Salle dit Lajoye, Lambert vs Primm, Peter 1833

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St. Louis Co

Ejectment

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Supreme Court of Missouri
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Lambert Salle dit Cassoije
o
Peter Primm

Supreme Court Oct Term
1833 —

And now comes the said Lambert and saith that in said record and proceedings and also in the rendition of the Judgment aforesaid there is manifest error in this to wit that by the record and proceedings afore=said it appears that the Judgment aforesaid in the plea aforesaid was given for the said Peter Primm against him the said Lambert Salle dit Cassoije when by the Law of the land it ought to have been given for said Lambert agt said Peter

And that in said record and proceedings there is error also in this that the first third fourth and fifth instructions prayed by the plaintiff were refused by the court to be given to the Jury and that the instructions prayed by the defendant were given by the court to the Jury

Wherefore and for other errors in the record and proceedings aforesaid by the said Lambert prays that the Judgment aforesaid may be reversed annulled and held as entirely void and that he may be restored to all things which he hath lost by reason of said Judgment.

Lambert Salle fi ff — Sera

And the said Peter Primm comes & says that in the record & proceedings aforesaid there is not any such error as by the said appellant is above supposed, and this &c —
Wherefore he prays judgment &c

E. Bates

Camber L Salle de la Casaze

Peter Prevost

a p of Error

Cambs

~~Filed 5th July 1833~~
~~Jo. C Brown Clerk~~

Filed 7th October 1833
Joseph C Brown Clerk

Joinder in error filed 9th October 1833
Jo: C Brown Clerk

State of Missouri }
County of St Louis } Be it remembered that heretofore
to wit: on the twelfth day of November in the year of our
Lord one thousand eight hundred and thirty one Lambert
Salle dit Layoye by his attorney filed in the office of
the clerk of the circuit court for the county of Saint
Louis his declaration against Peter Primm which said
declaration is in the words and figures following to wit;

Declaration "County of St Louis to wit Circuit Court November term
1831 Lambert Sallé dit Layoye compleains of Peter Primm
of a plea of Trespass and Ejectment. For that the said plain
tiff heretofore to wit on the first day of November one thou-
sand eight hundred and thirty one was and still is legally
entitled to the possession of an undivided moiety of all
that lot or peice of ground with the buildings and
appurtenances thereon containing seventy five feet
french measure by one hundred and twenty feet same
measure bounded north by a cross street called Elm
street and being the East half of a lot of one hundred &
~~twenty~~ by one hundred and fifty feet french measure
which lot is the northwest quarter of Block number fifty
seven on the plat of the lots of St Louis and he the said
plaintiff being so legally entitled to the possession and
being possessed of said land he the said Defendant
afterwards to wit on the day and year aforesaid at the
county aforesaid with force and arms entered into the
said land and premises to which the said plaintiff was
so legally entitled and ejected him said plaintiff thereout
and kept him so ejected from thence hitherto and during
that time took to the use of him said Defendant all the
issues and profits of said lands and premises being of the

yearly value to wit of five hundred dollars and other wrongs did to said plaintiff and said plaintiff saith that he is injured & hath received damage to the value of five hundred dollars and therefore brings suit &c Lawless Ag Pl'ff" And afterwards to wit on the said twelfth day of November in the year aforesaid the clerk of the said circuit court endorsed thereon a writ of summons which is in the words

Summons

and figures following to wit "County of St Louis Sct. The State of Missouri To the Sheriff of Saint Louis County Greeting. We command you to summon Peter Primm that he be and appear before the Judge of our circuit Court at the next term thereof to be held at the city of St Louis within and for the County of St Louis on the fourth Monday of the present Month of November then and there to answer unto Lambert Salle dit Lajoye of a plea of trespass and Ejectment to the damage of said plaintiff of four hundred dollars. And have you then there this writ. Witness Archibald Gamble Clerk of our said court at office this 12th day of November in the year 1831. Archibald Gamble Clerk." And afterwards to wit at the return term thereof the sheriff of the county of Saint Louis returned the said writ and declaration into court with his return thereon endorsed which is in the words and figures following to wit — "Served this writ by leaving a certified copy of the writ & declaration at the residence of the defendant with a free white member of his family over the age of fifteen years to whom I made known the contents, in the city of St Louis on the 12th November 1831. John K Walker Shff" service $100" and afterwards to wit on the thirtieth day of November in the same term of

Return

November in the year aforesaid the said defendant by his attorney filed his plea in the words and figures following to wit;

Not guilty "In the Circuit Court 3d Judicial Circuit Nov: term A.D. 1831. Peter Primm adsm Lambert Salle dit Lajoye and the said defendant comes and defends the force & injury when &c. & says that he is not guilty of the said supposed trespass & ejectment above laid to his charge or any part thereof in manner & form as the said plaintiff hath above thereof complained against him & of this he the said plaintiff puts himself upon the country &c. files Novr 30 1831 A.G. Bates & Allen p.q.

And afterwards to wit: at the same term of the said court on the twentieth day of December in the year aforesaid the

Survey order of following Order was made to wit; "Lambert Salle dit Lajoye v Peter Primm. on motion of the Plaintiff by his attorney it is ordered that a survey of the premises in dispute be made by the county surveyor shewing the different pretensions of the claimants and the true situation of the property as appears to him and that he make five copies of said survey" And afterwards to wit at the March Term of said court on the twentieth day of april in the year one thousand eight hundred and thirty two. the following proceedings were had to wit;

continued "Lambert Salle dit Lajoye v Peter Primm. continued by consent. And on the twenty third day of the month term & year aforesaid

survey order of Renewed the following Order was made to wit "Lambert Salle dit Lajoye v Peter Primm on motion of the plaintiff by his attorney it is ordered that a survey of the premises in dispute be made by the County surveyor shewing the different pretensions of the claimants and the true situation of the property as appears to him and that he make five copies of said survey. And afterwards to wit at the same term of the said court on the first day of May in the year aforesaid the following proceedings were

had to wit "Lambert Salle dit Lajoye vs Peter Primm on motion of the plaintiff by his attorney it is ordered that he have leave to amend his declaration in this case by striking out the words "originally granted to one Lambert Bouvartet and confirmed to said Lambert and his legal representatives" and to insert the words "being the east half of Northwest quarter of Block Number Fifty seven on the plot of the city of St Louis".

leave to strike out & insert

And afterwards to wit, at the July Term of the said court on the fifteenth day of August in the year aforesaid the following proceedings were had "Lambert Salle dit Lajoye vs Peter Primm Now at this day come the parties aforesaid by their respective attorneys aforesaid and thereupon also come a Jury to wit: George W Kerr. Richard Dowling James I Purdy. Mathew Kerr. Samuel Mount. Henry Von Phul Andrew Jackson William Tighe James B Niel John H Baldwin. John Cowie and James Martin twelve good and lawful men who being duly Elected, tried and sworn well and truly to try the issue within joined between the parties aforesaid, whereupon for reasons as well moving the court as the parties aforesaid. George W Kerr one of the Jurrors aforesaid is withdrawn from the pannel of the jury and the residue of the Jurors are discharged from rendering a verdict" and the said cause was continued from term to term until the March term in the year of our Lord one thousand Eight hundred and thirty three at which said term on the twentieth day of April in the year aforesaid the following proceedings were had to wit:

Jury impanneled & Juror withdrawn

verdict "Lambert Salle dit Lajoye vs Peter Primm Now at this day come the parties aforesaid by their respective attorneys aforesaid and thereupon also come a Jury to wit William Harris. James Loper John Irving. John M Feazel. George A Underhill. Henry Irvin. Frederick Cummins. Domitille St Vrain John Foster

William Houston. Henry Scott and John Boyd twelve good and lawful men who being duely Elected tries and sworn well and truly to try the issue within joined between the parties aforesaid on their oath aforesaid do say that the said Peter Primm is not guilty of the said trespass and Ejectment laid to his charge or any part thereof in manner and form as the said plaintiff hath above thereof complained against him" and afterwards to wit at the same term to wit the third day of May in the year aforesaid the following proceedings were had to wit: "Laurent Salle dit Lajoye & Peter Primm Bill of Exceptions filed"— which said Bill of Exceptions is in the words and figures following to wit: "L. S. Lajoie & Peter Primm:- Be it remembered That on the trial of the issue &c. in said cause the said plaintiff by a witness Rene Paul proved the possession by the said Defendant of the premises as described in the declaration at and previous to the commencement of the action and said possession was further admitted to have been held by said Defendant claiming the exclusive ownership thereof of said premises since the year 1809. That said plaintiff produced a witness named Laurent Riaé who deposes that he knew the said plaintiff and his father and mother whose names were John Salle dit Lajoye and Marie Rose Salle dit Lajoye. That the said witness is seventy four years old. That he was about twelve years old when he first knew John Salle. That said John Salle then occupied a small wooden house on the quarter of the square of which the lot in the declaration mentioned is part that the stone house was then building which stone house is still partly standing- That the lot he means is the carrier lot opposite the house occupied formerly by Mr Barron and since by Mr Easton That said Witness never knew any person in possession thereof but said John Salle till

