App Clemons, Tr., James v. Rannels, Charles S. et al. Resp

34 Mo. 579 519/4

635/26

St Louis

Conveyance - 1800 arpens to Jane McDonald
Act of Congress in 1836

Sheriff's deed
ejectment - oral evidence
Court will evidence insufficient

App
R. M. Field & Shepley

Resp
S. T. Glover

Bates:

The State of Missouri, ss.

The State of Missouri, to the Honorable the Saint Louis Land Court ——— **in said State—Greeting:**

WHEREAS, In the record and proceedings in a certain cause lately pending in the Land Court held in and for the County of Saint Louis in said State ———

wherein James Clemens Junior was plaintiff and Charles S. Ramels & others were defendants ———

in a Civil Action ——— manifest error hath intervened, to the great damage of said plaintiff as by his complaint we are informed.

NOW, 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 St. Louis, in the County of St. Louis, in said State, on the 1st 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 29th day of September in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty.

Wm. S. Glanville,
CLERK.

State of Missouri }
County of St Louis } Ss:

I Edward A. Tracy. Clerk of the St. Louis Land Court, within and for said County, in Obedience to the within writ. Herewith furnish a true and complete Transcript of the record and proceedings in the Case therein named (as required) as fully as the same remains 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 29th day of September A.D. 1860

Edwd A. Tracy Clerk

of Missouri ss

Page 1. State of Missouri } ss.
County of St. Louis } Be it remembered that on the tenth day of February in the year of our Lord eighteen hundred and sixty, there was filed in the Office of the Clerk of the St Louis Land Court a Petition.

Which Petition is in the words and figures following to-wit.

Petition

James Clemens Jr. plaintiff
against
Charles. S. Rannels, Mathew Muir defendants
} In the St. Louis Land Court
March Term 1860

The said plaintiff states that on the first day of January 1857 he was lawfully entitled to the possession of a certain tract of land situated in the County of St. Louis and State of Missouri containing one hundred & sixty two acres & sixty nine hundredths of an acre, and being part of United States Survey No. 2033, in the name of James McDaniel and is bounded on the north by Bradford and others, on the east by tract formerly belonging to Bryan Mullanphy, on the south by John Suter & by Walker formerly ; now Wislizenus, and on the west by a lot or tract allotted to Frederick Dent in a partition made between John Mullanphy's heirs & said Dent and he was entitled to the possession thereof on or about said time the said defendants unlawfully entered into possession of the same & have held & now hold possession of the same to the damage of plaintiff of Two thousand dollars.

Plaintiff asks judgment for possession of the same with damages as aforesaid,

J. R. Shepley Atty for Pff.

2. James Clemens Jr. being duly sworn on his oath states that said petition & the matters as therein stated he believes to be true.

Sworn to & subscribed before me this 10th day of February 1860 — James Clemens Jr.

Edward. N. Tracy, Clk

Upon the filing of the above Petition the Clerk then issued to the Sheriff of St. Louis County a Summons, Which Summons is in the words and figures following to-wit,

Summons

County of St. Louis, SS.

The State of Missouri,

To the Sheriff of St. Louis County, Greeting:

We command you to Summon Charles. S. Rannels & Matthew Rivr to appear before the Judge of our St. 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 March next, then and there to answer the complaint of James Clemens Jr. as set forth in the annexed petition: and have you then and there this writ.

Witness, Edward. N. Tracy, Clerk of our said Court with the seal thereof hereto affixed, at office in the City of St. Louis, this tenth day of February in the year of our Lord, eighteen hundred and sixty

(Seal)

Edwd. N. Tracy Clerk.

Upon which Summons the Sheriff made his Return in the words and figures following to-wit:

Shffs. Rtn.

Executed this writ in the

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County of St. Louis on the 16th day of February 1860 by delivering a copy thereof with a copy of the petition as furnished by the Clerk to Chas S. Rannells and by leaving a copy of this writ as furnished by the Clerk at the usual place of abode of Mathew Prior with a white person a member of his family over the age of fifteen years.

Thos. C. Courtenay Shff.
By Wilson P. Wells Deply Deply

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

March Term 1860
Monday March 12th. 1860

Ans'r. fil'd. James Clemens Jr. vs Charles S. Rannels Et al } Answer filed in this cause.

Which Answer is in the words and figures following to-wit:

Ans'r. James Clemens Jr vs Charles S Rannels & Matthew Prior } No. 68 March T. 1860 In the St. Louis Land Court. March Term 1860

The defendants deny that the plaintiff on the day mentioned in the petition or at any other time was entitled to the possession of the premises described in the petition or any part thereof or that the defendants unlawfully entered into the possession of said premises or that the plaintiff has suffered any damage by reason of any act of the defendants.

Glover & Richardson Attors. for Defts.

4 Chas. S. Rannels one of the above named defendants on his oath says that the foregoing answer and the matters therein as stated are true as he believes.

Sworn to & subscribed before me this 12th. day of March 1860 C. N. Tracy Clk. } Chas. S. Rannells.

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

Wednesday May 30th. 1860

Cause tried by Court. Plff. takes a non-suit with leave &c

James Clemens Jr. vs Charles S. Rannels Mathew Prior } Non suit.

Now at this day come said parties by their respective attorneys, and thereupon no Jury being required by either party, this cause is heard by the Court, upon the petition, answer and proofs adduced, and thereupon the trial progressed, Whereupon the Raintiff takes a non suit with leave to move to set the same aside, It is thereupon ordered and adjudged by the Court, that the plaintiff take nothing by his suit in this behalf, but that the defendants go hence without day and recover of said Raintiff their costs and charges herein in this behalf expended, and have Execution therefor

And afterwards to wit on the same day the following further proceedings were had in this cause to-wit:

Mo. to set aside Non-suit fild.

James Clemens Jr. vs Charles S. Rannels et al } Motion to set aside Non suit, filed in this cause.

5 (For which Motion to set aside Non-suit " See Bill of Exceptions Clerk)

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

Saturday June 16th. 1860

Mo. to set aside Non-suit overrld.

James Clemens Jr.
vs
Charles S. Rannels et al

Now at this day, the Court being fully advised of and concerning the Motion heretofore filed in this cause, to set aside Non-suit, doth order and adjudge that said Motion be overruled.

And afterwards to wit on the same day the following further proceedings were had in this cause to-wit:

Bill of Excp.s filed

James Clemens Jr.
vs
Charles S. Rannels et al

Bill of Exceptions, filed in this cause.

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

Bill of Excp.s

James Clemens Jr.
vs.
Charles S. Rannels & Matthew Prior

In the St. Louis Land Court.

Be it Remembered that at the trial of the above cause the plaintiff gave in evidence the Concession & Confirmation to James Mc Daniel as follows.

Concess.n & confirm.n to J. Mc Daniel

James Mackay assee. of Jas. Mc. Daniel ~. To Frederick Bates Esquire Recorder of Land claims ~ Please to take Notice that under a lost concession, as appears by the annexed receipt of James S. Donaldson herein enclosed and as assignee of James Mc. Daniel

being the fifth claim on said receipt, I claim 1800 arpens of land on river des Peres district of St. Louis

St. Louis 23d October 1812. James Mackay

Receipt . . . James L. Donaldson Esq. Commissioner and Recorder of lands for the Territory of Louisiana, will please to take Notice I James Mackay claims the following tracts of land in the said territory. Granted Augt 15. 1799

A grant of X 550 arpens bought of Christopher Carpenter

do. X 361 arps. do. of Wel Ante Prieux.

do. X 800 arps. do. of Hugh Graham

do. X 350 arps. do. of John Bishop

do. 1800 arps. do. of James McDaniel

do X30,000 arps. granted to me for my services.

do X 282 arps. granted do. near St. Louis bridge.

do. X a square or lot of ground in St. Louis

do. X a lot in St. Charles bot. of Mr. Duquette

do. X400 arps. bought of Seneca Rawlins

do. X450 arps. bot. of George Crump.

do. X600 arps. bot of John Bell on Bonhomme.

do. X4000 arps bot. of Ante. Gantier on my saline

do X650 arps. bot. of Wm. Hardy.

do. X650 arps — of John McMillan

do. X600 arps. — of Andrew Kehaird

do X900 arps. — of John Kenny

do X400 arps granted to me on Bonne femme saline

Grant X150 arps. partly bot. & partly granted to me at St. Andrew

1600 arps on wild horse creek the titles of which is at Orleans

Levrie A St. André Granted Decr. 23 1797, arpenter 6 mars 1798, certificate Decr. 179

No. 30 fol. 17. 200 arps. to Louis Boisrie or John Waters

I do certify certify that the above named James Mackay has

presented at my office of records for the lands of Louisiana territory all the claims stated in the foregoing list, excepting the title of 4600 arps. which is at Orleans, and that I received for record the nine claims first mentioned in the said list having at the same time returned the remaining part of the Claims contained in said list to said Mackay without being recorded, there being no regular survey of the same.
St. Louis 28th Febry. 1806. J. B. Donaldson
See Record Book E pages 358 & 359.

Claim. James Mackay, 1800 arpens of land situate on the river des Pères as assignee of James Mc. Daniel granted to him by Zenon Trudeau the 1st. February 1798.
Also 282 arpents & Co.
Mackays 1st. claim – the Concession is wanting

A Deed.

St. Charles, haute Louisiane, l'an mil huit cent et deux le troizième jour du mois de Fevr.

Pardevant nous Dn. Charles Tayon Capitne Commandant de St. Charles du Missouri, fut présent James Mc Daniel, habitant du district de St. Louis, que reconnois et confesse par ce présent d'avoir vendu volontairement, et cedé, delaissé et abandonné pour toujours pour lui même et ses successeurs, à Jagnes Mackay commandant de St. André et à ses successeurs, tout droit, titres, proprieté et concession d'une terre de dix huit cents arpents en superficie, concedée au dit vendeur pas Mr. Zenon Trudeau en date du premier de fevr. mil sept cent quatre vingt dix huit, et situés sur la rivière des Peres et bornée sur le coté du sud et une partie de L'est par la terre de Mr. Papin et partout ailleurs par le domaine de S. M. La dite terre de dix huit cents arpents est vendue comme ci-dessus pour

valeur reçue du argent comptant que le dit vendeur reconnait et declare par ce présent avoir deja reçu du dit acquéreur pour tout prix et consideration que le dit vendeur ou ses successeurs pour jamais demander du dit acquéreur ou de ses successeurs ou représentants pour la ditte terre de dix huit cents arpens ~ En conséquence de quoi le dit vendeur James Mc. Daniel pour lui même et ses successeurs vende, cède, delaisse et renonce pour toujours et de ce moment tous ses droits, titres, proprieté et concession qu'il a ou qu'il peut avoir à l'avenir a ou pour la ditte terre de dix huit cents arpents en superficie avec tous les avantages quelconque lui appartenant au et en faveur du dit acquéreur Jacques Mackay et à ses successeurs, auquel le dit vendeur donne possession immédiatement de la ditte terre de dix huit cents arpents en superficie; et de plus le dit vendeur James Mc. Daniel pour lui même et ses successeurs s'oblige par ce présent de donner ou faire donner au dit acquéreur Jacques Mackay et à ses successeurs un titre solide et legitime pour la ditte terre de dix huit cents arpents en superficie, aussitôt que lui le dit vendeur ou tout autre pour lui puisse obtenir les titres legaux pour la ditte terre du Gouvernement de cette province. Et de plus le dit vendeur pour lui même et ses successeurs donne par ce présent plein et entier pouvoir au dit acquéreur et à ses successeurs de reclamer et recevoir, quand ils jugeront à propos, les dits titres legaux du Gouvernement et de tout autre qui peut les avoir en possession, le dit acquéreur étant comme et declare par ce présent d'être seul proprietaire de la ditte terre de dix huit cents arpents en superficie.

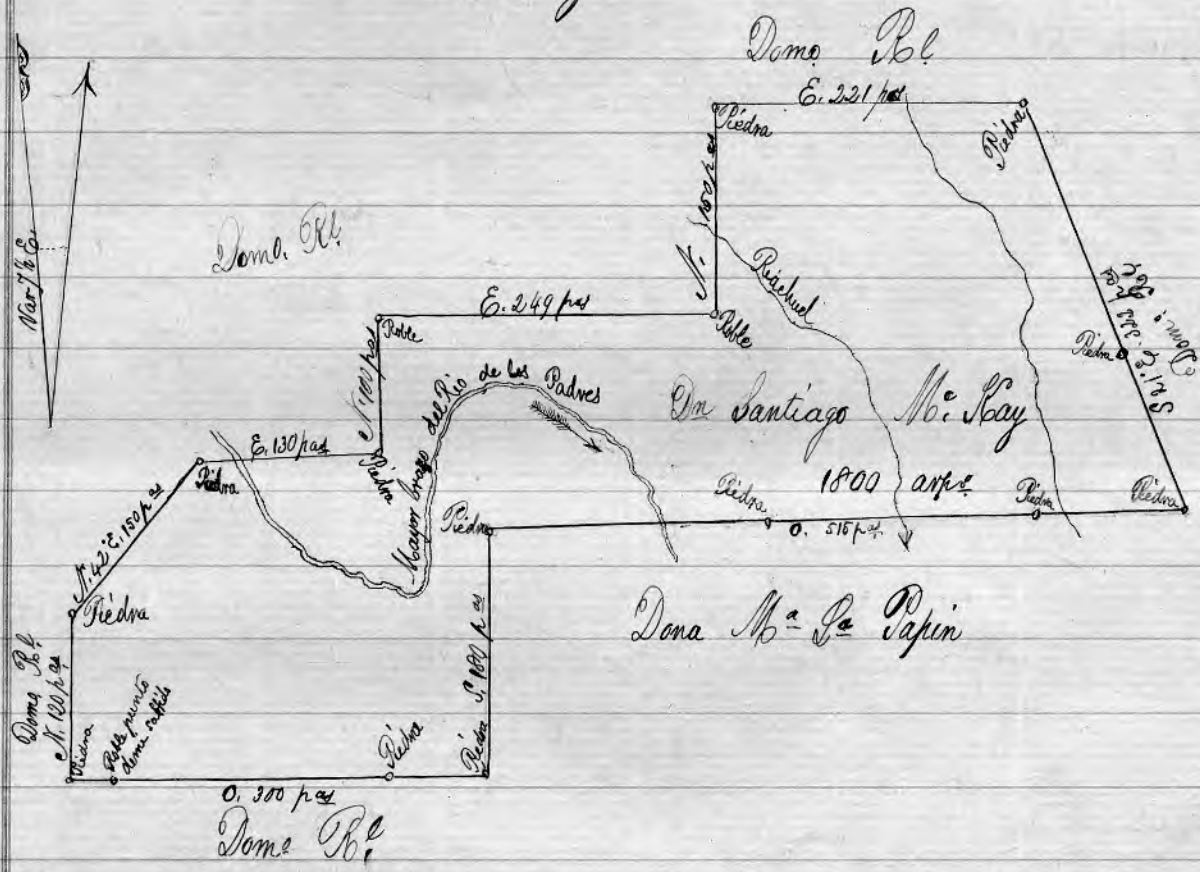
En foi de quoi le dit vendeur James Mc. Daniel a accepté & signé le présent après lecture faite en presence des témoins soussignés & les. le dit Commandant.

9 James Mc Daniel = Thomas Rogers = Isabella Mackay = Jacques Mackay = & Charles Tipan.

Nos James Mackay commandant de St. Charles et St. André certifions que la présente copie est conforme à l'orginal deposé dans les archives de ce poste, St. André le 11 Sept. 1804,

James Mackay. Richard Caulk

Survey



Nota, Los terminos puestos a todos los angulos y los mojones de 20 arps. de distancia entre ellos y todos indicados en el plano figurativo. Todos los arboles de las líneas van señaladas con una muesca arp.r y dos cantaduras infériores, y los de drã é izquierda muescados solamente. Asentado al Libo. B. de los Caper de Apeos pa dho. pto. fs 3 ha 3.

