Maguire v Tyler & 90 others

382/1(B)

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RG 600
Supreme Court of Missouri
Case Files

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Box 6

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Number of Items 7

Magwire vs. Tyler

between pages 36 and 37 map "J"

between pages 40 and 41 map "N"

between pages 50 and 51 map "T"

between pages 56 and 57 at bottom of map is "Sur 2974"

between pages 70 and 71 at middle left of map is "Diagram accompanying the Report of the Surveyor … June 16th 1847"

between pages 92 and 93 at top of map is "Plat of a Survey of the Claim of Louis Labeaume"

between pages 100 and 101 at top of map is "Sur. 3332"

75

75
Oct Term 1857

Oct. T. 1857.

John Maguire,
Appellant,
vs.

William C. Tyler, Louis A. LaBeaume, John R. Shepley, Isaac N. Stugeon et. al.
Respondents.

Krum and Harding and Glover & Richardson
for Pltff
Hill, Grover & Hill and John R. Shepley
for Defts.

Filed 3d. September 1856.
Wm. S. Hanville
Clk.

This Transcript $102.50 Paid by Pltff.

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SUPREME COURT.

OCTOBER TERM 1856.

STATE OF MISSOURI, } ss.
COUNTY OF ST. LOUIS, }

Be it remembered that on the twenty-second day of August, in the year of our Lord one thousand eight hundred and fifty-five, there was filed in the office of the clerk of the St. Louis Land Court, a Petition, which is in the words and figures following, to-wit:

[The Original Petition omitted by stipulation.]

And on the second day of July, A. D. 1856, there was filed an agreement in the words and figures following, to-wit:

JOHN MAGWIRE,
vs.
MARY L. TYLER, and others. } In St. Louis Land Court.

The Clerk of the St. Louis Land Court, in making a transcript of the Record for the Supreme Court, may omit the original Petition and Demurrer thereto.

St. Louis, July 1, 1856. KRUM & HARDING, for Plff.
HILL, GROVER & HILL, Att'ys for Defts.

Upon the filing of the "original petition" a Summons was issued to the sheriff of the county of St. Louis, in words and figures as follows, to-wit:

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

To the Sheriff of St. Louis County—Greeting:

We command you to summon Wm. C. Tylor, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thos. L. Sturgeon, Joseph Templeton, Marshall Brotherton, Calvin Case, Benj. F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith, and Virginia M.,

his wife, George W. Goode and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A. his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, to appear before the Judge of our Saint Louis Land Court on the first day of the next term thereof, to be held in the city of St. Louis, within and for the county of St. Louis, on the second Monday of October next, then and there to answer the complaint of John Magwire, as set forth in the annexed petition: And have you then and there this writ.

SEAL

Witness Charles A. Mantz, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the city of St. Louis, this twenty-third day of August, in the year of our Lord eighteen hundred and fifty-five.

C. A. MANTZ, Clerk.
By J. B. WALSH, Deputy.

Upon which Summon the Sheriff made his return in words and figures as follows, to-wit:

Executed this Writ in the county of St. Louis, on the 24th day of August, 1855, by delivering copies of the same as furnished by the clerk, to Isaac H. Sturgeon, Daniel A. Rawlings, Marshal Brotherton, Wm. L. Ewing, and Thomas J. Beirne, and by delivering a copy of this writ and petition as furnished by the clerk, to Louis A. Labeaume, on the 25th day of August, 1855, and by delivering a copy of this writ, on the 27th day of August, 1855, to William C. Tylor, and by delivering copies of this writ, on the 29th day of August 1855, to David D. Mitchell Sr., Fanny C. Mitchell, Taylor B. Mitchell and Wm. A. Pendleton, and

by leaving copies of this writ at the usual places of abode of Mary S. Mitchell, Susan P. Mitchell, David D. Mitchell Jr., Charles G. Mitchell, and Mary A. Pendleton, all with-named defendants with a white person, over the age of fifteen years and members of said defendants' families, and by delivering a copy of this writ on the 29th day of August 1855 to George W. Sparhawk, Wm. H. Glasgow, Louis A. Benoist, John Brotherton, and John B. Gibson, and by leaving copies of this writ at the usual places of abode of Alfred Dryden, Margaret Dryden, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, and James Patterson, all the within named defendants with a white person over the age of fifteen years and members of the said defendants' families, and on the 31st day of August 1855, by delivering copies of this writ to Joseph Templeton and Calvin Case, and by leaving copies of this writ at the usual places of abode of Mary Gordon, Benjamin Vice, Seaborn Miller, Mark Chester Jennings, Benj. F. Jennings, and Joseph Dennis, all within named defendants with a white person over the age of fifteen years and a member of said defendants' family, and by delivering copies of this writ on the 6th day of September 1855 to Louisa R. Brown, Laura H. Brown, Mary Ann Lakenan, George W. Goode, and Francis S. M. Goode, and on the same date, viz: the 6th day of September 1855, by leaving copies of this writ at the usual places of abode of James B. Brown, Robert B. Brown, and Matilda N. Taylor, with a white person over the age of fifteen years and a member of Brown's family, and by delivering a copy of this writ on the 3d day of September 1855, to James R. Lackland, and on the 4th day of September 1855 by delivering a copy of this writ to John Wickham, and by delivering copies of this writ on the 11th day of September 1855 to Theodore P. Green, Thomas L. Sturgeon and John R. Shepley, and by delivering a copy on the 20th day of September 1855 to Martha A. Wills, and by offering to read the petition to all the defendants, and by leaving a copy of this at the usual place of abode of Harriett M. Dean on the 20th day of September 1855, with a white person over the age of fifteen years and a member of said Dean's family, Mary L. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Francis S. Tyler, Roberta Tyler, James Guthrie, Wm. Chambers, Edward D. Hobbs, Joseph Cochran, Susan P. Christy, Thomas A. Wright,

A. B. Stone, G. B. Boomer, and L. B. Boomer, not found in my county.

TURNER MADOX, Sheriff.
By J. S. WILKINS, Deputy.

Fee, $54.00
Non est, 8.50

$62.50

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

OCTOBER TERM, 185[illegible],—Saturday, January 19th, 1856.

John Magwire, vs. Wm. C. Tyler, L. A. Labeaume & others, } Leave given Sheriff to amend his return.

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

SATURDAY, JANUARY 26TH, 1856.

John Magwire, vs. Tyler, Labeaume and others. } Twenty days time given plaintiff to file amended petition.

And afterward, on the eleventh day of February, A. D. 1856, there was filed an amended petition, in words and figures as follows, to-wit:

JOHN MAGWIRE, Plaintiff,
VERSUS
Mary L. Tyler, William C. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie J. Tyler, Roberta Tyler, James Guthrie, William Chambers, Louis A. Labeaume, John R. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshal Brotherton, Calvin Case, Benjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Good and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A., his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary H., his wife, Theodore P. Green and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings,

Thomas Shaffey, John Brotherton, John B. Gibson, Geo. W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G. B. Boomer, L. B. Boomer, Benjamin Vice, Louisa R. Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland, Orleana Schamburgh, George Case, George T. Hardcastle and Adalade, his wife—Defendants.

IN THE ST. LOUIS LAND COURT, [illegible]

TO THE HONORABLE JUDGE OF THE ST. LOUIS LAND COURT, IN CHANCERY SITTING:

JOHN MAGWIRE, the plaintiff in the above entitled cause, by leave of the said Court exhibits this his amended petition, and states, that on or about the second day of October, in the year 1793, one Esther, free mulatress residing in the then town of St. Louis, exhibited her petition in the Spanish language to Don Zenon Trudeau, Lieutenant Governor of the Spanish province, afterwards known as Upper Louisiana, asking for a concession or grant of land in the northern part of said town of St. Louis, situate on the border of the Mississippi river, to be bounded on the three sides by the domain of his Majesty the king of Spain, and on the other by the shores of the Mississippi, the northern part of which to be situated between the earthbarn, *La Grange de Terre*, and the bluffs of the Mississippi, having on each end four arpents, running about from the East, North East to the West South West, and extending twenty arpents, nearly running from the East, North-north West, to the South-south East, to which petition there was annexed a plat or diagram, showing the form and relative position of the tract of land asked for—a copy of which petition, correctly translated into the English language, and a copy of said plat are filed herewith, and marked **A**, (see exhibits) and made an exhibt herein.

The Plaintiff further states, that on or about October 3d, 1793, Don Zenon Trudeau, said Lieutenant Governor, made his declaration and certificate in writing in the Spanish language, to the effect that he had put said Esther into possession of the said tract of land asked for by her in her said petition—a copy of said declaration and certificate, correctly translated into the English lan-

guage is filed herewith, marked **B**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about the 5th day of October, 1793, the said Trudeau, Lieutenant Governor aforesaid, made a concession in writing in the Spanish language and in conformity with the laws, usage and practice of the Spanish Government, of said tract or parcel of land to said Esther—a copy of which concession, correctly translated into the English language, is filed herewith, marked **C**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about June 1st, 1794, one Joseph Brazeau, a citizen of the said town of St. Louis, exhibited his petition to said Lieutenant Governor for a tract of land in the western part of said town, situated beyond the foot of the mound called the 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 said tract thereby 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—a copy of which petition, correctly translated into the English language, is filed herewith, marked **D**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about the 10th of June, 1794, said Lieutenant Governor made his declaration and certificate in writing in the Spanish language, to the effect that he put said Joseph Brazeau into possession of said tract or parcel of land, designated in his said petition, of 4 arpents front by 20 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 Rouisseau de Pierre (Stony Creek), bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to his Majesty's domain, and at the two ends bounded 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 mulattress named Esther—a copy of which declaration and certificate, correctly translated into the English language, is filed herewith, marked **E**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about June 25th, 1794, the said Trudeau, Lieutenant Governor as aforesaid, made a concession in writing in the Spanish language, in conformity with the laws, usage and practice of the Spanish Government, of said tract or parcel of land last above mentioned, to said Joseph Brazeau—a copy of which concession, correctly translated into the English language, is filed herewith, marked **F**, (s. exh.) and made an exhibit herein. And after said concession was made to him as aforesaid, said Joseph Brazeau took possession, and possessed and cultivated the same during the years 1794, '95 and '96, and thence down to the time that he sold and conveyed a part of said tract of land to Louis Labeaume, as hereinafter stated.

The Plaintiff further states, that on or about May 9th, 1798, the said Joseph Brazeau, by his deed of that date in the French language, sold and conveyed to one Louis Labeaume, sixteen arpens, part and parcel of said tract of land conceded to said Joseph Brazeau by said Lieutenant Governor as aforesaid; the said parcel conveyed by said deed being four arpens in width by sixteen arpens in depth—but the said Brazeau reserved to himself four arpens of said tract conceded to him as aforesaid, which four arpens so reserved to be taken at the foot of the hillock in the southern part of the said four by twenty arpens conceded to said Brazeau as aforesaid—a copy of which deed made to said Labeaume and the reservation therein contained, correctly translated into the English language, is filed herewith, marked **G**, (s. exh.) and made an exhibit herein. Which said tract of four by four arpens of land is situated within the limits of the outboundary line of the village of St. Louis, run in conformity to the 1st Section of the Act making further provision for settling the claims to land in the Territory of Missouri, approved June 13th, 1812.

