Aubuchon, Napoleon v. Ames, Benjamin 1858 St. Louis 403/9
et al

593/1

27 Mo 89

Action of Ejectment

57/M58

John Valle dit L'anglais plaintiff

Aubuchon - app

claims tract of land through descent

wants $1000

Ames - unlawfully on land

lot ~~claimed~~ Ames conveyed by act of congress in 1810

Richardson - Appellant

when did statute of limitations begin to run against plaintiff?

gov't should step up & do some new surveying

building have been built on this tract of land quite a lot

# The State of Missouri, ss.

**The State of Missouri,** *To the Honorable 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 the said Court of Common Pleas in and for the County St Louis

wherein Napoleon B. Antrechan was plaintiff and Benjamin Ames was defendant

in an action of trespass in Ejectment manifest error hath intervened, to the great damage of said plaintiff 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 tenth day of September in the year of our Lord one thousand eight hundred and fifty seven

Wm S Glanville CLERK.

$1.50 paid

(Paid by J Polk)

State of Missouri } I, Charles W. Hicks Clerk
County of St Louis } of the St Louis Court of Common Pleas, in and for the County aforesaid, in obedience to the command of the within writ, herewith transmit a true and complete transcript of the record and proceedings in the case of Napoleon Aubuchon against Benjamin Ames, 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 10th day of September AD 1807.

SEAL OF THE ST. LOUIS COURT OF COMMON PLEAS, MISSOURI

C W Hicks Clk

1 State of Missouri } ss. Be it remembered that
County of St Louis } on the fifteenth day of No:
vember A D 1851 there was filed, in the Office of
the Clerk of the St Louis Court of Common Pleas,
in and for the County aforesaid, a certain petition
which is in the words and figures following, to wit:

| | |
|---|---|
| Napoleon Aubuchon, and John Valle dit L'Anglais, Plaintiffs | State of Missouri, County of St Louis February Term A D 1852 of the Saint Louis Court of Common Pleas. |
| Petition. against | |
| Benjamin Ames, Defendant. | |

Plaintiffs state that in the year one
thousand seven hundred and seventy the widow
Hebert claimed, cultivated and possessed a certain
lot or piece of land known and described as a
common field lot in the Grand Prairie Common
Fields in the now County of St Louis and State of
Missouri containing three arpents in front and
forty arpents in depth bounded on one side by
land formerly of William Bizet and on the
other side by land formerly of Paul Kiercereau
and on the two ends by land formerly belong:
ing to the domain of the King. Plaintiffs state
that the said piece of land was for many years
prior to the twentieth day of December in the
year one thousand eight hundred and three
inhabited cultivated and possessed by the said
widow Hebert or those persons claiming or hol:
ding under her and that the land above de:
scribed was by virtue of the inhabitation cul:
tivation and possession of the said widow Hebert
and those persons claiming and holding under
or through her and by virtue of the several acts

2. of Congress relating to land claims in the then Territory of Louisiana afterwards Territory and now State of Missouri confirmed to the said widow Hebert or to her legal representatives. And the plaintiffs file herewith as evidences of the title of the legal representatives of the said widow Hebert to the land aforesaid first a document marked "A" and containing duly certified copies of the concession of said land to said widow Hebert of the survey of the same by Martin Duralde of the proceedings of the Board of Commissioners and of the proceedings of Frederick Bates Recorder of Land Titles in the Territory of Missouri relating to the land aforesaid and certified copy of the report of the said Recorder of Land Titles having reference to the land aforesaid made to the Commissioner of the General Land Office under the act of 13th June A D 1812 and subsequent acts. Plaintiffs also file a duly certified copy of the official survey of the said land made under the authority of the United States and being survey numbered twelve hundred and fifty six marked "B" and certified copy of the plat of said survey marked "C". And the plaintiffs state further that the widow Hebert departed this life in the year 1784 or about that time, that she died unmarried and leaving issue surviving her and that an undivided one fifth part of said land came by descent to and vested in Louis Trudeau, Henry Trudeau, and Marie Therèse Lambert Ranger, which three persons last aforesaid plaintiffs state to be lineal descendants and legal representatives of the said widow Hebert and to be entitled to the undivided one fifth part of said land by

1/5

3. virtue of their descent from the said widow Hebert. And plaintiffs further state that the said Louis Trudeau, Henry Trudeau, and Marie Therèse Lambert Ranger executed and delivered to the said Napoleon Aubuchon a deed dated on the 26th day of January A.D. 1846 conveying to him, the said Aubuchon, all the estate and interest of the said Louis Trudeau, Henry Trudeau, and Marie Therèse Lambert Ranger in and to the land above described with other lands which said deed is filed herewith marked "D". And plaintiffs State further that the said John Vallé dit L'Anglais is one of the lineal descendants and legal representatives of the said widow Hebert and is entitled to the one undivided tenth part of said land by reason of his descent from said widow Hebert. And plaintiffs state further that said defendant is in possession of the said tract of land or of some portion thereof and unlawfully and unjustly witholds from the plaintiffs the possession of the undivided three tenths part of the same to which plaintiffs aver they are entitled. And plaintiffs pray to be put in possession of the undivided three tenths part of so much of the said tract of land as shall be found to be possessed by said defendant by the judgment and process of this Court and for damages for the unlawful detention and possession of the same by said defendants to the amount of one thousand dollars.

to

Napoleon Aubuchon &
John Vallé dit L'Anglais.
By F M & D C Haight attorneys.

4. Napoleon Aubuchon one of the plaintiffs being duly sworn deposes and says that he believes the above petition and matters and things therein contained to be true.

Sworn to and subscribed } Napoleon Aubuchon
before me this 24th October 1851.

Mann Butler Justice of the Peace.

And upon the foregoing Petition the following Summons issued. to wit:

Summons. The State of Missouri, To the Sheriff of St Louis County Greeting: We command you to summon Benjamin Ames 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 first monday of February next, then and there to answer the complaint of Napoleon Aubuchon & John Vallé dit L'Anglais 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 15th day of November in the year of our Lord one thousand eight hundred and fifty one. P Tippett Clerk.

And upon the foregoing Summons the Sheriff made the following return.

Shff's Return. Executed on the 17th day of November 1851 by delivering to Benjamin Ames a true copy of the Writ & Petition in St Louis County.

Henry B Belt
Sheriff
By Geo W Stevens Depty.

5. And afterwards, to wit, on the 27th day of Febri=
=ary A D 1852 the following answer was filed.

Answer. This defendant in answer to the petition in this case says that he admits that said three by forty arpens of land was conceded to widow Hebert & confirmed to her as set forth in the petition. Also that said land had been of=ficially surveyed by the United States but he says that he has not sufficient knowl=edge ~~sufficient~~ to form a belief as to when the widow Hebert died, nor whether she died married or not, nor whether she left issue, nor whether a fifth part of said land came by descent to & vested in Louis Trudeau, Henry Trudeau, Marie Therese Lambert Ranger, nor whether they are lineal descendants & legal repre=sentatives of said widow Hebert & entitled to the one undivided fifth part of said land by vir=tue of their descent from the said widow He=bert. Defendant further says that he has not sufficient knowledge to form a belief whether the said three persons last above named exe=cuted a deed to plaintiff Aubuchon, nor wheth=er, if they did, the one made an exhibit by the petition is the deed. And he further says that he has not sufficient knowledge to form a belief whether said John Valle dit L'Anglais is a lineal descendant of Madam Hebert & her legal representative & as such is entitled to one tenth or any other portion of said land. Defendant admits that he is in possession of between twelve & thirteen arpents of the said tract & the quantity that he is in possession of is bounded on the north by land of John

6. O'Fallon, on the East by land of Thornton D Murphy, on the South by land of John O'Fallon, & on the west by land of Robert Wash.

