Peterson, William vs Sing, Catharine 1856 St. Louis 377/2
Peterson, Sylvina (alias Lark, Catharine)

587/3

Scott
R&R
L-gen

Cath. daughter of Tonville, Toussant who died
2 children conveyed shared to Pierre & Chas, Tonville → Cath.

Cath's husband → P, S

deed from minors → dro a disaffirmance

Transcript

For Supreme Court,
in case of

William D. Peterson,
& Sylvania his wife, — Plaintiffs

vs,

Catharine Leig, alias Laik, Defendants —

from St. Louis Land Court —

1 State of Missouri:
County of St. Louis, } S.S.

Be it remembered that there was filed in the office of the Clerk of the St. Louis Land Court, within and for the County and State aforesaid, on the Thirteenth day of July, in the year one thousand Eight Hundred and fifty-four, a petition, which is in the words and figures following, to-wit:

In the St. Louis Land Court,
October Term, 1854.
St. Louis, County:-

Petition William D. Peterson, & Sylvina his wife, } Plaintiffs
vs.
Catharine Leig, alias Laik, } Defendant.

Plaintiffs State that they own, and on the 28th day June, 1854, were entitled to the possession of Twenty acres of land in the County of St. Louis, State of Missouri, being the undivided two eighths of a certain tract in said County containing eighty acres being the East half of the North East quarter

Page 23 of Section No. 7 in Township No. 45 North Range, 6 East and was patented to one Thomas Hensley and by him sold to and Conveyed to Torrissant Tourville, Senior, deceased, by deed dated August 18th, 1829 of Record in the Recorders Office of St. Louis County in Book P. page 353, and being so entitled to the possession thereof, the said defendant on the first day of July, 1854, entered upon and took possession of the same, and still continues unlawfully to withold the possession thereof from the said Plaintiffs to their damage two hundred dollars.

Pet'n. Petition, Plaintiffs pray judgment for the possession of said land as above described and for said damages of two hundred dollars - and for rents according to law

P. C. Morehead, for Pltffs.

William D. Peterson, makes oath and says - that he believes the above petition, and the matters as therein stated are true.

Wm D. Peterson,

Sworn to and subscribed before me - this 13th, day of July, 1854.

Charles A. Mantz, Clerk,

Summons. Upon which petition, the following Summons issued to the Sheriff of St. Louis County:

Page 33

County of St. Louis, S. S.
The State of Missouri:-
To the Sheriff of St. Louis County: Greeting:-
We Command you to Summon Catharine Leig alias Laik - to appear before the Judge of our Saint Louis Land Court, on the first day of the next term thereof, to be held in the City of St. Louis, within and for the County of St. Louis, on the First Monday of October next, then and there to answer the Complaint of William D. Peterson and Sylvina his wife - as set forth in the annexed petition. and have you then and there this writ.-

Summons.

Witness: Charles A. Mant, Clerk of our said Court with the Seal thereof hereto affixed, at office in the City of St. Louis, This Thirteenth day of July, in the year of our Lord, Eighteen hundred and fifty-four.

(Seal.)

Charles A. Mant Clerk.
By A. Selkirk, Deputy,

Shiffs Return

The Sheriff made return upon the Summons, in words and figures, as follows, to-wit:
Executed this Writ in St. Louis County

 On the 17th day of July, 1854, by delivering a copy of the within writ and petition, as furnished by the Clerk, to Catharine Leig alias Laik, the defendant,

J. M. Wimer, Sheriff.

Fee $1.00 — By J. H. Douglass, Deputy,

And afterwards, to wit: On the Ninth day of August in the year one thousand Eight hundred and fifty-four, the defendant filed the following Demurrer, in words and figures following to wit:—

Demurrer.

The State of Missouri; } S.S.
St. Louis County, }

In the St. Louis Land Court, October Term, 1854.

William D. Peterson, et. al. } Plaintiff.
vs } Demurrer.
Catharine Leig, alias Laik, } Defendant,

1 Defendant Demurs to plaintiffs petition in this cause, First, because plaintiffs hath not in said petition made all the parties in interest in the land in controversy, parties plaintiffs or defendants to this suit:

5 2 Defendent demurs also to said petition, because it does not state facts sufficient to constitute a cause of action; in this

(A) Plaintiff sets forth in said petition no possession by defendent inconsistent with plaintiff as co-tenant.

(B) Plaintiff does not allege a sufficient ouster as to the co-tenancy of the land.

3. Defendent demurs also to said petition, because plaintiff hath not filed with his pleading any record, deed or other writing, or authenticated copy thereof, on which he intends to rely to maintain his action. Delafield & Kribben, p.q.

And afterwards the following further proceedings were had in this cause, to wit:

Demurrer Overruled.

October Term 1854

Saturday December 9th 1854

William D Peterson and Sylvina his wife
vs
Catharine Leig alias Laik

Now at this day the demurrer of said defendant heretofore filed, to the said plaintiffs petition in this cause, is submitted to the Court, and the Court having heard and being fully advised of and concerning the same, doth order and adjudge that said demurrer be overruled, with leave to file his answer to said petition

Saturday December 9th 1854

William D Peterson and Sylvina his wife
vs
Catharine Leig alias Laik.

Answer filed

Answer 6

The State of Missouri } In the St Louis Land Court
St Louis County } October Term A. D. 1854
Wm D. Peterson et al plaintiff
vs
Catharine Leig alias Leick Defendant

Defendent for answer to plaintiffs petition denies that plaintiffs own and on the 28th June 1854 were entitled to the possession of the twenty acres of land in the County of St Louis and State of Missouri set forth in their petition or any part thereof, Defendent denies that on July 1. 1854, or before or since, she unlawfully entered and took possession of the same and she denies that she still continues unlawfully held possession of the same from Plaintiffs. And she denies that by any damage done by her she owes plaintiffs two hundred dollars or any other sum as charged in said petition, And she prays she may be hence dismissed with her costs in this behalf wrongfully sustained by Delafield & Krebbenpg George Leick son and agent for defendent Catharine Leick his mother, makes oath and says that he believes the above answer and the matters therein contained as true,

Sworn to & subscribed before } George Leick
me this 9th October 9. 1854.
Charles A. Mantz, Clk

The following further proceedings were had in this cause, to wit.

March Term 1855

Tuesday May 15th.

Wm D. Peterson et al plaintiff
vs

7 Catharine Leig alias Laick Defendent } Continued by consent

The following further proceedings were had in this cause.

October Term 1855

Monday October 29th 1855

William D. Peterson and Sylvina his wife }
vs } Ejectment
Catharine Leig alias Laick }

Now at this day come said parties by their respective attorneys and thereupon come also a Jury, to wit: John M. Cooper, Louis Morel, Joseph Baker, John Letcher, John C Williams, Daniel Casey, Francis Mallett, Elijah Grant, Frederick Jenkins, Louis Motier, Jonathan Hatch and John Foz, twelve good and lawful men, who being duly elected, tried and sworn well and truly to try the issues joined in this case, and a true verdict render according to the evidence, therefore the trial prognosed, but not being fully ended, this cause is continued until to morrow.

Jury

The following further proceedings were had in this cause, to wit,

October Term 1855

Tuesday October 30th 1855

William D. Peterson and Sylvina his wife. }
vs } Ejectment
Catharine Leig alias Laick. }

Now at this day come again said parties by their respective attorneys, and also come the jury heretofore sworn in this cause, and the trial being fully ended, the Jury aforesaid upon their oaths aforesaid find for the defendent. Therefore upon the finding of the Jury as aforesaid, it is ordered and

Judgment against Pltff for costs

8 adjudged by the Court that the plaintiffs take nothing by their suit in this behalf, but that the defendant go hence without day and recover of the Plaintiffs their costs and charges in this behalf expended and have thereof execution.

The following further proceedings were had in this Cause to wit.

October Term 1855.

Wednesday October 31st 1855.

William D Peterson and Sylvina his wife
vs
Catharine Lieg alias Laick

Motion for a new trial & bill of exceptions filed.

Motion for New Trial

William D Peterson & wife Pltffs
vs
Catharine Laick Deft

In the St Louis Land Court
Oct T. 1855

The Pltffs come and pray the Court to grant a new trial in this case for the following reasons

1 The Court erred in refusing instruction asked by Pltff.

2 The Court erred in giving instruction No 1 so far as it submitted to the jury to determine the effect of deeds therein mentioned.

