Cerre, Gabriel vs Hook, Joseph 1840 3rd D St. Louis Co 153/13

8

Ejectment & Trespass

Evidence, & Land

State of Missouri County of St. Louis Set.

Be it remembered that heretofore to wit on the twenty fourth day of August in the year of our Lord one thousand eight hundred and thirty eight was filed in the Office of the Clerk of the Circuit Court within and for said County, a Declaration which is in the words and figures following

Declaration

to wit – State of Missouri County of St Louis – St Louis Circuit Court Nov. Term 1838. – Gabriel P. Cerré by Bogy & Hunton his attorneys, complains of Joseph Hook, of a plea of trespass and ejectment – For that whereas the said Gabriel P. Cerré, on the first day of June A.D. eighteen hundred and thirty eight, was & thence hitherto had been & still is entitled to the possession of a certain lot or piece of land, lying and being situate in the City and County of St. Louis, and State of Missouri, fronting westwardly on fourth street and running back one hundred & fifty feet more or less, bounded westwardly by said fourth street, northwardly by Mulberry street, eastwardly by an alley, which separates the said lot from the lot originally belonging to Marchant, and southwardly by property belonging to the plaintiff, & in block number seventy five of the plat of the City of St Louis with the buildings thereon, & all & singular the appurtenances thereunto belonging & the plaintiff being so entitled to the possession of the said lot & premises with the appurtenances, the said Joseph Hook afterwards to wit on the day and year last aforesaid, with force and arms, entered into the said lot and premises, with the appurtenances whereof the said plaintiff was entitled to the possession, and ejected him the said plaintiff therefrom, & then & there unlawfully withheld, & thence hitherto continued, unlawfully to withhold & still carefully withholds from the plaintiff, the said lot and the premises with the appurtenances, to the possession where of the said plaintiff was entitled as aforesaid, and other wrongs to the plaintiff then and there did, to the great damage of the said plaintiff, and against the peace to wit at the County aforesaid – Wherefore the said plaintiff says he is injured, and has sustained damage, to the value of six thousand dollars & therefore he brings his suit – Bogy & Hunton attys for pltff – Whereupon the Clerk of said Court issued a summons which is in the words and

Summons figures following to wit – County of St Louis ss. – The State of Missouri to the sheriff of the County of St Louis Greeting – We command you to summon Joseph Hook if he be found in your County that he be and appear before the Judge of our Circuit Court, on the first day of the next term thereof to be held at the City of St Louis, within and for the County of St Louis, on the Second Monday of November next, then and there to answer unto Gabriel P. Cerré of a plea of trespass and ejectment, to the damage of said plaintiff of six thousand dollars, and have you then there this writ – Witness John Ruland Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of St Louis, this twenty fourth day of August in the year of our Lord eighteen hundred and thirty eight – Jn. Ruland Clerk – (Seal) – upon which the sheriff endorsed

Shff's Return his return in the words and figures following to wit – Executed this writ in the County of Saint Louis on the 1st day of September 1838, by reading it, and the declaration to Joseph Hook – Marshall Brotherton sheriff by F. W. Peltzhoover Dpty. Shff – And afterwards at the November term 1838 of said Circuit Court, to wit on the 13th day of November in the year last aforesaid, the following proceedings were had to wit – Gabriel P. Cerré

Plea filed vs Joseph Hook plea filed – which plea is in the words and figures fol-

Plea lowing to wit – And the said Deft. comes & defends the force & injury when &c. & says that he is not guilty of the said supposed trespass & ejectment, above laid to his charge in manner & form as the said plaintiff hath above thereof complained against him & of this he puts himself upon the Country &c. – B. Allen p. d. – Filed Nov. 13th 1838. Jno. Ruland Clerk And the said plaintiff doth the like – Bogy & Hunton for pltf –

And afterwards at another day of said November Term 1838 of said Court to wit on the twenty fourth day of December in the year last afor-

Judgment said, the following further proceedings were had to wit – Gabriel P. Cerré vs Joseph Hook – Trespass & Ejectment – Now at this day comes the said plaintiff by his attorney, and the said Defendant, although demanded comes not, but makes default, nor hath he pleaded to the action of the said plaintiff, who thereby remains undefended against him, wherefore the said plaintiff ought to recover of the said ~~plaintiff~~ Defendant, and

not requiring a Jury to assess his damages, all and singular the premises are by him submitted to the Court, which being seen and heard, and by the Court here fully understood, and the said plaintiff consenting to nominal damages, the Court doth assess the same at one cent. Therefore it is considered by the Court, that the said plaintiff recover of the said defendant, his damages aforesaid, in form aforesaid by the Court assessed, together with his costs and charges in this behalf expended, and the said plaintiff prays the writ of the State to cause him to have possession of the premises, and the same is granted. Whereupon the Clerk of said Court issued a writ, which is in the words and figures following

Writ of possession

towit - County of St. Louis Sct. The State of Missouri to the sheriff of the County of St Louis Greeting. Whereas Gabriel P. Cerré on the twenty fourth day of December 1838, at our Circuit Court before our Judge thereof, recovered against Joseph Hook in a certain action of trespass and ejectment his possession of the premises in his declaration mentioned towit "a certain lot or piece of land lying and being situate in the City and County of St Louis, and State of Missouri, fronting westwardly on fourth street, and running back one hundred and fifty feet, more or less bounded westwardly by said fourth street, northwardly by Mulberry street, eastwardly by an alley, which separates the said lot from the lot originally belonging to Dorchent, & southwardly by property belonging to the plaintiff, & in block number seventy five, of the plat of the City of St Louis, with the buildings thereon, and all and singular the appurtenances thereunto belonging" - as also the sum of one cent for his damages by him sustained by reason of the trespass and ejectment aforesaid together with his costs and charges by him about his suit in that behalf expended - These are therefore to Command you that without delay, you cause the said Gabriel P. Cerré to have possession of the premises aforesaid - And we also Command you that of the goods and chattels, lands and tenements of the said Joseph Hook in your bailiwick you cause to be made the aforesaid damages and costs - that you have the same before the Judge of our said Court, on the Second Monday of March next, to render to the said Gabriel P. Cerré, the damages

and costs aforesaid - and that you certify to our said Judge how you execute this writ - and have you then and there this writ - Witness John Ruland Clerk of our said Court at St Louis, the twenty fourth day of January in the year of our Lord one thousand eight hundred and thirty nine. John Ruland Clerk. C.C. (Seal) On which said writ is the following direction - The sheriff is hereby directed not to execute this writ - Feby 19th 1839. Bogy & Hunton - Upon which said writ the sheriff endorsed his return in the words and figures following towit