Dn Antonio Soulard, agrimensor particular de la alta Luisiana Certifico, que el veinte y nueve del año ultimo (en virtud de decreto acompana, del Sor. Sente. de Gobor. de Esta alta Luisiana Dn Zenon Trudeau, en fha de primero de Febrero del año de mel siete

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cientos noventa y ocho) me he transferido a la tierra de San-
-tiago Mc Daniel primero proprietario cuya tierra ha pasado
a la de Dn Santiago Mc Kay segun consta de la escritura de
venta origl. que acompaña y ha sido otorgada en su del
Misuri Dn Carlos Tayon, para practicar el apeo arreglado a su
pedimento de Diez y ocho cientos arps. planos, cuyas medidas
se han tomado en presencia del proprietario, y del vecino lindero
con la percha de Paris de diez y ocho pies de largo segun con-
-stumbre adoptada en esta provencia de la Luisiana, y sin
tocar a lo que puede dar de si la variacion de la Aguja que es
de 7. grs. y 30 mos. E. como consta del plano figurativo que ante-
-cede, cuya tierra tierra se halla situada como a seis millas al
O. N. O. de esta villa de Sn. Luis. Lindando por el N. y O. con las
tierras valdias del Domo. Rl. al E. en partida con el mismo Domo.
citado y tierra de Dna. Maria Luisa Papin, y al S. con referida
tierra de la Dna. Maria Luisa Papin, y las tierras val-
-dias del Domo. Rl. y para que conste donde convenga le
doy el presente con el plano figurativo que precede en
el qual se indican las dimensiones y limites naturales y
artificiales que rodean dha tierra
cientos y tres. Sn. Luis de Illinois a quinze de Marzo
de mil ochs Antonio Soulard agr. par.

See record B pages 432 & 433.

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 to land in the territory of Missouri" passed
the 13th day of June 1812, and other acts subsequently passed.

Frederick Bates Commissioner

St. Louis December 16th 1813.

James Mackay, assignee of James Mc. Daniel, claiming 1800

arpens of land on river Des Pres -
Notice, also a paper purporting to be a receipt of James. L.
Donaldson, late Recorder of land titles, dated 28th February 1806,
on which receipt the concession of said Mr. Daniel is the sixth
Antoine Soulard duly sworn, says that he has seen, held
and read, in 1798, a concession from Zenon Trudeau, late
Lieutenant Governor to James Mr. Daniel for 1800 arpens
of land on river des Pres.

Witness further states that he has a knowledge that the
Concession was entered by Claimant with the late Recorder for record.

St. Louis June 2d 1818.

This day James Mackay, by Colonel Lawless, his attorney, as
authorized by act of Congress of 20th April last entitled
"an act for the relief of James Mackay, of the Missouri"
filed in this Office a writing purporting to be a warrant
of survey or concession from Zenon Trudeau, Lieutenant
Governor of the late Spanish province of Upper Louisiana,
called western part of Illinois, bearing date 1st. February 1798,
for 1800 arpens of land granted to James Mr. Daniel,
in the following words and figures following, to wit: &c.
Afterwards, to wit, on the 12th day of June 1818, being the day
assigned for the presentation of subordinate evidences,
both written and oral, the said James Mackay appeared
personally, accompanied by his attorney, and presen-
-ted in support of the claim, a writing purporting to
be a plat and field notes of the said land on the river des
Peres, in the following words and figures, to wit &c. A writ-
-ing purporting to be a receipt of James L. Donaldson
late Recorder of land titles, for sundry papers in
relation to sundry claims of the said James Mackay, in

which receipt there is found enumerated among others, the first concession, or paper purporting to be a concession to said James McDaniel; also, deed from McDaniel to Mackay - Book B. page 433.

General Bernard Pratte, being duly sworn says, after examining the concession to McDaniel, as above stated, that the body of concession, to wit, the requete and the decree, is in the hand writing of Antoine Soulard, and that the signature to the decree is in the proper hand writing of Zenon Trudeau, late Lieutenant Governor.

Antoine Soulard duly sworn says that the requete was written by himself, (the witness) and that he, the witness, saw the late Lieutenant Governor, Zenon Trudeau, subscribe his own proper name to the decree or order of Survey. Witness further states that more than one year past, walking up the street with James Mackay when near the tavern of Peebles, the said Mackay observed that he would go in and inquire for letters which he expected from his son, On coming out, he held in his hand a letter, which when opened in presence of witness, was found to be an original, and to enclose the concession to James McDaniel for 1800 arpens of land, and which concession has already been said to have been mislead by the late Recorder of land titles, or stolen from his Office in the year 1806, which said letter is now presented by witness, and is in the following words and figures, &c. See Recorder's minutes pages 1, 80, 81, 163 & 164.

A Dn Zenon Trudeau Lnt. Col. gradué Captne. au regiment fixe de la Louisiane, et Lnt. Gouv.r de la partie occidentale des Illinois.

Le Sr. James McDaniel ancien habitant des Etats unis d'Amerique, et habitant ce pays depuis plus d'une année, a l'honneur de vous observer qu'il est provisoirement établi avec votre permission sur une terre située dans la pointe du Missouri que ledit =

=érant ses vues d'établissement il n'a pas jugé le bien propre ainsi qu'il desire en consequence il vous supplie de vouloir lui accorder comme vous lui avez déjà permis une terre de 1,800 arp.s de superficie qu'il choisira dans un lieu vacant et qui ne porte préjudice à personne; le suppliant ose espérer cette grace de votre justice, et de l'encouragement que vous donnez cha= -que jour aux cultivateurs

St. Louis des Illinois le 1.er Février James Mc. Daniel

Sn Luis de Ilinóis 1 de Febrero de 1798

El agrimensor Dn Ant.o Soulard, pondere el interesado en posesión de la tierra que se solicita y verbalizeres su arpeo a continuación para que pueda solicitar la concesión del Sor Governador el que queda informada que el sujeto merece la gracia que solicita. See original on file.

Zenon Trudeau

Saturday 6 October 1832

The Board met pursuant to adjournment.

Present Lewis. F. Linn . F. R. Conway, Commissioners

Dec. No. 8 page 289. James Mc. Daniel by his assignee James Mackay, claiming 1800 arpents of land on River des Peres, see Record book C page 358. Recorder's minutes pages 80, 163 & 164

Produces a paper purporting to be a concession from Zenon Trudeau, Lieutenant Governor, dated 1 February 1798; also a plat and certificate of survey of same, executed the 29th (month not mentioned) 1802, and certified by A. Soulard 15 March 1803. Also a report made by Frederick Bates, late Recorder of Land titles to Josiah Meig's Commissioner of the General Land Office together with the accompanying documents marked A. B, C. D & E. — Also a paper pur= -porting to be an original letter from Gabriel Long, dated

October 29, 1818.

M. P. Leduc duly sworn says that the signature to the concession above mentioned is the handwriting of J. Tardeau that the signature to the survey above mentioned is the handwriting of A. Soulard and that the signature to the letter above mentioned is the handwriting of Gabriel Long.

Wilkins Updike, Esqre. Commissioner appeared having been qualified, took his seat.

On motion the Board adjourned until Monday at 10 o'clock A. M.

Minutes of the Board, Book C. p. 8. 9 & 11.

L. F. Linn
W. Updike
F. R. Conway.

Friday November 1, 1833

The Board met pursuant to adjournment.

Present. Lewis. F. Linn, A. G. Harrison. F. R. Conway, Commissioners

No. 8. James Mc. Daniel claiming 1800 arpents of land. See page 9 of this Book

The Board are unanimously of opinion that this claim ought to be confirmed to the said James Mc. Daniel or his legal representatives according to the concession.

The Board adjourned until to morrow at 9 o'clock A. M.

L. F. Linn
F. R. Conway
A. G. Harrison

See minutes of the Board No. 6 pp. 288, 289 & 292

Office of the Recorder of Land titles, Saint Louis 6 April 1858

I certify that the foregoing on pages 1 to 7, is a full and correct transcript from the books, records, plats, filed and documents in this office of the claim of James Mc. Daniel or his

legal representatives to eighteen hundred arpents of land, situated on river des Pres.

The said claim was recommended for confirmation by the Board of Commissioners appointed in pursuance of the Act of Congress of the 9th of July 1832, entitled "An act for the "final adjustment of land claims in Missouri" and the supplemental act of 2d March 1833, in their report of the 27 November 1833, to the Commissioner of the General Land Office, in which the said claim is entered as "Decision" number eight. And it is further certified that the said claim was confirmed, according to said recommendation to James Mc Daniel or his legal representatives, by the first section of the Act of Congress approved the 4 of July 1836, entitled "An act confirming claims "to land in the State of Missouri and for other purposes."

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

Translation of such parts of the foregoing as are in the French and Spanish Languages.

Concession part C in original

To Don Zenon Trudeau, Lieutenant Colonel by brevet, Captain in the Stationary Regiment of Louisiana and Lieutenant Governor of the western part of Illinois.

James Mc Daniel formerly residing in the United States of America, but living in this country since upwards of one year has the honor to state to you that he is temporarily settled with your permission upon a tract of land situated in the bottom of the Missouri river, that con-sidering his views of settlement, he has not found that locality suitable for the desired object.

Therefore, he supplicates you to have the goodness to

grant to him, as you had already allowed him, a tract of 1800 arpents in superficies, which he may be at liberty to select in a vacant place, where it shall not cause prejudice to any body.

The petitioner dares to hope this favor of your justice and the encouragement you daily give to the cultivators of the soil. St. Louis of Illinois, the 1 February 1798.

James McDaniel

St. Louis of Illinois 1 February 1798.

The Surveyor of this Jurisdiction, Don Antonio Soulard, shall put the party in interest in possession of the land which he asks for, and afterwards shall make a plat of his survey in order to serve to solicit the concession from his Lordship the Governor General who is advised that the petitioner deserves the favor which he prays for.

Zenon Trudeau.

Deed part A in original

St. Charles, Upper Louisiana. In the year eighteen hundred and two, and on the thirteenth day in the month of February; Before us, Charles Tayon, Captain Commandant of St. Charles of the Missouri, was present James McDaniel, residing in the district of Missouri, who does acknowledge and confess by these presents to have voluntarily sold, ceded, left and abandoned for ever, himself and successors, unto James Mackay, Commandant of Saint André, and unto his successors, all the rights, titles, ownership and concession to and of a tract of eighteen hundred superficial arpents of land, granted to the said vender, by Mr. Zenon Trudeau, under date of the first day of February seventeen hundred and ninety-eight, situated on the River des Peres and bounded

south and in part east by the land of Mr. Papin, and everywhere else by the Domain of His Majesty

The said tract of eighteen hundred arpens, is sold as above-said, for value in Cash, which the said vender, acknowledges and declares to have, by these presents, already received of the said acquirer as a full price and consideration, which the said vender or his successors never can demand again of the said acquirer, his successors or assigns for the said land of eighteen hundred arpents.

In consequence whereof, the said vender, James McDaniel, for himself, and his successors, sells, cedes, leaves and renounces for ever from now, all his rights, titles, ownership and concession that he may have hereafter to and of the said tract of eighteen hundred superficial arpents, with all advantages whatever that may belong to him to and in favor of the said acquirer, James Mackay and his successors to whom the said vender gives immediate possession of the said tract of eighteen superficial arpents.

And moreover, the said vender, James McDaniel, for himself and his successors, binds himself, by these presents to give or cause to be given, to the said acquirer, James Mackay and his successors, a valid and lawful title for the said tract of eighteen hundred superficial arpents as soon as him the said vender or any other person for him may obtain the legal title to the said land from the Government of this Province

And moreover, the said vender for himself and his successors, gives by these presents full and complete power to the said acquirer and his successors to claim and receive (when he thinks it proper) the said lawful title from the

Government, and from any individual who may have the same in his possession.

The said acquirer being satisfied, declares by these presents to be sole owner of the said land of eighteen hundred superficial arpents.

In faith whereof, the said vender James Mc. Daniel has accepted and signed the presents after reading thereof being made, in the presence of the undersigned witnesses and as the said Commandant;

James Mc. Daniel - Thomas Rogers - Isabella Mackay, Jacques Mackay & Charles Tayon, hors James Mackay, Commandant of St. Charles, and St. Andrew, do certify that the present copy is conformable to the original filed in the archives of this post.

James Mackay

St. Andrew the 11th September 1804.

Richard Caulk

Survey

Part B, in original

Upper Louisiana, District of Saint Louis of Illinois.

Note. The posts set at all the corners and those set on the lines at the distance of 20 arpents between each other are all shown on the figurative Plat.

All the line-trees were marked with one notch above two blazes, and those on the right and left of the lines were blazed only.

Registered in book B of the surveys for said post, folio 3 No 3.

I, Antoine Soulard, Surveyor particular of Upper Louisiana, do certify that on the twenty ninth of the past year, in virtue of the annexed decree of the Lieutenant Governor of this Upper Louisiana, Don Zenon Trudeau, dated the first of February one thousand seven hundred and ninety eight, I went to the land of James Mc. Daniel, first owner of said land, which has since passed to

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James Mackay, as appears from the original deed of sale hereto annexed, executed in his favor on the 13th of February 1802, before the Commandant of St. Charles of the Missouri, Charles Tayon, in order to survey the same, conformably to his request for eighteen hundred superficial arpents.

Said survey was taken in presence of the owner, and the adjoining neighbor, with the perch of Paris, eighteen feet long, according to the custom of this province of Louisiana and regardless of the variation of the needle, which is 7 degrees 30 minutes east, as appears from the foregoing plat.

This land is situated at about 2½ miles W. N. W. of this town of Saint Louis, bounded on the north and west by the vacant lands of the Royal Domain; east in part by the same domain and part by the land of Mrs. Maria Louisa Papin, and South by the said land of Mrs. Papin, and the vacant lands of the Royal Domain, and in order that the same be available wherever needed, I give the present certificate with the foregoing illustrative plat on which are shown the natural and artificial dimensions and limits around said land,

St. Louis of Illinois 15 March 1803.

Antonio Soulard, Surveyor Particular.

St. Louis 6 April 1858

I have correctly translated the foregoing

Adolphe Renard

Also United States Survey No. 2033. of the confirmation, as follows,

20.

