Choquette, Julien vs Tigh, William 1854 St. Louis Co 351/3

575/17

lot in Carondelet

T got it from Board of Trustees
C bought from Fassey, Louis

Scott-
ff.

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Judge of the St Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the St Louis Court of Common Pleas

wherein William Tigh was plaintiff & Julian Chouquette was defendant

in an action of Ejectment. manifest error hath intervened, to the great damage of said defendant as by his complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the Third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the 6th day of October in the year of our Lord one thousand eight hundred and fifty four.

Wm S. Glanville,
CLERK.

State of Missouri
County of St Louis } I, Charles M Hicks
Clerk of the St Louis Court
of Common Pleas in and for said
County, certify herewith a full true and
complete transcript of the record and
proceedings in the case mentioned in
the within writ as the same remain
in my office

In Testimony whereof I hereto
set my hand and affix the
seal of said Court at
office in St Louis this
6th October A. D 1854

C. M. Hicks Clk

State of Missouri }
County of St. Louis }

Be it remembered that heretofore to wit, on the twentieth day of August A.D. Eighteen Hundred and fifty Two, there was filed in the Office of the Clerk of the Saint Louis Court of Common Pleas, within and for the county aforesaid a certain petition, which is in the words and figures following to wit;

Petition.

In the St. Louis Court of Common Pleas for St. Louis County

William Tigh plaintiff }
against }
Julien Chouquette Defendant } The plaintiff states that on the first day of September in the year of Our Lord, One thousand Eight Hundred and thirty four he purchased a lot of Ground in the Town of Carondelet in the County of St. Louis and described as follows to wit; "lot number Eighty Seven in North East quarter as known and designated on the plat or survey of said Town, containing on East Third street fifty feet one inch and one half inch and on the back line in width forty six feet one inch, bounded west by balance of said square East by third street North by lot of Christian F. Keintlay and South by lot of William H. Pocock, which said lot the plaintiff acquired from the Board of Trustees of said Town of Carondelet, who caused a deed to be made to the plaintiff for the same under and by virtue of an act of the general Assembly of the State of Missouri approved February thirteenth Eighteen hundred and thirty three entitled "An act authorizing the corporation of Carondelet to sell & convey certain lots of ground" The plaintiff files his deed for said lot here=

=with which is marked Exhibit "A". The plaintiff avers
and states that the said defendant in the year of
our Lord One thousand Eight Hundred and forty
eight or forty nine without leave and wrongfully en=
tered upon and took possession of said lot, this plain=
=tiff being at the time and still being the rightful
owner thereof. And the plaintiff avers that said de=
=fendant from the time he took possession of said lot
has continued to hold the same wrongfully and still
unlawfully and wrongfully holds the possession thereof
from the plaintiff, and the plaintiff avers that he is
legally and rightfully entitled to the possession of said
lot, that the same is wrongfully withheld from him
by the defendant who has no right or title to the same
and the plaintiff avers that said defendant never
purchased said lot and has no title to the same or
even a shadow of title thereto. The plaintiff avers and
states that by reason of the premises he has been
injured and has sustained damages in the sum of
One hundred dollars for which he asks judgment
he also asks judgment against said defendant that
he the defendant be dispossessed of said lot, and the
plaintiff may be put in possession of the same

Hudson atty for
Pltff.

William Tigh plaintiff on his oath says he believes
the aforegoing petition and the matters therein as
stated are true

Sworn to & subscribed before me Aug 20th 1852 — W. Tigh

J. Tippett Clk.

The State of Wisconsin

To the Sheriff of St. Louis County
Greeting

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Summons

We command you to Summon Julien Choquette to appear before the Judge of our St. Louis Court of Common Pleas on the first day of the next term thereof to be held at the City of St. Louis, within and for the County of St. Louis on the third Monday of September next then and there to answer the complaint of William Tigh as set forth in the annexed petition: and have you then and there this writ;

Seal Witness Philip Tippett Clerk of our said Court, with the seal thereof hereto affixed at Office in the City of Saint Louis this 20" day of August in the year of our Lord One thousand eight hundred and fifty two.

P. Tippett Clerk

Shff's Return

Executed this writ in the County of St. Louis on the 28th day of August 1852 by delivering a copy of the within writ & petition as furnished by the Clerk to Julien Choquette personally

John M. Winner Sheriff
By Frs. Wolair Deputy

And afterwards to wit on 25" September 1852 the defendant filed an answer herein, which is in the words and figures following to wit;

William Tighe plff
vs
Julien Chouquette
Deft

Answer

The Defendant says that he cannot tell from the description of the land in the petition what piece of land is really intended That he defendant is in possession and the owner in fee of a lot, forming part of block (87) in the town of Carondelet described as follows, a lot having a front of One hundred and fifty feet on third Street, bounded, on the North by D street, on the West by by Fourth street, on which it fronts, also one hundred

& fifty feet & on the South by the balance of said Block (b)
The lot possessed & claimed by defendant being one hund-
-red & fifty feet in front & three hundred feet in depth
That on this lot of ground defendant has lived & resided
since the month of August 1834 succeeding then to the
rights and possession of Louis Fassen who by deed dated
18th August 1834 recorded in Book C2 p4 conveyed
all his interest therein to defendant that Louis Fassen
purchased the rights and succeeded to the possession
of one Antoine Motier by deed dated August 3d
1833. And Antoine Motier had been an inhabitant
of the Town of Carondelet and had lived on the
said lot of ground for more than five years prior to
1832; and upto the year 1832. That Louis Fassen
was also an inhabitant of said town of Caronde-
-let and continued in possession of said lot of ground
connecting with said Antoine Motier's possession
until he sold to defendant, And that defendants
possession connected with that of said Fassen.
That the deeds referred to, together with a certified
copy of the ordinance No. 31 of the town of Carondelet
are filed among the papers of the case of Reilly vs
Chouquette, being a record of this court, and to them
defendant prays leave to refer. And defendant avers that
he as representative of the said Motier and Fassen
and as inhabitant of the town of Carondelet (and
defendant says that he has been an inhabitant of
the town of Carondelet for more than 25 years last
past) he was entitled to a deed from the town of Caron-
-delet for the lot above described, as being owned and
claimed by him and that the said Town of
Carondelet did make to him on the 29th January
1850 a conveyance for said lot of ground which
deed is recorded in Book N No. 5 B 33 and