3 Instructions No 2 & 3 are against law.

4 The verdict of the Jury is against law and against the evidence.

5 The verdict of the Jury is against the instructions.

P. C. Morehead for Pltffs.

The following further proceedings were had in this Cause,

October Term 1855

Saturday December 8th 1855.

9- William D. Peterson, and Sylvina his wife -
vs.
Catharine Leig alias Laick

Now at this day the motion herein before filed, of said plaintiff, for a new trial, is submitted to the Court, and the Court being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled -

Mo. overruled

And afterwards, the following further proceedings were had in this cause, to-wit:

Saturday, January 5th, 1856.

William D. Peterson and, Sylvia his wife.
vs.
Catharine Laick

Bill of Exceptions filed -

Bill of Exceptions - in words & figures following -

Bill of Exceptions

William D. Peterson & wife, Pltffs.
v
Catharine Laick, Deft.

In the St. Louis Land Court,
October Term, 1855 -

Be it remembered that on the trial of this Cause, the evidence to wit. First a deed from Thomas Hensley & wife to Tonisant Tonville, as follows to wit: "This Indenture made and Executed, this Eighteenth day of December, one thousand Eight hundred and ~~twenty~~ nine - between Thomas Hensley and Hariet Hensley his wife - of the County of St. Louis and State of Missouri, of the first part and Tonsant Tonville of the County and State aforesaid of the second part Witnesseth that for and in consideration of the sum of three Hundred & twenty five dollars in hand paid the receipt whereof is hereby acknowledged by the said party of the first part the parties of the first part do grant, bargain, sell and convey to the said party of the second part a certain tract or parcel of land lying and being in the Township of St Louis on the waters of the Riviere des peres in the County of St. Louis and State aforesaid and being the East half of the North East quarter of Section

Deed of Thomas Hensley & wife to T. Tonville

Seven, in Township forty five north of Range Six East in the dis-
-trict of lands offered for sale at St. Louis Missouri, Containing
Eighty acres and patented to the said party of the first by
patent bearing date the first day of april one thousand
Eight hundred and twenty Eight.

To have and to hold the said tract or parcel of land with
all its appurtenances thereunto belonging to him the said Tous-
-ant Tourville his heirs and assigns forever & we
the said Thomas Hensley and Hariot Hensley his
wife do hereby covenant & bind ourselves our heirs and assigns
to the said Tousant Tourville his heirs and assigns to warrant
and forever defend the right and title of the said tract or
parcel of land, to him his heirs and assigns free from
the claim or claims of all persons whatsoever. In Tes-
-timony whereof we have set to our hands and seals the day and
year above mentioned

attest

Thos A Hensley (Seal)
Hariet Hensley (Seal)

State of Missouri
County of St Louis }

Be it remembered that on this Eight-
-eenth day of December in the year of our Lord Eighteen hun-
-dred and twenty nine before me one of the Justices of the County
Court within and for the County aforesaid personally app-
-eared (Came) Thomas Hensley and Harriet Hensley his
wife both personally known to me to be the
persons whose names are subscribed to the

11 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 Harriet being by me first made acquainted with the contents thereof and examined seperate and apart from her husband, whether she executed the said deed, and relinquished her dower freely and without 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

Frederick Hyatt J. C. C.

State of Missouri }
County of St Louis } ss

I Archibald Gamble Clerk of the Circuit Court and ex officio Recorder of the County of St Louis do Certify that the within deed is truly recorded in my office book P page 355.

(Seal)

Given under my hand and the seal of the said Court this 15th day of January 1830

Archibald Gamble
Recorder.

Plaintiffs then introduced Charles Tourville as a witness, who was sworn and stated as follows. Viz:

testimony of witnesses

I knew Toussaint Tourville senior deceased, he was my father, he died in St Louis in the first year of the Cholera, he left eight

12 children, Charles Louisant, Louis, Pierre, Etienne, Paschal, Mary and Catherine. Catherine is married to Joseph Chaput, both now living in Illinois. Paschal died four or five years past, He died up the Missouri amongst the traders, he has been up there the most of his time, I know the Plaintiffs they live in this City. I know the land in dispute in this Case, It belonged to my father, he was the person it was conveyed to. My Henley, witness occupied it for his father about five years, and up to the time of a deed I made to a Mr Chouse, My Mother is also dead — and this was all he stated on examination by Plaintiffs — Witness then stated on cross examination as follows to wit; That the person first spoken of was Louisant Tourville senior, he had but eight children, he died at the time of the first cholera in 1833 — There is another Charles Tourville my nephew, Myself and one of my brothers lived on the land Cant tell exactly which side I lived on, I lived on it four or five years after my father bought it,

Paschal was the youngest of the brothers, Catherine was the youngest child, I do not know exactly how old Paschal was when he died, think he was here four or five years ago — I am about fifty six years old, Louisant next fifty four years, Mary next fifty two years, Louis next fifty years, Pierre next forty eight years, Etienne next forty six years — There was one who died young between Etienne and Paschal, My brothers did not live with their father, Paschal was in the mountains, I dont remember Paschals age when my father died, My Mother survived my father, Paschal lived I think with my Mother awhile after my fathers death,

13 I bought some shares in the land from my brother and sister Louis and Catherine - I think the deed was acknowledged before Mr Bienn. I sold to Mr Cloum my rights as I did it My wife's name is Amelia - And this was all he stated Plaintiff then introduced Paul Desjarlais as a witness who was sworn and stated as follows - I know Louisant Tourville senior he is dead - he left children as follows,
Charles, Louisant, Louis, Pierre, Etienne, Marg, Paschal and Catherine, Mrs Tourville the mother is dead, Catherine is now married to Mr Joseph Chaput, they live in Illinois I know Paschal, he went to the mountains twelve or fifteen years ago, he is now dead - he came down here some five or six years ago to Lt Louis - And this was all he stated.
Charles Tourville Junior was then sworn as a witness for Plaintiff and stated as follows,
I know the land in dispute in this suit, I was on it July the 3d 1854, with Mr Peterson the Plaintiff, I then saw Mrs Laiche the defendent on it, Mr Peterson then demanded from her the possession of twenty acres - She said she had no land of Mr Petersons, and refused to give him possession of any land - And this was all he stated.
Frederick Cloum was then called as a witness for Plaintiff and being sworn, stated as follows, I know the land in dispute, I live upon it, Mrs Laiche the defendent also lives upon this land and has during the past sixteen or seventeen years, she occupies the North half, I occupy the South half. Old Mr Laiche and myself had it surveyed off in this way - and this was all he stated.

14 Plaintiffs then read in evidence a deed from Joseph Chaput and wife to Silvina Peterson as follows,

This indenture made and entered into this the twenty six day of April 1853 between Joseph Chaput and Catherine his wife of the State of Illinois parties of the first part and Sylvina Peterson the wife of Wm. G. Peterson of the City of Saint Louis State of Missouri party of the second part, Witnesseth – that the said parties of the first part in consideration of the sum of fifty dollars in hand paid by the said party of the second part the receipt of which is hereby acknowledged have and do by these presents grant, bargain sell and transfer and convey unto the said party of the second part all our right title, claim and interest to real estate in the County of Saint Louis State of Missouri to which we are entitled as heirs of Louisant Tourville senior deceased the said Catherine being one of the said Louisant Tourville children and heirs and the said real Estate being bounded as follows in Saint Louis county state of Missouri to wit; the East half of the North East quarter of Section seven in Township forty five North Range six east it being one eighth of eighty acres also one on the tract of land bounded as follows on the East by Cold Water creek on the South by land formerly owned by Jane Cortway and on the West by land of said Cordway on the North by land formerly owned by Michael Crely and it being one or part of land or more in said St Louis County and State and Township of Saint Ferdinand.