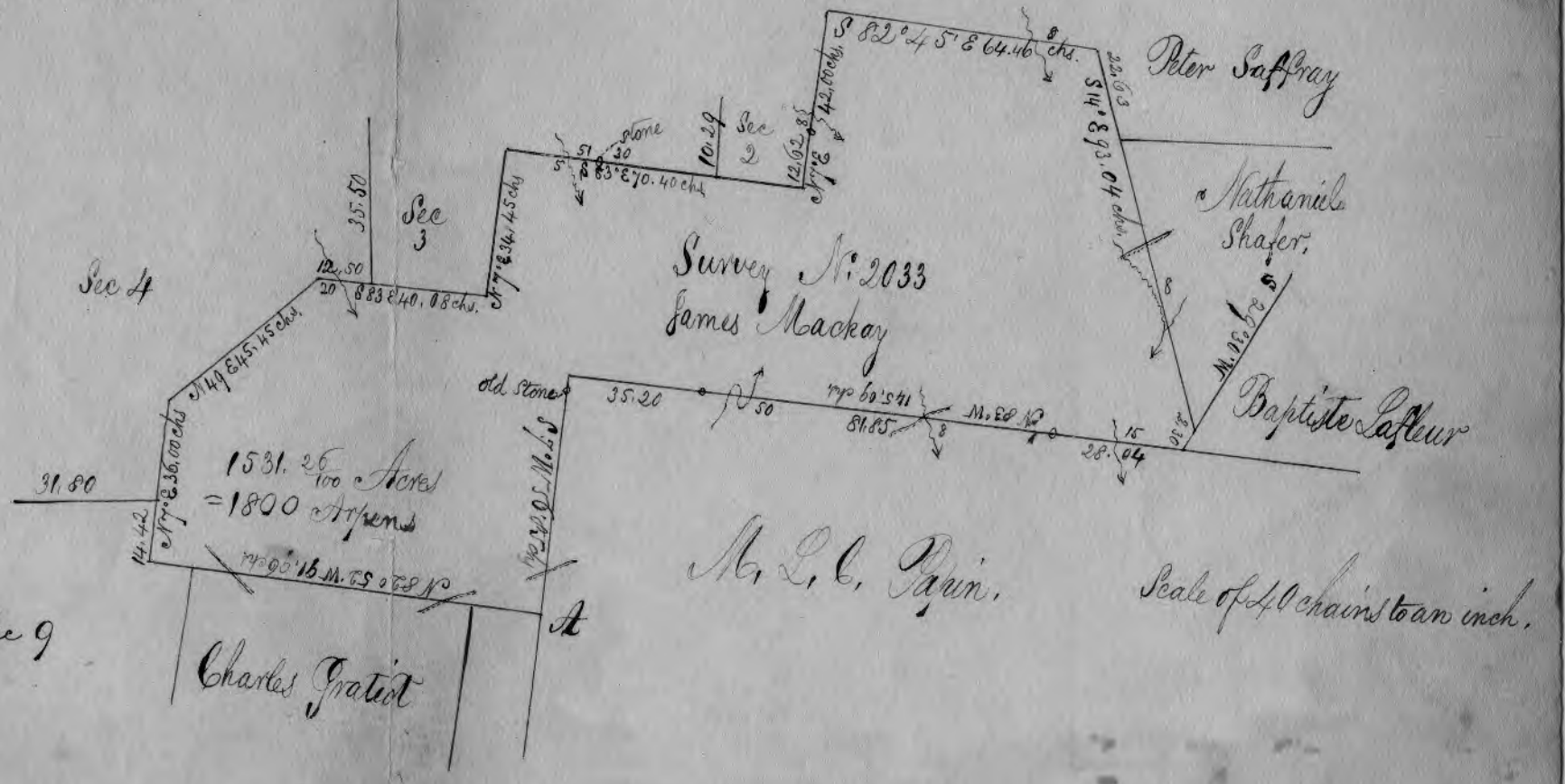
U. S. Survey

No. 2033

Surveyed for James Mackay who claims in right of James Mc. Daniel 1531 acres and 25/100 of an acre equal to 1800 arpens;
Beginning at a stone in Papins western boundary, where Mackay's southern boundary intersects it (there being no old corner found) there set for corner a lime stone about 4 inches thick 20 inches long and sixteen inches wide, with the small end down, and with the edge to the west, thence N. 82° 52' W. 17.58 chains the N. E. corner of Charles Gratiot's Survey of 500 arpens, thence continue along his old line, which is also Mackay's line, 21.00 chains (counting from the beginning) intersect Bonhomme road 74.00 chains against intersect Bonhomme road, 82.15 chains

M. A

Townships 45 & 46 North Range 6 East of the 5th principal Meridian.



Grafiot's N.W. corner 91.96 chains Mackay's old corner, which is a post oak 18 inches diameter, from which a Black Jack 10 inches in diameter bears east 5 links and a Post Oak 20 inches in diameter bears S. 72° W. 39 links (The course of this line as here given is deduced from a random line run N. 83° W, which random line fell 20 links southward of the corner, the old line being generally plain and sufficiently straight) Thence with Mackay's old line plainly marked, N. 7° E. 14.42 chains intersected the line between sections 4 & 9 in Township 45 north of the base line, in range 6 east of the 5th. principal meridian, where set a post from which a Black jack 18 inches in diameter bears S 4° W. 58 links, and a black jack 10 inches in diameter, bears N 2 4° W. 112 links, thence west between these said sections 4 & 9, 31.80 chains to the corner of sections 4, 5, 8 & 9; return to the corner of these fractional sections (4 9) on Mackay's line, and from said corner continue N. 7° E. 21.58 chains, making this whole line of Mackay's 36.00 chains long, set a stone for a corner (the old corner not being found) 4½ inches thick 14 inches broad, and 21 inches long (a lime stone) set with the smaller end down, the edge to the north east — October 28th. 1828: From the above mentioned stone corner, a Post Oak 18 inches in diameter bears N. 76° E. 144 links and a Post Oak 10 inches in diameter, bears S. 73° W. 85 links, thence N. 4 9° E. 45.45 chains set a lime stone for corner 4 inches thick, 20 inches long, and 14 inches wide, the edge to the east, set 9 inches in the ground, from this corner stone a Post Oak 4 inches in diameter bears S. 48° W 15 links, and a Pin Oak 5 inches in diameter bears N. 33° E. 70 links, thence S. 83° E. 5.50 chains the middle of a creek 20 links wide, bearing S. 50° E, 12.50 chains intersected the line between sections

22 384 in Township 45 North of the base line in Range 6 east of the 5th. principal Meridian, set a post at this intersection for the corner of these said fractional sections, from which post a black oak 12 inches in diameter bears N. 20° W. 65 links and a Black Oak 12 inches in diameter bears N. 24° E. 145 links, Thence north between said fractional sections (384) 35.50 chains to the section corner, as well as can be ascertained from the bearing trees which are a few links contradictory return and proceed from the corner of these fractional sections (384) on Mackay's line and counting from said corner S. 83° E. 27.58 chains, old corner of this survey, being a Black Jack 15 inches in diameter, from which a hickory 15 inches in diameter, bears S. 39° W 56 links, and a Black Jack 8 inches in diameter bears N. 60° E. 86 links.

The whole length of this line is 40 chains 08 links, thence along Mackay's old line N. 7° E 34.45 chains old corner of the survey and now corner to fractional section 3 in Township 45 North of the base line and Range 6 east of the 5th principal Meridian being a black Jack now cut down, set a line stone for corner 3½ inches thick, 14 inches wide and 16 inches long, set 7 inches in the ground the edge to the east, from it a Black Jack 24 inches in diameter bears S. 41° E 78 links and a Black Jack 12 inches in diameter bears S 27° W. 85 links, thence along Mackay's old line S. 83° E. 15.80 chains a branch 5 links wide bears southward 22, 00 chains a stone of old set, in the line, 51.30 intersect the line between sections 283 in Township 45 North of the base line and Range 6 east of the 5th. principal meridian, where set a post corner to said fractional sections (283) from which a black oak 15 inches in diameter bears S. 31° W 100 links, and

Recorded 3d. March 1830.

a Black Jack 10 inches in diameter bears S. 16° E 74 links, from this post, run along the old line North between these sections 2 and 3, 10.29 chains set a stone (May 16th. 1829) a lime stone 19 inches long, 4 inches thick, 12 inches broad set 8 inches in the ground, with the edge South, this stone is corner to sections 2 & 3 in township 45 north and 6 sections 34 & 35 in Township 46 North Range 6 East, return to the afore-said corner of said fractional sections 2 & 3 in Mackay's line, and continue along his line (counting the measure from the commencement of it, S. 83° E. 70.40 chains, being the whole length of this line to the old corner (as formerly shown by Mr. Mackay) now down and gone, set a lime stone for corner of this survey, and of fractional section 2 in Township 45 North of the base line in Range 6 east of the 5th. principal meridian, which stone is 4 inches and a half thick, 16 inches wide and 24 inches long, set 10 inches deep with the edge to the North and from which a Black Jack 12 inches in diameter bears S. 37° W. 61 links and a hickory 4 inches in diameter bears N. 85° E. 68 links, thence N. 7° E along Mackay's line 12.62 chains intersected the Township line at which point set a stone about 2 feet long, 4 inches thick 13 or 14 inches broad at the upper end set about twelve inches deep the edge to the west, from this stone an unmarked cotton wood 15 inches in diameter, standing in the branch bears N. 58° E about 230 links, this stone is a corner of a New Madrid location of 640 acres in the name of Andrew Robertson, and of fractional section 2 in Township 45 North of the base line and Range 6 east of the 5th principal meridian, 15.00 chains a branch 8 links wide bears S. 25° E 42.00 chains set a lime stone for corner to Mackays and Robertson's survey which stone is 4 inches thick, 24 inches long and 17 inches broad small

This claim having been confirmed to James McDaniel or his legal representatives by an act of Congress approved the 4th of July 1836. This survey therefore is approved this 19th. day of January 1841, and adopted as the survey under said confirmation, The No. of the Survey (2033) is retained

William Mulburn Surveyor of the public lands in Illinois and Missouri.

end set 10 inches in the ground edge to east, a hickory 12 inches in diameter bears N. 35° E. 100 links (old bearer) and a black jack 14 inches in diameter bears N 22° W 110 links, thence S. 82° 45' E 50. 00 chains a branch 8 links wide bears generally S. 12° E. 64. 46 chains set a lime stone for a corner of this survey, and of the location in the name of Peter Saffray, this corner is in the edge of the Ste. Charles road, the stone is 14 inches thick, 24 inches long and 14 inches wide, from this stone to a stone formerly set as the corner of these two Surveys the course is S. 83° E. and distance 260 links, the former corner is removed, from the stone in the Ste. Charles road as above described and which is now the corner of these two surveys (of James Mackay and Peter Saffray) S. 14° E. 22. 63 chains set a post in the Township line at its intersection with Mackay's eastern boundary which is a corner to said Saffray's survey and to survey in the name of Nathaniel Shafer and from which corner a Pin Oak 8 inches in diameter bears N. 47° W. 125 links and a Pin Oak 10 inches in diameter bears N. 34° W. 144 links, (both trees stand in a drain which bears southwest, into the branch not far off) 40. 00 chains quit for the day 29th October 1828: 48. 00 chains middle of road by Watson, 52, 50 chains a branch 8 links wide continue down it, 62. 00 chains left the branch bearing southward 68. 00 chains touched the branch where a drain puts in from the East, and from whence the branch bears southward 93. 04 chains intersected the N W. boundary line of Baptiste Lafleur's survey where set a lime stone about 19 inches long, 14 inches thick and twelve inches broad, set 8

inches deep, the edge to the south westward, from this last corner on Laflevrs line I am directed by the repre-sentatives of said Mackay (to avoid the interferance that would exist by extending his eastern boundary acrofs said Laflevrs survey to Papins northern boundary) to run with said Laflevrs N. W. boundary thence S. 29°30' W 2.30 chains intersected Papins northern boundary and set a stone which is the most western corner of said La-flevrs survey and is also a corner of Mackays survey, this stone is 3 inches thick 29 inches long and 20 inches wide, thence N. 83° W with Papins line, 15.49 chains a branch 15 links wide bears southward 28.04 chains old line between sections 182, 56.79 chains a branch 8 links wide, (where a road crofses) bearing south, 101.39 chains a creek 50 links wide, 103.29 chains cut a bend of the creek below the first intersection, 106.29 chains left the Creek bearing south eastwardly 109.89 chains in-tersect old line between sections 283, 145.09 chains whole length of this line to Papins old north west corner asset by U. States deputy Surveyor heretofore, it is also a corner of Mackays survey from this corner a Black Jack 10 inches in diameter bears S. 43° E. 56 links, and a hickory 12 inches in diameter bears N. 52° W. 64 links, the same bearers heretofore taken, thence S. 7° W with Papins west boundary 145 chains an old stone 48.50 chains Bonhomme road, 56.85 chains the beginning corner stone in Papins west boundary. May 1829.

Joseph. C. Brown Deputy Surveyor

Office of the Surveyor General for Illinois and Missouri.

Saint Louis January 13th 1857

The foregoing plat and description of Survey No. 2033 is correctly copied from pages 55, 56 and 57 of record book C on file in this office

Jno. Loughborough Surveyor General

Also a deed of James Mc Daniel to James Mackay dated Feby. 13th. 1802 as follows

Deed of Jh Mc Daniel to J. Mackay

No 1141. St. Charles Haut Louisiane, L'an mil huit cent et deux le treizieme jour du mois de Fev. pardevant nous Don Charles Tayon, Cajité Commandant du St. Charles du Missouri, fut present James Mc Daniel habitant de la Districte de St. Louis qui reconnait & confesse par ce present d'avoir vendue volontairement, et cede delaisser et abandone pour toujours pour lui meme et ses successeurs a Jaque Mackay Commandant de St. Andre, et a ses successeurs tout droit titre propriété et concession d'une terre de dix huit cent arpens en superficie (concédé au dit vendeur par Mr. Zenon Trudeau en date du premiere de Fevrier mil sept cent et quatre vingt dix huit) et situé sur la Rivière des Peres et Coupé sur la cote du sud, et une partie de l'Est par la terre de Mr. Papin et partout ailleurs par le domaine de S.M. la dite terre de dix huit cent arpens est vendue comme ci dessus pour valeur reçu en argent comptant que le dit vendeur reconnait et declare par ce present avoir deja reçu du dit acquereur Pour tout prix et consideration que le dit vendeur ou ses successeurs puis jamais demander du dit acquereur ou ses successeurs ou representant pour la dite terre de dix huit cents arpens; En consequence

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de quoi le dit vendeur (James Mc. Daniel) pour lui meme et
ses succeseurs vende cede delasse et renome pour toujours et
de ce moment tout ses droits titres propriété et conceseun
qu'il ai angu'il pent avoir à l'avenir au ou pour la
dit terre de dix huit cents arpens en superficie ainn tous les
avantages quel conque lui appartenant an et en faveur
du dit acquereur (Jacque Mackay) et à ses succeseurs
au quelle le dit vendeur done possession immediatement
de la dit terre de dix huit cents arpens en superficie Et de
plus le dit vendeur (James Mc. Daniel) pour lui même et
ses succeseurs s'oblige par ce present du donner ou faire
donne au dit acquereur (Jacque Mackay) et a ses succesaurs
en titres solide et légitime pour la dit terre de dix huit
cents arpents en superficie aussitot que lui le dit vendeur
au tout autre pour lui puis obtenir les titres legaux pour
la dit terre du Gouvernement de cette province Et de plus
le dit vendeur pour lui même et ses succeseurs donne par ce
present plein et entier pouvoir au dit acquereur et à
ses succeseurs de reclamer et recevoir (quand ils jugeront
a propos) les dit titres legaux du Gouvernement et de tout
autre qui pent les avoir en leur possession, le dit acquereur
etant connu et déclare par ce present d'etre seul proprietaire
de la dit terre de dix huit cents arpens en superficie,
En foi de quoi le dit vendeur James Mc. Daniel a acceptee
et signe la present apres lecture faitte en presence des
temoins soussignes et nous le dit Commandant,

Thos. Rogers James Mc. Daniel Isabella Mackay

Charles Tayon Jacque Mackay.

Copie donne

Recorded April 13th. 1825 Archibald Gamble Clerk

28 Delivered to L. C. Lawless for Mrs. Mackay.

State of Missouri } ss.
County of St. Louis } I the undersigned Recorder for said County certify that the foregoing is a true & complete copy of a deed from J. McDaniel to James Mackay & also of the date of recording thereof as fully as the same remains of record in my office in Archives Vol. 1 page 173

Seal Witness my hand and official seal this 9th May 1857

C. Keemle Recorder

per Benj. B. Hicks Dept.

