Mitchell, David v Handfield, Thomas 1862 484/3

621/3

33/431

Mitchell (R) (P)

v

Hand field (A) (D)

7 A Hill Dick (P)

Cline & Jamison et al (D)

Whittelsey (A)

Mitchell owned land - in St Louis

- land withheld by Handfield

- wants rent.

St. Lou

Oct 1857

Oct 62

Bates

Affirm

Conc

Page 1

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

Be it Remembered that on the Nineteenth day of July in the year of our Lord One thousand eight hundred and fifty six there was filed in the office of the Clerk of the St Louis Land Court a Petition in the words and figures following, to wit;

Petition

David D. Mitchell, Plaintiff against Thomas Handfield, Defendant	In the St Louis Land Court October Term 1856 St Louis County.

The plaintiff says that on the 1st of June 1856, he was entitled to the possession of a parcel of land in the City of St Louis described as follows, beginning at a point of intersection of the Eastern line of Nineteenth Street with the Northern line of United States Survey number 1482 in the name of John B. Sarpy, thence Eastwardly with the Northern line of Survey 1482, about One hundred and twenty seven feet to an alley, thence Northwardly with said Alley & parallel with Nineteenth Street thirty feet, thence Westwardly and parallel with the North line of said Survey 1482, about One hundred and twenty seven feet to Nineteenth Street, thence Southwardly with Nineteenth Street to the beginning, said parcel or lot of land lying within United States Survey number 380 for the public Schools.

And the plaintiff further says that the defendant on the day aforesaid or on some other day before then not known to the plaintiff entered into said premises and unlawfully withheld from the Plaintiff the possession of the same, —

And the plaintiff specifically alleges that the defendant is in possession of the parcel of land above described.

The plaintiff asks judgment against the defendant for

2

the possession of said premises and damages for the detention thereof and the value of the rents thereof from the institution of this suit & for the monthly value thereof

F. A. Dick. Atty for plaintiff.

David D. Mitchell Plaintiff being duly sworn says he believes the foregoing petition and the matters therein as stated to be true.

Sworn to & subscribed before me this 24th day of June 1856

D. D. Mitchell

Witness my hand & seal of office

Seal

Samuel Simmons

Notary Public, St Louis County Mo.

Upon the filing of the above petition the Clerk then issued to the Sheriff of St Louis County a Summons in the words and figures following, to wit:

Summons

County of St. Louis, S. S.

The State of Missouri,

To the Sheriff of St. Louis County . . . . . Greeting:

We command you to Summon Thomas Hadfield 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 Second Monday of October next, then and there to answer the complaint of David D. Mitchell as set forth in the annexed petition: and have you then and there this writ.

Witness Charles A. Mantz, Clerk of our said Court with the Seal thereof hereto affixed at Office in the City of St. Louis, this 23d day of July in the year of our Lord eighteen hundred and fifty six.

Seal

C. A. Mantz, Clerk,

Upon which Summons the Sheriff made his Return in words

3 and figures as follows, to wit;

Shff's Return Executed this Writ in the County of St Louis on the 23d day of July 1856 by leaving a Copy of the Writ and petition as furnished by the Clerk at the usual place of abode of Thomas Handfield with a white person a Member of the family and over the age of fifteen.

Turner Meaddor Sheriff
Theodore LaBeaume D.

And afterwards "to wit" at the October Term (in Vacation) 1856 on the seventeenth day of October 1856. there was filed in this cause an Answer in the words and figures following, to wit:

Answer David D. Mitchell, Plaintiff } In the St Louis Land Court
against } October Term 1856
Thomas Handfield, Defendant } St Louis County,

Defendant appears and for answer to the plaintiffs petition states that it is not true, and he therefore denies, that on the 1st of June 1856 plaintiff was entitled to the possession of a parcel of land in the City of St Louis, described as follows, beginning at the point of intersection of the Eastern line of Nineteenth Street with the Northern line of United States Survey number 1482 in the name of John B. Sarpy, thence Eastwardly with the Northern line of Survey 1482 about one hundred and twenty seven feet to an alley, thence Northwardly with said alley and parallel with Nineteenth Street thirty feet, thence Westwardly and parallel with the North line of said Survey 1482 about One hundred and twenty seven feet to Nineteenth Street, thence Southwardly with Nineteenth Street to the beginning, said parcel or lot of land lying within United States Survey number 380 for the Public Schools.

Defendant admits that some day previous to the first day of June

4

1856 he was in possession of said premises, but he denies that on said day or previous thereto or at any other time he the defendant unlawfully with held from the plaintiff the possession of the same, but he alleges that his possession was lawful.

Defendant denies that the plaintiff is entitled to any rents or profits of said premises, or to damage for any detention thereof, or to the monthly value of said rents.

E. D. Appleton
Atty for Defendant.

Isaac T. Greene being duly sworn, on oath states that he is the agent of the above named defendant, and he believes the foregoing Answer and the matters therein as stated to be true.

Sworn to & subscribed before me this 17th day of October A.D. 1856, Chas A. Mantz Clk

Isaac T. Greene.

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

October Term 1856
Wednesday December 24th 1856

Continued — David D. Mitchell vs Thomas Handfield — Continued

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

March Term, 1857
Tuesday April 14th. 1857

Jury, Trial, Judgment — David D. Mitchell vs Thomas Handfield — Judgment.

Now at this day come said parties by their respective attorneys, and thereupon come also a jury, to wit: James Mulholland, Nicholas Ellis, Meyer Friede, Richard Lewallen, William H. Kent, T. F. Keane, Frederick Heeman, John H.,

5 Tebbe, F. Massman, Felix Lafare, F. W. Hering, and Christian Rohl=
=fing, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues joined between the parties herein, therefore the trial progressed and being fully terminated, the jury aforesaid, upon their oaths aforesaid, find for the plaintiff, and assess his damages at the sum of One cent, and the monthly value at the sum of one cent. It is therefore upon the finding of the jury, ordered and adjudged by the Court, that the plaintiff recover of said defendant, the possession of four hundred and thirteen, seven hundred and fifty six (413/756) parts of the premises described in the Plaintiffs petition, being a parcel of land in the City of St Louis, described as follows, begin=
=ning at the point of intersection of the Eastern line of Nineteenth Street with the Northern line of United States Survey number 1482 in the name of John B. Carpy, thence Eastwardly with the Northern line of Survey 1482 about One hundred and twenty seven feet to an alley, thence Northwardly with said alley and parallel with Nineteenth Street thirty feet, thence Westwardly and parallel with the North line of said Survey 1482 about One hundred and twenty seven feet to nineteenth Street, thence Southwardly with nine=teenth Street to the beginning, said parcel or lot of land lying within United States Survey Number 380 for the public Schools, and also that said plaintiff recover of said defendant his damages, and the monthly value, aforesaid, in form aforesaid as assessed, together with his costs and charges herein expended, and have Execution therefor.

And afterwards to wit on the same day there was filed in this cause an agreement in the words and figures following, to wit:

Agreement Mitchell vs. Handfield } In this cause it is agreed that the same Evidence offered by the plaintiff in the case of Mitchell vs Colston shall be considered as having been introduced by him — and also the same evidence offered by the Defendant in the former case only leaving out the deeds showing title from Public Schools to Colston It is admitted that

Handfield has a deed from the Schools subsequent to the assignment to them, conveying all the title of the Schools to him — the same instructions given and refused also shall be considered as given & refused in this cause — and upon the testimony as above a bill of Exceptions may be made for the Supreme Court. F. A. Dick for Plff
Cline & Jamison for Deft.

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

Thursday April 16th 1857.

Mo. for new Trial. filed

David D. Mitchell vs. Thomas Handfield } Motion to set aside Verdict and for a new Trial filed in this cause

Which Motion to set aside Verdict and for a new trial is in words and figures as follows, to wit:

Mo. to set aside Verdict & for new trial

David D. Mitchell vs Thomas Handfield } Land Court Mch Term. 1857.

The Defendant moves the Court to set aside the Verdict in this cause and grant a new trial for reasons as follows. —

1 — The Court erroneously gave the instructions asked by the Plaintiff and.

2nd Erred in refusing the instructions asked by the Defendant.
Cline & Jamison. Attys for Deft.

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

Wednesday May 13th 1857.

Mo. to set aside & Overruled

David D. Mitchell vs Thomas Handfield } Now at this day the Court being fully advised of and concerning the motion

7 hereinbefore filed in this cause. to set aside Verdict and for New trial, doth order and adjudge that said Motion be overruled,

Bill of Excpts. filed

And afterwards "to wit" on the Twenty seventh day of June 1857. there was filed in this cause a Bill of Exceptions.

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

Bill of Excpts.

David D. Mitchell vs. Thomas Handfield } In the St Louis Land Court March Term 1857.

On the trial of this cause the Plaintiff gave in evidence the Confirmation to Louis La Beaume of 386 arpens of land by the Board of Commissioners on the 22nd September 1810 embracing the petition of Louis La Beaume the Order of Survey thereon and the Certificate of survey by Antoine Soulard made the 10th April 1799 as follows.

(Exhibit H.)

Pet.n of Louis Labeaume

Petition of Louis Labeaume, — Second Concession

To Don Zenon Trudeau, Lieutenant Governor, and civil and military Commander-in-chief of Upper Louisiana.