To have and to hold the same real Estate unto her the said Sylvina Peterson her heirs and assigns forever,

Deed of Chaput to Sylvina Peterson

15 In Witness whereof the said parties of the first part have hereunto set their hands and seal this the day and year first above written

Witness
Thos S. McGill,
Geo. W. Lowder

Joseph Chaput (Seal)
Catharine her mark Chaput (Seal)

State of Illinois
Jersey County

Be it remembered that on this 28th day of April A.D. 1854, Before me Thos L. McGill Clerk of the Circuit Court of said County, came Joseph Chaput and Catharine Chaput his wife personally known to me to be the real persons described in and whose names are subscribed to the foregoing deed as parties thereto before me they acknowledged that they executed & delivered the same as their Voluntary act and deed for the uses and purposes therein contained. And the said Catharine being by me made acquainted with the contents of said deed and acknowledged the examination apart from her her said husband that she executed the same freely and without compulsion of or undue influence of her said husband & that she does not wish to retract from the same,

(Seal)

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Court at office in Jerseyville this 28th day of April, A.D. 1854.

Thos L. McGill, Clerk.

State of Missouri
County of St Louis } ss

I, the undersigned Recorder for said County, certify that the foregoing deed was filed for Record in my office May 1, 1854, and is truly recorded in Book 151 page 152.

Witness my hand and official seal the date aforesaid.

(Seal)

C. Keemle Recorder

and a deed from Paschal Tousville to Charels Tousville as follows.

A deed from Paschal Tourville to Carles Tourville

This Indenture made and entered into this the Seventh day of May In the Year one thousand eight hundred and fifty between Louis Tousville and Ellen his wif Peter Tousville and Nancy his wife Louis Kail and mary Louise his wife Joseph Thape and Catheren his wife Pascal Tousville Charles Tousville Junor Tousant Tousville Junor of the County of St Louis State of Missouri Parties of the first Part and Charles Tousville Sinor of the Saim County and State Party of the Second Part Witnesseth that the said Parties of the first Part in Considration of the Sum two hundred and fifty dollars Paid by the said Party of the Second Part the receipt of which is herby Acknowledged hav and do by thes presents grant bargain Sell

17

transfer and Convey unto the said Charles Tousville Sinor of the second party his hairs and assins forever all the Real Estate of Tousant Tousville Sinor deceased and all our rights and titles of Parcel or tract of Land lainy and being in the County of St. Louis State of Missouri and Township St Ferdmond and bounded as follows to wit on the East by the Coldwater Creek Runing one arpin on the South by the land of Charles mercies on the west by the St Charles Road and on the North by the land of Michal Crely Containing in the whole about ten arpints be the saim mor or les it being the saim land Purchest by Tousant Tousville Sr Deed of Tousant Rubide and Recorded in Book U Page 308 the said Charles Tousville Sr of the second party is to hav and to hold the said tract of land that is in this Indenture mention and all the Real Estate of Tousant Tousville Sr Dec as we the Parties of the first Part do Claim to be the heirs at law of the Estate of Tousant Tousville Sr Dec we do herby Deed warrant and Defend unto Charles Tousville Sinor of the second Party his hairs and assins forever all rights and titles that ley or thru us be Claimed or our heirs or assins forever and all Persons or Person whomsoever

18 ma Claim hereafter in law or Equity
Whereunto we hav set our hands and Seal
this the Day and Year first abov written --

Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal

State of Missouri } ss
County of St Louis } Pascal his Jousville Mark

Be it remembered, that Pascal Jousville who is personally known to the undersigned Justice of the Peace to be the same person whose name is subscribed to the foregoing deed as a Party thereto this day appeared before me at the County of St. Louis aforesaid, and acknowledged that he executed the said deed voluntarily for the uses and purposes therein expressed. Given under my hand this ninth day of May, a.d. eighteen hundred and fifty. William Weber
Justice of the Peace

State of Missouri
County of St. Louis } ss I the undersigned Recorder within and for the County aforesaid do hereby Certify that the foregoing instrument of

Writing was filed for Record in my office Dec. 30, 1850 & is truly Recorded in Book S No 5 Page 309 & follg.

Witness my hand and official seal the date last aforesaid
J. D. Barlow
Recorder.

and a deed from Charles Tousville to Silvina Peterson as follows.

a deed from Charles Tousville to Silvina Peterson

Know all men by these presents that I Charles Tousville senior of the City of St. Louis State of Missouri for and in Consideration of the sum of one hundred dollars paid me by Sylvina Peterson Wife of William O. Peterson of the City of St Louis state of Missouri the receipt of which is hereby acknowledged have and do by these presents grant sell alien and convey unto the said Sylvina Peterson all my right title claim and interest of in and to a Certain tract or parcel of land in the County of St. Louis State of Missouri containing eighty acres, described as follows being the East half of the North East quarter of Section No 7, Seven Township No. 45, North Range 6, East — and being the same right title claim and interest which I acquired of Paschall Tousville by deed recorded, — To have and to hold the same unto her the said Sylvina

20 Peterson her heirs and assigns forever.—
being an undivided eighth thereof—
Witness my hand and seal this the 26th
day of June 1852.

Charles his × Jousville (Seal)
Mark

State of Missouri
County of St Louis } ss.

Be it remembered that
on this twenty sixth day of June, A.D. 1852,
before me, the Undersigned, a Notary Public
within and for said County and State came
Charles Jousville, Senior who is personally known to
me to be the same person whose name is subscr-
ibed to the foregoing instrument of writing
as a party thereto and he acknowledged the
same to be his act and deed for the purposes
therein mentioned, In testimony whereof I have
hereunto set my hand and notorial seal
at my office in the City of St. Louis, the day
and year last above written.

John N. Strait
Notary Public.

(Seal)

Plaintiffs then read in evidence the following
Copies from the St. Ferdinand Catholic Church
Marked Nos. 1, 2, and 3.

21

No. 1 Extract from the Baptisms, Record of St. Ferdinand, Church November 14th 1813. St. Louis Co. Mo.

St. Ferdinand Church Copy No. 1

On the 14th of November eighteen hundred & thirteen, was baptized by me – Pascal Tourville born on the 13th instant – Legitimate son of Coupaint Tourville & Marie Reine Calve – God-father Pascal Dubreuil, Godmother Asposie DeJorlois

his
Pascal + Dubreuil
mark

Marie her + Asposie DeJorlais
mark

his
Coupaint + Tourville
mark

M. Durand
Priest

I, the undersigned, certify that the above copy is faithfully taken from the original St. Ferdinand's Church – Florissant St. Louis Co. Mo August 13th 1854

F. I. Saulois S. J.
Pastor of Florissant

Certified before the undersigned
this 14th day of August 1854
Thomas Sweanson
Justice of the Peace

F. I. Saulois S.J.
Pastor of Florissant

$1.50

22 I the undersigned do Certify that the foregoing extract of the baptism & birth of Pascal Jousville is truly Copied from the Register of Baptisms & births Kept in the Roman Catholic Church of St. Ferdinand at Florisant St. Louis County Missouri of which said Register I have the charge & keeping

St. Ferdinand Florisant Mo. October 27th 1855

F. I. Tautois S.J.
Pastor of Florisant

State of Missouri
County of St. Louis } ss.

Before the undersigned a Justice of the Peace within and for the County of St. Louis aforesaid this day personally appeared F. I. Tautois - Pastor of St Ferdinand who being by me duly sworn upon his oath states, that the facts set forth by him in the above Certificate by him subscribed in my presence are true to the best of his knowledge and belief

given under my hand this the 27th day of October 1855

Thomas Swanson
Justice of the Peace

Church Copy No. 2

No. 2. Extract from the Baptisms Record of St. Ferdinand's chuch - Florisant St. Louis Co. Mo

23

On the 12th of January (1819) eighteen hundred and nineteen was baptised by me Catharine Jourville born on the 10th instant — Legitimate Daughter of Jourpaint Jourville & of Marie Reine Calvi — God-father Philibert Aubuchon God-mother Celeste Deforlois —

Philibert his x mark Aubuchon
Celeste her + mark Deforlois

M. Durand
Priest —

I the undersigned, testify that the above Copy is faithfully translated from the original St Ferdinand's Church — Florissant, St. Louis Co Mo August 13th 1852

J. I. Santois S.J.
Pastor of Florissant —

Certified Before the undersigned this 14th day of August 1852

Thomas Swanson
Justice of the Peace

J. I. Santois S.J.
Priest of Florissant

#1,50

I the undersigned do hereby certify that the foregoing extract of the Baptism and birth of Catharine Jourville is truly Copied from the

24 Registry of Baptisms and Births kept in the Roman Catholic Church of St. Ferdinand at Florisant St. Louis County Missouri of which said Registry I have the Charge and Keeping

St. Ferdinand Florisant Mo. October 27th 1855

Pastor of St Ferdinands Church

F. I. Santois S.J.

State of Missouri
County of St. Louis } ss.

