THE PACIFIC RAILROAD

V McCOMBS, LIZZIE et als.,
HEIRS OF
LINDELL, PETER

1866

ST LOUIS COUNTY

553/2

OLD 647/9

AFFIRMED

INVOLVED:
- AN ACTION OF EJECTION
- LANDS AND LAND TITLES
- RAILROAD CORPORATIONS
- NEW MADRID LOCATIONS (A CERTIFICATE IN NAME OF HUNOTÉ, JOSEPH (#161) ISSUED AUG 12, 1818) - U.S. SURVEY NO. 2500
- ESTOPPEL

CONTAINS: THREE (3) MAPS

INVOLVES
- ACT OF CONGRESS OF JUNE 10, 1852 GRANTING LANDS TO THE STATE OF MISSOURI FOR THE CONSTRUCTION OF RAILROADS
- THE STATUTE OF THE STATE OF MISSOURI OF DECEMBER 25, 1852 TRANSFERRING SUCH GRANTS TO THE COMPANIES THEREIN NAMED.

1 State of Missouri } Be it remembered that
County of St Louis } heretofore to wit on the twenty seventh day of April A. D. eighteen hundred and sixty one there was filed in the office of the Clerk of the St Louis Court of Common Pleas within and for the County aforesaid, the pleadings and entries of proceedings in a certain suit commenced in the St Louis Land Court on the twenty second day of January eighteen hundred and fifty nine, the petition wherein is in the words and figures following to wit;

The Pacific Railroad, Plaintiff
against
Peter Lindell, defendant.

State of Missouri
St Louis County ss.
In the St Louis Land Court
March Term 1859.

Petition

Plaintiffs states that it is a corporation and body politic, by virtue of sundry acts of the General assembly of the State of Missouri, to wit: "An act to incorporate the Pacific Railroad", approved March 12th 1849". An act to expedite the construction of the Pacific Railroad and of the Hannibal and St. Joseph Railroad", approved February 22d 1851, and an act to amend an act to incorporate the Pacific Railroad" approved March 1st 1851

Plaintiff further states that it is entitled to the possession of the following described parcels of land and

2 premises situate in St Louis County, in the State of Missouri to wit;

Fractional Section Number Eight and Number eighteen in township Number Forty five Range Number Seven East of the Fifth principal meridian, and being entitled to the possession thereof that the defendant has entered into said premises and unlawfully withholds from the plaintiff the possession thereof to the damage of the plaintiff in the sum of Five hundred dollars

Plaintiff further avers that the monthly value of the rents and profits of the land and premises above mentioned is three hundred dollars

Therefore plaintiff sues and asks judgment for the recovery of said lands and premises and five hundred dollars for the unlawful withholding of the same from the plaintiff, and three hundred dollars for each month for monthly rents and profits from the rendition of the judgment until the possession of said premises is delivered to the plaintiff and for other relief.

Thomas J Cox
Pltff's attys.

John D Stevenson, agent of the plaintiff makes oath and says that the foregoing petition and the matters therein as stated, he believes to be true

Sworn to and subscribed before me this 22d day of January AD 1859 } John D. Stevenson

Ashley T. Johnson, Notary Public;

3 Summons

Thereupon the following summons issued, to wit:

County of St Louis ss:

The State of Missouri

To the Sheriff of St Louis County — Greeting

We command you to summon Peter Lindell 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 Pacific Railroad as set forth in the annexed petition and have then and there this writ.

Witness Charles A Mantz, clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis, this twenty second day of January in the year of our Lord eighteen hundred and fifty nine

L S

Charles A. Mantz, Clerk.

Upon the back of said summons the Sheriff made the following return, to wit:

Executed this writ in the county of St Louis on this 4th day of February 1859 by delivering a copy of the writ and petition as furnished by the Clerk to Peter Lindell the within named defendant.

Michael J Cerre, Shff.
by W. F. Walsh, Depty.

Answer.

On the sixteenth day of March 1859 the following answer was filed to wit:

The defendant Peter Lindell for answer to the

petition of the plaintiff, states as follows:

1. He denies that at the time of the institution of this suit, the plaintiff was entitled to the possession of the parcels of land mentioned in the petition, to wit: Fractional section number eight and number eighteen in township number Forty five Range number seven east of the fifth principal meridian, in manner and form as is alleged in the petition

2. He denies that at the time of the institution of this suit he did unlawfully withhold from the plaintiff the possession of the said parcels of land or either of them or any part thereof, in manner and form as is alleged in the petition

3. He denies that the plaintiff or any person under whom the plaintiff claims title to the said land or a right to possess the same, has been seized or possessed of the said land or any part thereof, at any time within ten years next before the time of the institution of this suit, in manner and form as in the petition is supposed

4. And he affirms that for twenty years ~~at~~ more, next before the time of the institution of this suit, he the defendant has had the peaceable and undisturbed possession of the said parcels of land, using and enjoying the same as his own property and claiming title thereto, against the world

These allegations being true, he prays to be hence dismissed with his costs.

By attorney Bates & Woodson

5 St Louis County to wit:

Edward Bates, attorney and agent and agent for the defendant being duly sworn says that the matters stated in the foregoing answer he believes to be true

Sworn to and subscribed before me this 16th day of March A D 1859. C. A. Mantz Clk

Edw Bates

Change of Venue

Afterwards on the sixteenth day of April 1861 the following further proceedings were had to wit:

March Term 1861 of the St Louis Land Court

Tuesday April 16, 1861.

Now at this day comes the said defendant Peter Lindell by attorney and files herein a petition and affidavit for a change of venue and notice thereof and the Court being fully advised of and concerning the same doth order that the venue in this cause be changed according to law to the St Louis Court of Common Pleas.

And afterwards at a term of the St Louis Court of Common Pleas within and for the County aforesaid begun and held at the City of St Louis, on the third Monday of November 1861 it being the eighteenth day of said month, the following further proceedings were had, to wit: Monday February 24th 1862

Death of P. Lindell suggested

It is suggested and shown to the satisfaction of the

6

Court that the defendant has departed this life

Tuesday February 25. 1862 the following further proceedings were had, to wit;

Pet filed & order that summons issue &c

The plaintiff comes and files a petition from which it appears that the Lizzie McComb, Lenn H. Baker, administrator, John Baker, Robert Baker, Sarah L. Coleman, and Martha Coleman, Esther Collins, and Monroe R. Collins, Peter Lindell, William C Lindell, Mary D Satchin, Lyman W Satchin, Eliza Gordon and Robert C Gordon, are the heirs at law and legal representatives of the deceased defendant Therefore on motion of said plaintiff by its attorney the Court orders that a summons issue to bring in said parties as defendants to this suit.

Petition

Which petition above referred to is in the words and figures following to wit;

Now comes the plaintiff and having suggested the death of the defendant Lindell states that said Lindell died intestate leaving as his heirs at law Lizzie McCombs, Lenn H. Baker, John Baker, Robert Baker, Sarah wife of Nathan Coleman, Esther wife of Monroe R. Collins, Peter Lindell, William C Lindell, Mary D wife of Lyman W Satchin and Eliza wife Robert C Gordon, and that letters of administration have been granted by the St Louis Probate Court to the said Lenn H Baker

Plaintiff prays that all the parties above named be made parties defendant to this suit and that

7 writ of summons issue therefor against Lizzie McCombs, Lenn H Baker as heir and administrator, John Baker, Sarah Coleman and Nathan Coleman her husband, Esther Collins and Monroe A Collins her husband, Peter Lindell William C Lindell, Mary D Satchin and Lyman H Satchin her husband, Eliza Gordon and Robert C Gordon her husband

Whittelsey
atty p. q.

Charles C Whittelsey agent of plaintiff in his oath says that he believes the above petition and the matters therein as stated to be true

Sworn to and subscribed this 25th Feby 1865. | Chas C Whittelsey

L. J. Papini, Clk.

And afterwards to wit on Thursday the fourth day of December 1862 the following further proceedings were had, to wit;

appearance P. Lindell for | Now come Peter Lindell, Jesse G. Lindell and Albert Lindell, children and heirs of Peter Lindell Jr deceased, by their curator, Linus Jackson, and file their appearance as representatives of Peter Lindell Jr.

And afterwards at the November Term 1864 of said court the following further proceedings were had to wit:

Wednesday February 15, 1865

8 It is suggested and shown to the satisfaction of the Court that Linus Jackson heretofore appointed Curator of infant defendants Peter, Jesse G. and Albert Lindell, has departed this life whereupon by consent William C. Jamison enters his appearance herein in place of stead of said Linus Jackson.

Judgment On Thursday February 16. 1865 the following further proceedings were had, to wit:

Pacific Railroad

vs

Lizzie McComb, Lewi H Baker, as heir and administrator John Baker, Robert Baker, Sarah L. Coleman and Nathan Coleman, Esther Collins and Monroe A. Collins, and Peter Lindell Jesse G Lindell, and Albert Lindell, heirs of Peter Lindell Junior by their curator William C Jamison, William C. Lindell, Mary D. Satchin and Lyman H Satchin, Eliza Gordon and Robert C Gordon, heirs and representatives of Peter Lindell deceased.

Now at this day came the parties herein by their respective attorneys and the infant defendants also, appearing by their curator, whereupon said parties waive a jury and submit this cause to the court and the Court after hearing the evidence herein being fully advised in the premises, finds the issues herein joined in favor of the defendants.

9 Therefore it is considered by Court that the plaintiff take nothing by its suit in this behalf, that the defendants go thereof without day and recover of said plaintiff their costs and charges herein expended and have execution therefor. The parties file an agreement which is in the words and figures following, to wit:

In the above entitled cause the parties agree before the Court and the same is entered of record, that the motion for new trial and bill of exceptions may be filed and signed at any time in vacation of this court at the option of the party making the motion for a new trial and filing the bill of exceptions and all proceedings shall be stayd in this cause until the first six days of the next term. St Louis February 16th 1865."

Burton A Hill attorney for defendants, Whittelsey atty P. L.

Afterwards at the April Term 1865 the following further proceedings were had, to wit;

Monday July 3d 1865.

appeal allowed &c The plaintiff files a Bill of Exceptions and an affidavit for an appeal and on its motion by attorney an appeal is allowed it to the Supreme Court from the judgment herein rendered it thereupon files an appeal Bond conditioned according to law, which bond is approved by the Court.

affidavit of appeal } Which affidavit for appeal is as follows Charles C Whittelsey agent and attorney of plaintiff being sworn says that the plaintiff does

10 not appeal for vexation or delay but because the affiant believes that the appellant is aggrieved by the judgment and decision of the Court.

Sworn to and subscribed this 3d July 1865, before me. } Chas. C. Whittelsey

Leon J. Papin, Clk.

Bill of Exceptions } The bill of exceptions is follows;

Be it remembered that this cause came on for trial before sitting without a jury on the 15th of February 1865 and thereupon the plaintiff to maintain the issues upon its part offered evidence as follows: It was admitted by both parties that defendants were in possession of the premises sued for and that they and their ancestors had been in possession since Jany 1, 1829 and that the annual value of the premises was five dollars per acre per annum since the commencement of this suit

1. Plaintiff then read the act of Congress of June 10. 1852 granting the right of way to the State of Missouri and lands to aid in the construction of railroads &c.

2. An act of the State of Missouri approved Dec 25. 1852 to accept said grant of land &c.

3d Certified plat of sections eight and eighteen T. 45 N R 7 E, which is attached hereto:

11 4. Plat of line of road to the southwest boundary of the state which is hereto attached;

13 5. Certified copy of route of road through St Louis County, It is agreed that this plat may be used in Supreme Court.

Letter of Commissioner of General L. Office 6. Letter of Commissioner of General Land office, certifying to the filing a plat map of the location of the road from St Louis to the Southwest boundary of the state dated May 16. 1853. and other documents;

General Land Office
May 16th 1853

Thomas Allen
President of the St Louis
and South Western Branch
of the Pacific Railroad Co
at St Nicholas Hotel, New York

Sir

I have to acknowledge the receipt of your communication of the 4th. instant transmitting the map of location of the St Louis and South Western Pacific Rail Road of Missouri, a printed copy of the act of the State Legislature, transferring to your company, on certain conditions, all the benefits and immunities of the grant made to the State by the act of Congress approved June 10. 1852, to aid in the construction of the road; your commission under the seal of the State from the Governor of Missouri, as agent for making the selections of land and a certified copy of the resolution of the board of directors of the company, authorizing and empowering

you to attend to the adjustment of the whole grant all of which are satisfactory to this office and have been placed on its files.

As regards the slight contemplated modifications in two small portions of the line of the road alluded to in your letter, when finally determined upon a more perfect map of the route duly certified, will be required to be filed in this office before a full adjustment can be made of the grant; and in accordance with the suggestion contained in your letter to release and restore to market such portions of the lands heretofore withdrawn from sale, as will not fall within the limits of sections under the grant as indicated by the red shaded lines on the printed diagrams of the State which accompanied your letter, the president has just ordered that such lands shall be restored to market by a public notice, through the paper Land Officers on Tuesday the 5th day of July next as shown and explained on the printed diagram (marked E & E) herewith transmitted

In answer to your request to be furnished with an estimate of the number of acres granted by the act, I have to state that by a careful measurement of the route of the road as laid down on the township plats of this office from the maps of location received with your letter, the length of the road is found to be three hundred and fourteen (314) miles and the quantity granted will therefore be One million two hundred and five thousand, seven

15 hundred and sixty acres (1.205.760.) acres, which it is believed will not vary materially from the actual quantity when ascertained by the final adjustment of the grant.

I am very respectfully
Your obdt Servt
John Wilson
Commissioner

Plaintiff then proved that a map of the route had been filed in the office of the Secretary of State of Missouri and that the same had been lost.

Plaintiff here rested its case whereupon the defendants offered evidence as follows:

Commission Thos Allen from Gov S. Price of Missouri

Commission from S. Price, Governor of Missouri appointing Thomas Allen President Pacific R.R. agent of the State to select the lands granted by act of Congress of June 10. 1852, dated Jany 13. 1853

The State of Missouri
To all who shall see these presents Greeting.

Know ye that reposing especial trust and confidence in the integrity and abilities of Thomas Allen of St Louis County, I, Sterling Price, Governor of the State of Missouri on behalf and in the name thereof, do hereby appoint and commission him agent to locate and select the lands granted by act of Congress, along the main line of the Pacific Railroad from St Louis City to where the Southwestern Branch

diverges and along said line or branch railroad to the western boundary south of the Osage River, of the State of Missouri and do authorize him to discharge, according to law the duties of said trust and to hold and enjoy the same, together with all the powers privileges and emoluments thereunto appertaining until the legal termination thereof.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State of Missouri Done at the City of Jefferson this 13th day of January in the year of our Lord one thousand eight hundred and fifty three, of the Independence of the United States the seventy seventh and of the State of Missouri the thirty third

Sterling Price

The Great Seal of state

By the Governor

Ephraim B Ewing

Secretary of State.

Resolution of Board

Resolution of Board of Directors of Pacific R.R. of April 13, 1853, as follows:

Office Pacific Rail Road Co.
St Louis 13th april 1853

at a meeting of the Board of Directors of the Pacific Railroad Company held this day, among other proceedings had the following resolution was unanimously adopted viz;

Resolved that the president of this Company report

to the General Land Office, in person, a map of the line from St Louis to the western boundary of the State, so far as the same is located, and make such locations and selections of the lands granted to this Company as he may deem most advantageous to their interests

A true copy from the minutes of the Board.

Attest:

Seal of P.R.R. Co

Saml Copp Jr.
Secy P.R.R. Co.

Letter of Thos Allen apporting Coleman to act for him as agent of P.R.R.

Letter of Thomas Allen to Commissioner of General Land Office dated Nov 15, 1853, appointing S.M. Coleman to act for him as agent of the P.R.R to select the lands granted in lieu of the even numbered sections within six miles of the road already sold or disposed of or not subject to entry, dated Nov 15. 1853.

Office of Pacific Railroad Co
Saint Louis Nov 15. 1853

Hon John Wilson
Commissioner of General Land Office
Washington D.C.

Sir:

Mr S.M. Coleman is hereby authorized and deputed to proceed to Washington City and to act for me in selecting the lands granted to the State of Missouri to aid in the construction of the Pacific Railroad

The interest of this Company and of the public will be promoted by the early completion of this work at the land office and I respectfully ask the Commissioner to furnish such facilities to Mr Coleman as may be practicable in order that his duties there and the final location of the lands granted may be early brought to a close

I am very respectfully
Your obt. Servt.
Tho: Allen

Prest. P & R R Co and agt. for the State of Mo.

Letter of Thomas Allen to Commissioner dated May 4. 1853.