The Plaintiff further states, that from and after the making of said last mentioned deed, said Joseph Brazeau continued to claim, hold and possess the said four arpens of land reserved to himself in his said deed, and so continued to hold, claim and possess the said four arpens down to the time he agreed to convey the said four arpens to Pierre Chouteau, as hereinafter stated; and said

Labeaume occupied the land sold to him, and erected a dwelling house thereon and occupied the same.

The Plaintiff further states, that after the making of said deed by Brazeau to said Labeaume (the precise date the plaintiff is not able to state), the said Labeaume presented his petition to said Lieutenant Governor in the Spanish language, stating in said petition in substance that he had purchased of said Brazeau a parcel of land which had but a very limited depth, and said Labeaume asked said Lieutenant Governor, that he would grant to him 360 arpens of land, including that which he had acquired from said Brazeau, that is to say 20 arpens in depth from the Mississippi, ascending Rocky Branch West, quarter South, by sixteen arpens front along the Mississippi, to be taken from the descent of the road into the creek, which is the same front of the said petitioner's land—a copy of which petition, correctly translated into the English language, is filed herewith, marked **H**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about February 15th, 1799, the said Lieutenant Governor acted upon the said petition of said Labeaume, and ordered that a survey should be made for said Labeaume of the land asked for in said petition, and that he be put into possession—a copy of which order, correctly translated into the English language, is filed herewith, marked **I**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about April 10th, 1799, the Spanish Government caused a survey to be made by Don Antoine Soulard, acting surveyor in said Spanish province, for said Labeaume, and which survey was intended and ordered to be made of the land that said Labeaume had asked for in his petition to the Lieutenant Governor above mentioned; but the said surveyor Soulard, either by mistake or design, so made said survey as to include the whole of the four by four arpens of land which said Brazeau reserved to himself in his said deed to said Labeaume, as will more fully and at large appear by reference to said survey—a copy of which is filed herewith, marked **J**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about September 22d, 1810, the board of Commissioners for the adjustment of land titles in the territory of Missouri, acting in pursuance of and in

conformity with the laws of the United States in such cases provided, confirmed to said Joseph Brazeau four arpens of the tract or parcel of land that was conceded to him as aforesaid by the said Lieutenant Governor, being the same four arpents which the said Brazeau reserved to himself in his said deed made to said Louis Labeaume mentioned herein before, and said Commissioners, by the same act, confirmed 356 arpens to said Labeaume —a copy of which confirmation is filed herewith, marked **K**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that the said Commissioners in pursuance of and in conformity with the laws of the United States, on or about June 14th, 1811, issued their certificate in writing, numbered 983, to the effect that said Joseph Brazeau was then entitled to a patent under the provisions of the 4th Section of the act of Congress, entitled "An act respecting claims to lands in the territory of Orleans and Louisiana," passed March 3d, 1807, for four arpens of land, situated in the District of St. Louis on the Mississippi, and ordered the same to be surveyed agreeably to a reserve made in the said sale of said Joseph Brazeau to said Louis Labeaume—a copy of which certificate is filed herewith, marked **L**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about July 26, 1816, the said Joseph Brazeau and Therese, his wife, by their deed of that date, written in the French language, conveyed all their right, title, claim and interest in the said tract or parcel of land, conceded as aforesaid to said Brazeau, to Pierre Chouteau; the said Brazeau having long before the date of this deed agreed to sell and convey said four arpens to said Chouteau, and which deed was duly acknowledged and recorded in the Recorder's Office of St. Louis county on the same day said deed was made—a copy of which deed, correctly translated into the English language, is filed herewith, marked **M**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that in the month of November, in the year 1817, by authority of the Surveyor General of the United States for the district of Illinois and Missouri, the said four arpents of land reserved by said Joseph Brazeau as aforesaid, was surveyed; which survey was made by one Joseph C. Brown, Deputy Surveyor under the said Surveyor General; and the said Deputy Surveyor in his report of said survey, stated in substance

and effect that he had surveyed "two tracts in one"—the one confirmed to Louis Labeaume for 356 arpens, the other under Joseph Brazeau for four arpens, together 360 arpens, equal to 306¼ acres, beginning at the mouth of the branch, the South East corner of Easton's tract, thence down the Mississippi river bending therewith (giving course and distances) to a stone at the mouth of an old ditch, the lower corner on the river, thence westwardly (giving courses and distances) to a stone at the South West corner of the tract, thence northwardly (giving courses and distances) to the branch where the road crosses, and thence meandering down the same (giving course and distances) to the mouth of the branch at the beginning—a copy of which survey is filed herewith marked **N**, [s. exh.] and made an exhibit herein.

The Plaintiff further states, that on or about June 1st, 1826, Pierre Chouteau, and wife, by their deed of that date, duly recorded in the Recorder's Office of St. Louis County, sold and conveyed to one George F. Strother the said four arpens of land confirmed as aforesaid to said Joseph Brazeau, or his legal representatives; describing said four arpens in said deed in substance as follows: a tract of land containing four arpens, running on the river and running back four arpens, making sixteen arpens, being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by said Brazeau to Pierre Chouteau —a copy of which deed is filed herewith, marked **O**, [s. exh.] and made an exhibit herein.

The Plaintiff further states, that on or about September 3d, 1830, the said George F. Strother and Theodosia, his wife, by their deed of that date, which is duly recorded in the Recorder's Office of St. Louis county, conveyed the said four by four arpens (making sixteen arpens in superficies) of land to John Mullanphy, and John O'Fallon, in trust for the sole use, benefit and behoof of and for the St. Louis Marine Railway Company, and which deed contained and has in it a clause to the effect that said Mullanphy and O'Fallon (trustees as aforesaid), shall hold said property for the sole benefit of the St. Louis Marine Railway Company, and shall obey the written instructions of said Company in all things relative to said premises—a copy of which deed is filed herewith, marked **P**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that sometime in the month of November, 1840, the said George F. Strother departed this life, intestate, and in the month of March, 184–, Alexander Hamilton, Esq., was appointed by the Probate Court in and for St. Louis county, Administrator of all and singular the property and effects of said Strother, as will appear by a copy of the letters of administration granted to him, filed herewith, marked **Q**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that, inasmuch as the personal property belonging to the estate of said George F. Strother, was insufficient to pay and satisfy the debts established against said estate, the 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 the real estate belonging to the estate of said George F. Strother, including in said order, among other lands, the said sixteen arpens which said Pierre Chouteau and wife conveyed to said Strother as aforesaid; and in pursuance of said order of said Court and in conformity with the laws of the State of Missouri, in such cases provided, the said Administrator, on or about the 4th day of May, 1846, offered the said sixteen arpens of land for sale at public vendue at the Court House in said county, and at said sale the plaintiff became and was the highest and best bidder therefor, and said sixteen arpens of land and all the right, title and interest of the estate of said George F. Strother therein, were struck off to the plaintiff, and he thereby became the purchaser of said sixteen arpens; which sale was approved by said Court. And afterwards, on the 4th day of June, 1846, the said Administrator made his deed to the plaintiff, conveying to him, the said sixteen arpens and all the right, title and interest of said Strother therein; which deed is duly recorded in the Recorder's office of St. Louis county, and a copy of which is filed herewith, marked **R**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that on or about the second day of January, 1852, John O'Fallon, surviving trustee for said Saint Louis Marine Railway Co., (the said John Mullanphy having before that time departed this life,) by the authority and direction of said Marine Railway Co., by his deed of that date conveyed the said sixteen arpens of land, and all the right and interest of said Marine Railway Co. therein to the plaintiff; which deed is

duly recorded in the Recorder's office of St. Louis county, and a copy thereof is filed herewith, marked **S**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that by virtue of the act of Congress, approved March 3d, A. D. 1807, and the confirmation made pursuant to said act, the legal representative of said Joseph Brazeau became the owner in equity of said sixteen arpens of land, reserved by the said Brazeau in his said deed to said Labeaume, and on or about the 25th day of March, 1852, a patent was issued to said Louis Labeaume or his legal representatives, from the General Land Office of the United States, under the direction of the Secretary of the Interior, signed by the President of the United States, which patent was so formed and worded as to include the said four arpens, that is to say, said sixteen arpens in superficies, which said Brazeau had reserved to himself as aforesaid, and which had been confirmed to him or his legal representatives, by the United States, as aforesaid, but the plaintiff avers that said patent was issued, as aforesaid, by the error and mistake of the said Secretary of the Interior, and the issuing of said patent was in violation of the right of the plaintiff, and contrary to law.

The Plaintiff further states, that before said Brazeau made his said deed to said Labeaume, and in which said Brazeau reserved to himself said four arpens of land as aforesaid, and about the year 1796 or 1797, the said Labeaume caused a ditch to be dug and made along the south end of the said four arpens of land then belonging to said Brazeau; which ditch was begun at or near the south west corner of said four arpens, and extended thence eastwardly on a line nearly coincident with the south line of said four arpens, towards the Mississippi river; and said Labeaume also about the same time made a ditch along the west line of said four arpens, towards and extending to the vicinity of said Rocky Creek.

The Plaintiff further states, that said ditch was made by said Labeaume not as an enclosure, but for the purpose of a drain so as to carry off the surface water to the river, that the topography of the said land, and the land adjacent thereto, rendered such a ditch necessary, convenient and useful, and the said Soulard in

making his said survey and plat, refers to said ditch, and the same is indicated on the said plat made by him.

The Plaintiff further states, that, although said Labeaume may have used said ditch or part of it, for the purpose of an enclosure by making a fence along and upon its bank or side, yet he afterwards and about the year 1803, withdrew his fence therefrom, and so constructed his fence as to include only so much and such part of said 4 by 20 arpens of land as he had purchased of said Brazeau, and leaving without his last mentioned fences the said four by four, or sixteen arpens which said Brazeau had reserved to himself, as before stated.

The Plaintiff further states, that the proper and true location of the said four by twenty arpens, conceded to said Brazeau as aforesaid, is in the form of a parallelogram, four arpens in width by twenty arpens in depth; the south end of which parallelogram is at the foot of the hill on which stands, or is situated said La Grange de Terre, and which foot of the said hill is at the place where said Labeaume made said ditch, which extended eastwardly toward the Mississippi river; and from said ditch said parallelogram extends northwardly parallel with said river twenty arpens towards the said Rouisseau de Perre, or Rocky Creek; and the plaintiff further states, that the proper and true location of said four arpens of land reserved by said Brazeau in his said deed to Labeaume, is in the south end or part of said parallelogram above mentioned—the south end of which parallelogram and the land included in it, being bounded by the tract of land which was granted by the said Lieutenant Governor to said free mulattress Esther. And in order to show more clearly the proper and true location of said four by twenty arpens of land, as well as the said four arpens, reserved by said Brazeau as aforesaid, the plaintiff files herewith a *plat* or map, marked **T**, (s. exh.) and made an exhibit herein, and which plat or map also shows the proper and true location of said ***Earth Barn*** (La Grange de Terre,) or big mound, and also the location of said ***Rouisseau de Perre*** or Rocky Creek, with its course and meanderings to its junction with the Mississippi river.