Translation. St. Charles Upper Louisiana in the year one thousand eight hundred & two on the thirteenth day of the month of February, before me Dn. Charles Tayon commanding Captain of St. Charles in Missouri, was present James McDaniel, an inhabitant of the District of St Louis who acknowledges and confesses by these presents, to have voluntarily sold ceded relinquished & for ever abandoned, as well himself, as his successors, to Jacque Mackay, Commander of St. André and to his successors, all his right to, ownership & concession of a tract of land of eighteen hundred arpens superficial measure, (granted to the said vendor by Mr. Zenon Trudeau, on the date of the first of February one thousand seven hundred and ninety eight) and situated on the river des Peres and bounded, on the southern hill, & in part on the east, by Papin's land & everywhere else by the King's Demesne.

The said land of eighteen hundred arpents is sold as above said, for value received in Cash money which the said

vendor acknowledges & declares by these presents to have al-
-ready received from the said purchaser, for the whole
price & consideration that the said vender or his successors
can ever claim from the said purchaser or his successors.
In consequence of which the said vender (James McDaniel)
as well himself as his successors, sell grant relinquish
& renounce from now & for ever, all his right title property
& concession he has or may have in the future of in & to
the said land of eighteen hundred arpents in superficy, to-
-gether with all the advantages whatsoever thereunto belong-
-ing unto the said purchaser (Jacque Mackay) & his
successors, to whom the said vendor gives immediate
possession of the said land of eighteen hundred arpents
in superficy, And moreover the said vendor, (James
McDaniel) binds himself and his successors by these
presents to give or cause to be given to the said purchaser
(Jacque Mackay) and to his successors a good & lawful title
for the said land of eighteen hundred arpents in superficy,
as soon as he the said vendor or any one for him can
obtain the legal titles to the said land from the Govern-
-ment of this province, and he the said vendor & his suc-
-cessors also give by these presents full power to the said
purchaser & his successors to claim & receive (when they will
deem it fit & proper) the legal titles from the Government
and any one who may have them in his possession; the
said purchaser being known & declared by these presents
to be the only owner of the said land of eighteen hundred
arpents in superficy

In testimony whereof the said vendor James McDaniel
has accepted & signed these presents, after the reading of the

same made in presence of the undersigned witnesses & me the said Commander,

Thos. Rogers James. McDaniel Isabella Mackay
" Charles Tayon Jacque Mackay.

(copy given)

Also the will of James Mackay & Probate thereof & letters testamentary to Mrs. Mackay & Soulard & renunciation by Long as follows.

Will of Jas. Mackay.

I James Mackay second son of George Mackay Esqr. of Ar-richliney and Elizabeth McDonald Parish of Kildonan and County of Sutherland North east part of the Kingdom of Scotland Late command^t. of St. Andrew upper Louisian-na do declare to all whom it may concern that though I am now in perfect health yet not knowing how soon it may please the Almighty Lord of the Universe to call me to Eternity and it being our duty to put our affairs in order before that awful period and leave as little as possible to trouble our last moments, I will & do requir_ by these presents that after my death all & every my property real & personal shall be dis-
1st. posed of in the following manner, to wit_ Section 1st. I leave & bequeath to my dear Mother Elizabeth McDonald, mentioned in the above preamble fifty pounds sterling money as a mark of my filial duty and affection towards my excellent & surviving parent and in case of her death, the said money to go to my sister Catherine.

2d Section 2d. I leave & bequeath to my three Nieces, Eliza, Mary, & Matilda all three children of my eldest brother John Mackay & of Elizabeth Michean his wife late of Statten Island

31 New York & now deceased, seven hundred & fifty dollars money of the United States, that is to say, two hundred & fifty dollars each of them my said nieces

3d. Secn. 3rd. I leave & bequeath to Mr. John Long of Gravois & Elizabeth Bennett his wife (my father & mother-in-law) fifty dollars each as a mark of my friendship for their kindness to my children whom I hope they will not forget when fatherless & unprotected, & I leave & bequeath to my faithful friend Anthony Soulard Esqr. of St. Louis late Surveyor General of Upper Louisianna fifty dollars to buy him a Jewel in memory of our long & sincere friendship —.

4 Sectn. 4th. It is my special request that all the above mentioned legacies, amounting in all to the sum of eleven hundred & twenty three dollars money of the United States as also the money necessary for defraying the expences of raising & remitting the same shall be made & raised out of any part of my personal or real estate which may be the least determental or injurious to the interests of the rest of my property, and that the whole of said legacies be remitted and paid to the several legatees as hereabove mentioned within one year after my decease or as soon after as possible,

5 Sectn. 5th. I leave & bequeath to my three sons, John Zeno, George Anthony & James Bennett all my fire arms, my watch and all my musical & mathematical instruments, all my books, charts, journals, official & familiar letters & papers of every description, & my spy glass, my desk & book case, all of which I hope my dear boys will make good use of in due time, with that regard to Justice Friendship & harmony which ought ever to exist between Brothers,

and in the event of any of them every article mentioned in this section shall to the survivors or survivor.

6th. Sectn. 6th. I give leave & bequeath to my beloved wife Isabella S. Mackay or to her heirs or assigns in absolute right forever whether she remains a widow or marries again one negro man and negro or mulato woman or girl to be chosen by her from among my slaves, two horses or mares & two cows & calves all to be chosen by her out of my stock, our carriage & harness, our best bed & bedstead with all its cloathing & furniture compleat all our silver plate all her own cloathing & jewels, our cloaths, press and the largest cup board, a table of her choice & twelve chairs, & all the kitchen utensils, also two hundred dollars in Cash her looking glass and four hundred arpens of land french superficial measure with all its appurtenances, provided the said land shall be chosen by her or by any other at her request and in one or two prices at most, to be taken in such a shape as will not injure materially the rest of the tracks of land out of which the said piece or prices are taken, my said wife to choose the said four hundred arpents out of any land I own, excepting the land including my salines, my two plantations on Gravois, my town lots in St. Louis & Carondelet & my plantation & land south of St. Louis on which my mansion dwelling house stands, but the whole of the said property bequeathed to my said wife as specified & contained in this section is left & bequeathed to her by me on the express & irrevocable condition that the said four hundred arpens or any part thereof or anything else bequeathed to her my said wife by me & mentioned in this section shall never be sold

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mortgaged executed alienated or disposed of in any manner or on any pretence or for any debt or debts dues or demands or any cause whatsoever or taken or possessed by any person or persons whomsoever without first obtaining and having the free will & consent of my said wife to the sale disposal or alienation of said property or any part thereof thus bequeathed by this section provided that if such sale or disposal of said property shall be made in the presence of my son John Zeno or one of my executors hereafter named in this my will, such sale to be written & passed & acknowledged before a magistrate & signed sealed & delivered freely & voluntarily by my said wife whose deed or conveyance made as heretofore specified & with the advice & consent of (at least) one of my said executors who may act at that time it shall be a legal deed to convey whatever property she my said wife may & will as aforesaid sell to the purchaser, and provided also that my said wife shall have free liberty to bequeath by will or testament whatever part of the property bequeathed to her by me as aforesaid which may remain at her death to any person or persons to whom she may choose to leave & bequeath the same according to her free will & pleasure, and it is my will that my said wife shall remain in full possession of my mansion house & plantation belonging thereto (situated near St Louis Bridge) during her natural & single life, but no longer, and that all my children while single shall enjoy in common with her the benefits of said house & farm

7 Sect^n 7th. It is my special will & request that all the residue
3 and remainder of my estate real & personal goods & chattles of whatever nature, quality or quantity they may be, shall be and remain to and with my said beloved wife Isabella A. S. Mackay while she remains a widow & my seven children

John Zens, George Anthony, James Bennett, Eliza Lucy, Catharine Mary, Jean Julia and Emilia Anne, and that my said wife and all my said children do & shall, have & hold the same said property & estate in common between them for their common use & benefit during the minority of my said children, and my said beloved wife is hereby directed & authorized by and with the advice of my executors hereafter named to provide & take & use out of said property real & personal whatever may be necessary & sufficient to support & maintain herself & said children in a plentiful, decent and becoming manner & in wise inferior to the manner they lived with me and to give good Education to my said daughters & a classical education to my said sons, and to dispose of as much of said property & estate real & personal as will be sufficient to pay & defray all costs and expences due & accruing on account of each & every thing done or performed by virtue of this section & when any of my said children becomes of age or gets married with the consent of my said wife & desires & requires to get a share of said property. Then (and not till then) an Inventory shall be taken & an appraisement made under the direction & management of my executors hereafter named of the whole of my said property & estate already mentioned in this section, and which may be remaining at that time, and (after deducting therefrom and saving the necessary expences & sum to finish the education of my said children as above specified) shall be divided into eight equal shares of which seven shares shall go my said seven children, i.e, an equal share to each of them, and the remaining eighth share shall go to my said wife Isabella who shall have & hold the same during her natural & single life for her better support and maintenance which share she shall take in such things as may

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suit her, and my said executors shall sell such parts of said estate as may be for the interest of the heirs & such things as can not be divided between them, and from and after the day that this division is made those of my said children who shall remain still with their mother my said wife or under her care shall make to her a reasonable compensation each of them out of his or her own share for all expense she my said wife shall be at on their account. But it is my will & request that if my said wife do marry again, she shall immediately remove from my said mansion house & plantation & from & after the day of her so marrying shall have no right to the possession or benefit of said mansion house or plantation or any part thereof unless my said children shall be disposed to allow her to remain with them in said house or on said plantation during their pleasure and immediately after the day that my said wife shall marry as aforesaid I will that my executors shall take all my estate real & personal from her & out of her possession (except the property & land which I bequeathed to her in absolute right as specified in the foregoing section the sixth) and if not appraised before to take Inventory of the whole & keep it safe or dispose of what parts of it that are perishable, to the best advantage for the benefit of my said children leaving the real estate to be divided and appor-tioned equitably & in equal shares among my said seven children as they get married or come of age and to be drawn by lot or otherwise as may seem best & just & all the personal estate also which remains at the time of taking said Inventory and not included in foregoing section the sixth shall be equally divided among my said Seven children provided nevertheless that my executors hereafter named and who may act at the time shall have power

to dispose of as much of the said personal or real estate at any time as may be necessary for the good & decent manteinance and education (as above mentioned already in this section) of my said children, and in case my said wife do marry again as aforesaid I will that my said children shall be taken taken from her by my said executors and placed at school or some other good place except such as they may think proper to leave with their mother to whom they shall pay a reasonable compensation for their mantainance and I fondly hope that my said executors will always remember that the charge I leave to them are helpless orphans and the off-spring of a friend; and a father who has not one relation on this side of the Ocean to take their part, to guide them in the way they ought to go, to relieve them in their distress & guard them against a crafty & corrupt world, consequently will act as fathers to my dear children after I have mouldered in the Tomb, see that they are treated with justice & humanity & brought up with decency and in the principles of virtue, religion & morality.

8 Sectn. 8th. It is my will & request that after my said wife has received the property I bequeathed to her in absolute right and all the foregoing legacies being paid to the legatees, and prior to any division being made of the remainder of my estate among my said children; my executors hereafter named & who may act at the time shall take out of the said remainder of my estate one thousand dollars lawful money or the value thereof in real estate to be safely keept by my said executors and their successors for the express purpose of affording relief & support to my said wife in case of her being reduced to poverty or want in consequence

37 of the misconduct of her future husband or other accidents or circumstances so as to need such relief and to furnish her from time to time with such small sums as she may need while the said one thousand dollars or any part thereof remains, and it is my most earnest request & desire that my said executors shall never suffer or allow my said dear & beloved wife to want, or be without a comfortable maintainance while there is any of the said thousand dollars left or remaining, and if the said thousand dollars be left & kept in real estate, my said executors shall dispose of the same to the best advantage & for the benefit of my said wife in the manner aforesaid, and whatever is left of the said thousand dollars at the death of my said wife, I do authorize & empower her by these presents to will & bequeath it as she (my said wife) may think proper and to any person or persons whom she may think deserving and who may have acted the most dutiful towards her of which she shall be the sole Judge and it is my will & desire that my said dear wife shall be & remain Guardian to my said children while she remains a widow but no longer & if she marries again my eldest children to be guardians to the youngest of them, provided they act as such with the advice of my excellent friend Mad^me. Julia Carré Soulard who I know will be the faithful freind of my dear orphans, And I charge my dear & beloved wife & children by the regard they owe to my memory that in whatever situation they happen to be to continue during their lives in that duty & attachment which by nature they owe to each other and which is so essential to their welfare & never to forget that God will reward them according to their deeds.

9 Sec^tn. 9th. It is my will & request that in case any child or children shall be born to me by my said dear wife Isabella

after the date hereof such child or children shall inherit his her or their share & portion of my said estate equally with my children herebefore named & in the same manner & on the same conditions as expressed in this my will, and in as ample a manner as if she he or they had been mentioned by name herein
10 Sectn 10th. It is my will & request that while my before said wife remains a widow none of my daughters before mentioned shall marry with out her consent & that any of them who acts to the contrary shall receive no part or share of my aforesaid estate or property real, personal or mixt except one dollar, & that all the remainder of the equal share mentioned in the foregoing sectn. 7 & intended for her "such daughter" shall be equally divided among the rest of my said children.

I leave & bequeath to my youngest brother George now in the Island of Cape Breton near Nova Scotia Four hundred dollars to be taken & remitted to him or his heirs in the same manner as the other legacies mentioned in the foregoing part of this my will.

And I do by these presents nominate constitute & appoint my good trusty friend Mr. John Long my father-in-law of Gravois & Coll. Anthony Soulard of St Louis & my said dear wife while she remains a widow & no longer to be joint executors of this my last will & testament & my oldest son John Zeno as soon as he is twenty one years of age to be joint executor, of this my will & testament and on the demise of any of my said executors, I will that the survivors of them (my said executors) shall choose another to replace such deceased executor taking care to choose a friend to my family.

And it is my special will & request that no Court or law whatever which do exist, or may or shall exist shall ever

meddle or interfere with anything concerning this my will & testa-
-ment or my property or estate specified therein & that all
difficulties which may or shall occur respecting the same or
any part thereof shall be settled by the arbitration of friends
and honest men chosen by those concerned for that purpose.
And I do declare this to be my last will & testament hereby
revoking all former wills & testaments by me made.

In testimony whereof I have hereunto set my hand &
seal at St. Louis, State of Missouri this seventh day of Novem-
-ber year of our Lord one thousand and eight hundred &
twenty nine - nine words interlined before signed & the
word "made" in the margin.

(signed) James Mackay (Seal)

In explanation of and to remove all doubt that might here-
-after arise upon my intention expressed in the tenth section
of my will as above written I hereby declare it to be my will
that if any of my daughters shall marry or shall have married
without my consent or without the consent of my said wife
that in such _ she or they shall be entitled only to an estate
for & during the term of their & each of their lives respectively in
that portion of my property hereby bequeathed & devised to
each & any of them & each of their children shall be entitled
to the absolute property to said portion & portions after the
death of each of them respectively & it is my will that in
case said daughter or any of them so marrying without
consent as aforesaid shall die without lawful issue then &
in that case her or their respective shares & portions
should & shall become distributable in equal shares to my
surviving children & their legal representatives.

In testimony whereof I have hereunto set my hand this

sixteenth day of March One thousand eight hundred & twenty two, hereby republishing my said will as well as the clause or codicil aforesaid subjoined thereto.

(signed) James Mackay.

Signed & published in the presence of the witnesses hereunto who have signed & attested said will in presence of said testator & of each other.

L. C. Lawless — Cerré — P. Provenchere.

State of Missouri } ss.
County of St. Louis } We Luke. C. Lawless and Pascal. L. Cerré two of the subscribing witnesses to the last will and testament of James Mackay deceased do solemnly swear that we saw the said testator sign publish & execute the annexed as his last will & testament & we at his request signed the same as witnesses in the presence of each other & in the presence of the testator & further we believe that the said testator at the time of executing the said will was of sound & disposing mind.