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is among the papers of the aforesaid case of Reilly vs Chouquette, and defendant says that by virtue thereof he is is the legal & equitable owner of said lot of Ground. Defendant denies that the plaintiff has any deed for any part of said lot from the town of Carondelet. He denies that the paper filed by the plaintiff is (as defendant is advised, for defendant cannot read or write) the deed of the town of Carondelet. He avers that the said lot of ground prior to the passage of ordinance No. 31 which was June 2nd 1834 belonged to the town of Carondelet as part of the Commons of said town. That on the said 2nd day of June 1834 said Tassin became entitled to a deed from the town of Carondelet for said lot which right he conveyed to defendant as above shown; and by such conveyance to defendant, and by force of the ordinance aforesaid defendant became the equitable owner of said lot: and on the 29th January 1830 he became by virtue of the deed ~~of the deed~~ of the town of Carondelet the legal holder & owner also. And if plaintiff claims any part of said lot defendant for the reasons aforesaid denies his right thereto. And if the claim of plaintiff is for some other lot of ground parcel of Block 87, defendant says that he does not hold any such other part in possession.

And defendant prays to be hence dismissed with his costs.

Th. T. Gantt P.D.

Julien Chouquette being duly sworn saith that he verily believes the aforegoing answer to be true.

Sworn to & subscribed before me this 25th Sept. 1852

Julien Chouquette

P. Tippett. C.K.

And afterwards the following further proceedings

6 were had in this case to wit; (8)

Tuesday 17th January 1854

William Tigh

Judgment. vs Ejectment

Julien Chouquette, Now at this day come the parties by their respective attorneys, and thereupon come a jury of twelve good and lawful men, who being duly elected tried and sworn the issues between the parties aforesaid well and truly to try, the trial progressed, and being finished the jurors aforesaid upon their oaths aforesaid say they find for the plaintiff, for the possession of the premises described in his petition and ~~value of said premises~~ and assess his damages sustained by the detention thereof at the sum of five dollars, and find the monthly value of said premises to be the sum of One cent; It is therefore considered by the Court that the plaintiff recover of the defendant the possession of said premises described in the petition as follows to wit; "Lot number Eighty seven in the North east quarter and known and designated on the plat or survey of the town of Carondelet in the County of St. Louis containing on East third Street fifty feet one inch and one half inch, and on the back line in width forty six feet one inch, bounded west by balance of said square East by third street. North by lot of Christian F. Reinlan and South by lot of William H. Pocock" and also the damages and monthly value aforesaid by the jury assessed and found together with his costs and charges herein expended and have thereof execution; thereupon the defendant files a motion for a new trial herein, and submits the same to the Court, and the Court being fully advised of and concerning the premises, it is ordered that said motion be overruled

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and thereupon the defendant files a Bill of Exceptions herein.

Which Bill of Exceptions is in the words and figures following to wit:

William Tigh
vs
Julien Chouquette

In the St. Louis Court of Common Pleas Sept. Term 1853.

Bill of Exceptions

Be it remembered that on the trial of the above entitled cause the plaintiff offered and read in evidence the general acts of Congress of the United States of June 18th 1812 26th of May 1824 and 31st January 1831 all of which acts it is agreed may be read and referred to in Supreme Court as the same are contained in the United States Statutes at Large. The plaintiff also offered and read in evidence the act of the general assembly of Missouri passed Feby 18th 1838 entitled "an act authorizing the Corporation of Carondelet to sell and survey certain lots of ground" which act it is agreed may be read and referred to in the Supreme Court as a part of this Bill of Exceptions. The defendant also here admitted that the land in controversy is included within the commons of the Town of Carondelet as confirmed to the Inhabitants of said town by the act of Congress of 18th of June 1812, and as surveyed under that authority of the United States. The defendant further admitted that on the day of 1832 the Inhabitants of the Village of Carondelet were duly incorporated according to the laws of the State of Missouri by the name and style of "The Inhabitants of the Town of Carondelet.

The plaintiff then the defendant objecting & excepting offered in evidence the following purporting to be

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a deed from the Inhabitants of the Town of Carondelet to plaintiff (10)

The defendant admitted the genuineness of the signature of P. I. Shoultz Chairman Jacob R. Stine Regr. and the Seal of the Corporation of Carondelet affixed to said deed. The plaintiff also read in evidence the certificate of registry on said deed as follows;

Certificate of Registry

County of St. Louis p. I. Stephen D. Barlow Recorder for said County certify that the foregoing deed was filed in my office April 25th 1848 & is truly Recorded in Book R No. 4 page 196 & following

Seal

Witness my hand and Seal of Office at St. Louis the date last aforesaid

S. D. Barlow Recorder.

The defendant objected to the reading of said deed, on the ground that the same was not the deed of the Town of Carondelet and that the same was not in point of law sufficient to convey the title of said town, which objections were overruled and the defendant excepted. The plaintiff then read the deed as follows.

Deed of City of Carondelet to Plaintiff

This indenture, made this the first day of September in the year of our Lord one thousand Eight hundred and thirty four between Peter I. Shoultz Chairman of the Board of Trustees, within and for the Town of Carondelet in the County of St. Louis and State of Missouri, by virtue of authority conferred in me by an act of the Legislature, passed the thirteenth day of February, in the year Eighteen hundred and thirty three, authorizing the Corporation of Carondelet to sell and convey certain lots of ground, of the first part, and William Tighe of the Second part, Witnesseth: that the said Peter

9 I. Shoults for and in consideration of the sum of forty five dollars — cents unto him well and truly paid according to the condition of the sale of lots in the town of Carondelet on the 15th, 16th, & 17th day of August in the year of our Lord eighteen hundred and thirty three by William Tighe of the second part, at and before the sealing and delivery hereof, the receipt whereof is hereby acknowledged hath granted bargained sold and conveyed, and by these presents do grant Bargain sell and convey unto the said William Tighe his heirs and assigns a certain lot messuage or parcel of ground, situated, lying and being in the town of Carondelet, aforesaid known and designated on the plat or survey of said town, as lot number (87) eighty Seven in N E Gr. containing East third street fifty feet one inch and a half West by balance of same square forty six feet one inch on back line North by Christian F. Kimmerlin. South by William H. Pococke.

