave in evidence - Madam Verdun's will By one of the items of the will she declares that she had three sons Joseph Louis and Godfrei and two daughters Pelagie & Victoria. Her real estate described in the will is said to consist in one house, one orchard - She appoints Auguste Choteau her testamentary executor to whom she gives power & recommends to sell all her real & personal estate -

2 Confirmation and survey to Laroche's representatives - a confirmation under act of 29th April 1816 on the report of the Recorder of Land titles -

3 - Ex. B. Choteau's settlement of Madame Verdun's Estate. page 67 - of Transcript -

4 - Choteau's account of auction sale of Madam Verdun's estate - This was a judicial sale made with all due formalities under the order of the Lt Governor Trudeau before him & signed by him -

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Charleville

v.

Chouteau

Transcript