Before the undersigned a Justice of the Peace within and for said County this day personally appeared F. I. Santois Pastor of St. Ferdinand who being by me duly sworn upon his oath states, that the facts set forth by him in the above Certificate by him subscribed in my presence are true to the best of his Knowledge and belief

Given under my hand this the 27th day of October 1855

Thomas Swanson
Justice of the Peace

Church Copy No. 3

No. 3. Extract from the Marriages Record of St. Ferdinand Church, Florisant St. Louis Co. Mo.

25 On the 9th of October eighteen hundred and thirty eight, the bans of Matrimony having been Publish in the Parish, Church of St. Ferdinand Florisant were married before me Joseph Chapus, Legetimate Son of Bonventure Chapus & of Julie Nipé - on one part And Miss Catherine Tourville, Legetimate daughter of Toupaint Tourville & of Reine Calvé - on the other Part - In presence of the following witnesses were present

Pierre Tourville
Louis Belle
Charles Tourville
Toussaint Roubedous
Paule Baudouin
Nicolas Chapus
Lucille Chapus
Paulle Tourville
Adeline Mouvs &
Adeline Philibert &
Bridget Premauth

Witnesses

Signed Pierre Chaput

F. Gleizal S.J.
Pastor of Florisant
P. mis.

I the undersigned, testify that the above Copy is faithfully translated & Copied from the original St Ferdinand Church - Florisant - St. Louis Co. Mo. August 13th 1854.

P. L. Santoni S.J.
Pastor of Florisant

Certified before the undersigned this 14th day of August 1854
Thomas Swanson
Justice of the peace

26 I the undersigned do hereby Certify that the fore-going extract of the Marriage of Joseph Chaput and Catharine Fourville is a true Copy from the Registry of Marriages Kept in the Roman Catholic Church of St Ferdinand at Florissant St. Louis County Missouri of which said Registry I have the charge & Keeping.

St. Ferdinand, Florissant, Mo. October 27th 1855

F. J. Santois S.J.
Pastor of St. Ferdinand

State of Missouri
County of St. Louis } ss

Before the undersigned a Justice of the Peace within and for the County aforesaid this day personally appeared F. J. Santois Pastor of St. Ferdinand, Who being by me duly Sworn upon his oath States, that the facts set forth by him in the above Certificate, by him subscribed in my presence are true to the best of his Knowledge and belief. Given under my hand this the 27th day October 1855.

Thomas Swanson
Justice of the Peace

And this was all the evidence on the part of the Plaintiff. The defendant then introduced as a witness George Lath who was sworn and stated as follows,

I am a Son of Morgan Leith deceased I have been living on the lands since 1835, the time my father bought the defendant is my mother — and this was all he Stated — The defendant then read in evidence a deed from Louis and Catharine Tourville to Charles Tourville as follows.

A, Deed from Louis Catharine Tourville, to Charles Tourville

This Deed made the tenth day of april Eighteen hundred and thirty four, between Louis Tourville, Catharine Tourville and Toussaint Tourville, heirs at law of Toussaint Tourville deceased of the First part and Charles Tourville of the Second part, all of the County of St. Louis in the State of Missouri;

Witnesseth, that whereas Toussaint Senior died intestate, leaving the said parties of the first part his heirs at law, and as such entitled each to one equal Eighth part or Share of his Estate; now therefore in Consideration of the sum of ten dollars to each of the said parties of the first part in hand paid by the said Charles Tourville, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and do by these presents grant, bargain and sell unto the said Charles Tourville, his heirs and assigns forever all the right, title, interest and claim of them the said parties of the first part, being an undivided eighth part each, of in and to a Certain tract of land on the waters of the River des Peres in the County of St. Louis aforesaid, and being the East half of the North

East quarter of Section Number seven in Township number forty five north, Range six East in the District of Lands offered for sale at St. Louis Missouri, containing Eighty acres being the same tract of Land purchased by the said Toussaint Tourville deceased of Thomas Hensley and wife by deed dated the Eighteenth day of December Eighteen hundred and twenty nine and recorded in the office of the Recorder of St. Louis County aforesaid, in Book P page three hundred and fifty three, To have and to hold all the right, title, interest Claim and estate of them the said parties of the First part, being an undivided Eighth part each, of in and to the above described tract of land unto him the said Charles Tourville and to his heirs and assigns forever, Free and Clear of all incumbrances whatever,

In Testimony whereof, the said parties of the First part, have hereto set their hands and seals the day and Year first above written.

Signed and Sealed in presence of, Wilson Primm as to Louis Tourville, J LaBeaume witness to Catharine Tourville

Louis his + mark Tourville (Seal)

Catharine her + mark Tourville (Seal)

(Seal)

State of Missouri
County of St. Louis } ss. Be it remembered that on the twenty first day of June in the Year of our Lord Eighteen

29 hundred and thirty four, before me Wilson Primm a Justice of the Peace within and for the County aforesaid, Came Louis Tourville whose name is subscribed to the foregoing instrument of Writing as having Executed the same and acknowledged the same to be his act and deed for the purposes therein mentioned, the said Louis Tourville being personally known to me —

Taken and Certified the day and year aforesaid —

Wilson Primm Justice of the Peace

State of Missouri
County of St Louis } ss Be it remembered that on this seventeenth day of March in the Year of our Lord, Eighteen hundred and thirty five before me, a Justice of the Peace within and for the County aforesaid, appeared Catharine Tourville proved by Pierre Tourville and Louise Bizeth, 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 her act and deed for the purposes therein mentioned

Taken and Certified the day and year aforesaid —

Patrick Walsh
Justice of the Peace

30 State of Missouri }
County of St. Louis } I Archibald Gamble Clerk of the Circuit Court and Ex Officio Recorder for the County of Saint Louis do Certify that the foregoing deed is truly Recorded in my office in Book U Page 276 & following

Seal

Given under my hand and Seal of office this 20th March 1835
Archibald Gamble Clerk.

a deed from Paschal & Etienne Tourville & Louis Reille & Mary his wife to Pierre Tourville

and a deed from Paschal & Etienne Tourville and Louis Reille and Mary his wife to Pierre Tourville as follows,

This Deed made at St. Louis in the State of Missouri this first day of April Eighteen hundred and thirty four, between Etienne Tourville, Paschal Tourville and Louis Reilhe and Mary Tourville his wife of the first part and Pierre Tourville of the second part, Witnesseth; that whereas Toussaint Tourville died intestate leaving the said parties of the first part entitled to one eighth part each of his Estate as his heirs at law; Now therefore in Consideration of the premises and of the sum of thirty dollars to them the said parties of the first part in hand paid by the said party of the second part the receipt of which sum is hereby acknowledged have granted, Sold, aliened and confirmed and do by these presents, grant, sell, alien & confirm unto the said party of the second part his heirs and assigns all the right, title, interest, Claim and Estate which they and each of them have in and to a

31 Certain tract of land in the County of St Louis and being the East half of the North East quarter of Section number Seven in Township Forty five, north of Range Six East in the district of Lands offered for sale at St Louis Missouri being the same tract of land purchased by the said Toussaint Tourville of Thomas Hensley and Harriet his wife by deed dated the Eighteenth day of December Eighteen hundred and twenty nine and Recorded in the Recorder's office of St Louis County in Book P Page 353, To Have and to hold the right, title, interest and Claim as aforesaid of them the said party of the first part unto him the said party of the second part and to his heirs and assigns forever, In Witness whereof the said parties of the first part have hereto set their hands and seals the day and year aforesaid.