To have and to hold the said messuage, lot or parcel of ground hereby granted, or mentioned, or intended so to be, with the appurtenances thereunto belonging unto the said William Tighe his heirs and assigns to the only proper use and behoof of the said William Tighe his heirs and assigns, in fee simple, forever. And the said Peter I Shoults Chairman of the Board of Trustees aforesaid, by right of authority in me vested according to the above recited act of the Legislature, doth covenant and promise, to and with the said William Tighe his heirs and assigns, by these presents, That he the said Peter I. Shoults Chairman &c the said above described messuage, lot or parcel of ground, hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said

10 William Tighe his heirs and assigns against the claims of the Inhabitants of said Town of Carondelet, and against any person or persons claiming under them whomsoever, shall and will warrant and forever defend by these presents

Seal In Testimony Whereof I Peter J Shoults Chairman of the Board of trustees for the Town of Carondelet aforesaid, by virtue of authority in me vested have caused the seal of the corporation of Carondelet aforesaid to be hereunto affixed, and signed the same with my own proper hand the day and year above written

J. P. Shoults Chairman.

State of Missouri } Jacob R. Stine Regr.
County of St. Louis } Be it remembered that on this first day of September in the year of our Lord Eighteen hundred and thirty four before me one of the Justice of the Peace within and for the county aforesaid appeared Peter J Shoults who is personally known to me to be the Person whose name is subscribed to the foregoing instrument of writing as having executed the same and acknowledged the said instrument to be his act and deed for the purposes therein mentioned

Taken and Certified the day and year aforesaid

Peter D Barada J. P.

County of St. Louis } I Stephen D. Barlow Recorder for said County Certify that the foregoing deed was filed in my office April 25th 1848 & is truly recorded in Book R No. 4 page 196 & following

Seal Witness my hand and Seal of Office at St. Louis the date last aforesaid

S. D. Barlow Recorder

11 The Plaintiff also offered in evidence a plat of the town of Carondelet as surveyed by Lawrence W. Eiler in 1832 in the month of November. the plaintiff also offered and read in evidence the field notes and remarks as contained on said plat. It was admitted by defendant that said plat remarks and field notes were a true copy of the original. It is agreed that said plat with the remarks and field notes thereon, filed in this cause marked Exhibit "D" may be produced and read in the Supreme Court as part of this Bill of Exceptions. The defendant further admitted that the land in controversy is included within the said survey of Eiler and also within the description of said deed. It was admitted by defendant that the lot described is the following that is to say: Beginning on 3d. Street in the Town of Carondelet at the South East corner of lot in Block 87 sold to Christian F. Kessler thence westwardly along the southern line of said Keysler's lot one hundred and fifty feet more or less to a line parallel with said third street and one hundred and fifty feet therefrom thence southwardly along said last mentioned line forty six feet one inch more or less to the north west corner of Wm. H. Pocock's lot thence eastwardly along the northern line of said Pocock's lot eastwardly one hundred and fifty feet more or less to third street thence Northwardly along said third street fifty five one inch and a half more or less to the place of beginning It was admitted that the defendant was in possession of the premises above described at the commencement of this suit and had so been in possession ~~of the premises above described at the~~

with knowledge of plaintiff's claim for five years before that time. It was also admitted that the monthly value of the premises in possession of defendant is ten cents.

The defendant proved that the reasonable rents and profits of so much of the land in controversy as was in possession for the space of five years was five dollars.

The plaintiff here closed his case.

The defendant thereupon offered and read in evidence a certified copy of Ordinance No. 31 of the Town of Carondelet as follows:

Copy of Ordinance No. "31"

No. 31 An ordinance fixing the mode of making conveyances in ~~accordance~~ accordance with the third and fourth Section of the Charter of Incorporation of the Inhabitants of Carondelet passed July 18th. 1833. and for other purposes therein specified.

Whereas, many of the Citizens of the Town of Carondelet who have been in possession of and improved their lots have not received deeds for the same, nor their boundaries to the same, established by any competent tribunal, therefore;

Sec 1 Be it ordained by the Board of Trustees of the town of Carondelet. That every person who shall have been in possession of a lot in said town and shall have cultivated the same, being an inhabitant and having so been possessed prior to eighteen hundred and thirty two shall be entitled to a deed in fee simple for the same.

Sec 2. Be it further ordained, that all deeds made in obedience to this ordinance, confirmatory of the third and fourth sections of the Corporate Charter, shall conform to the following limits, viz: the lots shall be one hundred and fifty feet front

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and three hundred feet deep where the situation will admit of it, and where it will not, to conform, as nearly as possible

Sec 3 Be it further ordained, that it shall be the duty of the Chairman of the Board from time to time as the respective claims may be established to execute deeds in conformity with this ordinance with special warranty against the claim or claims of the Inhabitants of the town of Carondelet or any person holding under them. The said deed to be signed by the Chairman of the board and countersigned by the Recorder, which shall pass a sufficient title

Sec 4 Be it further ordained that the sum of five dollars be paid to the Chairman of the board for the use of said town, in consideration for such lots, which shall cover the costs and charges of executing said conveyance, shall be paid respectively by the person seeking the same Provided, always that there shall not be more than One hundred and fifty feet by three hundred feet in depth, to any one inhabitant, who may be entitled to such deed; and that none other, but an inhabitant, shall be entitled to the benefit of this act

Passed by the Board of Trustees June 2d 1834

Approved June 2d 1834

P. S. Shoults Chairman Jacob R Stine Regr.

State of Missouri

County of St. Louis } I Bernard Poepping Register of the City of Carondelet do certify, that the above and foregoing is a true copy and correct copy of an ordinance, entitled An Ordinance fixing the mode of making conveyances, in accordance with the third and fourth sections of the Charter of Incorporation of the Inhabi-

=tants of Carondelet, passed Feby 13th 1833 and for other purposes therein specified" approved June 2" 1834, as fully as the same appears of record in my Office

Seal. In Testimony whereof I have hereto set my hand and affixed the seal of said City at Office this thirteenth day of October A.D. 1853. Bernard Poepping Register

The defendant also offered and read to the Jury the following deed, purporting to be a deed from the town of Carondelet:

Deed of Carondelet to Chouquette.