Sir, — Louis Labeaume, with all due respect, has the honor to represent to you that he has acquired from Joseph Brazeau, a resident of this town a parcel ____ conceded to him on the 20th of the month of June 1794. This track having but a very limited depth and the petitioner having nearly put the whole in cultivation, besides the necessity for him to make establishments for the maintenance (manutention) of the manufactures which he has proposed to you, asks that you be pleased to grant to him 360 arpents of land, including that which the petitioner acquired from Brazeau - that is to say twenty arpents in depth from the Mississippi, ascending Rocky ~~Rocky~~ Branch west quarter south by sixteen arpents front along the Mississippi, to be taken from the des-cent of the road into the

Creek, which is the same front of the petitioner's land.
The angle made by the perpendicular line, from the road to the river, by the creek and by the river, will about complete the (quantity) of land asked for by the petitioner, who has the honor to observe to you that this land is entirely barren of wood, and can serve but as a pasture, wanted by the petitioner for the maintenance of the cattle he is obliged to keep for his establishment.

(Signed) Louis Labeaume.

Order of Survey for Louis Labeaume

(Exhibit I)

Order of Survey for Louis Labeaume

St Louis, 15th of February, 1799.

Whereas it is evident that the land solicited is totally deprived of timber and wood, is hilly, broken by ravines and unfit for cultivation, and can ~~only~~ serve only for the pasturing of the cattle necessary for the use of the mill which is contemplated, I inform the Governor-General that the concession asked for will prove useful to the interested as likewise to this town, without being prejudicial to any body, and considering these circumstances, the surveyor, Don Antoine Soulard, shall put the interested in possession, and make out his survey in continuation, in order to serve to solicit from the Governor-General the title in form which he desires.

Zenon Trudeau.

(Exhibit J)

Certificate of Survey

I, Antoine Soulard, surveyor particular of the establishment of upper Louisiana, do certify that on the second of March of the current year, (in virtue of the foregoing decree from Don Zenon Trudeau, Lieutenant Governor of these settlements) I went on the land of Louis Labeaume, to execute the survey of the same, conformably to his petition for three hundred and seventy four superficial arpents. Said survey was made in presence of the proprietor and of the adjoining neighbors, with the perch of the City of Paris, eighteen feet in length, according to the custom adopted in this province of Louisiana.
This land is situate at three miles in the north of this town of St. Louis, bounded on the north side, by the bank of Rocky Branch

9

and the domain of his Majesty, on the south side by the lands of divers inhabitants, on the East side by the river Mississippi, and on the West side by vacant lands of the royal domain; and in order that all that is above written may be available whenever needed, I give the present certificate with the foregoing figurative plat, on which are designated the dimensions and the natural and artificial boundaries of said land.

In St. Louis, of Illinois, the tenth of April, of the year 1799.

(Signed) Antoine Soulard
Act. Surveyor Particular.

Claims filed by L. Labeaume Jr.

Claims filed by Louis Labeaume with the Recorder of land titles, February, 26, 1806.

Abstract from the list of lands claimed by Louis Labeaume, and of which the titles, concessions, plats, scales, and certificates of scales, have been delivered by him to the Recorder of land titles, in order that they be registered and recorded by him, according to the act of Congress, approved on the second day of March, of the year 1805.

— No. 2. Louis Labeaume, 374. arpents of land, conceded in part to Joseph Brazeau, the 20th of June, 1794, and the other part to Louis Labeaume, the 15th of February, 1799. Settled and cultivated since both these dates.

(Signed) Louis Labeaume

St. Louis, the 26th of February 1806.

September 3d, 1805.

The Board met agreeably to adjournment. Present: The Hon. John B. C. Lucas, and James L. Donaldson, Esq.

The same (Louis Labeaume) claiming 374 arpents of land, situate on the Mississippi, a distance of about two miles from the town of St. Louis, produces a concession duly registered, from Zenon Trudeau, for four by twenty arpents, dated the 20th of June

1794. and granted to one Joseph Brazeau; and another concession from said Zenon Trudeau to claimant for said 374 arpents, including the said four by twenty arpents, dated the 15th of February, 1799. A survey of the same, taken the 20th of March, and certified the 10th of April, 1799, together with a certificate by Zenon Trudeau of the sale of said four by twenty arpents by said Joseph Brazeau, reserving to himself four arpents in superficies. — said certificate dated the 12th of May 1798.

Hyacinth St. Cir, being duly sworn, says that the said Joseph Brazeau (obtained) the said tract of four by twenty arpents, and cultivated the same in the year 1794, '98, and 96; and having sold the same to claimant, he did, in the year '97, put a tenant on the same, who actually cultivated it, until the year 1799, when claimant moved on it; that he was then the head of a family, and did prior to, and on the first day of October, 1800, actually inhabit and cultivate the same, and has continued on it to this day. The claimant abandoning his right to the aforesaid concession of four by twenty arpents, and claiming immediately under the second, to wit — that for three hundred and seventy-four.

The Board reject the same, the said concession not being duly registered.

The Board adjourned till to morrow, 9 O'clock, A. M. — Book No. 1, pages 515, 517 and 519.

Confmtn to Labeaume & Brazeau

Confirmation to Labeaume And Brazeau.

Friday, September 22, 1810.

Board met. Present; John B. C. Lucas, Clement B. Penrose, Frederick Bates, Commissioners.

Louis Labeaume, claiming 374 arpents of land. (See Book, No. 1, page 517.) The Board confirm to Louis Labeaume three hundred and fifty six arpents to Joseph Brazeau, and order that the same be surveyed agreeably to a concession from

11 Zenon Trudeau to Louis Labeaume; and as respects the four arpents, agreeably to a reserve made in a sale from Joseph Brazeau to said Louis Labeaume. Recorded in Book C. page 339. of the Recorder's Office.

Board adjourned till Wednesday next, at 3 O'clock P.M.

John B. C. Lucas. Clement B. Penrose. Frederick Bates—

(See Book No 4. pages 502, 505, and 508.

Friday June 14th. 1811.

Board met. Present: John B. C. Lucas. Clement B. Penrose, and Frederick Bates. Commissioners.

Louis Labeaume. Book 4, 505. survey at the expense of the United States. Board adjourned.

Cert. 982. and 983. John B. C. Lucas. Frederick Bates and Clement B. Penrose. —

(See Book No. 3. pages 183, 184. and 185.

Plaintiff also read in evidence confirmation certificate to Louis La Beaume as follows.

(Exhibit L)

Commissioners' Certificate. No. 983.

Commissioners Certificate

Louisiana, } June 14, 1811.

We the undersigned Commissioners for ascertaining and adjusting the title and Claims to land in the Territory of Louisiana, having decided that Joseph Brazeau, original claimant, is entitled to a patent under the provision of the fourth section of an Act of Congress of the United States. "An act respecting claims to lands in the Territory of Orleans and Louisiana" passed the third day of March, One thousand eight hundred and seven, for four arpents of land, situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed agreeably to a reserve made in a sale of Joseph Brazeau to Louis Labeaume, recorded in Book C. page three hundred and thirty nine of the Recorder's office. By virtue of a concession

or order of survey. from Zenon Trudeau, Lieutenant Governor.

John B. C. Lucas.
Clement B. Penrose.
Frederick Bates

Bill of Exc'ps. The plaintiff then read in evidence a copy of United States survey No 3333 approved Feb 26. 1852 and patent certificate thereon issued 26 Feb 1852 as follows

(Not Copied by Order. Clk.)

And also a patent to Louis Labeaume's Representatives on said survey issued the 25 March 1852 for the land embraced in said survey. —

It is agreed by the parties that either plaintiff or defendant may use & read certified copy of said survey and patent in the Supreme Court the same as though herein fully copied.

The plaintiff then read a Deed by Louis Labeaume to William Chambers for the entire tract dated April 27. 1817. & a deed of 4th & May 1816. by William Chambers conveying to William Christy & to Thomas Wright. to each of them the undivided one third entire tract.

The plaintiff then deduced title by conveyance from the heirs of William Christy & Thomas Wright for the undivided two thirds of all that part of said original tract lying between surveys No 3333 & 2974.

It is admitted that the lot in dispute lies between said two surveys.

Defendants possession of the tract in dispute at the commencement of the suit admitted. —

This was all the evidence offered by the Plaintiff.

The Defendant then read in evidence an assignment made in regular form by the United States Surveyor General for Missouri

13 & Illinois of a tract of land of 1 arpen in front by 40 in depth made 31st March 1845 to the Board of President & Directors of the St Louis Public Schools under acts of Congress of 13 June 1812, 26 May 1824 & 27th January 1831. being United States Survey No 380 lying between the Joseph Taillon arpen Survey No 1483 on the North & the Sarpy arpen on the South being Survey No 1482

Assignment to the Schools

Office of the Surveyor of the Public Lands in the States of Illinois & Missouri.