Defendant denies that the plaintiffs right to recover in this case even if they are the legal descendants of the widow Hebert. He says that on the 9th day of July in the year A D 1777 she made a conveyance of the Southern one by forty arpents of said three by forty arpents deep to Joseph Labruxiere of which conveyance a copy is filed in the suit of said plaintiffs against Robert Wash in this Court and returnable to this term & designated by the number 100 to which defendant refers, he not having the possession or the control of the original. also that on the 18th day of March AD 1780 said Labruxiere conveyed the same to Louis Chevalier & on the 21st day of August A D 1805 the widow of Louis Chevallier conveyed it to John Mullanphy copies of which two last named conveyances are filed in said suit last mentioned & to them reference is hereby made, the defendant not having in his possession or under his control the originals. Also that on the first day of November A D 1819 said Mullanphy conveyed said arpent to A L Laugham & William Rector; a copy of the deed thereof is filed in said suit & to it reference is hereby made, the defendant not having possession or control of the original. That on the same day said Laugham & Rector executed their mortgage upon said land to John Mullanphy to secure the sum of $1200 dollars, which is filed in said suit & reference to it is hereby made. That afterwards judgment was rendered on said mortgage in the St Louis Court

7. of Common Pleas in favor of John O'Fallon as
executor of said Mullanphy against Elias T
Langham administrator of Angus L Langham
& Peter Walsh administrator administrator of
William Rector & an execution was issued upon
said judgment of special fieri facias & the said
one by forty arpents was sold to said O'Fallon
& a Sheriff's deed was given to him which con=
veyed all the title in it to him, which deed
is filed in said suit & reference thereto is hereby
made, the same not being in defendant's pos=
=session or control.

And defendant also claims title to that
portion of said tract admitted to be in defen=
dant's possession by virtue of the following
conveyances. viz. 1st a deed dated June 1st 1835,
made & executed by Edward Bates trustee of
Eliza H Cozzens to defendant which deed is
herewith filed. 2nd a deed dated March 4th 1834,
from Brown Cozzens & wife to said Bates. 3rd A deed
dated October 15th 1831, from Virgil Maxcy,
solicitor of the treasury, for and on behalf of
the United States to said Brown Cozzens, &
a deed dated August 31, 1833 from the Sheriff
of St Louis County to said Brown Cozzens by
virtue of a sale on executions issued out of the
Clerk's office of the Circuit Court of St Louis County
& returnable to the March Term of said Court,
upon a judgment against Angus L Langham
& another against Wilson A Bell in favor of the
United States. Copies of which three last above
mentioned deeds are filed with the answer of
Thornton D Murphy in suit (no 105) of plaintiff
against Thomas B Robinson in this Court the

8. originals not being in defts control reference is made to said copies. And defendant further says that said A L Langham & Rector in 1819 entered into possession of said 3 by 40 arpents claiming it as their own & ever since that time the same land has been held by them & by persons claiming under them adversely to all the world down to the present time, which length of possession is by law a bar to all persons & is claimed to be such by this defendant. And this defendant further says that Charles Sanguinett as testamentary executor of said widow Hebert some time previous to December 1786 sold at the Church door the remainder of said three arpents of land being 2 by 40 arpents & Joseph Brazeau was the highest bidder as appears by the certificate of said Sanguinet dated December 26th 1786 a copy of which certificate is filed in said suit, to which reference is hereby made, the original not being in defendant's possession or control. Defendant further says that the three persons from whom the plaintiff Aubuchon claims title were the children of John Baptiste Trudeau & he died early in the year A D 1827 leaving his wife discovert & that the plaintiff Aubuchon derives title through her as a child of said widow Hebert, the certificate of interment of the said John Baptiste Trudeau with a translation thereof is filed in said suit & to it reference is hereby made.

And he further says that on the 4th of May 1811 said Joseph Brazeau & Therese his wife conveyed by deed to August & Louis Brazeau the said two by 40 arpents remaining to the said widow Hebert after she had conveyed to said Labuxiere

9. the said one by 40 arpents a copy of which deed is filed in said suit, to which reference is hereby made, the defendant not having the original in his possession or under his control - and on the 10th of August AD 1818 said August & Louis made their deed of conveyance of said land to Angus L Langham, a copy of which deed is filed in said suit & to it reference is hereby made, the defendant not having the original in his possession or control, whereby all the right & interest of said Brazeau were vested in said Langham. And this defendant further says that said Brazeau after said purchase from said Sanguinet of said 2 by 40 arpents entered into the possession thereof & cultivated them under the Spanish government claiming them as his own prior to the 20th day of December AD 1803 for several years & was in the possession of them & the claimant of them as aforesaid at the change of government & ever since till the said deed to August & Louis Brazeau, so that the act of the 13th of June AD 1812 confirmed it on the possession & cultivation of said Joseph to his assignees said August & Louis.

Todd & Krum
attys for Deft.

Benjamin Ames, defendant, being duly sworn says that the foregoing answer & the matters therein as stated he believes to be true.

Sworn to & subscribed before me this 27 Feby 1852. } Benjamin Ames.

P Tippett Cl'k

And at the October Term 1856 the following proceedings were had herein.

Friday October 24th 1856.

Death of Pltff Vallé suggested & suit abated as to him. Jury & trial progressed.

Now at this day come as well the said plaintiff Napoleon Aubuchon by his attorney as the said defendant by his attorney and it is suggested and shown to the satisfaction of the Court that since the commencement of this suit the defendant John Vallé dit L'Anglais has departed this life; thereupon come a jury to wit; James Fitzgerald, James Jackson, John R Drew, Michael Freely, Barnard Fontin, Henry Goss, John Higgins, Modest Presse, August Lorine, Adam Peterson, Jacob Jeffery and James Millan, twelve good and lawful men who being duly elected tried and sworn the issues herein joined between the parties well and truly to try the trial of this cause progressed and not being finished is laid over until Monday next.

Monday October 27th 1856.

Trial & non suit with leave to move set aside.

Now again come the parties and jurors as aforesaid and thereupon the trial progressed, and being finished, the plaintiff says he will not further prosecute his suit in this behalf against the defendant but voluntarily takes a non suit, therefore it is considered by the Court that said plaintiff take nothing by his suit herein, and that the defendant go thereof without day and recover of the plaintiff his costs and charges herein expended and have execution therefor. Leave is given the plaintiff to move to set aside the non suit herein.

And at the Term last aforesaid the following further proceedings were had herein.

Friday November 21st 1856.

New trial refused.

The plaintiff's motion to set aside the non suit herein being heard and fully understood by the Court it is ordered that said motion be overruled.

11. And afterwards, to wit, on the 17th day of December 1856 the following Bill of Exceptions was filed herein to wit:

Bill of Exceptions.

Be it remembered that on the trial of this cause the following was all the evidence given to the jury. The Pltff gave in evidence the confirmation papers before Frederick Bates Recorder of Land Titles.

Confirmation Papers before Fred^k Bates, Recorder of Land Titles.