This deed made this twenty sixth day of January in the year Eighteen hundred and fifty, between the Board of Trustees of the town of Carondelet (acting in this behalf by their Chairman Thomas Al Levant. of the first part and Julien Chouquette of the town of Carondelet of the second part. Witnesseth. That Whereas One Antoine Wolter in or about the year 1823 inhabited improved cultivated and possessed a certain lot of ground or tract of land in the town of Carondelet described and known according to the present subdivisions of said town, as lot (87) Eighty seven. Bounded North by D street West by Fourth street East by Third street and South by E street being the whole of said lot or block 87 which is a fractional Block of said town of Carondelet and whereas the said Antoine Wolter did continue possess of said of said lot of ground or tract of land until the third day of August in the year Eighteen hundred and thirty three, when by deed of that date, the said Antoine Wolter and wife, by deed recorded in Book T. pages 40 & 41 conveyed said lot of ground to Louis Papen: who

entered upon and was possessed of said lot of ground or parcel of land up to the 18th August 1834, when by deed of that date the said Papin and wife conveyed said lot of ground to said Julien Chouquette, said deed being recorded in Book A No. 2 page 4, and whereas the said Julien Chouquette thereupon entered upon and took possession of the said lot and has ever since continued possessed thereof being an inhabitant of the Town of Carondelet, and having so been an inhabitant of said town for ten years preceding the said Mother & Papin being also during said period from 1823 to the present time inhabitants of said town of Carondelet; and by virtue of the premises the said Julien Chouquette assignee of Papin under Mother is entitled to a conveyance in fee of said lot of ground, having a front of One hundred & fifty feet on third Street and running westwardly by the same breadth to fourth street three hundred feet according to the ordinance number 31 passed by the Board of Trustees of the Town of Carondelet passed and approved June 2d 1834 entitled "an ordinance fixing the mode of making conveyances, in accordance with the third and fourth sections of the Charter of Incorporation of the Inhabitants of Carondelet passed February 13 1833 and for other purposes therein specified" Therefore in consideration of the premises and of the sum of five dollars paid to the said Chairman of said Board of trustees by said Julien Chouquette, the receipt, whereof is hereby acknowledged, the said party of the first part hath granted sold conveyed and assigned to said Julien Chouquette & his

heirs the lot above described having a front of One hundred and fifty feet on third Street and a like front on Fourth Street bounded North by D Street and South by a line One hundred and fifty feet distant therefrom and parallel thereto To have and to hold the same with the appurtenances to the said Julien Chouquette and his heirs forever, in as full perfect and ample manner as the said Board of Trustees and their Chairman can convey the same according to the law of the land & the ordinance above recited, and the said Board of Trustees, through their Chairman aforesaid and acting by him in this behalf, the lot of ground hereby conveyed will forever warrant and defend to the said Julien Chouquette & his heirs against the lawful claim of the Inhabitants of the Town of Carondelet or any person holding or claiming the same under them, but against no other person or persons well and truly, by these presents.

In Testimony Whereof the said Thomas W Levant Chairman aforesaid of the said Board of Trustees of the Town of Carondelet hath hereto set his hand and affixed the seal of said town of Carondelet the day and year first herein above written

Thomas W Levant (Seal)
Chairman of Board of Trustees for the Town of Carondelet

Michael Chartrand
Register of the town of Carondelet. (Seal)

State of Missouri } Be it remembered that
County of St. Louis } on this Ninth day of

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February in the year of Our Lord Eighteen hundred and fifty before me the undersigned a Justice of the peace within and for the County aforesaid personally came Thomas M. Levant Chairman of the Board of Trustees for the Town of Carondelet, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto and severally acknowledged the same to be his act and deed for the purposes therein mentioned

Taken and certified the day and year aforesaid

Augustus Gamache Justice.

County of St. Louis: I Stephen D. Barlow, Recorder of the said County do certify that the foregoing instrument of writing was filed for record March 11th 1850 & is truly recorded in Book No. 5 page 33.

Seal Witness my hand & Seal of Office the date last aforesaid

S. D. Barlow Recorder.

Bill of Exceptions Cont'd.

The defendant offered evidence tending to prove that Antoine Wotier settled on the Northwest Corner of Block 87 as early as 1824 and built a house thereon, and made some improvements which in 1833 he sold to Louis Fapew by a deed in the words and figures following.

Deed from Wotier to Fapew

Know all men by these presents that I Antoine Wotier (Sons) and Eleonore my wife of Carondelet County of St. Louis in the State of Missouri in consideration of the sum of One hundred and four dollars, legal money of the United States to me in hand, well and truly paid by Louis Fapew of the same County and state aforesaid the receipt whereof is hereby acknowledged and of which he is hereby exonerated, and of every part

18"

thereof forever discharged; have sold transferred (20)
granted, and made over, and by these presents
forever do sell transfer grant and make over
unto him the said Louis Fapew his heirs and
assigns, a certain house and lot, lying and
being situate in the village of Carondelet, bound=
=ed as follows to it: on the North by a cross street
on the west, by fourth street, on the south by a
lot belonging to Mr. Reify, and on the east by a
vacant lot, it being the North West fractional
quarter of block 87 containing eighty four feet
front, by ninety two and a fraction, on the back
part, and one hundred and fifty feet in depth
(french measure) To have and to hold the same
with all the privileges and appurtenances
thereof to him the said Louis Fapew his heirs and
assigns forever and I the said Antoine Mothier
for myself my heirs executors and administrators
do covenant with the said Louis Fapew that if
any lawfully seized in fee of the premises that
they are free of all incumbrances, and I will
warrant the same from his heirs and assigns,
not of all persons whatsoever, claiming or pre=
=tending to claim the same by under or through
him his heirs or assigns; In testimony whereof
I the said Antoine Mothier and Eleonora
my wife have hereunto set our hands, and af=
=fix our seals on the third day of August, one
thousand eight Hundred and thirty three

Signed sealed and delivered in presence of
Yacinte his X mark Pigeon
Peter D Barada

Antoine Mothier (Seal)
Eleonore her X mark Mothier (Seal)

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State of Missouri }
County of St. Louis } Be it remembered that on this Sixth day of August in the year of Our Lord Eighteen hundred and thirty three, Before me A justice of the Peace within and for the County aforesaid Personally came Antonie Wolter and Eleonora Wolter both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same and severally acknowledged the same to be their act and deed for the purposes therein mentioned; she the said Eleonora, being by me first made acquainted with the contents thereof, and examined separate and apart from her husband whether she executed the said deed and relinquishes her dower to the lands and tenements therein mentioned Voluntarily freely and without Compulsion or undue influence of her said Husband. Acknowledged and declared that she executed the said deed and relinquishes her dower in the said Lands and tenements therein mentioned, Voluntarily freely and without compulsion or undue influence of her said husband.

Taken and certified the day and year aforesaid

Peter D. Pgrada J.P.

