Maguire, John vs. Tyler, Mary L (and ninety others) 1857 St. Louis

382/1

588/—

M claims land from Labeaume, Louis - T claims from Chouteau

1794 - to Brazeau, Joseph - (gave part to Labeaume, Louis) - .
- conveyed part to Chouteau, Pierre ---- to Strother

1799 - sp. gov't survey by Soulard, Don Antonio

Scott

court dismissed petition - error

r & r

St. Louis Mairne Railway Company

(transcript contains map)

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John Maguire Appellant } Appeal from the
vs } St Louis Land
Wm C. Tyler & others Respts } Court.

This is a proceeding in equity and the plaintiffs right to a recovery is based on the pretension that in justice and good conscience he is entitled to the relief sought from the defendants. On The 9th May 1798 Joseph Brazeau in a deed to Lou is Labaume reserved to himself 4 by 4 arpens of a concession which was thereby conveyed from Brazeau to Labeaume. This reservation was also sanctioned by Lieu Tenant Governor Trudeau in a certificate dated the 12th of May of the same year endorsed on the concession, for the purpose of authenticating the transfer from Brazeau to Labaume. By the Board of commissioners acting under the law of Congress of the 3rd March 1807 respecting land claims in Louisiana Territory this reservation was confirmed to Jo Brazeau or his legal representatives as is maintained by the plaintiff. It is conceded on all sides, that there was but one such reservation, and that the Government of the U States was under obligation to make but one satisfaction of the claim ~~of~~ or reservation of Brazeau: If those entitled by law to that reservation have had it located & have made an appropriation of it as located, there can be no valid claim to that reservation existing in any other person, nor can it be of any importance whether the location of the claim was made North or South of the Labaume ditch. If those entitled to the claim are satisfied with the location as it has been made it is not for Third persons claiming by a subsequent conveyance to object to that location and insist on it being placed in some other locality.

By a deed of July 26th 1816 Brazeau having conveyed his reservation to Pierre Choteau, Choteau by a deed of June 12th 1826 conveyed the same to G. F. Strother. This latter deed by its terms beyond all doubt included the reservation of 4 by 4 arpens originally belonging to Brazeau and by him conveyed to Choteau. Strother by a deed of the 3rd Sep. 1830 conveyed to John O. Fallon & John Mullanphy in trust for the St. Louis Marine Rail way Company the reserva as it was conveyed to him by Choteau reference being made to Choteaus deed. It will not be contended it is presumed that the deed from Strother to the trustees for the Marine Railway company did not convey the reservation in as ample a manner as it was conveyed by Choteau to Strother. The answer denies that the title of the Marine Rail way company paped to the plaintiff by virtue of the deed of Jany 2. 1852, and as it was agreed ~~That~~ on the argument that any state of facts might be assumed consistent with the pleadings which would show that the plaintiff is not entitled to recover, we will take it, That the Marine Rail way company without any regard to its location conveyed away the reservation acquired from Strother by his deed of Sep. 3rd 1830. Now if afterwards that company conveyed its interest in ~~that~~ The reservation by the description "of the land North of the ditch called Labeaumes ditch, to the plaintiff, then he took it subject to the preexisting rights of the company's alienees. Those alienees taking the reservation wherever it might be located, they or their assigns would have a ~~prior~~ right prior to that of the plaintiff to attach to the location, and if they should have appropriated the land as located and patented

in any other person arising out of a conveyance subsequent to ~~that~~ those under which the land had been previously appropriated.

We do not see what the deed of the admr. of Strother has to do in this controversy. Even ~~if~~ admitting it was available for any purpose, we do not consider that there is any necessity for enquiring how far the deed from the plaintiff to Boggs would operate as an estoppel against his right of recovery in this action: The existence of this deed is averred in the answer.

I have not placed my opinion on the ground maintained by Judge Naylor. Deference to the intimation of the Sup. Court of the U. States when this case was before it on a writ of error on its law side disinclines me to enter upon that question. It is obvious that if such an objection is tenable, unless the Genl Government will issue a patent to each claimant of the same tract of land, the action of its officers in making a survey will be conclusive on the Courts both at law and in equity. On the other hand, if the intimation of the Court is carried out, then by a change of the form of the action the whole doctrine of the conclusiveness of surveys will be evaded.

We do not see, how the action of the Court below in dismissing the bill under the circumstances can be sustained. An answer ~~was~~ to the petition was filed. If the parties had so wished, the answer might have been withdrawn and a demurrer entered; But that was not done: There was no trial but on the petition and answer: The bill was dismissed: No facts were found: It does not appear why the petition was dismissed: The judgment will be reversed & the cause remanded

Wm Scott

there could be no right in the plaintiff to have it surveyed in any other locality. Indeed if the reservation was conveyed by the Marine Rail Road company to its alienees as it was received from Strother it is not easy to see how the plaintiff could derive any right title or interest by a subsequent conveyance. If the conveyance to the plaintiff had been in as ample a manner as those to the prior alienees, he could not derive any title from it, and it cannot be perceived how his situation is bettered by taking a deed for the company's land North of the Labeaume ditch. It will not be contended, that the company's grant to the plaintiff was designed in any way to affect the rights of its prior alienees in the event of the reservation being patented South of the ditch.

How then does the case stand: They to whom the reservation rightfully belonged have appropriated it, and its survey and patent ~~as~~ include the land as appropriated. Survey No. 3333 locates the reservation South of the ditch and the patent on that survey conveys the land to Brazeau's representatives. Now as the representatives of Brazeau prior in point of time & of right have appropriated the land as located by the United States, how can there be any right in any other person to have that land located a second time. Such a ~~idea~~ pretension can only find support in the idea that there were two reservations belonging to Brazeau, one North and one South of the ditch. As there was but one reservation and as the Government of the U. States has satisfied its obligation to the legal representatives of that claim, there cannot exist in law or equity any claim or right

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Maguire
vs
Tyler et al

opinion

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Filed 14 December 1857.
Wm. H. Glanville
Clk.

Maguire v. Tyler & others

It was determined in the case of Watt v. Lochman (How. R.) that in relation to confirmations under the act of 1807, where the claim was uncertain, & the confirmation is accompanied with the condition that the land shall be surveyed, such survey is to be made under the authority of the United States by her officers, & that the location is not a question for the investigation of the Judiciary. This principle is distinctly declared in the instructions of the Judge who tried the case in the Circuit & who subsequently obtained the opinion of the Court at Washington. The principle is moreover applied to the very matter now in controversy here, as will be seen by the instructions - which are these: "We are of opinion that the United States reserved the power to locate, by survey, the land confirmed to Brazeau, & by such survey to separate it from the public lands & from the lands claimed by others, & to issue a patent therefor, as was done in this instance; that this reserved power was vested in the Executive Department, whose act in this instance bound Brazeau & those claiming under him; nor can they extend their claim & recover land beyond the boundaries described in

land which the United States Executive should subsequently designate: "until the survey was made" the Court say "the plaintiffs' title attached to no land, nor could a Court of justice ascertain its boundaries." It strikes me, that this is a very distinct enunciation, that the surveying department of the federal government settles the question of location & that the Courts have nothing to do with it. The principle is just as applicable in a Court of equity as of law.

There is no doubt, that where a complete title has emanated from the federal government to a specific tract of land, & an equity attaches to that land in behalf of some other person than the patentee, a Court of justice, either state or federal, may enforce such equity & transfer to its owner the legal title. This however proceeds upon the assumption that there is an equity against the United States to a specific tract of land. It cannot be doubted that Brazeau's confirmation was at least an equity - but to what? To what specific land did Brazeau's equity attach? To the land within the confirmation, of course. But what land is within the confirmation & who is to determine it? The answer settles this controversy. If it is a question of fact to be investigated & determined by Courts of justice, the title in this case is not

subject to demurrer; but if, as the Supreme Court said in Watt v. Lochram, it is a question to be determined by the Executive Department of the United States, then Braxcan's equity is to the land which they designate & not to that which we might determine. No doubt, the acts of Executive officers, federal or state, whether President or Surveyor, if contrary to law, are void, & so any Court of justice federal or state would decide. But the Supreme Court declare that the law itself, the act of 1807, has entrusted the Surveyor with authority to determine where this confirmation is, & that until a survey is made, the confirmee has no standing in Court. If injustice is done him, it is by the political sovereignty - & to redress such injuries is not within the province of Courts.

This controversy is obviously purely one of locality. Pursuing it through all its ramifications, & looking at it in all its diversified shapes, it still resolves itself at last into this, & nothing else. There is no dispute, that Braxcan had a confirmation - There is no dispute, that this gives him at least an equitable, if not ~~legal~~ (as was once supposed) a legal title - There is no dispute that a Court of justice, either State or federal, which has jurisdiction, will enforce this title - but the dispute is, where is

the land confirmed? Who is to decide this? I am laboring under a singular delusion, if I am mistaken in saying, that the Supreme Court of the U. States have deliberately ~~solemnly~~ adjudged, in reference to the very case, that the U.S. Surveyor is alone to determine this question.

That the case of West v. Cochran is not misunderstood is seen by what the same Court have since said in Kissell v. The Public Schools (How.) "our opinion is, that the school lands were in the condition of Spanish claims after confirmation by the United States, without having established conclusive boundaries made by public authority, which claims depended for their specific identity on surveys to be executed by the government. The case of Cochran v. West lays down the dividing line between the Executive & judicial powers in such cases, to wit; that until a designation, accompanied by a survey or description, was made by the Surveyor General, the title attached to no land, nor had a Court of justice jurisdiction to ascertain its boundaries."