The Plaintiff further states, that the said Louis Labeaume recognized the right and proprietorship of said Joseph Brazeau to said sixteen arpens, reserved as aforesaid, and in various ways

signified his full and complete acquiescence in said Joseph Brazeau's said right, and said Labeaume while he continued owner of the land he purchased of said Brazeau, never attempted to molest or interfere with the right of said Brazeau to claim and possess as his own, said four arpens reserved to himself in his said deed to said Labeaume, and it was not until after said Brazeau conveyed said four arpens to said Chouteau, and until after said Labeaume had conveyed away his right and interest in the land he had acquired from said Brazeau, that any claim or pretended claim was ever set up to said four arpens of land, and the first claim that was ever set up to said four arpens of land was by parties who purchased from and claimed under said Labeaume, as hereinafter stated.

The Plaintiff further states, that on or about the 27th day 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 four by twenty 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 four arpens of land, owned and reserved by said Brazeau, and the said Christy after the making of said deed by said Chambers, but prior to May 1st, 1823, actually but without any claim or pretence of right thereto, entered into and upon said four arpens, and unlawfully withheld the same from said Pierre Chouteau, who was 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 states, 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 George 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, that 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 states, that the 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 states, 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 inclosed, 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.

The Plaintiff further states, that the said four by four arpens of land were uninclosed and lay open as a common to the public, without fences or buildings thereupon, from about the year 1799 or 1800, until the year 1827, or thereabouts, when a small building was erected on said land by one Lapsley; but the plaintiff does not know under whom or what right or authority said Lapsley went upon said land; but said Lapsley soon afterwards and sometime in the year or about the year 1831, vacated said building, and went off from said land, and from that time said land remained vacant and unoccupied until sometime in the year 1843, when the said William Chambers, who purchased from Labeaume as before stated, erected a small building on said four by four arpens, near the Mississippi river.

The Plaintiff further states, 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 vs. Benjamin Vice, John Maguire vs. Charles L. Annis, John Maguire vs. Jos. Cochran, John Maguire vs. Rufus Low, John Maguire vs. John Brotherton, John Maguire vs. Jos. Templeton, John Maguire vs. Jos. Dennis, John Maguire vs. Mark Chester Jennings, John Maguire vs. Robt. Dodd, John Maguire vs. 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, D. 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**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, 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**, (s. exh.) 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 states, 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**, (s. exh.) 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

the facts, in respect to said survey, and that said survey did include said Brazeau's tract or reservation of four arpens, and the plaintiff charges that said patent certificate was obtained by the fraud and misrepresentations of said Chambers.

The Plaintiff further states, that in May, 1841, the said patent certificate, numbered 1151, was cancelled by the Recorder of Land Titles for said district, and on the application of said Chambers, another patent certificate, numbered 1162, was issued and delivered to said Chambers, who made application to the Commissioner of the General Land Office, for a patent to be issued on said certificate, whereupon the said Commissioner required the Surveyor General of said district, to furnish a diagram which would show a survey of the said confirmation to saidBrazeau, as will appear by the letter of said Commissioner to said Surveyor, dated July 19th, 1841, a copy of which is filed herewith, marked **BB**, (s. exh.) and made an exhibit herein; but from some cause unknown to the plaintiff, the said instructions of said Commissioner were not complied with, or acted upon by said Surveyor General.

The Plaintiff further states, that in June, 1847, the Surveyor General of the United States for the District of Illinois and Missouri, in pursuance of instructions given him by the Commissioner of the General Land Office, made his Report, accompanied by a diagram, to the Commissioner of the General Land Office, touching the said concession and confirmation to said Brazeau, and also touching the true location of the said four arpens, reserved by said Brazeau, in his said deed to Labeaume, a copy of which Report is filed herewith, marked **CC**, (s. exh.) and made an exhibit herein; and such proceedings were had before said Commissioner of the General Land Office—that on the 15th December, 1847, the said Report of said Surveyor General, was approved and surveys were ordered to be made in conformity with the said Report and recommendation of the Surveyor General.

The Plaintiff further states, that after said approval by said Commissioner, an appeal was taken from his decision by the representatives of said Labeaume to the Secretary of the Treasury, and the matter remained before said Secretary undecided, until the Department of the Interior, and the office of Secretary of the Interior were established by the Congress of the United States, when the said matter of said appeal was by operation of law, transferred to said Department of the Interior, and the Secretary

thereof, referred the same to the Attorney General of the United States, for his advisory opinion, and said Attorney General, in the year 1851, gave his opinion, affirming and approving the said Report of said Surveyor General; but the Secretary of the Interior, notwithstanding the said opinion of the said Attorney General, the chief law officer of the General Government, and the legitimate and constitutional, as well as legal adviser of every department of said Government, disapproved and set aside the said Report of the said Surveyor General, and ordered another survey and gave special and particular instructions how the lands mentioned and included in said Report of the said Surveyor General, should be surveyed. The opinion and decision of said Secretary of the Interior disapproving said report, and order another survey as aforesaid, is filed herewith, marked **DD**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that in obedience to the order and direction of said Secretary of the Interior, the said Surveyor General caused a survey to be made of said premises in conformity with the instructions of said Secretary of the Interior, and which survey was made by William Milburn, and he made his return and report thereof, together with a diagram or plat of his said survey, numbered 3333, to the office of said Surveyor General, which survey was approved by the said Surveyor General, February 26, 1852, a copy of which survey 3333 and diagram are filed herewith, marked **EE**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that at the same time said Milburn, under the authority and special instruction of said Secretary of the Interior, surveyed a tract or parcel of land four arpens square, as and for the tract or parcel of said four arpens which said Brazeau reserved to himself in said deed, and as and for the same four arpens which were confirmed as aforesaid to said Brazeau—which survey so made by said Milburn, was numbered 3332, and was approved February 26th, 1852, a copy of which survey and a diagram thereof are filed herewith, marked **FF**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that after he was informed that said surveys had been made, returned and approved as aforesaid, and after he was informed that an application had been or would be made to said Recorder of Land Titles for a patent certificate,

in behalf of the assignees of said Louis Labeaume, on said survey 3333—the plaintiff, on the 22d of January, 1852, delivered to and filed with said Recorder, a protest in writing, to the effect that such patent certificate ought not to be issued, because said surveys did not, nor did either of them, correctly locate the said four arpens reserved by said Brazeau, and that said surveys were erroneous and improperly made—a copy of which protest is filed herewith, marked **GG**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that notwithstanding said protest, said Recorder of Land Titles, on the 26th of February, 1852, issued a patent certificate on said survey No. 3333, which was done out of the usual course, and in conflict with the established usage and practice of said office, and which patent certificate is to the effect, that Louis Labeaume or his legal representatives, is entitled to a patent for $339\frac{69}{100}$ acres, equal to $399\frac{30}{100}$ arpens of land—the contents of survey 3333; a copy of which patent certificate is filed herewith, marked **HH**, (s. exh.) and made an exhibit herein; and on the same day said Recorder, notwithstanding the plaintiff's said protest, issued another patent certificate, to the effect that Joseph Brazeau, or his legal representatives, was entitled to receive a patent for 13 61-100 acres, equal to 16 arpens of land, the contents of said survey 3332; a copy of which patent certificate is filed herewith, marked **II**, (s. exh.) and made an exhibit herein. And afterwards, on the 25th day of March, 1852, the President of the United States caused a patent to be issued on said patent certificate, marked HH, to Louis Labeaume, or his legal representatives, for the contents of said survey 3333; a copy whereof is filed herewith, marked **JJ**, (s. exh.) and made an exhibit herein; and on the same day last mentioned, the President of the United States caused a patent to be issued on said patent certificate, marked II, to Joseph Brazeau, or his legal representatives, for the contents of said survey No. 3332, a copy of which is filed herewith, marked **KK**, (s. exh.) and made an exhibit herein.

The Plaintiff further states, that the said order and direction of the said Secretary of the Interior, touching said surveys, also the said surveys 3333 and 3332, were made without authority of law, and they and each of them are erroneous and founded in mistake in this, that said surveys are so made as to include in said survey 3333 the very land which said Joseph Brazeau reserved to himself as aforesaid, which parcel as is shown herein before, is located on and along the Mississippi river, next north of what is called in said survey *Labeaume South Ditch*, and survey No. 3332 is erroneous, because it locates said land so reserved as aforesaid by said Brazeau, South of said Labeaume's south ditch, which is wholly at variance with the calls contained in the concession and confirmation to said Brazeau, and contrary to the true and proper location of said four arpens.

The Plaintiff further states, that the land next south of and along said Labeaume's said south ditch, was never granted or confirmed, so far as the plaintiff knows or believes, to the said Joseph Brazeau, and he never, so far as the plaintiff knows or believes, reserved to himself any of the land next south of and along said south ditch, where said Secretary of the Interior has located said four arpens.

The Plaintiff further states, that the said Secretary of the Interior, in directing said four arpens, claimed by the legal representatives of said Brazeau, to be surveyed and located south of said Labeaume's said south ditch, does not locate the land which said Brazeau excepted and reserved from his said sale to Labeaume, within the boundaries or limits of the four by twenty arpens, originally conceded to said Brazeau by the Lieutenant Governor aforesaid, but entirely without the boundaries or limits of said 4 by 20 arpens, which the plaintiff alleges is not only contrary to the proper construction of the said deed made by said Brazeau to said Labeaume, but it is alike contrary to common sense and common justice, and in derogation of both; and the action of said Secretary of the Interior, in the premises, has hitherto been and is now made, in the hands of and under the direction and control of the defendants, to violate and override the legal as well as equitable rights of the plaintiff to said four arpens of land.

The Plaintiff further states, that the defendents were active in procuring the said surveys to be made and to have them made, and the land located in the manner it has been, under the direction of said Secretary of the Interior, and the defendents, immediately after said surveys were made, availed themselves of said survey No. 3333, and they now claim the benefit and legal advantage thereof, and under the same resist and oppose the plain-

tiff and prevent him from having, possessing or enjoying the said four by four arpens of land which he acquired, as before stated, under said Joseph Brazeau; and the plaintiff charges, that the said survey No. 3333, and the issuing of the patent certificate and patent thereon, as before stated, were procured and obtained by the secret and fraudulent misrepresentations of the defendants or some of them, by which the said action of said Secretary of the Interior was procured.

The Plaintiff further states, that he has always refused to recognize the said action of the Secretary of the Interior, in respect to said surveys and the location of said land; and the plaintiff has in like manner refused at all times to acquiesce in or abide by the said surveys; and he has at all times refused to accept the said patent issued as aforesaid to said Joseph Brazeau or his legal representatives; and the plaintiff now, as he has at all times hitherto done, protests against the said action of said Secretary of the Interior, and against said surveys No. 3333 and 3332, and said patents marked JJ and KK, all, which the plaintiff avers, are in derogation of his rights and contrary to law.