For St. Louis township County of St. Louis

State of Missouri }
County of Saint Louis } I Archibald Gamble Clerk of the Circuit Court and Ex Officio Recorder for the County of Saint Louis, do hereby certify that the within and foregoing deed from Antonie Wolter and wife to Louis Faber is truly recorded in my Office in Book

II page 40 and 41

Seal Given under my hand and seal of Office this 10th August 1833.

Archibald Gamble Recorder.

Bill of Exceptions Cont'd

That said Wotey lived in said house until said sale and that he then delivered possession thereof to said Papin who occupied it until the 18th of August 1834 when he sold it to defendant by a deed in the words and figures following

Deed from Papin to Chouquette

Know all men by these presents that Louis Papin and Philippine my wife of Carondelet County of St. Louis in the State of Missouri in consideration of the sum of One hundred and ten dollars legal money of the United States to us in hand well and truly paid by Sylvis Chouquette of the said County and State aforesaid the receipt whereof is hereby acknowledged and of which she is hereby exonerated and of every part thereof forever discharged, have sold transferred granted, and made over and by these presents forever do sell transfer grant and make over unto him the said Sylvis Chouquette his heirs and assigns, a certain house and lot lying and being situated in the village of Carondelet bounded as follows to wit; on the North by a cross street, on the west by fourth street, on the south by a lot belonging to Mr. Reily and on the East by a lot belonging to Mr. O Neil it being the North west fractional quarter of block 87 containing eighty feet front by ninety two and a fraction on the back part, and One hundred and fifty feet in depth (french measure). To have and to hold the same, with all the privileges and appurtenances thereof, to him the said

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Julius Chouquette his heirs and assigns forever and I the said Louis Papin for myself, my heirs, executors and administrators do covenant with the said Julius Duchouquet that I am lawfully seized in fee of the premises that they are free of all incumbrances, and will warrant the same against all and every person or persons whatsoever, claiming or pretending to claim the same by under or trough him, his heirs or assigns; in testimony thereof I the said Louis Papin and Philippine my wife have hereunto set our hands and affixed our seals on the Eighteenth day of August in the year of our Lord one thousand eight hundred and thirty four.

Signed Sealed and Delivered in presence of
John his X mark Barada
Peter D. Barada
J P

L. Papin (Seal)

State of Missouri } Be it remembered that on
County of St. Louis } this Eighteenth day of August in the year of Our Lord Eighteen Hundred and thirty four, before me, a justice of the Peace within and for the County aforesaid personally Came Louis Papin and Philippine Papin. Both personally known to me to be the persons, whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledge the same to be their act and deed for the purposes therein mentioned; She the said Philippine being by me first made acquainted with the contents thereof, and examined separate and apart from her husband, whether she executed the said deed and relinquishes her dower to the lands

and tenements therein mentioned voluntarily freely and without compulsion or undue influence of her said husband. Acknowledged and declared that she executed the said Deed and relinquished her Dower in the said lands and tenements therein mentioned voluntarily freely and without compulsion or undue influence of her said husband
Taken and certified the day and year aforesaid
Peter D. Barada (P.F.)

State of Missouri
County of St. Louis } I John Ruland Clerk of the Circuit Court & Ex officio Recorder in said County do certify that the foregoing Deed was filed on the 18th September 1837 and is truly recorded in my Office Book C No. 2 page 4 &c

Seal Given under my hand and seal of said Court this thirteenth day of September Anno Domini 1837.

Jno. Ruland Recorder

The defendant offered to prove that at the time of the sale of said lot in controversy to plaintiff, the same was not vacant, but that the fence of defendant included part thereof, and that the fact that it was so in the occupation of defendant was called to the attention of the persons then and there conducting the sale on the part of the town of Carondelet and by them disregarded. Defendant also offered to prove that he the said Motier and said Fassen had been inhabitants of the Town of Carondelet since the year 1824 and that said defendant had been in possession of a part of the land in controversy anterior to the sale to plaintiff to the present time claiming

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it as his own. all which testimony the Court refused to allow to go to the jury to which refusal the defendant then and there excepted.
The plaintiff thereupon asked and the Court gave the following instructions

Pltff's Instructions

1, If the jury believe from the evidence, that the land in controversy is embraced within the corporate of the town of Carondelet as confirmed by the act of Congress of the 13th. of June 1812 and as surveyed under the authority of the United States, and that it is included in the deed of the Inhabitants of the Town of Carondelet to plaintiff executed by P. L. Shoultz Chairman of the Board of Trustees of said town and that said deed was executed as the same purports to have been and that defendant was in possession of the land in controversy or any part thereof at the commencement of this suit, they will find for the plaintiff.

Given

2, If the jury find for the plaintiff and believe from the evidence that knowledge of plaintiffs claim came to defendant more than five years previous to the commencement of this action, and that defendant was in possession of any part of the land described in plaintiffs deed, for five years prior to that time, then plaintiff is entitled to recover by way of damages such reasonable rents and profits of so much as he was so in possession for the term of five years next preceding the commencement of this suit, the whole amount of such recovery not exceeding the sum claimed in plaintiffs petition. But if the knowledge of plaintiffs claim came to defendant, within five years and prior to the

commencement of this suit then plaintiff is entitled to recover such damages from the time such knowledge came to defendant.

8 If the jury find for the plaintiff and that his right to the possession is unexpired the jury will find the monthly value of the rents and profits of so much of said premises as they find to be in the possession of the defendant. To the giving of which instructions the defendant excepted.

Given.

The Defendant then asked the following instructions which the Court refused. the defendant duly excepted.

Refused

The jury is instructed that the instrument read in evidence by the plaintiff is not the deed of the town of Carondelet

Refused

The jury is instructed that the said instrument is not sufficient in law to convey any title of the town of Carondelet to the land in controversy

Refused

The jury is instructed that the town of Carondelet had no authority to sell under the 1 Section of the act of 13th Feb 1833 any lots which were not vacant unoccupied, and that any sale or attempt to sell under that act, a lot actually occupied by any person holding adversely to the town of Carondelet was void & is a nullity.

Bill of Exceptions Cont'd.

The jury found a verdict for the plaintiff and that the defendant was in possession of the whole of the land in controversy at the commencement of this suit and that plaintiff had suffered five dollars damages and the monthly value of the premises was few cents

Afterwards the defendant filed the following motion for a new trial:

The Defendant prays the Court to set aside the verdict of the jury in this cause & grant

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Mo. for New Trial

him a New trial for the following reasons
1° That the Court improperly admitted in evidence the instrument signed by C. P. Shultz to be read in evidence by the ~~jury~~ plaintiff.
2° The Court improperly declared the said instrument to be the deed of the Town of Caron=delet
3°. The Court erred in declaring said deed to be sufficient to convey the title of the town of Carondelet
4°. The Court erred in giving to the jury the instructions asked for by plaintiff
5°. The Court erred in refusing to permit the defendant to give the testimony which he offered to give
6°. The Court erred in refusing the instructions asked for by defendant.