General notice. To Frederick Bates Esquire Recorder of land titles in and for the Territory of Missouri. Sir. For the benefit of all parties interested please to record the registered concessions of Livres terreins No^s 1.2.3.4.5.6. on file in your office, St Louis november 28th 1812. Th^s F Reddick. Pre Chouteau, Lyre Sarpy, Julius Demun, Ch^s Gratiot, Bernard Pratte, B Y Farrar, John McKnight, A McNair, Wm C Carr, Cabanne; Augte Chouteau, M P Leduc. See Book F p 146. Minutes of the Recorder of Land titles acting as Commissioner under the act of Congress entitled, "an Act making further provision for settling the claims of land in the Territory of Missouri" passed the 13th day of June 1812 and other acts subsequently passed.

Frederick Bates Commissioner

See Bates minutes page 1.

January 2nd 1814.

The claimants (under General notice) of the lots in the town of St Louis, and the field lots adjoining, being on the 21st day of December last introduced Col Auguste Chouteau as witness in support of their claims, and the investigation not having been yet completed owing to its length and together with some necessary and unavoidiable interruptions - the said claimants

12. by one of their number M P Leduc introduced Col Auguste Chouteau for the purpose of deposing in continuation, and on the oath formerly administered, as to the inhabitation, cultivation ownership and possession of said lots. Whereupon the said witness deposes in continuation as follows. As to widow Hebert claiming 3 by 40 Big prairie fields St Louis August Chouteau says, this lot was cultivated from 1766 or 1767 till the fence was taken down in 1793 Bates. Minutes p 149. Opinions of the Recorder of Land Titles for Missouri Territory as to claims entered under act of 13th June 1812, and proven before 1st January 1814 as provided by the act of the 3d march 1813 comprehending the claims also in the late district of Arkansas, which by act of 2nd August 1813 were permitted to be entered until 1st January 1814 and proven 1st July 1814 together with the extensions of quantity provided by 4th Sect of the 3rd march 1813, and confirmation under the Act of 12th April 1814.

| Warrant or Ord of Survey | Survey | notice to Recorder by whom | Quantity claimed | Where situated | Poss: Inhab: Cult: | Opinions of the Recorder. |
|---|---|---|---|---|---|---|
| Prov: Land book 1 p 28 | not plotted | Widow Hebert Rep's | 3 by 40 arpents F 158 | Fields St Louis Big prairie | poss & cult prior to 1803. | confirmed 120 arpens to be surveyed |

Office of the Recorder of Land titles.
St Louis 30th October 1849.

I certify the above is correctly copied from pages 1 & 8 of Book No 1 being one of the five small books in this Office with the following endorsement on the first and also on the fifth book believed to be in

13 the handwriting of Frederick Bates to wit: "These five small books are originals in the proper hand writing of the undersigned being his decisions on land claims since the adjournment of the late Board. They were arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by Government. St Louis nov 1st 1815. Frederick Bates Recorder of Land Titles."

Adolph Renard U S Recorder of land titles in the State of Missouri.

Recorders Office St Louis 30th October 1849.

I certify that the foregoing on pages 1 to 5 is together with the attached paper a full complete and correct transcript from the books, papers, files & documents of this office of the claim to 120 arpens of land in the Grand prairie common fields of St Louis, which was confirmed to widow Hebert by the Board of Commissioners, appointed pursuant to the 5th Section of the Act of Congress of the 2nd march 1805. entitled, "An act for ascertaining & adjusting the titles and claims to land within the territory of Orleans and district of Louisiana." and which was also confirmed to widow Hebert's representatives by the 2d Section of the act of Congress approved on the 29th April 1816 entitled "An Act for the confirmation of certain claims to land in the Western district of the State of Louisiana and in the Territory of Missouri.

Adolph Renard U S Recorder of land titles in the State of Missouri.

Also the U S Survey no 1256 executed in Sept 1838. which survey it is agreed by the counsel

14. in the case ~~and~~ need not be inserted in the Bill of Exceptions but may be used on the argument of the case in the Supreme Court as if it had been inserted herein.

Also a plat from the Surveyor General's office showing the connection of said Survey No 1256 with the surrounding U S Surveys. In regard to this the same agreement is made as in the case of the preceding.

Also the deposition of mad Helen Lerou as follows.

Deposition of Helene Salle Lerou.

Hélène Sallé Lérou being produced sworn and examined on the part of the plaintiff deposeth and saith. I am in my seventy second year of age and was born in St Louis upon the very lot I am at present. (which is situated at the Southeast corner of Third and Elm Streets) I was acquainted with the widow Hebert who died a few years after the year of the "Coup". I do not know how many children mr Hebert had, but I remember Joseph Francois nicknamed "belle homme" and Auguste of these sons Francois i-e "belle homme" married the late widow Trudeau, who was Madam Roy; they had one child, a boy; the father Francois died before his son. I believe he Francois was killed in the year of the "Coup". The son died after his father being at the time of his death about 6 or 7 years of age. The mother then contracted marriage with Jean Baptiste Trudeau or Truteau. Auguste died without being married and without leaving issue. Joseph married leaving a son Joseph, and a daughter who married mr St Cyr. I also heard that there was another son named

15 Ignace. I heard this in the family but did not know him. I also knew two daughters, do not recollect their names,- one married a Mr Carpentier of St Genevieve, and the other a Mr Martin. Mrs Martin and her husband died without leaving issue. Mrs Carpentier and her husband had one daughter whose name I do not recollect. This daughter married Charles Vallé of St Genevieve- they had two children John Vallé dit L'Anglais, and a daughter named Pelagie who married Robin who had one daughter named Aspasia who married Etienne Roussin.
Cross examined by Mr Beattie counsel for defendant.
I knew Mr & Mrs Carpentier, but were not in intimate with them, but I well know their children and grand children. The daughter of Mr & Mrs Carpentier was married to Chas Vallé- they had two children who are John Vallé (dit L'Anglais) and Pelagie Mrs Valle subsequently eloped with a man by the name of Vie and went to Vincennes with him where she died. The father Mr Charles Vallé went to Apelousas or Appacapas with his children- he died somewhere in the lower country. Mr Louisel brought these two children back to this County. I went to school with the daughter Mrs Reganché where we were half boarders together. I was not at St Genevieve but Mr & Mrs Carpentier came here occasionally. I always resided here in St Louis.
Resumed- I went to school with Mr Charles Vallé's daughter upwards of a year at Mrs Reganché in the City of Saint Louis.- further deponent saith not.

Hélène Leroux

16.

Deposition of Louis Trudeau.

Also of Louis Trudeau.

Louis Trudeau, of lawful age, being produced sworn and examined on the ~~the~~ part of the plaintiffs deposeth & saith.

Qus by plaintiff. What knowledge have you of widow Hebert formerly of St Louis and her children and from what source did you obtain that knowledge.

Ans. From conversation with my Grand father Pierre Chauvin I learned that widow Hebert had seven children four sons and three daughters of the four sons one named Ignace moved from St Louis some where about St Genevieve and was married there he was an old hunter at Fort Chartres from this marriage issued three children two sons and one daughter who married one Pierre Chauvin who had an only child a daughter who married Louis Trudeau the father of deponent Louis Trudeau father of deponent had three children two sons Louis this deponent and Henry and one daughter named Marie Therese who married Lambert Ranger. Of the two sons of Ignace Hebert one named also Ignace was not married and died without issue the other named Henry married the widow St Marie otherwise called Lamfeigne these had two sons who died unmarried one named Baptiste was said to be killed by the Indians and the other named Henry Hebert died in the State of Mississippi some twenty two or three years ago. Deponent further says that he understood from his Grand father that one Carpentier married one of the daughters of the widow Hebert who had an only

17. child a daughter who was married to Charlo Valle and they had two children John Vallé dit L'Anglais & Pelagie who intermarried with Charlo Robin and that he does not now recollect the names of any other of the children of the widow Hebert. This deponent further states that he lived many years close by his Grand father Pierre Chauvin and heard the above facts from him and from conversation in the family and that was almost grown when his Grand father died - this deponent further states that he now resides in Washington County Missouri about sixty eight miles from St Louis Missouri and further this deponent saith not.