Etienne his + mark Tourville (Seal) Pascal his + mark Tourville (Seal)
Louis his + mark Reilhe (Seal) Mary Tourville her + mark Reilhe (Seal)
In presence of Manuel Alveiz, Wilson Primm

State of Missouri
County of St Louis } ss Be it remembered that on this first day of April in the year of our Lord one thousand Eight hundred and thirty four before me Wilson Primm a Justice of the Peace within and for the County aforesaid Came Etienne Tourville, Pascal Tourville, Louis Reilhe and Mary Tourville Reilhe his wife all personally known to me to be the same persons whose names are subscribed to the foregoing Instrument of writing as having executed the same

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and Severally acKnowledged the Same to be his act and deed for the purposes therein Mentioned, She the said Mary being by me first made acquainted with the Contents of said deed and examined Seperate and apart from her husband whether She executed the said deed and relinquishes her dower in the lands and tenements therein mentioned Voluntary, 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 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

Wilson Rimm Justice of the Peace

Recorded 10th October 1834 Archibald Gamble Recorder

State of Missouri }
County of St Louis } ss

I the undersigned Recorder for said County Certify that the foregoing is a true and Complete Copy of a deed from Etienne Tourville and others to Pierre Tourville as also of the Certificate of acKnowledgement & of the date of Recording thereof as fully as the same remains of Record in my Office in Book U p 59.

Witness my hand and official Seal this 12th day of March 1855.

C. Keemle Recorder

(Seal)

pr D. Babcock Dept

and a deed from Pierre Tourville to Morgan Leik as follows,

a deed from Pierre Tourville to Morgan Leik

Know all men by these presents that Pierre Tourville and Pespiaz Tourville his wife of the County of St Louis in the State of Missouri for and in Consideration of the Sum of Three hundred and eighty-eight dollars to them in hand paid by Morgain Leig before the ensealing and delivering hereof, the receipt whereof they do hereby acknowledge and thereof acquit and forever discharge the said Morgain Leig his heirs, and assigns- have granted bargained and sold, and by these presents doth grant, bargain and sell unto the said morgain Leig his heirs and assigns forever, a certain tract or parcel of land lying and being in the County of St Louis and described as follows. The East half of the North East quarter, of Section number Seven, in Township forty five North of range six East, in the district of Lands offered for sale at St Louis, Missouri- Being the same tract of Land purchased by Toussaint Tourville of Thomas Hinsley and Harriet his wife by deed dated the Eighteenth day of December Eighteen hundred and twenty nine, and recorded in the recorders office of St Louis County in Book P page 353, and also deeded by the heirs at law of said Toussaint Tourville deceased to Pierre Tourville bearing date the first day of April Eighteen hundred and thirty four and recorded in the recorders office in St Louis book U page 59, To have and to hold the west half of the above described tract of Land together with all the rights, ~~title~~ privileges and

appurtenances thereunto belonging or in any wise appertaining to the only proper use of the said Morgain Leig his heirs and assigns forever, and the said Pierre Tourville and Pispiaz Tourville his wife for themselves their heirs or assigns, the above mentioned West half of the first described tract of land and premises, against the said Pierri Tourville and Pispiaz Tourville and their heirs, and against all and every other person and persons whomsoever to the said Morgain Leig his heirs and assigns shall and will warrant and forever defend by this presents_ In witness whereof the said Pierri Tourville and Pispiaz Tourville his wife have hereunto set their hands and seal Twenty third day of January Eighteen hundred and Thirty six_

In the presence of

Acan his x mark Fountain

J_ Barbee

Pierre his x mark Tourville (Seal)

Pispiaz her x mark Tourville (Seal)

State of Missouri }
County of St Louis } SS.

Be it remembered that on this Twenty third day of January in the Year of our Lord Eighteen hundred and thirty six before me, a Justice of the Peace within and for the County aforesaid, personally came Pierri Tourville and Pispiaz Tourville 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; The,

35 Pepiag Tourville being by me first made acquainted with the Contents thereof, and examined Seperate and apart from her husband, whether she executed the said deed, and relinquished 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 tenaments therein mentioned Voluntarily, freely and without Compulsion or undue influence of her said husband

Taken and Certifyed the day and year aforesaid

Ira Barber Justice of the peace
St. Louis County

State of Missouri } ss
County of St Louis } I, John Ruland, Clerk of the Circuit Court, & ex officio Recorder for the County aforesaid, certify that the foregoing instrument of writing was filed in my Office for Record on the 18th day of August 1838, & is truly recorded in Book E, No 2 pages 450, 451

Given under my hand, & the seal of said Court at Office, this 16th day of October, A. D. 1838

(Seal)

Jno. Ruland Recorder

and a deed from Charles Tourville & wife to Frederick Clouse as follows—

36 This Indenture made the twenty seventh day of
a deed from March in the Year of our Lord One thousand Eight
Charles Tourville hundred & thirty five between Charles Tourville &
wife, to his wife Amelie Tourville of the first part and
Frederick Friedurich Louis (Frederick Clauss) of the
Clause Second part all of the County of St Louis in the State
of Missouri witnesseth that in Consideration of the
sum of three hundred dollars to the parties of the first
(Charles Tourville & Amelie Tourville his wife) in hand paid
by Friedurich Louis (Frederick Clauss) the party
of the Second part, the receipt whereof is hereby ac
knowledged, have granted, bargained & sold and by
these presents do grant, bargain and sell unto the said
Friedurich Louis (Frederick Clauss) his heirs &
assigns forever all the right title, interest and claim
of them the said parties of the first part to a certain
tract or parcel of Land on the waters of the River des Peres
in the County of St Louis aforesaid and being the East
half of the North East quarter of Section number Seven
in Township number forty five North, Range Sixe East
in the District of Lands offered for sale at St Louis
Missouri, Containing eighty acres be the same more
or less, being the same tract of Land purchased by the
said Charles Tourville of Louis Tourville, Catharine
Tourville and Toussaint Tourville heirs at Law of Tous-
saint Tourville who purchased the said tract of Land of
Thomas Hensley & wife by deed dated the Eighteenth day
of December Eighteen hundred and twenty nine and

recorded in the office of the Recorder of St. Louis County aforesaid, in Book P. page three hundred and fifty three: the deed of Bargain & Sale of Louis Tourville, Catharine Tourville & Toussaint Tourville to Charles Tourville being also filed for Record in the proper office on the said twenty seventh day of March eighteen hundred and thirty five - To have and to hold all the right, title Interest and Claim and estate of them the said parties of the first part (Charles Tourville & Amelie Tourville his wife) in the above described tract & premises unto him the said Frunduvif Llovrifs (Frederick Clauss) party of the second part his heirs and assigns forever - free & clear of all incumbrances whatever - and to be secured by further assurances if necessary -

In testimony whereof the said parties of the first part, have hereunto set their hands & seals the day & year first aforesaid.

Signed, sealed, & delivered in the presence of

Francis Gercau his mark

Louis Vasseau his mark

Charles his + mark Tourville (Seal)

Amelie + Tourville (Seal)

State of Missouri }
County of St. Louis } ss

Be it remembered that on this twenty seventh day March in the year of our Lord one thousand eight hundred and thirty five, before me the clerk of the Circuit Court for the County of St Louis personally appeared Charles Tourville and Amelie his Wife who

were proved by Francis Gereau and Louis Vassuer exa-
mined before me on oath, 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 Amelie being by me first made
acquainted with the contents thereof and examined seperate
and apart from her husband whether She executed the
said deed and relinquishes her dower to the lands and tenem-
-ents therein mentioned voluntarily freely and without com-
-pulsion or undue influence of her said husband acknow-
-ledged and declared that She executed the said deed and
relinquishes her dower to the lands and tenements therein mentio-
-ned voluntarily freely and without compulsion or undue
influence of her said husband

In Witness whereof I hereunto set my hand
and the seal of the said Circuit Court at
Office the day and year aforesaid

(Seal)

Archibald Gamble Clerk

State of Missouri
County of St. Louis } ss I John Ruland Clerk of the Circuit
& Ex officio Recorder in said County do certify that the foreg-
-oing Deed was filed on the 25th May 1837 & is truly recorded
in my office Book A No. 2 page 407 &c

Given under my hand and seal of said Court
this twenty seventh day of June Anno Dominie 1837

(Seal)

Jno Ruland Recorder

and this was all the evidence on the part of the defendant.
The Plaintiffs then offered the following instruction —

instruction offer by pltffs

The Court instruct the Jury that the law is that the deed of a minor under the age of twenty one years is voidable and that a subsequent deed duly executed for same land, is such an avoidance —