Thos. T. Gantt p. d.

Bill of Exceptions Cont.d

Which motion afterwards in said term coming on to be heard and considered the same was by the Court overruled, to the overruling of which the defendant excepted and prayed the Court to allow sign and seal this his Bill of Exceptions this 18th day of January 1852

Samuel Treat Judge (Seal)

State of Missouri
County of St. Louis } I Charles W. Hicks
Clerk of the Saint Louis Court of Common Pleas within and for the County aforesaid certify the above and foregoing to be a full true and complete copy of the record and proceeding in the case of William Tigh plaintiff against Julien Choquette Defendant as fully as the same remains in my Office

In Testimony Whereof I hereto set my hand and affix the seal of said Court at Office in the City of St. Louis this 4th day of October A D 1854

C. W. Hicks
Clk

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(17) 128

March T. 1855

William Tigh D.E.

vs

Julien Chouquette P.E.

Error to St. Louis Court of Common Pleas.

J. J. Gantt.

Filed 6th October 1854.
Wm. L. Glanville
Clk

$9.00 Clks fee.

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(60)

William Tigh
Defendant in error
v
Julien Chouquette
plaintiff in error

The said plaintiff in error comes & says that the Court below committed error in this cause in the following particulars to wit.

1o. In refusing to allow & give effect to the evidence offered by the said plaintiff in error

2o. In giving to the jury the instructions asked by the defendant in error

3o. In refusing to give the instructions asked for by the ~~defend~~ plaintiff in error.

4o. In permitting illegal testimony offered by defendant in error to go to the jury

5o. In overruling the motion for a new trial made by the plaintiff in error.

Wherefore the plaintiff ~~in~~ in error prays that said judgment be reversed.

Thos T Gantt.
for pltff in error.

And the said Respondent comes and says there is no such error as above alleged Hudson & Thomas
Holmes
for Respd

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William Tighe, D.E.
v
Julien Chouquette
p.E.
Assignment of error
J W Gantt for
plff in error

Filed 15 November 1857,
Wm L Glanville
Ck

William Tighe
vs ~~Deft in Error~~ } In the Supreme Court
Julian Chouquette } of the State of Missouri
Pltff in Error } March Term 1855

This was an action of ejectment brought to the September Term, 1852 of the St Louis Court of Common Pleas by Tighe against the plaintiff in Error to recover the possession of a lot of ground situated in Block No 87 of Eilers Survey of the Town of Carondelet, and within the Commons of said Town. At the same Term, 1853, there was a verdict and judgment for the plaintiff.

The case is, in many respects, the same as that of Reily vs Chouquette. The plaintiff proved the title of the town to Commons and gave in evidence the Act of the General Assembly approved Feb. 13th, 1833, entitled "An authorizing the Corporation of Carondelet to convey certain lots of ground", a plat of Eilers Survey, & a deed from the town purporting to be executed in pursuance of said Act. It was admitted that the town was incorporated in August 1832, that the premises in controversy were within the Commons and Eilers Survey of the town, and that defendant was in possession at the commencement of the suit.

Defendant gave in evidence Ordinance No 31 of the Corporation of the Town of Carondelet, a deed from the Town dated the 29th day of January, 1850, being the same deed given in evidence in the

case of Reily vs. Choupette, and purporting to convey to him the Northern portion of Block No 87, including the lot in controversy. This deed recites that defendants claimed a compromise with the town on the ground of the possession prior to 1832 of one Mother and one Fagen. Defendants further gave in evidence deeds from Mother to Fagen and from Fagen to himself, both executed after the making of Eilers survey, and purporting to convey the Northwest fractional quarter of Block 87, not including the lot in controversy.

At this stage of the case the defendants offered to prove that at the time of the sale of said lot in controversy to plaintiff, the same was not vacant but that the fence of defendants included part thereof, and that the fact that it was so in the occupation of the defendants was called to the attention of the persons then and there conducting the sale on the part of the town of Carondelet. Defendants also offered to prove that the said Mother and the said Fagen had been inhabitants of the town of Carondelet since the year 1824, and that said defendants had been in possession of a part of the land in controversy anterior to the sale to the plaintiff, claiming it as his own, all which the Court excluded.

The Court gave the following instructions for the plaintiff

1. If the jury believe from the evidence, that the land in controversy is embraced within the Commons of the town of Carondelet, as confirmed by the act of Congress of the 13th of June, 1812, & as surveyed under the authority of the United States, and that it is included in the deed of the Inhabitants of the Town of Carondelet to plaintiff, executed by P. J. Rhodes, Chairman of the Board of Trustees of said Town, and that said deed was executed as the same purports to have been, and that defendant was in possession of the land in controversy, or any part thereof, at the commencement of this suit, they will find for the plaintiff.

The other instructions given for the plaintiff were the ordinary instructions touching the matters of damages and the monthly value of the rents and profits.

The Court refused the following instructions asked by the defendant

1. The jury is instructed that the instrument ~~used~~ in evidence by the plaintiff is not the deed of the town of Carondelet.

2. The jury is instructed that the said instrument is not sufficient in law to convey any title of the town of Carondelet to the land in controversy.

3. The jury is instructed that the town of Carondelet had no authority to sell under

the 1 Section of the act of 13th of Feb, 1833, any lots which were not vacant and unoccupied, and that any sale or attempt to sell under that act, a lot actually occupied by any person holding adversely to the town of Carondelet was and is a nullity.

The giving and refusing instructions, admitting and excluding evidence, and the overruling the motion for a new trial are the errors assigned.

Points submitted.

1. That plaintiffs deed was the deed of the town is determined by the case of Reily vs Chouquette, 18 Mo. Rep., 220., and the Court properly refused defendants first and second instructions.

2. The Court properly excluded the evidence offered by the defendant, his possession being on his own showing that of a trespasser, See the deeds of Motier and Fassen. The recitals in those deeds operate as an estoppel against the defendant.

3. Aside from the fact that no act was necessary to authorize the Corporation to convey this land, the defendant was not an occupant in the sense of the act of 1833, and his third instruction was properly refused.