Louis his X mark Trudeau.

Sworn to and subscribed before me this 20th day of October 1853 and within the hours first aforesaid.

G M Wallis Justice of the Peace.

Pelf then proved that on the 26 July 1773 Peter Chauvin intermarried with Marie Rose Hebert daughter of Ignace Hebert deceased at the Parish of St Genevieve. That on the 23 April 1792 Louis Trudeau intermarried with Marie Chauvin daughter of said Pierre & Marie Rose Hebert at said Parish of St Genevieve. That Louis Trudeau son of said Louis & Marie was born on the 28th June 1793. That Marie Therese daughter of said Louis & Marie was born the 22 May 1795. That Henry Trudeau son of said Louis & Marie was born on the 8th of April 1797.

Testimony of P A St Cyr. Paschal A St Cyr testified. I was born in 1803 in St Louis & have ever since resided in this County. My mother died in Feby 1844, 75 years old - She survived her husband, was the daughter

of Joseph Hebert Senior & named Helen. Said Joseph Hebert Sr was the son of the widow Hebert.* There was a widow Hebert my grand mother, but she did not go by the name of "the widow Hebert." I dont recollect my grand father. Joseph Hebert the father of my mother had brothers & sisters whose names according to my recollection were - that is the children of the widow Hebert - were Joseph my grand father, Auguste, Francois, Ignace, and Helene, Marie, or Marie Therese & Pelagie. Dont recollect if Helene was married. I think I've heard Mary married a Trudeau. Pelagie married in St Genevieve. Dont know whether Ignace had children or not. One of the sons died without ifsue, but dont recollect which one - nor whether he died before or after his mother. Dont know whether either of the daughters died without ifsue. One of them I know left ifsue. I've seen Henry Trudeau & a widow a sister of his. This Henry Trudeau was a descendant of the widow Hebert. Madam Martigney died at my mothers. She was daughter of the widow Hebert & sister of my grand father. Think she left no children - never understood that she had any.

*my mother had a brother named Joseph. never heard of but one who went by the name of the widow Hebert

Testimony of Stepen Polite.

Stephen Polite testified. I reside in St Louis - came here from near the "old mines" in Washington County, - was born in St Genevieve & went from there to Washington County. Know Henry Trudeau - also his brother Louis. They had a sister Mary. She was widow of Lambert Ranger, who died a good while ago. I think before I came here

19 and I came here in 1830. These three latter named persons were the children of old Louis Trudeau whom I knew very well. (he hauled lead with my father. Don't think he had a wife living when I knew him) He died before Lambert Ranger and he died some years before 1830. At his death his widow said Mary must have been about 40 years old.

Pelf then offered in evidence the following deed from Louis & Henry Trudeau & mad Ranger to himself.

Deed from Henry & Louis Trudeau & M L L Range. to Napoleon Aubuchon.

This quit claim deed made this twenty sixth day of January in the year of our Lord eighteen hundred and forty six between Louis Trudeau and Eulalie Trudeau his wife, Henry Trudeau & Marie Therese Lambar Range' of the County of Washington in the State of Missouri of the one part, and Napoleon Aubuchon of the County of Washington in the State of Missouri of the second part. Witnesseth - that the said party of the first part for and in consideration of the sum of One thousand dollars to them cash in hand well & truly paid by the said Napoleon Aubuchon the receipt of which is hereby acknowledged, they the said ~~party~~ party of the first part have this day granted, aliened, quitclaimed, assigned and transferred, and by these presents do grant alien, quit claim, assign and transfer unto him the said Napoleon Aubuchon and to his heirs and assigns our whole and interest of in and to the estate of the widow Hebert deceased lying and being in the County of St Louis in the State of Missouri, as heirs at law of said widow Hebert deceased. Our interest in said estate being one undivided fifth part of said estate and particularly one undivided interest

of in and to two arpens of land by forty arpens deep confirmed to widow Hebert by the act of Congress approved the twenty ninth day of April eighteen hundred and sixteen entitled "an act for the confirmation of certain claims to land in the district of Louisiana and Territory of Missouri" the said two by forty arpens of land being situated near the northern part of the City of St Louis in what was called the "Prairie La Grange" & is described and known as Survey number fourteen hundred and eighty seven (no 1487) bounded on the East by the Mississippi river, on the South by Survey no 1486 granted to Delruisseau. To have and to hold the said above granted and bargained premises and lands unto him the said Napoleon Aubuchon and to his ~~heirs and~~ heirs and assigns, and to his and their only proper benefit and behoof forever. In testimony whereof, we the said party of the first part have hereunto set our hands & seals the day and year first above written.

Signed, sealed and delivered in the presence of Peter W Murphy.

Louis his X mark Trudeau (seal)
Eulalie her X mark Trudeau (seal)
Henry his X mark Trudeau (seal)
Marie Therese her X mark Lambert Rangé (seal)

State of Missouri } ss.
Washington County }

Be it remembered that on this twenty first day of March in the year of our Lord eighteen hundred and forty six before me the undersigned Clerk of the Circuit Court within and for the County aforesaid came Louis Truteau and Eulalie Trudeau his wife, Henry Trudeau and Marie Therese Lambar Rangé, who are personally known to ~~me~~ to be the

21 persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they acknowledged the same to be their act and deed for the purposes therein mentioned. She the said Eulalie Trudeau wife of Louis Trudeau being by me first made acquainted with the contents of said conveyance acknowledged on an examination separate and apart from her husband that she executed the same and relinquishes her dower to the real estate therein mentioned fully and without force or undue influence of her said husband.

(Seal) In testimony whereof I hereto set my hand and affix the seal of said Court at office in the town of Potosi this 21st day of March 1846.

Isaac McGready Clerk by Sam Harrison Depty Clk.

State of Missouri } ss.
County of St Louis } I hereby certify that the foregoing instrument of writing was on the 29th day of April 1846 filed for record in my Office as is truly recorded therein in Book Y no 3 page 450 and following. (Seal) witness my hand & Official Seal at Saint Louis the date aforesaid.

S. D. Barlow Recorder.

To the reading of which deed the defendant objected on the ground that the same was incompetent & irrelevant testimony - the Court overruled the objection & allowed the deed to be read & Deft duly excepted.

It was admitted that the land sued for & in possession of the Deft was worth $5.00 per acre by the year.

Plff closed his case.

Deft then offered the following evidence.

22. Archive no 220. being a Deed of Exchange dated the 9 July 1777 between Joseph Labuxiere & Madam Hebert whereby Labuxiere conveys to her 2 by 40 arpens of land in the "cul de sac of the Grand Prairie" & she conveys to him 1 by 40 arpens in the Grand Prairie touching on one side to land of Paul Gregoire & on the other to land of said widow Hebert.