Refused — E.N.B

which was refused by the Court to which the Plaintiff excepted, and in lieu of said instruction the Court gave the following instruction (marked No 1,)

No 1) given by the Court in lieu of one asked by pltff & refused.

instruction No 1 given by the Court in lieu of one ask by pltff

The law is that, if Paschal & Catharine Tourville respectively, when minors, made deed of Conveyance of the interest in their father's real estate (the land in question), such deeds were voidable only, not void. And after coming of age, respectively, they had power to avoid them respectively, by making other deeds, for that purpose & intended to have that effect. And it is for the Jury to determine in this Case, whether or no the deeds offered in evidence, from said Paschal & Catharine respectively, were for that purpose & intended to have that effect —

which the Plaintiff also excepted to — the defendant asked the following instructions marked Nos 2, & 3,

Defendants asks the Court to instruct the Jury:

instruction No 2 asked by Deft

2 That if they believe that no division has ever been made between the heirs of Toussaint Tourville Senior of the land in question or a partition had and that the

40 plaintiffs claim only an undivided share in the same and as tenants in common with defendant they will find for the defendant, unless the Jury believe that the defendant has either actually put the plaintiff out of possession or hindered & prevented them from entering into possession of that part of the land which they, the plaintiffs claim to hold in common with the defendant.

Given E.B.

instruction No. 3 asked by Deft

If the Jury find that Catharine & Pascal were minors at the time of the execution of their first deeds respectively to Pierre & Charles Tourville - but never disaffirmed those acts and deeds when they became of age then the original deeds hold good notwithstanding the infancy of the grantors - and deeds exec-cuted subsequently to their becoming adults conveying away the same estate conveyed in such original deeds executed during infancy - not expressly disaffirming these deeds are not conclusive as to disaffirmance, and it is for the Jury to determ-ine from the terms of such deeds & other evidence whether the same were intended as a disaffirmance or not -

Given for Deft - E.B.

Which were given by the Court, and excepted to, by the Plaintiffs in words & figures following, to wit,

William H. Peterson & wife Pltffs
vs
Catharine Lail Deft

In the St. Louis Land Court
October T. 1855.
Be it remembered that

on the trial of this cause the court gave the following instructions marked No. one, two and three to all of which said instructions Plaintiffs excepted and now here prays that this bill of exceptions may be signed sealed & c which is accordingly done

Edw.d Bates

The Case was then submitted to the Jury, and after argument the jury returned the following Verdict for the defendant.

Verdict

William H. Peterson & Sylvina his wife
vs
Catharine Leig alias Laik.

We the Jury find for the Defendant.

Joseph Baker Foreman

And afterwards the Plaintiffs filed their motion for a new trial.. for the following reasons

William H. Peterson & Wife Pltffs
vs
Catharine Laik Deft

In the St. Louis Land Court Oct 7. 1855.

Motion for new trial

The Pltffs come and pray the Court to grant a new trial in this Case for the following reasons—

1 The Court erred in refusing instruction asked by Pltffs

42 2 The Court erred in giving instruction No. 1, so far as it submitted to the Jury to determine the effect of deeds therein mentioned –

3 Instructions Nos. 2 & 3. are against law.

4 The Verdict of the Jury is against law and against the Evidence

5 The verdict of the Jury is against the instructions

P. C. Morehead for Plffs.

and afterwards said motion coming on to be heard and after argument thereon the Court overruled said motion, to which decission of the Court overruling said motion the Plaintiffs excepted as also to the instructions as aforesaid, and now here prays that this his bill of exceptions may be signed sealed &c. –

Edwd. Bates

Saturday December 8th 1855

The following further proceeding were had, to wit;

Motion for new trial overruled

William O. Peterson and Sylvina his wife vs. Catharine Leigh alias Laik

Now at this day, the Motion, hereinbefore filed of said plaintiffs, for a new trial, is submitted to the Court, and the Court being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled,

Thursday January 10th 1856.

The following proceedings were had, to wit:

appeal granted to

William O. Peterson & wife vs. Catharine Laik

Now at this day, on application of attorney for plaintiffs, the Court grants them an appeal of this cause to the Supreme Court,

and approves of William A. Shannon as Security in the appeal bond.

And on the same day the following further proceedings were had to wit:

Appeal bond filed

William H. Peterson & Sylvina his wife
vs
Catharine Saik

Appeal Bond filed

Which appeal Bond is in words and figures following, to wit:

appeal bond

Know all men, By these Presents, That we William H. Peterson, as principal, and William A. Shannon as Surety are held and firmly bound unto Catharine Saik in the Sum of Two Hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our Seals, and dated at St. Louis, this Tenth day of January A.D. 1856

The Condition of The Above Obligation Is Such that whereas William H. Peterson has appealed from the Judgment rendered against him and in favor of Catharine Saik in the St. Louis Land Court, for the Costs of Suit ~~dollars and Cents, together with Costs~~. Now, if the said appellant will pay all Costs and damages that may be awarded against him occasioned by Such appeal; and Shall prosecute his appeal; and Shall perform Such Judgment as Shall be given by the Supreme Court, and Such as the Supreme Court may direct the St. Louis

44 Land Court to give; and shall, if the Judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect—

William D. Peterson Seal
Wm A. Shannon Seal

St. Louis Land Court, October Term, 1856
Be it Remembered, that on this Tenth day of January 1856 personally appeared William D. Peterson the Principal, and William A. Shannon the security in the foregoing bond, and acknowledge that they executed the same for the purposes therein expressed.

In Witness Whereof, I hereto set my hand and affix the Seal of said Court, at office, in St. Louis, the day and year last aforesaid.

Seal

Charles A. Mantz, Clerk.

State of Missouri,
County of St. Louis, } S. S.

I, Charles A. Mantz, Clerk of the St. Louis Land Court, within and for the County and State aforesaid certify the foregoing to be a true and faithful copy of the Record and proceedings in the case of William D. Peterson & Sylvania his wife, Plaintiffs against Catharine Laig alias Laik, defendant, as fully as the same remains in my office,

In Testimony whereof I hereto set my hand and affix the seal of the St. Louis Land Court, at office, in the City of St. Louis, this Sixth day of March, A. D. 1856.

Charles A. Mantz, Clerk

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March Term 1857

William D. Peterson ux^e
vs. Pltff.
Catharine Leig alias
Laik, Deft.

Land Court.

P. C. Morehead for
Pltff
Delafield & Kibben
for Deft.

Filed 10th March 1856
Wm. T. Glanville
Clk.

Transcript $11.85 - Pd ~~Pltff~~ George Lick 52

Judgt Dism. Neuter rendered 27 May 1857

Wm S. Peterson Swipe

vs } In the Supreme Court

Catharine Laith &c

Philip C. Morehead states on oath that he is Attorney for Plff in the above case

That shortly after the Appeal was completed in said case, he went with Mr Peterson to the Clerks office of the Land Court to pay for the transcript in said case, because his employment required him to be frequently absent from the city —

Mr Mantz the Clerk said he could not then tell him the amount, He then paid Mr Mantz a part and requested him to let this affiant know what the balance was when ascertained.

Some few days before the last day for filing the records in time, Mr Mantz sent to affiant to see about the defendants exhibits mentioned in the bill of exceptions in said case which were wanting. Affiant went with the messenger to see Mr Kribben defendants Attorney — about them He examined his papers and could not find them, but said he thought they were filed in a suit against one Klown — we examined that case and did not find them

The 6th day of March last affiant believes was the last day for filing the record

Affiant did not know the exhibits were found and the record finished till the 8th day of March following when he was informed of it by Mr Walsh deputy Clerk

Affiant immediately went after Mr Peterson & had the record filed

The record was not completed till the 6th day of March as will be seen by reference to it —

Affiant was under the impression and so was Mr Peterson, from what occurred when they called in the office as before stated that Mr Mantz would have filed the record as soon as completed, and notified affiants of the balance of fees. Still affiants would have attended to it on the 6th of March if he had known it was completed.

Philip C. Morehead

Sworn to before me this
25 March 1856.