Washington City May 4, 1853

Hon. John Wilson
Commissioner of the General Land Office
Sir:

The State of Missouri having granted to the Pacific Railroad Company of Missouri all that portion of the grant of Public lands made by the act of Congress of June 10. 1852 to aid in the construction of a Railroad from St Louis to the western boundary of the State of Missouri, I have been designated by the Pacific Railroad Company under appointment of the Governor, agent to locate and select the lands under the grant aforesaid I file herewith in your office a copy of the location

19 of the line of the railroad from the Mississippi River in St Louis to the western boundary of the State in the Springfield District, subject however to some slight modifications, to make which the more accurately we ask a little more time. The location however is sufficiently definite to enable us to indicate a more limited reservation of the public lands from sale until our location is finally and more satisfactorily settled. With the view of enabling the local land offices to be opened to the fullest extent practicable, a diagram of a strip of land generally about thirty miles in width but a little wider at one or two points to enable a choice of final location of line and running from the Mississippi river to the southwestern part of the State, and suggest that all the other lands heretofore withdrawn from market on account of this work outside of the limit specified on this diagram be thrown upon for private entry. You will observe however, that there are a few townships north of the Missouri River, within the 15 mile limit not heretofore reserved from sale, which I respectfully ask may be included in the reservation.

In advance of final selections I respectfully solicit an official statement from your Department giving an approximate estimate of the quantity of acres which will enure to the Pacific Railroad under the grant.

Herewith I have the honor to file a copy of the

act of the Missouri Legislature approved Dec 25, 1852 my commission from the governor of that State as agent to locate and select the lands and a copy of a resolution of the Board of Directors of the Pacific Railroad on the same subject.

Very Respectfully
Your obt servt
Tho: Allen
agent for the State of Missouri and President Pacific Railroad.

Copy from G.L.O. of list of lands sold & otherwise disposed of within the six mile reservation in lieu of which other land was selected within 15 miles &c

A certified copy from the General Land Office of a list of lands sold and otherwise disposed of within the six miles reservation on each side of the Pacific Railroad in lieu of which other lands were selected outside of the six and within fifteen miles on each side of the route of the south western Branch of the Pacific Railroad Missouri

This book may be used in the Supreme Court without being copied in full.

In said book the following is the statement respecting township 45 N R 7 E

Statement as to T45 N R 7 E

				acres	acres
Private Claim	S2	T45	R 7 E.	635	635.
Do	4	"	"	640.	640.
Do	6	"	"	640.	640
Do	8	"	"	640-	640
Same	10.	"	"	640.	640

21	Same	12	"	"	80.	80
	St Louis Common	14	"	"	640	640
	Private claim	16	"	"	640	640
	Same	18	"	"	640	640
	Same	20	"	"	640	640
	Same	22	"	"	640	640
	St Louis City	24	"	"	130.	130
	St ditched part r Pr. claim	26	"	"	405	405
	N E fr. selected for Schools and Private claim	28	"	"	640-	640
	Private claim	30	"	"	640-	640
	Same	32	"	"	640-	640
	U. S. Magazine reservation 1819 Small triangular fra. including Pri claim				580.-	580
					Total	9.510

Recapitulation of said lands — The following is the recapitulation of said lands dated Feby 25. 1854

Recapitulation

Tp.	R	East	Quantity disposed	Vacant	Aggregate
40	1	"	68 09		135 98
41	"	"	5604 39		7525 83
42	"	"	11137 37		11354 34
43	"	"	9660 54		9686 98

Tp	R	East	Quantity disposed		Vacant		Aggregate	
41	2	"	728	68			921	10
42	"	"	8555	36			11322	40
43	"	"	11167	83			11620	58
44	"	"	4924	04			7452	63
42	3	"	2709	70			5529	88
43	"	"	8921	27			11401	90
44	"	"	11139	01			11360	31
45	"	"	3610	64			3687	53
43	4	"	5981	94			8887	83
44	"	"	11126	84			11369	"
45	"	"	5965	49			6160	"
43	5	"	3739	15			3942	37
44	"	"	11504	71			11504	71
45	"	"	9869	38			9982	96
43	6	"	925	44			932	80
44	"	"	10916	52			10941	50
45	"	"	11337	42			11702	42
46	"	"	3200	"			3200	"
43	7	"	"	"			"	"
44	"	"	3000	"			3108	82
45	"	"	9570	"			9778	20
46	"	"	3616	"			3680	19
Tps	26		188919	81	18269	74	187189	55

Th	R	W	Quantity sold		Vacant	Aggregate	
40	1	"	1916	18		6384	73
41	"	"	8120	09		12092	16
42	"		10049	84		11728	42
43	"		2120			2320	
39	2		1508	54		7695	53
40	"		6211	81		11807	47
41	"		8188	08		11058	27
42	"		8550	05		5439	95
38	3		1148	50		4124	84
39	"		1308	93		13035	58
40	"		2550	13		11384	65
41	"		640	"		3360	"
37	4		"	"		203	58
38	"		2261	18		9008	58
39	"		1400	"		13893	72
40	"		520	"		5000	"
37	5		629	02		2016	89
38	"		2841	60		11339	54
39	"		1727	51		11948	94
40	"		200	"		200	
37	6		1592	22		7211	38
38	"		2819	49		11148	09
39	"		850	96		7977	78
36	7		"	"		701	01
37	"		1798	72		10903	47
38	"		1800	91		11915	58
39	"		1480			2760	00

36	8	"	678	40	5831	84
37	"	"	974	86	11563	61
38	"		1360	"	10343	69
39	"		"	"	604	"
			70247	02	234999	30
			70247	02	234999	30
36	9	"	1518	80	7404	27
37	"	"	1479	34	11578	94
38	"	"	228	28	5167	43
35	10	"	51	10	476	80
36	"	"	1076	25	10229	23
37	"	"	1270	99	11162	84
38	"	"	549	43	5686	27
35	11	"	609	72	4216	48
36	"	"	1168	36	11420	47
37	"	"	1864	49	9955	21
38	"	"	"	"	880	
34	12	"	"	"	855	99
35	"	"	1937	30	10900	
36	"	"	2441	04	11172	22
37	"	"	804	87	9221	72
34	13	"	329		5351	60
35	"	"	1233	96	11432	57
36	"	"	1758	68	9262	44
37	"	"	"	"	1400	"
34	14	"	1520	"	9324	47

						Aggregate	
35	"	"	2597	09		11545	88
36	"	"	280			4143	50
33	15	"	720			5837	37
34	"	"	1842	08		13880	64
35	"	"	2311	31		10864	83
36	"	"	"	"		800	"
30	16	"	"	"		825	70
31	"	"	200	"		2721	53
32	"	"	782	80		4476	86
33	"	"	1710	65		11715	79
34	"	"	5034	53		13945	94
35	"	"	530	69		3101	53
			106093	78		465897	82
			106093	78		465897	82
29	17	"	"	"		580	60
30	"	"	1762	89		10378	81
31	"	"	1358	35		11662	46
32	"		1636	35		11574	27
33	"		2458	40		11406	21
34	"		600	"		7073	18
29	18		897	70		6056	56
30	"		1601	59		11522	59
31	"		1481	32		10865	74
32	"		2160	"		9538	98
33	"		120	"		5519	16
34	"		160	"		640	
29.	19		3439	73		11358	87

30	"	"		2171	32				11584	22	
31	"	"		120	"				2560		
28	20			126	88				503	17	
29	"			5728	03				12313	92	
30	"			3495	79				11304	15	
31	"			40					160		
28	21			2000	29				2566	72	
29	"			10835	58				13412	22	
30	"			2880					7479	44	
27	22			362	87				607	91	
28	"			4434	60				7807	64	
29	"			9094	57				14026	20	
30	"			1320					5732	67	
26	23			"	"				820	53	
27	"			1284	18				8000	23	
28	"			4082	49				11459	43	
29	"			3798	25				13624	20	
30	"			800	"				1400		
			17	6344	90				698837	90	
			17	6344	90				698837	90	
25	24	"		344	90				441	18	
26	"			1203	42				9874	44	
27	"			1586	10				11564	75	
28	"			2729	91				10913	50	
29	"			1280	"				2800	"	
25	25			226	24				2056	58	
26	"			1600	28				11479	08	

Vacant

27	25	"		2724	31					10281	75
28	"	"		280	"					2200	
25	26	"		640	"					6602	82
26	"	"		2515	53					11475	86
27	"	"		3271	04					9502	12
25	27	"		1162	60					10001	34
26	"	"		1032	72					11476	53
27	"	"		680						4040	
25	28	"		1399	81					9868	98
26	"	"		1720	72					11520	67
27	"	"		760	22					3280	31
25	29	"		3838	76					9288	56
26	"	"		2120	"					11583	02
27	"	"		40						2609	44
25	30	"		2279	83					9015	18
26	"	"		2522	27					11534	69
27	"	"		658	45					3648	44
24	31	"		40	"					859	65
25	"	"		2267	26					11240	72
26	"	"		2045	80					11578	72
27	"	"		80						1840	"
24	32	"		800						6114	18
25	"	"		1847	54					11434	62
26	"	"		2050	"					7326	
			22	1697	71				93	6311	03
			22	1697	71				93	6311	03
24	23	"		640	"					7115	40

	~~24~~	~~33~~	"										
	25	"	"		1715	22					1147	4	39
	26	"	"		560	"					684	4	60
	23	34	"		"	"					97	4	91
	24	"	"		988	25					701	3	94
	25	"	"		440	"					310	1	05
	26	"	"		80	"					121	0	20
	132	34	West	22	6121	18	74	7924	34	97	4045	5	52
	26	7	East	16	8919	81	1	8269	74	18	7189	5	55
Aggregate	151	41		39	5040	99	76	6194	08	116	1235	0	07

I have selected the land located and disposed of in the even numbered sections within the Grant of six miles on each side of the route of the West Division and the south Western Branch of the Pacific Rail Road, State of Missouri and carefully examined the same and find the above statement correct

John McDuell

Washington Feby 25
1854

29
Letter
Tho Allen
to
Comr. Mar. 10.
1854

Letter of Thomas Allen to Commissioner dated March 10, 1854

Washington City D. C.
March 10. 1854

Sir:

In making the examination necessary to determine the vacant lands in the even numbered sections within six miles of the Pacific Railroad leading from the Mississippi River at St Louis to the Western boundary of the State of Missouri which by act of June 10th 1852 were an absolute grant to the State and in place it is ascertained that the following described tracts of land are vacant and are by the said act vested in the State.

The tracts of land to which I allude are as follows, to wit: Fractional Section 24 T45 N 7 E containing 16. 65 acres being upon an island in the Mississippi River

That part of Frl Section 26 T45 N 7 East containing 8 20/100 acres, which lies upon the main shore west of the Mississippi River and is bounded on the north east by the claim of Auguste Chouteau Survey No 363 on the west or North west by the claim of James Mackay Survey No 3123 decision No 54 on the South by the claim of Antoine Soulard, Survey No 1333 and on the east by the Mississippi River

That part of Frl sec. 26 T45 N 7 East contents

not noted on the plat in the General Land Office) which lies between the claim of Antoine Inlard Survey No 1333 and the Mississippi River Fractional Section 26 T45 N7 East. containing 124 32/100 acres being upon an island in the Mississippi river All that part of the North East fract quarter of Section 34 T45 N7 East. which lies adjoining to and east of the Commons of St Louis and containing 16 47/ acres. All that part of the South fract 1/2 of Section 34 T45 N7 East, containing 6 33/100 acres which lies adjoining to and east of the Commons of St Louis. All of which are particularly designated and known as the tracts of land which are colored blue upon the annexed diagram

As all of the above tracts of land have by the act above referred to passed to the State I would respectfully submit them to you for approval as among the even numbered sections within six miles of the Railroad which I request may be included in the certified list.

I have the honor to be sir
very respectfully your obt
Servt. Tho Allen, President of the
Pacific Railroad Co and agent for the
State of Missouri

Hon John Wilson
Commissioner of G. L. O.

List of vacant lands within six miles of the road certified to the State of Missouri as lands granted by act of June 10. 1852, approved March 16. 1854.

This book may be used in the Supreme Court without being copied into the Record (P R R Book 1)

List of lands within fifteen miles of the road selected in lieu of even numbered sections within six miles sold or otherwise disposed of. approved Mar 13, 1854. (P R R book 2)

This book may be used in the Supreme Court without being copied into the Record

Letter of Thomas Allen to Commissioner dated July 7. 1854 as follows:

Letter of Tho Allen to Commissioner dated July 7. 54

Office of the Pacific Rail Road Co St Louis Missouri
July 7th 1854.

Dear Sir:

Enclosed I send you a list of lands which I have selected in lieu of those tracts included in your approval which it has been ascertained were disposed of prior to June 10th 1852

I see by your order No 517 of 21st June 1854 that all public land more than six miles from the South West Branch of the Pacific Railroad will soon be restored to market

The quantity reported as sold and for which the state is entitled to make additional selections, is

32

3222, 62 acres, in lieu of which I have selected 3223-20 acres

If no objection appears to these selections, I should be pleased if you would reserve them for the purpose above mentioned

I have the honor to be sir
Very Respectfully Your obt servt
Tho allen
Agent for the State of Missouri

Hon Jno Wilson
Comr Genl L O
Washington City
D.C.

List of addl lands selected as above

List of additional lands selected as above

33
~~33~~

Thos Allen to Commissioner April 8. 1854

Thomas Allen to Commissioner dated April 8. 1854

Office of the Pacific Rail Road Company St Louis Mo

April 8th 1854

Sir: I have the honor to enclose herewith a list of lands included in our approved list which (according to the records in the Land Offices in this city) appear to have been disposed of by the United States

In this statement will be found the date of entry, name of purchaser and number of certificate of purchase, number of warrant and number of Surveyor General's Certificate in each case.

I should be pleased if at your earliest conveyance you will cause an examination to be made and advise me, as to the number of acres of ~~xxxxxx~~ valid interferences included in this statement in order that I may select the like quantity before the lands shall be brought into market.

I have the honor to be sir
Very respectfully Your obt servt
Tho Allen
Prest. Pacific R.R. Co
Agent State of Missouri

Hon Jas Wilson
Comr Genl L Office
Washington City
D.C.

~~34~~ 54

List of lands thus selected (see above)

Letter of Secretary of Interior to Commissioner G.L.O. March 13, 1854

Secretary of the Interior to Commissioner dated Mar 13, 1854

Department of the Interior
March 13. 1854

Sir:

I herewith return the lists of land selected by the State of Missouri under act of June 10. 1852 for a rail road from St Louis to the western boundary of the State of Missouri known as the first division of the Pacific Railroad and the Southwestern Branch of the Pacific Railroad of said State", submitted with your letter of the eleventh inst. with my approval subject to any valid interfering rights written thereon

Very Respectfully
Your obt servt
R McClelland
Secretary

To the Commissioner of the General Land Office

Secretary of the Interior to Commissioner dated May 13, 1853.

Department of the Interior
Washington May 13th 1853

Sir: I have the considered the question submitted

in your letter of the eleventh instant as to the proper construction of the act of June 10th 1852 "granting the right of way to the State of Missouri and a portion of the public lands to aid in the construction of certain railroads in said state," and believing that sound policy requires a liberal construction of such acts of Congress, I fully approve the suggestions which you offer and advise their adoption

I am Sir very respectfully
Your obt Servant
R McClelland
Secretary

Hon John Wilson
Commissioner of the
General Land Office

Letter of Secy Interior to Commissioner dated May 14, 1853

Secretary of Interior to Commissioner dated May 14. 1853.

Department of the Interior
May 14. 1853

Sir:

I herewith return the papers enclosed in your letter of the 9th inst. in relation to the reservation of certain lands in the State of Missouri for railroad purposes with the approval of the President of the course suggested endorsed on a letter addressed to him on the subject by this department

To the Commissioner of the General Land Office

Very respectfully
Your obt servt R. McClelland,
Secretary.

36

Testimony S.M. Coleman

Defendants then called S.M. Coleman who testified that he was appointed as agent of the plaintiff to select lands for the Pacific Railroad without the six and within the fifteen mile reservation and that he acted as such agent in procuring the lists of lands granted and selected as presented by the books and lists here presesent. These records show the lands the plaintiff claimed

The additional lists certified for 3222 62/100 acres were supposed to complete the whole quantity to which we were entitled by the grant. The original lists and additional lists are hereinafter referred to Pacific R. Road 1 & 2, 3 & 4, and were made in 1854 The selections within the fifteen miles limit were made by me in full satisfaction of the lands within the six mile limit which appeared from the records of the General Land Office to have been sold or otherwise disposed at the time in 1854 follows;

Surveyed by Jos. C Brown
June 23d 1819
Plat & Survey recorded
B A p 84 85

No 161 Joseph Hunot
480 acres.