In Stanford v. Taylor (18 How. 412) the supreme Court say: "Where the claim has no certain limits and the judgment of confirmation carries along with it the condition that the land shall be surveyed & severed from the public domain & the land of others, then it is

not open to controversy that the title attaches to no land; nor has a Court of justice any authority in law to ascertain & establish its boundaries, this being reserved to the Executive Department."

These cases do not proceed upon any distinctions between legal & equitable titles - or legal & equitable remedies - they are based upon a division line between the Executive & Judiciary Departments, & assert that the latter have no jurisdiction of this question of location which Congress have assigned to the former in certain enumerated cases, & that this is one of the cases referred to.

The entire scope of this bill is simply to ask the Court to locate the Braxeau reservation within the lines of a tract confirmed to Labeaume, & to which Labeaume has a survey & patent. The ~~arg~~ whole argument to support this application is founded on the assumption that Braxeau's confirmation is to a specific tract of land, & this specific tract of land lies within Braxeau's patent. But it has been authoritatively decided, that Braxeau's confirmation was not specific, but was merely to such land as the Government surveyor should point out. The surveyor has determined its locality, & that is not at the place where the plaintiff

insists it ought to be. He is then without any equitable title to any specific tract, if he declines ~~the~~ to recognize the survey of the Government, & if injustice has been done through mistake or fraud, this is not the forum or this proceeding the remedy by which it can be corrected. If this Court can now declare ~~that~~ to him that his land is within Solomon's survey & is not where the Government has located it, he must do so upon the ground that his confirmation gave him an equitable title to a specific piece of ground - one that could be located by the Court without the aid of surveyors - and consequently that any location of such tract by a Government surveyor would merely be evidence of its locality, the propriety of which would be for the decision of Court & jurie by of justice as in ordinary surveys of complete titles. But this is directly at variance with my understanding of the opinion of the Supreme Court of the United States in ~~this~~ relation to this identical confirmations.

In my opinion ~~the judgment must be~~ affirmed.

W. B. Napton

Upon a point of practice, it is agreed that the judt. be reversed

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Maguire

v.

Tyler & others

Opinion

Newton

Filed 11 Decbr. 1857
Wm S. Glanville Clk.

SUPREME COURT OF MISSOURI.

No. 73, *March Term*, 1357.

JOHN MAGUIRE, Plaintiff Appellant,
vs.
MARY L. TYLER, and ninety others,
Defendants Respondents.

APPEAL FROM THE ST. LOUIS LAND COURT.

Statement and Brief by Britton A. Hill, of Counsel for Respondents.

STATEMENT.

On the 26th of February, 1806, Louis Labeaume filed his claim for confirmation, under the act of Congress of the 2d of March, 1805, as follows: "Louis Labeaume [claims] 374 arpens of land, conceded in part to Joseph Brazeau the 20th June, 1794, and the other part to Louis Labeaume the 15th of February, 1799, settled and cultivated since both these dates."

Under this claim he filed the following paper evidences of title, and they were duly recorded by the Recorder of Land Titles, pursuant to the act of Congress, to wit:

1st. The petition of Joseph Brazeau for 4 by 20 arpens.

2d. The order of survey of Zenon Trudeau, Lieut. Governor, thereon.

3d. The grant of Jos. Brazeau of 4 by 20 arpens.

4th. The certificate of the sale of 4 by 20 arpens, written on the grant by the Spanish Lieut. Governor, as follows: "I do certify that the above concession, except four arpens, has been sold, &c., to Louis Labeaume, by deed proven before us the

9th May of this year, and deposited in the archives of this post. St. Louis, of Illinois, the 12th of May, 1798. — Zenon Trudeau."

5th. The petition of Labeaume for an extension of the 16 arpens front purchased of Brazeau, 20 arpens west, and for the angle at the Rocky Branch, about 360 arpens.

6th. The order of survey by Trudeau to Soulard.

7th. The survey of Soulard for 374 arpens, and his descriptive plat thereof, with monuments and landmarks noted.

Upon the presentation of this claim upon the foregoing papers, the clerk, who read the certificate annexed to the grant to Brazeau, supposed the 4 arpens reserved were within Soulard's survey of 374 arpens, and he entered in the minutes that Labeaume's grant included the whole of the Brazeau grant. This was a mistake of the clerk, who did not have the Brazeau deed before him, but only the Governor's certificate. Mr. Labeaume abandoned all claim under the Brazeau grant, and demanded a confirmation directly under the one to himself—the Soulard survey. The board, upon proof of possession in 1800 by Labeaume, and that he was the head of a family, "confirmed to him 356 arpens, and 4 arpens to Joseph Brazeau, and ordered that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume; and as respects the 4 arpens, agreeably to a reserve made in a sale from Brazeau to Labeaume, recorded in book C, p. 339, of the recorder's office." This confirmation was made the 22d September, 1810, and confirmation certificates were duly issued—one to Labeaume and one to Brazeau.

Brazeau filed no notice with the Recorder of Land Titles, for confirmation of the said reservation. Pierre Chouteau had purchased the reservation prior to May, 1798, by parol, from Brazeau.

In April, 1816, Labeaume, who had been in actual possession of the land within Soulard's survey, sold the same, by deed, to William Chambers for $7040, who sold to Wright & Christy the two undivided third parts thereof, and all the defendants claim under Chambers, Christy & Wright.

In November, 1817, a survey was made by a deputy surveyor

of the United States of two tracts in one, as of the confirmations to Labeaume and Brazeau, for 360 arpens, which survey corresponded with Soulard's survey of 1799, except that it left off of the west end thereof, fourteen arpens of land. This survey of 1817 was a mere nullity, and was never acted upon, and no patent certificate was issued thereon; but in March, 1833, a patent certificate was refused, and a separate survey of each confirmation was ordered by the Recorder of Land Titles.

On the 3d of May, 1833, by order of the Surveyor General, a deputy surveyor made another survey of Labeaume's confirmation, so as to include 356 arpens of land, said survey corresponding with Soulard's survey, except that it left off of the west end of the tract 18 arpens of land.

Such proceedings were had upon this survey of Labeaume's confirmation in 1837, 1841 and 1847, before the Recorder of Land Titles, the Surveyor General and the Commissioner of the General Land Office, that a new survey was ordered on the 15th of December, 1847, of the confirmation to Labeaume, so as to exclude 16 arpens of land from the survey of 1833, at the south-east corner of the Labeaume tract; and a survey was ordered to be made for said Brazeau's reservation of 16 arpens, so as to cover said space to be excluded from the survey of Labeaume's tract.

An appeal was taken from this decision to the Secretary of the Treasury in due form of law, and it remained pending undecided before him until the Department of the Interior was created, when the appeal was transferred to the Secretary of the Interior; and, afterwards, such proceedings were had that in July, 1851, the Secretary of the Interior reversed the decision of the Commissioner of the General Land Office and the proceedings of the Surveyor General, and ordered a survey of the confirmation to Labeaume to be made in conformity with Soulard's survey of 1799, in all respects; and a survey of the confirmation to Brazeau to be made for 16 arpens of land in a square south of Labeaume's survey on the river Mississippi.

These surveys were made accordingly, and patent certificates were issued thereon; and on the 25th of March, 1852, two patents were issued, one to Labeaume's legal representatives and

the other to Brazeau's legal representatives, and they still remain in force.

PLEADINGS AND JUDGMENT.

The plaintiff claiming under Joseph Brazeau filed his petition in the nature of a bill in equity, in the St. Louis Land Court, returnable to the October term, 1855, averring that the true location of Brazeau's reservation of 16 arpens of land was within and at the south-east corner of Labeaume's tract; that the surveys for Labeaume and for Brazeau were erroneous; that the survey for Labeaume was procured by secret and fraudulent misrepresentations; that plaintiff has refused to recognize or acquiesce in the survey for Brazeau's confirmation, and has always protested against the same, and against the patent issued thereon.

Plaintiff further averred, that on the 27th of April, 1816, the said Louis Labeaume sold and conveyed the said tract or parcel of land that he acquired from said Joseph Brazeau, together with other land conceded to him by the Spanish Government, to one William Chambers, who afterwards and on or about May 4th, 1816, sold and conveyed an undivided interest of two-thirds of the same land to William Christy and Thomas Wright, and soon thereafter the said Christy entered into and occupied the dwelling-house that said Labeaume erected and occupied near the north end of said 4 by 20 arpens, as before stated; and it was the said Chambers, Wright and Christy, and persons claiming under them, who first set up a claim to the said 4 arpens of land owned and reserved by said Brazeau; and the said Christy, after the making of said deed by Chambers, but prior to May 1st, 1823, actually, but without any claim or pretence of right thereto, entered into and upon said 4 arpens, and unlawfully withheld the same from said Pierre Chouteau, who was then then the owner of said four arpens; and he, on or about the 4th day of May, 1823, instituted a suit of trespass and ejectment, against said William Christy, in the Circuit Court of St. Louis county, to recover possession of said four arpens; and such proceedings were had in said court, in said suit, that, at the June term, 1824, of said court, said Chouteau, by reason

of the erroneous ruling of the said court, in its instructions to the jury, was forced and obliged to submit to a non-suit, and he did submit to a non-suit in said cause, as will more fully and at large appear by the record in said suit still remaining in said court, and to which the plaintiff in this suit asks leave to refer, and which record he will give in evidence on the trial of this cause, if it shall be material or necessary so to do.