(signed) L. C. Lawless — Cerré

Sworn & subscribed before me Deputy } (endorsed Filed Apl. 24th. 1822
Clerk of the County Court. }
(signed) John Bent dep. Clerk } John Bent dep. Clerk.

State of Missouri } ss
County of St. Louis } By the tenor of these presents I Silas Bent Clerk of the County Court in & for the County aforesaid do make known unto all men that on the twenty fourth day of April in the year of our Lord one thousand eight hundred & twenty two, before me was duly & legally proven the last will & testament of James Mackay deceased (a true copy whereof is to these presents annexed) and be having whilst

41. he lived & at the time of his death divers goods chattels rights & credits within the said County, by reason whereof & the said Clerk, do grant administration of all & singular the goods, chattels, rights & credits &c. &c.

In testimony whereof I have hereunto set my hand & official seal this 29th day of April in the year of Christ 1822.

Silas Bent Clerk.
by John Bent dep. Clerk.

(Recorded Apl. 29. 1822).

Renunciation by Long.

Know all men by these Presents that whereas, I John Long of Gravois in the County of Saint Louis have been named and appointed by James Mackay late of Saint Louis as one of the Executors of his last will and testament and whereas my age and situation render it impracticable for me to execute the duties of said Executorship.

Now know ye, that I, the said John Long do by these presents declare my intention not to undertake said Executorship and do renounce all right, power or authority under the will of said James Mackay or as Executor thereof to administer or dispose of in any manner the good, chattels and property of said Testator.

In witness whereof, I have hereto set my hand and seal this twenty sixth day of April one thousand eight hundred and twenty two.

John Long Seal

In presence of Eli Musick.

142. State of Missouri } SS.
County of St. Louis } I, William. F. Ferguson Judge of Probate of the County of Saint Louis, certify that the foregoing is a true copy of the Renunciation of John Long to act as one of the Executors of the last will of James Mackay deceased, as the same now remains on file in my Office.

In testimony whereof, I hereto set my hand and affix the seal of the Probate Court of Saint Louis County at Office in said County, this twenty fourth day of September A.D. eighteen hundred and Sixty.

Seal

William. F. Ferguson Judge of Probate

Letters testamentary

State of Missouri } By this tenor of these Presents
County of St. Louis } I, Silas Bent Clerk of the County Court in and for the County aforesaid do make Known unto all Men, that on the twenty fourth day of April in the year of our Lord one thousand eight hundred and twenty two before me was duly and legally proven the last will & testament of James Mackay deceased (a true copy whereof is to these Presents annexed) and he having whilst he lived and at the time of his death divers goods chattels rights and credits within the said County, by reason whereof I the said Clerk do grant administration of all and

singular the goods Chattels rights and credits which were of the said deceased to Isabella Mackay and Anthony Soulard, who were nam-ed as executors in the said will they having first been duly sworn well and truly to administer the Estate of the said deceased and to make a true and perfect Inventory of his said Estate and Exhibit the same into the office of the Clerk aforesaid as also to render a just account of their Executorship when thereto required.

(L. S.) In testimony whereof I have hereunto set my hand and official seal at Office this 29th day of April in the year of Christ 1822.

Silas Bent Clerk.

By John Bent Deputy Clerk.

State of Missouri } I William. F. Ferguson, Clerk of
County of St. Louis } the Probate Court of the County of St. Louis, certify that the foregoing is a true copy of the letters of Administration granted to Isabella Mackay and Anthony Soulard on the estate of James Mackay deceased, as the same now remains of record in the office of the Judge of Probate of the County of St. Louis.

In testimony whereof I hereto set my hand and affix the seal of the Probate Court of the County of St. Louis at office in said County this twenty sixth day of October eighteen hundred and fifty eight

(Seal)

William. F. Ferguson Clerk.

44 Also transcript of Judgment & Execution in case of B & J. Pratte vs James Mackay's Executors as follows

Judgt & Ex in case of Pratte vs Jas. Mackay's Exrs

State of Missouri } Be it remembered that on the eighteenth
County of Saint Louis } day of September in the year of our Lord
eighteen hundred and twenty four there
was filed in the office of the Clerk of the Saint Louis Circuit Court
a petition in the words and figures following to wit:

In the Circuit Court October Term 1824.
Saint Louis County SS.

Benard Pratte and Joseph Pratte plaintiffs
complain of Antoine Soulard Executor and Isabella Mackey
Executrix of the last will and testament of James Mackey
deceased of a plea of trespass upon the case upon promises
for that whereas heretofore in the life time of the said James
Mackey (who is since deceased) to wit on the twenty seventh day
of March in the year one thousand eight hundred and twenty
one at St Louis in the County aforesaid the said James
Mackey made his certain promissory note of that date
which is now here to the Court shewn, and thereby promised
the said plffs. by the name and description of B & J. Pratte or
order to pay them, Sixty days after the date of the said note,
the just and full sum of five hundred and eleven dollars
and fifty two cents with interest of ten per cent from
that date for value received.

And also for that whereas, heretofore, in the life time of
the said James Mackey, to wit, on the day and year
aforesaid at Saint Louis aforesaid the said James Mackey
accounted with the said plaintiffs of and concerning

4 5

diveis sums of money before that time due and owing from the said James to the said plaintiffs and then in arrear and unpaid, and upon that accounting the said James Machey was then and there found to be in arrear and indebted to the said plffs in a large sum of money, to wit five hundred and eleven dollars and fifty two cents, and being so found to be in arrear and indebted he the said James Machey in consideration thereof, undertook then and there faithfully promissed the said plaintiffs to pay them the said last mentioned sum of money, whenever the said James should be thereunto afterwards requested.

Nevertheless altho' the time specified in the said promissory note for the payment of the sum of money therein mentioned has long since elapsed, the said James in his lifetime and the said executor and Executrix since the death of the said James have not nor has either of them paid the said sums of money, or either of them or any part thereof, but so to do the said James in his life time and the said defendants since the death of the said James have hitherto wholly neglected and refused and the said defendants still do neglect and refuse to the damage of the said plaintiffs One thousand dollars and therefore they sue.

By their Attorney C. Babb.

Upon the filing of the foregoing petition a Summons was then issued to the Sheriff of the County aforesaid as follows

County of St. Louis ss }
The State of Missouri } To the Sheriff of said County: Greeting:

We command you to Summon Antoine

Soulard Executor and Isabella Imachey Executrix of the last will and testament of James Imachey deceased that they be and appear before the Judge of our Circuit Court at the next term thereof to be held at the City of St. Louis within & for the County of Saint Louis on the first Monday of October next then and there to answer unto Bernard Pratte and Joseph Pratte of a plea of trespass upon the case upon promises to the damages of said plaintiffs of One thousand dollars and have you then and there this writ.

Witness Archibald Gamble Clerk of our said Court at office this 18th day of September 1824.

Seal

Archibald Gamble Clerk.

Upon which Summons the Sheriff made his return as follows to wit:

We acknowledge the service of the within writ this 18th of September 1824.

Antoine Soulard Executor

Isabella Imachay Executrix

Executed this writ on Antoine Soulard and Isabella Imachay September 18th 1824 as appears from the above acknowledgment

John K. Walker Shff

by John Simonds Dep. Shff.

The following is a copy of the note filed as an Exhibit in the case.

Note

Sixty days after date I promise to pay to B & J. Pratte or order the full and just sum of five hundred and eleven dollars and fifty two cents with interest of ten per cent from this date for value received and settlement of all accounts to this day. St. Louis March the 27th 1821

James Imachey.

47 Witness. Herbert Gaion

And afterward to wit at the October Term A.D. 1824 on the 12 day of the month and year aforesaid the following plea was filed

Antoine Soulard Executor
Isabella Machay Executrix } In the Circuit Court.
vs October Term 1824.
B & J. Pratt

And the said defendants by their attorneys come and defend the wrong and injury where &c. and say that the said James during his life time did not undertake and promise in manner and form as the said plaintiff have thereof complained nor since the death of said James did they the said defendants undertake and promise in manner & form as the said plaintiffs have thereof complained against them and of this they put themselves upon the contrary.

Magenis Atty. for Defts.

And afterwards to wit at the March Term A. D. 1825 on the 25th of April in the year aforesaid the following Bill of Exceptions was filed.

In the Circuit Court March Term 1825

Machays Exrs. } Be it remembered that on the triae of
vs the above cause the plaintiff offered in
B & J. Pratt evidence a note purporting to be signed
by James Machey the testator but no evidence was given to prove that the signature to said note was in the hand writing of said Testator upon which said defendants Counsel moved the Court to instruct itself sitting as

a Jury that there was no evidence to prove that the said note was made by said testator and that in the absence of such proof, they must find for the defendant.

Instruction the Court refused to give respect to which opinion the defendants by their Counsel excepted.

Alexander Stuart (Seal)

And afterwards to wit at the Term aforesaid in the year aforesaid on the 17 day of May the following Bill of Exceptions was filed

B. Ratte vs Machey's Exrs. } Be it remembered that on the trial of the above cause the plaintiff produced a note purporting to be the one specified in the declaration and purporting to be signed by James Machey the deceased whereupon the said defendants by their Counsel objected to the said note being given in evidence unless the hand writing of said Machey were proved by competent witnesses, this objection was by the Court overruled and the said note permitted to go in evidence, to which opinion of the Court the said defendants by their Counsel except and render this their bill of Exceptions.

Signed & sealed by Alexander Stuart (Seal)

In the Saint Louis Circuit Court. October Term A.D 1824.

Wednesday April 20 1825

Bernard Ratte: Joseph Ratte vs Antoine Soulard Exr. Isabella Machey Exx. of James Machey } Now at this day comes the parties aforesaid by their respective attornies aforesaid and neither of the parties requiring a Jury

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720.12

all and singular the premises and by them submitted to the Court which being seen & heard and by the Court here fully understood, the Court do find as to the issue within joined between the parties aforesaid that the said James during his life time did undertake and promise and form as the said plaintiffs have thereof complained and since the death of the said James the said defendants did undertake and promise in manner and form as the said plaintiffs have thereof complained against them and they assess the damage of the said plaintiffs by them sustained by reason of the non performance of the promises and undertakings in the declaration mentioned to the sum of seven hundred and twenty dollars and twelve cents.

Therefore it is considered that the said Bernard Pratte and Joseph Pratte recover against the said Antoine Soulard Executor and Isabella Machey Executrix of James Machey deceased their damages aforesaid in form aforesaid by the Court assessed and also their cost and charges by them about their suit in that behalf expended, and that they have thereof execution, against the goods and chattels lands and tenements of the said James Machey deceased in the hands of the said executor and executrix to be administered.

And afterwards to wit at the July term A.D. 1825 on the 3d day of June the following execution was issued

State of Missouri County of St. Louis SS.

To the Sheriff of St. Louis County; Greeting:

Whereas Bernard Pratte and Joseph Pratte at our Circuit Court before our Judge thereof hath recovered against Antoine Soulard Executor and Isabella Machey Executrix of James Machey deceased the sum of seven hundred and

twenty six dollars and ten cents for their damages by them sustained by reason of the non performance of the promises and undertakings in the declaration mentioned and also their costs & charges by them about this suit in that behalf expended which to the said Bernard Pratte and Joseph Pratte were adjudged as appears to us of record.

These are therefore to command you that of the goods & chattels lands and tenements which were of the said James Mackay at the time of his death in the hands of Executors to be administered in your bailiwick you cause to be made the aforesaid damages and — costs and that you have the same before the Judge of our said Court on the fourth Monday of July next to render to the said Joseph Pratte and Bernard Pratte the damages and costs aforesaid and that you certify to our said Judge how you execute this writ.

Witness Archibald Gamble, Clerk of our said Court at St. Louis this third day of June in the year of our Lord one thousand eight hundred and twenty five.

Archibald Gamble Clerk.

Upon which execution the Sheriff made the following return.

This Execution was levied on the Real Estate described in the enclosed copy of the advertisement, copies of which were put in six of the most public places of my County, twenty days before the day of sale, to wit the 28th day of July 1825 at which time at the Court house door in the City of Saint Louis agreeably to said advertisement the same was offered for sale and the tract of 1500 arpents was purchased by John Mullanphy & J. Durst at the sum of eighty five dollars and on the 2d described tract of 800 arpents was struck

off to Jonas Barry at Sicty five dollars and the third tract described in said advertisement to F. Dent at seventy five dollars making in all $175.00 which deducting costs $15.60 satisfied of the damages $159.40 no other ppy. found in my County.

J. K. Walker Shff

Sheriff's Sale.

By virtue of a writ of Execution to me directed from the Circuit Court in favor of Bernard Joseph Gratte against James Mackey's Executor's I have levied upon and will sell for Cash to the highest bidder at the Court house door in Saint Louis, on Thursday the 28th day of July inst. between the hours of 9 & 4 A. M. all the right, title, claim, interest, estate & property that was of the said James Mackay dec'd in and to the following described real estate.

1st. A tract of land containing 1500 arpens (more or less) situated on the river Desperres being part of a tract of 1800 arpens granted to James Mc Daniel on the first of Feby. 1798 by Don Gno Sundeau and adjoine land granted to Mary L. Papin

2d. A tract of 800 arpens situated in the Prairie about 4 miles west of Saint Louis and includes the place called Cote Brillante unconfirmed

3d. A tract of land of about 200 arpens part and parcel of a concession to said Mackey situated south of Auguste Chouteau's hill tract bounded north by said Chouteau, west by vacant land, south by vacant land and land of A. Soulard and east by lands of A. Rutgers & J. Mullanphy.

Saint Louis July 6, 1825.

Gno. K. Walker Shff.

State of Missouri } I, Stephen Rice Clerk of the Saint Louis
County of St. Louis } ss. Circuit Court within and for said County

certify the foregoing transcript to be a true and correct copy of the Record and proceedings had in the within cause as fully as the same remains of record in my office.

In Witness whereof I hereto set my hand and affix the seal of our said Court at office in the City of Saint Louis this fifth day of April in the year of our Lord eighteen hundred and fifty eight.

(Seal)

Stephen Rice Clerk.

The plaintiff then offered & read in evidence a deed of the Sheriff of St Louis County to John Mullanphy & Frederick Dent dated the 28 July 1825.

Deed of Shff to J. Mullanphy & F. Dent.

To all to whom these Presents shall come,

I, John K. Walker, Sheriff of the County of St Louis, in the State of Missouri, send Greeting:

Whereas, a certain execution issued from the Clerk's office of the Circuit Court, within and for the County of St. Louis returnable to the July term of said Court, in the year of our Lord one thousand eight hundred and twenty five, in favor of Bernard Pratt and Joseph Pratt, against Antoine Soulard Executor and Isabella Mackay Executrix of James Mackay deceased, and the said Execution being directed to the Sheriff of the County of St. Louis, and to me the said Sheriff, delivered a copy whereof is hereunto annexed and makes a part and parcel of this deed; by virtue of which said execution I, the said Sheriff, on the sixth day of July one thousand eight hundred and twenty five, did levy upon and seize all the right, title, claim, interest, estate and property of the estate of the said James Mackay dec.d in

and to a tract of land situate about six miles northwest-
-wardly from the City of St. Louis on the river Des Peres contain-
-ing fifteen hundred arpens (more or less) being a part of a
tract of eighteen hundred arpens granted to James McDaniel
on the first day of February in the year One thousand seven
hundred and ninety eight by Don Zeno Trudeau which said
tract adjoins lands which were granted to Mary C. Papin
and the same having been advertised as the law directs, by
affixing six advertisements or hand bills, in the most public
places in different parts of my County, at least twenty days
before I exposed the same to sale, a copy of which said adver-
-tisement is hereunto annexed and which also makes a part
and parcel of this deed; by virtue of which said Execution
and advertisement, I did, on the twenty eight day of July
in the year one thousand eight hundred and twenty five
agreeably to the advertisement thereof, at the Court House
door, during the sitting of the Circuit Court of St Louis County,
expose to public sale, for ready Cash, all the right, title,
claim, interest estate and property of the said James Mackay
deceased, of, in and to the above described property, together
with all and singular the buildings, improvements, rights
privileges and appertenances thereunto belonging, and John
Mullanphy & Frederick Dent being the highest and last bidders
for the same, at the price and sum of Eighty five dollars, the
same was stricken off and sold to them the said John
Mullanphy and Frederick Dent.