Shff's return Not executed by order of Bogy & Hunton - M. Brotherton Sheriff -

And afterwards at the March Term 1839 of said Circuit Court towit on the twenty first day of March in the year last aforesaid, the following

Judgment set aside further proceedings were had towit - Gabriel P. Cerré vs Joseph Hook Judgment having taken by default in this case at the last term, after a plea had been filed, on motion of attorney for the plaintiff, It is ordered that said judgment be set aside - And afterwards at another day of the said March Term 1839 of said Circuit Court towit on the eighteenth day of April in the year last aforesaid, the following further

Continued proceedings were had towit - Gabriel P. Cerré vs Joseph Hook continued by consent - And afterwards at the November Term 1839 of said Circuit Court towit on the twelfth day of February 1840 the following

Judgment. further proceedings were had towit Gabriel P. Cerre vs Joseph Hook Trespass & Ejectment - Now at this day come the parties aforesaid by their respective attornies, and thereupon come also a Jury towit William P. Warnes, D. L. Rathbone, John P. McNiel, Charles T. Johnston, Robert Collet, T. W. Cubberly, Charles W. Townsley, A. J. Matthews, A. Colwell, L. H. Calvert, Thomas Beatty, & Conrad Fox, twelve good and lawful men, who being duly elected, tried and Sworn, the issue within joined between the parties aforesaid, well and truly to try, upon their oath aforesaid, Say that said defendant is not guilty of the trespass and ~~trespass~~ ejectment charged against him by the plaintiff in his said declaration - It is therefore considered by the Court that the said plaintiff take nothing by his said writ, but that said defendant go thereof without day, and recover of said plaintiff his costs and charges

in this behalf expended, and have thereof execution - And afterwards on the thirteenth day of February in the year and at the term aforesaid, The following further proceedings were had towit - Gabriel P. Cerre vs Joseph Hook Motion for new trial - Which motion is in the words and figures following towit - Gabriel P. Cerré vs Joseph Hook - Action of Ejectment - Motion for a new trial in this case for the following reasons 1. The Court erred in his instructions to the Jury - 2 The verdict of the Jury was against the evidence - 3 The verdict of the Jury was against the weight of evidence 4 The Court erred in taking from the Jury the decision of the facts in evidence, & not permitting the attorneys for the plaintiffs to argue the Case to the Jury - 5 The Court erred in not permitting Pascal L Cerré a witness to be called to explain his testimony, when a misunderstanding in relation to it arose between the Court & the attorneys for the plaintiff, Bogy & Hunton & Primm attys for Pltff - And afterwards on the fifteenth day of February in the year and at the term aforesaid, the following further proceedings were had towit Gabriel P. Cerre vs Joseph Hook - Now at this day Come the parties aforesaid by their respective attornies, and thereupon the said motion of said plaintiff for a new trial is by them submitted to the Court, which being seen and heard and by the Court here fully understood, It is considered that the same be overruled - Bill of Exceptions filed - Which Bill of Exceptions is in the words and figures following towit - Gabriel P Cerré vs Joseph Hook - Be it remembered that on the trial of this cause Luke Marly was sworn and examined as a witness in behalf of the plaintiff - Said Marly testified that he knows the lot of ground back of Mrs Saugrains, and that it was always known as Mr Lamy's lot; he knows that Mr Lamy enclosed, and kept his hay upon it, at a period of time, which is not less than thirty years ago; he can't recollect whether it was under the American or Spanish Government, but if under the American Government, it must have been at a very early period - Witness is now fifty one years old, and at the time of the enclosure which he has spoken of, was about fourteen or fifteen years of age; he then aided Mr Lamy to fix the fences of this inclosure; he always knew this

Motion for New trial

Motion overruled

Bill of Exceptions filed

Bill of Exceptions

ground as Mr Lamy's property, until Mr Riddick wanted to make an improvement on it, when it changed name, and Lamy tried to prevent him; he cannot say when it was that Riddick wanted to make this improvement, but it must have been some fourteen or fifteen years ago; he was never sent to prevent Riddick from improving; he is unable to say what was the extent of Lamy's enclosure, but it was sufficiently large to enable him to keep his cattle and hay in it; at the time when Riddick took possession, there was no fence belonging to Mr Lamy on the land; does not know who was in possession of the north west quarter of the block when this Suit was instituted, but knows the house, on that quarter - Lamy's hay stacks stood near that house, on the South Side, but is unable to say whether his fence would have enclosed the house; the fence was on the same block where that house now is; the fence was made and run about square, enclosing from one and a half to two arpens - The barns were usually on the Street, called third street, back of Mr Pascal L. Cerré's lot of ground -

On cross examination witness states that he does not know when Michel Lamé died, did not know him or his widow - Mr Lamé of whom he speaks above is Francois Lamy alias Francois Kluchonquette, and it was him whom witness assisted about the fences and hay stacks on this land - Being re-examined by pltff, witness says he knew Mrs Pascal Cerré, who was the Sister of Francois Kluchonquette -