W. F. Glanville, Clk. Sup. Court

Peterson & wife
v.
Laiff

Affidavits of
P. C. Morehead.

Filed 25 March 1856.
W. F. Glanville
Cl.

Petersen et al } In the Supreme Court
" } for Nipomo at Phoenix.
Catharine Laik et al } March Term 1866.

On appeal from the Phoenix Land Court.

Catharine Laik a Lieb defendant in said cause respondent) by Chas. Kibben her attorney comes and represents to this Court:

That in the above entitled cause an appeal was allowed by the Land Court to this Court to the plaintiff appellant thirty days before the present term of this Court.

That the plaintiff appellant has not within ten days of this term caused a transcript of the record & proceedings in said cause to be filed in this Court.

Respondent therefore moves, in accordance with the statute in such case made at this day comes & presents a perfect transcript showing that an appeal was allowed to plaintiffs in said cause and asks the judgment of the Land Court to be affirmed.

Kibben
atty for resp.

Petersen et al

vs

Catharine Lait

on

Mo. to affirm judgment.

Filed 25 March 1856.
W. S. Glanville Clk.

Kribben for resp.

William D. Peterson & wife Plaintiffs,

vs.

Catharine Laik alias Leig, Defendant,

Appeal in the Supreme Court.

Charles A. Mantz, States that he is Clerk of the St. Louis Land Court, within and for the County of St. Louis. That one of the Plaintiffs herein, William D. Peterson, called in my office on or about the 10th day of January last, and before the adjournment of the last (October) Term of the St. Louis Land Court, to pay for a transcript ordered in the above entitled suit by the Plaintiffs attorney, P. C. Morehead. Esq., and in which said suit the necessary bond had been given as required by Law and an appeal prayed by said Plaintiffs to the Supreme Court. Affiant further states, that at the time Plaintiff called to pay for and take the Transcript so ordered, that the same was not made at that time and that Plaintiff then desired to pay for the same, but I was unable to tell him what said transcript would cost him, and at that time he paid this affiant the sum of ($4.65) Four dollars and Sixty-five cents on account thereof and stated that he was ready and willing to pay the balance due on same whenever it was finished & ready for filing.

Said transcript was commenced at an early day in the Month of January last, but was delayed until on or about the Fifth day of March, 1856, because Most of the Deeds called for in the Plaintiffs Bill of Exceptions as introduced on the Trial of this cause in our said Court, on the part of the Defendant were not on file or among the papers of this suit. Affiant further states, that the deeds called for in the Bill of Exceptions of the plaintiffs, on the part of the defendant, were found filed in other suits in this office, to which, upon affiants enquiring of defendants attorney concerning those deeds, he was referred to said suits, where upon examination they were found

Charles A. Mant, Clk
Land Court,

W. D. Peterson & wife

v.

Catharine ~~Lacy~~ Laik
alias Leig.

Affidavit of
C. A. Mantz, Clk.
St Louis Land Court.

Filed 28 March 1856
W. S. Glanville
Clk.

William D. Peterson & wife Appellants
vs. } In the Supreme Court. October Term 1856.
Catharine Laik Respondent

The said Appellants come by their Attorney and assign the following errors in the above case

1st The Court erred in refusing the instructions asked by the Plaintiffs

2d The Court erred in giving instruction No. 1. so far as it submitted to the Jury to determine the effect of deeds therein mentioned

3d Instructions Nos. 2 & 3. are against law and improperly given

4th The verdict of the Jury was against law against the evidence and against the instructions — a new trial should have been granted

P.C. Morehead for Appls

Respondents say that there is no error in the Record

Kibben & Barret
Attys for Respondents

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William D. Peterson & wife
appellts
vs. } In the Supreme Court
Catharine Lauth Respt

assignment of Errors

Filed 10 Oct. 1864
W S Glanville
Cl.

Moulton for appellts

William S. Peterson & wife Appellants
vs. } In the Supreme Court
} October Term 1856.
Catharine Laith Respondent
Statement of the Case —

Louisant Fourville died in 1833. owning eighty acres of land the same in dispute
He left eight children his heirs as follows —
Charles — Louis — Louisant — Etienne — Paschall
Pierre — Catharine wife of Joseph Chaput and
Mary wife of Louis Reihle —

Paschall, Etienne & Louis Reihle & wife Mary conveyed their interest to Pierre Apl 1. 1834.
making his title one half.
Paschall was under age

Catharine and Louis conveyed to Charles their interest Apl 10th 1834. making his title three eighths
Catharine was under age —

Charles conveyed all his title to Clouse May 27th 1835
Pierre conveyed all his title to Laith Jany 23d 1836.

Clouse and Laith took possession under their deeds and divided the land, north half to Laith and South half to Clouse, and are still in possession of the same as divided
Catharine & husband & Paschall conveyed to Mrs Peterson their interests each one eighth in 1854 after they were of age, fee simple deed, but not in express terms disaffirming their first deeds.

Catharine and Paschall were non residents nearly the whole time after their first deeds.

A demand of possession from the defendants was made on the 3d July 1854. and suit brought for the possession of the undivided two eighths on the 13th July 1854 —

Instructions

The court instruct the Jury that if they believe from the evidence that Catharine & Paschall Fourvilles were under the age of twenty one years at the time they signed the deeds, one that is Catharine to Charles Fourville and Paschall to Pierre Fourville, they must find for the Plaintiffs —

The above instruction was offered by the Plaintiffs and refused and in lieu thereof the following

1. The law is that if Paschall & Catharine Fourvilles respectively when minors made deeds of conveyance of their interest in their fathers real estate, the land in question, such deeds were voidable only not void, and after coming of age respectively they had power to avoid them respectively by making other deeds for that purpose and intended to have that effect and it is for the Jury to determine in this case whether or no the deeds offered in evidence from said Catharine and Paschall respectively were for that purpose and intended to have that effect —

2 That if they believe that no division has ever been made between the heirs of Louscint Lourille senior of the land in question, or a partition had, and that the Plaintiffs claim only an undivided share in the same, and as tenants in common with defendants, they will find for the defendant unless the Jury believe that the defendant has either actually put the Plaintiffs out of possession, or hindered and prevented them from entering into possession of the part of the land which they the Plaintiffs claim to hold in common with the defendants

3. If the Jury find that Catharine and Paschale were minors at the time of the execution of their first deeds respectively to Charles & Pierre Lourille but never disaffirmed those acts and deeds when they became of age, then the original deeds hold good, notwithstanding the infancy of grantors and deeds executed subsequently to their becoming adults, conveying away the same estate conveyed in such original deeds executed during infancy not expressly disaffirming those deeds, are not conclusive as to disaffirmance, and it is for the Jury to determine from the terms of such deeds and other evidence, whether the same were intended as a disaffirmance or not

Appellants Brief

The questions of law deemed necessary to argue in this case arise chiefly from the instructions

1. The instruction asked by the Plaintiffs and refused by the Court, was in substance given in the first instruction given for defendants, Still it is insisted that the Court erred in refusing Plaintiffs instruction, because it is believed it contained the law of the case, and if so, superceded the propriety of any other whatever —

2. The first instruction given for defendants is erroneous so far as it submitted a question of law to the Jury, The same error exists in the third instruction, but giving them more latitude that is "to determine from the terms of the deeds and other evidence" There was no evidence in the case perceived touching the point, or aiding them in their construction of the deeds — The grantors were non residents, and there was no act by them in evidence shewing any kind of sanction — The Jury were left to decide the law alone upon their own construction of the terms and language of the deeds, without even the aid of books. perhaps somewhat aided, or led by the previous part of the third instruction, which asserts the law to be, "that the second deed must expressly use language of disaffirmance of the first upon the two instructions therefore the first and third we raise the following points of objection —

1. a question of law to the Jury
2. The court was wrong as to the law
3. The construction of the deeds by the Jury was wrong.

as to the first point see 1st M. R. page 68.
6th M. R. pages 267 & 279 7th M. R. page 607
16th M. R. page 62. and 1st Bibb page 283.

as to the second point see 12th M. R. page 549
19th M. R. page 65. 21st M. R. page 25.
10th Peters R. pages 59 & 70. 11th Johnsons R. pages 539 & 542
14th Johnsons R. page 124.