S A Holmes p. d.

William Tighe
vs Defdt

Julian Choquette
Ref

Brief for Defdt.
And Statement.

Filed 17 April 1855
W L Glamith
Ck

(36)

William Tigh Defdt. in Error
vs.
Juliane Chouquette Pltff in Error

Error to the St. Louis Court of Common Pleas

The idea in which the defense of the plaintiff in error seems to be conceived cannot be sustained. That idea is, that the execution of a deed for a lot in the Town of Carondelet was the execution of a naked power, and unless all the circumstances existed, that warranted its exercise, the act was void. It is believed, that such is not the view to be taken of the act and ordenances under which the authorities of the Town proceeded in settling ~~and~~ the titles ~~of~~ and disposing of her vacant and unoccupied lots.

The act of 13th Feby 1833 conferred on the board of trustees of the Town of Carondelet authority to sell and convey in fee all the vacant or unoccupied lots of grounds, to which the inhabitants of the Town had the legal or equitable title. This act was passed not because the property whose sale was authorized did not already belong to the inhabitants but because it was held in common and the act was ~~enabled~~ passed to enable them to convey it in a corporate capacity. This statute conferred no title on any person who had not one previously. The power of ascertaining which of the lots were vacant or unoccupied must have been given to the inhabitants But such a power could not warrant them, in disturbing the title of any individual which he possessed under any law or ordenance. Subject to this qualification the inhabitants determined which of their lots were vacant or unoccupied If there was a squatter on a lot, that would not prevent them from considering it as vacant. Public land on which a settler is seated without authority is nevertheless regarded as vacant. Under the first section of ordenance

No 31. Choquette ~~by~~ on his own possession prior to the year 1832 was not entitled to a lot: He was not on the land personally until 1834. Although he may have availed himself of a derivative possession yet he claims under those who only conveyed the Northwest corner or quarter of block 87. If in his occupancy of that corner or quarter, he encroached on another lot in the same block, the subject of this suit, which was apparently vacant or unoccupied or unclaimed as appeared by Eilers survey, such encroachment would confer no title under ordinance No. 31. It would not rightfully prevent the lot from being considered as vacant by the inhabitants. In the case of Reilly vs Choquette 18 Mo Rep 227 this court held, that nothing but bad faith & a wanton usurpation of power could avoid a deed of the inhabitants under the act of the 13th Feby 1833: That if the circumstances existed under which they were warranted in acting no error in judgment, no mistaken conclusion of law would be allowed to invalidate the act. The inhabitants then acting on this subject and having determined that this lot should be sold, there is no foundation in law for the plaintiff claiming under them by a subsequent conveyance, to contest on the ground of mistake or misapprehension, the correctness of that determination whether made by the inhabitants or the Chairman deputed by them. There is no hardship in this on ~~the~~ Choquette who is merely asserting a title acquired from the inhabitants subsequent in date to that of the plaintiff. The law entrusted the inhabitants with the authority to sell & compromise their titles to the vacant lots in their village. They have done so and in so doing have past away a title. Now no one claiming under them subsequently ~~that~~ can allege, that their judgment was erroneously

exercised in coming to the conclusion that a lot was vacant.

The question as to the validity of the deed growing out of the form and the manner of the execution of it, we consider as settled by the case of Reilly vs Lehongrette ~~[illegible]~~ to which reference has been already made. The deed in the present suit was executed under the third section of the act of 13th July 1833. In the case cited it was under the 4th section of the act, and that section provides that the deed under it, shall be executed in ~~like~~ the manner and under the restrictions prescribed by the 3rd sec. of the act. Then if the deeds are alike as they are in respect to the matter ~~[illegible]~~ to which objections are made, the deed under the 3rd section must be valid

Ordinance No 19 approved July 15th 1833 authorizing the sale of all the vacant and unoccupied Town & out-lots of Carondelet ~~was~~ is not preserved in the record of this case, but as no point was made on its absence its omission cannot vary the judgment. The cause has been considered as though it was ~~not~~ in it.

The judgment affirmed

The other judges concur

Wm Scott

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Tigh
vs
Chouquette

Opinion

1.

Filed 8th June 1855
Wm. L. Glarmien
Ck

William Tigh, d.E. v Julian Chouquette p.E. } Error to the St Louis Court of Common Pleas.

This was a suit in the nature of an ejectment, brought by Tigh against Chouquette to recover possession of a lot in Carondelet. The lot was within Eiler's Survey of the town, made in 1832. The plaintiff's title was derived through the following deed which was read the defendant objecting & excepting thereto.

"This indenture made this first day of September in the year of our Lord Eighteen hundred and thirty four between Peter J Shoultz chairman of the Board of Trustees within & for the town of Carondelet in the County of St Louis & State of Missouri, by virtue of authority conferred on me by an act of the Legislature, passed the 13th February in the year Eighteen hundred and thirty three, authorising the Corporation of Carondelet to sell & convey certain lots of ground, of the first part and William Tighe of the second part, witnesseth. That the said Peter J Shoultz for and in consideration of the sum of forty five dollars — cents, unto him paid well & truly paid according to the condition of the sale of lots in the town of Carondelet on the 15th 16th & 17th days of August in the year of our Lord Eighteen hundred & thirty three, by William Tighe of the second part, at & before the sealing & delivery hereof, the receipt whereof is hereby acknowledged hath granted bargained sold and conveyed and by these presents doth grant bargain sell & convey unto the said William Tighe his heirs and assigns, a certain lot of messuage or parcel of ground situated &c &c (describing the lot in controversy)

To have and to hold the said messuage lot or parcel of ground hereby granted or mentioned or intended so to be, with the appurtenances &c &c

of Carondelet who have been in possession of and improved their lots, have not received deeds for the same nor the boundaries to the same established by any competent tribunal. Therefore

Sec. 1. Be it ordained by the Board of Trustees of the town of Carondelet. That ~~any~~ every person who shall have been in possession of a lot in said town and shall have cultivated the same, being an inhabitant, and having so been possessed prior to ~~the~~ Eighteen hundred and thirty two shall be entitled to a deed in fee simple for the same

Sec. 2. Be it further ordained that all deeds made in obedience to this ordinance confirmatory of the third and fourth sections of the corporate charter shall conform to the following limits. viz. The lots shall be one hundred & fifty feet front and three hundred feet deep, where the situation will admit of it & when it will not, to conform as nearly as possible

§ 3. Be it further ordained that it shall be the duty of the chairman of the Board of from time to time as the respective claims may be established, to execute deeds in conformity with this ordinance with special warranty against the claim or claims of the inhabitants of the town of Carondelet or any person holding under them. The said deed shall be signed by the chairman of the board & countersigned by the Recorder which shall pass a sufficient title.