Office of the Recorder
of Land Titles

St Louis August 12, 1816

I certify that a tract of six hundred and forty acres of land at Portage River St Francis in the county of New Madrid, which appears from the books of this office to be owned by Joseph Hunot who has already received certificate No 37 for 160 acres) has been materially injured by earthquakes and that

37 Defendants then read in evidence patent to Joseph Hunot L R dated Aug 30. 1859

39 New Madrid Certificate No 492.

41 Plaintiff admitted that defendants hold the title under Hunot and have been in possession since 1829 Jany 1.

Plaintiff also waived all claim to any lots in the Grand Prairie Common Fields so far as the same have been confirmed by the United States and for the purposes of this suit admit that plaintiffs have title thereto

Defendants read in evidence act of Congress of June 30. 1864 confirming said Hunot claim this act may be read from the statutes 1864 p 7 of Private Acts

Defendants here rested their case.

Stipulation Defendants may read in evidence before the Supreme Court or any other appellant Court and have inserted in the transcript of the Supreme Court of Missouri for the Supreme Court of the United States, the whole or any part of "Book 3 B. A. Hill's List" as marked and B A Hill's papers Book 4 as marked; and from which copies of parts thereof have been heretofore referred to.

U S Survey No 2500. Plaintiff read in evidence certified copy of U.S. Survey No 2500 for Joseph Hunot approved by Surveyor General for Illinois and Missouri Jan 22. 1859 as follows:

Plat and description of the survey of the tract of land of four by hundred and eighty acres situate in town=

ship forty five north of the base line of Range seven east of the fifth principal meridian in the State of Missouri. This being the tract located on the sixteenth of June eighteen hundred and eighteen by Joseph C Brown for Rufus Easton, the legal representative of Joseph Hunot in virtue of a certificate Numbered one hundred and sixty one, issued on the twelfth of August Eighteen hundred and sixteen by Frederick Bates, United States Recorder of Land Titles in the Territory of Missouri in conformity with the provisions of the act of Congress of the seventeenth day of February eighteen hundred and fifteen entitled An act for the relief of the inhabitants of the late County of New Madrid in the Missouri Territory who suffered by Earthquakes"

The location above mentioned calls for including that part of Fractional section seventeen in township forty five north and range seven east (the township in which St Louis County is situated) lying north of the Cul de Sac Fields, fractional section eighteen in the same township and so much off on the East side of the unappropriated part of fractional section eight of the same township as will make the quantity" The tract so located was surveyed on the twenty third of June eighteen hundred and nineteen by Joseph C Brown, deputy Surveyor under his contract with William Rector, Surveyor of the lands of the United States in the Territories of Illinois and Missouri dated

43 the thirty first of March eighteen hundred and seventeen; the several lines thereof were subsequently re-measured either in whole or in part as lines of the adjoining or interfering private surveys. This survey is herein platted and described to conform to these remeasurements.

45

Description

Beginning at a stone in the west boundary of section in township forty five north of Range Seven east, corner to this survey and to survey numbered two thousand seven hundred and twelve in the name of James Conway or legal representatives, from which a large stone marked with letter I on the top, said to have been set for corner ~~from which~~ to the Conway Survey bears east seventeen links distant, thence South at forty four links a stone thirteen inches long, ten inches wide, three inches thick set with the edges north sixty one degrees west and south sixty one degrees east at the intersection with the southern boundary of Survey numbered three thousand and three hundred and forty in the name of Guillaume Bizet's legal representatives from which a black oak seventeen inches in diameter bears north twenty seven degrees and fifteen minutes west twenty eight links distant and a black oak eight inches in diameter bears north fifty eight degrees east thirty two and a half links distant; at four chains and seventy five links a large stone, the north west corner of survey numbered nine hundred and three in the name of Widow Campi's legal representatives, and a corner to fractional section sixteen from which a black oak twenty four inches in diameter bears north sixty five degrees and thirty minutes east eighty four links distant and a black oak twenty three inches in diameter bears

north one degree and five minutes west, seventy nine and a half links distant; at twenty seven chains and thirteen links a stone fourteen inches long, eleven inches wide and three and a half inches thick, the north east corner of survey numbered one thousand eight hundred and fifteen in the name of Peter Lacroix's representatives; at thirty three ~~sixches~~ chains and seventy eight and one third links a stone, the south east corner of the Peter Lacroix's Survey; and at thirty seven chains and fifty three and one third links a stone in the northern boundary of survey numbered one thousand three hundred and thirty two in the name of Emilian Gosty under John Baptiste Deschamp, the south west corner of the underwamp Survey and the south east corner of this Survey, from which the north east corner of the Emilian Gosty Survey in the western boundary of Survey numbered three hundred and sixty three in the name of Auguste Chouteau under Laclede Leget, bears south seventy five degrees east seven chains distant

Thence north seventy five degrees west, with the northern boundary of the Emilian Gosty Survey eighty one chains and eighty links to a stone in the east boundary of Charles Gratiots' Survey, numbered Two thousand and thirty seven, the north west corner of the Emilian Gosty survey and a corner to this survey

Thence north eight degrees and forty five minutes east

47 with the east boundary of the Charles Gratiot Survey two chains and forty seven links to a stone marked with the letters CG, the north east corner of the Charles Gratiot Survey and a corner to this Survey

Thence north eighty three degrees west with the north boundary of the Charles Gratiot Survey, thirteen chains and fifty three links to a large stone - The south east corner of survey numbered three thousand and fifty two in the name of Charles Roy or his legal representatives and a corner to this survey

Thence north seven degrees east with the east boundary of the Charles Roy Survey at twenty seven chains and ninety three and two third links a stone fourteen inches long eight and a half inches wide three inches thick, corner to the Peter Lacroix Survey; at thirty chains and ninety seven links a stone, corner of the Peter Lacroix Survey and at seventy six chains and forty seven links a large stone the south west corner of survey numbered two thousand six hundred and twenty in the name of Francis Delisle or legal representatives and the north west corner of this survey

Thence south eighty three degrees east with the south boundary of the Francis Delisle survey and to survey numbered two thousand six hundred and ninety two in the name of Joseph Genereaux or legal representatives

Thence south at nine chains and three links a stone

ten inches long nine inches wide, three inches thick at the intersection with the western boundary of survey numbered one thousand six hundred and sixty three in the name of Pierre Barribeau from which the south west corner of the Pierre Barribeau survey bears south twenty eight degrees and forty five minutes west three chains and ninety one and a half links distant at thirteen chains and fifty two links a stone nine inches long six inches, four inches thick at the intersection with the south boundary of the Pierre Barribeau survey which is the north boundary of Louis Lacroix's Survey numbered one thousand six hundred and sixty four from which the south west corner of the Pierre Barribeau Survey bears north sixty one degrees West two chains and twelve links distant; at sixteen chains and thirty links a stone marked with letter L" on the top the south west corner of the St Joseph Generaux Survey and at the north west corner of the James Conway survey; at ~~the~~ sixteen chains and eighty seven links a stone twenty and a half inches long six inches wide, three and a half inches thick, at the intersection with the south boundary of the Louis Lacroix Survey which is also the north boundary of survey numbered One thousand six hundred and sixty five in the name of Louis Laroches legal representatives from which the south west corner of the Louis Lacroix Survey bears north sixty one degrees west three chains and eighty one links distant

at twenty three chains and fifty six links a stone fourteen and a half inches long six and a half inches wide, six inches thick at the intersection with the south boundary of the Louis Laroche survey which is also the north boundary of survey numbered One thousand eight hundred and thirteen in the name of Vincent Bonis' legal representatives under Pierre Chonteau from which the south west ~~xxxxxxter~~ corner of the Louis Laroche survey bears north sixty one degrees west seven chains and nineteen links distant; at twenty six chains and ninety one links a stone ten inches long, nine inches wide, four inches thick at the intersection with the north boundary of survey one thousand eight hundred and fourteen in the name of Baptiste Riviere dit Baccané, or legal representatives, from which the north west corner of the Baptiste Riviere Survey bears north sixty one degrees west thirty five chains and seventy six links distant; at thirty chains and twenty five links, a stone fourteen inches long, ten and a half inches wide three and a half inches thick at the intersection with the south boundary of the Vincent Bonis and the Baptiste Riviere Surveys which is also the north boundary of Survey numbered three thousand three hundred and forty in the name of Guillaume Bizet's legal representatives from which the south west corner of the Vincent Bonis and the Baptiste Riviere surveys bears north sixty one degrees

west thirty seven chains and forty five links distant at thirty three chains and forty nine links a stone eleven and a half inches long, eight and a half inches wide, four inches thick at the intersection with the south boundary of the Guillaume Bizet Survey, from which the south west corner of said survey bears north sixty one degrees west thirty nine chains and fourteen links distant; and at fifty six chains and thirty links a stone the south west corner of the James Conway Survey and a corner to this survey. Thence east with the south boundary of the James Conway survey, at forty chains and fifty four links a stone fourteen inches long, eight and a half inches wide, two inches thick set with edges east and west at the intersection with the south boundary of the Guillaume Bizet Survey from which a black oak twelve inches in diameter bears north seventy two degrees and forty five minutes West eleven links distant; and at forty one chains and forty five links the beginning corner

Statement of Interferences of Survey No 2500 with other surveys.

1. Survey No 1663 of One and half by forty arpents claimed by Pierre Barrbeau, confirmed by the act of Congress of the 13th June 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri" the extent and bound=

aries proven on the third March 1825, in conformity with the provisions of the act of Congress of the 26th May 1824, entitled "An act supplementary to an act passed on the thirteenth day of June One thousand eight hundred and twelve, entitled "An act making further provision for settling the claims to land in the Territory of Missouri".

The area of the interfering part = 0.41 acres

2. Survey No 1664, of one by forty arpents claimed by Louis Lacroix confirmed by the act of Congress of the 13th June 1812; the extent and boundaries proven on the 3d March 1825 conformably to the provisions of the act of Congress of the 26th May 1824.

The area of the interfering part = 0.86 acre

3. Survey No 1665 of two by forty arpents in the name of Louis Laroche's legal representatives, confirmed by the act of Congress of the 13th June 1812, the extent and boundaries proven on the 28th July 1825, in conformity with the provisions of the act of Congress of the twenty sixth May eighteen hundred and twenty four

The area of the interfering part = 3.20 acres.

4. Survey No 1813 of two by forty arpents in the name of Vincent Bouis' legal representatives under Pierre Chouteau confirmed by the act of Congress of the thirteenth June eighteen hundred and twelve; the extent and boundaries proven on the first June eighteen hundred and twenty five, in conformity with the provisions of the act of

Congress of the twenty sixth May eighteen hundred and twenty four. The area of the interfering part exclusive of the part included in Survey No 1814 = 10-18 acres.

5. Survey No 1814 of one by forty arpents in the name of Baptiste Riviere dit Baccané or legal representatives; confirmed by the act of Congress of the thirteenth June eighteen hundred and twelve. The extent and boundaries proven on the twenty eighth July eighteen hundred and twenty five, conformably to the provisions of the act of Congress of the twenty sixth May eighteen hundred and twenty four confirmed also by the act of Congress of the twenty ninth of April eighteen hundred and sixteen, entitled an act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the territory of Missouri The area of the interfing part = 10.67 acres.

6. Survey No 3340. of one by forty arpents in the name of Guillaume Bizet' legal representatives confirmed by the act of Congress of the 4th of July eighteen hundred and thirty six entitled an act confirming claims to land in the State of Missouri and for other purposes" The area of the two interfering parts = 11.18 acres.

7. Survey No 1815 of two by forty arpents in the name of Peter Lacroix's representatives confirmed by the act of Congress of the twenty ninth of April eighteen hundred and sixteen This tract is wholly included in Survey No 2500 and contains 58.70 acres.

53 All the above surveys are lots in the Grand Praire Common Fields of St Louis, They were surveyed in the year eighteen hundred and fifty and eighteen hundred and fifty five by William H Cozens, Deputy surveyor under the instructions dated the ninth of May eighteen hundred and forty six and the twenty second of February eighteen hundred and fifty five

Office of the Surveyor General
for Illinois and Missouri
Saint Louis January 22d
1859

The foregoing plat and description of survey numbered Two thousand five hundred are this day approved as recorded on pages two hundred and sixty, two hundred and sixty one, two hundred and sixty two, two hundred and sixty three and two hundred and sixty four, of this book.

Jno Loughborough
Surveyor General

Office of the Surveyor General for Illinois
and Missouri Saint Louis April 16th 1860

The foregoing plat and description of Survey No 2500 with the accompanying certificate, are correctly copied from pages 260-261, 262, 263 and 264 of record book A on file in this office

Jno Loughborough
Surveyor General

54 Letter from Recorder of Land Titles to Commissioner of the General Land Office dated February 15. 1859.

Recorder's Office
Saint Louis 18. February 1859

Sir: I hereunto transmit
1° A plat and transcript of survey No 2500 in T 45 N R 7 E 5th pl Md. of the location under New Madrid certificate No 161 granted to Joseph Hunot or his legal representatives for 480 acres. The document was returned on the 5th instant by the Surveyor General with a copy of your instructions of the 26th August 1858
2° Patent Certificate No 492 issued for survey No 2500 in conformity with the above instructions
3° The abstract of certificate 492

The necessary annotations to show that certificate No 404 which had been formerly issued for survey No 2500 is superceded by certificate No 492, are made in the books

Messrs Ed Bates and Peter Lindell of this city claim the patent

I am very respectfully sir,
Your obt servt (signed) Adolphe Renard Recorder.

To Thomas A Hendricks Esq. Commissioner of the General Land Office, City of Washington

Office of the Recorder of Land titles Saint Louis 16th April 1860
I certify that the above is correctly copied from the original on file in this office. Adolphe Renard, R Recorder of Land titles in the State of Missouri –

55 Letter of Surveyor General to Commissioner dated October 14, 1857

Office of the Surveyor General
Saint Louis Oct 14, 1857.

Sir: I have received your letter of the 24th ult. in which I am requested to make a thorough examination of the location of Jos Hunot of 480 acres in T45 N R 7 E of the 5th prl mdn under New Madrid Certificate No 161 and a full report touching that location and all adverse claims, with the letters copies of two communications from Allen Long Esq, one dated the 17th November 1855 to the land officers at St. Louis containing his protest against their declining to permit him to enter the land covered by the said location and the other dated the 19th of same month to the commissioner of the General Land Office in which Mr Long stated his case and asked for the annulment of the Hunot Survey Jos Hunot had a permission dated the 20th June 1802 from Francis Lesieur commandant of the post of Little Prairie to settle on the vacant land of that post. Under this he presented a claim for 800 arpents to the Old Board which rejected it but the same was confirmed to the extent of 640 acres by the second section of the act of 29th April 1816 book A p 275 Board Minutes B 5. p 105 Bates decision p 13 in recorders office St Lap Vol 3 p 313

On the twelfth of August eighteen hundred and sixteen I as Agent availing himself of the benefit of the act of 17th of February eighteen hundred and fifteen furnished evidence of the injury to his land by earthquakes The following this testimony is a note in the handwriting of Recorder Bates i.e. R Easton claims this tract with the right of location. It was relinquished under the act by Rufus Eastons legal representatives Recorder Bates on the same day granted certificate of New location No 161 with this remark: Certificate dated August 12th 1816 for 480 acres which together with Certificate No 37 for 160 acres makes 640 acres the limitation (Delivered) R Easton "Certificate No 37 is for a lot of 1 arpent in New Madrid confirmed by the act of 29th April 1816 but relinquished on account of damages by Earthquakes

A copy of certificate (letter "A") No 161 accompanies this report A location of it (copy B) was made on the 4th of November 1816; it is signed "Rufus Easton assignee, agent and attorney of Claimant."

Paper "C" is a copy of the regulations prescribed to New Madrid Claimants by Surveyor General Rector for the reception at this office of their locations. They require the producing of the Certificate by the Recorder with its location.

From a note written on Eastons location it appears that it was received with Certificate No 161 by the Surveyor General on the 14th of Nov 1816 But no survey was made

57 for as endorsed on its back, the location was withdrawn in consequence of indefinite calls and interferences
A location was made on the sixteenth of June eighteen hundred and eighteen (paper D) by Joseph C Brown for Rufus Easton, as the legal representative of Jos Hunot to wit: That part of fractional section 17 lying north of the Cul de Sac fields - Fractional Section 18 and so much off of the east side of the unappropriated part of fractional Section 8 of the same township as will make the quantity in T45 N R 7 E of the 5th P M Dn. This is the location under consideration. It was surveyed on the 23d June eighteen hundred and nineteen by Jos. C Brown under his contract of thirty first March eighteen hundred and seventeen The survey was platted and described as No 2500 in book A pages 84 and 85 (Copy E) and return of it made the eighth January eighteen hundred and thirty three to the Recorder who on the second of February of same year issued Patent Certificate No 404 and delivered it to Peter Lindel Esq of this city. The Survey is stated to contain 480 acres the quantity granted
There are represented in diagram I Survey No 2500 of the Hunot Location the areas of the several tracts it takes up and all the claims conflicting with the Survey
Survey No 2500 conforms to the location as to fract=

ional sections 17 and 18 In regard to fractional section 8 the location calls for only so much off on the east side of the unappropriated part of the section as will with the other tracts make the quantity of 480 acres whilst the Survey includes the whole of the location It embraces also fractional section seven (21.12 acres) not mentioned in the location

The separate contents of the four tracts show an aggregate area of 485.88 acres.