The Plaintiff further states, that the several defendants named in this petition, either claim title to, or are in possession of parts of the said *four by four*, or sixteen arpens of land reserved as aforesaid by said Brazeau, to the extent and in the particulars following, viz:

The defendant Mary L. Tyler claims title, as the only child and heir of said William Chambers, deceased, to lots 46, 48 and 51, and fractional lot *b*, in block 292, also lots 44, 52 and 54 in block 293.

The defendant Mary L. Tyler also claims as devisee of her late husband Robert Tyler, in trust for her children who are also defendants, an undivided interest or estate in lots 4 and 6, in block 289, and lots 103, 104, 105, 112, 113 and 114, in block 321.

The defendant Robert Dodd is the tenant of said Mary L., and in possession of fractional lot *b*, and lot 48 in block 292.

The defendants A. B. Stone, G. B. Boomer and L. B. Boomer are the tenants of said Mary L., and in possession of lot 51, in block 292, and lot 52 in block 293.

The defendant Seyburn Miller is the tenant of said Mary L., and in possession of lot 46 in block 292.

The defendant James Patterson is the tenant of said Mary L., and in possession of lots 4 and 6 in block 289, and lots 44 and 54 in block 293, and lots 103, 104 and 105 in block 321; and said Mary L. is in possession herself of lots 112, 113 and 114 in block 321.

The said Mary L. also claims title through her trustees James Guthrie and William Chambers (the latter being a son of James Chambers), fractional lot *a* and lots 1, 2 and 3 in block 288; and the defendant Daniel A. Rawlings is her tenant and in possession of the last named lots.

The defendants James Guthrie and William Chambers have no other claim or interest, so far as the plaintiff knows or believes, except that they hold said fractional lot *a*, and lots 1, 2 and 3 in block 288, in trust for said Mary L. Tyler.

The defendants Isaac H. Sturgeon and Thomas L. Sturgeon claim the south half of block 294, and the defendants John Brotherton and John B. Gibson are their tenants in possession of said last mentioned lots.

The defendant Louis A. Labeaume claims title to fractional lot *c*, and lot 49 in block 292, and the defendant Thomas Shoffey is his tenant in possession of said lot.

The defendant John R. Shepley claims title to lot 45 in block 293, and the defendants A. B. Stone, G. B. Boomer, and L. B. Boomer, composing the firm of Stone, Boomer & Co., are his tenants in possession of said lot.

The defendant Edward D. Hobbs claims title to lot 53 in block 293, and said defendants Stone, Boomer & Co. are his tenants in possession of the same.

The defendant Thomas A. Dryden claims title to lot 53 in block 293, and the defendant James Patterson is his tenant in possession of said lot.

The defendant Joseph Templeton claims title to lot 102 in block 320, and he is in possession thereof.

The defendant Marshall Brotherton claims title to lot 115 in block 320, and the defendant George W. Sparhawk is his tenant in possession thereof.

The defendant Calvin Case claims title to lot 116 in block 320, and he is in possession thereof.

The defendant Benjamin F. Jennings claims title to 30 feet of lot 106 in block 322, and the defendant Mark C. Jennings is his tenant in possession thereof.

The defendant Harriett M. Dean claims title to lots 107 and 108 and 50 feet of lot 106 in block 322, and the defendant Joseph Dennis is her tenant in possession of said lots.

The defendant Joseph Cochran claims title to 20 feet of lot 5 in block 289, and the defendant James Patterson is his tenant in possession thereof.

The defendants Thomas J. Beyrne and William L. Ewing claim lot 7 in block 290, and they are in possession thereof.

The defendants Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Good and Francis S. M. Good, his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, David D. Mitchell Jr., Susan P. Mitchell, Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleton and Mary A. his wife, William F. Wright, Thomas A. Wright, William H. Glasgow and Mary F., his wife, Theodore P. Green and William F. Wright, trustees of said Mary F. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of said Martha A. Wills, and Orleana Schaumburgh, claim title to lots 47 and 50 in block 292, and the defendant Benjamin Vice is their tenant in possession of the said last mentioned lots.

The defendant William C. Tyler, as devisee of his father Robert Tyler, claims an undivided interest and estate with his sisters who are also defendants, in lots 103, 104, 105, 112, 113 and 114 in block 321, and in lots 4 and 6 in block 289.

The defendants William C. Tyler, Mary L. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fanny S. Tyler, and Roberta Tyler, are children of said Robert Tyler and are interested in the same property before mentioned, which was devised by said Robert Tyler to said Mary L., as before stated; and the said last named children of said Robert Tyler, as the plaintiff has been informed and believes, are now infants under the age of twenty-one years.

The defendants Margaret, wife of Alfred Dryden, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, and Mary Gordon, are children of James Gordon, deceased, and as heirs or devisees

his said children claim title to 60 feet of lot 5 in block 289, and lot 43 in block 293, and the defendant James Patterson is their tenant in possession thereof.

The defendants Louisa R. Brown, James B. Brown, Robert B. Brown, Louisa H. Brown, Mary Ann Lakenan, and James R. Lackland, are the heirs and legal representatives of Lewellyn Brown late of St. Louis County, deceased, and the said heirs and representatives of said Lewellyn Brown, claim title to lot 101 in block 320, and the defendants John Brotherton and John B. Gibson are their tenants and in possession of said last mentioned lot.

The Plaintiff further states, that since the institution of this suit Calvin Case has departed this life, leaving as his only heirs at law George Case, his son, and his daughter Adalade, who is now the wife of George T. Hardcastle, who are made defendants herein.

The Plaintiff further states, that since the institution of this suit, Thomas A. Wright has departed this life, leaving as his only heirs at law Mary H. Glasgow, William F. Wright, Martha A. Wills and Orleana C. Schaumburgh, who are defendants herein.

The Plaintiff further states, that the defendants claiming title and possession, as above stated, have combined and confederated together, and are now combined and confederated together for the purpose of keeping him out of possession and from the use and enjoyment of said four by four arpens of land, and they have hitherto by their acts, combination and confederacy aforesaid, hindered and prevented the plaintiff from having, possessing, using or enjoying said four by four arpens or any part thereof, and the defendants now combine and confederate together for the purpose of keeping the plaintiff out of possession of said land and to prevent him from getting possession thereof, and they have hitherto and do now prevent the plaintiff from taking or holding possession of said land—All which actings and doings on the part of the defendants are contrary to equity and good conscience, and cause great damage and injury to the plaintiff; and the plaintiff alleges that the damage and injury which he has sustained by being kept out of the possession of said land and by being deprived of the use thereof, is equal to the sum of $25,000, and that the total value of the whole of said four by four arpens of land, at the time of exhibiting this petition, set down at a fair and reason-

able estimate, is the sum of $350,000. And the plaintiff further alleges, that the defendants, while they have held, possessed, used and enjoyed said four by four arpens of land, have realized and received large rents, profits, benefits and advantages from the use of said land, and which rents, profits, benefits and advantages realized and received as aforesaid by the defendants, are of the value of $20,000; and for which the defendants should account to the plaintiff—

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 effect 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 jugdment 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.

JOHN MAGWIRE.

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. }

JOHN MAGWIRE, plaintiff in the above and foregoing petition, being duly sworn, says, that the said petition, and the matter therein, as stated, he believes to be true. John Magwire

Subscribed and sworn to, this 11th day of February, A. D. 1856, before me, CHARLES L. MANTZ, Clerk.

[redacted]

EXHIBITS.

(EXHIBIT A.)

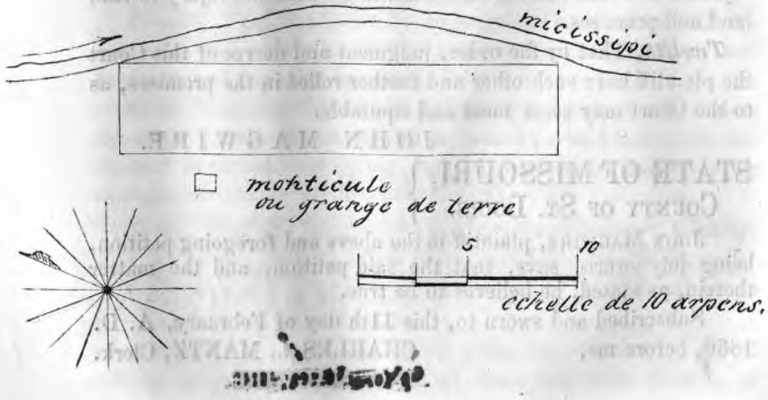
PETITION OF ESTHER, *October* 2, 1793.

[Livre Terrien, No. 5.]

To Don Zenon Trudeau, &c., humbly supplicates the undersigned Esther, free mulatto woman, residing in the town of St. Louis, and has the honor to observe to you that she would wish to obtain, in the northern part of this town, a tract of land situate on the borders of the Mississippi River, bounded on the three sides by the domain of his majesty, and on the other by the shores of the Mississippi, the northern part of which present requested grant to be situate between the earth barn, La Grange de Terre, and the bluffs of the Mississippi, having on each end four arpents, running about from the east, north-east, to the west south-west, and extending twenty arpents, nearly running from the east, north, north-west, to the south, south-east, so that your memorialist might hold it in fee simple for herself, her heirs and assigns for the purpose of mowing hay, grazing her cattle, and doing with the same anything else suitable to her interests, and your memorialist will ever pray, &c.

(Signed) ✕ ESTHER.

St. Louis, Oc'ober 2d, 1793.



(EXHIBIT B.)

We, Lieutenant Governor, after having ascertained that the land petitioned for belongs to the domain of his Majesty, and that it interferes with the claim of nobody, I certify to have put the said Esther, free mulatto woman, in possession of the portion of land designated in her request, having four arpents in front, running about from east, north-east, to west, south-west, on twenty arpents, running about from the north, north-west, to the south, south-east, situate in that portion of this town, between the mound called La Grange de Terre, and the borders of the Mississippi, three sides of which requested land are bounded by the domain of his Majesty on the other side—that is, in the part of the east, north-east—is bounded by the bluffs of the Missippi, as represented by the plat on the back hereof.

In witness, whereof, we have given these presents, in the town of Saint Louis, this third day of Oc'ober, 1793.

ZENON TRUDEAU.

(EXHIBIT C.)

CONCESSION TO ESTHER, *October*, 5*th*, 1793.