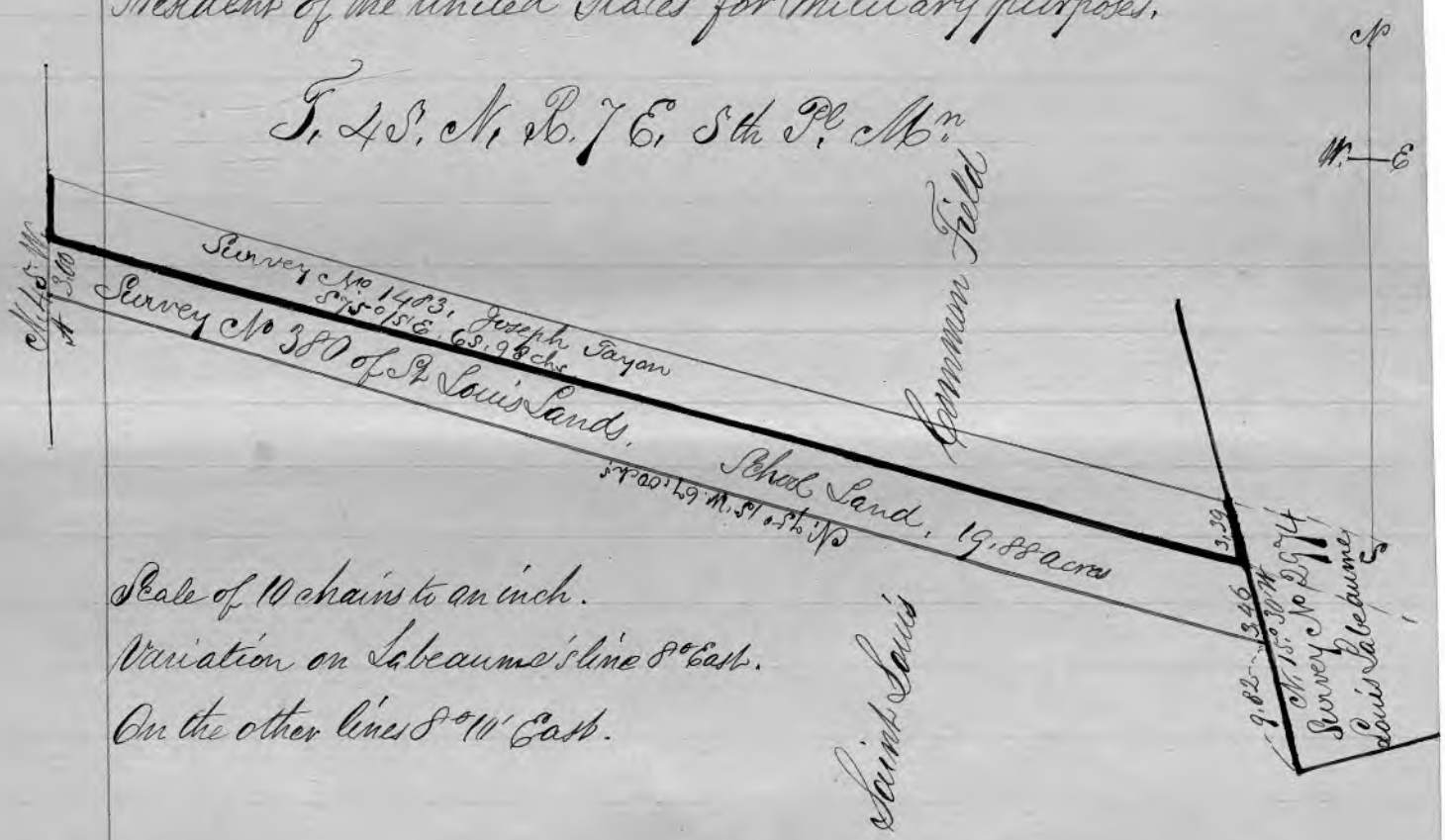
Saint Louis 31st March 1845.

Under the instructions of the Commissioner of the General Land Office, the piece of land, the survey of which is herein platted and described, has been legally surveyed, and under the instructions of the said Commissioner, dated 13th January and 18th February 1839. it is hereby designated and set apart to the town (now City) of Saint Louis, for the support of Schools therein, in conformity with the second section of the Act of Congress of the 26th of May 1824, entitled "An act supplementary to an act passed on the 13th day of June 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri," the said piece of land hereby designated and set apart as aforesaid, is situated within the bounds of the Survey directed to be made by the first section of the Act of the 13th of June 1812 aforesaid so as to include, the town lots, out lots, Common field lots, and Commons of the town of Saint Louis; —. and does not together with all other land designated and set apart to the town of St. Louis for the support of Schools, under the aforesaid second section of the Act of Congress of the 26th day 1824, amount to One twentieth of the whole lands included in the general survey directed to be made of said Town of Saint Louis by the aforesaid first section of the Act of Congress of the 13th day of June 1812.

The said piece of land was, not so far as the records of this Office show, rightfully owned or claimed by any private individual on the said 13th day of June 1812; nor was it held as Common belonging

to the said town of St. Louis, neither has it been reserved by the President of the United States for Military purposes.

T. 45 N. R. 7 E. 5th Pl. Mn.



Scale of 10 chains to an inch.
Variation on Labeaume's line 8° East.
On the other lines 8° 10' East.

Description.

Begin at an old stone, the South West corner of this Survey, and the North West corner of Survey No. 1482 in the name of John B. Sarpy, on the Western line of the Saint Louis Common fields; from which stone a hickory 5 inches diameter, bears South 22° W. 48 links distant.

Thence N. 45 minutes West, along the Western line of this Survey, and of the Saint Louis Common field; at 3 chains an old stone, the North West corner of this Survey, and the South west corner of Survey No. 1483, in the name of Joseph Tayon.

Thence S. 75° 15' E. with the Northern line of this Survey and the Southern line of Tayon's Survey; at 65 chains and 98 links a post, the North eastern corner of this Survey, on the Western line of Survey No 2974 in the name of Louis Labeaume, (at a point 3 chains and 39 links S. 15° 30 E. from the corner set on said Labeaume's line at its intersection with the Northern line of Tayon's Survey) from said post a red oak 3 inches in diameter bears S. 55° 30 W. 27 links distant, and a White oak 3 inches in diameter bears N. 48° E. 48 links distant.

15 Thence S. 15° 30' E. with the Eastern boundary of this Survey and the Western boundary of Labeaume's Survey; at 3 chains 84 links a post, on John B. Sarpy's line, the South Eastern corner of this Survey (nine chains and eighty two links N. 15° 30' W. from the South Western corner of Labeaume's Survey) from said post a cedar post of a fence bears N. 15° W. 95 links distant; and a White oak 3 inches in diameter bears N. 75° W. 80 links distant.

Thence N. 75° 15' W. with the Southern boundary of this Survey, and the northern boundary of Sarpy's Survey; at 67 chains the beginning corner.

This tract is situated in Township 45 North of the base line, of Range 7 East of 5th Principal Meridian. —

It contains 19 acres and 88 hundredths of an acre of land; and the Survey thereof is numbered 380 of St Louis lands.

A plat and description of Survey No 380 of Saint Louis Lands was issued on the 31st of March 1845, and transmitted to the President of the Board of Directors of the St. Louis public Schools.

(Signed) Silas Reed,
Surveyor of public Lands in the States of Illinois & Missouri.

Office of the Surveyor General for Illinois & Missouri,
Saint Louis April 11th 1851.

I certify that the foregoing plat and description of Survey No 380 "School land" is correctly copied from pages 45 and 46 in the Book of "Records of Surveys of School lands in Missouri," on file in this Office.

M. Lewis Clarke
Surveyor General.

Bill of Excpt. It is admitted that the lot in dispute is within said Survey No 380 assigned to the Schools. —

The Defendant then gave in Evidence a deed from the Schools under which he derived the title of said corporation to said lot by regularly executed conveyance

16

U.S. Survey No 2974

Next United States Survey No. 2974 made May 2. 1833 as follows.

(Exhibit A A.)

Survey No. 2974.

Recorded 23d July, 1836.

Plat and description of a survey of 356 arpents of land, equal to 302 $\frac{85}{100}$ acres of land, confirmed to Louis Labeaume, in his own right, situate in Township No 45. North of the base line of Range No. 7, east of the 5th Principal Meridian.

Surveyed under instructions dated "Surveyors Office, St Louis, 2d of May 1833."

Begin at a post set for corner on the bank of the Mississippi river, Eastward of the East end of a ditch, dug many years ago on the South line of this survey, from which post the N. E. corner of a stone house bears S. 75 deg. 45 min. W. 129 links distant, and a red oak, 10 inches in diameter, bears N. 88 deg. W. 98 links distant.

Thence meander up the west bank of the said river, between high and low water mark, N. 23 deg. W. 17 chains 28 links, to the N. E. corner of a steam saw-mill, and in all this course 30 chains 95 links.

Thence N. 34 deg. W. 25 chains.

Thence N. 20 deg. W. 13 chains, to the bank of the Rocky Branch near its mouth.

Thence meander up the branch, with the general course thereof (the branch to be, as in the former survey, the boundary between this tract and that of Rufus Easton, under Gabriel Cerre, No. 2042.) West 4 chains 15 links.

Thence N. 54 deg. W. 3 chains 40 links.

Thence S. 15 deg. 15 min. W. 4 chains 30 links, crossing the branch three times in this distance, on this course.

Thence S. 80 deg. 30 min. E. 2 chains 5 links.

Thence S. 3 chains 50 links.

Thence W. 3 chains, crossing the branch twice;

17

Thence S. 25 deg. 30 min. W. 3 chains 88 links, crossing the branch once,

Thence S. 34 deg. E. 4 chains, crossing the branch three times.

Thence W. 3 chains 21 links, to a point in the branch, having crossed the branch once.