Michel Marly another witness on the part of plaintiff, testified that he knows the lot of ground back of Mrs Sanzeains, that prior to the change of government, in this Country, Francois Kluchonquette, made an enclosure ~~of~~ on the same, of between one & two arpens of said land to put his hay & cattle in; that said Kluchonquette was Son of Mrs Lamy, and step son of Michel Lamy; he does not know how long Kluchonquet kept possession of this land, but he was in possession of it thirty Six or Seven years ago - This land was known as Mrs Lamy's lot; She was widow of Michel Lamy and mother of Francois Kluchonquette by her first husband; when Riddick was about to take possession of this ground, Francois Kluchonquette called upon witness to forbid his

doing so, as the lot belonged to the heirs of Mrs Lamy; this was thirteen, fourteen or fifteen years ago; Mrs Lamy's heirs always had possession, till then, and never till then had witness heard any other person claim the lot – Witness knows the house, corner of 4th and Mulberry streets; it is a frame house; does not believe that the house would be in Lamy's inclosure; the hay stacks as they then stood, would now be on the side of that house; the fence of Lamy was about as far from the cross street as from where witness was standing in Courthouse to Market street, – Lamy's improvement which was the only one, was about in the centre of the block – On cross examination witness stated that Francois Duchouquette made these improvements, some thirty seven or eight years ago; and Lamy's heirs ~~took~~ kept possession of the land for several years after – Witness always knew this as Mrs Lamy's lot – Michel Lamy died, before witness came to this country, which was fifty three years ago – Witness knew a man named Decarri who lived in a house, on the north east corner of the same block, which he rented of a woman named Zabette Dacherute – The plaintiff then offered in evidence, a Transcript of testimony taken before Theodore Hunt Recorder of Land titles, and offered to prove that the witnesses whose testimony was contained in that transcript, were dead, which transcript is in the words and figures following to wit – No. 1 Testimony relating to Town and village lots, out lots, and common field lots, in adjoining or belonging to the several Towns or Villages of Portage des Sioux, St Charles, St Louis, St Ferdinand, Villa a Robert, Carondelet, St Genevieve, New Madrid, New Bourbon, Little Prairie, and Mine a Burton in Missouri, and the village of Arkansas, in the Territory of Arkansas, as directed by an act of Congress passed May 26th 1824 – Theodore Hunt Recorder of Land titles – See Recorder Hunt's minutes book No. 1 p 1 – Michael Lamé's legal representatives claim a Town lot, in the City of Saint Louis, containing one square in said City, bounded on the East by third street, and Datchemt's lot; West by fourth street, North by South I. street, and South by South K street, being in No. 75 on the Town plot – Francois Cailloux being duly sworn, says he

Transcript of testimony.

knows the block or Square claimed he says he came to live in this Town of St Louis, when he was a Small boy, and that he is now fifty nine years old, that upwards of thirty years ago, this square was in possession of Michael Lamé, who had a barn on it, that this barn was about in the middle of the lot, and had a fence round it, the Barn, for keeping the cattle in – Francois his + mark Caillouxe – Sworn to before me April 11th 1825 – Theodore Hunt Recorder L.T. – Laurent Reed being duly Sworn, says he knows the Square claimed, that he was born in this Town, and has lived here ever Since – That forty five years ago, at the time the Indians attacked St Louis, he was there about Seventeen years of age, that the line of entrenchments made by the People or Government, run thro' this lot, and that he mounted guard in this Barn, and at that time it was owned by Michael Lamé, and to his knowledge, it was owned and possessed by Michael Lamé until he died – Never heard that was Sold by Lamé or his Representatives – He knows that the lot was owned by his heirs, at the time the change of Government took in this Country, about twenty one or two years ago – Laurent his X mark Reed – Sworn to before me April 11th 1825 – Theodore Hunt Recorder L.T. – Francois Reed, being duly Sworn, says he lived in the family of Michael Lamé after the death of his parents for twelve years – That it belonged to the heirs of Lamé at the time he first went to live there, and was owned by them at that time, and the whole time he stayed there – that they had a Barn on the lot, and the whole of it was fenced in – that he when he lived there, used to feed the cattle in the lot that it was possessed and owned by Lamé heirs at the time the change of Government took place about twenty two years ago – that it was a Square of the usual Size, two hundred and forty by three hundred in depth – Francois his + mark Reed – Sworn to before me April 11th 1825 – Theodore Hunt Recorder L.T. – See Recorder Hunt's minutes, book No 1 pp. 91 and 92 –

Recorders Office – St Louis Missouri 30th December 1839 – I certify the foregoing to be truly transcribed from the minutes of the proceedings of the Recorder of Land titles, in the State of Missouri, under the provisions of the act of Congress of the 26th May 1824 entitled "an act supplementary

to an act passed on the 13th day of June 1812" entitled "An act making further provisions for settling the claims to land in the Territory of Missouri" of record in this office. F. R. Conway U. S. Recorder of Land Titles in the State of Missouri. But the Court decided that said Transcript should not be read in evidence to the Jury, to which decision of the Court, the plaintiff by his counsel excepted. The plaintiff then introduced as a

P.L. Cerré

witness in their behalf, Pascal L Cerré, who being sworn, testified that he knew the property in dispute. that his recollection dates back from the year 1787 to the year 1791, and from the year 1794 down to the present time. From 1791 to 1794 I was absent from St Louis. Mrs Lamy had possession of this property prior to the year 1803 by keeping cattle and saving hay on it & from the year 1794 until the heirs proved up their claim before Mr Hunt the Recorder, I considered them in possession of the property. Their improvement on this land extended westwardly as far as the ridge on the block, and would take in part of the garden, on the S. W. & S. E. part of block. the fence was attached to house occupied by defendant. Mrs Lamy's fence would include part of defendants possession, but to what extent witness could not state. Mrs Lamy was the mother in law of witness. her first husband was Kuchinquette who died at Fort Chartres. She then removed to Ste Genevieve; where she married Michel Lamy by whom she had an only child, who became my wife, and who was mother of three children under whom the plaintiff who is one of them, now claims. Witness never heard of any other Lamys in this Country. and never heard of any other claim on that property, than that of the Lamys, until one Everhart built upon the land, the house where defendant lives. Witness stated that under the Spanish Government, one Eustache Caillonx obtained a concession for the North east corner of this block, which included part of the possession of Mrs Lamy. Mrs Lamy made no ~~remonstrance~~ remonstrance against this concession. Witness was present when this property was offered for sale, as Riddicks property. Francois Kuchinquette called upon witness and Michel Marly to go with him on the ground, & forbid the sale. Witness wrote a notice to that effect, they went to the premises, and witness stuck