Now therefore Know Ye, that I, John K. Walker, Sheriff as
aforesaid, for, and in consideration of the sum of Eighty five
dollars to me in hand paid by the said Mullanphy and
Dent the receipt whereof I do hereby acknowledge, and by

virtue of the authority in me vested by law, I do hereby transfer and assign to them the said Mullanphy and Dent all the right, title, interest, estate and property of him the said James Mackay deceased of, in and to the above mentioned and described property, that I might sell agreeably to law, as Sheriff aforesaid, by virtue of the aforesaid execution and advertisement, to have and to hold the same to them the said Mullanphy & Dent and to their Heirs and Assigns forever.

In Witness whereof, I, John. K. Walker, Sheriff of the County of St. Louis, have hereunto set my hand and seal, this eighth day of August in the year of our Lord one thousand eight hundred and twenty five, and of the Independence of the United States of America, the forty.

John. K. Walker Sheriff.

State of Missouri, County of St. Louis, ss.

To the Sheriff of St. Louis County, Greeting:

Whereas Bernard Pratte and Joseph Pratte at our Circuit Court before our Judge thereof hath recovered against Antonie Soulard Executor and Isabella Mackay Executrix of James Mackay deceased the sum of seven hundred and twenty dollars and ten cents for their damages by them sustained by reason of the non performance of the promises and undertakings in the declaration mentioned and also their costs and charges by them about their suit in that behalf expended, which to the said Bernard Pratte and Joseph Pratte were adjudged as appears to us of record.

These are therefore to command you that of the goods and

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chattels, lands and tenements which were of the said James Mackay at the time of his death in the hands of said Executors to be administered in your bailwick, you cause to be made the aforesaid damages and costs, and that you have the same before the Judge of our said Court, on the fourth Monday of July next, to render to the said Joseph Ratte and Bernard Ratte the damages and costs aforesaid, and that you certify to our said Judge how you execute this writ and have you then there this writ.

Witness, Archibald Gamble, Clerk of our said Court at St. Louis this third day of June in the year of our Lord, one thousand eight hundred and twenty five

(L.S.)

Archibald Gamble Clerk.

Sheriff's Sale.

By virtue of a writ of execution to me directed from the Circuit Court in favor of Bernard & Joseph Ratte against James Mackay's Executors, I have levied upon and will sell for Cash to the highest bidder at the Court house door in St. Louis on Thursday the 28th. day of July inst. between the hours of 9 & 4 A. M. all the right, title, claim and interest, estate & property that was of the said James Mackay dec'd in and to the following described real estate.

1st. A tract of land, containing 1500 arpens (more or less) situated on the river Des perres, being part of a tract of 1800 arpens, granted to James Mc. Dannel on the 1st. of February 1798 by Don Zeno Trudeau, and adjoins land granted to Mary L. Papin,

2d. A tract of 800 arpens, situated in the Prairie, about 4 miles west of St. Louis, and include the place called Cote Brillant, unconfirmed

3d. A tract of about 200 arpens, part and parcel of a concession to said Mackay, situated south of Auguste Chofteau's Mill tract, bounded north by said Chofteau, west by vacant land, south by vacant land & land of A. Soulard east by lands of A. Rutgers & Mullanphy.

St Louis July 6. 1825 John. K. Walker Sheriff.

State of Missouri } Be it remembered that on the tenth day
County of St. Louis } of August in the year one thousand eight
hundred and twenty five, John K. Walker
Sheriff of the County of St Louis personally appeared in open
Court and acknowledge the execution of the within deed from
him as Sheriff to John Mullanphy and Frederick Dent therein
named, which said acknowledgement is entered on the
records of the Court of that day.

Given under my hand and seal at office at Saint
(Seal) Louis the tenth day of August in the year
eighteen hundred and twenty five,

Archibald Gamble Clerk.

State of Missouri } ss.
County of St Louis } I certify that the within instrument
in writing is duly recorded in my
office in book W page 358 and following.

Given under my hand and seal of office the
(Seal) 17th. of August 1825.

Archibald Gamble Clerk,

to the giving of which in evidence the defendants objected

The plaintiff gave the following evidence written & oral.
Deed of Mackay to J. Murphy dated 5 Nov. 1821, as follows.

57.

Deed of Mackay to J. Murphy

This indenture made the fifth day of November in the year One thousand eight hundred and twenty one between James Mackay of St. Louis & Isabella his wife of the one part & James Murphy of the River des Peres in the County of St. Louis State of Missouri, of the other part, Witnesseth: that the said parties of the first part, for and in consideration of the sum of one thousand dollars to them in hand paid by the said party of the second part, have granted, bargained, sold released and confirmed & by these presents do grant bargain sell release and confirm unto the said party of the second part & to his heirs and assigns forever all that piece or tract of land containing one hundred arpents french measure situated on said river des Peres in said County of St. Louis being a part of a Spanish grant of eighteen hundred arpens and bounded on the south & east by land belonging to said James Mackay on the north by land belonging to Reuben. H. Price & on the west by vacant lands.

To have & to hold to the said party of the second part, his heirs and assigns forever, and the said parties of the first part & their heirs all and singular the said tract of land & premises hereby granted unto the said party of the second part his heirs & assigns, against them the said James Mackay & Isabella his wife their heirs and assigns & against all and every other person & persons whomsoever shall & will warrant and for ever defend by these presents.

In Witness whereof the parties to these presents have hereunto set their hands & seals the day & year first above written.

James Mackay (seal) Isa. L. Mackay (seal)

James Murphy (seal)

Signed sealed and delivered in presence of Eliza Mackay

Thomas McGuire

Memorandum. It is further agreed between the parties to the said deed that the said James Murphy his heirs or assigns shall be entitled under the covenant of general warranty to ten per cent. interest per annum on the amount of consideration of said conveyance & also to the value of all permanent improvements & buildings made or erected on said tract deducting nevertheless from said value the amount of the annual profits or rents of said tract received or that might be received by said James Murphy on a fair estimate thereof during the time that he shall have occupied said tract & untill he shall have been evicted by title paramount to that of said grantors and after said eviction said Murphy shall grant & allow to the said Mackay seven months time free from all trouble interest or costs to pay back or reimburse to him said Murphy all the principal interest & compensation for improvements to which he is entitled in virtue of this foregoing indenture St. Louis 5 Nov. 1821.

James Mackay (seal) James Murphy (seal)
In presence of Eliza Mackay. — Thos Mc. Guire

State of Missouri } Ss.
County of St. Louis } Be it remembered that on this fifth day of of November in the year of our Lord eighteen hundred & twenty one before me a Justice of the Peace within & for the County aforesaid personally appeared James Mackay & Eliza L. Mackay his wife, & severally acknowledged the foregoing deed as for their act and deed & the land & premises therein mentioned & bargained & sold to be the right and estate of James Murphy therein mentioned his heirs and assigns forever, She the said Eliza L. Mackay being by me

first made acquainted with the contents thereof & by me privately examined a part from her said husband whether she executed the same voluntarily & without compulsion or undue influence of her said husband acknowledged and declared that she executed the same voluntarily & without compulsion or undue influence of her said husband.

Taken and certified the day & year afore mentioned

Thos. McGuire J.P. (seal)

Recorded this 5th. day of November 1821.

Archibald Gamble Clerk.

State of Missouri } I the undersigned Recorder for said County
County of St. Louis } certify that the foregoing is a true and complete copy of an instrument of writing from J. Mackay to J. Murphy & also of the certificate of acknowledgment and of the date of recording thereof as fully as the same remains of record in my office Book K. P. 402

(seal) Witness my hand & official seal this 31st. day of March 1858

C. Keemle. Recorder

pr. J. Conrad Dy.

Deed of Mackay to R. H. Price dated June 10 1819, as follows

Deed of Mackay to R. H. Price

This indenture made the tenth day of June in the year One thousand eight hundred and nineteen between James Mackay and Isabella his wife of Carondelet County of St Louis Territory of Missouri of the first part and Rishon H. Price of St. Louis County of St Louis of the second part Witnesseth that the said parties of the first part for and in consideration of the sum of One thousand dollars to them in hand

paid by the said party of the second part the receipt whereof is hereby acknowledged have hereby bargained and sold and by these presents do bargain and sell unto the said Risdon H. Price, his heirs and afsigns forever all that tract of land containing One hundred acres (American measure) situated on the river des Peres in the County of St. Louis aforesaid bounded as follows beginning at a stake in a west line of said James Mackay thence running north fourteen chains twenty links to a stake thence east sixty seven chains seventy links with the north line of said James to a stake being the north east corner of said James Mackay and on the east side of the river des Peres thence south twenty one degrees East fifteen chains thirty links to a stake on the east side of the river des peres, thence west seventy three chains thirty links to the beginning together with all and singular the hereditaments and appurtenances thereunto belonging, and also all the estate right, title, interest claim or demand whatsoever, of them the said parties of the first part either in law or equity of in and to the above mentioned tract of land and every part and parcel thereof.

To have and to hold to the said Risdon H. Price his heirs and afsigns forever, and the said James Mackay and Isabella his wife, said tract of land hereby granted and every part and parcel thereof unto the said Risdon H. Price his heirs and afsigns against them the said James Mackay and Isabella his wife their heirs and assigns and against all and every other person and persons whomsoever shall and will warrant and forever defend by these presents.

In Witness whereof the parties aforesaid have hereunto put their hands and seals the day and year aforesaid at St. Louis aforesaid

61.

In presence of Wm. H. Peters
fr. Lawless.

James Mackay [seal]
Isa. L. Mackay [seal]

Territory of Missouri } Be it remembered that on the seventh day
County of St Louis } ss. of July one thousand eight hundred and
nineteen before me Francis. M. Guyol one of
the Justices of the Peace within and for the County of St Louis
aforesaid personally appeared James Mackay and Isabella
his wife both well known to me as the persons therein de-
scribed and acknowledged this instrument of writing to
be their and each of their act, deed hands and seals for
the purposes therein contained, and the said Isabella
wife of the said James Mackay being first apart and
separately from her said husband and by me examined
acknowledged that she signed the same freely voluntarily
without fear, restraint, constraint or undue influence of
her aforesaid husband.

In Testimony whereof I have hereunto set my hand and
affixed my seal at St Louis as the date in this behalf before
written F. M. Guyol J.P. [seal]

Recorded this 1st. day of June 1822.

Archibald Gamble Clerk

State of Missouri } I, the undersigned Recorder for said
County of St. Louis } ss County certify that the foregoing is a
true copy of an instrument of writing
executed by James Mackay to R. H. Price, and of the cer-
tificate of acknowledgment as also of the date of recording
thereof as fully as the same remains of record in my
office in book L. page 63

Witness my hand & official seal this the
[seal] 31st. day of March 1858.

62. C. Keemle Recorder pr. J. Conrad Dy.

Deed of Mackay to R. J. Watson dated June 26, 1821, as follows.

Deed of Mackay to R. J. Watson

This indenture made this twenty sixth day of June in the year eighteen hundred & twenty one by and between James. Mackay & Isabella his wife of the one part & Ringrose D. Watson of the other part all of the County of St. Louis in the State of Missouri, Witnesseth: that the said James & Isabella for and in consideration of the sum of one thousand dollars to them in hand paid by said Ringrose at or before the sealing & delivery of these presents the receipt whereof is hereby acknowledged, have granted bargained & sold & by these presents do grant bargamid & sell unto the said Ringrose a certain piece of land containing one hundred & five arpents french measure, the same land being part of the east front of the land of the said James upon the river des Peres & bounded on the east or front by the small creek or branch which runs nearly north to south near the east line, on the south by John Hartnels line which runs east to west five arpens from Papin's line & on the north & west by the land of the said James the said tract hereby sold being seven & one half french arpents wide & extending with that breadth from the small creek or branch aforesaid, west so as to include the said quantity of one hundred & five french arpens, the said land being situate in the township of Bonhomme in the County aforesaid

To have & to hold the said granted & bargained premises with all & singular the privileges & appurtenances thereunto

belonging or in any wise appertaining unto the said Ringrose or his heirs & assigns forever: provided however & it is upon the express condition that if the said Ringrose or his heirs or assigns shall not well & truly pay or cause to be paid to the said James or his executors administrators or assigns the sum of six hundred dollars with interest thereupon at the rate of six per centum per annum from the date of these presents in the instalments & at the days following: to wit. the sum of one hundred dollars in fifteen months from the date of these presents & one hundred & fifty dollars in September of 1823 & the further sum of one hundred & fifty dollars in September 1824 & the remaining two hundred dollars to be paid in September 1825, then & in that case these presents to be void. otherwise to remain in full force & virtue in law; and the said James for himself his heirs executors and administrators doth hereby covenant grant promise & agree to & with the said Ringrose his heirs and assigns that he the said James his heirs the tract of land & premises hereby granted & every parcel thereof with the appurtenances thereunto belonging to him the said Ringrose & his heirs & assigns all and every person or persons whatever claiming or to claim any right title or interest by through or under him the said James of in & to the same or any part thereof, shall & will warrant & forever defend by these presents & also that he the said James hath not, any time heretofore done executed or committed or willingly or willingly suffered any act deed matter or thing whatsoever whereby the said premises or any part thereof are in shall or may be impeached charged affected or incumbered in title charge estate or otherwise whatsoever

& it is also agreed and understood that in case of either of the aforesaid covenants being broken by the said James the damages to be therefor recovered by the said Ringrose shall be the consideration money & interest thereupon from this date at the rate of six per centum per annum & the costs to which the said Ringrose his heirs or assigns may be put in defending his or their title to the said premises together with the value of all & singular the improvements now made or hereafter to be made by the said Ringrose his heirs and assigns upon the said premises deducting from the value of said improvements the benefit derived by the said Ringrose from said improvements & land; and the said James doth also covenant with the said Ringrose in manner & form as aforesaid that if the Congress of United States shall finely decide the claim of the said Mackey to the aforesaid tract of land not to be entitled to confirmation so that the said James claim and title thereto should fail then & in that case the said James his executors & administrators shall & will pay to the said Ringrose his heirs or assigns the aforesaid damages for the failure of the said title to be ascertained as above stipulated.

In testimony whereof the said James Mackey & Isabella his wife & Ringrose D. Watson have hereunto set their hands & affixed their seals the day & year above first written

Twenty six words erased & two words interlined before signed

James Mackay (seal) Isabella L. Mackay (seal)

Ringrose D. Watson (seal)

Signed sealed & delivered in the presence of John Watson.

County of St Louis } SS.

Be it remembered that on the day of the

date hereof before the undersigned a Justice of the Peace in & for the County aforesaid personally appeared as well James Mackay & Isabella. L. Mackay his wife as Rinigrose. D. Watson & acknowledged the foregoing instrument of writing to be their act and deed for the purposes therein mentioned, And she the said Isabella. L. wife of the said James being by me examined separately and apart from her said husband doth make her acknowledgment that she is acquainted with the contents of the said deed & executed the same free from compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand & seal this fifth day of July A. D. 1821.

J. V. Garnier J. P. [Seal]

Recorded this 26th. day of September 1821.