The plaintiff further averred, that, after said George F. Strother purchased said four arpens of land from said Chouteau, the said William Christy again entered into and upon said four arpens of land, and unlawfully withheld the same from said Geo. F. Strother, and said Strother, on or about the 18th day of October, 1827, instituted a suit of trespass and ejectment against William Christy, in the Circuit Court in and for St. Louis county, to recover possession of said four arpens of land; and such proceedings were had in said court, in said suit, that, at the November term of said court, in the year 1828, said Strother was forced and obliged to submit to a non-suit, for the reason that the court excluded and refused to allow a copy of the said deed, made by said Joseph Brazeau to said Pierre Chouteau, to be read and received in evidence on the trial of said cause, and, by reason of the exclusion of said deed, there was no trial, verdict or judgment on the merits in said cause; all of which will more fully and at large appear by the record of proceedings in said cause, still remaining in said court, and to which the plaintiff in this suit asks leave to refer, and which record and proceedings the plaintiff will give in evidence in this case, if it shall be material and necessary so to do.

The plaintiff further averred, that said Chambers, Christy and Wright, sometime in the year 1816, laid off the said tract or parcel of land, which said Chambers purchased from said Louis Labeaume, into blocks and lots, and made a plat thereof, and called the same "North St. Louis;" and in laying off said addition, as aforesaid, they included the whole of said four arpens reserved as aforesaid by said Brazeau, and which four arpens then were the property of Pierre Chouteau, and which plat of said "North St. Louis" was filed for record in the Recorder's office of St. Louis county, and to which the plaintiff refers, and

will make proof of said plat in this case, on the trial hereof, if the same shall be material or necessary.

The plaintiff further averred, that, at the time said Chambers, Christy and Wright laid off said "North St. Louis," and made said plat, the said four arpens, sold by said Brazeau to said Chouteau, were vacant and unoccupied and not enclosed, and said Chouteau was ignorant of the intention of said Chambers, Christy and Wright to lay off said land into lots and blocks, and said Chouteau was not informed that they had done so until after said plat was filed for record in the said Recorder's office.

Plaintiff further averred, that said four by four arpens of land were unenclosed, and lay open as a common to the public, without fences thereupon, from 1799 until 1827, and that it continued to lay open until 1840, when William Chambers put a small building upon it.

Plaintiff further averred, that, at the February term, 1852, of the St. Louis Court of Common Pleas, to wit, on or about the 22d of January, 1852, he instituted several suits in ejectment against different parties who had unlawfully taken possession of parts of said four arpens, and unlawfully withheld the possession thereof from the plaintiff, which suits were entitled as follows, to wit: John Maguire v. Benjamin Vice, John Maguire v. Charles L. Annis, John Maguire v. Jos. Cochran, John Maguire v. Rufus Low, John Maguire v. John Botherton, John Maguire v. Jos. Templeton, John Maguire v. Jos. Dennis, John Maguire v. Mark Chester Jennings, John Maguire v. Robert Dodd, John Maguire v. Mark Chester Jennings; and at the February term, 1853, of said court, one of said suits, to wit, the suit against Benjamin Vice, was tried in said court, and a verdict and judgment therein rendered against the plaintiff, on the ground that the plaintiff had not the legal title to the land sued for, and therefore not entitled to the possession thereof, as will more fully and at large appear by reference to the record and proceedings in said court still remaining, and which will be produced and proved, if necessary, in the trial and hearing of this cause. And after the verdict and judgment were rendered as aforesaid in said last mentioned suit, the plaintiff prayed and took an appeal therefrom to the Supreme Court of the State of Missouri, and such proceedings were had

in said last mentioned court that at the March term thereof, A. D. 1855, the said judgment of said Court of Common Pleas was affirmed, on the ground that the plaintiff had not at the time of the institution of said suit, and the trial thereof, the legal title to said tract or parcel of land sued for, as will appear by reference to the opinion and decision of said Supreme Court given in said cause, a copy whereof is filed herewith, marked U, and made an exhibit herein.

The plaintiff further averred, that he, by his deed dated January 9th, 1852, conveyed lot No. 103, in block No. 321, being a lot 80 feet in front by 150 feet in depth, and part of said four arpens, to Edward M. West, a copy of which deed is filed herewith, marked V, and made an exhibit herein; and on the 22d day of January, 1852, said Edward M. West instituted a suit in ejectment in the Circuit Court of the United States for the District of Missouri, against one Joseph Cochran, to recover possession of said lot 103, and such proceedings were had in said court, that at the April term, 1853, of said court, a trial was had and a verdict and judgment in said suit were given for the said defendant, as will appear by the record and proceedings in said suit, in said court still remaining, and to which the plaintiff refers, and will make proof thereof if material or necessary on the trial of this case.

The plaintiff further averred, that after said trial and the rendering of said judgment, in said last mentioned suit, the plaintiff therein took an appeal therefrom to the Supreme Court of the United States, and such proceedings were had in said last mentioned court, that at the December term, 1854, of said court, said judgment of said Circuit Court was affirmed for the reason and on the ground that the said plaintiff had not, at the time of the institution of said suit, the legal title to said lot, as will more fully and at large appear by reference to the opinion of said Supreme Court, a copy of which is filed herewith, marked W, and made an exhibit herein.

The plaintiff further states, that ever since he purchased the said four arpens of land aforesaid, he has been endeavoring by all the means in his power, by actions of ejectment and otherwise, to obtain and hold peaceable possession of said four arpens of

land; but at all times hitherto he has been hindered and prevented from holding possession of said land, by reason of his not having the legal title thereto, and by reason of the improper and illegal acts of the defendants herein, who have hitherto unlawfully denied the plaintiff's right to the possession of said four arpens of land. That in 1846 the plaintiff peaceably entered into the possession of said tract of land, and occupied a part of it, claiming the whole, when some of the defendants entered and expelled the plaintiff therefrom, and, in an action of forcible entry, the plaintiff was restored to the possession of said premises.

Several other matters, deemed to be wholly immaterial, were averred.

The plaintiff prayed as follows:

Wherefore, and to the end, that equity and justice may be meted out to the plaintiff, and that he may be protected and established in his just rights, the plaintiff asks judgment in the premises in this case, as follows:

First, That this court, by its judgment and decree, will declare the said survey No. 3333 to be void and of no effect, and to vacate and set aside the same in so far as the same may or shall affect said four by four arpens of land reserved by said Brazeau.

Second, That this court, by its judgment and decree, will declare the said patent certificate No. 1249, issued thereon, to be void and of no effect, and to vacate and set aside the same in so far as the same may or shall affect the said four by four arpens of land.

Third, That this court, by its judgment and decree, will declare the patent aforesaid, issued upon said patent certificate No. 1249 to Louis Labeaume or his legal representatives, to be void and of no effect, and to set aside the same in so far as the same may or shall affect said four by four arpens of land.

Fourth, That this court, by its judgment and decree, will declare the said survey No. 3332 to be void and of no effect, and to vacate and set aside the same.

Fifth, That this court, by its judgment and decree, will declare the said patent certificate No. 1250, issued on said last

mentioned survey, to be void and of no effect, and to vacate and set aside the same.

Sixth, That this court, by its judgment and decree, will declare that the patent issued on said patent certificate No. 1250 to Joseph Brazeau, or his legal representatives, to be void and of no effect, and to set aside the same.

Seventh, That this court, by its judgment and decree, divest out of the defendants, or out of all those who claim to have or hold any title or right in or to said four by four arpens (or sixteen arpens in superficies) that said Joseph Brazeau reserved to himself in his said sale and deed to said Louis Labeaume; and that the right or interest in said land, held or claimed by the defendants, or either of them, be, by the judgment and decree of this court, vested in the plaintiff.

Eighth, That, by the judgment and decree of this court, the defendants be required to surrender and yield possession of said four by four arpens of land, or of so much, and such part or parts thereof, as they or either of them may claim, possess, or occupy, to the plaintiff; and that he, the plaintiff, may, by the judgment, order and process of this court, be put into possession of said land.

Ninth, That, by the judgment and decree of this court, the defendants may be required to account for and pay over to the plaintiff all the rents, profits, advantages and benefits which the defendants have realized and received from the possession and use of said land, and that a just and proper account thereof be ordered and stated.

Tenth, That, by the judgment and decree of this court, the defendants be adjudged to pay the plaintiff's damages aforesaid, sustained by him by reason of the fraudulent acts aforesaid of the defendants.

Eleventh, That, by the judgment, decree, and restraining order of this court, the defendants, their agents and servants, may be enjoined and restrained from committing waste and injury to said land and premises.

Twelfth, That, by the order, judgment, and decree of this court, the plaintiff have such other and further relief in the premises as to the court may seem meet and equitable.