Bill of Exceptions filed &c

whose

he Salle left the County. That said John Salle was a man grown when he first knew him. That there appeared to be some difference between the ages of said John Salle and his said wife. That witness did not pay attention to their apparent age. That he did not remember whether said John Salle was married when said stone house was being built That said John Salle was not married when witness first knew him. That witness was born near Cahokia and came here to St Louis the Summer after the post was established That when he first came here he was at the Creast and it might be a dozen years after that the stone house aforesaid was built. That after said John Salle left St Louis his Salle' wife and daughter occupies said stone house and lot. — and said witness in cross examination by the said defendants counsel said that there were, at the time that said Stone House was built and when he first saw said John Salle living on said lot, streets That the whole Isle was enclosed That an Isle as he understood it contained two lots That he understood that Madame Barrere went with John Salle when he left Saint Louis that he never saw her here afterwards That Madame Barrere disappeared about the time that John Salle left St Louis and has never been here since to the knowledge of the witness That the said plaintiff then produced the witness Noel Vieu who deposes that he Knew the plaintiff That he knew the father and mother of the plaintiff the aforesaid John Salle and Marie Rose That witness is sixty four or sixty six years old That he was thirteen or fourteen years old when he first knew said John Salle That the plaintiff ought then have been seven or eight

years old. That witness first knew said John Salle residing on north west quarter of the square of which the lot now occupied by the Defendant Peter Primm is part That witness assisted in Roofing the stone house on said lot That Salle was married when he first knew him That Salle was living in the stone house when witness assisted in roofing it That it has been roofed before he That he does not know how long said John Salle has lived in said stone house before he witness put the new roof on it. That witness was born in Lower Louisiana was at school there along with plaintiff That he was about thirteen or fourteen years old when he came to St Louis from Lower Louisiana That Salle had a large garden and trees That the enclosure of said John Salle, including the half square facing the dwelling of Mr Barnes now the house of Bates & before him occupied by Easton That said John Salle lives on the lot all the time he Salle remained in St Louis. That he John Salle made voyages to France like Labadie and others to purchase goods That it is upwards of forty years since he has seen said John Salle in this Country. That said John Salle left this place in a bateau accompanied by his son the plaintiff with the expectation of returning - That said John Salle left his stone here - That witness was here when said John Salle started for France the last time That said John Salle left his wife and family inhabiting his house and said premises. That witness knew a brother of John Salle who bore the name of Antoine Lajoye but was only brother by the mothers side That witness does not believe that John Salle left his said brother as his agent in his stone when he departed for France That witness

knew a woman of the name of Barrere who was wife to a Baker of the name of Barrere who lives Opposite to said John Salles house in St Louis That Barrere lives there but not his wife. That Witness conducted said Madame Barrere to New Orleans about 18 Mo or two years after said John Salle left St Louis. That Madame Barrere hired Engaged the Witness to take her to New Orleans That he arrives with Madam Barrere at New Orleans about three months after they Started from St Louis That witness left Madame Barrere at New Orleans in the family of Mr Magnon her brother in Law That Mrs Magnon was the sister of madame Barrere That Witness saw the plaintiff at New Orleans That plaintiff had arrived there from France some days before witness and Madam Barrere got there That witness remained at New Orleans about three years That Madam Barrere remained there five or six months. He was said in New Orleans that she has Embarked for France That the witness did not Know which was oldest John Salle or his wife but thinks that John Salle seemed the oldest John Salle brought his wife up the Missouri from the Indians with whom she was a prisoner That witness Knew no other owner of the Stone House and half square aforesaid than John Salle That he John Salle was considered the owner thereof. That on the return of the witness to St Louis from New Orleans he found Madame Marie Rose Salle the wife of John Salle residing in the Stone house and Helen Leroux her daughter with her husband Benjamin Leroux residing with her That witness does not recollect where the plaintiff Lambert Lajoye resided when he

Lambert returned to St Louis that he had not much intercourse with the plaintiff until he came to reside at Vide Poche when they renewed their old acquaintance That the counsel for the plaintiff being about to examine said witness as to the possession and inhabitation by the wife of John Salle Marie Rose and by her daughter Helen Larroux and her granddaughter Mrs Primm and her husband Peter Primm after the departure of said John Salle for France the Defendants by his attorney admitted the fact that said Marie Rose during her life time and said Helen Leroux and Peter Primm & his said wife have been in possession ever since the departure of said John Salle of the lot and premises in the declaration mentioned That said witness on his Cross examination said that he was not at St Louis at the time of the attack by the Indians and not until perhaps seven years more or less after. That John Salle was a Frenchman by birth that the first visit of the witness to St Louis was the year after the L'année du coup (the year after the below) That he was about twenty years old when he took Madame Barrere to New Orleans That he took her down on a float upon two canoes that there were two canadians besides with him That Madame Barrere might have been between thirty & forty years old that towards the last she did not live with her husband. That the plaintiff then produced the witness Pierre Chouteau Junr who deposed That he knew John Salle the father and Marie Rose the mother of the said plaintiff That when John Salle first arrived at St Louis which was in 1765 or 6 he seemed to be from 20 to 25 years of age was hired as a baker at the house of the mother of witness and was

a good Baker That John Salle staid in St Louis about Eighteen months and then went a voyaging up the River Missouri That said Salle was at first an Engage then an Indian Trader and afterwards a merchant That the witness was not in St Louis when the Stone house on the northwest quarter of the Square of which lot in the declaration mentioned is part was built That he never knew any other person in possession of the Stone house but D Salle and his family while he John Salle was in this country That he knew John Salle inhabiting the Stone house previous to his Salles marriage That John Salle was the reputed owner thereof and of the lot on which it was situate when he John Salle remained in the country that John Salle was so in possession for 20 to 25 years That John Salle had the half of the Square fronting on third Street bounded North & South by a Cross Street. That John Salle left this country in 1792 or 1793 That he left his family in possession of his house and half Square That John Salle had made one voyage to France for Trading purposes before his last voyge That he does not know that John Salle left any merchandize after him he believed that John Salle sold all his merchandize before he started but no other property belonging to him That witness was not here when John Salle started for France - That said witness then proves that the Signature "Salle" subscribed to a letter and power of Attorney bearing date the 29 day of Dec 1817 Dated the 29th day of Dec 1817 was the proper handwriting of said John Salle and said Pierre Chouteau - on his cross examination said that he knew one Boisrolet in possession of

a small wooden house about where peter Primm the defendants house now stands That Bouvaret lived then in 1766 a 1767 That he never saw any person in possesion of the north west quarter of the square of which the lot on which the stone house stands is part but Bouvalet and John Salle and family that is to say of the northwest corner of the square, he knew Bouvaret an old French soldier in possession of the part where the defendant Primms house now is That after the death of Bouvaret John Salle bought the lot of Bouvaret That Bouvaret lives on that part six or eight years and dies on the same That he dont know what enclosure John Salle had on the East but knows that Bouvalet and John Salle has the lot that is the north west quarter of the square between them during the life of Bouvaret That he knew not whether John Salle meant never to return but it has every appearance as he sold all his goods and bought real property in France as witness heard and believes The Witness was in the Indian country when J Salle started for France- That lots in St Louis were then of little value any body could have a lot by asking the commodant for one The said plaintiff then produces the Witness Louison Guitard who deposed that he is about 71 years of age - has known John Salle the plaintiffs father as soon as he knew any thing- was raised next door to him- That John Salle lives in the old Stone house when he first knew him John Salle had two lots enclosed each 120 by 150 feet— knew nobody else in possession of them while John Salle remained in St Louis those

two lots are bounded by third street and by cross street north and south — John Salle was the only reputed owner while he remained in this country — he left his wife and Helen Leroux his daughter in possession when he left this country — when he first knew John Salle he appeared to be considerably advanced in life there did not appear to be much difference between the ages of John Salle and his wife — they appeared to be two old persons together — when John Salle left St Louis he was grey and bald — he cannot say what difference there was between the ages of John Salle and wife on cross examination said witness said that Jeannett's lot lay East of and adjoining that where Primms House is situated — Primms house is on the extreme East of the lot of the northwest corner or quarter of square he remembers the Planne du coup — Knew John Salle then does not recollect Bouvarlet — does not recollect any house called Bouvarets house — he was too young to recollect that — The stone house is situated on the same lot or quarter of square with the defendants Primm's house & the northwest corner of it The plaintiff then produced the witness Francis Duchonquette who deposed that he knew the plaintiff and knew his father and mother — That he witness is 73 years old was 15. 16. or 17 when he first knew plaintiff's father in St Louis — when he first knew him he lived in the stone house and never knew him to reside elsewhere in St Louis — was well acquainted with John Salle's wife — does not know which was the oldest — thinks that John Salle and wife were

anné du coup —

about same age madame Salle Sajoye was a woman grown when she arrived here— Witness was here when John Salle left this country— he seemed aged and was called old Sajoye. The plaintiff witness believes does not speak English or if at all very little— Knew the plaintiff in 1816 is sure he could not speak English then— he can speak Spanish— John Salle carried on a store before he left St Louis in the stone house— The store was open and carrying on at the time that Johnsalle left here— does not know whether the store was carried on after John Salle left St Louis— there was no auction or public sale of John Salles goods, before he started that witness ever heard of— thinks that if such a sale had taken place he witness must have known it— he was never in the store of John Salle after his departure— Helen Lorieux the daughter of Johnsalle and her husband resided in the stone house— Knew another son and Daughter of John Salle both are dead under age and without issue— believes that the son Peter is also dead under age and without issue— Knows of no debts due to John Salle at the time he left— on Cross (X) examination said witness said that he was 16 or 17 years of age at the same au couch— Was born at Fort Chartres came to St Louis before the same au couch— was then 16 or 17 years of age— Johnsalle then lived in the stone house newly built— there was then a small house past in the bounds about 18 steps south of the stone house there was no other house— there was a garden on the south side belonging to J Salle Sajoye— none on the east side— Does not know how far J Salle's enclosure extended