the notice on the chimney of the house now occupied by defendant – the notice forbid the Sale on the ground that the property was claimed by the heirs of Lamy; Several persons read the notice, and among others Mr Frederick Went, who remarked that upon the strength of the notice, he would bid one dollar more for the property – Witness always considered the heirs of Lamy in possession of this property until Riddick took it – Witness understood as a matter of rumor, and through the family, that in 1780 by order of the Lieutenant Governor Mr De Leyba, the picketing which was placed around the Town for defence, was made to pass through the Barn, which Michel Lamy then had on this ground – that said Lamy was ordered to cut away the half of the Barn, outside of the picketing and the other half which was inside was converted into a Guard house – Witness stated that after the grant to Caillaux, the heirs of Madame Lamy claimed the remainder of the Block – During the Governorship of Don Zenon Trudeau, Mr James Mackay hauled Some rock upon this lot, but was informed by witness that the land belonged to the heirs of Lamy, thereupon Mackay requested witness to negotiate with Mrs Lamy, for the purchase of her claim, – Witness accordingly made the proposition to her, but she refussed, stating that it did not belong to her, but to her husband's heirs – Mackay then withdrew his pretensions, and petitioned the Lieutenant Governor, for another piece of ground, stating in his petition that he asked for a different piece of ground, in consideration of Mrs Lamy's claim to this – Witness does not know that Mackay ever had possession of this ground unless it was by Some ploughing which his Son died there – Lamy's heirs always claimed the whole Square, until the grant to Caillaux, and then they continued to claim the remainder, under the original improvement – Witness knows nothing of Michel Lamy, or any claim or possession by him of said Square, or any part thereof, never saw Michel Lamy & cannot say when he died – Upon cross-examination, witness stated, that Mackay had a fence and gate towards the Southern part of this land, the ploughing of which witness before spoke, was done Some one or two years before Mackay's death – Witness does not think that the ploughing, or the fence and gate of Mackay, extended further

than to the cross street, South of this block - Mackay never had possession of this block of ground - Witness does not know the year in which Mr Duchouquette, the first husband of Mrs Lamy died - he left six children by Mrs Lamy - Witness does not know the year when the widow Duchouquette was married to Michel Lamy, nor does he know the year in which Michel Lamy died - Mrs Lamy died about fourteen or fifteen years ago, This property was always claimed by the heirs of Lamy - The plaintiff then offered and read in evidence, the following certificate of confirmation - Office of the Recorder of Land titles in the State of Missouri It is hereby certified that by virtue of the act of Congress, passed the thirteenth day of June in the year of our Lord eighteen hundred and twelve entitled "An act making further provision for settling the claims to land in the Territory of Missouri" the claim of Michel Lamé's legal representatives to a lot, lying and being in the Town of Saint Louis, containing one hundred & twenty feet front on 3d. Street, by one hundred & fifty in depth, & two hundred & forty feet front on 4th. Street by 150 feet in depth, bounded on the east by third Street, & Darcherut's lot, west by fourth street North by South I Street, and South by South K street, (Block No 75) has been duly confirmed, and that the fact of the possession and cultivation required by the act of Congress aforesaid, with the boundaries and extent of the said Claim, has been duly proven before the recorder of Land titles for the State of Missouri and Territory of Arkansas, pursuant to an act Supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled "an act making further provisions for settling the claims to land in the Territory of Missouri -"

In Testimony whereof I Theodore Hunt, Recorder of Land Titles for the said State and Territory, have hereunto set my hand at St Louis this 11th. day of April 1825 - Theodore Hunt. - Réné Paul, a witness, produced, sworn, and examined, in behalf of the plaintiff testified that the lot of ground described in the foregoing certificate of confirmation is the same described in the declaration - That said lot constitutes part of block No. 75 on the plat of the City of St Louis, which block is bounded west by fourth Street, east by third Street, north by Mulberry

Street, and South by Lombard Street, that the north west quarter of said Block is of the following dimensions to wit - one hundred and five feet on fourth Street, one hundred and fifty four feet on Mulberry Street, after taking off the alley, one hundred and twelve feet on the alley, and one hundred and fifty two feet on the South line - Defendant admitted in open Court that at the time of the Commencement of this Suit, he was in possession of the north west quarter of said Block - The plaintiff then offered and read in evidence the following deeds - This Indenture made this first day of July in the year of our Lord one thousand eight hundred and thirty eight, by and between Pascal L Cerré of the City and County of St Louis, & State of Missouri of the first part, and the following persons Children of the said party of the first part viz. Gabriel P. Cerré, Michelle S — Cerré & Catherine wife of Pierre D. Papin, all of the same place as the said party of the first part of the other part Witnesseth that whereas the said party of the first part intermarried with one Therese Lamy, who was possessed of real & personal estate, from whom issued the three Children aforesaid, parties of the Second part, and whereas the said Therese is now dead, Now therefore and in Consideration of the above and of the natural love and affection, which the said party of the first part, has & bears towards them, the parties of the Second part & also for and in Consideration of the Sum of one dollar to him in hand paid by them, the receipt whereof is hereby acknowledged, has remised, released, & forever quit Claimed, & by these presents does remise, release & forever quit claim unto them the said parties of the Second part, all the right, title, claim & interest, which he the said party of the first part was and is entitled to in right of his wife the said Therese, either in the real, personal & mixed property situated any wheres - To Have and To Hold the same to them the said parties of the Second part, their heirs & assigns forever - with all the privileges & appurtenances belonging to the property derived as above - In Witness Whereof I have hereunto set my hand & seal the day & place above written - Cerré (Seal) - State of Missouri County of St Louis ss - Be it remembered that on this Seventh day of July eighteen hundred and thirty eight, before me the undersigned Clerk

of the Circuit Court, within and for the County aforesaid, came Pascal Leon Cerré, known to me to be the real person, whose name is Subscribed to the within and foregoing instrument of writing as a party thereto, and acknowledged the Same to be his act and deed, hand and Seal, for the purposes therein mentioned - (Seal) In testimony whereof I have here unto Set my hand, and affixed the Seal of Said Court at Office in the City of St Louis the date last aforesaid - Jno. Ruland Clerk - ~