In as much as the other locations are on sections 8 this thought proper to compare their dates with that of Hunot's made the sixteenth June eighteen hundred sixteen

Francis Delisle Certificate No 16 - Location on the 29th July or 3d August 1818 or on any of the intermediate days

Joseph Genereaux. Certificate No 19. Location 12th December 1817

James Conway Certificate No 348. Location 16th June 1818

The claims conflicting with the Survey for Hunot are the following lots of the Grand Prairie Common Field which have been confirmed with one exception upon possession and cultivation prior to the 20th Decr. 1803. The confirmation of the case excepted (Bizet) is founded upon Spanish Grant, to wit;

By act of 29th April 1816.

Survey No 1662 Benito Vasquez's representatives
" " 1815 Pierre Lacroix's representatives
" " 1814 Baptiste Riviere's representatives

By act of 29th June 1812 and 26th May 1824.

Survey No 1663 Pierre Panibeau
" " 1664 Louis Lacroix
" " 1665 Louis Lerche's representatives
" " 1813 Vincent Bonis' representatives
" " 1814 Baptiste Riviere dit Baccané's representatives

Act of 4th July 1836

Survey No 3340 Guillaume Bizeter his legal representatives

Those surveys were approved by your decision of the twenty seventh November eighteen hundred and fifty six which being appealed from was confirmed by Secretary McClelland on the 2d March eighteen hundred and fifty seven.

In your letter of the 24th ult. I am referred to mine of the 5th of February Eighteen hundred and fifty six respecting the appeal of Mr Lindell against Survey 1815 of Pierre Lacroix's lot of two arpents one of the above interfering claims In this case Messrs Bates and Hill the attorneys for Mr Lindell, filed an agreement which was

subsequently withdrawn and the appeal dismissed in consequence as I understand of a compromise between Mr Lindell and the heirs or representatives of Lacroix

I am very respectfully
Your obt servant

Thos A Hendricks
Commissioner of the
General Land Office

Jno. Longhborough
Surveyor General

Office of the Surveyor General for Illinois and Missouri St Louis Decr 16. 1858

The foregoing letter is correctly copied from the Record of Letters on file in this office

Jno Longhborough
Surveyor General.

Letter of Commissioner to Surv. Genl

Letter of Commissioner to Surveyor General dated August 25th 1858 as follows, to wit:

General Land Office
August 25. 1858

Sir:

Your letter of twenty third June last in relation to the Hunot Survey No 2500 in the Grand Prairie Common Fields N M Certif. No 161 is before me.

In this case the Hon Trusten Polk recently made

61 application at this office on behalf of Peter Lindell representative of Joseph Hunot and on behalf the twenty third inst. the Hon Edward Bates as counsel for said Lindell filed an argument on the case.

It is now agreed on the part of Mr Lindell to accept a patent for Survey No 2500 as shown on the diagram before this office certified by you on the twenty seventh May eighteen hundred and fifty eight, saving and excepting therefrom the interferences as indicated by said Diagram. I have therefore to request that if upon examination of the Survey in connexion with the original location and the records of your office you find it substantially in accordance with said location and such as, under the long established principles respecting old surveys, should be finally approved, you will give special notice to all parties interested and proper public notice, that if, at or before the expiration of three months from the date of notice valid cause should not be shown to the contrary the plat will be finally approved excepting and excluding therefrom the following adverse claims conflicting therewith;

No 1663 Pierre Parribeau

No 1664 - Louis Lacroix

No 1665 - Louis Laroche

No 1813 - Vincent Bonis under P. Chanteau

No 1814 - P. Riviere dit Baccané

62 No 3340 Guillaume Bizet
No 1815 Peter Lacroix
You will then at the proper time furnish the Recorder with a duly certified plat to be forwarded to this office with his certificate as the basis of a patent.
The original survey and ~~plat~~ plat Cert. No 404 are enclosed also the argument of Mr Bates, all to be returned

Very respectfully
J. Longhborough Esq Your obt Servant
Surveyor General Jos S Wilson
St Louis Mo. Acting Commissioner

Office of the Surveyor General
for Illinois and Missouri
St Louis Dec 16th 1858

The foregoing letter is correctly copied from the Record of Letters on file in this office
Jno Longhborough
Surveyor General

New Madrid Certificate No 161 and entries under the same as follows:-

New Madrid Certificate No 161. } No 161 Joseph Hunot 480 acres
Office of the Recorder of Land Titles St Louis August 12 1816.

I certify that a tract of six hundred and forty acres

63 of land at Portage of River St Francis in the County of New Madrid which appears from the books of this office to be owned by Joseph Hunot (who has already received certificate No 37 for 160 acres) has been ~~officially~~ materially injured by earthquakes and that in conformity to the provisions of the act of Congress of 17th February eighteen hundred and fifteen the said Joseph Hunot or his legal representatives is entitled to locate four hundred and eighty acres, the balance under the limitations of the said act of Congress on any of the public lands in the territory of Missouri, the sale of which is authorized by law.

Frederick Bates

To William Rector Esq
Surveyor of the lands of
the United States for the Territories
of Illinois and Missouri

Sir:

Take notice that pursuant to the act of Congress entitled An act for the relief of the inhabitants of the late County of New Madrid who suffered by Earthquakes," approved February 17th 1815, I claim the right to locate four hundred and eighty acres of land mentioned in the certificate to you produced being issued by the Recorder of Land Titles for said Territory of a tract of six hundred and forty acres of land originally claimed by confirmed to Joseph Hunot (who has already received a certificate for one

hundred and sixty acres) which said quantity of land mentioned in said certificate I request you to locate and survey in Howard County north of Missouri beginning about one mile north of Elisha Roe's plantation at a red oak on a dividing ridge between Salt Creek and Bonne femme, and running thence north three hundred and eleven and one tenth perches thence west two hundred and twenty six and five tenth perches, thence south three hundred and eleven and one tenth perches thence east two hundred and twenty six and five tenth perches to the place of beginning or if it cannot be located and surveyed as aforesaid then as follows: to wit: beginning as aforesaid, thence north sixty six chains, thirty three links, thence west sixty six chains thirty three links, thence south sixty six chains thirty three links, thence east to the place of beginning

Dated the 4th day of November 1816 } Rufus Easton, assignee agent and attorney of claimant

Received into this office the 14th November 1816.

Rufus Easton as the legal representative of Joseph Hunot, enters four hundred and eighty acres of land by virtue of a certificate No 161 dated August 12, 1816, issued by Frederick Bates Esq. Recorder of land titles to wit: that part of fractional section seventeen in township forty five North and Range

seven East, (the township in which St Louis is situated) lying north of the Cul de Sac Fields, fractional section eighteen, in the same township and so much off in the East side of the unappropriated part of fractional section Eight of the same township as will make the quantity

St Louis June 16. 1818 } Joseph C Brown for Rufus Easton

Office of the Surveyor General for Illinois and Missouri
St Louis December 18th 1858

The foregoing Certificate No 161 with the accompanying documents is correctly copied from pages 225 and 226 of Records of New Madrid Certificates and Locations on file in this office

Jno Loughborough
Surveyor General

Testimony of J.M. Cooper

Plaintiff then called J M Cooper who testified I am the land agent for the plaintiff
These books here presented me are first the certified list made out in eighteen hundred and fifty four at the land Office at Washington, of the even numbered sections within six miles of the road granted as vacant lands by act of Congress of June tenth eighteen hundred and fifty two, and second, the lands selected within fifteen miles in lieu of the even numbered sections within six miles sold or otherwise disposed of. These are the books

offered in evidence by defendants and referred to The two additional lists are lists of the lands taken in eighteen hundred and fifty four, to make up the quantity to which the company was entitled. ~~Plaintiff then read in evidence certificates from the General Land Office making corrections in the foregoing lists of land granted and selected, which are in the words and figures following, to wit:~~

List of additional Lands

A list of lands granted to the State of Missouri for constructing the Southwestern Pacific Railroad under the provisions of the act approved June 10th 1852 and omitted in the lists heretofore approved to said State

Parts sold prior		section	Town=ship	Range	acres	acres		Remarks—
1	S½ of S E¼	20	27 N	31 W		~~40~~	~~00~~	included in prior list
2	W½	28	" "	" "	3	20	00	
3	S E¼ & W½ of N E¼	"	" "	" "	2	40	00	
4	N E¼	30	" "	" "	1	60	00	
5	W½	"	" "	" "	3	83	20	
6	W½ of S E¼ & S E¼ of S E¼	"	" "	" "	1	20	00	
7	N½	32	" "	" "	3	20	00	
8	W½ of N E¼ & N E¼ of N E¼	26	28	31	1	20	00	
9	N½ of N W¼	"	"	"		80	00	
					17	83	20	acres

General Land Office
November 30th 1854

I certify that the foregoing is an additional list or schedule of lands situated in the districts of land subject to sale at St Louis, Jackson and Springfield in the State of Missouri outside of and not contiguous to the tier of sections within six sections in width on each side of the Rail Road from the City of St Louis to the western boundary of the State, and not more than Fifteen miles from the line of said road, the survey and location of which said railroad has been filed in this office in pursuance of an act of Congress approved June 10th 1852 entitled "An act granting the right of way to the State of Missouri and a portion of the public lands to aid in the construction of certain Railroads in said State". And I further certify that said sections or parts of sections, being the even numbered sections, lying within fifteen miles of said route of railroad and outside of the aforesaid six sections in width on each side thereof, has been selected in behalf of said State of Missouri in pursuance of of the provisions of said act of Congress of 10th of June 1852, in lieu of such even numbered sections or parts of sections within six sections in width on each side of said Rail Road as has been sold by the United States or to which the right of preemption had attached, in accordance with the act of Congress last aforesaid

and I respectfully recommend that the selection and appropriation of said lands to the State of Missouri be approved subject however to any valid interfering rights

John Wilson
Commissioner

Department of the Interior
November 30th 1854.

Approved subject to any valid interfering right
A. McClellan, Secretary

General Land Office
December 14. 1854

I, John Wilson, commissioner of the General Land Office do hereby certify that the foregoing list of lands and certificates, is a true and literal exemplification of the original on file in this office

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the City of Washington on the day and year above written.

John Wilson
Commissioner

L.S.

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A list of lands granted to the State of Missouri for constructing the southwestern Pacific Rail Road, under the provisions of the act approved June 10th 1852, and omitted in the lists heretofore approved to said State

List of additional lands

	Parts sold prior	Section	Township	Range	acres		Remarks
1	N½ of SE¼	2	41	1E	80	00	
2	SW¼ " SW¼	14	"	" "	40	00	
3	E½ " NE¼	36	43	3 "	77	55	
4	SW¼ " NE¼	26	41	3W	40	00	
5	W½ " NE¼	20	38	5 "	80	00	
6	SE¼ " NW¼	10	39	5 "	40	00	
7	E½ lot 1 NE¼	6	38	6 "	40	00	
8	NW¼ " SE¼	32	"	1 "	40	00	
9	SE¼ " SE¼	32	39	7 "	40	00	
10	NW¼	12	38	8 "	160	00	
11	NW¼ of NE¼	36	38	9 "	40	00	
12	E½ " NW¼	8	35	12	80	00	
13	SE¼ " SW¼	28	37	7	~~40~~	~~00~~	included in prior list
14	E½ " SE¼	14	36	9	80	00	
15	W½ lot 1 SW¼	6	37	9	~~38~~	~~85~~	included in prior list
16	SW fract¼ S of river	14	37	10	29	23	
17	NE¼ of SW¼	22	34	16	40	00	
18	E½ " NE¼	34	34	17	~~80~~	~~00~~	
19	SW¼ " NE¼	"	"	"	~~40~~	~~00~~	
20	S½ + NW¼	36	"	"	~~480~~	~~00~~	included in prior list
21	SW¼ " NE¼	"	"	"	~~40~~	~~00~~	
22	W½ " SE¼	10	27	23	~~80~~	~~00~~	
23	NE¼ " SE¼	"	"	"	40	00	

24	S½ N¼ " N½ N¼	30	26	32	40	00	
					1785.63		acres

General Land Office
November 30. 1854

I hereby certify that the foregoing is an additional list or schedule of lands situated in the districts of land subject to sale at St Louis, Jackson, Clinton and Springfield in the State of Missouri remaining unsold and undisposed of, in alternate sections designated by even numbers for six sections in width on each side of Missouri ~~Known as the~~ the railroad from St Louis to the western boundary of the State of Missouri known as the first Division of the Pacific Railroad and the Southwestern Branch of the Pacific Railroad of said State the location and survey of which said railroad has been filed in this office in pursuance of an act granting the right of way to the State of Missouri and a portion of the public lands to aid in the construction of certain Railroads in said State, approved June 10. 1852

And I further certify that the said sections or parts of sections are granted to the said State of Missouri pursuant to the authority in said act and I respectfully recommend that the said lands be approved to the State of Missouri subject however to any valid interfering rights

John Wilson, Commissioner,

Department of the Interior
November 30. 1854

Approved subject to any valid interfering rights

R McClelland,
Secretary.

General Land Office
December 14th. 1854

I John Wilson, Commissioner of the General Land Office do hereby certify that the foregoing list of lands and certificates, is a true and literal exemplification of the original on file in this Office

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written

John Wilson
Commissioner

L S

Corrected Lists of Lands &c dated the 3d Sept 1863

Plaintiffs then read in evidence certificates from the General Land Office making corrections in the foregoing lists of lands granted and selected, as follows:

General Land Office
September 3d 1863

It is hereby certified that upon examination of the foregoing transcripts bearing date the 11th of March and the 30th of November 1854, from

this office, the following modifacations are found necessary viz:

General Land office Pages	Railroad	
1	1	E½ of lot of N W¼ Sect 6 T 40 N R 1 E true contents 68.08 acres
"	"	S W¼ of S E¼ sec 2. 41.1 = 40 acres previously sold and therefore not appropriated to the Road
"	"	S E¼ of S W¼ sec 14. 41.1 = 40 acres previously sold and therefore not appropriated to the Road
3	3	S E¼ of S E¼ sec 8. 42.2. 41.36 - previously sold and therefore not appropriated to the Road
4	4	W½ of S W¼ sec 34. 42.2 = 80 acres - N W¼ of S W¼ of S W¼ 40 acres previously sold and therefore not appropriated to the road leaving it to read S W¼ of S W¼ 40 acres.
4	4	N½ of N W¼ sec 4. 43. 2 true contents 93.51 acres
5	"	N W¼ of S E¼ sec 32. 44. 2 - 40 acres previously sold and therefore not appropriable to the Road
7	6	N E fr 1/4 sec 28 - 43 - 3 true contents 142-86 acres.
"	"	S E¼ sec 36. 42 · 3 true contents 150 45 acres E½ sec 2. 43. 4 - 330.61 - W½ lot 2 of N E¼ - 45.11 previously sold and therefore

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not appropriable to the Road - leaving it to
road E1/2 of lot 2 of N E1/4 lot 1 N E1/4
and S E1/4 285.50

8 7 W1/2 sec 26. 44. 4, 320 acres previous=
ly sold and therefore not appropriable to the
Road.

8 7 S W1/4 of N E1/4 sec. 6. 43. 5 = 37.56 previously
sold and therefore not appropriable to the Road

9 8 S W fl 1/4 (west of Carondelet Common) sec 26
46. 6 true contents 11.31

" " N E1/4 part of S W1/4 S E1/4 sec 30. 4. 4. 6 -
true contents 5.20

10 " S E1/4 of N E fl 1/4 (North of River) sec 6. 40. 12
true contents 24.84

14 " S1/2 of S E1/4 sec 32. 43. 1 - 80 acres. S W1/4
of S E1/4 40 acres previously sold and
therefore not appropriable to the Road - leav=
ing to Road S E1/4 of S E1/4 40 acres.

" " N E1/4 of S W1/4 sec 34 43. 1 40 acres
previously sold and therefore not appropriable
to the Road.

15 12 N E1/4 of S W1/4 and S W1/4 of S W1/4 sec
20. 40. 2. 80 acres S W1/4 of S W1/4 40a
previously sold and therefore not appropriable
to the Road leaving it to road N E1/4 of S W1/4
40 acres.