East from the stone house - John Salle left all his property with his wife - has no knowledge of John Salle's Capitals - John Salle started for France about 43 or 44 years ago does not know how old he witness was when John Salle started for France - it was generally understood that John Salle was going to reside in France John Salle had been an Indian Trader and made frequent voyages up the Missouri - the witness lives in St Louis before Madame Marie Rose Lajoye came there witness was absent on a voyage as engage when she first arrived in St Louis it is probable that John Salle and his wife were married in St Louis she came from the ~~Illinois~~ Paris Indians with whom she had been a prisoner - The plaintiff then produced Marie Rose Provost who deposes that she was daughter to the plaintiff that the last account of her grandfather John Salle was received about 14 or 15 years ago That he sent about that time a power of attorney - That he has never been hearing in the family since that time That the family believe him to be dead - By family witness says that she means the family of herself her brothers and sisters and father and mother - she does not know whether they has accounts from John Salle previous to the receipt of the power of attorney she was too young to know that - The plaintiff then read in evidence the power of attorney and letter from John Salle hereinbefore mentioned and the translation of the same into English which Translations are here also by consent set out in the words and figures following that is to wit; "Bordeaux 29th December 1817 - In answer to your

letter of the 18 august 1816 and to conform to your intentions I forward you my power of attorney to authorize you to dispose as you shall think proper of the moveables and immoveables (or real and personal property) of which I have already granted to you the enjoyment— I have left you a total value of about sixty five thousand franks including in the inventories made by Mr Renal of Merchandize credits, moveables immoveables slaves, &c &c— So I see by your letter that you say you have received but six thousand franks when I have given you fourteen thousand without counting an apartment of wines and other articles, in my own act. the whole of which you have kept— the rigging of a boat left in the hands of Mr surgeon Labat who delivered it to you, also one hundred pistoles which I have paid at Rouen on your note— two hundred franks paid at Bordeaux for pantaloons &c all these values given to you and your mother would amount to more than ninety thousand franks— it would thence follow that for my share I should have had not more than thirty four thousand franks by the sale of my lettres which I sold for assignats and which in the same year fell to one third of the value (at par) It is with these monies that I have purchased the small property that I enjoy which produces me almost nothing and which costs me for repair & cultivation more than it produces— Here am I at this moment covered with loans and debts which I have contracted for my living and for my most urgent wants— By my last I mentioned to you that I would go myself to the Illinois (and Illinois) but my unfortunate situation and the almost total failure of the crops of

this year have not enabled me to realize any thing to pay my postage for which object I have not been able to borrow in consequence of the general distress and the little confidence in the small proprietors who like me are ruined— Then you see how unhappy my lot is— it is in this state of things that acting always with just and friendly intentions I send you by Mr Eagus the power of attorney clothed with all the formalities required by the law in order that you your mother and sister may concur in the partition of the property which I have relinquished to you— be more happy than me— I desire it— But you must be more happy than me since in my old age I see myself deprived of all means of support and in a state of penury of which I was far from thinking when I came to Bordeaux— but we must resign ourselves to the will of god— it is with those sentiments of religion which should animate us all that we must in our common misfortunes pardon each other reciprocally for the events which have led to these misfortunes of us all— After my statement you must feel that you have nothing to hope for from me— you could not wish that indigence should overtake me— for I have no other resource than in the little property which remains to me and which is insufficient for my support— you could not wish I say that I should have recourse to public charity to subsist— no you have too much religion for that— I expect from you sentiments of friendship and gratitude as on your part you may reckon that if I could contribute to your happiness I should do so with pleasure— I wish and

desire for you health and happy days — "Salle."

"To Marrie Lambert Salle at St Louis of the Illinois Continent of New England at the Illinois" —

Power of Atty. (The Power of Attorney referred to in the above letter)

"29th December 1817 (stamp) The 29th December 1817 —

(stamp) Before Duprat and his colleague Notaries at

Power of Attorney Bordeaux Is present. Mr John Salle, proprietor

(stamp) residing at Bordeaux Road of the Sablona No 161 Who makes and constitutes, for his general & Special agents; Mrs Marie Rose his wife, Mr Lambert Salle his son and Mrs Genevieve Salle his daughter all residing at St Louis in the countries of the Illinois —

to whom conjointly or in case of death to the survivors of him or them he gives power for him and in his name to sell a house with all its appertenances and dependencies situate at said place belonging to said John Salle, to make said sale for the price and on the conditions clauses and charges which the said agents shall judge to be expedient, to deliver all title deeds, to receive, to give receipts, to sell also, assign and transfer all other properties, titles, credits, belonging to said John Salle, at said place, to receive the price thereof, to pass and to sign all acts and deeds generally renouncing promising and accepting — Done and passed in Bordeaux, in the studies of said Duprat, where after same was read to said John Salle he signed with the said notaries — "Salle"

Dischamps (3) Duprant (3)

We Pierre Dennis de Payramont Knight of the loyal order of the Legion of Honor president of the Tribunal of First Instance sitting at Bordeaux, certify that the Signatures Duprat and Dischamps are those of

2.20 Recorded at Bordeaux the 30th Decemr 1817 folio 189. D.C. 2 — Recd. two franks twenty cents Lafargue

Mrs. Duprat and Deschamps royal notaries at Bordeaux this thirtieth day of December one thousand eight hundred and seventeen (Seal of the Tribunal) Dr. Peyronnet

(The plaintiff then offered in Evidence an original deed duly certified taken from the Spanish archives in St Louis which on Motion by defendant was excluded from the jury to which opinion said plaintiff by his counsel excepted and the translation of which said original Deed from the French Language is by consent of said parties above here set out in the words and figures following to wit:

Deed "Before us Don Pedro Pearnas Captain of Infantry Lieutenant governor of the province of the Illinois and its dependancies belonging to his catholic Majesty was present in person John Delage inhabitant residing at the post of St Louis who by these presents has acknowledged and confessed to have this day sold ceded transferred and assigned from the present time and for ever and promises to warrant from all trouble & debts generally to John Salle dit Lajoye inhabitants residing at said post of St Louis here present the purchaser stipulating and accepting for himself his Heirs and assigns to wit an ordinary lot of land situate at this said past of Saint Louis containing one hundred and twenty feet front by one hundred and fifty feet in depth bounded on said front by the third main street on the rear by the lot of the Heirs of Legrain on one side by the lot of said Lajoye and on the other by a cross street going to the Missippi as said lot is throughout situated and circumstanced which the said Salle has declared that he knows and is acquainted with from having seen and examined it and with which he is ~~sufficiently~~ satisfied without any thing being reser-

ved on the part of said John Delage to whom said lot belongs as having obtained it by concession from the Commandant and Judge of this Jurisdiction the eighth august one thousand seven hundred sixty seven being of the royal domain without any charges rents or dues down to this day to hold and enjoy the same to the said John Salle and his Heirs or assigns as a thing to him belonging to commence the enjoyment thereof from the day of this present Sale so made in consideration of the price and sum of fifty livres in peltries which the said Jean Salle has now paid down and delivered to said John Delage as he as he acknowledges and with which he is satisfied holds discharges the said John Salle and all others and promises to have him hers discharges by all those to whom it shall belong to give discharge in consideration of which the said John Delage has dispossessed disseized and divested himself of the said lot for and to the benefit of said John Salle and wishing that he be seized thereof and put into possession his Heirs or assigns by such person and in such form as may be proper for so has it been agreed and stipulated promising & obligating & renouncing & done and passed at the Illinois in the office in the year one thousand seven hundred seventy the ninth of July in presence of Messrs Milonus Durabee and Joseph Labuxiere witnesses who have with us commandant signe these presents and the parties have declared they did not know how to sign and have made their ordinary marks. — (mark of Comb Salle)

Pedro Piernas (mark of John Delage)

Labuxiere

The plaintiff then read in evidence the certified copy of the record

of Baptism of pierre Salle the translation of which from the original French is by consent herein set out

Baptism in the words and figures following to wit. "The twenty sixth September one thousand seven hundred and seventy one was baptised Pierre born the twenty first of July of the lawful marriage of John Salle and of Marie Rose Panda his wife The godfather was Pierre Kiercan the godmother Marie Duchman wife of Pierre Montardy The godfather has signed with us the godmother has declared that she does not know how to sign they are all of this parish — P. Gibault pte. miss. ap.