Thence S. 48 deg. 45 min. W. 3 chains 80 links, to a point at the intersection of the road and the middle of the channel of said branch, which is a corner of said survey, but being in the road and rocky cannot set a post, from said corner a white oak, 6 inches in diameter, bears S. 68½ W. 57 links distant, and a red oak, 5 inches in diameter, bears S. 44 deg. E. 98 links distant;

Thence S. 15 deg. 30 min. E. at 5 chains 24 links intersects the north line of widow Hebat's survey, No. 1847, being the north boundary line of St. Louis Common Fields, where set a post 44 chains 49 links S. 75 deg. 15 min. E. from the corner of a New Madrid location, in the name of John Brooks, being survey No. 2541, from which post a red oak, 3 inches in diameter, bears S. 78 deg. 15 min. W. 41 links distant, and red oak, 3 inches in diameter, bears N. 12 E. 27 links distant, at 10 chains 5 links, which is the whole length of the line, intersect the old ditch, which is in part the northern line of this survey, where set a post for corner, near an old stone found lying on the ground, not set in, (probably the old corner stone), from said post a sycamore, 6 inches in diameter bears N. 85 deg. E. 40 links distant.

Thence along said old ditch, being from this corner westward, so far as it goes, the north line of this survey, S. 74 deg. 30 min. W. 31 chains 27 links, set post for corner of this survey; from which a red oak, 6 inches in diameter, bears N. 72½ deg. E. 27 links distant, and a red oak 5 inches in diameter, bears S. 32½ deg. W. 35 links distant.

Thence S. 15 deg. 30 min. E. along a new line, the western boundary of this survey, 46 chains 95 links, set a post for S. W. corner; from which a white oak, 5 inches in diameter, bears N. 44 deg E. 43 links distant, and a white oak, 5 inches in diameter, bears S. 42½ E. distant.

Thence N. 74 deg. 30 min. E. along the south boundary line of this survey, at 49 chains 28 links, intersect the east boundary line of the St. Louis Common Fields, and set a post there in the old ditch, which is a corner to the survey No. 2571, of a New Madrid location of 160 acres, under certificate No. 184, in the name of Henry Perouy, or representatives, under Francis Hamerlin; from which corner post a sycamore, 14 inches in diameter, bears S. 74 deg. 30 min. W. 8 links distant.

Thence continue said line, on said course, along said ditch, to the end of it, and further to the beginning corner of this survey, making this whole south boundary line 60 chains 28 links.

Surveyed on the 2d and 3d days of May 1833.

June 8th, 1833. Joseph C. Brown, D.S.

Approval of Survey 2974.

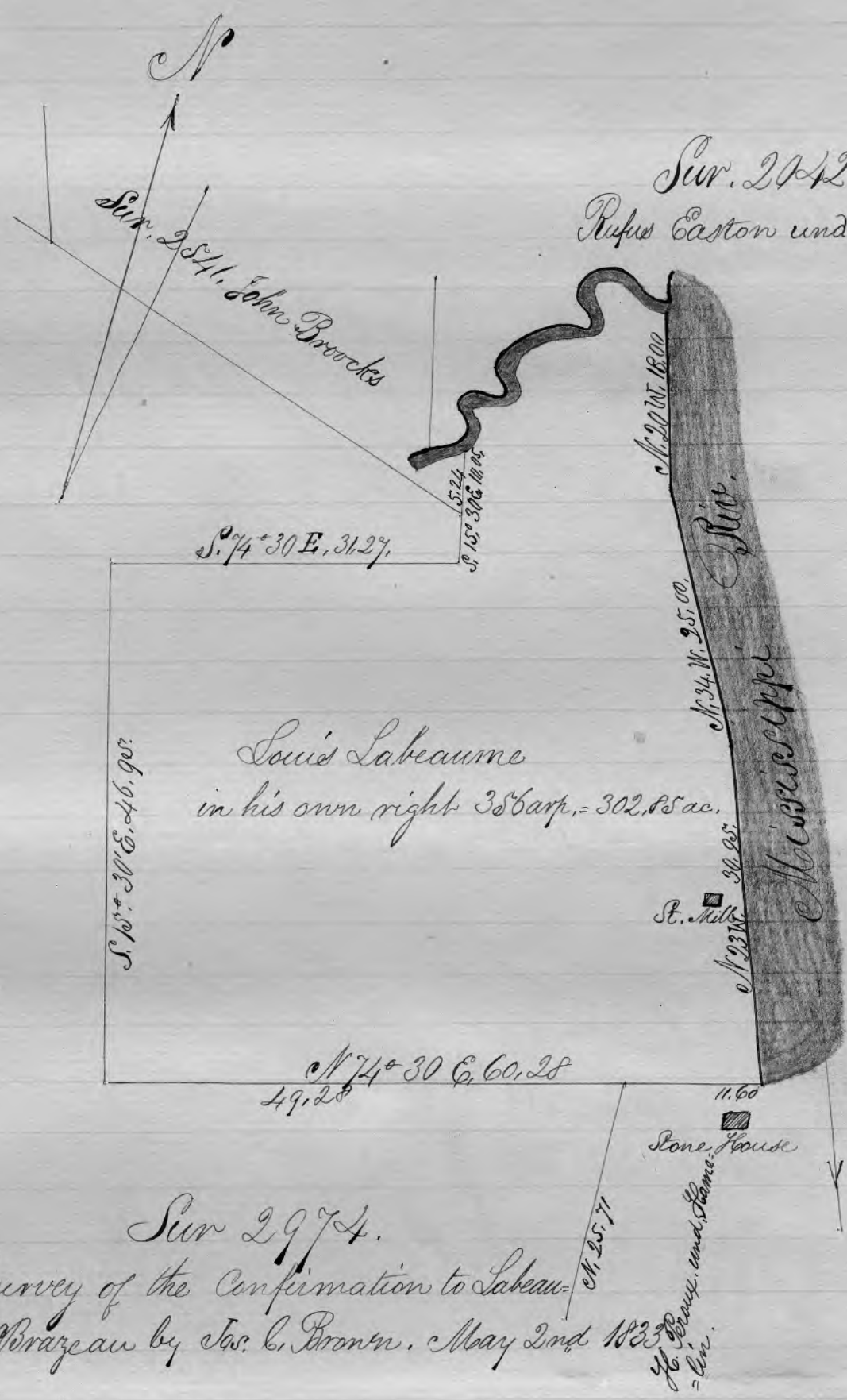
Surveyor's Office. St. Louis, 14th December, 1837.

This Survey, No. 2974, recorded on pages 114 and 115, is this day approved, as being conformable to the confirmation by the old Board of Commissioners, (certificate No. 982); but in approving the said survey, no importance is attached to the words "between high and low water mark."

The actual Points called for in running to the Mississippi and meandering it, are more definite, and the river boundary thus defined is the one approved.

Daniel Dunklin, Surveyor General.

19.
"Plat"



Bill of Excepts. It is admitted by the Plaintiff that the lot in dispute is outside of this survey –

Next a survey made by Joseph C. Brown in 1817. as follows.

Survey by Jos. C. Brown. No. 982 & 983.

(Exhibit No.)

Survey by Joseph C. Brown. Nov. 1817.
Of Confirmation Certificate. 982 & 983.

No. 982 & 983.

Township. No. 45. North. Range No. 47 E. of 5th Principal Meridian.

Surveyed for Louis Labeaume Two tracts in one.
The one confirmed in his own name for 356 arpents.
The other under Joseph Brazeau for 4 arpents. together 360 arpents, equal to 306 ¼ acres. beginning at the mouth of the branch, the S. E. corner of Easton's Tract.

Thence down the Mississippi River bending therewith:

S. 24 deg. E. 12 chains.
S. 33 deg. E. 14 chains.
S. 35 deg. E. 13 chains.
S. 27 deg. E. 8 chains.
S. 25 deg. E. 13 chains.
S. 24 deg. E. 15.50; a stone at the mouth of an old ditch. the lower corner on the river.

Thence S. 74½ W. 11 chains. 50 links. intersects the line of the common fields 63 chains 50 links; a stone the Southwest corner of the tract.

Thence N. 15½ W. 10 chains 20 links to the branch where the road crosses.

Thence meandering down the same:

N. 50 deg. E. 2 chains 50 links.
N. 25 deg. W. 5 chains 70 links.
E. 2 deg. —
N. 6 deg. —
N. 70 deg. E. 3 chains 70 links.
N. — — 2 chains 36 links.
W. — — 3 chains 50 links.
N. — — 25 chains E. 4 links.
N. — 60 E. 1 chain 50 links.
N. 36 deg. E. 2. chains 50 links.
N. 80 deg. E. 2. chains 50 links the mouth of the branch at the beginning.

November. 1817. (Signed Joseph G. Brown. D. S.

21 Surveyor's Office, St. Louis.
September 4th. 1822

I certify that the foregoing is a true copy of the Survey on file in this office.

Signed) William Rector. Surveyor General.