State of Missouri County of St Louis ss. I John Ruland Clerk of the Circuit Court & Ex Officio Recorder for the County aforesaid, certify that the foregoing Instrument of writing was filed in my Office for record, on the 7th day of July 1838, & is truly recorded in Book E No. 2 page 269 - (Seal) Given under my hand and the Seal of Said Court at Office this 29th day of August A.D. 1838 Jno. Ruland Recorder - This deed of release made and entered into this twenty first day of August A.D. one thousand eight hundred & thirty eight, between Michael S. Cerré & Pierre D. Papin & Catherine his wife, late Catherine Cerré of the first part & Gabriel P. Cerré of the Second part Witnesseth that for and in consideration of the Sum of one dollar & of the love and affection we have & bear to the Said Gabriel P. Cerré, the Said Michael S. Cerré & Pierre D. Papin & Catherine his wife have given, granted, remised, released, Set over & conveyed, & by these presents do give grant, remise, release, Set over & convey unto the Said Gabriel P. Cerré, all the right, title, claim and interest, which we or either of us have in and to a certain parcel of ground lying and being in the City of St Louis, in Block No. 75 Containing one hundred & twenty feet front on third Street by one hundred & fifty in depth, & two hundred & forty front on fourth Street, by one hundred & fifty feet in depth, bounded as follows viz - On the east by third Street & Dorcherut's lot, on the West by fourth Street, on the North by Mulberry Street & on the South by Lombard Street, it being the Same lot of ground, which was confirmed to Michael Lamy's legal representatives and a certificate thereof granted by Theodore Hunt Recorder of Land titles on the 11th day of April A.D. 1825 - To Have and To Hold the above described parcel of ground together with all & Singular the appurtenances thereunto belonging, to the Said Gabriel P. Cerré his heirs & assigns forever - In Testi-

Mony whereof we have hereunto set our hands & seals at the City of St Louis the day & year first above written - P. D. Papin (Seal) Catherine Papin (Seal) M. S. Cerré (Seal) State of Missouri County of Saint Louis ss

Be it remembered that at the August term of the County Court for the County of Saint Louis in the State of Missouri in the year eighteen hundred and thirty eight, held at the City of St Louis in and for said County, on the twenty first day of August in the year, and at the term aforesaid, personally appeared Pierre D Papin and Catharine his wife, and Michael S Cerré, who are personally known to the Justices of said Court, to be the persons whose names are subscribed to the foregoing Instrument of writing as parties thereto, who in open Court severally acknowledged the same to be their act and deed for the purposes therein mentioned, and She the said Catharine wife of said Pierre D. Papin being by the Court first made acquainted with the contents thereof; and examined separately and apart from her said husband, acknowledged and declared that She executed the same freely, voluntarily, and without compulsion, or undue influence of her said husband, and relinquishes her right to the lands and tenements therein mentioned, which said acknowledgement is entered in the Records of the Court of that day - (Seal) In testimony whereof I Henry Chouteau Clerk of said County Court have hereunto set my hand and affixed the seal of said Court at office, in the County and State aforesaid, this twenty second day of August in the year of our Lord one thousand eight hundred and thirty eight - Henry Chouteau Clerk -

State of Missouri County of St Louis ss. I John Ruland Clerk of the Circuit Court & Ex officio Recorder for the County aforesaid, certify that the foregoing Instrument of writing was filed in my office for record on the 24th day of August 1838, & is truly recorded in book E No. 2 pages 474 - 475 - (Seal) Given under my hand & the seal of said Court at Office, this 23d day of October A. D. 1838. Jno. Ruland Recorder -

Here the plaintiff closed his case - and said plaintiff having been specially called upon by the Court, to say whether he had any more evidence to offer, and having by his Counsel, replied in the negative the Court thereupon instructed the Jury that in the opinion of the Court, the plaintiff had not made out a prima facie case of right or title to the possession of the premises in question or of any part there

of, to which Instructions and opinion, the said plaintiff by his Counsel excepted, and tenders this his bill of Exceptions, and prays that same be signed by the Court, which is done accordingly — L E Lawless —

State of Missouri
County of St Louis } Set. I John Ruland Clerk of the Circuit Court within and for said County, certify the foregoing to be a full, true and correct Transcript of the Record and proceedings in the Case of Gabriel P. Cerré vs Joseph Hook, as the same remains in my Office —

In Testimony Whereof I have hereto set my hand and affixed the Seal of said Court at Office in the City of St Louis this tenth day of April one thousand eight hundred and forty —

J N. Ruland Clerk

No 41

Supreme Court - 3rd Jud: District
May Term 1840.

Gabriel P. Cerré

vs Transcript

Joseph Hook

For Messrs Bogy & Hunton

Fees $6.04 p. by atty Bogy

Filed April 10th. 1840.
Mr. Ruland Clerk
S. C.

STATE OF MISSOURI, } ss.
Third Judicial District,

The State of Missouri, to the Honorable the Circuit Court of St. Louis County, **GREETING:**

FOR AS MUCH as in the record and process, as well as in the rendition of Judgment, on a certain plaint which was in our Circuit Court, for our County of Saint Louis, before our Judge thereof, between Gabriel Carré

Plaintiff, *and* Joseph Hook

Defendant, *in a plea of* Trespass & Ejectment *as it is said, manifest error hath happened, to the great damage of the said* Gabriel Carré *as by* his *complaint we are informed:* WE, *being willing that the error, if any there be, should be duly amended, and full and speedy justice done to the parties aforesaid in this behalf,* COMMAND YOU, *that if judgment be thereupon given, then a transcript of the record of the judgment, with all things touching the same, you certify and send (with this writ) to our Supreme Court, to be holden at the City of St. Louis, within and for the Third Judicial District, on the* third Monday *of* May *next, that our Judges of our said Court, inspecting the record of the judgment aforesaid, may cau[illegible]ecting the said error, what to them of right, and according to law, shall seem meet to be done.*

Witness, JOHN RULAND, *Clerk of our said Court, and the seal of office hereunto affixed, at the City of St. Louis, this* twentieth *day of* March *in the year of our Lord, one thousand eight hundred and* ~~thirty~~ forty, *and of the Independence of the United States of America, the* sixty-fourth.

J. W. Ruland Clerk

(8) No 41.

Supreme Court - 3rd Jud: District.