And said plaintiff then offered and read in evidence the certified copy of the record of interment of said Marie Rose Lajoye and the translation thereof which translation is herein by consent of said parties set out in the words

Interment and figures following to wit; The twenty eighth of July of the year one thousand eight hundred and thirty I the undersigned have interred in the grave yard of this parish the body of Marie Rose Lajoye having administered to her all the sacrements of our holy mother the catholic apostolical and roman church aged one hundred and four years — Ed Saulnier priest — and said plaintiff then proved by a witness that the premises in the declaration mentioned were worth about ten dollars per month, at the time of bringing the present action — The plaintiff having here closed his case the defendant proved and then offered in evidence a deed of conveyance executed by the plaintiff Madeline his wife Marie Rose Lajoye mother of plaintiff & Helen Larsen sister of plaintiff — for the west half of the north west quarter of the square here before mentioned dated the 21st day of

October 18th which deed is in the words and figures following to wit; "Know all men by these Presents that

Deed to Peter Primm

Marie Rose Lalle Lajoye, Lambert Lalle Lajoye and Madeline his wife and Helene Leroux of the Town and County of St Louis in the Territory of Missouri for and in consideration of the sum of Eighteen hundred Dollars to them in hand at and before the ensealing & delivery of these presents well and truly paid by Peter Primm of the same place the receipt of which payment they do hereby acknowledge, and therefrom & of every part thereof do acquit and forever discharge the said Peter Primm his heirs and assigns forever have given granted bargained & sold & hereby give grant bargain & sell unto him the said Peter Primm his heirs and assigns forever a certain Town lot or parcel of ground lying and being situate in the Town~~ship~~ of St Louis aforesaid containing one hundred and Twenty feet fronting on third main street by seventy five feet on the rear French measure, bounded westwardly by the aforesaid third main street which separates the said lot from the lot of Rufus Easton - Northwardly by a Crop street which separates it from the lot of Paul Guitarre. Eastwardly by lot of Peter Primm and on which he now lives, and Southwardly by lot on which Elijah Beebe now lives - To have and to hold the said granted & bargained premises together with all & singular the Privileges and appurtenances to the same belonging or in any wise appertaining unto him the said Peter Primm his heirs and assigns and to his and their proper & only use benefit and behoof forever free and clear of all incumbrances whatsoever — In Testimony

whereof the said Marie Rose Salle Lajoye, Lambert Salle Lajoye & Madeline his wife, & Helene Leroux have hereunto set their hands & affixed their seals this Twenty first day of October Eighteen hundred & sixteen — Signed Sealed & delivered in presence of "Marie Rose her X mark Salle Lajoye" And. J. McGirk M. P. Leduc

L Bt Lajoye filo: Madeline her X mark Salle Lajoye Helen Leroux

seal LS LS LS

Missouri Territory } set
County of SS Louis } Before me Mary Philip Leduc clerk of the Circuit court within and for the County aforesaid, Personally came & appeared the within named Marie Rose Salle Lajoye Lambert Salle Lajoye & Madeline his wife & Helen Leroux & acknowledged the within Instrument in writing to be their & each of their act & deed hands & seals for the purposes therein contained: the said Madeline wife of said Lambert being first seperately & apart examined from her said husband and by me made acquainted with the contents of the same declares that she executed it freely & voluntarily & of her own free will & accord without fear restraint compulsion or undue influence of her said husband —

In Witness whereof I have hereunto set my hand and affixed the seal of office at my office in SS Louis day & date of said act & deed — M. P. Leduc clk —

Missouri Territory County SS Louis } set Recorded book F page ninety three — this 21st day of Octr AD 1816 — M P Leduc clk

— That said plaintiff thereupon moved said court to exclude said deed as irrelevant which motion was overruled by said court and to which opinion said plaintiff by his counsel excepted and the Defendant then

by one of the witnesses to said deed, named Marie P Leauce proved the execution and delivery thereof on the day on which it bears date and said witness on + Cross Examination by said plaintiffs counsel said that said plaintiff did not speak write or understand English at the date of said deed and that witness never spoke to said plaintiff in English but either in French or Spanish and said witness in reply to a question by the counsel for said plaintiff said that he did not recollect that said plaintiff had on the day of the execution of said deed refused to join in a deed of conveyance to said Peter Primm or to any body else of the premises in the declaration mentioned or that he said witness had in reply to a question of said plaintiff in the Spanish Language in a conversation with said plaintiff on the day of the execution of said deed approved of the refusal by said plaintiff to join in such conveyance unless said plaintiff received a consideration for so doing and said witness in reply to a question from said counsel of plff said that he witness had no recollection of a conversation with him said counsel in which he said witness admitted that he approved of said plaintiffs refusal to join in the conveyance above mentioned but that he witness would not say that such conversation had not in fact taken place between him and said counsel and said deed was then read in evidence, it was also proved by said defendant that the lot in the declaration mentioned is the same with that called in the deed last aforesaid the lot of Peter Primm on which he then lives & therein declared to be the eastern boundary of the lot conveyed by same deed, And the defendant

then closed his case whereupon the said plaintiff
Instructions by his counsel prayed the court to give the following
Refused instructions to the jury to wit:— 1st That the deed offered in
proved evidence by the defendant shews no title out of plain-
tiff as to the premises in the declaration mentioned
(refused)— That the deed offered in evidence is not proof
Given conclusive by estoppel or otherwise— that the premises
in the declaration mentioned were the fee simple
property at the date of the said deed of the defendant—
(given)— That the description of the premises conveyed
Refused by the deed offered in evidence by the defendant in
said deed contained is not proof conclusive by estoppel
that the premises in the declaration described were at
that time the property of the defendant as his estate
in fee or for life or for a term of years certain (refused)
That the following words in deed offered in evidence
Refused by the defendant to wit:— "Eastwardly by lot of Peter
Primm and on which he now lives"— are not proof
of any estate of inheritance then vested in said
Peter Primm in and to said lot— and is not con-
clusive proof of any conveyance by deed or any trans-
fer whatever of said lot by the plaintiff in this case
to said Peter Primm or by any other person to said
Peter Primm— (Refused)— That Defendant has shewn
Refused nothing in evidence in ~~said cause~~ to rebut the title proved by the
plaintiff to an undivided moiety of the premises in the
declaration mentioned— (refused)— That the deed given
Refused in evidence by Defendant is void as against Marie
Rose Lajoye— if Court shall be of opinion that at
date of the deed the said marie Rose Lajoye was
a married woman (refused)— That said court gave

the second of these instructions and refused the others to which said refusal and opinion said plaintiff by his counsel excepted, and said Defendant by his counsel then prayed said court to give the following instructions to the jury towit: "1. That the statement in the deed read in evidence on the part of the Defendant from Marie Rose Lajoye, Lambert Salle Lajoye and Madeline his wife & Helen Larouse to Peter Primm that the lot therein and thereby conveyed to Peter Primm was bounded on the east by the lot of Peter Primm & on which he then lived estops the plaintiff in this action to deny that the lot of ground on which said Primm lived at the date of said deed was at that time the lot of the said Primm (given) 2do The lot on which Peter Primm lived at the time of the date of the said deed being admitted to have been at that time the lot of Peter Primm, the plaintiff cannot recover in this action without proving a right in himself, derived from Primm since that time, or without proving that Primm's right had ceased, & that the plaintiff had since the ceasing thereof & before the bringing of this suit, acquired a title to the same (given) 3. It is not necessary for the party offering to read a deed in evidence to prove that its contents were explained to the person who executed it, but it is the duty of the party against whom it is offered if any improper conduct attended the execution to shew it. (given) The whole of which instructions 1. 2 & 3 were given — to which opinion and instructions the said plaintiff by his counsel excepted and prayed the said court to file this his bill of exceptions which is done accordingly.

Instructions prayed for by Deft & given

filed May 3rd 1838 A Gamble Clerk — Wm. C. Carr [Seal]

And afterwards to wit: at the term aforesaid on the seventh day of May in the year aforesaid the following proceedings were had to wit: "Lambert Salle dit Lajoye vs Peter Primm May 7th 1833 [illegible]. The plaintiff having withdrawn his motion made by him for a new trial. It is considered by the court that the said plaintiff take nothing by his said writ and that the said defendant go thereof without day and it is further considered that the said Peter Primm recover against the said Lambert Salle dit Lajoye his costs and charges by him about his suit in that behalf expended and that he have thereof execution"

Appeal granted

And on the same day Term and year aforesaid the following proceedings were had to wit: "Lambert Salle dit Lajoye vs Peter Primm The plaintiff files his affidavit and prays an appeal in this case to the Supreme Court and the said appeal is granted and the Record and proceedings ordered to be certified up accordingly"

Affidavit

The affidavit above referred to is in the words and figures following to wit: "Lambert Salle dit Lajoye vs Peter Primm Luke Edw Lawless agent of said plaintiff Lambert Salle dit Lajoye maketh oath and saith that the application for an appeal to the Supreme Court in said case is not made for the purpose of vexation or delay but because this affiant verily believes that the said plaintiff is agrieved by the decision and judgment upon which said appeal is prayed L. E. Lawless"

Filed May 8th 1833
A Gamble clerk
Sworn to before me May 6th 1833
A Gamble

State of Missouri }
County of St Louis } ss

I Archibald Gamble clerk of the circuit court for the County of Saint Louis do certify that the foregoing is a full and complete transcript of the Record and proceedings in a certain case in said court wherein Laurent Sale dit Lajoye was plaintiff and Peter Primm was defendant as the same now remains of Record in my office.

Given under my hand and the seal of the said circuit court at Office this 25th day of May in the year of our Lord one thousand eight hundred and thirty three—

Archibald Gamble Clerk

No 2 (27)

October Term 1833

Lambert Salle dit Lajoye vs Peter Primm } Transcript of Record & Proceedings

484

484

Transcript	$ 8.87½
Certificate & Seal	.50
Tax	42½
Copy of Bill Exceptions	6.87½
	$ 16.87½

Ten dollars paid by Mr Lawless

Filed 5th July 1833
Joseph C Brown Clerk

Judgment affirmed book D page 9 } Lub & Arrian 25 - Lub pt 31
Mid for Retrieving which is granted 9

Fubile 50

Lallé dit Lasoye } Error from St. Louis
vs
Primm } Circuit Court.