To this petition the defendants filed the following answer:

The premises in controversy are situated on the river Mississippi, about four arpens north of the Big Mound—a most noted monument in St. Louis, called by the French, "*la grange de terre*" (the earth barn). This mound is an artificial erection, situated on the brow of the first bank of the prairie west of the bank of said river, at the distance of about 28 arpens north of the northern wall of the fortifications of the old Spanish town of St. Louis, and about four and a half arpens west from the bank of the river. The bank on which the mound stands is the eastern boundary of the Grand Prairie, covered by the St. Louis common fields, and the land descends with a gentle slope from the brow of it to the small prairie or bottom land between it and the river. This bank of the prairie is about 4½ arpens west of the river bank, where the mound stands, and about 60 feet above the level of the prairie along the river, and it runs nearly parallel with the river, at that distance from it, for a mile or more towards the south. At the north foot of the mound, this bank of the prairie curves towards the north-west, and running to the south-west corner of the southern and western ditches of Labeaume, as marked on the Spanish survey of Labeaume's concession in 1799, it thence runs about 16 arpens northwardly parallel with the river, at the distance of about 7 arpens from the bank of the river, where it becomes broken, and the land descends more or less abruptly into a small creek called the Rocky Branch, about 25½ arpens north of the mound. South of the Big Mound, about 18 arpens distant, there are small mounds on the same bank of the prairie. The bank of the prairie is higher where the Big Mound stands than at any other point between the old town of St. Louis and the Rocky Branch.

The first Spanish grant, north of the town of St. Louis, on the river Mississippi, was made to Esther, a mulattress, in October, 1793, by the following description: "The north part of the present concession shall be situated between the hillock named the Earth Barn and the banks of the Mississippi, thence descending the said river as far as the complement and extent of twenty arpens in length," &c. This description locates the north line of Esther between the Big Mound and the river, and the call for

quantity is to the extent of 20 arpens south of that point on the river.

The second Spanish grant, on the river north of the town, was made in June, 1794, to Joseph Brazeau, under whom the plaintiff claims. Brazeau petitioned for "land situated *beyond the foot of the mound* called the Earth Barn, of the width of four arpens," &c.; and the grant to him was for 4 by 20 arpens "from the foot of the hill where the Earth Barn is situated, thence up to the environs of the Rocky Branch," &c.

No Spanish or United States survey has ever been made of either of these grants, but Esther and Brazeau took possession of their respective tracts of land so granted—the one south of, and the other north of, the Big Mound. Esther possessed, as the land granted to her, that portion which lay south of the Big Mound, between it and the small mounds, embracing the little prairie between the bank of the prairie and the river Mississippi; and Brazeau possessed, as the land granted to him, the little prairie north of the Big Mound, along the river. He cultivated fields up to the foot of the Big Mound, and built a limekiln on the bank of the river about 2½ arpens north of said mound. The Big Mound was the great natural monument that designated the division line between the possessions of the two parties, Esther and Brazeau, in Spanish times.

On the 2d of September, 1794, Esther conveyed her interest in the grant to her, to Jacques Clamorgan, her master and lord, by deed, and Joseph Brazeau was a subscribing witness thereto. In August, 1797, the Esther grant was annulled by the lieutenant governor for the reason that the delay granted to begin improvements had expired; and a grant of 600 feet square was made at the same time to Antoine Roy upon the same land—that is, upon the southern portion of Esther's grant. When Soulard, the Spanish surveyor general, was about to survey the Roy tract, he notified Clamorgan, as the owner of the Esther grant, according to the Spanish custom; and Mr. Clamorgan formally claimed "that the ground on which he was operating had been granted to him for a number of years." The south-west corner of the Roy tract is about 19 arpens south of the north foot of the mound, and about 23 arpens south of Labeaume's south ditch.

On the 9th of May, 1798, said Brazeau sold, by deed, 4 by 16 arpens of his tract to Louis Labeaume, under whom defendant claims; and reserved his fields and limekiln, near the Big Mound. The descriptive words of the deed are, "which consists of four arpens of land, to be taken from the foot of the hill or mound commonly called the earth barn, by twenty arpens in depth, bounded by the Rocky Branch at the extremity, which is opposite the said mound, east by the Mississippi river, and west by the king's domain — the said Brazeau *reserving to himself four arpens of land from the foot of the mound, in the south part of the tract.*" This deed was executed before the lieutenant governor, who officially certified to the sale. The confirmation under which the plaintiff claims, was void, the board of commissioners in 1810 having no jurisdiction of Brazeau's claim for want of notice to the recorder of land titles by Brazeau. Labeaume, after said purchase of Brazeau, immediately enclosed the land with enbankments of earth and ditches; the height of the embankments from the bottom of the ditches being about six feet, and on the top of the embankment pickets were driven into the ground so as to make a stockade enclosure. He also erected houses upon the grounds enclosed, and lived there with his family from 1798 until 1814, and left his agent in possession from that time until he sold to William Chambers in April, 1816. The north and south ditches of Labeaume were 16 arpens and 40 French feet apart; Brazeau's limekiln was 300 feet south of the south ditch of Labeaume; and he worked that kiln and cultivated the field south of that ditch, up to the time he sold to Labeaume, and after the sale he rented the kiln to one Primeau.

It appears, however, from a deed made by Brazeau to Pierre Chouteau in 1816, that, at the time of the deed to Labeaume of 1798, Brazeau had made a verbal sale of the 4 by 4 arpens at the foot of the mound to Pierre Chouteau. (See deed referred to.)

In February, 1799, Labeaume asked for a grant "of 360 arpens of land, *including the part which he had acquired of Brazeau*, that is to say, 20 arpens in depth from the Mississippi along the Rocky Branch, west one-fourth south, by 16 arpens from along the river, to be taken at the descent of the road into the branch, which is the very front of the petitioner's land; the angle formed by the line perpendicular from the road to the river will nearly complete the land demanded by the petitioner," &c.

On this petition, the same lieutenant governor who certified to the Brazeau reservation ordered a survey the 17th of February, 1799; and on the 2d of March, 1799, Don Antonio Soulard made the survey in the presence of the adjoining neighbors, according to the Spanish custom, and returned the plat and notes of survey, which were duly recorded in the archives of the government on the 15th of April, 1799. On Soulard's survey the ditches are marked, and the houses of Labeaume, and the quantity of land surveyed was 374 arpens. The south ditch of Labeaume is 4 arpens and 20 French feet north of the north foot of the Big Mound, at a point four arpens west of the river. The reservation of Brazeau, by his deed, of 4 by 4 arpens, on the Mississippi, from the foot of the Big Mound, locates it south of and adjoining the southern ditch of Labeaume.

In February, 1806, Labeaume filed his claim for confirmation under the act of Congress of the 2d of March, 1805, as follows: "Louis Labeaume (claimed) 374 arpens of land, conceded in part to Joseph Brazeau the 20th of June, 1794, and the other part to Louis Labeaume the 15th of February, 1799, settled and cultivated since both these dates." Under this claim he filed the following paper evidences of title, pursuant to the act of Congress, and they were duly recorded, to-wit:

1st. The petition of said Brazeau for 4 by 20 arpens.

2d. The order of survey of Zenon Trudeau, lieutenant governor, thereon.

3d. The grant to Brazeau of 4 by 20 arpens.

4th. The certificate of the sale of 4 by 20 arpens by Brazeau to Labeaume, with a note of the reservation of 4 arpens written on the grant by the lieutenant governor, as follows:

"I do certify that the above concession, except four arpens, has been sold, &c., to Louis Labeaume, by deed proven before us, the 9th May of this year, and deposited in the archives of this post. St. Louis, of Illinois, the 12th May, 1798. Zenon Trudeau."

5th. The petition of Labeaume for an extension of the 16 arpens front purchased of Brazeau, 20 arpens west, and for the angle at the Rocky Branch, about 360 arpens.

6th. The order of survey by Trudeau to Soulard.

7th. The survey by Soulard of 374 arpens, and his plat thereof.

On the presentation of this claim upon the foregoing papers, the clerk who read the certificate annexed to the grant to Brazeau supposed the 4 arpens reserved were within Soulard's survey of 374 arpens, and he entered in the minutes that Labeaume's grant included the whole of the Brazeau grant. This was a mistake of the clerk, who did not have the Brazeau deed before him, but only the governor's certificate. Mr. Labeaume abandoned all claim under the Brazeau grant, and demanded a confirmation directly under the one to himself—the Soulard survey. The board, upon proof of possession in 1800, by Labeaume, and that he was the head of a family, "confirmed to him 356 arpens, and four arpens to Joseph Brazeau, and ordered that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume, and as respects the 4 arpens agreeably to a reserve made in a sale from Brazeau to Labeaume, recorded in book C, page 339, of the recorder's office." This confirmation was made the 22d September, 1810, and confirmation certificates were duly issued—one to Labeaume and one to Brazeau.

Brazeau, at the time of this confirmation to him, did not own or claim to own the said reservation; he had sold it to Pierre Chouteau, who had included the whole of it in a larger grant made to him by an order of survey of October, 1799, surveyed the 17th of June, 1803. In P. Chouteau's petition of 1799, he asks for the land bounded "*north by the line of Mr. Labeaume's tract*, south by the line of Mr. Antoine

Roy's tract, east by the river, and west by the domain of his majesty." Chouteau was the owner of the Brazeau reservation, at the time of the Soulard survey of Labeaume's tract. In June, 1803, when Chouteau's grant was surveyed by Mr. Soulard, the parties Labeaume and Chouteau were present, and Labeaume's south ditch was marked upon the plat as a part of the north line of Chouteau's tract; and the surveyor returned his plat of boundaries, stating thereon that Chouteau's tract was *bounded north by the land of Louis Labeaume*. This confirmation to Brazeau under which plaintiff claims, is null and void; the board had no jurisdiction of the Brazeau case, and no notice had been filed by Brazeau, or any one for him, for the confirmation.