Also Archive no 146 - a deed from Joseph Labuxiere to Louis Chevalier dated 10 march 1780 conveying 1 by 40 arpens of land in the Grand Prairie contiguous to land of the widow Hebert on the north side & on the other to the river.

Also a deed from Helene Tayor widow of Louis Chevalier to John Mullanphy dated the 21 Aug 1805 conveying 1 by 40 arpens of land bounded on one side by Paul Grigoire & on the other by widow Hebert.

Also a deed from John Mullanphy to Angus L Langham & Wm Rector dated 1 Nov 1819 convey'g 1 by 40 arpens in the Grand Prairie, bounded on the one side by the children of Paul Grigoire & on the other by widow Hebert.

Deft then offered certified copy of the record from the office of the Recorder of the County of St Louis of Archive no 2389 marked. It is agreed that said copy need not be inserted in the Bill of Exceptions, but that the same may be used & read in the Supreme Court as if it had been copied herein. To this Plff objected as being incompetent, illegal. but the Court admitted it & Plff excepted.

See Dressing Notes

Deft also offered a Deed from Jos Brazeau

23. & wife to Louis & Auguste Brazeau his nephews in consideration of one dollar dated 4 May 1811 & conveying a piece of land in the Grand Prairie 4½ by 40 arpens bounded on one side by land originally granted to widow Hebert & on the other by both - 2 arpens of which was acquired from Chas Sanguinett & the balance of 2½ from Chas Bizette's estate.

Also Deed from Louis Brazeau & Auguste Brazeau & wife to Angus L Langham dated 13th August 1818 conveying tract in Grand Prairie of 2 by 40 arpens bounded North by land of Langham South by land of Paul Kiercireau being same acquired by grantors from Jos Brazeau.

Also Deed from Angus L Langham by Shff on foreclosure of mortgage to Brown Cozzens dated 31 August 1833 conveying a tract of 104½ arpens being part of the land originally granted to Bizette & widow Hebert bounded South by Paul Kiercireau, north by lands of Sanguinett.

Also Deed from Brown Cozzens to Edward Bates in trust for Cozzens' wife dated 4th mch 1834 conveying 100 arpens more or less in the Grand Prairie bounded North by Doct Sangrain & South by Paul Kircireau.

Also Deed from Edw^d Bates trustee of Mrs Cozzens by her direction to deft dated 1 June 1835 conveying the tract mentioned in the deed last preceding. It is stipulated & agreed that for the purpose of more definitely ascertaining the boundaries & descriptions of the land mentioned in the foregoing several deeds & archives offered by defendant he may use

said deeds & archives before the Supreme Court without having them copied into the Record.

Testimony of Chas Sanguinet.

Chas Sanguinet as a witness who testified as follows. I was born in St Louis & am 73 years old this month. There is no other Chas Sanguinet here. My father was named Charles — he was admr of the estate of widow Hebert. I so learned from him. I have seen a memorandum of a sale by him as such admr of a negress belonging to the estate of the widow Hebert — this was about 1795 — Said negress escaped & came back to my fathers house. My father died in 1819. I didnt know Paul Kircireau nor Grigoire Kircireau. But I did know Mary P Leduc & he knew my father who was 75 or 76 years old when he died.

Deft then offered the copy from the record of an instrument recorded in the Recorders Office of the County of St Louis also the record of it itself as follows.

Sanguinet's Memorandum

27 Jany 1785. Nous Louis St Ange de Bellerive Capitaine commandant de la partie française aux Illinois et Joseph Labuxiere subdéléguéi de Monsieur l'ordonnateur de la Louisiane Judge et Procureur au dit pays, en vertu du pouvoir à nous donné par Messieurs les gouverneurs et ordonnateurs de la Louisiane et sur la demande de la dame Veuve Hebert habitante laboureuse qui desire cultiver la terre nous lui avons concedé et concédons à titre de propriete pour elle ses hoirs ou ayant causes une terre située a la grande prairie contenant trous arpents de face sur le profondeur ordinaire de quarante arpens tenant d'un coté à Guillaume Bisette et de

26 l'autre coté au nommé Taillon aux conditions de mettre en valeur la dite terre sous l'an et jour et qu'elle sera sujette aux charges publiques et autres qu'il plaira à Sa majesté d'y imposer. Donne à St Louis aux Illinois le dix huit juillet, mil sept cent soixante neuf Signé sur le régistre St Ange et Labuxiere - Labuxiere enrégistre folio 28 Rects - Pour concession. J'ay exécuteur Testamentaire de Madame Helene Denis Veuve Hebert reconnais et certifie d'avon vendu à la porte d'Eglise à la criée au plus aux enchérisseur la presente terre que de deux arpents à Mr Joseph Brazeau pour prix et somme de quarante livres en argent dont je reconnais que de Sr Brazeau m'a payé comptant, dont quit a St Louis des Illinois le 26 Xbre 1786. Chles Sanguinet.

Recorded this 18 day of June 1811. M P Leduc Recorder.

State of Missouri County of St Louis } ss. I the undersigned Recorder in & for the County of St Louis do hereby certify the foregoing to be a true copy of an instrument of writing and also of the date of recording thereof as fully as the same remains of record in my Office in Book C page 396. (Seal) Witness my hand & official seal at St Louis the 28th day of January 1852. S D Barlow Recorder.

Territory of Louisiana, District & township of St Louis } Before me the subscriber one of the Justices of the peace in & for the township aforesaid personally came and appeared Charles Sanguinet who acknowledged the within instrument (to wit the deed bearing date the 26th Xbre 1786) to be his act & deed for the purposes therein contained. Given under my hand this 29 day of June 1811.

M P Leduc J P.

Recorded this 29 day of June 1811. M P Leduc Recorder.

State of Missouri County of St Louis } ss. I the undersigned Recorder in & for the County aforesaid do hereby certify the foregoing to be a full & complete copy of a certificate of acknowledgment, of the reference in the margin & of the date of recording thereof as fully as the same remains of record in

26. my Office in Book C page 401. (Seal) Witness my hand & official Seal at St Louis the 28th day of January 1852.

S D Barlow Recorder.

Also in connection with it the copy from index of the Book in which the instrument is recorded & also of the Genl Index as follows. Plff objected to said instrument, because informal illegal & incompetent - not properly recorded - the instrument being recorded in one place & the acknowledgment in another - not properly certified. But the Court allowed it to go to the jury & Plff excepted.

It is agreed that the original record above mentioned and County Recorders indexes may be used in the Supreme Court and that copies need not be inserted in this transcript.

Todd & Krum
Attys for B Ames.
Trusten Polk.

Testimony of Augustus H Evans.

Augustus H Evans testified for deft as follows. I came to St Louis in 1817 - been here most of the time since. For 4 years - 1818 - 1819 - 1820 & 1821 lived in Howard County, but during that time was here almost every month. When I first came, was engaged in boating. In 1822 went into Surveyor Genl's Office but had surveyed some before then. Was in that Office from 1822 to 1836. Knew Angus L Langham shortly after I came here. He was U S Deputy Surveyor. He was then a young man without family. He built a house in the Grand Prairie on the Bizette arpen. Judge Wash's house is on that tract. The widow Hebert tract lies S of the Bizette tract. but I

27 dont know if it lies next South. The Sangrain tract laid North of the Bizette. Sangrain died shortly after I came here & then his children claimed it. About 1819 A L Langham had a large frame house on the Bizette tract & also a barn. He lived there till about 1822.