May Term 1840.

Gabriel Cerre

vs } error to St. Louis.

Joseph Hook

$1.50 pd by Mr. Bogy

906

Filed April 10th. 1840.

Jno. Ruland Clerk

S.C.

Gabriel V. Leré
vs. } In the Supreme Court.
Joseph Hook. }

Assignment of Errors.

And the said plaintiff by Rogy & Stanton his attorneys comes & says that there is error in the record & proceedings in this case — in this to wit.

1. The court erred in giving judgment for the defendant, whereas from the record & proceedings it appears that judgment ought to have been given for the plaintiff.

2. The Court erred in excluding a portion of the testimony offered by the plaintiff.

3. The Court erred in instructing the Jury to find a verdict for the defendant, when it should have been for the plaintiff.

4. The Court erred in refusing to grant a new trial.

Wherefore the plaintiff prays that the said judgment in form aforesaid given, for the errors aforesaid may be reversed, set aside and held for naught.

Rogy & Stanton
For plff in Error.

Gabriel P. Cené
vs
Joseph Hook

Assignment of Errors.

Bogy & Stanton
attys for pltff

Filed May 18th 1840
J W Ruland Clerk

Gabriel P Carr
vs
Joseph Hook

In Supreme Court

I do hereby acknowledge that I have received the notice of the sueing out the Writ of Error in the above Case. Given under my hand this 28th day of March 1840.

B. Allen
attorney for deft.

28

Gadmel P Cerre
vs ∃ Notice
Joseph Hook

Filed May 19th 1840
J W Rulan & Clerk

Cue
Book. on Tooor.

This was action of ejectment for lot of ground in City of Stlouis - Decn in usual form - pere quippus. Trial Judge for ept. motion for new trial sovereign Bill of exceptions - sets forth: that Luke Marly a witness introduced by pltffs. testified he knew the lot of ground back of Mrs. Sangrains, that it was always known as Mr. Lamy's lot, that Mr. Lamy inclosed & kept his hay on it at a period of time not less than thirty years ago. (12 Feb. 1810) Cant recollect whether it was under Spanish or american govt. but if under the American govt. at a very early period, wit: is at time of testifying (12 Feb. 40) 51 years old but time of enclosure spoken of was about 14 or 15 years of age - he then aided Mr. Lamy to fix the fence of this inclosure - always knew this ground as Mr. Lamy's property until Mr. Riddick wanted to make an improvement on it when it changed name & Lamy tried to meant him Cant say when it was that Riddick wanted to make this improvement but it must have been some fourteen or fifteen years ago - he was never sent to meant Riddick from improving - Cant tell extent of Lamy's inclosure but sufficiently large to enable him to keep his cattle & hay on it. At the time when Riddick took possession there was no fence belonging to Mr. Lamy on the land does not know who was in possession of the N.W. Tp of block when this suit was instituted, but knows the house on that quarter. Lamy's hay stacks stood near that house on the South side but is unable to say whether his fence would have inclosed the house: the fence was on the same block where that house now is. the fence was made some about 25 years inclosing from one & half to 2 arpens. the barns were usually on the street called 3d. street back of Mr. P. L. Cere's lot of ground. x does not know

when Michel Lamy died, did not know him or his widow.
Mr. Lamy of whom he speaks above is François Lamy
alias François Duchouquette. It was him whom witness
assisted about the fences & hay stacks on this land - knew
Mrs. Pascal Cré who was sister of François Duchouquette
that Michel Marly another witness called by pltff: tes-
tified he knows the lot of ground back of Mrs. Souprain
that prior to the change of govt. in this country Fran-
cois Duchouquette made an enclosure on the same
of between one & two arpens of said land to put
his hay & cattle in - that said Duchouquette was
son of Mrs. Lamy & stop son of Michel Lamy -
does not know how long Duchouquette kept possession
of this land, but he was in possession of it 36 or 37
years ago - This land was known as Mrs. Lamy's
lot, she was widow of Michel Lamy & mother of
François Duchouquette by her first husband: when
Riddick was about to take possession of this ground, Fran-
cois Duchouquette called on wit: to forbid his doing
so as the lot belonged to heirs of Mrs. Lamy, this was
13. 14. or 15 years ago - Mrs. Lamy's heirs always had
possession till then & more till then had witness heard
any other person claim the lot - wit: knew the house
corner of 4th & Mulberry St. It is a game house - does
not believe the house would be in Lamy's enclosure
the hay stacks as they then stood would now be on
the side of that house - the fence of Lamy was a-
bout as far from the cross street as from where wit-
ness was standing in court house to market street.
Lamy's improvement which was the only one was a-
bout in the center of the block - that François Du-
chouquette made these improvements - some 37. or 38
years ago Lamy's heirs kept possession of the land
for several years after - wit: always knew this as
Mrs. Lamy's lot - Michel Lamy died before witness

came to this country which was 5d years ago (1787)
Wit: knew a man named Deccari who lived in a house
on the north east corner of the same block which he
rented of a woman named Zobitha Datchemitte
that Pascal Cure another witness called by Pltff:
testified that he knew the property in dispute - that
his recollection dates back from the year 1787 to 1791 &
from '94 down to present time. from '91. to '94 wit:
was absent from St Louis - Mrs Lamy had possession
of this property prior to year 1803 by keeping cattle &
pay on it from '94 until the heirs proved up
their claim before Mr. Hunt the Recorder, he considered
them in possession of the property - their improvements
on this land extended westwardly as far as the ridge
on the block & would take in part of the garden on the S.W.
& S.E. part of the block - the fence was attached to house
occupied by deft. - Mrs Lamy's fence would include
part of defts possession but to what extent witness could
not state - Mrs Lamy was the mother in law of witness
her first husband was Duchonquette who died at
Fort Chartres - She then removed to Hte Genevieve
where she married Michel Lamy by whom she had
an only child who became my wife & who was
mother of three children under whom the Pltff: who
is one of them now claims - Wit: never heard of any
other Lamy's in this country & never heard of any other
claim on that property than that of the Lamy's until
one Evrhart built upon the land the house where de-
fendant now lives - that under the Spanish govt. one
E. Caillou obtained a concession for the north east corner
of this block which included part of the possession
of Mrs Lamy - She made no remonstrance against
this concession - Wit: was present when this property
was offered for sale as Riddicks property. Francois Du-
Chonquette called upon witness & Michel Marly to go
with him on the ground & forbid the sale - Wit: wrote