16 13 N1/2 Sec and S W1/4 of sec 30. 40. 2 true
contents 462. 89 acres

74 " " SE1/4 of SE1/4 sec 2. 41. 2 40 acres previously sold and therefore not appropriable to the Road

17 14 N1/2 of sec 30. 41. 2 135.83 - N1/2 of NE1/4 80 acres. previously sold and therefore not appropriable to the Road, leaving it to the road S1/2 of NE1/4 and N1/2 NE1/4 215.83 acres

21 17 E1/2 of N1/2 NW1/4 Sec 34 40. 3 80 acres - SE1/4 of N1/2 NW1/4 40 acres previously sold and therefore not appropriable to the Road, leaving it to road NE1/4 of N1/2 NW1/4 40 acres

25 21 ~~NE fl 1/4 NW 1/4~~ Sec 18. 38. 5 true contents 649.73 acs.

26 22 NE fl 1/4 (both sides of River) sec 34. 38. 5. true contents 155.49 a.

29 25 N1/4 of SE1/4 sec 32. 38. 6 40 acres previously sold and therefore not appropriable to the Road

31 27 S1/2 of sec 20. 37. 7 320 acres. S1/2 NW1/4 of SE1/4 40 acres previously sold and therefore not appropriable to the Road leaving it to road S1/2 NW1/4 E1/2 of SE1/4 and N1/2 NW1/4 of SE1/4 280 a.

32 " E1/2 of S1/2 NW1/4 and E1/2 of lot 1 & 2 of N1/2 NW1/4 sec 2. 38. 7 true contents 160.70

33 28 Section 30. 38. 7. true contents 806.08

34 29 Lots 1 and 2 of S1/2 NW1/4 sec 6. 37. 8 - true contents is 173.54 a

35 30 Lots 1 & 2 of S1/2 NW1/4 sec 30. 37. 8 - 184.24. N1/2 of lot 2 of S1/2 NW1/4 S112 a. previously sold and

75

		therefore not appropriable to the road, leaving it to road Lot 1 & S 1/2 of lot 2 of SW 1/4 131.a 12
37	12	S 1/2 of NE 1/4 and S 1/2 of NW 1/4 sec 26. 37. 9 160 a SE 1/4 of NE 1/4 40 acres previously sold and therefore not appropriable to the Road - leaving it to road SW 1/4 of NE 1/4 and S 1/2 of NW 1/4 120 acres.
38	33	W 1/2 and SE 1/4 sec 36. 38. 9 480 acres NW 1/4 of SE 1/4 40 a. previously sold and therefore not appropriable to the road - leaving it to road W 1/2 of sec; NE 1/4 of SE 1/4 and S 1/2 of SE 1/4 440 a.
40	34	N fr 1/2 (S or East of River) sec 2. 37. 10 112.a 98 - NE fr 1/4 S of River 92.a 70 previously sold and therefore not appropriable to the road - leaving it to road NW fr 1/4 S & East of River 20.a 28
44	38	SW fr 1/4 (S & W of River) sec 28. 37. 11 changed to road SE fr 1/4 S & W of river
46	40	N 1/2 of sec 2. 36. 12 true contents 318.40 a
47	40	E 1/2 of NE 1/4 and NW 1/4 of NE 1/4 sec 24. 36. 12 120 - NW 1/4 of NE 1/4 40 acres previously sold and therefore not appropriable to the Road - leaving it to road E 1/2 of NE 1/4 80 acres.
51	45	E 1/2 and NW 1/4 and N 1/2 of SW 1/4 sec 2 35. 14 true contents 580. 55

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52 " E1/2 and S W1/4 and lot 1 of N W1/4 sec 4 35. 14 true contents 573.a30

" " S1/2 of lot 1 and N1/2 of lot 2 of S W1/4 sec 18. 38. 14 true contents 85.94

58 57 N1/2 and E1/2 of S E1/4 sec 30. 33. 16 429 a N E1/4 of S E1/4 and S E1/4 of S E1/4 80 acres previously sold and therefore not appropriable to the Road – leaving it to road N1/2 of sec 349 acres.

59 52 Lots 6 + 7 of N W1/4 sec 4. 34. 16 true contents 184.a04

63 55 E1/2 of S E1/4 and E1/2 of N E1/4 sec 6. 32. 17 true contents 156.a28

64 56 Sec 30. 32. 17 true contents 694, 28 acres

66 58 S W1/4 of S W1/4 sec 4. 29. 18 40 acres stricken from list. Description of tract twice designated

70 61 W1/2 of N E1/4 and N W1/4 of N E1/4 sec 32 32. 18 – 120 acres.
N W1/4 of N W1/4 and N W1/4 of N E1/4 80 a previously certified to the ~~road~~ State as Swamp land and therefore not appropriable to the Road – leaving it to road S W1/4 of N E1/4 40 a

70 " S1/2 sec 32. 32. 18 320 a – N E1/4 of S E1/4 40 a previously certified to the State as Swamp Land and therefore not appropriable to the Road – leaving it to road S W1/4, N W1/4 of S E1/4 and S1/2 of S E1/4 = 280 acres.

77 " 63 Lot 2 of N.W.1/4 and N1/2 of lot 3 of S.W.1/4 Sec 30 29. 19 true contents 104.43

72 Sec 2. 30-19 true contents 652.03 acres

64 S1/2 and E1/2 of N.E and S.E1/4 of N.E1/4 sec 30 30. 19 - Description changed to S1/2 and E1/2 of N.E1/4 and S.W.1/4 of N.E1/4

74 65 S1/2 and W1/2 of N.W.1/4 sec 24. 29. 20 true contents 400a 00

81 " E1/2 of N.W.1/4 and S.E1/4 sec 32. 30. 22 Description changed to read E1/2 of N.W.1/4 and S.W.1/4 of N.W.1/4

84 74 E1/2 and S.W.1/4 sec 14. 29. 23 480 acres. E1/2 of S.W.1/4 and W1/2 of S.E1/4 160 acres previously sold and not appropriable to the road 160 acres - leaving it to read N.E1/4; E1/2 of S.E1/4 and W1/2 of S.W.1/4 320 a.

83 E1/2 lot 7 of N.W.1/4 sec 2. 29. 23 true contents 39.58 a.

85 75 S1/2 of sec 2. 26. 24 323 a 40 - N1/2 of S.W.1/4 80 acres previously sold and therefore not appropriable to the Road leaving it to read S.E1/4 S1/2 of S.W.1/4 = 243a 40

87 77 E1/2 and S.W.1/4 and S1/2 of N.W.1/4 sec 32 27. 24 true contents 360 acres

92 81 S1/2 and N.W.1/4 Sec 2. 26. 26. Description changed to read S1/2 of N.E1/4

94 83 N1/2 and S.E1/4 and E1/2 of S.W.1/4 sec 4.

26. 27 true contents 555 a 24

97 86 Section 26. 26. 28. 640 acres - W1/2 of SW1/4 80 acres previously sold and therefore not appropriable to the Road leaving it to road E1/2 sec; NW1/4 and SW1/4 560 a

102 90 N1/2 of lot 2 of SW1/4 sec 18. 24. 31 true contents 28 a 10

105 93 N1/2 lots 1 & 2 of SW1/4 Sec 2. 25. 32 true contents 85. 27

106 94 W1/2 and NE1/4 sec 20. 26. 32 - 480 acs. SW1/4 of NE1/4 40 a. previously sold and therefore not appropriable to the Road. leaving it to Road W1/2 of Sec: SE1/4 of NE1/4 and N1/2 of NE1/4 440 acres,

106 95 E1/2 and SW1/4 sec 28. 26. 32 480 acres NW1/4 of NE1/4 40 acres previously sold and therefore not appropriable to the Road leaving it to road E1/2 of NE1/4, SW1/4 of NE1/2 and S1/2 of sec. 440 a

107 96 N1/2 and E1/2 of SE1/4 sec 10-25-33 400 acres - NE1/4 of SE1/4 40 acres previously sold and therefore not appropriable to the Road - leaving it to Road N1/2 and SE1/4 of SE1/4 360 acres.

108 96 Section 36 - 25 - 33 640 acres - NE1/4 of NW1/4 40 acres previously sold and therefore not appropriable to the Road - leaving it to

79 Road E1/2 of sec. SW1/4, W1/2 of NW1/4 and SE1/4 of NW1/4 600a

Supplemental list

Line No.	Line No.	
13	13	SE1/4 of SW1/4 sec 28.37 N7 W 40 acres stricken from list, the same tract included in original list.
15	15	W1/2 lot 1 of SW1/4 sec 6-37-9 - contents 38-85 stricken from list the same tract ~~of~~ included in original list
19	19	SW1/4 of NE1/4 sec 34.34.17 - contents 40 acres stricken from list, the same tract included in original list
20	20	S1/2 and NW1/4 sec 36.34.17 contents 480 acres stricken from list the same tract included in original list
21	21	NW1/4 of NE1/4. S36-34.17 - contents 40 acres stricken from list, the same tract included in original list
22	22	W1/2 of SE1/4 sec 10.27.23 - contents 80 acres stricken from list the same tract included in original list
23	23	NE1/4 of SE1/4 sec 10-27-23 contents 40 acres stricken from list, the same tract included in original list
18	18	E1/2 of NE1/4 Sec 34.34.17 contents 80 acres stricken from list the same tract included in original list.

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed on the day and year first above written

J M Edmunds
Commissioner

(L S)

General Land Office

September 3. 1863

It is hereby certified that upon examination of the foregoing transcripts bearing date the 11th of March and the 30th of November 1854 from this Office, the following modifications are found necessary viz:

General Rail road Land of Company Page	Page	
1	1	S 1/2 lot and N 1/2 lot 2 of SW 1/4 sec 18 T39 R1 east true contents 71.05
2	2	all of sec 30. 39=1 true contents 611.28
"	"	SE 1/4 and lots 1 & 2 of NE 1/4 sec 2-40-1 true contents 319 acres
"	"	NE 1/4 of NW 1/4 sec 10-40-1 true contents 43.20
"	"	E 1/2 and NW 1/4 sec 22-40-1 true contents 519-20
3	"	W 1/2 of SW 1/4 and NE 1/4 of SW 1/4 sec 20 40-1 true contents 128.04

81

3 E1/2 of NE1/4 and W1/2 of NW1/4 sec 26-40 1 true contents 167-68

" " all of sec 34-40-1 true contents 657 60

4 4 NE1/4 of SE1/4 sec 6-44-1 = 40 acres previously sold and therefore not appropriable to the load.

" " E1/2 of SW1/4 and SW1/4 of SW1/4 sec 24-45 1. 120 acres NE1/4 of SW1/4 - 40 acres previously sold and therefore not appropriable to the load, leaving it to load S1/2 of SW1/4 80 acres

5 5 W1/2 of Sec 12. 40. 2 = 320 acres SW1/4 of NW1/4 of SW1/4 80 acres previously sold and therefore not appropriable to the load, leaving it to load E1/2 of NW1/4 NW1/4 of NW1/4 E1/2 of SW1/4 and SW1/4 of SW1/4 240 acres

6 6 E1/2 and NW1/4 sec 26-41-2 true contents 503-20

" " W1/2 of NW1/4 sec 30-41-2 83.06 NW1/4 41-53 previously sold and therefore not appropriable to the load leaving it to wad SW1/4 of NW1/4 41-53

" " E1/2 of SE1/4 and SW1/4 of SE1/4 sec 30-41-2 = 120 acres SW1/4 of SE1/4 40 acres previously sold and therefore not appropriable to the load, leaving it to wad E1/2 of SE 1/4 = 80 acres

7 7 W1/2 ~~of~~ and SE1/4 sec 6-44-2 true contents

458.76

" " E1/2 sec 6-45-2 true contents 321 acres

" " N2W1/4 of NE1/4 N1/2 of NW1/4 and S2W1/4 of NW1/4 sec 12.-45-2. true contents 154.75

8 E1/2 and S2W1/4 sec 18 45-2 true contents 411.17

" " SW1/4 of NE1/4 and S1/2 of S2W1/4 sec 30 45 2-94.50 SW1/4 of NE1/4-40 acres previously sold therefore not appropriable to the road leaving it to road S1/2 of S2W fl 1/4 54.50

" " S1/2, E1/2 of NE1/4 and S2W1/4 of NW1/4 sec 32 45-2, true contents-408-62

" 8 Lot 1 and W1/2 of lot 2 of NW1/4 sec 2-40-3 140-25- E1/2 lot 1 of NW1/4 40 acres previously sold and therefore not appropriable to the Road leaving it to Road W1/2 of lot 1 and W1/2 of lot 2 of NW1/4 100-25

" " SE fl 1/4 and NE fl 1/4 (S of R) sec 4.40-3 true contents 145.03

10 9 W1/2 of NE1/4 and N1/2 of NW1/4 sec 28.42-3-160 acres NW1/4 of NE1/4 40 acres previously sold and therefore not appropriable to the Road, leaving it to Road SW1/4 of NE1/4 and N1/2 of NW1/4 120 acres.

" 10 E1/2 of SE1/4 and SW1/4 of SE1/4 sec 34.42 3 120 acres - NE1/4 of SE1/4 40 acres previously sold and therefore not appropriable to the Road leaving it to road S1/2 of SE1/4

80 acres

" " NE¼ and N½ of SE¼ sec 2-41-4. true contents 287.63

" " N2W¼ and SE¼ of S2W¼ sec 2. 41-4 true contents 245-33

" " NE¼ of SE¼ and S2W¼ of SE¼ sec 8. 41. 4 80 acres S2W¼ of SE¼ 40 acres previously sold and therefore not appropriable to the road, leaving it to read NE¼ of SE¼ 40 acres

10 10 W½ of S2W¼ sec 10-41-4 true contents 83-97

" " Frl sec (S of L) Sec 18-41-4 true contents 372-04

11 10 Frl Sec 30-41-4 true contents 687-64

" " N2W¼ sec 2. 42-4-176.28 E½ lot 1 of N2W¼ 40 acres. previously sold and therefore not appropriable to the road - leaving it to read lot 2 and W½ of lot 1 of N2W¼ 136-28 acres.

12 12 W½ and SE¼ of NE¼ of SE¼ sec 24. 43-4 Description changed to read W½ and SE¼ and S½ of SE¼

" " W frl ½ of sec: and W½ of SE¼ Sec 4 46. 4 180 acres previously sold and therefore not appropriable to the road

" " NE frl ¼ and E½ of N2W¼ of SE frl ¼ sec 10-46-4 true contents 177-31

13		S E fl 1/4 of S E 1/4 Sec 2-42-5 true contents 30-31
"	"	Lot 1 and E 1/2 lot 2 of N E 1/4 sec 4.42-5 true contents 142-40
	13	Lot 2 and E 1/2 lot 1 of N W 1/4 sec 4. 42-5 true contents 142-62
"	"	S W 1/4 of S E 1/4 and E 1/2 of S E 1/4 sec 22-43-5 true contents 82-00
14	14	S E fl sec 14. 43-5 - 0-74 previously sold and therefore not appropriable to the Road
16	15	all of sec 4-39 N 1/2 true contents 114a 06
18	17	W 1/2 of S E 1/4 N E 1/4 of S E 1/4 and E 1/2 of S W 1/4 Sec 32-40-1 200 acres S W 1/4 of S E 1/4 40 acres previously sold and therefore not appropriable to the Road leaving it to Road N W 1/4 of S E 1/4 N E 1/4 of S E 1/4 and E 1/2 of S W 1/4 160 acres
"	"	Section 2-38.2 true contents 651.60
"	"	Lot 2 and E 1/2 lot 1 of N E 1/4 sec 4.38.2 true contents 125a 26
20	19	N E 1/4 sec 2. 42-2 159a 67 Lot 1 of N E fl 1/4 81a 83 previously sold and therefore not appropriable to the road leaving it to Road lot 2 of N E fl 1/4 77. 84
20	19	W 1/2 of S E 1/4 and N E 1/4 of S E 1/4 sec 2. 42. 2 120 acres. N 1/2 of S E 1/4 80 acres

previously sold and therefore not appropriable to the Road leaving it to the Road S W 1/4 of S E 1/4 = 40 acres.

21 20 W 1/2 lot 1 of N E 1/4 40 acres previously sold and therefore not appropriable to the Road

22 21 N E 1/4 of N E 1/4 and N W 1/4 of S E 1/4 sec 32 43-2 80 acres. N E 1/4 of N E 1/4 40 acres previously sold and therefore not appropriable to the Road, leaving it to Road N W 1/4 of S E 1/4 40 acres.

25 24 W 1/2 of N E 1/4 and E 1/2 of N W 1/4 sec 22. 40-4 160 acres N E 1/4 of N W 1/4 40 acs. previously sold and therefore not appropriable to the Road. leaving it to road W 1/2 of N E 1/4 and S E 1/4 of N W 1/4 120 acres

25 24 S 1/2 and S W 1/4 of N E 1/4 sec 8 - 37. 5 - 360 acres S W 1/4 of N E 1/4 40 acres, previously sold and therefore not appropriable to the road leaving it to road S 1/2 of sec = 320 acres.