Then Elias Langham went there to live with his sisters. The next one that came in there was Brown Cozzens, and the house was burnt down while he was there. Cozzens went there after 1824. Langham claimed more than the Bizette arpen or tract. Langham claimed the Hebert tract. He had an enclosure there - a good large field - cant say how large. Immediately S of his house was a sink-hole & his barn. His enclosure extended West & East of his house & also South of his house but not as far S as the Picard claim.

The house where Wash lives was built by Genl Rector about 1820. It was on the Bizette arpen. Rector & Langham were interested together. They divided, Rector taking the western & Langham the Eastern part. Jos Barton occupied it after Rector. He died there in 1823. His family lived there some time - then Steen - then Haskell - dont recollect who afterwards. Barton bought of Rector. He was a brother-in-law of Rector & so of Steen. The Eastern part has been occupied since Cozzens was there. Know the race-track where Ames claims. He has been there for 20 years or more. Think Rector's improvement cost $4900.00 - 'twas good. In sight of the St Charles road which was the greastest thoroughfare we had. These were the

first inclosures in that Prairie. Ames Prairie House building is on the Picard tract.
Deft then gave in evidence the Township Plat of T 45. N. R. 7 E. And it is agreed that the same need not be made a part of this Bill but may be used on the argument of this case in the Sup Court as if it had been inserted herein.

Ford went into the possession of the Langham part next after Langham & before Brown Cozzens but cant say when - perhaps about 1824. Dont know what Ford did then. He was not there long. Dont know under whom he went there.

Testimony of Geo Norton

George Norton testified for Plff as follows. I have lived in St Louis 38 years. Knew Angus L Langham in 1820. I was then a builder. In summer of 1820 or 1821 I built Langham a dwelling house. This house may have been 300 yards north of where the St Charles road now is. It was near the Eastern end of the arpen lots & about one arpen West of East line of the arpen lots. The house was 5 or 6 arpens further East than the "Prairie House" but it was north as well as East of the "Prairie House". L had the whole front of the tract inclosed extending Westwardly about half way to where Wash now lives & containing about 25 or 30 arpens. Langham was there 3, 4, or 5 years. Brown Cozzens was there 3 or 4 years or more - dont know under whom he went there - nor who was there next after him. L's W fence was as far West as the centre of the present race-track. His cultivation 2 or 3 arpens. His inclosure was not less than 2 arpens wide perhaps three. There was one open space between

29. it & the St Charles Road. L's house was N E of the present Prairie House.

Deft next gave in evidence a Deed from John L Provenchere to Angus L Langham dated 13 Mch 1817 for a tract of land being the same bought by Chas Bizzette, bounded N by Dodier, S by Hebert. (The same agreement is made in respect to this Deed that is made above in respect to the other deeds offered by deft)

Testimony of Edwd Bates.

Edward Bates then testified for Deft as follows. Knew A L Langham well - as early as 1816 or 1817. Think that in fall of 1818 he had just erected a small house which he called "Prairie House", on the Eastern end of the tract on which Genl Rector was erecting a house. There was a very temporary fence, but it was all around the house. The house was a 2 story log cabin, with one room in first & one room in 2d story - Think there was stable & corn crib, and that Langham lived there several years. Cant tell when Brown Cozzens went there nor under whom. Have known the premises since then by passing them - think they have been occupied since. There was quite a distance between Langham & Rector. Think the improvements of each extended towards each other & possibly come together but am not sure. Cozzens cultivated there pretty extensively. I executed one or more deeds as Mrs Cozzens' Trustee Think I made one to Mr Abbott.

Testimony of J O'Fallon

John O'Fallon, on part of deft testified as follows. I came here in 1817 & found A L Langham here. Known Grand Prairie since 1812 - have been familiar with it. In Spring of 1818 Langham commenced building a house in Grand Prairie -

30. was clearing up in fall of that year - he had a "house warming" in Spring of 1819. He claimed next South of Kennerly or the Sangrain tract & the E half of the same tract that Rector improved He occupied till 1825 & Haskell next after him & next to him was Judge Shannon. Stroth er bought it for the US about 1827 & sold I think to Cozzens. The tract was about equally divided between Langham & Rector, the former having the East & the latter the west end. In 1824 I bought of Rector & then sold to R Wash who has been there since 1826. I know Ames' Prairie House tract - The Langham tract was N E of Ames tract. This Prairie House tract is part of the Langham tract that he built upon & occupied in 1818. Kennerly lived on the west end of a tract which was given to his wife by Sangrain her father - who also gave the East end of the same tract to von Phul who married another daughter of his. The Prairie House tract comes down to the St Charles road. The Langham house was 6 or 7 arpens N of that road. Think Langham's & Rector's inclosures came together, tho' there might have been a space between them. I never made any inclosures there & never owned the Langham tract. Dont know when the inclosure coming down to the St Charles road was made. When Rector & Langham went out there as before stated they claimed the Hebert & Bizette tracts. Witness bought out Rector 1824 - held but a short time & then sold to Wash 1826 who has occupied the premises ever since. The Prairie House tract is a part

of the Langham tract of which I have spoken. Doct Sangrain's tract was next north of Langham's. Langham's enclosure came down South within an arpen or so of Charles Road.

Testimony of Jacques Noise dit L'abbé

Jacques Noise dit L'abbé on part of deft testified as follows - was born in St Louis & am 72 years old. Knew Paul Kircireau since my earliest recollection. Dont know that he had any middle name. I've heard him called Paul Kircireau dit Grigoire.

Deft then gave in evidence a Deed from the US by Virgil Maxey Solicitor of the Treasury to Brown Cozens dated the 15th conveying a tract of 104½ arpens in the Grand Prairie bounded N by Doct Sangrain, W by R Wash & S by Paul Kircireau - being same sold as Langham's property to Geo F Strother in trust for the U S.

Also a deed from A L Langham by Shff to Geo F Strother agent for the U S dated 30 Apl 1827 - for the same tract described in last named deed.

This was all the evidence in the case. The Court then on the part of the deft & at his prayer gave to the jury the following instructions, to which the Pltff at the time excepted.

Deft's Inst's given.

If the jury believe from the evidence that the widow Hebert from whom the plaintiff claims title was the same person of whose estate Charles Sanguinett was appointed administrator, as given in evidence, & that the writing, given in evidence, of Charles Sanguinett to Joseph Brazeau was made by said Sanguinett as said administrator, & that it embraced any of the

land sued for in this suit & that the deeds, given in evidence, respectively, of said Brazeau & wife to Louis & Auguste Brazeau & of said Louis & Auguste ~~Brazeau~~ to Angus L Langham & of said Langham by the Sheriff of the County of St Louis to Brown Cozzens & of said Cozzens to Edward Bates & of said Bates to the defendant Ames, embraced any of the land sued for in this suit & that said Langham as early as 1819 entered upon & took possession thereof under said deed of Louis & Auguste & made costly & notorious improvements on the same & dwelt there & that the possession & improvement of the same have ever since been kept & continued publicly expensively & conspicuously by said Langham Cozzens & Ames & others under or through them respectively, successively, under a claim of right thereto by virtue of said writing & deeds & that Louis & Henry Trudeau & Mrs Ranger grantors of the plaintiff have been of the age of 21 years & Mrs Ranger unmarried, also, for twenty next before the commencement of this suit, then the jury may presume that said Sanguinette did lawfully sell said land to said Joseph Brazeau & find for the defendant as to said land.