The deeds in this case were precisely like the deed in the case of Young vs. Norcom, conveying all their right title and interest, without covenants for the title in said land —
see statement of case in Young vs. Norcom
12th M. R. page 551.
That deed did not in express language disaffirm
Suppose there was no deed under infancy
would not this deed pass the title —
So far therefore as the Court by the third instruction determined the law, it was wrong, and if it were conceded that the Court could confer upon the Jury the power to determine it in this case they determined it wrong —

The second instruction is wrong in this — The latter part of it is ambiguous and calculated to confuse the minds of the Jury — the part of the land claimed by the Plaintiffs was an undivided interest

It cannot be doubted they could sue for that in Ejectment, and although the instruction is to some extent good law. the evidence did not authorize it — The suit was for two eighths undivided it was proved.

1st That Plaintiffs before suit demanded possession which was refused "stating the had of their land —

2d That defendant had a deed for the whole land and long possession of it, and had made large improvements upon it —

Long possession is ouster as also denial of title

The verdict was against the evidence and even against the instruction

The 11th section of the Ejectment act uses this language "Or did some act amounting to a total denial of his right as such extenant "

The instruction uses this language,

"Or hindered and prevented them from entering into possession "

The evidence shewed that both was done particularly the first —

See Adams Ejectment page 55. & note 2, page 56 & note 3 page 88 & note 1. — and 3d Connecticut R. page 191.

It is therefore insisted

1st That the deeds of Plaintiffs were sufficient to avoids the the first deeds.

2d That from the evidence Plaintiffs were entitled to a verdict —

P.B. Morehead
For Appellants

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William D. Peterson
& wife Appellants
vs. } In the
} Supreme Court
Catharine Leist
Respondent

Appellants Brief

for the Court

Filed 13 Nov 1856
Wm. S. Glowacki
Clk

Morehead for Appltz

W. D. Peterson & wife
vs
Catharine Laid

Appeal from the St. Louis Land Court.

Under the circumstances of the case, the instruction given by the court as a substitute for that offered by the plaintiff was erroneous. As the defendant in her answer under oath denied the right of the plaintiffs to the premises, they for the purposes of the suit could not be regarded as co-tenants. The instruction gave the defendant all the benefit of an actual cotenancy in making her defense, while at the same time she holds the plaintiffs at arms length and denies that they have any title. The law of ouster in an action of ejectment between cotenants wherein the one denies that the other ever had any title to the disputed premises must be the same as in an action, between those who are connected by no such relation. If the defendant wanted the benefit of the facts assumed in the instruction, why in her answer did she not disclaim to hold adversely to the plaintiffs. She would in one breath deny that the plaintiffs were her co-tenants & in the other claim the benefit of the relation. Where one cotenant seeks to bar another on the ground of adverse

possession, the law requires proof of unequivocal acts showing an actual ouster. So where the title of the plaintiff as a cotenant is not disputed by the defendant, & the case turns on the fact whether there has been a dispossession of one Co-tenant by another, the plaintiff must show an actual ouster, or that some act was done by the defendant amounting to a total denial of the right of the plaintiff as a co-tenant. But in an action wherein the cotenancy is denied ever to have existed, there is no reason, why stronger evidence of an ouster should be required of one claiming as cotenant than any ~~such~~ other party. In such case the 11th sec of the act ~~of~~ concerning ejectment has no application. By filing such an answer as was put in, in this case, an act was done which showed, that the defendant made a total denial of the right of the plaintiffs as cotenants.

There was error in submitting to the jury the construction of the deeds read in evidence. Whether the deeds amounted to a disaffirmance of the act done by those who executed them while they were infants was a question of law for the determination of the court. That a deed executed by one who has attained his

~~his~~ majority conveying lands, which he had alienated during his infancy, is a disafferm ance of the deed of alienation made ~~executed~~ during ~~his~~ infancy is the well settled doctrine of this court. The acquiescence of the infant after his reach ing his full age, for a period short of that ~~period~~ which would secure a title by the statute of limitations, does not destroy or take away the right which the law for wise purpo ses has conferred on infants of disafferm ing their deeds. Whether the infant may not after attaining full age within a shorter time by his declara tions, acts, or conduct, ~~prevent~~ restrain himself from a disafferm ance of his acts done during infancy is a question not presented by any thing contained in this record. In the case before us, we are of the opinion that the deeds executed by the infants after they attained their majority, and relied on by the plaintiffs amounted to a dis afferm ance of the deeds made for the same land during their infancy: Rouse vs Norcum 12 Mo 549. Norcum vs Gaty 29 Mo 65. Tucker & al vs Moreland ~~72 & 73~~ ~~Pet~~ 10 Pet. 72.3. Carpenter vs Jackson 11 John 539. Jack son vs Burchin 14 J. R. 124.

J Ryland concurring the judgment reversed & the cause remand ed: J. Leonard absent

Wm Scott

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Peterson & Wife
vs
C. Laik

Opinion

Filed 29 May 1857
Wm S Glanville
Cl

Pelersew and wife

vs

Lish and others.

Points made by Respondent Dft.

The instruction asked by Plff. was properly refused and the substitute in its stead, embracing in the main the same principles of law laid down in the first, is correct and leaves no question of law to the jury. A deed of sale made by an infant is voidable, not void. The evidence shows clearly that Pascall Tourville at the time of executing the deed under which Dfts. claim was within eight months & a few days of lawful age. This appears by the very Record of baptisms offered by Appellants Plaintiffs. The land was then & has ever since been in cultivation. He was born Nov. 14. 1813. – he executed the deed April 1. 1834. By a deed, evidently gotten up in great haste Pascall is made to sell the same land again sixteen years later in May 1850 to his own brother who was cognizant of the original deeds in 1834 he being a party to those self same deeds. The lapse of time then intervening was a question of fact, and a fit subject for the jury to enquire into, as also the terms and manner of making up the deed. This is all the Court asked the jury to do under the 1st & 3d instruction

Points: 2d Kent 233; Bingh on Inf. Chap. IV & V. 65 - 91; 6 Conn Rep. 494 11 Johns. 539. 14 John. 124; 8 Taunton 35.

Although the claim under Catharine Tourville who married in 1838 & was younger than Pascall does not come under the same rules of law yet, it appears from the deed to Dfts. Respondents feet:

That the 8 children of Tourville by the deeds offered in evidence divided the inheritance in question between them in this wise: Three of the children among whom was Pascall sold their share to Pierre and Three more, among whom was Catharine sold their share to Charles

Pierre & Charles thus became sole owners & Tenants in Common of the whole each holding up to that time an undivided Moiety. Pierre thereupon sells to Defendants and on looking at the deed and particularly at the habendum clause sells only the West half of the tract. The intention to do this is apparent on its face. The deed from Charles to Clouse who however is not made a defendant in this suit - Clouse holding under Catharine is less special in this respect. It is also in evidence that Lish & Clouse ever since their purchase from Pierre & Charles respectively occupied the former the West & the latter the East half of the whole tract. Accordingly: these defendants are only concerned respecting the claim under Pascall's title. The points set up & authorities cited by the appellant such as: 12 Mo R. 549; 19 M.R. 56; and 21 Mo R. 25, have no reference to Pascall bearing only the rights of a married woman under coverture to avoid a deed executed when an infant after a lapse of many years. Nor do the other authorities bear on this point. The Court did not err in giving the second instruction neither for the first nor second reasons given. The Ejectment act and Sec. 11 cited Rev. Col. Mo. 45 bears clearly in favor of defendants. Even under the most unfavorable interpretation of the law & under the force of the decisions quoted from Adams Eject. PP. 55-56 & 58 & 3 Conn. Rep 191. There was no such constructive ouster as claimed by appellant. The deed from Pierre to defendants is not for the whole land but evidently intended only for the West half and his interest & claim only. The deed to Pierre from his brothers & sister explains it, and it follows clearly that Partition is the only remedy for Plaintiffs claiming under Catharine to obtain their rights, leaving the claim under Pascall out of question, Defts. maintaining that there has been no

avoidance by Pascall either legally or even within proper & rea-
-sonable time as to defeat the former deed.

The judgment should therefore be affirmed.

Ribben.

52.

Peterson & wife

v.

Lick and others.

on.

Bill of Respondents

Ribbon