I, Don Zenon Trudeau, Lieutenant Governor of the Western part of Illinois, in consequence of the application of Esther, a free mulatto woman, residing in this town of St. Louis, made by her request, having date the second instant, and after having put her in possession ourselves, according to the decree of the following, we have granted, and do grant to the said Esther, and her heirs, and assigns, or any other that might represent her rights, the portion of land above mentioned, having four arpents front on its two extremes, which will be nearly running from the east, north east, to the west, south-west, on twenty arpents, running nearly from the north, north-west to the south, south-east, situate north of this town, then the northern portion of the present grant will be situated between the mound called La Grange de Terre and the borders of the Mississippi, on going down the said river to the complement and extension of the aforesaid twenty arpents in depth, the north, north-west, south, south-east, and west, south, south-west, which are about the directions of the lines, shall be bounded by the domain of his Majesty, and the side of the east, north-east, which is the side next the river, shall be bounded by its bluffs, so that the said Esther may upon it mow the

hay she be in want of, graze her cattle, and do with the same whatever use she may think best for her interest, subject, however, to the laws, charges, and impositions which his Majesty may think proper to impose hereafter on the same.

Given in the town of St. Louis, of Illinois, the fifth day of October, one thousand, seven hundred and ninety-three.

ZENON TRUDEAU.

(EXHIBIT D.)

PETITION OF JOSEPH BRAZEAU, *June 1st*, 1794.

To Mr. Zenon Trudeau, Captain of the Stationary Regiment of Louisiana, Lieutenant Governor, and Commander-in-Chief of the western part of Illinois, Joseph Brazeau, a citizen of this post of St. Louis, hereby supplicates, and has the honor to represent that he wishes to obtain in the western part of this town a tract of land, situate beyond the foot of the mound, called the La Grange de Terre, of four arpents in width, which are to extend from the steep bank or beach (ecore) of the Mississispi river, in the west quarter south-west, by about twenty arpents 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 Stoney Creek, so that the said tract hereby asked for be bounded on the east side, by the bank of the Mississippi, and on the other sides in part by the King's domain, and in part by lands re-united to said domain, on which lands now lies the present concession, in order that the petitioner may cut hay on it for his cattle, and sow it with grain, and the petitioner shall never cease to be thankful for your goodness.

(Signed) JOSEPH BRAZEAU.

St. Louis, 1st of June, 1794.

(EXHIBIT E.)

We, Lientenant Governor and Commander-in-Chief of the Western part of Illinois, after having ascertained that the land asked for, belongs to the domain of his Majesty, and on account of the abandonment which the ancient owners have made of it, and the other part not having ever been conceded, and that the whole is not prejudicial to anybody, do therefore certify to have put Joseph Brazeau in

possession of the parcel of land designated in his petition of four arpents front by twenty arpents 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 Rouisseau de Pierre, (Stoney Creek,) bounded on one side by the bank of the Mississippi, and the opposite side by the lands not conceded or reunited to his Majesty's domain; and at the two ends, bounded on the north north-west by the vicinity of Rocky Creek, and the other in the south south-east shall be bounded by the land granted to the free mulattress named Esther; and in order to certify the same, we have delivered these presents to serve, in the town of St. Louis of Illinois, this tenth of June of the year 1794.

(Signed) ZENON TRUDEAU.

(EXHIBIT F.)

CONCESSION TO JOSEPH BRAZEAU, *June, 25th*, 1794.

I, Don Zenon Trudeau, Captain in the Stationary Regiment of Louisiana, Lieutenant Governor, and Commander-in-Chief of the western division of Illinois, in consequence of the demand made by Joseph Brazean, residing in this town of St. Louis, in his petition dated the first of this month; and after I had put him in possession, according to the decree I have drawn hereabove, on the tenth of the same month, have conceded, and I do concede, to the said Joseph Brazeau in fee simple for him, his heirs, assigns, or whoever may represent his rights, the tract of land, hereabove designated of four arpents front by twenty arpents deep, situate north of this town; which [twenty arpents] shall begin beyond the mound called La Grange de Terre, extending north north-west to the environs of Rocky Branch; bounded on one side by the bank of the Mississippi River, and on the opposite side by lands reunited to the Kings' domain, through which lands passes the present concession, of which one end is to be bounded by the concession of the free mullattress, named Esther; in order that the said Brazeau may cut on it the hay wanted for his cattle, or sow it with grain, said concession remaining liable to all the charges, laws or impositions which it shall please his Majesty to impose in future.

Given in the town of St. Louis, this twenty-fifth of June, in the year 1794.

(Signed) ZENON TRUDEAU.

(EXHIBIT G.)

DEED FROM JOSEPH BRAZEAU TO LOUIS LABEAUME.

May, 9th, 1798.

The year seventeen hundred and ninety-eight, the ninth of the month of May, before us, Don Zenon Trudeau, Lieutenant Governor, Commander-in-Chief, civil and military of Upper Louisiana, was present Joseph Brazeau, inhabitant of this town, who by these presents acknowledges to have sold, ceded, relinquished and transferred to Mr. Louis Labeaume, also inhabitant of this town, a concession of land to him given the twenty-first day of the month of June, of the year 1794, such as the said concession purports to be, and without any warranty ; the said Joseph Brazeau not wishing to be responsible at all for said land, although he has fulfilled the obligations imposed by the laws of the Government, in order to acquire the right of domain and of property, yielding and abandoning to said Mr. Labeaume, the purchaser for him, *his*, or his assigns, all his rights, actions, possessions and property, for the price and sum of forty dollars, which the said Mr. Labeaume has paid him in cash, and for which sum the said Joseph Brazeau gives him a full discharge ; the said Mr. Labeaume remaining content and satisfied with the said concession, consisting of four arpents of land to be taken from the foot of the "elevation or hillock," commonly called the Grange de Terre," by twenty arpents in depth, bounded by the Rouisseau de Pierre (Rocky Creek) at the extremity opposite to the said hillock, bounded east by the Mississippi, and west by the land belonging to the Royal domain ; the said Mr. Brazeau reserving to himself four arpents of land to be taken at the foot of the hillock, in the southern part of said land, for him (the said Mr. Brazeau) to do as he shall please with them, to sell, cede, or alien, as well for him or assigns ; only selling to this effect sixteen arpents in depth to said Mr. Labeaume, who accepts the said sale on the terms and conditions above mentioned; remaining and accepting, the parties have signed in presence of Don Zenon Trudeau, Lieutenant Governor, and of Messrs. Antoine Dubrail and Gregore Sarpy, witnesses of assistance.

Done and passed at St. Louis, of Illinois, the day and year above written.

—— BRAZEAU.
L. LABEAUME.

GR. SARPY, }
ANT. DUBRAIL. }

(EXHIBIT H.)

PETITION OF LOUIS LABEAUME.—SECOND CONCESSION.

To Don Zenon Trudeau, Lieutenant Governor, and civil and military Commander-in-Chief of Upper Louisiana.

Sir,—Louis Labeaume, with all due respect, has the honor to represent to you that he has acquired from Joseph Brazeau, a resident of this town a parcel conceded to him on the 20th of the month of June, 1794. This tract having but a very limited depth and the petitioner having nearly put the whole in cultivation, besides the necessity for him to make establishments for the maintenance (manutention) of the manufactures which he has proposed to you, asks that you be pleased to grant to him 360 arpents of land, including that which the petitioner acquired from Brazeau—that is to say, twenty arpents in depth from the Mississippi, ascending Rocky Branch west quarter south by sixteen arpents front along the Mississippi, to be taken from the descent of the road into the Creek, which is the same front of the petitioner's land. The angle made by the perpendicular line, from the road to the river, by the creek and by the river, will about complete the [quantity] of land asked for by the petitioner, who has the honor to observe to you that this land is entirely barren of wood, and can serve but as a pasture, wanted by the petitioner for the maintenance of the cattle he is obliged to keep for his establishment.

(Signed) LOUIS LABEAUME.

(EXHIBIT I.)

ORDER OF SURVEY FOR LOUIS LABEAUME.

ST. LOUIS, 15th of February, 1799.

Whereas it is evident that the land solicited is totally deprived of timber and wood, is hilly, broken by ravines and unfit for cultivation, and can serve only for the pasturing of the cattle necessary for the use of the mill which is contemplated, I inform the Governor-General that the concession asked for will prove useful to the interested as likewise to this town, without being prejudicial to any body, and considering these circumstances, the surveyor, Don Antoine Soulard, shall put the interested in possession, and make out his survey in continuation, in order to serve to solicit from the Governor-General the title in form which he desires.

ZENON TRUDEAU.

(EXHIBIT J.)

I, Antoine Soulard, surveyor particular of the establishment of Upper Louisiana, do certify that on the second of March of the current year, (in virtue of the foregoing decree, from Don Zenon Trudeau, Lieutenant Governor of these settlements) I went on the land of Louis Labeaume, to execute the survey of the same, conformably to his petition for three hundred and seventy-four superficial arpents. Said survey was made in presence of the proprietor and of the adjoining neighbors, with the perch of the city of Paris, eighteen feet in length, according to the custom adopted in this province of Louisiana. This land is situate at three miles in the north of this town of St. Louis, bounded on the north side, by the bank of Rocky Branch and the domain of his Majesty, on the south side by the lands of divers inhabitants, on the east side by the river Mississippi, and on the west side by vacant lands of the royal domain; and in order that all that is above written may be available whenever needed, I give the present certificate with the foregoing figurative plat, on which are designated the dimensions and the natural and artificial boundaries of said land.

In St. Louis, of Illinois, the tenth of April, of the year 1799.

(Signed) ANTOINE SOULARD,
ACT. SURVEYOR PARTICELAR.

[EXHIBIT K.]

CERTIFICATE OF THE SALE BY JOSEPH BRAZEAU TO LOUIS LABEAUME.

I, Don Zenon Trudaeu, Lieutenant Governor, Commander-inChief, civil and military, of upper Louisiana, do certify that the above concession, except four arpents, have been sold, ceded and transferred to Louis Labeaume, by deed proven before us, the ninth of May of this year, and deposited in the archives of this post.

In St. Louis, of Illinois, the twelfth of May, 1798,

(Signed) ZENON TRUDEAU.

CLAIMS FILED BY LOUIS LABEAUME WITH THE RECORDER OF LAND TITLES, *February*, 26, 1806.

Abstract from the list of lands claimed by Louis Labeaume, and of which the titles, concessions, plats, scales, and certificates of scales,

have been delivered by him to the Recorder of land titles, in order that they be registered and recorded by him, according to the act of Congress, approved on the second day of March, of the year 1805:

—No. 2. Louis Labeaume, 374 arpents 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.

(Signed) LOUIS LABEAUME.

ST. LOUIS, the 26th of February, 1806.

September 3d, 1806.

The Board met agreeably to adjournment. Present: The Hon. John B. C. Lucas and James L. Donaldson, Esq.

The same (Louis Labeaume,) claiming 374 arpents of land, situate on the Mississispi, a distance of about two miles from the town of St. Louis, produces a concession duly registered, from Zenon Trudeau, for four by twenty arpents, dated the 20th of June, 1794, and granted to one Joseph Brazeau; and another concession from said Zenon Trudeau to claimant for the said 374 arpents, including the said four by twenty arpents, dated the 15th of February, 1799. A survey of the same, taken the 20th of March, and certified the 10th of April, 1799, together with a certificate by Zenon Trudeau of the sale of said four by twenty arpents by said Joseph Brazeau, reserving to himself four arpents in superficies—said certificate dated the 12th of May, 1798.