If the jury believe from the evidence that the widow Hebert from whom the plaintiff claims title was the same person who is a party to the instrument of conveyance of widow Hebert to Joseph Labuxiere, given in evidence & that said instrument embraces any of the land sued for in this suit then they should find for the defendant as to so much of the land sued

33 for in this suit, as is embraced in said instrument.

If the jury believe from the evidence that the defendant & those through whom he claims & holds possession of so much of the land sued for as he was in possession of when this suit was begun, had had the continuous possession thereof for & during twenty years next before the commencement of this suit claiming the same adversely to all others & that twenty years before this suit was begun Henry & Louis Trudeau & Mrs Ranger the grantors of the plaintiff were twenty one years of age & Mrs Ranger unmarried also, & that their parents were also dead as long before this suit was begun, then they should find for the defendant.

And if the jury believe from the evidence that the defendant & those through whom he claims the land in controvery entered upon the same under deeds embracing the same, then the jury should find that possession so taken of any part embraced in such deeds was a possession of the whole unless the contrary be proved & every possession thereof by others by their respective permissions or authority was their possession respectively.

The Pltff then prayed the Court to give to the jury the following instructions - which the Court refused to give & the Pltff excepted.

Plaintiffs Instructions Refused.

The paper purporting to be a deed from Charles Sanguinet to Joseph Brazeau dated the 26th Decr 1786 a copy of the record of which has been given in evidence by the deft; and the paper purporting to be archive no 2389 a copy of the record of which has been given in evidence

34. by the deft. do not nor does either of them pass to said Brazeau any title or claim to the premises therein described that had belonged to the widow Hebert in her lifetime.

The statute of limitations would not begin to run against the legal representatives of the widow Hebert as to the land mentioned in the confirmation papers given in evidence by the Plff before the execution of the U S Survey No 1256 given in evidence by the Plff.

The Plaintiff thereupon took a non suit with leave to move to set the same aside - which motion with reasons was filed in due time and are as follows:

Mo & reasons to set aside non suit.

And now comes plaintiff & moves the Court to set aside the non suit in this case for the following reasons:

1. Because the Court refused to give to the jury the instructions prayed by the plaintiff & refused to give legal & proper instructions to the jury.
2. Because the Court gave the instructions prayed by the defendant & which were illegal & improper & ought to have been refused.
3. Because the Court erred in matters of law - giving instructions to the jury that ought to have been given & then refusing & failing to give the instructions that it ought to have given them.
4. Because the Court admitted illegal evidence on the part of the defendant & excluded from the jury legal & proper evidence offered by ~~by~~ the Plaintiff.

T Polk atty
for Plff.

35. This motion the Court overruled & the Plff imme=
diately excepted & now files this his Bill of Excep=
tions & prays that the same may be sealed &
filed & made a part of the record which is done.

Samuel Treat Judge (seal)

State of Missouri } ss.
County of St Louis } I, Charles W Hicks, Clerk
of the St Louis Court of Com=
=mon Pleas, in & for the County aforesaid, certify
the above & foregoing to be a true & complete
transcript of the record & proceedings in the
case of Napoleon Aubuchon against Benjamin
Ames as fully 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 the
City of St Louis this 27th day of
March A D 1857.

C W Hicks Clk

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82 [illegible]

March. T. 1858

Napoleon Aubuchon. P.E.

vs } Transcript.

Benjamin Ames. D.E.

Filed 10th Septr. 1857

Wm J Glanville
Clk

$14 50/100 Exd.

paid by T. Polk.

Tr sr. sept. 1.00/

Assigt Ct. 57/ founder Mt. 58/ res. stat/ res. brief/ apt brief/

Affirmd 24 June 1858/ 13 p. 454.

Napoleon Antuchon
apt
Benjamin Ames
Respondent

Supreme Court
Octo. Term 1859

And now comes said appellant & assigns the following errors in the record & proceedings in this cause.

1. The Court allowed to go to the jury on the part of the defendant wid[illegible] which was illegal sought to have been excluded.

2. Court below excluded from the jury evidence offered by plaintiff which was legal sought to have been allowed to go to the Jury.

3. Said Court gave instructions to the jury against the objections of the Plaintiff that were illegal sought not to have been given.

4. Said Court refused to give to the jury instructions asked by Plaintiff which were legal sought to have been given.

5. Said Court rendered judgment for defendant when by the laws of the land its judgment ought to have been for the plaintiff.

Wherefore &c

J. Polk for appt

And the said defendant comes & denies that the Court below erred in the matters & things complained of by the plaintiffs in error

No 82

Sup: Ct = Oct. T. 1857

Napoleon Arbuthnot
Apls
Benj^n Ames Respdt

Assignment of Errors
T. Pstk P.A.

Filed 20 Oct. 1857
Wm S Glanville
Ck

& say, that there is no error in the proceedings & judgment of the Court below in this case & he prays for its affirmance with costs &c
Todd & Krum
Attys. for dept in error.

Napoleon Aubuchon et. al. Appellants
vs:
Benjamin Ames Respondent.

Supreme Court.
March Term.
1858.

## Points of Respondent.

I. The objection taken to the reading in evidence of the memorandum of sale made by Sanguinett, Adm^r of Widow Hebert, has been virtually adjudged against the appellant in the case of Aubuchon vs: Murphy 22 Mo. Rep. p. 115. -

But as an original question it is easily demonstrated that the paper under the preliminary proof made to the Court was admissible, and made so by express statute. -

Vide. Revised Code 1855 Vol. 1. p. 726. - Sec. 18.

~~The objection is not that the preliminary proof addressed to the Court was insufficient~~

The identity of the grantor was made out beyond all question - This is virtually conceded by the Appellant because his objection is to the competency of the writing notwithstanding the preliminary proof - The point is not taken that the preliminary proof was insufficient - If that had been done, the omission or defect probably, could have been supplied. -

The question then resolves itself into this - the Court below being satisfied by the preliminary proof as to the identity of the grantor, was the paper of the character of evidence contemplated by the statute and therefore admissible ?-

We think there can be but one answer to this proposition.-

II. The Appellant assumes that until there was an official survey of the land in question, the statute of limitations did not run against the representatives of Widow Hebert.-

This is tantamount to saying that the confirmation attached to no land until there was a survey - Is this so ?-

A survey was not necessary in this case to sever the land in question from the Public domain - that was accomplished by the act of confirmation itself -(Vide. Act 29. May. 1816-)-

For the land confirmed was defined and designated by boundaries with reasonable certainty - A survey could accomplish no more-

(Vide archive no 2389. + proofs Certified by Recorder of Land Titles &c)

The cases in which it has been held that a

survey is necessary in order to sever the land confirmed from the public domain - and consequently that the statute of limitations does not run till a survey is made - are cases (as will be found on examination) where the land confirmed was not defined or designated by boundaries by which the location of the land could be ascertained.