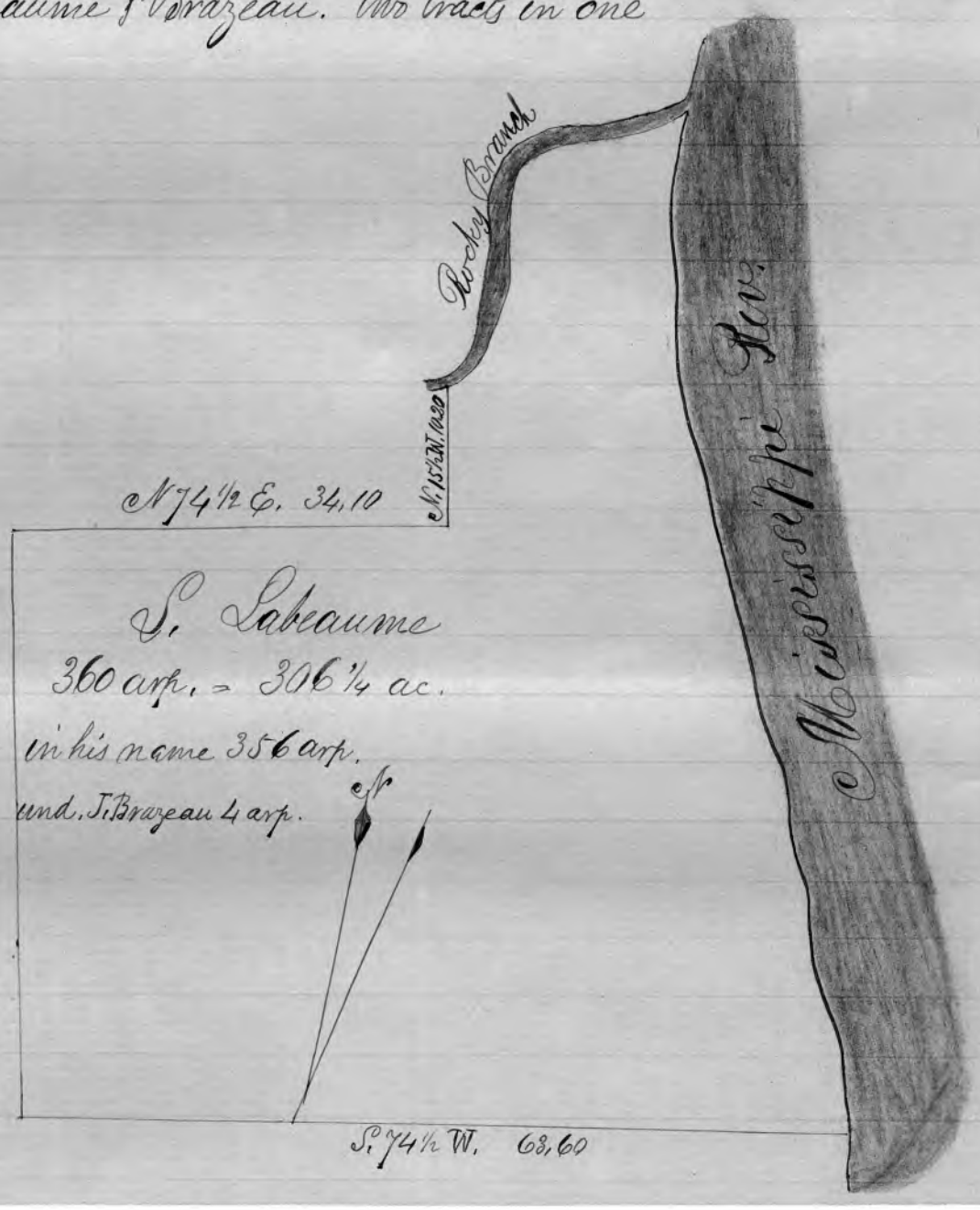
To Frederick Bates. Esq.
Recorder of Land Titles for the Missouri Territory.

Surveyor's Office, St. Louis,
October 24th. 1832.

I certify that the foregoing Survey, No 982 & 983, together with the certificate of Wm. Rector, is recorded in Book C, pages 73 & 74.

To F. R. Conway. Esq. Recorder of Land Titles.

Plat Sur. 982 & 983. by Jas G. Brown Nov 1817 of the confirmation to Labeaume & Brazeau. two tracts in one



22

Bill of Excepts.

Defendant then proved by a Witness that William Chambers stated that he had a patent certificate issued on the survey of 1833. which he had lost & he advertised to recover it. that he might procure a patent thereon conformably to said survey. —

These declarations were made long after his deed of 1817 to Christy and Wright. —

The Defendant then gave evidence tending to show that long prior to 1845 a fence stood along on about the western line of said survey of 1817 which fence was erected by Christy Chambers & Wright the owners of the entire tract in 1817. —
which fence the evidence tended to show was treated by William Chambers one of said proprietors as enclosing up to the western line of the southern part of the tract which was held by him in severalty —

This Evidence related to declarations & conduct of William Chambers after the partition of said tract below mentioned.

The Defendant then offered to prove by the declarations of William Chambers made after a division of that part of the tract within the survey of 1817 into lots and a partition of said lots into three shares one of which shares was taken by William Chambers one by Christy one by Wright, that he Chambers considered said fence as the Western boundary of said entire tract —

The plaintiff objected to the admission of declarations of said Chambers made long after such partition, as to the position of the Western line of said entire tract —

the Court sustained the objection & excluded the testimony to which action of the the Court the defendant at the time excepted. —

The Defendant here closed

And the Plaintiff in rebuttal gave in evidence of the following

23

Letter of E. T. Langham to F. R. Conway

documents.

(Exhibit G.)

Letter of E. T. Langham, Surveyor General, To F. R. Conway, Recorder.

Surveyor's Office.
St Louis, 9th March, 1833.

Sir: —

A certified copy of the record of a survey, in the name of Louis Labeaume, for 360 arpents of land, which issued from this Office on the 24th of October last, at the instance of the present claimant thereof, for the purpose of procuring a patent, and which possesses the required indication of approval by my predecessor, Gen. Rector has been returned, with the following words, believed to be in your handwriting, endorsed on a paper enveloping the same:

"Survey not made in conformity with the confirmation; consequently the patent certificate cannot issue."

I have to request, in case the endorsement on said envelope is yours, that you will make it official by your official signature, and that you will distinctly state all the points in which said survey is at variance, as respects conformity, with the confirmation, in order that I may re-survey the claim, if necessary, and said claimant require it.

The survey and envelope are both enclosed, in order that you may comply with my request in regard to them, if you shall think proper to do so.

I am, Sir, very respectfully, your obedient servant,
E. T. Langham.

F. R. Conway, Esq.,
Recorder of Land Titles

Letter of F. R. Conway, Recorder to E. T. Langham Surveyor Genl.

(Exhibit H.)

Letter of F. R. Conway, Recorder, To E. T. Langham, Surveyor General.

Recorder's Office
St. Louis, — March 23, 1833.

Sir:— Your letter of the 9th instant, in relation to the survey of Louis Labeaume has been received.—

You will herewith receive a copy of a confirmation of the claim of Louis Labeaume and that of Joseph Brazeau, together with a certified translation of the concession to Labeaume, referred to in the confirmation, with a plat and translation of the survey made under said concession, and a translation of a certificate of Zenon Trudeau, Lieut. Governor, in relation to the sale from Brazeau to Labeaume; which certificate, you will observe, states that the deed from Brazeau to Labeaume is deposited in the archives of the post of St. Louis, to where I now refer you for a description of the reservation made in said deed, &c.

I see nothing which would warrant the issuing of a patent certificate to the representatives of Labeaume, for the land confirmed to Brazeau; but am of opinion that there should be two surveys — the one of 356 arpents for Labeaume's representatives, and the other of 4 arpents for Brazeau or representatives.

The survey of Labeaume is herewith returned.

Very respectfully, Sir, Your obedient servant,

F. R. Conway. {Seal}

E. T. Langham, Esq.
U. S. Surveyor of Pub. Lands, St. Louis, Mo. }

(Exhibit B. B)

Letter from Comr. of Genl. Land Office to F. R. Conway.

Letter from Commissioner of General Land Office to F. R. Conway, Surveyor General.

General Land Office, July 19th, 1841.

Sir:— I have had the honor to receive from you two patent certificates, and the plates of surveys connected therewith, which you enclosed to me for the following claims, viz:

First Patent Certificate No. 1162. and plat for the claim (No. 982) of

25 Louis Labeaume, confirmed by the old Board, for 356 arpents.

Second Patent Certificate No. 1163, and plat for the claim of Joseph Brazeau, under Joseph Calve, for a lot in St Louis, designated in the report of February, 1816, thus: 60 by 180 feet, barn lot, town of St Louis, possession and improvement 20 years ago, granted 60 by 180 feet to be surveyed.

In the first case (that of Labeaume,) I find certain differences between the survey according to the separate plat, accompanying the certificate, and the township plat in this office, viz:

By separate plat.	By township plat in G. L. Office
The S. line is 60 82 chains	The S. line is 63 60 chains
The W. " 47 31 "	The W. " 47 60 "
The line of that part of the N. boundary, parallel to the S. line, is 31 51 chains.	The line of that part of the N. boundary, parallel to the S. line is 34 10 chains.
The line running from Rocky Branch S. 15 deg. 30 minutes, is 10 12 chains.	The line running from Rocky Branch S. 15 deg. 30 min. is, 10 20 chains

The survey however, in this case, on the township, appears to include a claim of Joseph Brazeau, for four arpents. (Confirmation Certificate No. 983.)

The Surveyor General should furnish a diagram, exhibiting distinctly and separately, the correct and approved survey of each of the claims, (982 and 983) as also their connection with the contiguous surveys, in order that the same may be attached to the township plat in this office.

In the second case, that of Brazeau, for a lot of 60 by 180 feet, the area of the lot, according to the survey, is much greater than that confirmed;

The North line being 153 feet 3¼ inches.
" East " " 101 " 5 "
" South " " 179 " 4½ "

The West line being 80 feet 3 inches.

The report as stated, represents the lots to be 60 by 180 feet.

The plat of survey accompanying the certificate, is headed:

"Plat and description of a lot, 60 by 180, French measure, as described; but agreeably to the boundary lines called for, said lot is found to be as it is represented by the plat and description; which lot is confirmed to Joseph Brazeau." &c.