" " W 1/2 and S E 1/4 sec 12. 37. 5 480 acres S E 1/4 of S W 1/4 and N W 1/4 of S E 1/4 80 acres previously sold and therefore not appropriable to the Road, leaving it to Road N W 1/4, N E 1/4 of S W 1/4, W 1/2

		S W 1/4, E 1/2 of S E 1/4 and S E 1/4 of S E 1/4 400 acres
"	"	Lots 2, 3, 4, 5 and 6 of N E 1/4 sec 4. 39-5 true contents 420.54
	25	S E 1/4 and W 1/2 of N E 1/4 sec 34-40.5 240 acres, S W 1/4 of N E 1/4 40 acres previously sold and therefore not appropriable to the Road, leaving it to read S E 1/4 and N W 1/4 of N E 1/4 200 acres.
26	"	E 1/2 of N W 1/4 sec 36-40-5 120 acres S E 1/4 of N W 1/4 40 acres previously sold and therefore not appropriable to the Road N E 1/4 of N W 1/4 40 acres is included in the six mile list, leaving it to Read N W 1/4 of N W 1/4 40 acres
26	25	W 1/2 of S W 1/4 and N E 1/4 of S W 1/4 sec. 32, 37. 6 120 acres. N W 1/4 of S W 1/4 40 acres previously sold and therefore not appropriable to the Road, leaving it to Read S W 1/4 of S W 1/4 and N E 1/4 of S W 1/4 80 acres.
28	27	W 1/2 of S W 1/4 and S E 1/4 of S W 1/4 sec 32. 39. 8 120 acres added from original list.
32	32	W 1/2 of S E 1/4 and S E 1/4 of S E 1/4 sec 22 36. 14 contents 120 acres. S E 1/4 of S E 1/4 40 acres is included in the six mile list leaving it to Read W 1/2 of S E 1/4 80 acres.

87.

37 36 W½ of NW¼ and SW¼ of NW¼ sec 28. 33. 18
Description changed to read W½ of NW¼
and NW¼ of SW¼

41 40 W½ of NW¼ and W½ of SW¼ sec 4. 31-20
159. 28. SW¼ of SW¼ 40 acres previously
sold and therefore not appropriable to the
Road leaving it read W½ of NW¼ and
NW¼ of SW¼ 119.25

44 43 E½ of NW¼ and SW¼ of NW¼ sec 28-
28. 21. 120 acres. SE¼ of NW¼ 40 acres
previously sold and therefore not appro-
priable to the Road, leaving it to read
NE¼ of NW¼ and SW¼ of NW¼ 80 acres

50 49 W½ of SE¼ and SE¼ of SE¼ sec 4. 31. 22
120 acres SE¼ of SE¼ 40 acres previous-
ly sold and therefore not appropriable to
the Road leaving it to read W½ of
SE¼ 80 acres.

53 53 Lot 2 and N½ of lot 1 of SW¼ sec 18. 30.
23 120. 80 N½ lot 2 of SW¼ 40.46
previously sold and therefore not appropriable
to the Road leaving it to read S½ lot 2
and N½ lot 1 of SW¼ 80.34

58 57 SE¼ of SE¼ sec 24. 30. 24. 40 acres
previously sold and therefore not appropriable
to the Road

60 60 all sec 32. 25. 26 = 640 acres SE¼ of SW¼
40 acres previously sold and therefore not appropriable

to the road, leaving it to read N1/2 sec S E1/4
N1/2 of S W1/4 and S W1/4 S W1/4 600 acres.

66 66 W1/2 of N W1/4 and N E1/4 of N W1/4 sec 14, 24,
29 120 acres
S W1/4 of N W1/4 40 acres previously sold and
therefore not appropriable to the Road,
leaving it to read N1/2 of N W1/4 80 acres,

74 73 E1/2 of N W1/4 and N W1/4 of N W1/4 sec 20. 27-31
120 acres. N W1/4 of N W1/4 40 acres previously
sold and therefore not appropriable to the ~~Leading~~
Road, leaving it to read E1/2 of N W1/4 80 acres

Line Line Supplemental list

S W1/4 of S E1/4 sec 20. 27 N-31 W 40 acres stricken from list, the same tract is included in the
original list

In testimony whereof I have hereunto subscribed my name and caused the seal of the General Land Office to be affixed on the day and year first above written

L S

J M Edmunds
Commissioner

89

Witness then testified the erasures in red ink in these two books and these two additional lists were made at the land office at Washington in eighteen hundred and sixty three and are corrections made in the original lists or accounts of errors discovered therein and correspond with this list of corrections here certified in these certificates The corrections are made for lands wrongly described for lands previously sold or preempted and to which the Cs was entitled by the act of Congress These corrections were made in eighteen hundred and sixty three and are certified Sept 3. 1863

The pencil additions in these books were made in our office

The original quantity certified in eighteen hundred and fifty four within six miles was

762 536. 75 acres – within fifteen miles selected was

395. 232.18 acres – the six mile additional list was

1, 743.24 " – the fifteen mile additional list was

1, 785. 63 " – making a total of

1, 161. 297. 80 acres

These corrections made in red ink by a clerk in the land office in eighteen hundred and sixty three in my presence, and change the footings of the original and supplemental lists of eighteen hundred and fifty four

The six mile list as corrected in eighteen hundred and sixty three, gives the S L R 761.589. 97 acres

The additional six mile list as corrected 946.78 acres
Total within six miles 762,536.75 "
The fifteen mile list corrected gives 393 793.59 "
The additional fifteen mile list corrected gives 1,743.20 "
making a total of 1.158.073.54 "

The quantity to which the Co, was entitled by the original estimate was 1.161.235.07 "
leaving still to be selected 3.161.43 "
by the Company and for which we are authorized to make selections, under the correction of eighteen hundred and sixty three

Plaintiff here closed their rebuttal

Defendant recalled S M Coleman who testified
As agent of plaintiff I selected all the lands supposed to be coming to the road. I selected the lands in the supplemental lists to make up the full complement The total quanty of land certified in the original and supplemental lists to the plaintiff, was 1.162.064. 4/100 acres. This was all done and completed in the pencil The pencil additions of the lands selected within the fifteen miles and without the six miles limit foot up 395.232 18/100 acres, these are the figures as they stood March fifth eighteen hundred and fifty four, and they are in my hand writing. The footings of the figures of the lands certified out to the plaintiff within the six miles limit have been rubbed out. I selected the supplemental lists.

91

The Pacific Rail Road South West Branch was completed in eighteen hundred and sixty to Rolla from St Louis, a distance of about one hundred and thirteen miles. No track has been laid down since eighteen hundred and sixty beyond Rolla.

The Railroad as laid down on the route filed in this office of the Secretary of State of Missouri, is 320 miles from St Louis to the western boundary of the State of Missouri.

This is all the testimony in the cause

Plff's Instructions Given

Plaintiff then asked the following instructions which the Court gave

1. The act of Congress of June 10. 1852 granting lands to the State of Missouri and the act of the General Assembly of December 25. 1852 conveyed to the Pacific Rail Road the alternate sections of land designated by even numbers for six sections in width on each side of the Pacific Railroad, commencing at the City of St Louis and running westwardly to the boundary of the State on the line of the definite location of said road, excepting lands previously sold or to which the right of preemption had attached

If therefore the jury find from the evidence that the premises sued for to wit; fractional sections eight and eighteen of township 45 N R 7 east of 5th P. M, are within the distance of six sections of the Pacific Railroad as located and built through said township 45 north range 7 east, then the plaintiff has shown a

92 legal title to so much of said sections eight and eighteen as are south of U. S. Sur. No 2620 in the name of Deleide, and without the United States Surveys Nos 1663, 1664, 1665, 1813, 1814, 3340, 3052,

and as legally entitled to recover the possession of said premises with the rents and profits thereof from the commencement of this suit, unless said plaintiff has selected other lands in lieu of said sections eight and eighteen

Given 2. If the plaintiff has not selected the full quantity of land to which it would be entitled under said act of Congress, the plaintiff is not estopped from claiming said fractional sections eight and eighteen although the plaintiff and the United States may have supposed that said sections had been sold or disposed of

The Court gives this instruction No 2 with this addition, that if the plaintiff selected the full quantity of land it was entitled to and the Secretary of the Interior approved such selections and that such selections included lands taken in lieu of the sections parts of which are sued for, and that these selections and the Secretarys approval of them stood upon the records of the Commissioner of the General Land Office and in the Office of the plaintiff at the time the patent was issued under which defendants claim, the plaintiff could not after the said patent was issued, change the said selections on account of any

93 alleged errors or omissions so as to affect or impair the defendants' title

Given 3 The defendant claiming under Patent in the name of Joseph Hunot and the United States Survey thereof No 2500 offered in evidence by the defendant have shown no title that can avail against the legal title of the plaintiff, if the jury the jury believe as in the first instruction given for the plaintiff

Given 4 The patent to Joseph Hunot dated August 30. 1859 shows no title in the defendants of a date older than the date of the patent and the recitals in said patent afford no legal evidence to show a title of a date older than the patent, against the claim of the plaintiff, claiming under the act of Congress of June 10. 1852

Plaintiff's Instructions Refused Plaintiff asked the following instructions which the Court refused to which refusal the plaintiff then and there excepted.

5 The plaintiff is not estopped from claiming title to said fractional eight and eighteen or so much thereof as lies outside of the Grand Prairie Common Fields by the fact that the Railroad Co and the Land Office at Washington laboring under a mutual mistake, treated said land as sold or disposed of by the United States, if in fact said land had not been sold or disposed of unless the plaintiff has actually selected and received all the lands

to which it was entitled under said act of Congress of June 10. 1852 and the plaintiff has not received all the lands to which it was entitled, if it appear that the even numbered sections of lands within six miles were certified as unsold and vacant or that any of the lands selected in lieu of lands sold had been previously sold and that to correct the errors thus made the plaintiff is still entitled to select a large quantity of land under its grant.

Defendants Instructions Given

Defendant prayed the following instructions which the Court gave, to the giving of which plaintiff excepted at the time, to wit:

If the Court finds from the evidence that the selections of all the lands to which the Pacific Rail Road Company was entitled under the grant of 10th of June 1852, were made and completed in the years eighteen hundred and fifty four and that the same were duly certified to said Rail Road Company in two lists called the six miles list and the fifteen miles list, and that supplemental lists were made closing up the account for the balance of the lands claimed by the agent of the State and the agent of said Rail Road, in the same year, and if the Court further finds from the evidence that the lands sued for in this action were not claimed, marked or designated on said lists or either of them and

95 and that other lands were selected by the authorized agent of said Rail Road Company, in lieu of the lands sued for, then the Court will find for the defendants.

Given 2 If the original lists and supplemental lists of lands selected by the authorized agent of the plaintiff and of the State, included all the acres of land to which the plaintiff was entitled and the land sued for was not selected and other lands in lieu thereof were selected for said plaintiff by the agent of the plaintiff under the grant of 10. June 1852 then plaintiff cannot recover.

3 If the Court find from the evidence that the New Madrid location and Survey and patent Certificate for the Hunot location, have appeared upon the records of the Surveyor General's Office and of the Recorder of Land Titles, from the dates of the said documents up to the time the plaintiff selected its land under the act of Tenth June 1852, and that other lands were selected by the plaintiff or its agent in lieu of the said Hunot New Madrid claim, then the plaintiff cannot recover.

B A Hill for defts

The Court of its motion gave the following instructions to the giving of which plaintiff then and there excepted

(See above)

On the sixteenth of February eighteen hundred

and sixty five the Court found a verdict and gave judgment for the defendants

On the eighteenth February plaintiff filed its motion for new trial as follows:

Motion for New Trial

The plaintiff by its attorney comes and moves the Court to set aside the verdict and judgment in this cause for the reasons

1. The Court illegally refused the instructions asked by the plaintiff

2. The Court erred in the instruction given of its own motion

3d The Court erred in giving the instructions asked by defendants

4. The finding was contrary to the evidence

5. The finding was against the law

6. The finding was against the law and the evidence

Whittelsey

atty p. q.

Which motion was by the Court continued until the april term of said Court.

On the third day of July said motion was by the Court overruled to which decision of the Court said plaintiff then and there excepted and prays that this bill of exceptions be signed and made part of the record which is done this 3d day of July 1865.

Sam Weber

Judge &c.

97

State of Missouri } ss: I Leon J Sapin clerk of
County of St Louis } the St Louis Court of Common
Pleas within and for the county
aforesaid certify the above and foregoing to be a
full true and complete transcript of the record and
proceedings in the above entitled cause as fully as
the same remain in my office

In witness whereof I have hereunto
set my hand and affixed the
seal of said Court at office in the
City of St Louis this first day of
September A.D. 1865

Leon J. Sapin,
Clerk.

SEAL OF THE ST LOUIS COURT OF COMMON PLEAS MISSOURI

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100 (9)

October Term 1866

The Pacific Rail Road
Appellant

vs Transcript

Lizzie McCombs
Levin H Baker et al
Respondents

Appeal from the
St Louis Court of Common Pleas

Filed Sept 30th 1865
C. A. Willis
Clk

$10 pd by Whittlesey
C. C. Whittelsey Esq
for appellant
B. A. Hill Esquire
for Respondents
$10 pd by appellants

1866 Mch 22 Appellant of errors filed

1866 Dec 3 Stipulation to supply recor
of Ap filed. Arg progress
" " 4 Arg resumed - cause sub
" " 6 Brief of Respt filed
" " 10 Affirmed

The Pacific RR
v
Suggie McCombs et als } Supreme Court

Now comes the appellant and by counsel says

That in the record and proceedings of the St Louis Court Common Pleas there is manifestem in this

That said court gave judgment for defendants when judgment should have been given for plaintiff

That said court illegally refused instructions asked by plaintiff. and

That said court illegally gave instructions asked by defendant.

That said court illegally overruled the plaintiffs motion for a new trial.

The Defts come & join in error

B. A. Hill
for Defts

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Pacific Railroad

v

Lizzie McCoombs et
als

Assignment of Errors
Whittelsey
p. appt.

Filed, Oct 16, 1865
J. A. Willis
Clerk

The Pacific Railroad
v
Lizzie McCombs et al

IN SUPREME COURT,
Mar TERM, 1866

AND now come the said appellant and say, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellant assign the following, to wit:

1. That said Court admitted improper and illegal testimony offered by defendant
2. That said Court rejected proper and legal testimony offered by plaintiff
3. That the Court gave to the Jury improper and illegal instructions.
4. That the Court refused to give to the Jury proper and legal instructions offered by plaintiff
5. That the verdict was against the evidence.
6. That the verdict was against law.
7. That the verdict was against both law and evidence, and against the law under the evidence.
8. That the verdict was against the weight of evidence.
9. That the judgment was rendered in favor of the defendant when it should have been rendered for the plaintiff.
10. That said Court overruled the motion for a new trial, made by plaintiff

Whittelsey
i. p. p.

And now come the ..... and for joinder in error say, that there is no error in the record and proceedings of said ..... in said cause, as assigned by said .....

184

Pacific R.R.

v

Lizzie McCombs

al

Assignment of Errors

Filed, Mch. 22 1866

O. T. Fitzback

CCR

Pacific RR
v
Lindells Heirs

In this case it is agreed that the Patent to Joseph Hunots L. R, and the New Madrid certificate offered in evidence may be read from the originals in the Supreme Court, as if fully copied, at pages 37 & 39 of the record and thus save a certiorari.

Whittelsey p q
B. A. Hill p.t.

Pacific R.R.
v
Lindells Heirs

Stipulation

Filed Dec 3d 1866
O J Fishback Clk
by E P McCarty
Dep'y

Pacific Railroad
v
Peter Lindells Heirs

Sup. Ct.
Oct. T. 1866

This was an action of ejectment to recover possession of part of fractional Sec. 18. T. 45 N. R. 7 E. in St Louis County, which lies within six miles of the plaintiffs road.

At the trial, the plaintiffs title was as follows,

Act of Congress June 10. 1852, granting to the State of Missouri, the even numbered sections within six sections in width on each side of the road, 10 U. S. Stat. p 8. s. 2.

Act of Missouri of Dec 25. 1852, transferring this grant to the plaintiff. Acts 1852-3, p 10. s 1.

Evidence was then given, to show that the R.R. ran through the center of T. 45 N. R. 7 E, and that the lands sued for were within six sections of the Road, — that the plats of the location of the road had been duly filed at the General Land Office, in the District Land Offices and in the Recorder's office for St Louis County as required by the statutes.

The time of completing the road was extended by Act. U. S. June 5. 1862.

The defendants title rested upon a New Madrid Location in the name of Joseph Hunot's L. R. No 161.

issued Aug 12. 1818

Survey made and recorded May 22. 1859 and returned to Recorder of Land Titles May 23. 1859

Patent of U. S. dated Aug 30. 1859, issued after suit begun. This was void, no title passed.