If the confirmation in this case was sufficient on which to maintain ejectment at any time since the act. of 1825 (and this must be admitted) how can this be reconciled with the appellants theory that the confirmation attached to no land till the survey in 1838 - ?-

The reasoning in support of the appellants theory leads to this result, viz: that the confirmation vested a right to land in the confirmee - but the location of the land confirmed is not designated, or or its location known until a survey is made -

If the confirmee is dispossessed before the land is surveyed no action can be maintained to recover possession, because the confirmation attached to no particular parcel of land; consequently the right to the land confirmed as well as the right to sue for possession must lie dormant until a survey is made.- In this case nearly 25 years elapsed before the survey was made - surely such a result could never have been contemplated by the several acts of Congress confirming titles.-

Whether the plaintiffs were barred by the statute of limitations must be determined under the evidence in this case, upon the instruction asked by the plaintiff - the defendants instructions were hypothetical and as the plaintiff submitted to a non suit, it must be assumed that there was evidence to support the hypotheses of the defendants instructions. -

III. The plaintiffs asked an instruction to the effect that the memorandum of sale of widow Hebert's property and the Archive No. 2389., were not, nor were either of them, sufficient to pass the title of said Hebert to Brazeau. -

This instruction was refused and properly - As to the sale by Sanguinett, Adm^r of Hebert, the writing having been admitted in evidence, it was sufficient in connection with the other facts in the case to show a sale - or rather from which a sale might be presumed -, to Brazeau, of all the right and estate of said Hebert in the land in question. -

In considering this instruction of the

plaintiffs, we have a right to assume that the land which Sanguinett sold, belonged to Widow Hebert in her life time - This fact conceded, it only remains to enquire whether under the laws and usage of the Spanish Government in such cases, a deed poll or any other kind of deed or writing was essential in order to transfer or convey land -

It is admitted law that land like moveable property could under the Spanish laws, be sold by parol - a verbal sale and delivery was sufficient.

The writing in question was evidence of a sale, and this was all that was claimed for it - and it is sufficient.-

As a formal deed or writing was not necessary nor required by law to pass title, the plaintiffs instruction on this point was calculated to mislead the jury.-

As to the writing purporting to be a deed of Widow Hebert to Labuxiere, that, if authentic, is sufficient to pass the grantors title -

This is settled by the form and terms of the deed itself - Comment is unnecessary -

But assuming that neither of the writings are technical deeds, yet they are evidence respectively of sales of the land mentioned -

Was the defendant, to sustain his defence,

required to show anything more than a valid sale of the lands in question by parol or otherwise, in conformity with the laws then in force? —

The plaintiffs instruction virtually assumes that there was then no mode of selling or passing title to land except by deed, or some formal writing.

This is the fundamental error of this instruction. —

No 82

Napoleon Aubouchon
et. al appellant

vs

Benjamin Ames
Respondent

Points of Respondent
By Krum & Harding

Filed 1 April 1858
Wm. S. Glanville Ct.

No 82 Aulnchon vs Ames

This suit is brought to recover an undivided interest in a common field lot situated in the Grand Prairie of St Louis, conceded to the widow Hebert and confirmed to her representatives by the second section of the act of Congress approved 29th April 1816. entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri". Under the proper head in the tabular list of decisions by the recorder, reported to Congress and opposite the claim of widow Hebert, is this remark. "Confirmed 120 arpents, to be surveyed".

The survey was executed in 1838, but not approved until the 29th April 1851, just thirty five years after the confirmation, and we are not apprised that a patent has yet been issued.

The controlling question in the case, is when the statute of limitation began to run against the plaintiff, in favor of the adverse possession.

The act of 1807 respecting claims to land in the Territory of Orleans and the district of Louisiana, contained no words of present grant, but was prospective in its operation, and the rights of claimants were dependent on acts to be performed by them, and the subsequent decisions of the commissioners. The fee that resided in the United States was not then passed to the claimants, and the act only undertook to provide measures for ascertaining and adjusting claims, without confirming them, but "gave to the board of commissioners power to adjudicate claims against the United States, and conclude the government as to the question of right in the claimant".

Whether any claim would ever be confirmed was not known when the act was approved, for confirmations depended on the proofs of the parties and the decisions of the board, and if commissioners had not been appointed, or had failed to act, or had decided adversely to the claimants, the law would not have benefited any person.

But the act of the 29th of April 1816 spoke in a different tone and tense, and declared that the claims embraced in the recorders reports, which had received his favorable decision "shall be and the same are hereby confirmed". The confirmations by this act carried the legal title, and being a direct grant of the fee by Congress, was the highest evidence and grade of title. Strother v Lucas 12 Peters 454. Marshall v Brooks 14. How. 524.

No one in this State has ever doubted that land confirmed by this act was subject to taxation, that it was vendible under execution and passed by will, or deed, or under the statute of descents, and it has never been supposed that these incidents of ownership were suspended until it was the pleasure of a deputy surveyor to make the survey, or the clerks in the land department at Washington to prepare the patents.

In Grignon v Astor (2. How. 319) the claim of Pierre Grignon was confirmed by an act of Congress passed in February 1823, for which the patent did not issue until 1829, and in the mean time the land having been sold by his administrator under an order of Court, it was contended that the sale was void, because he had no such estate until the emanation of the patent as could be sold.

but the Court observed that "the title became a legal one, by its confirmation by the act of Congress of February 1823 which was equivalent to a patent" and that "it was a higher evidence of title, as it was the direct grant of the fee, which had been in the United States, by the government itself, whereas the patent was only the act of its ministerial officers".

The confirmation in the case of Hart and Cochran (17 How. 403) was under the act of 1807 which we think is essentially different from the act of 1816. And it may be doubted whether the decision of that case was intended to apply to any claims except such as are so uncertain as to their boundaries, that public surveys are necessary to locate them. For the learned Judge who delivered the opinion in that case, after saying in the later case of Stanford and Taylor (18 How. 412), that "where the claim has no certain limits, and the fiat of confirmation carries along with it, the condition that the land shall be surveyed and severed from the public domain and the land of others" attaches to no land until it is designated by a survey, proceeds then to show that the concession to Angela Chavez was so indefinite in its boundary that a survey was required to attach it to any land.

It is not pretended in this case, that the concession to the widow Hebert was uncertain as to its location, or that it required a survey to identify it. It was one of the commonfield lots in the Grand Prairie, bounded on the north by the lot of Bozette and on the south by Vieux creek, and its definite location was no doubt quite as well known forty years ago

when Langham built on the tract. as it has been since the approval of the survey in 1851. Since 1818 buildings at different times have been erected on this land, it has been occupied and owned by various persons, it has been the subject of repeated sales and conveyance, and all the time since the confirmation has been treated as private property.

Our laws from 1825 down to the present time have authorized actions of ejectment to be maintained on confirmations under the act of 1816. and there is no reason in justice and no principle of public policy, why the statute of limitation should be suspended until a survey is made on the patent issues in favor of a title like the one in this case, on which an action of ejectment could have been maintained more than thirty years ago. If a party is under disability, or cannot sue or recover on his title because ~~because~~ something remains to be done by the government to give him a right of action time should not be counted against him in favor of an adverse possession. But when a full right of action in all the form of law is given, the repose of the country requires that the same measure of indiscriminate justice should be applied to actions on titles of this character, that governs other actions of ejectment.

The view we have taken of the case renders it unnecessary to extend this opinion further or to notice the instructions in detail. And in relation to the first instruction given for the defendant it is sufficient to say

that whether the hypothetical facts stated in it, warranted the jury in presuming that Sanguinette lawfully sold the land to Brazeau, is immaterial and need not be discussed or decided. For the instruction contained another distinct element, independent of the doctrine of presumption, and the verdict could not have been made on this instruction, unless the jury had found the existence of facts absolutely necessary to establish a perfect defence under the statute of limitation.

All the judges concurring the judgment will be affirmed.

R. C. Richardson

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Aubuchon

v

Ames

opinion of the Court

affirmed

Filed 24 June 1858.
Wm S Glanville
Clk.

Richardson