Pierre Chouteau procured a confirmation in 1811, from the same board of commissioners, for the land between Labeaume and Roy. He purchased the Esther claim of Clamorgan in 1810, and procured the formal title of the reservation from Brazeau in 1816, by deed, which describes the reservation three times as land "to be taken from the foot of the mound called the earth barn."

In 1817, Rector and Barcroft entered for Henry Peyroux all the land south of Labeaume's south ditch, including the reservation and all of P. Chouteau's tract, under a New Madrid earthquake certificate, No. 184. P. Chouteau, on the 20th of May, 1826, protested in writing to the Commissioner of the General Land Office against the issuing of a patent on said certificate, stating "that it covered the whole of a small tract of 16 arpens, which he had purchased from a Mr. Joseph Brazeau, to whom it had been confirmed by the board of commissioners." This is a solemn act of location by Chouteau of the reservation south of Labeaume's tract. Chouteau conveyed the reservation to Strother in June, 1826; Strother's administrator to John Maguire, in June, 1846; and Maguire founds his suit on this title through Pierre Chouteau. The plaintiff has no conveyance from Brazeau for any land north of the south ditch of Labeaume. If Brazeau's grant was included within Soulard's survey for Labeaume, then Mr. Brazeau located his

reservation in the wrong place. But if the mistake in the deed of Brazeau to Labeaume be admitted, and if he located his reservation at the foot of the mound, when he intended to locate it north of the south ditch of Labeaume, it is too late to relocate it now—for the title of Brazeau passed to Labeaume in 1798 for the whole of Brazeau's tract, excepting only the 4 by 4 arpens at the foot of the mound. If Brazeau had no land where he reserved these 16 arpens, he, or Chouteau his vendee, should have proceeded to correct the mistake in the deed of 1798, during the time Labeaume held the title. But Labeaume held possession, according to the terms of his deed and Soulard's survey, for eighteen years, when he sold the whole tract of 374 arpens to William Chambers, by deed of April, 1816, for $7,460, a full consideration; and William Chambers had no notice of the alleged mistake in the location of Brazeau's reservation, and he was not put upon inquiry by the title papers; and he was an innocent purchaser, for a valuable consideration, of the tract embraced within the Soulard survey. Up to the purchase by Chambers, the lessor of the defendants, there never had been any claim by Joseph Brazeau or Pierre Chouteau for the location of the reservation north of the south ditch of Labeaume.

From 1799 until 1823 Mr. Chouteau had acquiesced in the possession of Labeaume to the south ditch, which ditch was established by the surveyor general of the Spanish province of Upper Louisiana, in March, 1799, as the division line or stockade fence between Labeaume's land and Brazeau's reservation, and this is an estoppel against Pierre Chouteau and all persons claiming under him, concluding the plaintiff.

In October, 1799, Mr. Chouteau, in his petition to the lieutenant governor, recognized the ditch and stockade fence of Labeaume as the boundary between Labeaume and himself; and he calls the land north of that boundary Labeaume's land. In June, 1803, Mr. Chouteau's survey of his grant was made by the same surveyor, in his presence and in the presence of Labeaume, when the stockade fence or ditch of Labeaume was again officially recognized and established as the division fence

between Labeaume and Chouteau. For fifty-four years prior to this suit, Labeaume and Chouteau and their grantees have possessed their land—the one south of, and the other north of, the line of this stockade fence and ditch so recognized and established as the boundary line between their respective tracts.

And these defendants further state, that by the said recognition of the south ditch of Labeaume as the boundary line between the lands of said Pierre Chouteau and Louis Labeaume, for so long a period of time, they, the said Perre Chouteau and Louis Labeaume, and all persons claiming through or under them as parties or privies, are mutually bound and estopped from disputing the same or claiming adversely thereto; and that the long possession of the said parties and their privies of the said several tracts of lands, in accordance therewith, has vested a complete title in the said representatives of Louis Labeaume to the land in the United States survey No. 3333.

These defendants deny that the said southern ditch of Louis Labeaume was built to serve the purposes of a ditch, as stated by plaintiff; but, on the contrary thereof, these defendants aver that the said southern ditch was dug for the purpose of making an embankment on the northern margin thereof, to serve as an enclosure, and on the top of the said embankment pickets were driven into the ground, so as to make a stockade enclosure.

Defendants deny that about the year 1803 said Labeaume withdrew his fence from said embankment; defendants deny that said Labeaume so constructed his fence as to leave any portion of said land included in said Soulard's survey outside of his enclosure, on the south side of said tract, to the extent of said ditches and embankments. Defendants deny that the proper or true location of said four by twenty arpens of Joseph Brazeau was or is as stated in the plaintiff's petition; but, on the contrary thereof, the location of the southern part of said Brazeau's tract was truly given by the said United States survey No. 3332.

Defendants deny that Louis Labeaume ever recognized the right or proprietorship of said Joseph Brazeau to said sixteen arpens of land known as Brazeau's reservation, at any other

place than as located by said United States survey No. 3332 for Joseph Brazeau's legal representatives ; and the possession of said Brazeau, and of Pierre Chouteau, his grantor of said reservation, was in accordance with said United States survey No. 3332, and the said Labeaume always claimed the land within Soulard's survey, and the survey of the United States No. 3333, as the land belonging to him.

Defendants deny that Wm. Christy entered into and unlawfully withheld the possession of said reservation, as stated by the plaintiff. It is true that Wm. Christy entered into possession of all the land included in said Soulard survey and United States survey No. 3333, being the Labeaume tract, in virtue of the title of Chambers, Christy and Wright, and held the same with his cotenants in common and in severalty of such as had been divided, until his death, in 1837 ; and his widow and his cotenants in common, and their grantees, held the same in severalty in their own right until the bringing of this suit.

When defendants' grantors—Chambers, Christy and Wright—laid off the said Labeaume tract into lots and blocks, they did so as owners in fee of the whole of the tract, and Pierre Chouteau well knew thereof, and never set up any claim to the said property at that time.

Defendants aver that said land north of Labeaume's ditch was always held in possession by actual possession and by notorious acts of ownership on the part of Chambers, Christy and Wright, and their representatives and grantees, from and after the year 1816 until the year 1846.

Defendants deny that the sixteen arpens of land, or four by four arpens, lying north of the southern ditch and embankment of Labeaume's tract, was unenclosed as alleged, or lay open as a common to the public as alleged, without fences or buildings thereon, from the year 1799 or 1800, as alleged, until the year 1827 ; and defendants deny that afterwards, in 1831, or at any time, as alleged, the said land lay open and vacant ; but, on the contrary thereof, the same has always been claimed and possessed as part of the Labeaume tract, by the defendants and their grantors, for more than fifty-six years last past, ex-

cepting a small tract or block into which plaintiff fraudulently entered by corrupting the tenants of William Chambers, as hereinafter stated.

Defendants deny that in 1846 the plaintiff peaceably entered upon the said sixteen arpens north of the southern ditch of Labeaume, as stated ; and defendant denies that plaintiff held such possession until 1849, as stated. Defendants aver that the said pretended possession of plaintiff, if it amounted to any possession in him, was obtained by fraud and the fraudulent attornment of the tenants of William Chambers, and could confer no right upon the plaintiff.

These defendants aver that the conveyance made by the plaintiff to said Edward N. West of said lot of land, was made without a valuable or *bona fide* consideration, and for the purpose and with the view of bringing the title of said land into judicial decision before the Circuit Court of the United States for the district of Missouri, or some other court or courts of the United States, and thereby harassing the occupants thereof ; and these defendants deny that plaintiff has acquired any right or title to the said land by the reconveyance of the said West to him.

Defendants have no knowledge or information sufficient to form a belief, whether the representatives and assigns of Louis Labeaume, in the year 1832 or 1833, made an attempt to procure or obtain a patent certificate upon the said survey No. 982 and 983 of 1817, as stated ; nor whether William Chambers, said grantor of Labeaume, applied to the said recorder of land titles for said patent certificate.

Defendants deny that said William Chambers obtained said patent certificate, No. 1162, by fraud or misrepresentation, as stated by plaintiff.

Defendants deny that said order and direction of the Secretary of the Interior, touching said surveys 3333 and 3332, were made without authority of law ; and defendants deny that there was any mistake or error therein ; and defendants aver that said surveys are conclusive evidence of the location of

said two tracts of land, and that plaintiff is estopped from denying or controverting the same.

Defendants further aver that said patents are conclusive evidense of the location of the said two tracts of land, and that plaintiff is estopped from denying the conclusive effect thereof.

Defendants further aver that plaintiff conveyed the whole of said Brazeau's reservation lying south of the said southern ditch of Labeaume to Louis V. Bogy, by deed dated the sixth day of June, 1846, which deed is herewith filed as an exhibit. Defendants aver that the said locations, as given by said surveys Nos. 3333 and 3332 and the said patent, are the true and correct locations of said two tracts of land under the said confirmations.