Sec. 4. Be it &c. That the sum of five dollars be paid to the chairman of the Board for the use of said town in consideration for said lots, which shall cover the costs & all charges of executing said conveyance and shall be paid respectively by the person seeking the same. Provided always that there shall not be more than one hundred ~~dollars~~ and fifty feet by three hundred feet in depth [granted] to any inhabitant who may be entitled to such deed and that none other than an inhabitant shall be entitled to the benefit of this act

approved 2d June 1834.

and the said Peter J. Shoultz chairman of the Board of Trustees aforesaid by right of authority in me vested according to the above recited act of the legislature, doth covenant and promise to & with the said William Tighe his heirs & assigns by these presents, that ~~&~~ he the said Peter J. Shoultz chairman (sic) to the said above described messuage lot or parcel of ground hereby granted or mentioned or intended so to be, with the appurtenances unto the said William Tighe his heirs and assigns against the claims of the Inhabitants of said town of Carondelet and against any person or persons claiming under them whomsoever shall & will forever warrant and defend by these presents. In testimony whereof I, Peter J. Shoultz chairman of the Board of Trustees for the town of Carondelet aforesaid, by virtue of authority in me vested, have caused the seal of the Corporation of Carondelet aforesaid to be hereunto affixed, and signed the same with my own proper hand, the day & year above written.

Peter J Shoultz. chairman

Jacob R Stine Register

(Seal of Carondelet)

This ~~deed~~ paper was acknowledged by Shoultz to be his deed. and was recorded.

It was admitted that defendant was in possession of the premises and had been so for more than five years before the bringing of this suit.

On the part of the defendant it was shown that the following ordinance had been passed by the Board of Trustees of Carondelet in June 1834. to wit.

No 31. An ordinance fixing the mode of making conveyances in accordance with the third & fourth sections of the Charter of Incorporation of the Inhabitants of Carondelet, passed Feb 13. 1833 and for other purposes therein specified — Whereas many of the citizens of the town

On the 29th January 1850. the town of Carondelet. by deed in due form, executed by the Corporation through its proper officers Conveyed to the defendant. by virtue of this Ordinance. a lot of 150 X 300 feet including the premises in Controversy. reciting that the defendant and those under whom he Claimed had been in possession of the premises since 1823. & that defendant had been in possession before & since 1831, in person, being then & before an inhabitant of the town of Carondelet. The defendant proved the facts recited by this deed by evidence dehors the deed. And offered to prove that at the time of the sale of the lot in controversy to the plaintiff the same was not vacant, but was in the actual occupancy of defendant. and that plaintiff knew it so to be, and that the persons Conducting the sale on the part of the town of Carondelet knew and disregarded the fact of the occupation of said lot by defendant at the time of said sale That the persons under whom defendant Claimed had been inhabitants of the town & village of Carondelet since 1824 and that defendant was in possession of the land in controversy at the time of the sale to the plaintiff & had been ever since, claiming it as his own. The Court excluded all this testimony, and the defendant excepted.

And thereupon the Court gave the following instructions. the defendants excepting.

If the jury believe from the evidence that the land in controversy is embraced within the commons of the town of Carondelet as confirmed by the act of Congress of the 13th June 1812 and as surveyed under the authority of the United States and that it is included in the deed of the Inhabitants of the town of Carondelet to the plaintiff executed by P. J. Shoultz Chairman

of the Board of Trustees of said town and that said deed was executed as the same purports to have been and that defendant was in possession of the land in controversy or any part thereof at the commencement of this Suit, they will find for the plaintiff.

2. If the jury find for the plaintiff and believe that defendant had notice of plaintiff's title &c &c (This instruction is not in itself objected to. It only refers to the amount of damages.

3°. (The same of this instruction)

The defendant asked the following instructions all of which the Court refused & Defendant excepted.

1. The jury is instructed that the instrument read in evidence by the plaintiff is not the deed of the town of Carondelet.

2. The jury is instructed that the said instrument is not sufficient in law to convey ~~to the~~ any title of the town of Carondelet to the land in Controversy

3. The jury is instructed that the town of Carondelet had no authority to sell under the first Section of the act of 13th Feb. 1833. any lots which were not vacant & unoccupied, & that any sale or attempt to sell under that act, a lot actually occupied by any person holding adversely to the town of Carondelet was & is a nullity.

The jury found for plaintiff. Defendant moved for a new trial & prosecutes this writ of error.

The first Section of the act of 13th Feb. 1833. is as follows

§1. The Board of Trustees of the town of Carondelet shall have authority to sell and convey in fee all the vacant or unoccupied lots of ground to which the Inhabitants of the town of Carondelet shall have the legal or Equitable title which are included in the Survey of said town of Carondelet made by Lawrence McKiler deputy Surveyor of the County of St Louis in November last, by authority of the said Board of Trustees."

The third section of the same act is as follows.

§3. The inhabitants of the said Town shall have power to convey all the lots of ground thus sold upon the payment of the purchase money according to the conditions of the sale: and the chairman of the Board of Trustees in their behalf shall have authority to execute a deed in fee simple for the lots thus sold, with special warranty against the claim of the inhabitants of said town and against all persons claiming under them: which deed shall be countersigned by the recorder and shall have the corporate seal of said town affixed thereto, and shall be effectual to convey all the legal and equitable ~~title~~ claim to said lots which accrued to the inhabitants of said town under the French or Spanish Governments and by virtue of acts of the Congress of the United States.

And thereupon Chouquette (plff in Error) submits 1°. That the paper read in evidence purporting to be executed by P. J. Shoultz to the plaintiff, is not valid to convey any interest of the town of Carondelet to the land in controversy

Reilly v Chouquette 18 Mo. Rep. 220 + cases there cited

2°. The act of 13th Feb'ry 1833 conferred on the Board of trustees of Carondelet the right to sell only the vacant and unoccupied lots of Eiler's Survey: and any sale of a lot held adversely to the ~~City~~ town was under that act a nullity.

Id. Ibid.

Respectfully Submitted — Thomas T. Gantt p.q.

No. 128

William Tighe
v
Julien Chouquette.
Statement of the
Case & points for
plaintiff in Error
H. T. Gantt
for J. Chouquette

(48)