Hyacinth St. Cir, being duly sworn, says that the said Joseph Brazeau [obtained] the said tract of four by twenty arpents, and cultivated the same in the years 1794 '95, and 96; and having sold the same to claimant, he did, in the year '97, put a tenant on the same, who actually cultivated it, until the year 1799, when claimant moved on it; that he was then the head of a family, and did prior to, and on the first day of October, 1800, actually inhabit and cultivate the same, and has continued on it to this day. The claimant abandoning his right to the aforesaid concession of four by twenty arpents, and claiming immediately under the second, to wit—that for three hundred and seventy-four.

The Board reject the same, the said concession not being duly registered.

The Board adjourned till to-morrow, 9 o'clock, A. M.—*Book No.* 1. *Pages* 515, 517 *and* 519.

CONFIRMATION TO LABEAUME AND BRAZEAU.

FRIDAY, September 22, 1810.

Board met. Present: John B. C. Lucas, Clement B. Penrose, Frederick Bates, Commissioners.

Louis Labeaume, claiming 374 arpents of land. (See Book No. 1, page 517.) The Board confirm to Louis Lebeaume three hundred and fifty-six arpents, and four arpents to Joseph Brazeau, and order that the same be surveyed agreeably to a concession from Zenon Trudeau to Louis Labeaume; and as respects the four arpents, agreeably to a reserve made in a sale from Joseph Brazeau to said Louis Labeaume. Recorded in Book C., page 339, of the Recorder's office.

Board adjourned till Wednesday next, at 3 o'clock, P. M.

John B. C. Lucas, Clement B. Penrose, Frederick Bates.—[*See Book No.* 4, *pages* 502, 505, *and* 508.

FRIDAY, June 14th, 1811.

Board met. Present: John B. C. Lucas, Clement B. Penrose and Frederick Bates, Commissioners.

Louis Labeaume, Book 4, 505, survey at the expense of the United States. Board adjourned.

Cert. 982, and 983. John B. C. Lucas, Frederick Bates, and Clement B. Penrose.—[*See Book No.* 5, *pages* 183, 184, *and* 185.

(EXHIBIT L.)

LOUISIANA, { *Commissioners' Certificate, No.* 983. *June* 14, 1811.

We, the undersigned, Commissioners for ascertaining and adjusting the title and claims to lands in the Territory of Louisiana, have decided that Joseph Brazeau, original claimant, is entitled to a patent under the provision of the fourth section of an Act of Congress of the United States, "An Act respecting claims to lands in the Territory of Orleans and Louisiana," passed the third day of March, one thousand eight hundred and seven, for four arpents of land, situate in the district of St. Louis, on the Mississippi, and order that the same be surveyed agreeably to a reserve made in a sale of Joseph Brazeau to Louis Labeaume, recorded in Book C. page three hundred and thirty-nine of the Recorders's office. By virtue of a concession, or order of survey, from Zenon Trudeau, Lieutenant Governor.

JOHN B. C. LUCAS,
CLEMENT B. PENROSE.
FREDERICK BATES.

[EXHIBIT M.]

DEED FROM JOSEPH BRAZEAU TO PIERRE CHOUTEAU,

July 26, 1816.

Whereas, Joseph Brazeau, by deed passed before Don Zenon Trudeau, Lieutenant Governor, &c., under date of the 9th day of May, 1798, the original of which is deposited in the archives of this County Register, No. 2, folio 51, and 52, sold, ceded and transferred to Louis Labeaume, a concession of land granted to me 21st of June, 1794, which concession consists of four arpents of land to be taken from the foot of the hill or mound commonly called La Grange de Terre by twenty arpents in depth, bounded by the rocky branch on the extremity opposite the said mound, bounded on the east by the Mississippi, and the west by the land belonging to the Domain of the King, reserving to myself four arpents of land to be taken at the foot of the said mound, in the southern part of the aforesaid tract, selling for that purpose only a depth of sixteen arpents to the said Louis Labeaume, who accepts the said deed under the terms and conditions therein mentioned, all of which appears by the aforesaid deed. And whereas, I, the aforesaid Brazeau, made this reservation because I had verbally promised this quantity of land, to Pierre Chouteau before the execution of the said deed to the said Louis Labaume, which said Pierre Chouteau paid me at the time the price agreed upon between us for this piece of land, which I reserved, as heretofore set forth; and wishing, and desiring now to fulfil the premise I had made to the said Pierre Chouteau, and to give him title for the aforesaid land by me reserved in the sale passed between the said Louis Labeaume and me herein above mentioned. Therefore know all men to whom these presents shall come, that I, the said Joseph Brazeau and Therese my wife, of the County of St. Louis, Territory of Missouri, for the consideration of one dollar lawful money of the United States, well and truly paid to me by the said Pierre Chouteau of the same place, as we acknowledge by these presents, and of which sum we hold his heirs or assigns acquitted and discharged, have this day sold, ceded and quitted, released, abandoned and transferred to the said Pierre Chouteau, his heirs and assigns, all the rights, titles, claims, possessions, profits, pretentions and demands which we have and can have to four arpents of land in depth in the south part of said concession at the foot of the aforesaid mound, bounded on the east by the Mississippi, west by lands unknown, being the same which I, the aforesaid Joseph Brazeau, reserved by the said deed made and passed

between the said Labeaume and me above mentioned, and being the remainder of the balance of the said concession of land which we granted to the said Pierre Chouteau.

JOSEPH BRAZEAU.
THERESE BRAZEAU.

Witness. { ZOE LADUC, M. P. LADUC.

Acknowledged before Mary P. Leduc, July 26th, 1816. Recorded the same day in Book F. folio 38.

[EXHIBIT N.]

SURVEY BY JOSEPH C. BROWN, Nov. 1817.

Of Confirmation Certificate, 982 & 983.

No. 982 & 983.

Township, No. 45, North, Range No. 47 E. of 5th Principal Meridian.

Surveyed for Louis Labeaume *Two* tracts in one. The one confirmed in his own name for 356 arpents. The other under Joseph Brazeau for 4 arpents, together 360 arpents, equal to 306¼ acres, beginning at the mouth of the branch, the S. E. corner of Easton's Tract. Thence down the Mississippi River bending therewith:

S. 24 deg. E. 12 Chains.
S. 33 deg. E. 14 Chains.
S. 35 deg. E. 13 Chains.
S. 27 deg. E. 8 Chains.
S. 25 deg. E. 13 Chains.
S. 24 deg. E. 15.50; a stone at the mouth of an old ditch, the lower corner on the River.

Thence S. 74½ W. 11 Chains, 50 links, intersects the line of the common fields 63 chains 50 links; a stone the southwest corner of the tract.

Thence N. 15½ W. 10 chains 20 links to the branch where the road crosses. Thence meandering down the same:

N. 50 deg. E. 2 Chains 50 links.
N. 25 deg. W. 5 Chains 70 links.
E. 2 deg.
N. 6 deg.
N. 70 deg. E. 3 Chains 70 links.
N. 2 Chains 86 links.
W. 3 Chains 50 links.
N. 25 Chains E. 4links.

N. 60 E. 1 Chain 50 links.
N. 36 deg. E. 2 Chains 50 links.
N. 80 deg. E. 2 Chains 50 links the mouth of the branch at the beginning.

(Signed JOSEPH C. BROWN, D. S..

November, 1817.

Surveyor's Office, St. Louis, }
September 4th, 1822. }

I certify that the foregoing is a true copy of the Survey on file in this office.

(Signed) WILLIAM RECTOR,
Surveyor General.

To FREDERICK BATES, ESQ.,
Recorder of Land Titles for the Missouri Territory.

Surveyor's Office, St. Louis, }
October 24th, 1832. }

I certify that the foregoing Survey, No. 982, & 983, together with the certificate of Wm. Rector, is recorded in Book C. pages 73 & 74.

To F. R. CONWAY, ESQ.,
Recorder of Land Titles.

[EXHIBIT O.]

DEED FROM PIERRE CHOUTEAU TO GEO. F. STROTHER.

June 1st. 1826.

This Indenture, made the first day of June, in the year 1826, between Pierre Chouteau and Bridget his wife, and George F. Strother of the other part, all of the City of St. Louis, and State of Missouri:

Witnesseth, that the said Pierre Chouteau and Bridget his wife, in consideration of One Thousand Dollars, to them in hand paid by the said George F. Strother, before ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents doth bargain and sell unto the said George F. Strother, his heirs and assign, the following tracts or parcels of land, to-wit: all that tract or parcel of land granted to the said Pierre Chouteau in October 1799 by Carlos Dehault Delassus, Spanish Commandant, beginning at Roy's line running north to Labeaume's south line, and extending from the river to the common field lots west, it being intended hereby, to convey to the said George F.

Strother, his heirs and assigns, all the land contained within the said concession, except that heretofore sold by the said Pierre Chouteau according to his said several contracts, to be limited by the metes and bounds, limited and fixed by the intention of the said parties at the period of contracting. And one other tract of land containing four arpents, running on the river, and running back four arpents, making sixteen arpents lying between the north line of the first described tract of land and the south boundary of the tract of land, sold by Joseph Brazeau to Labeaume, said sixteen arpents being a tract or parcel of land confirmed to Joseph Brazeau, and sold and conveyed by Joseph Brazeau to Pierre Chouteau, together with all the houses and appurtenances thereunto annexed. To have and to hold the said several tracts or parcels [pieces] of land, with the tenements, so intended and bargained to be sold, with every part and parcel thereof, with rights and appurtenances, unto the said George F. Strother, his heirs and assigns forever, and the said Pierre Chouteau and Bridget his wife, do hereby warrant the same free from the claim of themselves and their heirs, and all persons claiming under them, except those who now have deeds recorded in the Clerk's office of St. Louis, according to the modification of said claims aforesaid described.

In witness whereof, the said Pierre Chouteau and Bridget his wife, have hereunto set their hands and affixed their seals, the day and year first above written.

PIERRE CHOUTEAU, [*Seal.*]
SANCIE CHOUTEAU, [*Seal.*]

Signed, sealed, and delivered in the presence of { F. P. Chouteau. C. Chouteau.

Recorded in Book N page 77.

[EXHIBIT P.]

DEED FROM GEORGE F. STROTHER AND WIFE TO JOHN O'FALLON AND JOHN MULLANPHY, IN TRUST FOR THE ST. LOUIS MARINE RAILWAY COMPANY.

Sept. 3, 1830, *Book* 2, 217.