a notice to that effect — they went to the premises & wit: stuck the notice on the chimney of the house now occupied by dft. the notice forbid the sale on the ground that the property was claimed by the heirs of Lamy — wit: always considered the heirs of Lamy in possession of this property — until Riddick took it. in 1780 Michel Lamy had a barn on this ground that after the grant to Cailloux the heirs of Mad: Lamy claimed the remainder of the block — during the governorship of Mr. Dean James Mackay held some rock upon this lot but was informed by wit: that the land belonged to heirs of Lamy thereupon Mackay requested wit: to negotiate with Mrs. Lamy for the purchase of her claim — wit: accordingly made the proposition to her but she refused stating that it did not belong to her but to her husbands heirs — Mackay son did some ploughing on this ground — Lamys heirs always claimed the whole square until the grant to Cailloux & then they continued to claim the remainder under the original improvement knows nothing of Michel Lamy or any claim or possession by him of said square or any part thereof, never saw Michel Lamy & cannot say when he died, &c. Mackay had a fence & gate towards the southern part of this land, the ploughing of which wit: before shaker was done some one or two years before Mackays death. does not think the ploughing or the gate & fence of Mackay extended further than to the cross street south of this block — Mackay never had possession of this block of ground does not know the year when Mr. Duchonquette the 1st husband of Mrs. Lamy died, he left six children by Mrs. Lamy, does not know the year when widow Duchonquette was married to Michel Lamy, nor when Michel Lamy died — Mrs. Lamy died 14 or 15 years ago — This property was always claimed by heirs of Lamy a certificate by the Mr. Recorder of Land titles, as follows see record.

Office of Recorder of Land titles in State of Missouri.

It is hereby certified that by virtue of the act of Congress passed the 13 June 1812 entitled "An act &c." the claim of Michel Lanuys Esq. Rep. to a lot lying & being in the town of St Louis containing 120 ft. on 3d St. by 150 in depth & 240 ft. part on 4th St. by 150 in depth bounded on East by 3d St. & Hatchers-lip W by 4th St. N by South J St. S by South K St. block 75 has been duly confirmed & that the fact of the possession & cultivation required by the act of Congress aforesaid with the boundaries & extent of the said claim has been duly proven before the Recorder of Land titles for the State of Missouri & Territory of Arkansas pursuant to an act supplementary to an act passed 13 June 1812 entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." In testimony whereof I Theodore Hunt Recorder of land titles for the said State & Territory have hereunto set my hand at St Louis this 11. April 1825.

(Signed) Theodore Hunt.

that Rene Paul — another wit: called by pltff: testified, that the lot described in certificate of Recorder is the same with the lot described in declaration — that said lot constitutes part of block 75 on the plat of City of St Louis which block is bounded W. by 4th St. E. by 3d St. — N. by Mulberry St & S by Lombard St. that the northwest 1/4 of said block is 105 ft. on 4th St. 154 ft. on Mulberry St. after taking off the alley 112 ft. on the alley & 152 ft. on the south line — that defl admitted he was in possession at commencement of suit of the NW 1/4 of said block —

The bill of exception also sets forth — a deed from P. Cerré to Gabriel Cerré, Michel Cerré, Catharine Papin, dated 1 July 1838 for all his interest in the estate of his wife Therese Lanuy.

A deed from Michel S. Cerré — Pierre Papin & Catharine his

wife to Felix Cerré dated 1 Augt 38 for the indentation mentioned. And this being all the testimony in the cause the court instructed the jury that in its opinion the pltffs. had not ~~[illegible]~~ a prima facie case of right-or title to the possession of the premises in question or any part thereof, to which instruction the pltffs. excepted.

It is contended in this case that the act of Congress 13 June 1812 operates on those claims only of which notice had been previously given to the Recorder on the evidence of which was in his office, originating by concession or order of Survey.

That inasmuch as no evidence in the cause shows this to have been such a claim there is no error.

For authorities see endorsement.

B. Allen
for dept.

Cerré
vs.
Hook

~~Acts of Congress of [illegible]~~

Acts of Congress: 13 June 1812. Sec 1.
2 Mar 1805 – 1.2.3.4.
5.
21 Apr 1806 – 1.2.
3 Mar 1807 4.7.

Filed October 5th 1840
Jno Ruland clerk

B. Allen.

Gabriel P. Cerre v. Joseph Hook

Error to St Louis C.C.

Opinion of the Court by Napton J.

This was an action of ejectment brought by Gabriel P. Cerre, to recover a lot in the city of St Louis. On the trial of the cause, the plaintiff offered in evidence a confirmation of the lot in question, by the recorder of Land Titles, under the act of 1812, to the legal representatives of Michel Lamie.

It appeared from ~~oral~~ the testimony, that Madame Lami, ~~had~~ the wife of Michel Lamie had been previously married to one Douchonquette, by whom she had six children. The only child by her last husband married Paschal L. Cerre, and died leaving three children, of whom the plaintiff is one.

Some testimony was offered to prove the possession, ~~and~~ & cultivation of the lot in controversy by Michel Lami previous to 1803.

The plaintiff also offered deeds from two of the Douchonquettes, children of Madame

Lami by her first husband, who after the intermarriage of their mother with Michel Lami were generally known by the name of Lami.

It was also proved that the lot described in the declaration was the same as that described in the certificate of confirmation by the Recorder, and it was admitted that the defendant was in possession.

The defendant offered no testimony, but the court instructed the jury, that the ~~defendant~~ plaintiff had not made out a prima facie case.

It has been decided by this court in the case of Jarvis v. Gurno (4 Mo. R. 458) that the confirmations of the Recorder under the act of 13th June 1812, are evidence in an action of ejectment under our statute. This opinion was reiterated in the same case, ~~at the~~

decided at the last term of this Court. The Court are ~~satisfied~~ not disposed to review the positions assumed in those cases.