Act of Congress June 30. 1864. Private Acts. 1863-4

13 p 581. p 70, relinquishing title of U. S. to Jos. Hunot & other N. M. Locations, saving all adverse rights.

The land sued for interfered with some lots confirmed in the Grand Prairie Com. F. Plaintiff waived all claim to such lots, and admitted that defendant had the Hunot title and had held possession under it since 1829.

The case was tried by the court, as the questions presented were all questions of law and all turned upon record evidence almost entirely.

The instructions given by the court, declared that the plaintiff had the better legal title and would have been entitled to recover, but was estopped by its own acts from setting up title to the land.

The supposed estoppel originated in the following manner.

By the Act of Congress of June 10. 1852, S. 2, in case, any of the even numbered sections with six sections had been previously sold or

granted by the U. S. or the right of preemption had attached thereto, then the Gov. of the State might appoint an agent to select other lands, if vacant and within 15 miles of the RR. when located, in lieu of such even numbered sections within six miles which had been granted or sold.

After the State had transferred its grant to the plaintiff, the Governor appointed an agent to select lands in lieu of those granted.

After the return of the plat of the location of the road to the Gen. Land Of. an estimate was there made as to the quantity of lands to which the State was entitled within six miles.

Lands supposed to be vacant	Ac. 766.149.08
Lands supposed to have been sold	" 395.040.97
Total of lands to which P.R.R. was entitled	Ac. 1.161.235.07

In making this estimate, Sec. 8. & 18. T. 45 N. R. 7 E. sued for were considered as having been sold in making up the lists of lands. see Rec p 20

The Comm^r of Gen. Land Of. under the Acts of Congress of June 10. 1852, and Aug 3. 1854 (10 U. S. Stat. 346,) issued to plaintiff a list of the lands supposed to have been granted by the Act of June 10. 1852, within six miles of the road, and another list of the lands selected.

Within six mile limit	Ac. 762.536.75
Within fifteen mile limit	Ac. 395.232.18

In 1854 additional lists were issued

Rec	66	Within six mile limits	Ac	1,743.24
"	69	" fifteen " "	"	1,785.63

Had these lists been correctly made out, and no error discovered, the Pacific RR. would have had certified to it all the quantity of land to which it would have been entitled; but a subsequent examination of the lists showed, that some of the lands certified had been previously entered, or preemptions had attached, & and the Land Department after these errors had been corrected, found that the P. RR. had not received all the lands to which it was entitled, and that it was still entitled to 3.162.53. to make up the quantity granted by the W.D. see Rec p. 71-88

The lists when corrected, stood as follows

Original 6 mile list		761.589.97	
Add. "	" Add.	946.78	
			762.536.75
" "	15 mile list	393.793.59	
Add.	" " "	1743 20	
			395.536.79
			Ac 1,158,073 54
Balance			3.162 53
Total granted by the Act Ac. 1.161.255.07			

The plaintiff therefore had not actually received all the land to which it was entitled and had not yet received it at at the time of the trial.

The suit was commenced May 22.1859

The instructions given and refused were,

Plaintiff's Instruction Given.

1 The act of Congress of June 10 1852 granting lands to the State of Missouri and the act of the General assembly of December 25 1852 conveyed to the Pacific Rail Road the alternate sections of land designated by even numbers for six sections in width on each side of the Pacific Railroad commencing at the city of St Louis and running eventually to the boundary of the State on the line of the definite location of said road excepting lands previously sold or to which the right of preemption had attached

If therefore the Jury find from the evidence that the premises sued for to wit: fractional sections eight and eighteen of township 45 N R 7 east of 5th P M are within the distance of six sections of the pacific Railroad as located and built through said township 45 north Range 7 east then the plaintiff has shown a legal title to so much of said sections eight and eighteen as are south of U S Sur No 2620 in the name of Melile and without the United States surveys Nos 1663. 1664. 1665. 1813, 1814, 1340, 3052,

And as legally entitled to recover the possession of said premises with the rents and profits thereof from the commencement of this suit unless said plaintiff has selected other lands in lieu of said sections eight and eighteen,

2 2 If the plaintiff has not selected the full quantity of land to which it would be —

entitled under said act of Congress, the plantiff is not estopped from claiming said fractional sections eight and eighteen although the plantiff and the United States may have supposed that said sections had been sold or disposed of. The court gives this instruction No 2 with this addition that if the plantiff selected the full quantity of land it was entitled to, and the Secretary of the interior approved such selection and that such selection included lands taken in lieu of the sections parts of which are sued for and that these selections and the secretarys approval of them stood upon the records of the Commissioner of the General land Office and in the Office of the plantiff at the time the patent was issued under which defendants claim the plantiff could not after the said patent was issued change the said selections on account of any alleged errors or omissions so as to affect or impair the defendants title

3 The defendant claiming under patent in the name of Joseph Hunot and the United States survey thereof No 2500 offered in evidence by the defendant show no title that can avail against the legal title of the plantiff if the jury believe as in the first instruction given for the plantiff

4 The patent to Joseph Hunot dated August

Object no title under Act 1864

30th 1859 shows no title in the defendants of a date older than the date of the patent and the recitals in said patent afford no legal evidence to show a title of a date older than the patent against the claim of the plantiff claiming under the act of Congress of June 10, 1852

Plantiffs Instruction Refused

5 The plantiff is not estopped from claiming to said fractional eight and eighteen & so much thereof as lies outside of the Grand Prarie Common Fields by the fact that the Rail Road Co and the land Office at Washington laboring under a mutual mistake treated said land as sold or disposed of by the United States if in fact said land had not been sold or disposed of unless the plantiff has actually selected and received all the lands to which it was entitled under said Act of Congress of June 10 1852 and the plantiff has not received all the lands to which it was entitled, if it appear that the even numbered sections of lands within six miles were certified as unsold and vacant or that any of the lands selected in lieu of lands sold had been previously sold, and that to cover the errors thus made, the plantiff is still entitled to select a large quantity of land under its grant

Defendants Instructions Given

1 If the court finds from the evidence that the selections of all the lands to which the Pacific Rail Road Company was entitled under the grant of 10th of June 1852 were made and completed in the year eighteen hundred and fifty-four and that the same were duly certified to said Rail Road Company in two lists called the six miles lists and the fifteen miles list and that supplemental lists were made closing up the account for the ballance of the lands claimed by the agent of the state and the agent of said Rail Road in the same year and if the court further finds from the evidence that the lands sued for in this section were not claimed marked or designated on said lists or either of them and that other lands were selected by the authorized agent of said Railroad Company, in lieu of the lands sued for then the court will find for the defendants

2 If the original lists and supplemental lists of land selected by the authorized agent of the plantiff and of the state; included all the acres of land to which the plantiff was entitled, and the land sued for was not selected and other lands in lieu thereof were selected for said plantiff by the agent of the plantiff under the grant of 10 June 1852 then plantiff cannot recover

3 If the court find from the evidence that the New Madrid location and survey and patent certificate for the Hunt location have appeared upon the records of the Surveyor Generals

Office and of the Recorder of land titles from the dates of the said documents up to the time the plaintiff selected its land under the act of tenth June 1852 and that other lands were selected by the plaintiff or its agent in lieu of the said Hunot-New-Madrid Claim then the plaintiff cannot recover

To the qualification given by the Court to the plaintiffs 2d ~~instruction~~, and the refusal of the 8th instruction and the instructions given for defendants plaintiff excepted.

Pacific Railroad
Lindell's Heirs } Points for Appellant

From the record it will be seen that the Com. Pleas, decided this case against the plaintiff upon the doctrine of Estoppel, after deciding by its instructions, that the plaintiff had the better legal title, by its grant of June 10. 1852.

1° The New Madrid Location of Joseph Hunt not having been located with one year after the passage of the Act of Congress of Apr. 26. 1822, 1 Land Laws p. 344. was void.

Easton v Salisbury 21 How. 426. 431. Hale v Gaines 22 How. 444.

The Location is made only by the Return of the of the official survey by the Surveyor Gen. to the Recorder of Land Titles. Bagn

Bagnall v Broderick 13 Pet. 436, Cabanne v Lindell 12 Mo. 124 Lessieur v Price 12 How. 59

The recitals in the Patent issued in 1859 were no evidence, as against the plaintiff claiming under act of June 10. 1852, of the facts therein recited to show a title older than the patent.

Marsh v Brooks 8 How. 223. Kennet v Plummer 28 Mo. 412.

II. The location having been made when forbidden by law, the patent was void and passed no title from the U. S.

Easton v Salisbury 21 How 426. 431. which was a case of a patent declared void. Wilcox

v McConnell's Lessee 13 Pet. 511. Stoddard v Chambers 2 How. 284. 317, Hale v Gaines 22 How. 444.

At the commencement of this suit the defendant had no legal title by or under which he could defend this suit.

Holme v Fenn 21. How. 481. Stoddard v Chambers 2 How. 284. Stoddard v Mills 8 How. 345, 20. Mo. 108, 17 Mo. 31. Bissell v Penrose 8 How. 317.

The defendant therefore had no legal title under which to defend, or under which he could claim the benefit of any estoppel until the passage of the Act of Congress of June 30. 1864. As his location was void, as above shown, he had neither an equitable nor a legal title until that date.

III. The defendant having neither a legal or equitable title at the commencement of the suit nor until June 30. 1864, was not in a condition to set up an estoppel as against the plaintiff.

Sapy v Papin 7 Mo. 563. Hillot v Sandford 19 How. 79.

a. The Act of Congress of June 10. 1852, was a complete grant of the even numbered sections within six sections of the road as located, unless some legal or equitable right and title as against the U. S, had attached thereto, prior to the grant.

10 U. S. Stat. p 8. 52.

As above shown, there was no legal or equitable title to said land in any one, in 1852, except the United States and the grant was therefore a complete grant to the State of Missouri and that title passed to the plaintiff Dec 25. 1852. The defendant ~~therefore~~ had no title until June 30. 1864, and before that date, in 1863, the U. S. had made corrections in the certified lists of lands, showing that the plaintiff had not received all the lands to which it was entitled, and that both parties had labored under a mistake. The defendant claiming by a subsequent grant in 1864, cannot complain of the action of the U. S.

As to effect of mistake upon an estoppel, see Knowlton v Smith 36 Mo. 507.

6. The court below gave to the erroneous certification of the lists made by the Comm'r Gen. Land Of. a greater effect than the Act of Congress of Aug 3. 1854, (10 Star. U. S. 346) for that Act made such lists null and void, as to all lands not granted or not intended to be granted, that is as to all lands to which legal or equitable rights had attached as against the United States.

That Act only applied to cases where the fee simple did not or had not passed by the granting statute. But in this case, the Act of June 10. 1852, was a complete grant of itself

to the even numbered sections on each side of the road. The words are, "That there be and is hereby granted to the State of Missouri &c". As soon therefore as the road was located, and the plat of location of road filed in the Gen. Land Of. the title attached at once to the even numbered sections on both sides of the road, unless the U. S. had sold or granted the land or a right of preemption had attached thereto under some Act of Congress.

As the United States therefore was not estopped in 1863 at the time the lists were corrected, and ~~the~~ parties in interest, to wit the U. S, and the plaintiff agreed to the corrections, the defendant claiming under a title of subsequent date, cannot object nor claim the benefit of an estoppel which his grantor could not claim and did not claim. ~~for~~ There would be no mutuality in the estoppel.

There court therefore erred in refusing the second instruction asked by the plaintiff, and in the instruction given of its own motion and in the instructions given for defendant, and in deciding that the plaintiff was estopped from claiming the land.

Plaintiff was not estopped at the commencement of the suit, the defendant had no title whatever until June 30. 1864, and at least had a right to the rents and profits up to that that date.

The United States were not estopped by the certified lists referred to in the instructions and given in evidence; for by the Act of Congress of 1854, said lists were only prima facie evidence of grant, as the lists ~~amounts~~ had no validity, unless the title to the lands really passed by them. Said lists were no evidence of estoppel against the U. S. in AD 1863, and defendant who had no title until 1864, cannot set up an estoppel against his grantor, the U. S. He is privy with the U. S. and is bound by the acts of its public officers.

Easton v Salisbury 21. How. R. 426
23 Mo R 100

New Mad. Cert. issued Nov 16. 1815
Notice given Nov 16. 1816
Survey No 2491 made Mar. 1818
when returned, or when Pat. Cert. issued does not appear
Patent issued May 28. 1827

Hale v Gaines 22 How. R. 144

New Mad Cert. 469 issued May 28. 1818
Private Survey made July 16. 1820
Notice of location Jan 29. 1819
Survey made 1838
returned and Patent Certificate issued 1838.

New Madrid Acts Feb. 17. 1815 1 Ld L. 285
on lands the sale of which is authorised by law.
Apr 9. 1818 1 Ld L. 299
To perfect locations Apr 26. 1822 " 3144
See Hale v Gaines 32 How 144, as to what is
the location ratified p 159.

10 U.S. Stat. p 8, 346
Oct 1864 Pri Law p 7

10 U.S. Stat p. 8. 346
13 " " p 581
21 How R. 426
22 " " 144.159
12 " " 59
13 Pet. R 450
8 How R. 223
12 Mo 84
23 " 100.
21 How. R. 481

Howard Co. Lieutenant
Rec. p 62

4 How. 169 prescription

C

Pacific R.R

v

McCoombs et al
Heirs of P. Lindell

Whittelsey
atty p q

Filed Dec 3d 1866
O T Fishback clk
by E P McCarty
Dept

The Pacific Rail Road Pltff applt
vs
Peter Lindells heirs
——— " Defts Respdts

In the Supreme Court
Oct Term 1866
No

Statement by Respondents: B. A. Hill Atty for Respdts.

On the 2d day of January 1859 Pltff sued Lindell in ejectment for fractional sections 8 & 18 in St. Louis Township; claiming title under a grant by Congress of the 10 June 1852. Stat. at Large. Vol 10 p 8 –

This act granted all the even numbered sections to Pltff on each side of the Rail Road, & within six miles, on each side of the Rail Road, which were not sold or otherwise reserved or disposed of at that date, and the right to select lands, in lieu of those sold or otherwise reserved or disposed of, within said limits, adjoining & outside of said limits & within a strip of nine miles wide on each side of said six mile limits.

Sections 8 & 18 are within the 6 miles limits, but they are also within a New Madrid location & Patent, to Jos. Hunot & his legl. reps. under whom Peter Lindell claims.

The Hunot tract of 480 acres, was located for Rufus Easton as legl. rep. of Jos. Hunot on the 16th day of June 1818. (p 42) The patent was issued 30th Aug 1859. Pltff admits (p 41) that Defts

held under Jos Hunot's title & had been in possession from the 1st Jany 1829, a period of 30 years before suit. The Hunot claim was confirmed specially by Act of Cong. of 1864 p 7 of private acts, ratifying the ~~conf~~ location certificate & all acts of U. S. officers &c:

Rec p 57. See Stipulation & patent & New Madrid certifs of location 3 papers.

The Hunot claim was surveyed on the 23d of June 1819 by Jos. C. Brown. Survey returned the 8th of January 1833, & patent certificate No 404 was issued to Peter Lindell Esq. 2nd Feby 1833.

From the 16th day of June 1818, until the date of the patent, 30th Augt 1859, the Hunot New Madrid location appears upon the records of the Recorder of Land Titles, & the Surveyor General & of the Register of the Land Office at St Louis, as 480 acres of land, appropriated & disposed of by the U. S. for the satisfaction of that location & including all of fractional sections 8 & 18 now sued for.

Evidence was given tending to prove that all the lands to which the Plff was entitled under the grant of 10th June 1852, was selected by the agent of Plff in 1854, in full satisfaction of the grant:

In 1859 the patent issued to Deft Peter Lindell for the Hunot land 480 acres including frac. Secs 8 & 18.

In 1863 the Plff procured some corrections of the locations, for the Rail Road on the ground that some

of the locations had been on lands previously sold or otherwise disposed of by the United States, and Plff pretends that thereby it acquired some right to claim for Secs 8 & 18 in St. Louis Township; tho they had been patented in 1859 to the Deft Lindell under a location of 1818, a survey of 1819, rectd in 1833 & patent certificate of 1833 & resurvey of 1859.

Rec p 20.. Defts proved by the certificates of the General Land Office, that Secs 8 & 18 in T. 45 R. 7 E. of 5th prin. meridian 1280 acres were Private Claims, not subject to be located under the R. R. grant of 1852.

Rec. p 22. In the Recapitulation of the tracts sold or disposed of T. 45 R. 7. E. is marked 9510 acres. Feby 25. 1854. The statement is found correct

" p 28. Feby 25. 1854 (p 28 Rec.)