State of Missouri } ss
County of St. Louis } I the undersigned Recorder for said County certify the foregoing to be a true & complete copy of an instrument in writing from J. Mackay to R. D. Watson & also of the certificate of acknowledgment & of the date of recording thereof as fully as the same remains of record in my office in Book K. p. 333.

[Seal] Witness my hand & official seal this 31st. day of March 1858

C. Keemle Recorder
pr. J. Conrad Dy.

Deed of Mackay's Extrs. to Hartnett dated October 9, 1823, as follows.

Deed of Mackay's Exrs. to Hartnett.

Know all men by these presents that whereas pursuant to an order of the Circuit Court of the County of St. Louis made at the October term 1822, on petition of the Executors of James

Mackay deceased certain lands situated in the County aforesaid being part of the estate of said James Mackay were duly advertized and set up to be sold to the highest bidder and whereas one of said tracts of land containing one hundred and twenty arpens french measure bounded as hereinafter described was thereupon sold to John Hartnett as the highest bidder and whereas the return of the proceedings on such sale had been duly made on oath by said Executors to said Circuit Court of the County of St. Louis:

Now know ye that we Antoine Soulard and Isabella Mackay Executors of said James Mackay in pursuance of the authority vested in us by virtue of said order of the Circuit Court of said County do hereby in consideration of the sum of three hundred dollars by the said John Hartnett to us in hand paid grant bargain sell and assign unto said John Hartnett and his heirs forever all the right title and interest of the said James Mackay in and to said tract of one hundred and twenty arpens which said tract is part of a tract of eighteen hundred arpens originally granted by the Spanish Govert. to one James Mac Daniel and by him sold to said James Mackay and is bounded on the north by land belonging to and occupied by Ringrose D. Watson and on the south by land of Papin and on the east and west by land belonging to the estate of said James Mackay which tract hereby conveyed is the same now occupied by said John Hartnett under a lease to him made by said James Mackay, to have and to hold said tract and appurtenances to said John Hartnett his heirs and assigns forever.

In witness whereof we have hereunto set our hands and

seals this ninth day of October in the year of our Lord One thousand eight hundred and twenty three at St. Louis aforesaid.

Antoine Soulard (Seal)

Isabella L. Mackay (Seal)

State of Missouri } SS.
County of St Louis } This day personally appeared before me the Clerk of the Circuit Court for the County of St Louis the above named Antoine Soulard and Isabella L. Mackay, Executors of James Mackay dec'd & acknowledged the above and foregoing deed to be their acts and deeds hands and seals for the purposes therein mentioned and I further certify that I am personally acquainted with said Grantors.

(Seal) Given under my hand and seal of office at St. Louis this 9th. day of October 1823.

Archibald Gamble Clerk.

Recorded Sept. 16th. 1824.

Archibald Gamble Clerk.

State of Missouri } I the undersigned Recorder for said County
County of St. Louis } SS. certify that the foregoing is a true copy of an instrument of writing executed by the Executors of James Mackay, to John Hartnett & of the certificate of acknowledgment as also of the date of recording thereof as fully as the same remains of record in my office in book M. page 103.

Witness my hand & official seal this the
(Seal) 31st. day of March 1858.

C. Keemle Recorder.
pr. J. Conrad Dy.

W. H. Cozzen's Cest.

The plaintiff then called William H. Cozzens who is

shows a subdivision of the Mc. Daniel tract as follows

& witness says the four tracts described in the deed of Mackay to Price to Murphy to Watson & of Mackay's Extrs. to Hartnett are correctly

RG 600
Supreme Court of Missouri
Case Files

LARGE DOCUMENTS CAN BE FOUND IN OVERSIZED STORAGE

Location 68A/3/7

Box 10

Folder 27

Number of Items 1

69

laid down on this plat.

The amount in quantity to 4+8 arpents.

R. J. Watson was in possession of his tract from my earliest recollection. His possession included more land than is cov-ered by his deed. He possessed north to Rice's south line west to Murphy's east boundary & south of Murphy to Hartnett's line. That was more than twenty years ago. He claimed to hold for Mullanphy over the other portion of the Mc. Daniel tract, that he did not claim as his own & I have seen him in pos-session of a portion of it. I know that Mackay had no other tract on the river Des Peres.

The tract in controversy is correctly laid down on that plat.

F. Dent's Test. Frederick Dent on behalf of plaintiff testified that he knew the Mc. Daniel tract since 1817.

By the description contained in the deed of Sheriff of St. Louis County to Mullanphy & Dent now read to me that tract therein described was well known in the City of St. Louis at the time of the sale. I dont know whether by that description it was at that time well known in the County.

After the sale to Mullanphy & I took possession of the land & appointed R. D. Watson our agent to hold it. He continued to hold possession for us till I sold to Rannels.

We always paid the taxes & sued trespassers on the tract.

On Cross-Examination the witness said

I referred to the 1800 arpent tract of Mc Daniel claimed by Mackay as the tract well known.

We took possession of all the tract upon the sale to us ex-cluding what had been before sold & put Watson in possession

We took possession by surveying & putting rocks at every corner.
Watson lived on the Wm. Daniel tract & kept trespassers off for Mullanphy & myself. We gave permission to Watson to fence in a portion of our land which he did enclosing 20 or 30 acres, perhaps he fenced in 30 or 40 acres or more lying south of his own tract the fence ran north & east of Watson's land.
I saw the fence standing when Brown made the last survey.
The enclosure was adjoining on the west Watson's own land.
The fence started at Hartnett's north west corner & run up north, I am not certain whether it went to Murphys line or not. The fence was built shortly after we purchased as soon, I think, as Watson could put up rails.
That fence was standing in 1845. I cant say whether that fence was ever reset.
The enclosed part was used by Watson as a pasture. I saw his stock in it. The balance of the tract bought at Sheriff's sale by us was unenclosed.
Watson paid no rent except by taking care of our interests.

Upon re-Examination Witness said Mrs. Mackay & her children always lived in this County.
The pasture was west of Watson's land.
In answer to the Court Witness said. I think the land described in the Sheriff's deed was generally known. That is the tract was generally known.

On Cross-examination by Deft. Witness said
Bates confirmed the tract & sent it to Surveyor's office.
There was a New Madrid location laid over it & I was deprived of the patent.

W. Walton test.

William Walton on the part of plaintiff testified as follows
I have known Mackay tract for more than 30 years since 1824 or 1825. I knew the tract sold by the description contained in Sheriff's deed to Mullanphy & Dent.
It was well known in the community that three pieces had been sold, those of Harnett, Watson & Murphy.
Harlnett, Watson & Murphy were in possession at time of sale in 1825.

On Cross-Examination the witness said The tract I speak of as being generally known is the Mackay tract of 1800 arpents.

In answer to the Court witness said — I could not have located the 1500 arpents in the 1800 arpents by the description

S. Denny test.

Samuel Denny on part of plaintiff testified as follows.
I have known the Mackay or Mc. Daniel tract since 1824.
(The description contained in the deed of Sheriff to Mullanphy & Dent offered in evidence by plaintiff being read to him) witness says. I should have known the land to be sold by that description & I think it would generally have been so applied.
Watson's possession was well known, so also Harlnetts & Murphy's.
Rice's possession I do not know about. All this was known generally.

In answer to the Court witness said. I should have known the location of the 1800 arpents generally, but not precisely for I did not know the exact lines nor the exact quantity of the several tracts then sold.

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On Re-examination witness said, I should have known the land by the description contained in the deed. That is I should have known it was in the 1800 arpent tract.

R. Clayton test.

Ralph Clayton on the part of plaintiff testified as follows I know the Mackay or Mc Daniel tract on the river des Peres.

On the description of the deed of Sheriff to Mullanphy & Dent being read to him witness says that description would have informed all the neighbors what was to be sold.

The parts sold before were generally known & were in fact in possession except Price's which I do not remember to have been in his possession. It was often called the 1500 tract of Mackays after Murphy & Watson & other's purchases It was also called the 1800 arpent tract & also sometimes the 2200 arpent tract

On Cross-Examination the witness said, since the Sheriff's sale to Mullanphy & Dent. The tract has been called the Dent & Mullanphy claim.

Bill of Excep.

Thereupon the Court excluded the deed of John. K. Walker Sheriff of the County of St. Louis to John Mullanphy & Frederick Dent, as evidence

to which exclusion the plaintiff then & there excepted.

The plaintiff then offered evidence tending to prove that Mullanphy & Dent had possession of the ground in controversy from the date of the Sheriff's deed to them down to the 5th. February 1846.

to which evidence the defendant objected & the Court excluded

the evidence to which exclusion the plaintiff then & there excepted

The plaintiff thereupon took a non. suit with leave to move to set the same aside and in due time filed his motion to set the same aside & grant him a new trial as follows.

Mo. to set aside Non. suit &c.

James S. Clemens Jr.
vs
Charles. S. Rannels & Matthew Prior } In the St. Louis Land Court.

And now comes the said plaintiff and moves the Court to set aside the Non suit & jindgment in this cause & grant a new trial for the following reasons to wit

Because the Court excluded legal and competent evidence & testimony offered on the part of plaintiff.

Field & Shepley Atty. for Plff.

which motion the Court overruled & to the overruling of which the plaintiff then & there excepted & filed this his Bill of Exceptions & prays the same may be allowed which is accordingly done

C. B. Lord

State of Missouri } SS.
County of St. Louis } I, Edward N. Tracy clerk of the St. Louis Land Court, within and for the County aforesaid, certify the foregoing Transcript to be a true copy of the Record and proceedings had (as required) in the case of James Clemens Jr. is plaintiff and Charles S. Ramels & Matthew Parr defendants 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 the Twenty Seventh day of September A.D. 1860

Edward N. Tracy Clerk

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22000 words $33.00
3 Plats 4.00
Certificates 1.00
$38.00

Affirmd Dfr 204

(26) 98

March T. 1864

James Clemens Jr.
Plff. in Error.

vs.

Charles S. Rannels et al,
Defts. in Error.

Error to Land Court.

W. E. Land Court

B. R. Shepley Atty for Plff

Glover & Richards[illegible] Defts.

Dawes Clemens Jr
vs
Charles S Raunels
et al

In the Supreme Court
At March T. 1863

And now comes the said plaintiff and says that there is manifest error in the record & proceedings of the Court below & for error said plaintiff assigns the following to wit

1st That the Court rejected proper and legal testimony offered by plaintiff.

2. That the Court refused to give proper & legal instructions offered by plaintiff

3. That the Court gave improper & illegal instructions to the Jury

4. That the Court improperly overruled the motion for new trial made by plaintiff

R M Field & S R Shepley
Attys for Pff

In the Supreme Court

Clemens J.

v.

Rannels.

Assignment of Errors

R M Field. J R Shepley
for Plf

Filed April 25, 1863
A W Mead
Cl

James Clemens

v

In Supreme Court
Apl T 1863

Charles S Rannells
Defts

Statement of the case by S. T. Glover for Rannells

(1) A tract of 1800 arpents of land was conceded to James McDaniel and was confirmed to him or his legal representatives by act congress July 4. 1836

(2) Feby 13/1802 McDaniel conveyed the land to James Macky

(3) Apl 20/1825 Pratte & al had a judgment v Mackys Exors he being dead for $725.12 cost, on 3rd June following fifa issued on this judgment and was levied on a tract of land by the following description "a tract containing 1500 arpents more or less situated on the river Des Peres part of a tract of 1800 arpents granted to James McDaniel Feby 1798 by Don Zeno Trudeau and adjoining land granted to Mary L Papin"

The property was sold and conveyed by the same description to John Mullonphy & Frederick Dent sheriffs deed dated August 8/1825

4 Clements who claimed some interest in the land under this sheriffs deed but his ejectment and was nonsuited at the trial

(5) Clements conceding or it would appear that the sheriffs deed was not competent without some explanation offered in explanation thereof the following evidence, (1) Deed of James Mackey to J Murphy for 100 arpents part of the 1800 arpt. date Nov 5/1821 (2) Deed from same to R H Price dated June 10/1819 for 100 acres part of the 1800 arpents (3) Deed from same to Watson for 105 arpents part of 1800 arpents dated June 26/1821 (4) Deed from same to Hartnett for 120 arpents dated Octo 9/1823 also showed the location of these small tracts upon the plat of the 1800 arpents conceded to Mc Daniel

(6) oral evidence was offered for the

purpose of showing that the description in the deed was known in the community where the sale took place as identifying some definite tract of land but the proof did not come up to the rule and the court then excluded the sheriffs deed, and the question now is whether the exclusion of the deed was proper

Points & authorities by S. T. Geover atty for Rannells

(1) The sheriffs deed on its face was ambiguous so as to fail of describing any tract of land: and thereby void for uncertainty

It is evident the 1500 arpents may be laid off in ten thousand ways and as there is nothing to show in what manner they are to be laid off the deed is void for uncertainty. In a conveyance inter partes the deed might take effect but as a sheriff deed must be held void. Such has been the course of adjudication see 10 Ohio 42 the sale was of 1055 acres part of a tract of 1731

on Little Miami located by R T" and was deed void.

1 Swan Tennessee 375- the description was as follows " 1950 acres of land in H County part of 25000 acres located by D. G" and the deed was pronounced void.

4 B Mon 211 the description was thus " 190 acres of 600" without designating how or where to be laid off.

1 Harris & Gill (maryland) 172 these were the words " part of the resurrection manor containing 257 acres more or less"

1 Harris & Gill 435- " part of a tract of land called Borough hall being of the lands & tenements of the said H, B, containing 130 acres more or less"

6 Gill & Johnson 76 " a part of Pleasant Grove containing 52 acres"

1 N Hamp 93 " a certain tract of land part of lot 40

300 containing 250 acres "

12 Ohio 414, 416 "part of a lot one acre of a lot"

11 Ohio 316 "one hundred and twenty acres in the Whitaker reserve" there being Twelve hundred & eighty acres in the reserve

1 Foster "68 acres part of government right"

5 Blackford 51 "Richardson heirs 56 acres in the South East quarter of Section 8 Township 12 Range 13" In all these cases the sales were held void by the courts

In our own state the same doctrine prevails see 8 Mo 177 Evans v Ashley "twelve & 1/2 arpents adjoining St Louis &c" held void for uncertainty In 12 Mo R 260 Louder v Perkins it is said "if the lot was known by the description given the sale would be valid citing Hart v Rector 7 Mo R 531 where the words of

~~[illegible]~~ description were " all that interest in the Boonville tract being three and a half eighths " To sustain this deed proof ~~was~~ was allowed to show that N W qr S 35 T 49 R 17 was at the time of the levy and sale were known by the appellation " Boonville tract " in the " county of Cooper and neighborhood " There was in reason no objection to this. The ruling was in effect that the land was patently described — for " Boonville tract " was as well known to the community as meaning N W qr S 35 T 49 R 17 as those words themselves. In 15 Mo R 311 the same principle was laid down and proof that the descriptive words used were " well known in the community " to describe a certain 35 acres of land then sued for this was right.

(2) But there was no testimony in this cause which gave any such phase to the case.
The description in the deed "1500 part of 1800 arpts" was not shown to have acquired any meaning in the community as description of any tract of land. The proof did not tend to show that any specific 1500 arpents was indicated thereby. The McDaniel tract contained 1800 arpents. Out of this had been sold by McAy some 440 arpents leaving about 1360 arpents in the tract. This 1360 arpents never had acquired in the community any appellation.

1800
440
1360

(1) ~~Fred Dent~~ Saml Denny testifies "Knew "McDaniel tract" "since 1822" "I should have known the land to be sold" by the description in the deed. "I think it would have been generally so applied" Watsons Hartnett Smurphys possessions were "well known" "dont know about Prices"
on reexamination Mr Dent said I should have known the

land by the description contained in the deed, that is I should have known it was the 1800 acpent tract."