This was an action of ejectment commenced in the circuit court by the plaintiff in error against the defendant in error, to recover the undivided moity of a lot of ground in the city of St. Louis, containing 75 feet french measure by 120 feet — being the East half of a lot 120 by 150 feet french measure, which last named lot is the North West quarter of block No. 57 as designated on the plat of the City of St. Louis. — The defendant had a verdict & judgment; to reverse which judgment, the plaintiff now prosecutes his writ of error in this court. —

The evidence is all preserved by a Bill of Exceptions — from which it appears that Jean Lalle dit Lasoye, the father of the plaintiff, about the year 1769, built a store house on the North West corner of the square or block No. 57; and had a garden & enclosed the west half of the square, the north east portion of which he purchased from one Bon vastel who had settled upon it a few years before and which includes the land in dispute; and continued in possession of the same until he left this country for France in 1792 or 1793; at which time he removed & settled in Bordeaux, where he continued to live up to the 29th of Decr. 1817 — since which time he has not been heard from. —

About the year 1770 Jean Lallé intermarried with one Marie Rose Panda, by whom he had a son (the present plaintiff) and a daughter (Helene Leroux). When he removed from St. Louis to Bordeaux, he took his son with him and left his wife & daughter in possession of his house, who together with Peter Primm the defendant &

his Primm's wife (the daughter of Helene Seroux) have continued ever since, to occupy the north west quarter of said Block or square - the East half of the north west quarter of which, the defendant has possessed exclusively, since 1809. Eighteen months or two years after Jean Lalle removed to Bordeaux, his son, the plaintiff, returned & has ever since resided in the country but not on the lot or square on which his Mother & Sister lived.

Marie Rose, the Mother of the plaintiff died in 1830. From the time the plaintiff returned from France, up to the 29th of Decr. 1817, Jean Lallé the father had no intercourse with his family. The manner of his removal & the circumstances attending it as detailed in the evidence, as also a letter received from him of the date of the 29th Decr. 1817, shew clearly that when he removed to Bordeaux in 1793, he intended to abandon his family & the country & no intention could have been more fully acted out or persevered in. It was proved that Marie Rose the mother of the plaintiff died in 1830 at the advanced age of 104 years & the witnesses state Jean Lallé the father, was or appeared to be about as old as his wife; and not having been heard from since 1817 and being then about ninety years old, the plaintiff relies upon the presumption of his death & claims as heir to his father the undivided moity of the lot sued for — Insisting, first; that the title of Jean Lalle his father was a good & perfect one according to the law of prescription in force whilst the country belonged to Spain; or else, that the Act of Congress of the 13th of June 1812 operated a confirmation to his father by virtue of his prior possession of the lot:-

And again the plaintiff insists, that if it be held that Jean Lallé had no title by prescription; and that he

had abandoned his possession & could take nothing by the act of Congress of 1812; then he claims as heir to his mother the moity of whatever she was entitled to claim by virtue of said Act.

The defendant gave in evidence a Deed of convey-ance dated oct 21st 1816 from the Plaintiff & Marie Rose his mother & Helene Leroud his sister, convey-ing to the defendant the west or corner half of the lot of 120 by 150 feet above referred to; in which Deed is the following clause, the grantors "sell unto him the said Peter Primm, his heirs & assigns forever a certain town lot or parcel of ground lying & being situate in the town of St Louis aforesaid, containing one hundred & twenty feet fronting on third main street, by seventy five on the rear french measure bounded westwardly by the aforesaid third main street which separates the said lot from the lot of Rufus Easton, Northwardly, by a cross street which separates it from the lot of Paul Guitard, Eastwardly by lot of Peter Primm & on which he now lives & southwardly by lot on which Elijah Bube now lives": And insists, first that the plain-tiffs father had no title by prescription & that the Act of Congress of 1812 operated a confirmation of the title to the mother Marie Rose & her son in law Ben-jamin Leroud who with his wife Helene Jouitt possessed the lot within the meaning of the act:- and secondly, that the Deed from Marie Rose to Peter Primm above referred to, admitted the title of the lot in dispute to be in Peter Primm & that the plaintiff as heir of his mother, is estopped from claiming any portion thereof.

Upon this state of facts various instructions were asked on the part of the plaintiff, which were refused and on the part of the defendant which were given;

It is not now our purpose to notice them in detail; but will proceed to the examination of those only on which the parties mainly rely. (ie) First, did Jean Salle acquire title by prescription to the lot in question? If not, did the act of congress of 1812 accrue to his benefit or to that of Marie Rose her son in Law Bayonne Lerous? The right of prescription has been heretofore, but little discussed or investigated; and no decision it is believed, has ever been made upon it in this court. The doctrine as it is to be collected from the Partidas, the Digest of the civil law prepared for the Territory of Orleans in 1808; and from Febrero, leaves it somewhat doubtful, whether the right of prescription could ever arise as against the King. The principles upon which the right is founded, according to Febrero Lib. III. cap. II. § 239. are "First for the public good, to the end that the dominion of property might not remain for a long time or almost always uncertain. Second, to avoid the enumerable & perpetual suits which might otherwise originate. Third; that the possessors of property might not be always in dread of losing what they had honestly obtained; & fourth; to punish the indolence of those who were tardy in recovering their property — so that they should impute the loss of it to themselves; since the law protects those who watch & not those who sleep". —

In order to set up the right as between private individuals on a possession short of thirty years, the title must commence in a fair & formal manner. The principle laid down in the civil code, and which is recognised both by the Partidas & Febrero is, "that a man who becomes possessed of an immoveable estate, fairly & honestly, and by virtue of a just title, may prescribe for the same, after the expiration of ten years, if the true proprietor resides in the Territory; and after twenty years, in case said proprietor resides abroad" see Civil code title prescription Sec II. Art. 67. — this is the authority upon which the counsel for the plaintiff mainly rely in

order to make out their title by prescription. A slight examination will suffice to shew that it has reference to individual claimants & cannot with any reason be made to apply to the King or Government. The King is never presumed to be absent from his dominions. His Territories are under the command & in the possession of his Officers & he cannot be charged with indolence in not resuming what had never been parted with. In looking a little further, to other provisions of the law, it will be still more evident that the one relied on in this case, was not intended to authorize an individual to prescribe against the crown. — Prescription requires a continued, uninterrupted, peaceable, public & unequivocal possession animo domini (ie) by one who is master or who has good reason to think himself so. Civil code Lee 1. Art. 38. — And the circumstance of having been in possession by the permission or through the indulgence of another, gives no legal possession upon which to prescribe, but the person so obtaining possession will be esteemed to hold for him who grants the indulgence or permission. —

Jean Lalle was among the first who settled in this country. When his possession of the lot in question, commenced, it was known to all that the King was the Proprietor of the soil & had granted but little of it away to the settlers. Without a grant or permission to settle obtained from the proper officer, no one could therefore feel authorized to consider himself Master of a single foot of land. It was not in this new colony, as it was, or might be presumed to be in Spain - that the evidences of title commencing in regular & formal grants, had been lost or destroyed through lapse of time. As between individuals, a title commencing by permission or force or fraud, could not be prescribed for in less than thirty years. Lalle's possession as against the government cannot be placed upon a more favourable footing. For though

he might have purchased a part of the lot in dispute of Bon-vartet, by formal sale — yet in order to build up the title upon this purchase, Bon-vartet must have sold in good faith, believing at the time that he was the lawful owner, which it is clear he could not have done. The law being, "that he who alienates & he who receives the thing, must both act in good faith, believing they had a right to do so". (Partidas Law 18 — p. 383). — It is next insisted on by the counsel for Lallé (& they cite Partidas L. 21. p 384. civil code title prescription Sec. III. Art 65. p. 486 — Febrero lib. III. cap. 11 § 240 in support of the position) that thirty years possession however acquired, will give title against all the world; and they contend that Lallé's possession, was continued after he left the country in 1792 or 3 — since the law regards the possession of the wife & daughter as his possession for the purpose of setting up the right of prescription. To this there are two answers — first, I Lallé had openly abandoned his family & the country, without the purpose of ever returning to them; and so stopped thereby the running of the right; & second — The right must be set up by the actual possessor, who as donee, vendee, alienee, or heir may join the prior possession of their donor, vendor, alienor or ancestor, to their own possession, and so make out the time required to set up the right in the particular case. I Lallé had neither the natural possession as it is termed in the civil law (which means an actual, corporal common law possessio pedis) nor a civil possession, which is raised by force of law where the possession instead of being relinquished or abandoned, is merely committed by the proprietor to his family or agent with the purpose of resuming it again soon, or at a time fixed or appointed.

Let us now see if I Lallé could claim any thing by virtue of the act of Congress of 1812 above cited? The express object of that act, was to confirm to the Inhabitants of the towns & villages therein enumerated, the lots occupied or possessed by them, prior to Decr. 1803 — The most liberal construction of the act, could not we apprehend, extend its provisions, further than to the legal representatives of the last legal owners or pos-

-sessors prior to, and at the period referred to in the act. I Valle' was not only, not an inhabitant at the passage of the act, but he had ceased to be an inhabitant long before the period referred to. It would be too unreasonable to suppose, that where different persons at different periods, had succeeded to the possession of the same lot, that the act intended to confirm the title to each possessor: or that, where the first possessor had abandoned or transferred his possession, the act intended nevertheless to confirm the title to him, upon the maxim invoked by the plaintiffs counsel, "that the prior in possession is the better in right". It is not perceived that any principle of reason, justice or ~~good~~ policy could have moved the Congress of the United States to enact such a provision. — The great object of the act was, to quiet the villagers in their titles to property (so far as the government was concerned), which had been acquired in many instances by possession merely under an express or implied permission to settle, & which had passed from hand to hand, without any formal conveyance. In such cases, possession was the only thing to which they could look, and taking it for granted that those who were found in possession at the time the country was ceded, or who had been last in possession, prior thereto, were the rightful owners, the confirmation was intended for their benefit. — Marie Rose, with her son in-law Benjamin Leroux (the husband of Helene) had remained in possession of the lot from the time I Valle' left St Louis in 1792 or 3. up to the period fixed in the act of 1812; and they were the persons to whom the confirmation enured. The right of the plaintiff to recover in this action, might have been readily disposed of, so far as he claims title through his father, without ~~having~~ entering into the consideration of the doctrine of prescription — since from the record it does not appear that I Valle is dead and the plaintiff could not claim as heir whilst his father lives. The questions arising fairly however, & being considered essential to the final adjudication between the parties, it was thought best to notice them.