Defendants deny that they or either of them procured or obtained said survey No. 3333 or said survey No. 3332, or the patent certificates thereon, by any fraud or misrepresentation; and defendants deny that they used any fraudulent means or contrivances to procure or obtain the action of the said Secretary of the Interior thereon.

Defendants have no knowledge or information sufficient to form a belief, whether the property personal, belonging to the estate of said George F. Strother, was insufficient to pay and satisfy the debts established against said estate; nor whether said administrator made application to said Probate Court in due form of law, and obtained an order from said court authorizing said administrator to sell said real estate as alleged; nor whether said Brazeau's reservation, located as claimed by plaintiff, was included therein; nor whether said premises in question were sold in conformity with law, as stated in plaintiff's petition.

Defendants deny that the plaintiff acquired the right, title and interest of the Marine Railway Company in and to the premises in question by the deed of the 2d day of January, 1852, as alleged, and defendants have no information or knowledge sufficient to form a belief, whether the said John O'Fallon was authorized in due form of law, by the said Marine

Railway Company, to convey the said premises in question to the plaintiff.

Defendants deny that, under the confirmation made under the act of Congress of March 3d, 1807, the said Joseph Brazeau became the owner in equity of the premises in question; and defendants deny that the said patent to Louis Labeaume's legal representatives included any part of the said Brazeau reservation.

Defendants aver that the said pretended confirmation to Brazeau was wholly void; but if it be held available to vest any interest in any land in Joseph Brazeau, it could only vest an interest in him for such land as should be thereafter surveyed for him under said confirmation by the United States, and none other; and that such confirmation was subject to the condition of survey, and that no title passed to Joseph Brazeau until such survey.

Defendants further aver that William Chambers, William Christy and Thomas Wright were innocent and *bona fide* purchasers, for a full, fair and valuable consideration, of the said Labeaume tract, and the land included within the survey of Don Antonio Soulard of 1799, which is identical with the United States survey, No. 3333; that they had no notice of the pretended claim of Brazeau for said sixteen arpens of land within the said Soulard survey; and the defendants, are in like manner innocent *bona fide* purchasers and representatives of said Chambers, Christy and Wright; and the defendants, and those under whom they claim, have been in the actual adverse and continuous possession of the premises sued for, for more than twenty years next before the commencement of this suit.

Defendants further aver that the plaintiff is barred and precluded from claiming or having the relief prayed for, by reason of the great lapse of time since the alleged error in the location of said Brazeau's reservation, and by the great lapse of time since the same was discovered, as alleged in the plaintiff's petition.

Defendants further aver that the title to the sixteen arpens front by four arpens in depth, acquired by Labeaume in 1798,

under the deed from Joseph Brazeau to him, was a just title; that the said deed gave a title capahle of transferring the property; that said Brazeau was then resident in the town of St. Louis, where said land was situate, and continued so to reside therein for more than ten years thereafter; that said Labeaume, immediately after the said deed was executed, dug the said ditches and made the said embankments, and put pickets thereon, and thereby enclosed the premises in question sued for, and held the same as his own so enclosed, and lived thereon for more than ten years successively prior to the first day of January, 1816; whereby said Labeaume acquired all the right, title and estate of said Brazeau by the Spanish law of prescription then in force in the territory of Missouri and the territory of Upper Louisiana.

And the defendants ask for judgment and for their costs.

On Thursday, the 5th of June, 1856, said cause came on to be heard, and a jury was empannelled and sworn; the trial progressed, but, not being fully ended at the adjournment of the court, was continued until the next day.

Friday, the 6th of June, 1856, the trial progressed, and both parties having announced themselves ready for the trial of the case, the court, having examined the petition and answer, *ex mero motu*, ordered the plaintiff's petition to be dismissed; and the plaintiff then and there excepted.

Plaintiff thereupon appealed to this court.

BRIEF.

1. Brazeau had no confirmation under the acts of Congress of 1805, '6 or '7, under which the confirmation to him purports to have been made, for the reason that no notice of his claim was filed by him according to the requirements of said acts of Congress, so as to give the board of commissioners jurisdiction of his case.

The board of commissioners in Missouri possessed only such powers as were conferred upon it by acts of Congress of 2d March, 1805, 25th of February, 1806, and 3d of March, 1807. The first of these acts created the board, prescribed its duties and

jurisdiction, and the others only extended that jurisdiction to certain classes of cases that might be filed during the time as extended. By the 4th section of the act of 1805, 2d vol. L. & B. ed. 326, each claimant "*shall, before the first day of March*, 1806, *deliver to the register or recorder of land titles, within whose district the land may be, a notice in writing stating the nature and extent of his claim*, together with a plat of the tract claimed; and shall deliver to the register or recorder, for the purpose of having the same recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim," &c., all of which were required to be recorded.

This notice of claim had to be filed, together with the documentary evidence of title, before the first day of March, 1806, which time was afterwards extended, as to certain claims, until the 1st day of July, 1808; and it was further enacted, that "if any person should fail to deliver such notice, or cause to be recorded such written evidence of his claim, 'all his right,' under the act, should be void and forever barred; and that no incomplete grants, warrants, deeds, &c., which were not so recorded, should ever be admitted as evidence in any court of the United States, against any grant derived from the United States."

The grant to Brazeau was incomplete. The board of commissioners was a court of special and limited jurisdiction, not acting under a common law jurisdiction, but in pursuance of a statute of the United States.

After the claims were thus filed and recorded, the board was authorized to act upon them, and not before. The 5th section of the act of 1805 confers the only power possessed by the board, in the following words: "To decide in a summary way, according to justice and equity, on all claims *filed with the register or recorder in conformity with the provisions of this act*," &c.

As to complete French or Spanish grants the board had no power, but merely ascertained that they were such, they being perfect titles needing no confirmation.

On all incomplete grants, warrants, or orders of survey, it was required by these acts of Congress that the party claiming the land, and asking a confirmation thereof, should have had

actual possession thereof on the 1st of October, 1800, or on the 20th of December, 1803; and the confirmation was made for such possession, *to be surveyed*, unless there was already a recorded survey under the Spanish government.

Section 1 of act of 2d March, 1805, page 325, 2 L. & B., requires possession under a registered warrant or order of survey on the 1st of October, 1800, and actual inhabitation and cultivation.

Section 2 of same act extends the provisions of that act to all persons actually in possession of land under any settlement right on the 20th of December, 1803.

Section 3 of the act of February, 1806, 2d vol. U. S. Statutes at Large, L. & B., page 353, repeals so much of the 4th section of act of 3d March, 1805, as requires a plat to be filed by the claimant.

Section 7 of act of 3d March, 1807, requires surveys to be made by the United States surveyor if an authentic Spanish one has not been made, or shall not appear of record, &c.

There was a recorded Spanish survey of the Labeaume tract, recorded the 15th of April, 1799, as appears from the Register d'Arpentage.

The power of the board of commissioners did not extend to all lands in Louisiana or Missouri, nor could the board confirm lands except in accordance with law. Congress did not create this board for the purpose of making donations of land, but merely vested in it power to act on claims to land under incomplete grants, warrants of survey, and settlement rights originating under the Spanish government, which were actually presented, filed, and recorded, and accompanied by a written statement of the claim, signed by the claimant, showing its nature and extent; and to be prosecuted afterwards by producing before the board evidence of actual possession in October, 1800, or on the 20th of December, 1803, or for ten years prior thereto.

The board had no more power to confirm land not claimed before it, according to the requirements of the statute, than a court of justice would have to enter up a judgment without any party before the court, without a writ or appearance. Such a

judgment would be a nullity; and so an act of the board confirming land to a man who is not a claimant, who has not filed any notice, or made any proof of possession in accordance with the statute, is a mere nullity.

The jurisdiction that might be presumed in favor of the validity of judgments rendered in a court of common law jurisdiction, will not be presumed in favor of special statutory courts. A court constituted as this board of commissioners was, and created for a special purpose, has no common law intendment in favor of its jurisdiction, but the facts necessary to show its jurisdiction under the acts of Congress must appear upon the record of the judgment rendered by the board in the particular case. (United States vs. Percheman, 7 Peters, 85.)

In Wilcox vs. Jackson, 13 Peters, 499, the question was presented whether a pre-emption claim and register's certificate to the plaintiff was a sufficient foundation for an action of ejectment under the statute of Illinois, to recover lands so entered, which were reserved from sale by order of the President of the United States. It was held "that if a court act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void. Assuming that the decision of the register and receiver, in the absence of fraud, would be conclusive as to the facts of the applicant then being in possession, and his cultivation during the preceding year, because these questions are directly submitted to them; yet if they undertake to grant pre-emptions in land in which the law declares they shall not be granted, then they are acting upon a subject matter clearly not within their jurisdiction." In the case of Chouteau vs. Eckart, 2 Howard, 374, this court held that "the board of commissioners had no capacity to grant, but only to ascertain facts and report their opinions," and that "their power to examine did not extend to every description of claim." These principles apply with peculiar force to the case at bar. Brazeau failed to deliver any notice of claim or to do any act required by law, in order to procure a confirmation or give the board jurisdiction of his claim. The reason why he failed to do so is apparent from the record in this cause, for Brazeau, prior to the 9th of May, 1798, had sold all his interest in the reser-

vation by a verbal sale to Pierre Chouteau, (see the deed from *Brazeau* to *Chouteau* of 1816,) and this verbal sale passed Brazeau's title and claim under the Spanish law to Chouteau. (10 Mo. Rep. 260; 4 Martin N. S. 567; 7 Martin N. S. 315; 3 Louisiana, 114.) Chouteau had included the reservation within his extended grant, and located it according to the U. S. survey and patent. (See protest of P. Chouteau, of May, 1826.)