I find no authority, with the papers submitted for such a deviation, in the survey, from the size of the lot as given in the report; and therefore the said survey is not recognized as correct by this office.

The above is an extract from Fractional Township 45 N. Range 7 E. 5th Principal Meridian, as certified by W. McKee, Surveyor.

Sept. 6th. 1825. E. G.

When an accurate survey is executed for the lot, according to the confirmation, there should be returned with the plat and certificate a diagram, exhibiting the connexions with the adjacent blocks in which lots may be confirmed.

A copy of this letter will be sent to the Surveyor General, at Saint Louis, from whom a report will be required in relation to these surveys.

The papers, including a letter to you of the 21st ult. from Col. J. O'Fallon, are herewith returned, as that gentleman may desire to retain them until the further action of the Surveyor General.

With great respect, your obedient servant,

(Signed) E. M. Huntington,

Hon. John J. Crittenden, present. Commissioner.

General Land Office, July 19. 1841.

27 Sir; — Herewith I enclose a copy of my letter of this date to the Hon. John J. Crittenden, relative to the claim of —

1st — Louis Labeaume, for 356 arpents, survey No. 2974, T. 45, N. R. 7 E. Confirmation by the Old Board, No 982.

2d — Joseph Brazeau, under Joseph Calvi, for a lot in St. Louis, 60 by 180 feet.

You are requested to report to this office —

1st, in reference to the differences between the survey for Labeaume, as exibited on the township plat in this office, a sketch from which is herewith sent, and the survey, the plat of which has been furnished by your office to the Recorder, returning at the same time a diagram to be attached to the township plate in this office, exhibiting the survey for this claim of 356 arpents (No. 982,) and that of the survey of four arpents for Joseph Brazeau's claim (No 983).

2d, — In relation to the deviation in the survey for Brazeau from the size of the lot as given in the report, which has been confirmed, viz; 60 by 180 feet, with copies of any papers in the nature of evidence on which the present survey is based.

Very respectfully, your obedient servant.
E. M. Huntington, Commissioner.

Surveyor General, St. Louis, Mo.

Office of the Surveyor General
St Louis, March 4th, 1853 }

I certify that the above is a correct copy of a letter from the Commissioner of the General Land Office, of the 19th of July 1841, on file in this office.

D. A. Spaulding.
Surveyor General.

Bill of Excepts, And also a report of the Surveyor General to the Commissioner of the General Land Office in compliance with said instructions of 19 July

1841 on the claims of La Beaume Brazeau. Chouteau & Esther dated June 16. 1847.

It is agreed that either party may read a copy of this report certified or from the printed copy of the Report of the case of Maguire vs Tyler & others in the St Louis Land Court, on the hearing of this cause in the Supreme Court & also a like copy of the next paper

Also a Copy of the decision of Alexander H H Stuart Secretary of the Interior made July 25. 1851 on the matter of the Location and Survey of said parcels of land & on the survey and location of said tract confirmed to Louis LaBeaume.

— this decision in reference to the Labeaume tract is

"That the Representatives of LaBeaume are entitled to a patent of the land above the ditch according to Coulards survey & LaBeaume's possession"

And pursuant to the principles therein settled the necessary surveys were ordered by the Commissioners to be made and patents directed to be issued in conformity therewith.

In accordance with said decision said Survey No 3333 was made and Patent Certificate dated 26 Feby 1852 issued thereon.

This is all the evidence offered by either party—

The Plaintiff then asked the Court to instruct the Jury as follows,

Instructions— The Court instructs the Jury that by the act of 13th June 1812 and the 2d section thereof and of the 27th January 1831 the Surveyor General was not authorised to set apart to the Board of Public Schools any lots which were on the 13th June 1812 rightfully owned or claimed by any private Individuals —

And the Court further instructs the Jury that the Patent given

29

in Evidence by the plaintiff establishes the fact (if it be genuine) that the land therein designated and granted was rightfully owned and claimed by Louis LaBeaume on and prior to the 13th of June 1812.

2d If the land in dispute is part is part of the land granted by the patent to Louis La Beaume or his Representatives, and it was conveyed by said La Beaume by the conveyances given in Evidence to William Chambers and by Chambers to Wm Christy and Thomas Wright - to each of them the one third & the Heirs of Wright & a part of the Heirs of Wm Christy conveyed their interest in said land derived from said Wright and Christy to the Plaintiff, then the Plaintiff is entitled to recover for the interest so acquired by him —

Bill of Excpt. Which instructions the Court gave & the Defendants duly Excepted thereto.

The Defendant asked the following instructions which the Court refused. - to the refusal of which the Defendants duly excepted.

Instructions First - If the Jury find from the evidence that the Survey No 2974 given in Evidence by Defendant was duly made and approved by authority of the United States that the same was assented to and accepted by the legal representatives of Louis LaBeaume as the tract of land confirmed to said LaBeaume, that a patent Certificate thereon was duly issued received and accepted by the said Representatives then the Jury are instructed that the said Survey is as against the title conveyed by the Survey and designation to the Board of President and Directors of the St Louis Public Schools No 380 School lands given in Evidence by Defendant conclusive of the bundaries of the tract of land confirmed to Louis LaBeaume as aforesaid —

Second — If the Jury find from the evidence that the tract of land sued for is within a tract of land designated Surveys

30

set apart on the 31st day of March 1845 for the St Louis Public Schools

And if they further find that the said land is within the limits of the Survey No 3333 given in Evidence by plaintiff which last mentioned survey was made under a confirmation of the old board of Commissioners on the 22d September 1810 which confirmation carried with it a condition that it was to be surveyed and that said confirmation was not surveyed so as to include any of the land in controversy in this suit until the time of the making of said last mentioned survey then the title of the plaintiff is not such that he can recover as against the title of the St Louis Public Schools.

Bill of Exptns

The Jury gave a verdict for the Plaintiff - for the undivided interest derived from Christy & Wright. —

Within proper time the Defendant filed a motion to set aside the verdict & grant a new trial for the reasons that the Court had erroneously instructed the Jury. & erroneously refused instructions asked by by the Defendant. —

Which motion the Court overruled & to this action of the Court the Defendant duly excepted —

Now asks to have this bill of Exceptions signed and made part of the record which is done. —

C. B. Lord (seal)

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

I, Charles A. Mantz Clerk of the St Louis Land Court, within and for said County certify the foregoing Transcript to be a true and faithful copy of the Record and proceedings had in the case of David D. Mitchell plaintiff and Thomas Handfield Defendant (as required) as fully as the same remains of Record in my Office.

In Testimony Whereof, I hereto set my hand and affix the seal of our said Court at Office in the City of St Louis this Twenty Sixth day of August, A. D. 1857.

Charles A. Mantz, Clerk.

Index

Petition.	Page	1 & 2.
Summons & Sheffs Return.	"	2 & 3.
Answer. Cont^d.	"	3 & 4.
Jury. Trial. Judgment.	"	4 & 5.
Agreement.	"	5 & 6.
M^o. to set aside Verdict & for new trial filed. & M^o. of d^o.	"	6.
" " " " &c. Overruled. & Bill of Excpt^s. filed	"	6 & 7.
Bill of Excpt^s. (Embodying the following. viz:)	"	7 to 30 inclusive.
Petition of Louis LaBeaume	"	7 & 8.
Order of Survey for d^o. Certificate of Survey.	"	8 & 9.
Claims filed by L. LaBeaume &c.	"	9 & 10.
Confirm^tn. to LaBeaume & Brazeau.	"	10 & 11.
Commissioners Certificate.	"	11 & 12.
Assignment to the Schools.	"	13
U. S. Survey No. 2974.	"	16. 17 & 18.
Approval of Survey " 2974.	"	18.
Plat	"	19.
Survey by Jos. C. Brown No. 982 & 983. & Plat.	"	19. 20 & 21
Letter of E. T. Langham to F. R. Conway.	"	23.
" " Recorder Conway to Surveyor Genl. Langham.	"	23 & 24
" " Com^snr. of Genl. Land Office to F. R. Conway.	"	24. 25. 26 & 27.
Instructions.	"	28. 29 & 30

Words 12600 $18.90
3 Plats — 3.15
2 Cert 1.00
$23 05

(3) 52.

October T. 1862

David D. Mitchell resp.

vs.

Thomas Handfield. apt.

Sand Court.

F.A. Dick for Peff-

~~Cline & Jenison & others for deft.~~

Filed 3rd October 1857
Wm. S. Glanville Ck.