This Indenture, made this third day of September, in the year of our Lord, one thousand eight hundred and thirty, between George F. Strother and Theodosia his wife, of the first part, and John Mullanphy and John O'Fallon of the second part, all of this City and County of St. Louis, State of Missouri. Witnesseth · That the said parties of the first part, for, and in consideration of the sum of eight thousand dollars to them in hand paid by the said party of the second part, at and before the ensealing and delivery hereof the receipt whereof is hereby acknowledged, and thereof acquit and forever discharge the said party of the second part as having received the aforesaid sum of eight thousand dollars, in three several notes, bearing even date, herewith, and subscribed by the said party of the second part, in favor of Henry S. Cox, Cashier, of the Branch Bank of the United States at St. Louis, aforesaid for the use of the United States Treasury, each of said notes for the sum of two thousand six hundred and sixty-six dollars and sixty-six and two-thirds cents, payable in one, two and three years, with interest thereon, from the day of the date hereof, at the rate of six per centum per annum, until paid. They, the said party of the first part, have granted, bargained and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, their heirs and assigns, all their estate, right, title, interest, claim and demand whatsoever, in and to the following tracts, pieces or parcels of land to-wit, all that tract or parcel of land granted to Pierre Chouteau in October, one thousand, seven hundred and ninety-nine, by Carlos Dehault Delassus, Spanish Commandant—beginning at Roy's line running north to Labeaume's south line, and extending from the river to the common field lots, west, except that heretofore conveyed by the said Pierre Chouteau, according to his several contracts, to be limited and fixed by the intention of the said parties at the period of contracting; and also with a reservation of a parcel of the said land contracted to be sold, by the said George F. Strother to Martin Thomas, as surveyed by Rene Paul, as follows; to wit:—Beginning at an old store on the bank of the river Mississippi and on the south side of an old ditch, thence along the upper bank of the Mississippi River, South 26 degrees' East 4 chains 86, to a stone for the south-east corner, thence south 75 degrees, W. 3 chains 23 links, a point in the east boundary line of the common field lots, where is a stone for the S. W. corner, at the foot of, and on the north side of a black oak bush, two inches in diameter, thence along said eastern boundary line N. 1. degree 30, W. 4 chains 86, to the southern boundary line of Labeaume's survey where intersect the same on the east of a sycamore, fifteen inches in diaameter, the north-west corner, thence along the said south boundary line of Labeaume's survey, so called, N. 75 degrees, E. 11 chains to the beginning corner, containing five acres, and ninety-two hundredths of an acre.—Also another tract of land containing four arpents run-

[EXHIBIT R.]

DEED FROM ALEXANDER HAMILTON, Esq.

Administrator of the Estate of Geo. F. Strother, deceased, to John Maguire, June 4th, 1846, *Book A.* 4, 307.

Whereas, the Probate Court for the County of St. Louis, in the State of Missouri, at the March term thereof–that is to say, on the second day of March, in the year of our Lord, one thousand eight hundred and forty-six—did make an order for the sale of the following real estate therein particularly mentioned and described as belonging to the estate of Geo. F. Strother deceased, late of the county aforesaid, for the payment of the debts of the deceased; and whereas I Alexander Hamilton, administrator of the estate of said deceased, did cause the real estate in said order mentioned, to be appraised by Martin Thomas, Joseph S. Hull and John Riggin, three disinterested householders of the county of St. Louis, a certificate of said appraisement to be made by said appraisers, which certificate is on file in the office of the Judge of Probate of said county, and whereas I, Alexander Hamilton, administrator as aforesaid, having caused the said real estate to be advertised by publication three or four weeks prior thereto in the "New Era," a newspaper printed aud published in the city of St. Louis, in said State, and also by ten advertisements put up in public places in the said county twenty duys before the said day of sale, I, the said administrator, did, on the fourth day of May, in the year of our Lord, one thousand eight hundred and forty-six, at the eastern front door of the Court House, of the County of St. Louis, being the time and place mentioned in said advertisement, and between the hours of ten in the forenoon and five in the afternoon of that day, and while the Circuit Court for the County of St. Louis was in session, proceeded to sell the real estate in said ordermentioned, to the highest bidder, on the terms in such order mentioned; and, whereas, subsequently to said sale—to wit, on the fourth day of June, in the year, 1846, —I the said administrator did make report to the Probate Court of the County aforesaid, of my proceedings under the order of sale aforesaid; and the said Probate Court having approved and confirmed the report and proceedings of said administrator in that behalf according to the statute in such case made and provided, said report being now on file in the office of the said Probate Court, and John Maguire of St. Louis, having been the highest and best bidder for the real estate in said order mentioned, and hereinafter described, at, and for the price and sum of three hundred and fifteen dollars, and the said purchaser having made full payment of the durchase money aforesaid. Now, therefore, in order to carry into effect the said sale, by virtue of the statute in such case made and provided, and in consideration of the sum of three hundred and fifteen dollars, full payment of which I do hereby acknowledge to have received from the said John Maguire, I, the said Alexander Hamilton, administrator as aforesaid, do hereby grant, sell and convey unto the said John Maguire, and unto his heirs and assigns forever, all the right, title and interest which the said George F. Strother had in, and to, the following described real estate at the time of his decease—that is to say, a certain tract of land, situate in the city of St. Louis, containing sixteen arpents, running on the Mississippi river four arpents, and running back four arpents, being a tract or parcel of land which the said George F. Strother acquired from Pierre Chouteau and wife, by deed dated June 1st, 1826, recorded in the Recorder's office of the county of St. Louis, in Book N, page 77, to which deed reference is here made for a more particular description—to have and to hold the same, with all the appurtenances thereunto belonging, unto the said John Maguire and his heirs and assigns forever. In witness whereof, I, the said Alexander Hamilton, as such administrator aforesaid, have hereunto set my hand and seal, the fourth day of June, A. D. 1846.

ALEXANDER HAMILTON,
Administrator, &c.

[EXHIBIT S.]

DEED FROM THE ST. LOUIS MARINE RAILWAY COMPANY TO JOHN MAGUIRE.

Book C, 6, 492. *January* 2, 1852.

Whereas, at a meeting of the stockholders of the St. Louis Marine Railway Company, held at the office of F. M. Haight, on the 31st day of December, in the year of our Lord 1851, in pursuance of a notice of said meeting, duly given, in conformity to an act of General Assembly of the State of Missouri, entitled "an act to repeal the charter of the St. Louis Marine Railway Company," approved on the 15th day of February, in the year of our Lord 1841, the following resolution was unanimously passed:

Resolved, That the land belonging to, or claimed by the St. Louis Marine Railway Company, "north of what is known as Labeaume's ditch, being four arpents in front on the river, and four arpents in

depth; and bounded east by the Mississippi river, and south by said ditch of Labeaume, and containing sixteen arpents, be conveyed to John Maguire; and that John O'Fallon, surviving trustee, who holds the legal title to said land, be and he is hereby directed to make said conveyance to said Maguire, and deliver the same."

Now, therefore, this deed, made on this 2d day of January, in the year of our Lord 1852, between the said St. Louis Marine Railway Company, party of the first part, and John O'Fallon, party of the second part, and John Maguire, party of the third part—witnesseth, that the said party of the first part, for and in consideration of one dollar, to the said party of the first part paid in hand, by the party of the third part, and the further consideration expressed in an agreement, bearing even date herewith, doth hereby grant, sell, alien, enfeoff and confirm unto him, the said Maguire, the land belonging to, or claimed by the St. Louis Marine Railway Co., in the city of St. Louis, north of the ditch called Labeaume's ditch, and is more fully described hereinafter. And the said party of the second part, for the consideration of one dollar, to him in hand paid, by the party of the third part, doth hereby transfer, convey, release and quit claim unto the said Maguire, the party of the third part, all his right, title and interest in the said land hereinabove described; and doth convey particularly all his right and estate acquired by deed of George F. Strother and wife, and by deed of the Solicitor of the Treasury of the United States, to John O'Fallon and John Mullanphy, Trustees of the said St. Louis Marine Railway Company, in the said tract of land hereinabove conveyed. To have and to hold the said above conveyed and described piece of land, with all rights, privileges and appurtenances thereto belonging, unto him the said Maguire, his heirs and assigns forever. This deed is made, and is hereby declared to be subject to the performance, by said John Maguire, of an agreement with the stockholders of said company, bearing even date herewith. (.) In making this conveyance, the said John O'Fallon does not make any guaranty or incur any responsibility as to the title or otherwise.

In testimony whereof, John O'Fallon, expressly authorised so to do, hath hereunto subscribed his name on behalf of said party of the first part, and hath affixed the seal of the said St. Louis Marine Railway Company; and also, John O'Fallon, surviving trustee, hath hereunto set his hand and seal. JOHN O'FALLON,

On behalf of the St. Louis Marine Railway Co., as surviving trustee.

[SEAL.]

JOHN O'FALLON. [SEAL.]

(EXHIBIT T.)

REPORT OF SURVEYOR.

In the Circuit Court of the United States. } COUNTY SURVEYOR'S OFFICE, ST. LOUIS, Mo., Nov. 22, 1852.

By virtue of an order of the Court in this case, that a survey be made of the premises in dispute herein, to me directed and delivered, and in pursuance of due notice given to the parties, I have, since the tenth day of September last, executed said order upon the premises in the following manner, to wit:—

I was met on the premises by John Maguire, who appeared for the plaintiff, and B. A. Hill, Esq., who appeared for the defendant. The parties pointed out to me the south line of the survey in the name of Louis Labeaume, and the location of Labeaume's southern ditch, which is the south line of said survey, and in that line the stone recently set by General Milburn as the N. W. corner of survey No. 3,332, in the name of Joseph Brazeau, which stone the parties agreed was at a corner of the four arpents reserved by Brazeau in his sale to Labeaume. See Doc. E.

The plaintiff claiming that it was the S. W. corner, and the defendant that it was the N. W. corner, Labeaume's southern ditch being either the north or south line of the said four arpents. The plaintiff claiming that it lay north of the ditch, and requesting me to survey it there—the defendants claiming that it lay south of the said ditch, in accordance with the survey recently made by General Milburn, under the direction of the Surveyor General—the defendant wanting no survey made except the lot No. 103, in Block No. 321, which lot I have surveyed and correctly represented on the map herewith returned, shaded yellow. At the request of the plaintiff, I have made the following survey:—

Beginning at the intersection of the north line of Antoine Roy's survey with the line of curb-stone on the east side of Main street, and running thence N. 5, W. along said line of curb-stone 22 chains and 50 links; thence N. 9°, W. 32 chains and 71 links to the line of Labeaume's survey, to a point 2 chains and 38 links westwardly from the south-east corner of said Labeaume's survey; thence S. 74¾°, W. with the line of Labeaume's survey 9 chains and 53 links, to the corner of Brazeau's survey No. 3332, as before noted, 12 chains and 41 links to the curb-stone on the east side of Broadway; thence N. 21½° W. along the line of curb-stone so far as that a line drawn parallel to Labeaume's south ditch, when produced, will touch the southern side

of Rocky Branch, and at a corner of Labeaume's survey by Milburn, as represented on the map, which line I find, by calculation based upon my own measurements (the buildings, &c., preventing my measuring in its true line,) to be distant from the said south line of Labeaume's survey 58 chains and 33 links, on a course N. 29° W. I now go to the corner of Labeaume's survey, at the bridge, as represented on the map, and run N. 74¾°, E. 15 chains and 43 links, to the bank of the river, the point represented on the map as the N. E. corner of the four by twenty arpents to Joseph Brazeau.