Labeaume duly presented his notice to the recorder, claiming, according to his Spanish survey, all the land within it, and filed the documentary evidence of his title with said Spanish survey and had them duly recorded, thus complying with the law, and placing his claim before the board for the tract of land which was confirmed to him.

In the case of Strother vs. Lucas, 6 Peters, 771, 772, it was held that notice of the nature and extent of the claim must be filed, together with all written evidence of claim, and all persons *neglecting to do so are forever barred.* (See also Strother vs. Lucas, 12 Peters, 453, '4, and '8; and Bissell vs. Penrose, 8 How. S. Ct. U. S. 333, 338.)

Brazeau never filed any claim before the board; and he had no claim for this land to file.

How could the board—acting on the claim of Labeaume lawfully before it, for a tract of land described by specific metes and bounds, with a recorded Spanish survey as evidence of the grant, and proof of possession by him as the head of a family—confirm the claim to Labeaume, and then proceed and confirm to Brazeau the reservation in which he had no interest in possession or reversion, and for which he had filed no claim, but which was actually claimed as a part of another grant by Pierre Chouteau.

The confirmation is to the claimant. (Landes vs. Perkins, 12 Mo. 255 and 256; Strother vs. Lucas, 12 Peters, 458; Bissell vs. Penrose, 8 Howard, 338; see also 14 Mo. 482.) The question here is as to the jurisdiction of the board to confirm land to Brazeau not owned, or claimed, or possessed by him, under proceedings by Labeaume on a claim for other land; and it seems very clear that the board had no jurisdiction over the non-claim which was illegally confirmed to Brazeau, and that nothing could pass to Brazeau by the confirmation. It is an anomalous

case, in which the board not only attempted to confirm land to a man who did not own it, or claim it, or possess it; but this act was done in violation of the statute in 1810, when all claim by Brazeau was forever barred, and he was prohibited from exhibiting any such claim as any evidence of title thereto before any court.

It is said, on the part of the plaintiff, that the only parties to the confirmation are the United States and Brazeau, and that Labeaume has no right to question the regularity of the proceedings, or the jurisdiction of the board collaterally in this action. If Brazeau's representatives only claimed this land where the United States had located it, in accordance with the patent, it would not interfere with Labeaume's tract, and the defendant could not object that the government had given Brazeau sixteen arpens of land without any lawful right to do so; it would then be a question between the grantor and grantee, and a third person could not object to a grant being made of land in which he had no interest. But the case presented is one in which the representatives of Brazeau set up a confirmation within Labeaume's patent for land that Brazeau did not own or claim. It is no longer a question between the Government and Brazeau, but one between Brazeau and Labeaume; and Labeaume's representatives have a clear right to insist that such a confirmation cannot affect the title to any land embraced within the United States survey and patent to Labeaume; that as to such land it is null and void; that the board had no jurisdiction over it, and that plaintiff cannot set up any title under it.

It clearly appears in this case that Labeaume possessed the land embraced within Soulard's survey on the 1st of October, 1800, and on the 20th of December, 1803; that said survey was duly recorded in April, 1799, and that it was the concession in fact to Labeaume; that the United States survey and patent are for the same land embraced within Soulard's survey; that the only concession to Labeaume was the order of survey and the said survey of Soulard; and that it was the Soulard survey that was claimed by Labeaume and confirmed by the board: therefore Labeaume's representatives have a vested right under the confirmation to the land within the Soulard survey, which is the same land included

within the Labeaume patent, and the patent relates back (Landes vs. Brant, 10 Howard; Crowley vs. Wallace, 12 Mo. 145) to the confirmation and to the notice of claim in February, 1806, so as to override the title of Brazeau's representatives to any land within the Soulard survey.

The question is distinctly presented between these two confirmations, as to which shall prevail, *for the land embraced within the Soulard survey*. Brazeau has no confirmation under any law of the United States for the land; he is expressly barred by law from exhibiting any evidence of his grant or deed in any court against the Labeaume confirmation; he did not possess the land in October, 1800, or in December, 1803, as required by the act; he never had any survey for it; he has no patent for it, and he did not own or claim to own the land.

Labeaume has a complete confirmation for this land under the laws in force; he possessed it in October, 1800, and in December, 1803, he had a recorded Spanish survey of it; he has an United States survey and patent for the whole tract. All the title that the United States had in this land on the 26th of February, 1806, the date of Labeaume's claim, has been vested in Labeaume and his legal representatives by the patent. (Green vs. Liter *et al.*, 8 Cranch, 229; Landes vs. Brant, 10 Howard, 373, '4.) The confirmation under which plaintiff claims can not prevail against Labeaume's confirmation alone, if it were not supported as it is by the patent, which is the ultimate and conclusive evidence of title. (Landes vs. Brant, 10 Howard; Burgess vs. Gray *et al.*, 16 Howard, 48.)

It cannot avail the plaintiff to say that the confirmation to Brazeau was for land within the Soulard survey for Labeaume. The board had no jurisdiction over the location of any grant; its powers were limited, by the acts of Congress, to the examination of claims filed and the taking of testimony of possession, and the reporting of an opinion for or against the confirmation. So far as the confirmation is claimed to locate Brazeau's reservation, the board had no power whatever. The plaintiff is compelled to insist, that upon the proof of possession by Labeaume of the land within the Soulard survey, the board had power to locate the reservation within that survey without any claim

or any evidence of right or of possession. The case of Wilcox vs. Jackson, 13 Peters, 511, is directly in point, to show that the board had no such jurisdiction. See also Chouteau vs. Eckart, 2 Howard, cited above. Barry v Gamble 3 How 32

II. If the confirmation to Brazeau is not void, the State courts have no authority to ascertain and establish the boundaries of the tract, this being reserved to the executive department of the government. Field v Seabury 19 How 324, 333

In *West* v. *Cochran*, 17 How. 415–6, the Supreme Court of the United States held that in this confirmation to Brazeau, "the survey was a condition which the judgment of confirmation carried along with it, and, until the survey was made, the plaintiff's title attached to no land, nor could a court of justice ascertain its boundaries, as this power was reserved to the executive department of the federal government," &c.

In *Stanford* v. *Taylor*, 18 How. 412, this same language was repeated. Ledoux & Blanc 18 How 473.

In *Burgess* v. *Gray et al.*, 16 How. 62, this same doctrine is stated; and it was held that a confirmation by the old board did not vest a legal title in the claimant; that the fee still remained in the United States. (See also *Landes* v. *Brant*, 10 How. 373.)

It has been uniformly held by this court and the Supreme Court of the United States, that these inchoate concessions did not give the parties holding them any standing in court; that the rights of parties under such grants created no legal obligation that could be enforced in courts of justice, but only a political obligation.

The plaintiff must claim under the confirmation of which the survey was a part. In this suit, he proposes to set aside the survey made under the judgment of confirmation, and to procure from the State courts a new survey or a new location of the confirmation. This can not be done. The government of the United States passed the title to the land embraced within the confirmation, by the survey and patent, according to the

provisions of the act of March 3d, 1807; and the State courts have no jurisdiction to review those proceedings.

If the title to this land had passed to and vested in the confirmee, by force of the confirmation, without any condition of survey, as in the case of the village lots, outlots, common field lots and commons under the first section of the act of 13th of June, 1812, then the State courts would have had jurisdiction to try the question of location, because the fee having passed from the United States, the action of the executive department of the government could not affect the title thus vested. But in this case, as the title of the United States has not vested in Brazeau under the said act of 1807, for the land sued for, the State courts have no power to vest that title, or to affect it in any way.

As it is proposed by the plaintiff to pass a title to Brazeau for other land than that which has been designated under the confirmation, he must make the United States a party to the proceedings; for he must claim title through the United States, and not otherwise.

The decisions in the cases of *West* v. *Cochran*, and *Stanford* v. *Taylor*, above cited, are predicated upon the hypothesis that if there are no definite limits or location to the claim confirmed, the survey is conclusive. I think the case of *West* v. *Cochran* settles this question; but if it should be contended that it does not, a brief examination of the proceedings on the concession to Brazeau will show that his location was not definite.

Brazeau's petition was for "a tract of land in the northern part of St. Louis, *situated beyond the foot of the mound called La Grange de Terre*, of four arpens in width, which are to extend from the steep bank or beach (*ecore*) of the Mississippi in the west, quarter south-west, by about twenty arpens in depth, that shall begin at the foot of the hill on which stands the said *Grange de Terre*, ascending in a north-west course to the environs of Stony Creek, so that the tract asked for be bounded on the east side by the Mississippi, and on the other

sides in part by the king's domain, and in part by lands reunited to said domain."

The concession by the lieutenant governor to Brazeau on the 10th of June, 1794, was as follows: "He put Joseph Brazeau into possession of said tract of land designated in his petition of four arpens front by twenty arpens deep, which shall extend in a north north-west course from the foot of the hill where stands the *Grange de Terre*, ascending to the vicinity of the Rocky Creek, bounded on one side by the bank of the Mississippi, and on the opposite side by the lands not conceded or reunited to his majesty's domain, and at the two ends, on the north north-west by the vicinity of Rocky Creek, and on the other, in the south south-east, shall be bounded by the land granted to the free mullattress named Esther."