The judgment in this case will therefore be reversed and the cause remanded.

W. B. Napton

Mr concur

Geo Lompkins

M. McGee Sr

G. P. Cone
v.
Joseph Hook

Opinion of
the court

Napton

Filed October 5 1840
J W Ruland Clerk

Gabriel P. Cené
vs. } Error to the St Louis Circuit Court
Joseph Stock.

Ejectment.

This was an action of Ejectment brought by plaintiff in Error, against the defendant. The judgment being in favor of Stock, the plaintiff prosecutes this writ of Error to reverse it.

The bill of exceptions taken at the trial contains all the facts & offered in evidence. The defendant offered no testimony.

It appears from the evidence that Michel Lamy had possession of the lot prior to the year 1803.

As there appears to be some confusion in relation to Madame Lamy, it may be well to give the Court the following explanations, which are sustained by the testimony of P. L. Cené — Her first husband was named Du-Chauquette, who died at Fort Chartres a great many years ago. She then removed to St. Genevieve, & there married Michel Lamy. By her first husband she had ~~4~~ six children, & by the last but one. Michel Lamy died in this place many years ago. The only child left by the last husband became the wife of P. L. Cené, & had three children yet living, under whom the plaintiff, who is one of them, claims. Mrs Lamy died about twelve years since. The children of Duchauquette, after their mother married with

Michel Lamy, were generally called by the name of Lamy, although their name was properly Duchouquette.

1. The first error assigned is ~~that~~ ~~in~~ the court giving judgment for the defendant. It appears from the testimony that Mr Lamy was in possession of the lot in question prior to the year 1803. See Vol 1. Land Laws Ustoles page 620 – and the case of ~~G~~ Janis vs Gumo 4. Vol Mo Rep. 458. It may be contented in this court as it was below, that there is also evidence shewing that this property was also possessed by Madame Lamy prior to ~~the~~ 1803, and that consequently it descended after her death to all her children by both husbands, and not as contented by the pepp to the only child of the last husband. Admitting this supposition to be correct, the plaintiff should have recovered for the portion coming to him ~~a~~ as one of the heirs of Madame Lamy. She had six children by her first husband and one by the last; the plaintiff was then entitled to one seventh in his own right, and as he claimed under two other heirs, he ought to have had a judgment for three sevenths.

A certificate of confirmation to the heirs of Michel Lamy for the lot in question, was also read in Evidence. The plaintiff insisted that this certificate gave a sufficient title to maintain ejectment, unless the person in possession could shew a better title – vide Janis vs Gumo 4. Vol Mo Rep 458. What shall be considered a better title the ~~statute~~ laws ~~does~~ –

of this State do not define, it surely does not mean that the bare suspicion of the defendant shall be to be considered. It will be observed that the defendant offered no evidence. The counsel for the plaintiff confidently rely on the above cited case of Janis vs Gunn decided by this Court, where the very same question was settled.

2 A transcript of testimony taken before Theodore Stumpes Recorder of land titles, was then offered to be read in Evidence, which was refused by the Court — this we believe also to be Error. This Court in the case of Janis vs Gunn holds the following language. "The act of Congress of the 13. June (1812) confirms to the inhabitants "village & common field lots inhabited "or cultivated prior to the 20. December "1803. It is admitted that if inhabitation "or cultivation existed prior to that time, "that the party by the act of Congress has a "legal title, though he has no confirmation "by the Board of Commissioners. Yet in all "trials when he claims a right to the land, "he must shew the fact by extrinsic evidence "most cases parol testimony. This would "after a lapse of many years be hard to "do. It was therefore proper that Congress "should adopt some means by which "the Evidence of the fact might be embodied and rendered durable. By the act of the 26 June 1824 it was made the duty.

of the recorder of land titles to take testimony in relation to these claims, so as to enable the Surveyor General to distinguish the private from the vacant lots appertaining to the different towns or villages. The language of this court above quoted and applied to the certificate of confirmation, neither applies with equal force to the proof taken before the recorder, & by that officer preserved on the records of his office. It was urged in the court below that this testimony is ex parte. We reply so is the confirmation, for the one is but a consequent of the other. But the Recorder was selected by the Government as an impartial judge between the different claimants, & the testimony which he placed on the Records of his office should be received in all courts.

3. The third error assigned, is the ~~error~~ instructing of the court below ~~in instructing~~ to the jury to find for the defendant. The reasons given under the first head of this brief apply equally well to this branch of the argument. It does seem to us that the plaintiff had made such a prima facie case, as to require the defendant to introduce some rebutting testimony. All the requisites of the plaintiff's case were clearly & fully proven.— First: possession prior to 1803, or in case this might have been thought not satisfactory, a confirmation by the Recorder to the legal representatives of Michel Lamy.

2d That Mr & Mrs Tomy ~~were dead~~, and their only child were dead - & that the plaintiff was one of the grand children of the Confirmee, and claiming under deeds from two others. 3. Possession by the defendants of the property claimed. ~~By the~~ We contend that on this statement of evidence a prima facie case was made, & the plaintiff entitled to a verdict, unless the defendant had produced rebutting testimony. Yet the Court below told the jury that as the plaintiff had not made out a prima facie case, there was no necessity for the ~~plaintiff~~ deft to introduce any testimony, or he would instruct them to find a verdict against the plff.

4. It follows as a matter of course that if any of the three preceding propositions be correct, that the Court should have granted a new trial. The Court in instructing the jury to find generally for the defendant assumed upon itself powers properly belonging to the jury. It can not be denied that some pertinent testimony was offered by the plaintiff, yet the instructions lead to the conclusion that the testimony ~~was~~ offered ~~by the plaintiff~~ was of character with which the jury had nothing to do. Against such doctrines we are bound to protest - The jury are the sole ~~of the~~ judges of the fact. But in this case this power was taken from them and assumed by the Court. In conclusion we again repeat that the instructions of the Court are too broad & comprehensive, assuming that there was no evidence given of any character whatever.

Bogy & Stanton
attys for appellant

Gabriel P. Cené
vs. ⅔ In Supreme Court
Joseph Hook

Plaintiff's brief
Bozy Munton

Filed Oct 9 1840
J W Ruland Clk