The next question to be considered is, whether the plaintiff can claim as heir to his Mother the being dead? And if so how much or to what extent? Marie Rose & Benjamin Lesoux her son in law, were the inhabitants whose possessions the act of 1812 intended to confirm. The legal existence of Helene Lesoux (who lived with them) was merged in that of her husband, so that she could acquire no title except through her husband. The confirmation under the act enured then, to Marie Rose & Benjamin Lesoux only, who took each an undivided moity. Upon the death of Marie Rose, her daughter Helene, became equally entitled with the plaintiff, to the undivided moity of their Mother — so that the plaintiff as heir to his Mother may rightfully claim & recover the one undivided fourth part of the lot sued for, unless it can be held (as the counsel for the defendant contends) that as heir to his mother, he is estopped from asserting his title by the clause above recited, from the Deed of conveyance executed to the defendant in 1816, by the plaintiff, together with his Mother Marie Rose & Benjamin Lesoux & wife?

To dispose of this question it becomes necessary to examine the doctrine of estoppels. — It is insisted on the part of the plaintiff in error, that this Deed to Peter Primm cannot estop him from recovering. The objection taken, is first, that this estoppel is uncertain in this, that the acknowledgment that the lot was Primms lot, does not shew how much interest Primm had in the lot. Whether he was lessee for years, or tenant for life or in fee. To support this position 2. Coke Litt. 352. a. is cited. The rule there laid down is, that every estoppel, because it concludeth a man to alledge the truth, must be certain to every intent & not to be taken by argument or inference. How it can make any difference to the plaintiff whether the estate of Primm is for years or for life, is not easily understood. If it was Primm's lot then it continues to be his yet, since it do not shew that he has parted with it. When a thing belongs to a man he has dominion over it, to the full extent to which the law will give dominion in such thing. It is true, as argued by the counsel for Lalle, that Primm's interest may

have long ago expired. If so it is for him to shew that matter to qualify his general acknowledgment. It is next said that the rule is, that even estoppel ought to be a precise affirmation of that which maketh the estoppel and not spoken indifferently. - In this case the affirmation that the lot is the lot of Peter Primm, is precise & clear & accords with the rule. In Comyn's Dig. vol 4. p. 79. the same doctrine is laid down. There it is said, that if a thing be not directly & precisely alledged, it is no estoppel. The example given is, that if the defendant pleads within age (to wit) of the age of fourteen years & no more, and after judgment brings error within seven years, and assigns error by attorney; he shall not be estopped to say that he was not of full age at the time error assigned: - For the allegation after the viz, that he was 14 years old & no more, is not positive. This case shews what is meant by a precise allegation. The same author says so is the law, if the matter of estoppel be by way of recital; and so is the law if it be alledged by way of supposal. - Another rule is, that there will be no estoppel, if the matter alledged, be not material. Under the authority of this rule it is argued, that the matter of estoppel in this case, is only intended to be a part of the description of the boundary of the lot, and as there is a good description without this part of it, it cannot be material. - The case put in the book (4 Com. Dig. 80) shews what sort of immateriality is meant. The case is in debt on an obligation alledged to be made at A. in another action upon the same obligation, he may say that it was made at B. - We know that in general, it is true, that the place where an obligation was made is perfectly immaterial. But in the case at bar, it is material whether the lot was Peter Primm's lot or not. To prove that descriptions where they are unnecessary, may be disregarded as estoppels, 4 Bruce 517-18 is relied on. This author in treating of recitals, says

a misrecital of a former grant, will not invalidate a Deed. The author says further, that it is laid down by Lord Coke, that a misrecital does not invalidate, because it is no direct affirmation. This authority will not bear the party out. Here there is a direct affirmation that the lot on which Primm lived was Primms lot. and the phraseology in reference to Primm differs from that made use of towards the other persons named by way of description merely. Moreover it is in proof that Primms house stood on the spot where Bonsall first built (ie) on the Eastern edge of the lot sued for, leaving some 60 or 65 feet between the house & the eastern limit of the lot sold to Primm 1816;— so that the reference to it as the lot of Peter Primm & on which he then lived, shews that an eye was had to the extent of Primm's lot & that the whole of it was embraced in the clause recited. And this answers another objection raised by Zalle's counsel, that it does not appear whether Primm's lot referred to in the Deed, was 75 feet or 75 inches or of any particular extent. As to description in a Deed, we are referred to the same author (4 Bruin Dig. 308. where it is laid down that a lessee is not estopped by a description of the lands contained in his lease; for this is not the essence of the Deed. He may therefore shew, that what in the lease, is called meadow, has been sometimes ploughed. This case shews that as to the character of the property, the party is not tied down to an exact description.

On the other hand, the law appears to be, that a person shall always be estopped by his own deed: that is, he shall not be allowed to aver any thing in contradiction of what he has once solemnly & deliberately avowed.

In the case of Shelly as Wright (Willes Reps. p. 9.) it was decided that where it was recited in the condition of a bond, that the obligor had received divers sums of money for the obligee, which he had not brought to account, but acknowledged that a balance was due to the obligee, that the obligor was estopped to say that he had not received any money to the use of the obligee. See also as to this point (4 Cruise, 72. Co. Litt 352 a). according to our view of these authorities, we are

of opinion that the plaintiff is estopped to allege that the lot which in 1816 he said was Primm's lot, is not now Primm's lot. — It is next insisted that if the plaintiff be estopped by the Deed, it can only be, as to the title which he then had: and that he is not estopped as to any title which may have fallen on him by descent from his mother who has since died. — And here it is urged, that the marriage & the rights of community still subsisted, notwithstanding the abandonment & removal of L'Lalle; and the property confirmed to Marie Rose by the act of Congress of 1812, became subject to the marital rights of the husband & so by the Spanish law, could not be alienated by the wife, whose deed of conveyance to Primm was null & void. If this position could be maintained, it will be still seen, that the plaintiff could not recover in this action, since the death of L'Lalle to whom the property passed upon the death of Marie Rose his wife, has not been proven or found by the Jury from the presumptive evidence in the cause. — But let us look a little into the Spanish law on this point & see how far the authority cited (Febrero lib. 1. ca. 11. p 238) will sustain the position assumed by the plaintiffs counsel. — It is laid down "that property acquired during marriage is to be divided equally between the two (husband & wife)" if they live together, according to the provisions of the law (2. tit. 9. lib. 5. Recop.) which says that every thing the husband & wife shall acquire or purchase, whilst they are living together, shall belong to them both in moities; and if it be a gift of the king, and it be given to both, the husband & wife may take it; and if it be given to one of them, the one to whom it is given may alone have it" &c The author proceeds, "the same conclusion in the preceding number, holds good & applies not only when the husband & wife live together, in the same town & house, but although they may be living in different towns or countries, provided the marriage & their mutual consent & union of wills continue, and no divorce has taken place — For example, if the husband be employed abroad

& the wife because the climate is prejudicial to her health or for any other just cause remains in her own country: or if the wife pursues one traffic in one part of the country & the husband another in a different part; then in these & other like cases, the marriage & society & union of their wills subsist, although their bodies be separated; and so whatever one or the other or both may gain, should be brought into community & divided equally:— yet some maintain that in order for this (community) to take place, it is necessary that there should be simultaneous cohabitation; but this opinion has no solid foundation & may be disregarded" &c No person can feel much difficulty in applying these principles to the case at bar. I Lalle was not employed abroad, with the purpose of ever returning; no society or intercourse or union of wills subsisted. On the contrary the wife & family had been entirely abandoned for more than twenty years, without having even known of the existence of her husband. The presumption in law is, that he was dead, & so that Marie Rose was in law a femme sole, with power to make a deed binding upon herself & all claiming under. According to the English decisions, absence for 7 years beyond seas without being heard from during that time, raises the presumption of death & this from analogy to a British statute. We have a statute passed originally in 1807 respecting Bigamy which declares that a person shall not be subject to the penalties of the act whose husband or wife shall have been continually beyond seas for 7 years (see Rev. Code p. 307) Seven full years had elapsed after the passage of this act, when the deed was made by Marie Rose — to say nothing of the period elapsed before. We are therefore of opinion that the mother of the plaintiff did by her deed estop herself from claiming the lot now sued for & that consequently the plaintiff, who claims through her, is estopped. The Judgment of the circuit court is therefore affirmed with costs

Mall Gish

I concur in all of the opinion except so much thereof as relates to the estoppel

G Tompkins

N Wash

4610

Lambert Sallé dit Lajoye

Peter Primm

Appeal from St Louis Circuit Court

This is an action of ejectment, brought by Sallé vs Primm, to recover a moiety of a lot in St Louis containing 75 feet French measure, by 120 feet same measure bounded North by a cross street called Elm Street, and being the east half of a lot of 120 by 150 feet french measure which lot is the north west quarter of block No 57, on the plat of the City of St Louis."