Mr ~~Dennis~~ Dennys evidence consisted of his opinion that something hard to tell what was generally known — and that he not the community knew the land in the deed described that is the 1800 acpent tract. The evidence of Dent Walton & Clayton were no better Clayton said the land remaining after the sale to Murphy Hartnett Watson & Price was called the "1500 acpt tract" the "1800 acpt tract & the "2200 acpt tract" The Judgment should be affirmed

James Clemens
v
Charles S Rou
nells
—
Powers & author
ities for
Rounnels
—

(3) If this was a deed inter partees made in execution of a contract the deed would be sustained: be cause the court would assume

that the parties intended to trans-
fer something and this intent
would be sought for by the
light of all the matter on the
deed and would see that such
intent should not fail,
on such a conveyance equities
attach upon the conscience
of the parties and these eq-
uities will be enforced by
just rules of construction.
In a sheriffs deed however there
is no precedent agreement,
nothing to which the owner
of the property has assented &
nothing to be enforced against
him. The deed must stand
upon its terms and can
not be helped by enforc-
ing any agreement or equi
ty

W Reed argues that if in fact
the debt in the execution owned
any land in the ~~grantor~~ grantor
tract that must be the land
sold and the purchaser may
sustain the deed by prov-
ing there was some land
there that might have been
described and sold, this
would sustain every

James Clemens Jr

vs

Charles J. Rannells

Brief of Deft in Error

Filed May 26. 1863
A. W. Mead
Clerk

deed which has been heed void
for insufficient description

Clemens
v.
Ramsel.

In the Supreme Court
of the State of Missouri

II If a deed intelligibly describes a piece of property it is a question of fact for a Jury to determine as to the particular tract described therein and then is applicable as rule to Sheriff deeds as to others.

Rector v Nash 7. Mo. 531.
Bates v the Bank 15 Mo. 309
Same v same 17 Mo. 191
Lasa v Lindell 21. Mo 127.
Collier v Bason 12 Geo. 442

The case of Bates v the Bank 15 Mo. 309 is an exactly parallel case to this. The description there was "all the right title "claim & interest of defendants &c &c 35 75/100 "acres of land being a New Madrid claim No "2592 part of S W qr of Sec 25 T. 58. Range "6 West" Now the New Madrid claim covered the whole west half of Sec 25. & other land in addition. How then could it be determined what 35 75/100 acres in the S.W 1/4 of Sec 25 was meant? There was nothing on the face of the Deed to determine it In such case

it was $35\frac{75}{100}$ out of a quarter section. In this case it is 1500 arpents out of 1800 arpents. If in that case the Supreme Court of this State thought it was a question for the Jury to determine what was the land conveyed, it is rather difficult to see why the same principle should not hold good in the present case.

In the case of Lisa v Lindell 31. Mo. the fact was that there had been an auction sale of lots upon laying out the addition and though for the purposes of that trial, it was thought sufficient to prove one lot as sold yet in point of fact many were sold & bonds for a conveyance were given and no record was made of most of those bonds for years afterwards. and some of them were never recorded, duds having been obtained from the original proprietors or their heirs or by Bill in Equity. It was under those circumstances that the sale was made & deed given of Lisa's interest in that tract. and the description was "the one undivided third part of the lots "which were not sold by Lisa in the addition" &c. In Hart v Rector Judge Napton said "a Sheriff has no right to sell land under execution "except such as he can describe with sufficient "certainty so that purchasers may know what specific "land is put up at auction & when it lies". This is undoubtedly correct doctrine & all such sales should be set aside, but when made & a deed given

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as in the case of Lisa. it is ordered that the Court does not apply it, for it is certain that at the sale of the lots in Bates Smith & Lisa's addition there was no way in which a purchaser could inform himself what was sold. The records did not show it & unless he had been present at the sale of lots & made a memorandum of what was sold, the purchaser must have been entirely in the dark as to what was sold.

But in this case the conveyances of land in the 1800 aspect tracts were of record and none of the four owners at least were on the trial proved to have actual possession of the tracts purchased by them. at the time of the Sheriff's sale.

II II. The evidence was sufficient to allow the deed to go before the Jury as to the identity of the land described in it - for

1st If no evidence had been introduced other than the deeds of the portions already conveyed & the location of those lots by a surveyor within the 1000 acres tract & that there did not remain the amount of 1500 acres to be conveyed by Sheriff's deed. That evidence of itself was sufficient to allow the jury to pass upon the question of the identity of the land conveyed
It is thus brought within the case of Bates vs the Bank in 15 Mo. 309.

2d. But the plaintiff went one step further & attempted to show that the ground described in the Sheriff's deed was well known by the description. It is contended that in that he failed But this is not so In the case of most of the witnesses, it is true that on cross examination they seem to say that they referred to the large tract as being well

known. but ~~Has~~ what then whole testimony amounted to taken together was a matter for the Jury. The evidence at best of Ralph Clayton was, however, not subject to such a criticism and upon that of for nothing else the Jury should have been allowed to pass upon the matter.

In the Supreme Court.

Clemens.

v

Rannels.

Brief for Pff.

J R Shepley

Filed May 26 1863

A. W. Meal

Clk

James Clemens Jr Plff in Error ~ Field & Shepley for Plff in Error

vs

Charles S. Rannels et ab Defts in Error ~ Glover for Deft in Error

Error to St Louis Land Court

The Sheriff's deed to Mullanphy and Dent was properly excluded for the want of "an ascertainable subject matter"

The deed purpated to convey "all the right, title, interest, estate and property of him the said James Mackey deceased of in and to a tract of land situate about six miles northwestwardly from the City of St Louis on the river Des Peres containing fifteen hundred arpens (more or less) being part of a tract of eighteen hundred arpens granted to James Mc Daniel on the first day of February in the year one thousand seven hundred and ninety eight by Don Zenon Trudeau, which said tract adjoins lands which were granted to Mary L Papin"

1. – Without the other testimony given to aid in ascertaining what was the land conveyed, it is obvious that it is utterly impossible from the words used, to determine where, within the large tract (of 1800 arpens), the tract conveyed was located.

Were the deed a grant from Mackey himself, perhaps in order to avoid a failure of the grant and con-

strung it most strongly against the grantor, it would be held to convey either all his interest in the large tract or an undivided interest therein of fifteen hundred parts in eighteen hundred. But that rule of construction will not apply to a Sheriff's deed as to which there can be no presumption of a contract by the owner for a conveyance. There is in the deed itself no sufficient certainty of description.

2. Proceeding to consider the deed in connection with the other testimony given and applying to it the maxim "id certum est quod certum reddi potest" (although we are not to be heard as deciding that the maxim does apply to Sheriff's deeds) there is still a fatal want of certainty of description. In the first place, the large tract being sufficiently described, the tract conveyed is a part of it. But what part? - how large a part? - "1500 arpens more or less". Looking to quantity as a means of description we find it wholly uncertain. It may be 1500 arpens, it may be more, it may be less, and how much more or less equally uncertain. Rejecting then the words "containing fifteen hundred arpens more or less", because of their entire want of meaning as words of description, there is nothing remaining to show how large a part of the 1800 arpen tract was conveyed. We only know that it is a part of it; but whether arpen one

or 1799 acres or an undivided interest equal thereto we have no means of knowing or ascertaining. ~~from the very nature of the uncertainty no extrinsic testimony can remove it.~~

But, in the second place, if 1500 be regarded as a certain quantity, (rejecting the words "more or less") and we look to the words "containing 1500 acres" as descriptive of the tract of land (and not merely as expreping the number of acres contained in a tract otherwise described) then the very testimony given to show the certainty of the description, shows that there is no tract within the 1800 acres tract ~~called~~ to which the descriptive words "containing 1500 acres" will apply, for the deeds to Price, Murphy, Watson and Hartnett convey 448 acres (as calculated by the witness Cozens) which deducted from the 1800 acres would leave 1352 acres, and no mode of computation shows the existence of a tract of 1500 acres.

~~An incorrect statement of the number of acres in a tract of land, conveyed by other sufficient description, would be of little importance; but when the statement of the number of acres in the tract is referred to as a description of the tract, without which description there is no certainty of what is the tract conveyed, then the number stated must correspond precisely with the number of acres in the tract. If it vary from the true number at all, it is not descriptive of the tract.~~

Nor did the parol evidence make the description any more certain. None of the witnesses proved that any particular tract of land was known by the description contained in the deed. - They proved that the large tract was well known and that it was known that some parts of it had been sold, but they did not prove that any part of the large tract was known generally by any such name or description as that contained in the deed. The witnesses Dent and, Walton ~~Denny~~ testify only to the "1800 acres tract" or "McDaniel tract" as well known. Denny stated that he would have known the land to be sold by the description given, that is he proved "have known it was in the 1800 acres tract" and Clayton testified that the "description would have informed all the neighbours what was to be sold" that after Mackey's sales to Murphy, Watson and others the tract was "often called the 1800 acres tract" and also "the 1800 acres tract and sometimes the 2200 acres tract", thus showing that there was no certain name by which the tract was known, ~~to be~~ such as the description contained in the deed.

This case differs from all of those cited, but it is not thought necessary to go over them and point out the differences.

Judgment affirmed

Barton Bates

Judges Dryden & Bay Concur.

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Clemens
vs
Rannels

Opinion
Affirmed
Bates

Filed Nov 16. 1863
Andrew W. Mead
Clerk

Supreme Court, Octr Term, 1863.

James Clemens, Plaintiff in error,
vs
Charles S. Rannels, Defendant in error.

Motion for Rehearing.

In this case the plaintiff moves for a rehearing.

The opinion filed in the cause shows that the attention of the court has not been directed to the main ground taken by the plaintiff.

It becomes necessary briefly to state the argument anew.

The general rule that a deed of land must contain such a description as to enable the court to ascertain the location of the subject of the grant with reasonable certainty is not controverted. But this rule must not be construed to exclude extrinsic evidence. On the contrary, there never yet was, nor can there be, a description so complete as not to require the proof of facts outside of the deed to fix the location. The most perfect description is that which rests on marked & permanent natural objects, but then the actual position on the earths surface of those objects must always be matter of proof.

Under a system like ours, where all transfers of land are required to be recorded in a public registry, the usual method of designating a tract of land is by the name of its owner. In such case there is an implied reference to the public registry of conveyances. Take as an instance a conveyance of "the lot of A. bounded by B. on the north, C. on the east, D on the south and E on the west;" no lawyer would question the sufficiency of such description on the face of the deed. The obvious mode of ascertaining the position of the lot granted would be to refer

to the title papers of A, B, C, D and E, as they stand recorded.

The following descriptions have been holden to be good: — "the lot of Moreau in the common fields of St Louis" — "John Doak's seventy acres of land" — "the unsold lots in Lisa's addition"; yet each of these descriptions implies a large examination of extrinsic evidence to determine the location.

It is unquestionable that where a lot, to be taken out of a known or ascertainable larger tract, is sold as the property of a particular person who owns but one lot in the larger tract, that lot will pass. Furthermore, there is no difference, for the purpose of our present inquiry, between these forms of description: — "a lot, property of A, part of a certain larger tract", and "all the property of A in a lot, part of a certain larger tract." Under either form, if A owns but one lot in the tract, that must be taken to be intended by the grant.

Let us apply these plain principles to the case at bar.

The sheriff's deed contains as part of it the execution and advertisement. The execution runs against executors and commands the sheriff to make the judgment out of "the lands & tenements which were of James Mackay deceased at the time of his death." It is material to observe that on the face of the deed the sheriff had no authority to sell any thing but the land of Mackay. The advertisement and deed show that the sheriff by virtue of the execution levied upon and sold "all the right, title, interest, estate and property that was of said James Mackay deceased in & to the following described real estate, — a tract of land containing 1500 arpents more or less, situate on the river Des Peres about six miles northwesterardly from the city of St Louis, being part of a

tract of 1800 arpens granted to James McDaniel on the 1st February 1798 by Don Zenon Trudeau."

According to the opinion of the court as delivered in this case, the larger tract of McDaniel is well and sufficiently described. Although it is manifest that the tract is not and cannot be located without reference to the public records & other proofs; and although it was clearly proven to contain 1878, arpens; being 78 arpens more in quantity than the call of the deed.

In regard to the smaller tract of Mackay the whole difficulty seems to arise from discarding the conveyances that fix incontestably its location & making the whole question turn upon the call for quantity in the deed.

The proofs in the cause show that Mackay became the purchaser of the whole larger tract of 1878 arpens, that he sold in his life time four parcels amounting in the aggregate to 448 arpens, and was at his death proprietor of the residue lying in one parcel of 1430 arpens. It was further shown that Mackay owned no other land on the river Des Peres. There is certainly no further difficulty in ascertaining the boundaries of the lesser tract than of the larger. In fact it was platted by the surveyor from the deeds.

Nor does it appear from the opinion of the court that any real doubt exists as to the location of the smaller tract owned by Mackay at the time of his death. The uncertainty springs out of the vagueness of the call for quantity. In respect to this, it may be suggested that in the construction of deeds that call is always regarded as least important & is only appealed to when other calls fail. It may be added that the difference is only 70 arpens in 1500, less than 5 per cent and withal is unfavourable to the purchaser.

One paragraph in the opinion presents the leading view of the court in a striking light.

"In the first place, the larger tract being sufficiently described, the "tract conveyed is part of it. But what part? How large a part? "1500 arpens more or less."

Surely, here is no answer at all to the first question stated. The true answer is, James Mackay's part. And when the boundaries of this part are ascertained as they readily were on the trial from the title papers on the public records, the other question How large a part? becomes immaterial.

For the purposes of this motion, the plaintiff deems it unnecessary to pursue the subject further.

The land embraced by the Sheriff's deed is understood to be of the present value of more than $200,000.

The plaintiff submits that the question involved is of sufficient importance to justify a further examination by the court.

R. M. Field, of counsel
for the plaintiff.

Sup. Court
James Clemens
vs
Chas S. Rannels
No. for rehearing

Filed Decr. 8. 1863
A. W. Mead
Clerk

James Clemens
vs
Charles S Runnels

In St Louis Cir Court
Octo ~~April~~ T 1863

The deft in the argument filed by his counsel insists that in deciding the cause the court has not passed upon the main proposition raised to maintain the validity of his title. He then lays down a truism that evidence outside the deed is necessary absolutely necessary to locate the calls of boundary in the deed. This illustrated by the familiar description "bounded north by A" &c and the counsel insists that if can be found and is certain of identity this locates the northern line because "that is certain which may be certain". He next argues that one lot out of a larger lot if identified is a proper subject of a legal sale, which nobody denies.

The pleff next proceeds to show that the execution which is part of the deed requires the sheriff to levy upon

"the lands and tenements which were of James McKay deceased at the time of his death"
that is all the land that belonged to James McKay at his death, and there is offers that the Sheriff did so — and that the Sheriff seized and sold of course all James McKays part of the 1878 patents which he says was 1500 more or less,

If I may point out what I consider the error of this reasoning it would be this

(1) That tho the execution empowers to sell all deft lands if necessary this is rarely done

(2) Tho the Sheriff may sell all he most generally sells less

(3) That title can pass only to what he does sell

(4) That the words quoted in the execution the part of the deed in one sense is not a granting part of the deed —

(5) And that in this case the Sheriff has seized and sold "1500 acres more or less out of 1800" which description is void for uncertainty as the court held.

It moved therefore seems that the plff's position that the point raised by him was not decided is untenable. The ruling of the court shows ~~that~~ the call in the deed of "for part more or less of a tract of land" that the court holds is ~~to~~ void for uncertainty

S. T. Glover
for Rousseau

James Coleman

v

Chs Rousseau

Reply to W Field's argument for rehearing

Filed January 5. 1864

A.W. Mead
Clk