" p 31 The President of the R. Road Thos Allen declares in his letter of July 7th 1854 to the Commissioner of the Genl Land Office that he sent therewith a list of lands which he had selected in lieu of those tracts included in yr approval wh. it has been ascertained were disposed of prior to June 10th/52

xxx The quantity reported as sold & for which the (party) State is entitled to make additional selections is 3222 $\frac{62}{100}$ acres in lieu of

p 32. which I have selected 3223 $\frac{20}{100}$ acres.

xx.

This was the closing up of the selections

of all the lands to which the R. R. Co. was entitled under the act of 10th June 1852.

The Plff had thereby located all the lands to which it was entitled & abandoned all reserved lands within the six miles limits.

The instructions given for the Plff and the Defts are on pages 91, 92, 93 of Record.

The propositions of law are in substance.

1st That if plff selected the full quantity of land it was entitled to & the Secretary of the Interior approved such selections & that such selections included lands taken in lieu of the sections parts of which are sued for & that these selections & the Secretary's approval of them stood upon the Records of the Comm. of the General Land Office & in the office of the Plff at the time the patent was issued to Deft Lindell, the Plff could not change the selections on acct of any alleged errors or omissions so as to affect or impair Defts title.

2d That Defts patent is void.

3d That if selections were closed the Plff has no title to Secs 8 & 18, if Plff selected other lands in ~~to~~ lieu of them in 1854

4th See instructions: Rec 92, 3.

The Court sitting as a jury found a verdict for the Deft. Plff moved for a new trial & comes here by appeal

B. A. Hill for Defts.

Brief:

1. The finding of the Court sitting as a jury is conclusive on the evidence that the Plff selected the full quantity of land it was entitled to, that the selections were approved & that the selections included lands taken in lieu of frac Secs 8 & 18 & so appeared on the records of the Genl. Land Office & in the office of the plaintiff at the time the patent was issued to Dft in 1859:

This operates as an estoppel against the Plff claiming frac Secs. 8 & 18

State to use Town 44 v FK Denb 18 Mo 315.

Dezell v Odell 3 Hill N. Y.

2d The New Madrid location by leg. reps of Jos. Hunot in 1818, the U. S. Survey in 1819, the return of Survey to Recdr. of Land Titles in 1833 operated to reserve the land from sale or preemption, after that date, although the proceedings may have been irregular & inoperative to pass the legal title to the New Madrid claimant.

Rec p. 57.

See Act of 17th Feby 1815 - 3 Stat p 211. §1, 2, 3. also Act 20th Apl 1822 §1 & 2: 3 Stat. 668. also Act of 2d Mar 1831 §1, 2. 4 Stat. 482

Brightly's Dig 558 - 476 §104.

3d It has been the uniform rule of the Land Office, to hold all lands covered by Spanish grants, confirmed or in course of proceedings for confirmation; by New Madrid locations perfected or not perfected into patents, as reserved from sale or entry or preemption.

See Acts of 1812 & 1836 establishing Genl Land Office & the Opinions & instructions of the Attorneys Genl particularly Mr Wirt. Vol 2 Land Laws & Instructions. p 9, 13.

~~See also my 2d point in my Brief in the case of Gibson vs Chouteau argued last week as to effect of Act of 15 June 1812 in reserving~~

4th The 2d Section of the Act of June 10th 1852, grants to the State for the making of the Pacific & Hannibal & St Joseph R. R. the alternate even numbered sections, for six sections in width on each side of the road, but if any of the land thus granted has been sold or preempted, then the State has the power & right to select other lands in lieu thereof, most contiguous to the six miles tier of sections granted:

In the last clause of this 2d Sec. it is "provided further; That any and all "lands heretofore reserved to the United "States by any act of Congress, or in

"any other manner, by competent author-
"ity, for the purpose of aiding in any
"object of internal improvement, or for
"any other purpose whatsoever, be and
"the same are hereby reserved to the
"United States from the operation of this
"Act, except so far as it may be found
"necessary to locate the route of the said
"railroad through such reserved lands;
"in which case the right of way only
"shall be granted."

It is clear that all lands reserved for any purpose whatsoever, either by Act of Congress or in any other manner by competent authority, are excepted out of the operation of the granting clause of said Act of 10 June 1852: Now these two fractional sections 8 & 18 were reserved by the Acts of Congress, to satisfy the New Madrid location of Joseph Hunot; and also to satisfy the Spanish concessions in the South part of the Grand Prairie fields of St Louis; granted 13 June 1812

We might safely rely upon the entries in the records of the General Land Office, to show that the tribunal having competent authority, had reserved both these sections to satisfy private claims. It is so certified officially

Rec p 20
21 & 22.

The Commr of the General Land Office has jurisdiction over these New Madrid claims & locations & all other private claims Act 4 July 1836 §11. 5 Vol Stat 107. & §1 ib Brightly's Dig p 462. Maguire v Tyler 1 Bl

The Commr is specially named as the officer having supervising control over New Madrid locations. Sec 3. Act of 17 Feby 1815 – 3 Stat. p 211.

5. These frac. secs. 8 & 18 were therefore not subject to the grant of 10th June 1852 but they were expressly reserved from passing by the granting clause of the act.

And as the Plff acting under the instructions of the Commr of Genl Office & the Secretary of the Interior, has under ample powers granted to Plff by the General assembly of this State Act of 1852 p selected & accepted other lands in lieu of full secs of 640 acres each, for frac Secs 8 & 18, in T. 45, R 7, E; & the Secretary of the Interior having approved the selections, the Plff has no right to claim these secs at all.

State to use of T. 44. v T. Dent 18 Mo. 315, is a case very similar to this

in fact & in principle exactly like it, except that under the Acts of 1820 & 1823 granting 16th Secs. for Schools, there is not so broad a reservation as in the Act of 10th June 1852. for the Rail Road.

6th The lands in Secs 8 & 18 being reserved from the grant to the State for the use of railroads, by competent authority; the patent of 1859 to Peter Lindell leg. rep. of Hunot passed all the title of the U. States by estoppel, whether such patent was or was not in strict conformity to the preceding requirements. No other grant having been made by the United States to any other person or Corporation, the plaintiff cannot be heard here to impeach the said patent in a collateral action of ejectment. As the land was reserved by competent authority, for the satisfaction of private claimants, the Plff has no standing in Court under the Act of June 10th 1852.

7th The patent to Jos Hunot's leg. rep. is not void, as against the United States unless the Plff can show, a previous grant from the U. States to the State of Mo. for R. R. purposes for the same land

No. Oct T. 1866

Supreme Court

The Pacific R.R.
Plff Appt

vs

Peter Lindell's
heirs

Statement
and
Brief for Respts

Britton A. Hill
Counsel for
Defts.

As to effect of New Madrid locations see Lindell vs Cabanne 12 Mo.
Lessee vs Price 12 How.
Bagnell vs Broderick 13 Pet.
Easton vs Salisbury 21 How
By the decision of Easton vs Salisbury 21 Howard it was held that if the U. S. Survey be not returned by the Surveyor General to the Recorder of Land Titles within one year from the passage of the Act of 1822, that the patent issued thereon is void.
But it is to be remarked that in Eastons case there had been a valid title passed by the U. States to another party before the New Madrid claimant had perfected his proceedings under the Acts of Congress, and there was no reservation to save the New Madrid title from the operation of the prior grant.
The dictum of Mr Justice McLean will therefore be held, to mean only that the New Madrid title was void as agst the better prior title granted by the U. S. to another party, after the reserving power of the Act of 1822 had expired.
The Act of 1831 extended the time for New Madrid claimants to perfect their titles & the Survey of 1819 had been made in ample time, and the

neglect of the Surveyor General to return the survey of 1819 to the Recorder of Land titles, until 1833 ought not to prejudice the parties claiming under them who have done their duty?

I refer to the criticism of Mr Gibson in his Brief p. 7. III, 1, 2. upon the act of 26 Apl. 1822 in case of Gibson v Chouteau. No 128 Oct. T. 1866.

7th If the Court holds notwithstanding our objection, that the New Madrid location is void as against any prior title granted by the U. S.; yet, is not the location valid as a reservation of the land, until a final disposition of the land by the U. S. I think so, unless the land was reserved for the use of schools, or granted to individuals by the Act of 13th June 1812..

If the land was granted ~~for~~ the inhabitants or reserved for schools, by the Act of 13th June 1812 it would not pass by the Act of 10 June 1852 to the rail-road.

If the land was not granted to or reserved by the Act of 13 June 1812, then the New Madrid location would take effect upon it, so as to reserve it from the rail road act of 1852.

8th Peter Lindell is admitted to have been in possession from 1829 of the land in suit thirty years before suit brought by Pltff and this possession was open notorious & operated to give Peter Lindell a right ~~of the~~

Additional Brief & Statement

The New Madrid location & Patent are by stipulation made part of the record.

1. The plffs pretended grant of 10 June 1852, did not cover this land or any land reserved from sale by the Commr of the General Land Office —

2nd The New Madrid location was returned to the Recorder of Land Titles on the 2d July 1833, and from that day the exchange between the United States & the locator Jos. Hunot was effected — and the statute of limitations began to run — Cabanne vs Lindell 12 Mo. in point

No 133

C

Pacific Rail Road Co
Appellant
vs
Lizzie McCombs. L H
Baker et al. Respt

Respts Brief -

Filed Dec 6th 1866
O T Fishback clk
by E. P. McCarty Deptg

The Pacific Railroad
v. Appt.
Lizzie McCombs et al.
Res.

In the Supreme Court
Oct. T. 1866.

Opinion of the Court.

The plaintiff claims title under the second section of the act of Congress of the 10th. of June, 1852. (10 U.S. Stat. p. 9). This act granted to the State of Missouri, for the purpose of aiding in making certain railroads, every alternate section of land designated by even numbers, for six sections in width on each side of said road; which sections or any part thereof, should not appear to have been sold, or subjected to the right of pre-emption, and provided that no reservation of any or all of said lands by any act of Congress, or in any other manner by competent authority, for any purpose whatever, had been made; but in case such sale, right of pre-emption, or reservation, did appear, then the agent of the State appointed by the Governor was to select, subject to the approval of the Secretary of the Interior, other lands elsewhere in lieu thereof as further therein provided. It seems to have

been left to the agent of the State to ascertain for himself what sections or parts of sections had been so sold, preëmpted, or reserved.

The State of Illinois by an act of the General Assembly of the 25th of Dec. 1852 (Laws of 1853, p. 10), granted to the Pacific Railroad company so much of their lands as were applicable to the Pacific Railroad ~~company~~, and requiring the company to proceed as soon as practicable to locate the railroad, and to locate and select the lands granted by said act of congress by an agent to be designated by them and appointed by the governor; a copy of the location was to be forwarded to the local land office and to the general land office; they were to cause a map and profile of the road, and a map of the land located, to be filed in the office of the secretary of State, within one year after the ~~location~~ road was of the road, and maps of the parts thereof located in different counties were to be recorded in the office of the recorder of deeds in each county respectively.

The plaintiff produced evidence tending to show that this map and profile of the location of the railroad had been

made and filed; but no evidence was offered to show that any map of the lands located, including the land in controversy here, had ever been filed with the Secretary of State, nor that any map of the parts thereof located in the County of St. Louis had ever been recorded in the office of the recorder of deeds therein. The only evidence offered to prove that the particular sections or parts of sections, which are sued for in this case, were any part of the granted premises, was a certified plat from the office of the Surveyor General, showing sections eight and eighteen in T. 45, N., R. 7 E., in the County of St. Louis. The plat and profile of the location of the railroad did not show the numbers of the sections. And the plaintiff contends that the act of Congress operated directly as an absolute grant of all the even numbered sections within six miles on either side of the located road, and that no other evidence than the official sectional public surveys was necessary to ascertain the particular lands granted.

This point has been expressly decided otherwise. (Baker v. Gee, 1 Wall. (U.S.), 333;

Han. & St. Jo. R.Co. v. Moore, 37 Mo., 338). The act of the General Assembly has reference more especially, perhaps, to the protection of the rights of such persons as should, under the provisions of that act, become preëmptors and purchasers of the lands thus granted to the State. The defendants are claiming here as purchasers from the United States, and not as preemptors under the statute. But the grant to the State is transferred to the railroad company, accompanied with all the restrictions of this legislation on the part of the State, defining the powers and duties of the agent; the statute amounts to a legislative interpretation of the meaning and intent of the act of Congress; and it supposes, as that act itself would seem to do, that it was left to the agent of the State to ascertain for himself, and at his own peril, what lands were excepted out of the grant. The agent was designated by the corporation and commissioned by the Governor, and thus became the agent both of the State and the company, for this purpose, under the act of Congress. Both the act of Congress and the statute suppose that the agent will select and locate the particular sections and parts of sections that fall within the

granted premises; and the statute requires that a descriptive list of the lands selected shall be filed with the secretary of State, and that a map of the lands so called in different counties shall be recorded in the office of the recorder of deeds therein; and the act of Congress requires that a descriptive list of the lands selected in lieu of those sold, preëmpted, or reserved, shall receive the approval of the Secretary of the Interior. And it was held in Baker v. Gee, that the location of the land was not complete, as regards the rights of the preëmptor under the statute, until the company had caused that map to be recorded in the office for recording deeds in the county where the lands were situated. The point was distinctly made in that case, as it is here, that the granted sections, or parts of sections, were sufficiently ascertained and designated by the even numbers of the public sectional surveys alone; and it was expressly decided that they were not.

In the case of the Hannibal & St. Jo. R. Co. v. Moore, it was said that the act of Congress and the statute amounted to a legislative grant of the specific lands, whenever they should be particularly ascertained

and designated. The location of the railroad was to be made by the corporation, and would ascertain the six mile limit within which the even numbered sections were to be found. The public sectional surveys would ascertain what sections were designated by even numbers within that limit. The admission of the answer identifies the land sued for as a part of one of those sections, and the descriptive list approved by the Secretary of the Interior announced in the office of the recorder of deeds in the county where the lands were situated, was held to be prima facie evidence, at least, that the lands therein designated came within the grant. This court does not think aware of the decision in Baker v. Gee, which, so far as there may be any conflict, may be taken as the higher authority; but on the question in hand, there is no conflict between the two decisions. We are of the opinion, therefore, that the evidence did not show any grant to the plaintiff of the specific lands in controversy.

In accordance with the ~~opinion given~~ decision in Upton v. Chouteau (Oct. T. 1866),

we are of opinion that the evidence produced by the defendants tended to show a valid location made in 1833, covering this land, under the act of Congress of the 17th. of February 1815, for the relief of the sufferers by earthquakes in New Madrid, and that this land had been appropriated by law to answer that location, and was therefore within the reservation of the act of Congress of the 10th. of June 1832.

It appears that the agent of the corporation and the State proceeded to perform the duty assigned to him under those laws, and proving to his satisfaction, and by an official communication from the Commissioner of the General Land Office, that these particular sections and parts of sections, among other lands in St. Louis County, had already been disposed of, within the meaning of the act of Congress, and were not a part of the granted premises, he selected and made a list of other lands elsewhere in lieu thereof, which had the approval of the Secretary of the Interior. But it was afterwards discovered, it seems, that some of these other lands, so selected

elsewhere, were not subject to location and sale under the act of Congress, and that, upon the necessary correction being made, there still remains a certain portion of the whole quantity granted to be selected and located in some other place within the limits prescribed by the act. It does not appear, however, that the lands in controversy have ever been selected, or located, as a part of that residue.

This action must be considered as binding and conclusive upon all the parties as to that matter. It amounted to a solemn admission that these lands were not included within the grant, and were included within the reservation; and it was a formal disclaimer on the part of the agent of all right to select and locate them as a part of the granted premises. The officers of the land office department may be considered as representing the interests of those who were entitled to this reservation or exception. The defendants proceeded to consummate their equitable right into an actual patent for these lands. The admission was acted upon by all parties concerned. It is not important

that the admission was not made to the defendants in person. Being an open and public act, it is to be considered as addressed to every one who had occasion to act upon it. As against this party, neither the agent, nor the plaintiff, can now be heard to deny the truth of the admission. Whether the facts were true or false, they are concluded by their own act and acceptance to say the truth. And it may very well be deemed to have amounted to an estoppel in pais. (1 Greenl. Ev., § 207; 208; 4 Comyn's Dig., tit. Estoppel, A. 1.; Dezell v. Odell, 3 Hill, 215; State v. Dent, 18 Mo., 313).

We conclude, therefore, that the defendants' instruction was properly given; and whatever error there may have been in giving, or refusing, the plaintiff's instructions, it was either not material, or not such as the plaintiff is entitled to complain of.

The judgment will be affirmed. The other judges concur.

N. Holmes

C

The Pacific Railroad
appt.
v.
Lizzie McCombs
et al. Res.

Opinion.
Affirmed.
Holmes.

Filed Dec 10th 1866
O F Fishback Clk
by E M McCarty Dep Clk

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Supreme Court of Missouri
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