Transcript $ 23.05 pd by -

1862 April 15 Continued by Court
1862 Nov 17. Argued and submitted
1863 May 7. Affirmed. Opin filed
Op 170

15.55
30
$15.85

instr. for opt. 60/

Opt. arrow/ Vigs. & Slot for each/ Arg & Sub/ res brf/

submission set aside & continued for reargument Oct. 5. 1858/ Continued by consent/

~~La~~ Klaid on motion withdrawn his lf. & asks to have ~~[illegible]~~ his name withdrawn from case as attorney. C.C. whittlesey asks same withdrawn lf./

Called a lord over/ ~~submitted~~ / continued/

[34]

David D. Mitchell Respondent
vs
Thomas Handfield, Appellant

Supreme Court
March Term 1858
No. 102,

And the said Appellant comes & says, that the Court below that St. Louis Land Court erred in the above entitled cause & assigns the following errors committed by said Court; to wit:

1, The Court below erred in giving the instructions asked by Plaintiff

2, The said Court erred in refusing to give the instructions asked by Defendant,

3, The said Court erred in rejecting legal & proper evidence offered by Defendant

4, The said Court erred in overruling the motion for a new trial

Cline & Jamison
for Appellant,

3

No. ~~102~~

Supreme Court
March Term 1858

David D. Mitchell
Respondent
vs
Thomas Handfield
Appellant

Assignment of
Errors

Filed 7 April 1858
Wm L Granville Ch

Clint & Garrison
for Appellant

David D. Mitchell, Respondent } Supreme Court
vs } March Term 1858,
Thomas Handfield, Appellant } No. 102,
Appeal from St. Louis Land Court

This was an action in the nature of ejectment for a lot of 30 feet front on the East side of 19 Street by 127 feet deep in the City of St. Louis & in United States survey No. 380. & being a portion of the ground between the West line of United States survey 3333. made Feby. 26, 1852 for the confirmation to Louis LaBeaume & the West line of survey 2974 made May 2, 1833. for the same confirmation.

On the trial the Pltff. read in evidence the petition of Louis LaBeaume for 360 arpens of land - a concession & order of survey for the same by Zenon Trudeau, dated Feby. 15, 1799, & also survey made by Antoine Soulard for said land dated April 10, 1799 (See record 7 & 8) - Also the proceedings of Old Board of Commissioners on said claim & the confirmation thereof made September 22, 1810 (See record 9 & 10) - Also order of survey made June 14, 1811 (See record 11) - Also Commissioners certificate No. 983, dated June 14, 1811 (See record 11) Also copy of United States survey 3333, approved February 26, 1852 & Patent certificate thereon, dated on said day, & a Patent to Louis LaBeaume dated March 25th 1852 for the land embraced in said survey 3333 (See record 12) - Also a deed from said LaBeaume to William Chambers for the entire tract dated April 27, 1817, & a deed from Wm. Chambers to Wm. Christy & Thomas Wright one third of said land to each & then deduced title by conveyance from the heirs of Wm. Christy & Thomas Wright for 2/3 undivided of all that part of said tract lying between surveys 3333 & 2974 (See record 12). It was admitted that Deft. was in the possession of the lot at the commencement of the suit - Pltff. then closed. Defendant then read in evidence an assignment made in regular form by the United States Surveyor General for

Missouri & Illinois of a tract of land one by 40 arpens made March 31, 1845, to the Board of President & Directors of the St. Louis Public Schools, under act of Congress of June 13, 1812, May 26, 1824 & January 27, 1831, - being United States survey 380 under instructions from the Commissioner of the General Land office, dated January 15 1839 & February 18, 1839, - Also said survey 380. that deduced title by conveyance from the said Schools to himself - Also United States survey 2974 made May 2, 1833. for the tract confirmed to Louis LaBeaume - Also survey made by Joseph C, Brown in December 1817 of confirmation certificates 982 & 983 - then proved by a witness, that William Chambers stated, that he had a Patent certificate issued on the survey of 1833, which he had lost, & he advertised to recover it. that he might procure a Patent thereon conformably to said survey, which declarations were made long after his deed of 1817 to Christy & Wright - then gave evidence tending to show that long prior to 1845 a fence stood along or about the Western line of said survey of 1817 which fence was created by Chambers Christy & Wright the owners of the entire tract in 1817, which fence the evidence tended to show was treated by Wm Chambers one of said Proprietors as enclosing up to the Western line of the Southern part of the tract which was held by him in severalty - this evidence related to declarations & conduct of William Chambers after the partition of said land (See record 22)

Defendant then offered to prove by declarations of Wm Chambers made after a division of that part of the tract within the survey of 1817 into lots & a partition of said lots into three shares, one of which shares was taken by Wm Chambers - one by Wm Christy & one by Thomas Wright - that he Chambers considered said fence as the Western boundary of said entire tract to which evidence the Pltff, objected - some customary

by the Court & excluded the said evidence, to which Deft. at the moment excepted (see record 22) & then closed,

The Plff. in rebuttal gave evidence tending to prove that neither the survey of 1817 nor the one made in 1833 were approved by the United States & that the one made in 1852 No. 3333, was made in pursuance of the decision of the Secretary of the Interior of July 28, 1851 & then closed

Plff. asked the following instructions.

1. The Court instructs the jury that by the act of 13th June 1812 & the 2d. section thereof & of the 27th January 1831 the Surveyor General was not authorized to set apart to the Board of Public Schools any lots which were on the 13 of June 1812 rightfully owned or claimed by any private individuals.

And the Court further instructs the jury that the Patent given in evidence by the Plaintiff established the fact (if it be genuine) that the land therein designated & granted was rightfully owned & claimed by Louis La Beaume on & prior to the 13 of June 1812.

Given

2. If the land in dispute is part of the land granted by the Patent to Louis La Beaume or his Representatives & it was conveyed by said La Beaume by the conveyances given in evidence to William Chambers & by Chambers to Wm. Christy & Thomas Wright to each of them the one thirds & the heirs of Wright & a part of the heirs of Wm. Christy conveyed their interest in said land derived from said Wright & Christy to the Plaintiffs, then the Plaintiff is entitled to recover for the interest so acquired by him — Which instructions were given to which Deft. duly excepted.

Given

Defendant asked the following instructions, which

were refused, to which Deft, duly excepted -

1, If the jury find from the evidence that the survey No, 2974 given in evidence by Defendant was duly made & approved by authority of the United States, that the same was assented to & accepted by the legal representatives of Louis LaBeaume as the tract of land confirmed to said LaBeaume. that a patent certificate thereon was duly issued received & accepted by the said representatives then the jury are instructed that the said survey is as against the title conveyed by the survey & designation to the Board of President & Directors of the St. Louis Public schools No, 380. school Lands given in evidence by Defendant conclusive of the boundaries of the tract of land confirmed to Louis LaBeaume as aforesaid

Refused

2, If the jury find from the evidence that the tract of land sued for is within a tract of land designated surveyed & set apart on the 31st day of March 1842 for the St. Louis Public Schools, and if they further find that the said land is within the limits of the survey No. 3333 given in evidence by Plaintiff which last mentioned survey was made under a confirmation of the old Board of Commissioners on the 22 of September 1810, which confirmation carried with it a condition that it was to be surveyed & that said confirmation was not surveyed so as to include any of the land in controversy in this suit until the time of the making of said last mentioned survey that the title of the Plaintiff is not such that he can recover as against the title of the St. Louis Public schools.

Refused

There was a verdict for the Deff. Deft, in due time filed a motion for a new trial which was overruled to which Deft, duly excepted & appealed to this Court -

Cline & Garrison
for Deft,

3

~~No. 102,~~ C

Supreme Court
March Term 1858

David D. Mitchell
Respondent
vs
Thomas Handfield
Appellant

Statement

Filed 14 April 1858.
Wm S Glanville
Ch

[47]

D D Mitchell

v

Th Handfield.

Whittelsey of counsel p. d. presents the following points.

1. The plaintiff took no title until the issue of his patent Mar. 25. 1852, as his claim was to be surveyed and a patent issued. The words of the Act of Congress are, "shall be confirmed"

West v Cochran 17 How R. 415. Stanford v Taylor 18 How R. 412. Ledoux v Black 18 How. R 475 Cousin v Blanc 19 How R. 202. 210 Bryan v Forsyth 19 How, R. 334. Ballance v Papin 19 How R. 343. Ballance v Forsyth 13 How R. 18. 24 Lefevre v Corneau 11 La R. 323. Slack v Orillon 11 La. R 587 Lott v Prudhomme 3 Rob. La R. 293 Motoyer v Larenaudiere 6 Rob. La. R. 139 Carondelet v St Louis 1 Black see Sandford v Willott 19 How. 79

2. Before the date of plaintiffs patent, the U.S. by Act of 1831. and Survey of 1845. had passed the title to the land sued for, to the Schools. The Act & Survey were equivalent to a patent, and thus defendant has the older legal title.

Kissell v Schools 18 How. R. 19. Opinion of Secy Interior on School Surveys Nov 5. 1857. Bryan v Forsyth 19 How R 334. Marsh v Brooks 14 How R. As to effect of surveys. see McGill v Somers 15 Mo. R. p 87.- pr Gamble

3. The plaintiffs title by patent does not, as to adverse claims, relate back to the date of confirmation certificate, so as to divest intermediate titles, Such intermediate titles, sales &c will be good ~~Cousin v Blanc~~

Cousin v Blanc 19 How R. 202. 210. Ledoux

v Black 18 How R 475. See Louisana cases abbreviated 11 La R. 323. 587 3 Rob. R 393. 6 Id. 139. 19 How R. 334, 343. 13 How R 24.

Landes v Brant 10 How R. does not apply to adverse title under United States, but to adverse claimants under the same title. If carried farther than this, it is overruled by the case of Bryan v Forsyth 19 How R 334, which holds that under a confirmation (to be surveyed) by Act of Congress, that title only relates back to approval of survey, to let in defence Statute of limitations, although title would relate back to Act of confirmation by Congress (in some cases) so as to defeat intervening titles, as in Marsh v Brooks 14 How R.

4. The U.S. parted with its title to this land by its Survey in 1845, and could not afterwards survey it for plaintiff. It was estopped by its own action, & the plaintiff coming in by later title in 1852 was privy & also estopped

Menard v Massey 8 How R. Kissell v Schorls 18 How R. 19.