The jury found a verdict for the defendants, & judgment was given by the Circuit Court accordingly, to reverse which, the plaintiff Sallé brings the Case here by appeal.

The Bill of Exceptions sets forth the testimony minutely, and all the instructions to the jury prayed for on both sides.

It appears that in the year 1765 or 1766. Jean Sallé dit Lajoye, the Father of the plaintiff, a native Frenchman first came to St Louis, & served for a time as a journeyman baker. He was then a young man, apparently 25 or 26. years old. After staying in St Louis some 18 months, he went voyaging up the Mississippi - was first an Engagé, then an Indian trader - then a merchant -

About the year 1768 - 69 - or 70. Jean Sallé built a stone house on the north west Corner of the Square (now) No 57, which includes the land in dispute, and had an Enclosure and garden, which extended to the two Cross Streets, and included the west half of the Square, except that one Bonvarlet, during part of the time and until his death, possessed a house and lot on the Cross street where Peter Primm now lives (being the land sued for.) After his

death, Sallé continued in possession of the entire half square, until he left this Country for France in 1792 or 1793. In one of those years he removed to France, taking with him his Son the present plaintiff, and settled at Bordeaux, where by the last accounts of him, in the family, he continued to live, on the 29th of December 1817, since which time, he has not been heard from.

In departing from St Louis, as above, he left his wife & daughter (now Helene Leroux) living in the stone house, and they & Benj. Leroux the husband & Peter Primm, the present defendant, have possessed and occupied the entire north west quarter of that square ever since. Peter Primm has possessed and occupied the ground sued for ever since the year 1809.

Marie Rose Sallé dit Lajoye, wife of Jean Sallé & mother of the plaintiff, died in Eighteen hundred & thirty, at the advanced age of 104 years. Jean & Marie Sallé had other children, but they died in their minority many years ago.

The plaintiff gave no evidence of paper title to the land in question, but relied upon the possession of his father, and, presuming his death, claimed a moiety, as co-heir with his sister Helene Leroux under the supposition that the act of Congress of June 13. 1812. operated a confirmation in favor of his father.

This I understand to be the entire substance of the plaintiffs claim, as set forth in the bill of exceptions.

The defendant having proven his possession of the disputed premises in 1809 & ever since, proved & gave in evidence a deed, (dated 21 October 1816. to him from

the plaintiff & his wife, Marie Rose Sallé & Helene Seroux, for a lot of ground of 120 feet on B. Main Street by 75 in the rear - calling to be bounded eastwardly by a "lot of Peter Pinnin and on which he now live."

Some testimony was given to shew that the plaintiff did not understand English, probably with a view of inferring that he ought not to be barred by the above deed.

The plaintiff prayed six instructions, only one of which was given, & the other five refused.

All of them, though varied in form, & some of them inapposite to the case, are, in substance, that the above deed did not work an estoppel on the plaintiff -

The defendant prayed three instructions; all of which were given - The two first assume that the plaintiff is estopped by that deed, unless he can shew title in himself, accruing since that time - The third assumes that it is not the duty of the party offering the deed, to prove that it was explained to the maker of it, but that he who seeks to avoid the deed for imposition or other misconduct must prove the facts 2. Bl: Com: 304 - 2. J.R. 404

The defendant submits the following points.

1. Supposing the plaintiff had an indisputable title, still he is estopped by the recital in his deed of the 21. Octo. 1816.

2. Jean Sallé the father, had no title to the land under the laws of the United States & consequently the plff could derive no right to sue from him.

3. It does not appear that Jean Sallé, the father is dead. His death is not to be presumed in law, and is not proven in fact.

4. The plaintiff cannot derive title by inheritance from his mother Marie Rose Sallé.

First point — There is no principle better settled than that a man is concluded by his own deed, and that he is estopped to deny any fact distinctly stated or admitted under his hand and seal.

note Mr Lawley says a man is not estopped by a description — J cites 4 Cruise 306-7 2 T.R. 169 1 Stra: Rep 610 Cruise says a lessee, but the cases cited don't support the text.

Co. Litt. 352. a Vol. 2d. 4 Com: Dig: Estop: (A. 2) p. 72-3.
2. Stark. Ev: p. 30. Willes' Rep: 2. Bl: Com: 295
4. Cruise's Dig: 308 Bigelow's Dig 310

In argument in the Circuit Court, it was hinted, thos apparently not much relied upon, that the plaintiff at the time of making the deed of 21st Octo: 1816, had nothing in the land, and could not convey his expected inheritance, and therefore is not estopped.

To this I reply that by the Spanish law an heir may sell his expectancy, so that he does not name the persons from whom he expects to derive his title. See Partidas 2 Vol: 448. 1 Febrero p. 396 §§ 9.

And by the Common law, every grantor is estopped to say that he has nothing in the premises. 2. Term Rep: 167. 1. Ld Raym. 729.

Second point. There is no title set up in Jean Sallé the father, other than a naked possession, and that he abandoned in 1792 or 3. At the same time, he abandoned his family, under peculiar circumstances — He abandoned the Country for a permanent settlement in a foreign, and about that time a hostile

Second point. There is no title set up in Jean Sallé the father, other than a naked possession, and that he abandoned in 1792 or 3. At the same time, he abandoned his family, under peculiar circumstances — He abandoned the Country, for a permanent settlement in foreign, [illegible] about that time, a hostile

country; where he resided more than twenty years, without having any communication with this country - without setting up any claim to the land, and without even making known his existance to his family. This, in fact and in common sense, is an unequivocal abandonment. - For what constitutes abandonment in the Civil law, see 1 Vol: Pothier 364

The question on this point, turns upon the construction to be put upon the act of Congress of June. 13. 1812. This Court has decided in Valcour v. Benton 1 Mo: Dec: Jr. 296 - that the act, ipso facto, confined the claims to town lots, which had been inhabited, cultivated or possessed, prior to the 20th Dec. 1803. In that case the claimant was an inhabitant, he had a claim capable of confirmation at the date of the act, and had uninterrupted possession for near forty years - and down to the time of the trial of that cause.

The act does not purport to grant any thing: it confirms only, rights, titles, or claims, in being at its date. It is a confirmation in its terms as well as sense, to inhabitants, and to such inhabitants only as claim rights in the premises.

Third Point Whether a man be or be not dead is a pure question of fact, to be found by the jury - and the jury have not found it in this case, either directly or by implication. The only reasons for believing him dead is that, if living, he must be verry old. His wife died but three years ago, and the witnesses could not tell which was oldest. He was heard from living in December 1817, and if we must now presume him dead, from length of time, that was still better ground for the presumption, at the date of the deed in 1816; For then he had not been heard from for more than twenty years, during the most of which time the County in which he lived had been the theatre of unexampled revolutions and bloodshed.

If the plaintiff objected to the verdict on this Point, his only way to reach it was by a motion for a new trial. He did make the motion, but afterwards, waived the question, by voluntarily withdrawing it.

And here I will remark that, even if the Court had fallen into an error, in giving or refusing instructions, still the verdict and judgment are right, and will not be disturbed. Because the plaintiff claiming as heir to his father, and not proving his father's death, the verdict was obliged to be for the defendant, whatever errors might have been committed on collateral points - none but the dead have heirs. It does not appear that the plaintiff ever made any attempt to find out of late

It does not appear that the plaintiff

years, whether his father was dead or alive.

Fourth point There is no proof that Marie Rose Sallé the mother, ever had any right, title or claim, capable of being confirmed by the act of 1812.

The testimony shews on her part, no adverse seperate possession, habitation or cultivation prior to (or since) the 20. Dec. 1803. But the proof is that she, Benj: Seroy and Helene his wife, and Peter Primm the defendant had possession of the whole N.W. quarter of the square ever since the abandonment of Jean Sallé in 1792 or 3. and that Primm has had seperate possession of the part sued for, ever since 1809. (before the act of confirmation.)

Lajoy v. Primm

2. Bl: Comm: 295. 304
2 John: Rep: 404
2d vol: Co: Litt: 352. a.
4. Com: Dig: 72. 3.
Willes' Rep: 9 – 25
2. Stark: Ev: 30.
1. vol partidas 364
2. Vol: Partidas 668
1. Febrero. 396. N. 9.
1. Ld Rayd 729
2. Term Rep: 169
1. Mo Des: 296
4. Cruise Dig 308.
Land laws – act 13. June 1812. p 620
act 26 May 1824. p 884.
Bigelow's Dig. 310 B.

Brief for Primm appellee.