The location of the Esther concession was as indefinite as the one to Brazeau; so that no material aid can be obtained from it, in locating the Brazeau grant. The mound called *La Grange de Terre* stands on a hill; the petition of Brazeau is for the concession "to extend *from the steep bank or beach* of the Mississippi, &c.; *that shall begin at the foot of the hill on which the Big Mound stands*," *&c.* The concession "shall extend in a north north-west course from the foot of the hill where the Big Mound stands," &c.

The point of commencement is "the bank of the river at the foot of the hill where the Big Mound stands," and this point is wholly uncertain and indefinite. The plaintiff assumes that the foot of the hill is to be ascertained on a course north north-west from the mound; but there is no good authority for this assumption; and it is more reasonable to suppose that the point of commencement was at the bank of the river, as called for in the petition, but whether opposite the mound or above it, it is impossible to determine.

This grant to Brazeau clearly comes within the rule that when the boundaries of a confirmed claim are uncertain, the survey is necessary to vest the title. *Lefebvre* v. *Comeau*, 11 Louisiana, 321; *Slack* v. *Orillon*, id. 587; *Scott* v. *Prud-*

homme, 3 Robinson, 295; *Metoyer* v. *Larenandiere*, 6 id. 140; *Ledoux* v. *Black*, 5 Ann. 510.

In order that a confirmation may have the force of a patent, the description of the grant confirmed must be such as will identify the land. *Lafayette* v. *Blanc*, 3 Annual, 59. *Ledoux* v. *Black*, 5 Ann. 510.

III. It has been argued on the part of the plaintiff that Labeaume's patent is void, because it includes a greater quantity of land than was confirmed to him. There is no validity in this objection. Labeaume petitioned for 360 arpens of land; the surveyor was ordered to put him in possession of the land, and the survey was made for 374 arpens, and a plat was certified with metes and bounds, and all the natural and artificial monuments on the ground were carefully noted thereon. Labeaume was put into the possession of this land by the survey, and it appears from the plat that he had houses and enclosures upon the tract. The confirmation can not be limited as to quantity by the decision of the commissioners. *Ott* v. *Soulard*, 9 Mo. Labeaume complied with all the provisions of the several acts of Congress; he possessed the land included within Soulard's survey; he claimed it before the board, under Soulard's survey, and it was confirmed to him as 356 arpens, and the survey ordered to be made "agreeably to a concession from Zenon Trudeau to Louis Labeaume." The Spanish survey of the Labeaume tract was the concession in fact, and the United States survey No. 3333, on which the patent issued to Labeaume's representatives, was a mere retracing of the lines of Soulard's survey of the same tract, and the excess in quantity, over the 374 arpens, was obtained by accretions on the river bank, and the usual difference that exists between the old and new surveys. The Soulard survey was an authentic act under the Spanish law. (See Inst. of the Civil Law of Spain by Del Rio & Rodriguez, book 3, tit. 7, Johnson's translation, p. 327; *Litchworth* v. *Bartells*, 4 Martin, N. S. 136.)

This objection to Labeaume's confirmation would apply with much greater force to Brazeau's; for, under a confirmation for four arpens, the plaintiff claims sixteen arpens.

IV. It is further insisted that Labeaume's patent is void, because the confirmation includes the reservation of Brazeau within the Soulard survey. If this be so, then Labeaume had the better title under the confirmation to him. But the board had no power to decide upon the location of the land confirmed; that power was vested in the surveying department. The confirmation to Brazeau does not locate the reservation within Soulard's survey for Labeaume, but expressly directs a survey to be made "agreeably to a reserve made in a sale from Brazeau to Labeaume, recorded in book C, page 339 of the recorder's office."

This objection to Labeaume's patent is wholly untenable. A patent issued by the United States is conclusive proof that the party in whose favor it was issued had complied with the requirements of the act of Congress. *Jenkins* v. *Gibson*, 3 Annual, 203.

The same argument used by plaintiff to make the confirmation to Brazeau effectual to pass the title to a tract of 16 arpens at the south-east corner of Labeaume's tract, would make the confirmation to Labeaume, for all the land within Soulard's survey, a complete grant of the fee, and the patent vests the title in Labeaume for that identical land, and none other.

V. The patent to Labeaume is conclusive in any action in a State court; it imports absolute verity as a matter of record. *Patterson* v. *Winn*, 5 Peters, 241; *Bagnall* v. *Broderick*, 13 Peters, 450; *Galt* v. *Galloway*, 4 Peters, 342; *Wilcox* v. *Jackson*, 13 Peters, 499.

VI. The plaintiff is barred from obtaining the relief he seeks by laches. *Pitt* v. *Vattier*, 9 Pet. 416; *Smith* v. *Clay*, 3 Brown's Ch. Rep. 640; *Kane* v. *Bloodgood*, 7 John's Ch. R. 93; *Hughes* v. *Edwards*, 9 Wheat. 489; 3 Johns. Ch. R. 129; *Bolinger* v. *Chouteau*, 20 Mo. 89; *Keeton's heirs* v. *Keeton*, 20 Mo. 530; *Elmendorf* v. *Taylor*, 10 Wheat. 168. In all these cases, it will be found that the rule is well settled "that the same effect will be given to the statute of limitations in equity as at law." (See also *Hunt et al.* v. *Wickliffe*, 2 Peters, 212; *Peyton et al.* v. *Stith*, 5 Peters, 493-4.)

If the lapse of time, sufficient to bar the claim under the statute of limitations, appears on the face of the petition, the disability must be shown or a demurrer will lie. (See cases above cited.) No such disability is shown by the plaintiff in his pleadings, to which I briefly refer:

"The plaintiff states in his petition (printed record, p. 7,) that the Brazeau tract, excepting four arpens, was sold to Labeaume in May, 1798; that Labeaume occupied the land so purchased, and erected a dwelling-house thereon, (record, p. 8); that on the 10th of April, 1799, the Sanish survey of the grant to Labeaume was made, *so as to include* the four by four arpens of land which Brazeau reserved to himself in his deed to Labeaume, (record, p. 12); that Labeaume made a ditch so as to include said four by four arpens, in 1796 or '7, and used it as a drain and an enclosure until 1803, when he withdrew his fence therefrom and left the four by four arpens without his fences; that Labeaume recognized the right of Brazeau to said four by four arpens in various ways, and no claim was set up to the same until after the sale to Chambers, Christy and Wright; that in April, 1816, Labeaume sold and conveyed the said land he had acquired of Brazeau to William Chambers, who conveyed two-thirds thereof undivided to William Christy and Thomas Wright, (record, p. 14,) and prior to 1823 they entered into said four arpens and unlawfully withheld the same from Pierre Chouteau, Brazeau's grantee; that Chouteau sued Christy in trespass and ejectment in May, 1823; that he suffered a non-suit in June, 1824, (record, p. 15); that one Strother bought the four arpens of Chouteau, and sued William Christy again in trespass and ejectment therefor in October, 1827, and suffered a non-suit in November, 1828; that Chambers, Christy and Wright in 1816, laid off the tract of land purchased of Labeaume into blocks and lots as "North St. Louis," and included the whole of said four arpens therein; that said four arpens were then unenclosed and vacant, (rec. p. 16); that said four by four arpens lay open and unenclosed as a common to the public from 1799 until 1827, when a small building was erected thereon by one Lapsley, but under whom

Lapsley entered plaintiff is ignorant, (though he swears in a preceding page of the petition that a suit in ejectment was then pending by Strother against William Christy for the same land); that Lapsley vacated the house about 1831; that the land remained vacant until 1843, when William Chambers built a house on the four by four arpens; that in February, 1852, plaintiff sued many persons in ejectment for the said four by four arpens; that one case was tried and judgment rendered for defendant, and the other suits were dismissed in March, 1855, (record, p. 17); that plaintiff conveyed one lot in Labeaume's tract, as part of said four by four arpens, to *West*, who sued Cochran in the Circuit Court of the United States, and judgment was rendered for the defendants, and, on appeal to the Supreme Court of the United States, the judgment was affirmed in February, 1855; that plaintiff (record, p. 18) has used all the means in his power to recover said land by suits; that in 1846 he entered upon a part of the tract, claiming the whole, and some of the defendants turned him and his tenants out by force; that Carlisle & Keyser, his tenants, sued in forcible entry and detainer, and obtained judgment of restitution and execution thereof."

The foregoing averments do not show any disability in the plaintiff or those through whom he claims; and upon the face of the petition it appears that Chambers, Christy and Wright entered into and have held possession of said premises from 1816 until this time. That possession has not been interrupted, except by the entry of plaintiff into lots Nos. 1, 2 and 3, which he now holds, and which are not the subject of controversy in this suit. As early as 1823, more than a third of a century ago, the persons through whom plaintiff claims had actual notice of the entry and possession of William Christy, a cotenant in common with Wm. Chambers and Thomas Wright, claiming under the Soulard survey and the confirmation to Labeaume. The lapse of time since then is a complete bar to the relief sought by the plaintiff.

The judgment should be affirmed.

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of Counsel for the Defendants.

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