5 The patent and its recitals were no evidence as against the defendant of the truth of the facts recited, nor could said recitals destroy the effect of defendants evidence of title to this land as surveyed for Schorls.

Expressly so held Marsh v Brooks 8 How R. 223.

Admitting for arguments sake that both parties have prima facie titles ~~Both parties claiming under surveys~~, the defendant has older survey and possession, and the plaintiff shows no title right to the possession as against defendants prima facie title.

Vasquez v Ewing 24 Mo R. 31. Somers v McGill 15 Mo R. 80.

Whittelsey
Counsel p. d.

80 — 3

C

D.D. Mitchell

v

Thos Hanafield

Brief
Whittelsey
pr d.

Filed 15 April 1858.
Wm J Glanville
Ck.

[42]

Supreme Court of ~~Mich~~ United States
Of October Term 1862

Mitchell
vs
Handfield.

Brief of B. A. Hill
for Plff - Respdt.

Plff claims the lot in question under a confirmation to Louis Labeaume of 22 September 1810, by the old Board of Commissioners, under a claim filed for such confirmation before the Board of Commissioners in the office of the Clerk of the Board the 26th February 1806.

The derivative title of plaintiff under Louis Labeaume is not denied—

The confirmation was surveyed and patented by the United States, for Labeaume and his legal representatives in 1852.

By relation, this survey & patent related back to the confirmation of 1810 & the filing of the claim in 1806, and vested the legal title as of 26th Feby. 1806 in Labeaume

Landes vs Brant 10 How. U. S.

The confirmation to Labeaume was made in 1810 upon a Spanish Survey of Soulard for Labeaume of 10th April 1799.

The United States Survey of 1852 for Labeaume is a mere retracing of Soulards Survey of 1799.

Maguire vs Tyler 1 Black 200—

The confirmation appropriated the land within Soulard's survey, in 1810 to the use of the confirmee Labeaume

The decision of the commissioners was that Labeaume was confirmed for 356 arpens agreeably to a concession from Zenon Trudeau to Louis Labeaume - The only concession from Trudeau to Labeaume, was the Spanish survey of 1799 made by ~~Lt~~ Soulard pursuant to order of Trudeau,

By orders of O'Reilly & Morales Governors General at New Orleans no ~~grants or~~ concessions could be made by Lt. Governors in the provinces. The sole power of grant was reserved & exercised by the Governor general. The survey of Soulard was the document on which the Governor at New Orleans would issue the formal grant. The survey was all the grant that Labeaume had to present in the case to the Board & the Board acted on the survey as a grant and confirmed Labeaume according to it, as held in Maguire v Tyler & Black 200—

By the 4th Sec of Act 1807 p. 154. 1 Vol L.L. it is enacted ~~that~~ "the decision of "the commissioners when ~~final~~ in "favor of the claimant shall be "final against the United States, "any act of Congress to the contrary "notwithstanding."

By the 6 Sec of Act 1807. the commissioners are required to give a certificate to the claimant stating "that "he is entitled to a patent for "a tract of land therein designated" The certificate to Labeaume stated that he was entitled to a patent for the land confirmed according to the concession (ie survey of Sonland) from Trudeau to Labeaume & order of survey at expense of the United States. §7-1807.

~~In 1817 that was~~ Pursuant to this designation in the certificate the United States has issued the patent for the land embraced within the Spanish survey of Sonland; being the concession in fact.

By this act of confirmation survey & patent the title of the United States as of 22 Sept 1810

vested in Labeaume.

Defendant claims under the 2d section of the Act of 13 June 1812, a field lot within Soulard's survey for Labeaume, as a vacant lot reserved for the Schools, because "it was not "rightfully owned or claimed by any "private individuals"

If this lot was confirmed to La=beaume as I have shown, then it was rightfully owned & claimed by him & the 2nd sec. of the Act of 1812 could have no effect to reserve the lot for the Schools.

A direct grant of the field lot by the first section of the Act of 1812, would not have had any effect on the title of Mr Labeaume, for the section contains a proviso "that nothing herein contained "shall be construed to affect the rights "of any persons claiming the same "lands or any part thereof, whose claims "have been confirmed by the Board "of Commissioners for adjusting and "settling claims to land in the said "Territory."

Labeaume's claim under Soulard's survey was confirmed in

1810 by said Commissioners, and the act of 1812 could not in any wise operate to affect the right of Labeaume

We could maintain ejectment on this confirmation – Rev Code 1825 – 1835 &c

The title of Labeaume & his representatives is the elder & better title under the act of 1807.

Labeaume was the owner of all the land within Sowland's survey in 1812 when the act of 13 June 1812 was passed.

It is simply absurd for any one to pretend that the school reservation of a field lot as vacant could attach to a tract of land covered by a Spanish survey and a confirmation, in accordance therewith, by the old Board of Commissioners.

It is equally absurd to say that any grant by the first section of the act of 1812, could affect the Labeaume title under the confirmation, for the act expressly forbids it.

Whatever land has been confirmed by the old Board, is excluded from confirmation or reservation by the express terms under the act

of 1812.

This is the conclusion and end of the controversy, but defendant insists, that Labeaume's title of 1810, is divested by reason of the failure of the surveying officers to survey Labeaume's patent until 1852; and that another surveying officer of the U. States in the mean time had surveyed this field lot as vacant land & appropriated it to the Schools—

The title to the land confirmed to Labeaume, cannot be divested by the operations of the surveying department in this manner or in any other.

It is not pretended that Labeaume assented to or consented to any such survey for the Schools; and the surveyors had no power or authority to survey land confirmed to Labeaume as vacant land reserved to the Schools by the 2nd Sec. of Act of 13th June 1812.

As to effect of surveys to divest title see case of Glasgow & Taylor Commrs vs Hosler: 1 Black U. S. Rep. 1862:

This case has been argued before the old Court — two years ago — why it has not been decided no one seems to know.

The defendant has no title & no claim of title — and the plaintiff stands upon a confirmation of 1810 and a patent.

The judgment should therefore be affirmed

~~Milton S. Hill~~
~~of Counsel for~~
~~D. D. Mitchell~~

As to Estoppel:

There is no privity in this case between the Schools & Labeaume under the surveys by the U. States.

Labeaume's surveys of 1817 & 1833 & 1837 were set aside by U. States & Labeaume can't be estopped.

No estoppel by surveys unless the surveys are regarded as binding on the U. S. —

West v Cochran 17 How
Magnin v Tyler 1 Black
Glasgow et al v Hortey — 1 Black

Supreme Court
Oct T. 1862
No

D. D. Mitchell
v Res.
Hanfield
applt.

Brief by
B. A. Hill
for Respdt

Filed Nov 17. 1862
A.W. Mead
Clk

[56]

Appeal from Land Court

David D Mitchell Res } B. A. Hill & F. A. Dick for Res
" }
Thomas Hanafield Appt. } Whitteley, Lackland & Cline for Appt

This is an action in the nature of Ejectment.
The plaintiff claims title under a confirmation to Louis Labeaume by the old board of Commissioners in 1810
The defendant claims title under ~~the~~ Board of Public Schools by virtue of ~~a confirmation~~ the second section of the act of Congress of the 13th of June 1812, the acts of 26th May 1824 and January 27 1831.
The confirmation to Labeaume was surveyed in 1817 and again in 1833. These surveys were set aside by the Secretary of the interior and a new survey (No 3333) made ~~in 1851~~ which was approved February 26th 1852.
The surveys of 1817 and 1833 did not include the land in dispute. The survey (No 3333) did include it.
In 1845 The Surveyor General of Illinois & Missouri surveyed designated & set apart for the use of schools to the Board of Public Schools a tract of land ~~of~~ which included the piece in dispute.
The defendant claims that, holding under the Public Schools his title is better than that of the plaintiff holding under the confirmation & late survey ~~[illegible]~~

for Labeaume.

A patent has been issued to Labeaume's representatives for the land surveyed in 1852.

The Supreme Court of the United States in the case of Maguire v Tyler 1 Black 195 decided that the Secretary of the Interior had authority to set aside the former survey and order another to be made.

We therefore regard the case as if no survey had been made prior to that of 1852 (No 3333). Certainly a confirmation by the old board of Commissioners in 1810 is a superior title to any title subsequently acquired from the United States.

In some cases of confirmation and for some purposes the title does not attach to any particular land until the survey is made, but in this case Labeaume's claim before the Board of Commissioners was accompanied by a concession and Spanish survey, and the confirmation was therefore of a definite tract of land to which the title immediately attached.

It was ordered to be surveyed according to the concession, but the survey so ordered would only be a retracing of the lines run by the Spanish surveyor, or even if there had been an error in the Spanish survey to be corrected by the United States survey, such error might & probably would have no effect to impair the definiteness of the

tract confirmed. If there had been before the Commissioners no evidence by which to identify the tract, ~~confirmed~~ the confirmation would operate as a grant which, (because of its vagueness) would attach to no land until it ~~was~~ should be located by an United States survey.

In this case the confirmation being of a definite tract of land took immediate effect, and the subsequent proceedings by survey & patent relate to the time of the inception of the proceedings before the Board for the confirmation

The title of the plaintiff under Sabeaume is the ~~old~~ elder & better title than that of the defendant under the public schools.

The judgment of the Court below is affirmed the other judges concurring.

P Bertrand Bates

80

Mitchell
vs
Handfield

Opinion
Bates

Affirmed

Filed May 7. 1863
A. W. Mead
Clk