E. Bates

Cambert Sallé dit Casoije
appt
Peter Primm
appee

Supreme court oct. term 1833

This was an action of ejectment to recover possession of an undivided Moiety of a lot in the City of St Louis containing 75 feet by 120 feet french measure being the East half of the N.W. quarter of Block numbered 57 on the plot of the City of St Louis

The general issue was pleaded

On the trial the plaintiff proved his title as coheir, with his sister Helen Leroux, of his father and mother to the premises in the declaration —

The defendant on his part read in evidence a certain deed poll dated 21st oct. 1816 purporting to be a conveyance by Marie Rose Sallé dit Casoije, Cambert Sallé dit Casoije (the appellant) and his wife, and Helen Leroux to Peter Primm (the appellee) and his heirs for valuable consideration of "a certain lot or parcel of ground situate in the town of St Louis aforesaid containing 120 feet fronting on third main street by 75 feet in the rere french measure bounded westwardly by the aforesaid third main street which separates the said lot from the lot of Rufus Easton northwardly by a cross street which separates it from the lot of Paul Guitarre eastwardly by lot of Peter Primm and on which he now lives and southwardly by lot on which Elijah Beebe now lives"

The Defendant produced a witness, M. P. Leduc, who proved the execution and delivery of said deed on the day on which it bears date and which said witness was

Cross=

Cross examined by Plaintiff for the purpose of showing the nature and operation of the deed given in evidence by defendant —

The defendant gave no other evidence than the above deed and then prayed the following instructions

1st That the statement in the deed, read in evidence on the part of the defendant, that the lot therein and thereby conveyed to Peter Primm was bounded on the East by the lot of Peter Primm and on which he then lived estops the Plaintiffs in this action to deny that the lot of ground on which said Primm lived at the date of said deed was at the time the lot of said Primm —

2 That the lot on which Peter Primm lived at the date of the said deed being admitted to have been at that time the lot of Peter Primm the plaintiff cannot recover in this action without proving a right in himself derived from Primm since that time or without proving that Primm's right had ceased and that the plaintiff had since the ceasing thereof and before the bringing of this suit acquired a title to the same —

3 It is not necessary for the party offering to read a deed in evidence to prove that its contents were explained to the person who executed it but it is the duty of the party against whom it is offered if any improper conduct attended the execution to shew it —

all which instructions were given ——

The plaintiff on his part prayed the Court to instruct

instruct the jury —

1st That the deed offered in evidence by the defendant shows no title out of plaintiff or to the premises in the declaration mentioned

2d That the deed offered in evidence is not proof conclusive by Estoppel or otherwise that the premises in the declaration mentioned were the fee simple property, at the date of said deed, of the defendant —

3d That the description of the premises conveyed by the deed offered in evidence by the defendant in said deed contained, is not, proof conclusive by Estoppel that the premises in the declaration described were at that time the property of the defendant or his estate in fee or for life or for a term of years certain —

4th That the following words in the deed offered in evidence by the defendant to wit "Eastwardly by lot of Peter Primm and on which he now lives" are not proof of any estate of inheritance then vested in said Peter Primm in and to said lot, and is not conclusive proof of any conveyance by deed or any manner whatever of said lot by the plaintiff in this Case to said Peter Primm or by any other person to said Peter Primm —

5th That Defendant has shown nothing in evidence to rebut the title proved by the plaintiff to an undivided moiety of the premises in the declaration mentioned —

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6th that the deed given in evidence by the defendant is void as against Marie Rose Lafaye if Jury shall be of opinion that at the date of the deed the said Marie Rose Lafaye was a married woman — all which instructions with the exception of the second were refused —

To demonstrate the error of the Judge of the Circuit Court of the Counts of St Louis in giving the instructions prayed for by the defendant and in refusing those prayed by the plaintiff the court is referred to

Co. Litt. 303 (a) 352. b —

1 Starkey on evid. c. 303. 304

1 Fawn on pl. & evid. p. 38

Jackson & Cureden 2 Johns. Cas. 353 —

Jackson & Newton 18 Johns. rep. 355 —

2 Selw. Nis. prius Am. Edit. p. 512 (note a)

E. Carrick
for Appt.

additional authorities

Here an ambiguitas patens —
not to be explained by parolle testimony
see 4 Cruise 306 307 note 1 —
5 Mass. rep. 411
3 Johns. rep 506

words relied on here not words of recital but words of Description — see 4th Cruise "deed" Ch. XX p. 327, 5, 6
words of Description cannot be estoppel particularly when those words are words of addition to the Description as in present case — see 4 Cruise 308 — 1 Strange 610. 2 Term rep. 169 —
see 4th Cruise p. 318 as to when a recital of a particular fact is matter of estoppel —

For the component parts & general requisites & qualities of a deed see 4 Cruise Ch. XX —
as to additions to Description gen.l see 4th Cruise — Ch. XX —
no title not in esse will pass by a deed of Bargain & sale unless it contains a warranty in which case it will operate as an estoppel
Jackson & Wright 14 John. 193

Wm. Scott Lafaye
appt
Pete Primm
appee
Bruffe appt.
Carrick
Jacks. adv.

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To the Supreme Court of the State of Missouri

Cambert Salle dit Lafaye by his Counsel respectfully sheweth

That it appears by the opinion of this Court filed in the Cause in which said Salle is appellant and Peter Primm is appellee

1. That the said opinion treats the words "bounded east by the lot of peter primm and on which he lives" as words of recital in the deed, and cites a case of "recital" to shew those words to be an estoppel, whereas it is submitted that, on reference to the authorities cited, it will be found that those words are not words of recital at all

See 4 Cruise Title Deed p. 308 p. 324.5-6

2 That said opinion treats the words "lot of peter primm" as words of substantial description necessary to individualize and identify the lot really conveyed or intended to be conveyed whereas it will appear, by said deed and the authorities cited by the appellant, that said words are only "addition to description" and might be struck out of the deed without affecting the main or substantial description of the premises conveyed, and, therefore, are immaterial words, and, according to all the authorities, without a single one to the contrary, not matter of estoppel

4 Cruise p. 324.5-6

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3d That in the said Opinion it is observed that no uncertainty exists, in the words "the lot of Peter Primm" because they mean that the lot then belonged to Peter Primm, whereas it is manifest that, admitting those words to have that meaning, they, yet, do not shew how much land was included in "this lot of Peter Primm"; whether 75 feet by 120, the extent of the lot in the plaintiffs declaration mentioned, or 75 Inches by 120 or in short any other quantity whatsoever, and therefore are in this essential point of superficial quantity clearly uncertain, and, according to ~~[illegible]~~ all the authorities, not words of Estoppel.

See L. Cruise
See Co. Litt

4 In said Opinion it is said that plaintiff could shew the termination of the estate of Peter Primm whereas it is submitted that it is impossible to shew the termination of that which may be made infinite at the will of the interested party from whom the plaintiff does not pretend to derive title — (a tenant at will or at sufferance is not entitled to notice to quit — the bringing of the action puts an end to the estate of the tenant — 3 John Cas 424 5 Johns Rep 128 — therefore supposing Primm to be tenant at will or at sufferance of Eff his estate is ended)

5 It appears from the above Opinion that this Court has misconceived or overlooked the terms and tenor of the letter and power of attorney dated in 1817 addressed by John Salle the father of the appellant to his wife son and daughter in Missouri, was

—much as the Court refers to them as proof of a former abandonment of his rights and property in S. Louis by said John Salle whereas it will appear on a perusal of those documents that they prove the very reverse, and that they demonstrate clearly that said John Salle intended that his said property (at the date of said letter & power recognized & claimed by him as then still belonging to him) should be equally divided between his said wife Son and Daughter by virtue of the power of attorney for that purpose to them directed — the only abandonment shown by the S. letter & power was of the usufruct see said power & letter on the transcript

6 That the Court in passing on the question of abandonment has assumed jurisdiction of a question of fact which question was excluded from the Jury by the instructions of the Judge on the [illegible] words of estoppel —

7 The Court has in its opinion assumed that the possession of Mary Rose Salle (Pff's mother) was adverse to that of her husband, — that the possession of Mad. Leroux (the Pff's sister) was adverse to that of her father, whereas the question of adverse possession is one of fact to be passed on by a jury and in the present case totally excluded from the jury by the instructions —

See Bradstreet v Huntington 6 Peters Parks' ind. p. 4 —

8 The opinion does not say at what point of time John Salle abandoned or forfeited his lawful property whether it was previous to or after the cession of Louisiana by Spain to France in 1800 or the treaty of cession between France & the United States of 1803, nor by virtue of what law or in favor of whom such an abandonment or forfeiture has been

effected or pronounced, points which, it is submitted, are all important in this case because, if the right of property in the plaintiff's father existed at the date of the Convention between France and the United States and subsequent to the treaty of St Ildefonso between France and Spain, it seems manifest that the right was protected by the special terms of the Convention and the treaty of cession of 1803, and that in conformity to the 7th article of the Convention (which has been read to this court by the appellants' counsel) and the 3d article of the treaty of April 1800, it devolves on the heirs of John Salle who as respects that property died intestate —

9. It is submitted that although it may have been decided by anglo-american, or English, or even French tribunals that, after an absence of seven years, without being heard of, on the part of the husband, his wife may marry, it does not follow that she can dispose of her husbands estate, (or even of her own) if she should not marry, and her husband, though absent, should be still alive — it is submitted that the only effect, which, according to the Law (French or Spanish) of Communauté, that could result from such absence would be to give the wife the administration of the property but by no means the power to sell it — it is submitted, that by the English Common law in force at date

of the deed offered in evidence by defendant, the fact of coverture did render null and void all the deeds and obligations entered into by the wife of John Salle and that in order to enable her to convey she should have been regularly divorced or should have dissolved the bond of her first marriage by contracting a second —

For the above amongst other reasons it is prayed that the cause be reheard and the above opinion of this court, if it should seem just and proper to this court so to do, modified or amended —

Cambert Salle dit Cajoye
by his Counsel
[illegible]

Lambert Lalle
cpp

P. Wirum
appr

Petition for rehearing

Carolus
for cpp.

Recd from Mr Ferguson
the two affidavits made in support
of motion for a mandamus in the
case of Lafayette v. Pate Prin in the
Supreme Court

12th May 1834

[illegible signature]