Having established this point, I am enabled to lay down on the map, as I have done, the concession to Joseph Brazeau (see Doc. B) of four by twenty arpents; and from the survey hereinbefore described, together with the description contained in the certified copies of documents furnished me, I have laid down the claim of Antoine Roy, (see Doc. C,) the claim of Esther (see Doc. A,) the claim of Pierre Chouteau (see Doc. D,) and to make the survey of four arpents reserved by Brazeau in his sale to Labeaume (see Doc. E,) as claimed by the plaintiff, which survey I have made at the request of the said plaintiff, as follows:—

Beginning at the N. W. of survey No. 3332, situate as before mentioned, I run N. 29°, W. 11 chains 66⅔ links, to a point from which the east end of a brick house is 31½ links distant, and the north line of C. Case's dwelling house is 14½ links distant.

Thence, at 74¾° E. 12 chains, set a stone for corner, from which the S. E. corner of a lath factory, occupied by Summelman & Marine, bears N. 24° E. 153 links distant, and a large black walnut post set for hitching boats bears N. 72°, E. 95 links distant.

Thence south 29°, E. 11 chains 66⅔ links (four arpents) to a point from which N. E. corner of survey 3332 bears S. 74¾° W., and is 21 links distant; thence south 74¾°, W. 12 chains to the place of beginning, containing 16 arpents of land.

On the east of this survey, and of Brazeau's survey four by twenty arpents, I have represented two lines—the one making the corner at the south, and identical with those of survey 3332, and the other four arpents distant from the west line of said tract, at right angles therefrom.

I have also taken three lines of levels from the Big Mound, or Grange de Terre, which are represented by three lines of profile on the map. From the Big Mound, or Grange de Terre, the ground descends to the shaded blue line on the northern part of survey No. 3332, and from that line the ground begins to rise to the north. I have also represented on the map the general course of Rocky Branch, to

gether with a portion of the topography of the land near the bridge. I have also surveyed the lots and blocks in the four by four arpents, as represented on the map, together with a portion of Broadway with the cross streets.

N. F. HYER, *County Surveyor.*

[EXHIBIT U.]

DECISION OF SUPREME COURT IN THE CASE OF MAGUIRE VS. VICE.

See 20 Missouri Reports, p. 429.

(EXHIBIT V.)

DEED FROM MAGWIRE AND WIFE TO WEST.

This quit claim deed, made and entered into this ninth day of January, in the year of our Lord One thousand eight hundred and fifty-two, between John Magwire and Angeline Magwire, his wife, of the County of Saint Louis, State of Missouri, parties of the first part, and Edward M. West, of Madison County, in the State of Illinois, of the second part, witnesseth that the parties of the first, in consideration of the sum of one dollar to them in hand paid by the said party of the second party, the receipt of which is hereby acknowledged, do by these presents remise, release and forever quit claim unto said party of the second part, and to his heirs and assigns forever, the following described real estate and lot of ground, situated in the sixth Ward in the City of Saint Louis, Missouri, bounded as follows, to-wit: on the east by Second street, and containing eighty feet in front on the west side of Second street, north by Chambers street, west by an alley, and south by the north line of lot numbered one hundred and four, (104) in block numbered three hundred and twenty-one, (321) and is designated as lot numbered one hundred and three, (103) in block numbered three hundred and twenty-one, (321) of said city, containing eighty feet, more or less, on the west side of Second street, by a depth of one hundred and fifty feet, more or less, on Chambers street.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first aforesaid.

JOHN MAGWIRE, [seal]
ANGELINE MAGWIRE. [seal]

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. }

Be it remembered that on the second day of February, in the year eighteen hundred and fifty-two, before me, the undersigned, a Notary Public within and for the County of St. Louis, and State of Missouri, came John Magwire, and Angeline, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and they severally acknowledged the same to be their act and deed for the purpose therein mentioned, and she, the said Angeline Magwire, having been by me first made acquainted with the contents of said deed on an examination separate and apart from her husband, acknowledged that she executed the same and relinquished her dower in the real estate therein conveyed freely and without compulsion or undue influence of her said husband.

In testimony whereof I hereto set my hand and affix my Notarial seal, the day and year last aforesaid.

SAML. A. BENNETT,
[seal.] Notary Public St. Louis Co

STATE OF MISSOURI, }
COUNTY OF ST. LOUIS. }

I, the undersigned, Recorder in and for said County, certify that the foregoing instrument of writing was filed for record in my office, February 14th, 1852, and is truly recorded in Book G., No. 6, page 175 and fol.

Witness my hand and official seal at the date aforesaid.
[seal.] S. D. BARLOW, Recorder.

[EXHIBIT W.]

DECISION OF SUPREME COURT OF THE U. S. IN THE CASE OF WEST VS. COCHRAN.

See 17 HOWARD, p. 416.

(EXHIBIT X.)

DEED OF WEST TO MAGWIRE.

This quit claim deed made and entered into this second day of April eighteen hundred and fifty-five, between Edward M. West and , his wife, of the county of Madison, and State of Illinois, of the first part, and John Magwire, of the county of St. Louis, in the State of Missouri, of the second part, Witnesseth, that the said parties of the first part, in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents remise, release, and forever quit claim unto the said party of the second part, and to his heirs and assigns forever, the following described piece of land situate and bounded as follows, to-wit: Lot No. one hundred and three (103) in block numbered three hundred and twenty-one (321), on the plat of the city of St. Louis, Missouri, containing eighty feet in front on the west side of Second street, beginning at the corner of Chambers and Second streets, thence eighty feet along the west line of Second street, thence westwardly on a line parallel with Chambers street, one hundred and fifty feet, thence northwardly eighty feet to the south line of Chambers street, thence eastwardly along the south line of Chambers street, one hundred and fifty feet to Second street and the place of beginning.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first aforesaid.

EDWARD M. WEST. [SEAL]
JULIA A WEST. [SEAL]

(EXHIBIT Y.)

LETTER OF E. T. LANGHAM, SURVEYOR GENERAL, TO F. R. CONWAY, RECORDER.

Surveyor's Office, }
ST. LOUIS, *9th March*, 1833. }

SIR:—A certified copy of the record of a survey, in the name of Louis Labeaume, for 360 arpents of land, which issued from this office on the 24th of October last, at the instance of the present claimant thereof, for the purpose of procuring a patent, and which possesses the required indication of approval by my predecessor, Gen. Rector,

has been returned, with the following words, believed to be in your handwriting, endorsed on a paper enveloping the same: "Survey not made in conformity with the confirmation; consequently the patent certificate cannot issue."

I have to request, in case the endorsement on said envelope is yours, that you will make it official by your official signature, and that you will distinctly state all the points in which said survey is at variance, as respects conformity, with the confirmation, in order that I may re-survey the claim, if necessary, and said claimant require it.

The survey and envelope are both enclosed, in order that you may comply with my request in regard to them, if you shall think proper to do so.

I am, sir, very respectfully, your obedient servant,

E. T. LANGHAM.

F. R. Conway, Esq.,
Recorder of Land Titles.

[EXHIBIT Z.]

LETTER OF F. R. CONWAY, RECORDER, TO E. T. LANGHAM, SURVEYOR GENERAL.

Recorder's Office,
St. Louis, *March* 23, 1833.

Sir:—Your letter of the 9th instant, in relation to the survey of Louis Labeaume has been received.

You will herewith receive a copy of a confirmation of the claim of Louis Labeaume and that of Joseph Brazeau, together with a certified translation of the concession to Labeaume, referred to in the confirmation, with a plat and translation of the survey made under said concession, and a translation of a certificate of Zenon Trudeau, Lieut. Governor, in relation to the sale from Brazeau to Labeaume; which certificate, you will observe, states that the deed from Brazeau to Labeaume is deposited in the archives of the post of St. Louis, to where I now refer you for a description of the reservation made in said deed, &c.

I see nothing which would warrant the issuing of a patent certificate to the representatives of Labeaume, for the land confirmed to Brazeau; but am of opinion that there should be two surveys—the one of

356 arpents for Labeaume's representatives, and the other of 4 arpents for Brazeau or representatives. The survey of Labeaume is herewith returned.

Very respectfully, sir, your obedient servant, F. R. CONWAY. [SEAL]

E. T. Langham, Esq.,
U. S. Surveyor of Pub. Lands, St. Louis, Mo.

(EXHIBIT A.A.)

SURVEY NO. 2974.

Recorded 23d July, 1836.

Plat and description of a survey of 356 arpents of land, equal to 302 85-100 acres of land, confirmed to Louis Labeaume, in his own right, situate in Township No. 45, north of the base line of Range No. 7, east of the 5th Principal Meridian. Surveyed under instructions dated "Surveyor's Office, St. Louis, 2d of May, 1833."

Begin at a post set for corner on the bank of the Mississippi river, eastward of the east end of a ditch, dug many years ago on the south line of this survey, from which post the N. E. corner of a stone house bears S. 75 deg. 45 min. W. 129 links distant, and a red oak, 10 inches in diameter, bears N. 88 deg. W. 98 links distant. Thence meander up the west bank of the said river, between high and low water mark, N. 23 deg., W. 17 chains 28 links, to the N. E. corner of a steam saw-mill, and in all this course 30 chains 95 links. Thence N. 34 deg. W. 25 chains. Thence N. 20 deg., W. 13 chains, to the bank of the Rocky Branch, near its mouth. Thence meander up the branch, with the general course thereof [the branch to be, as in the former survey, the boundary between this tract and that of Rufus Easton, under Gabriel Cerre, No. 2042,] west 4 chains 15 links. Thence N. 54 deg. W. 3 chains 40 links. Thence S. 15 deg. 15 min., W. 4 chains 30 links, crossing the branch three times in this distance, on this course. Thence S. 80 deg. 30 min. E. 2 chains 5 links. Thence S. 3 chains 50 links. Thence W. 3 chains, crossing the branch twice; Thence S. 25 deg. 30 min. W. 3 chains 88 links, crossing the branch once. Thence S. 34 deg. E. 4 chains, crossing the branch three times. Thence W. 3 chains 21 links, to a point in the branch, having crossed the branch once; S. 25 deg. E. 2 chains. Thence S. 45 deg. E. 3 chains 33 links, crossing the branch once. Thence S. 48 deg. 45 min. W. 3 chains 80 links, to a point at the intersection of the road and the middle of the channel of said branch, which is a corner of said survey, but being in the road and rocky cannot set a post, from said corner a white oak, 6 inches in diameter, bears S. 68¼ W., 57 links distant, and a red oak, 5 inches in diameter, bears S. 44 deg., E. 98 links distant; Thence S. 15 deg. 30 min., E. at 5 chains 24 links intersect the north line of widow Hebat's survey, No. 1847, being the north boundary line of St. Louis Common Fields, where set a post 44 chains 49 links S. 75 deg. 15 min. E. from the corner of a New Madrid location, in the name of John Brooks, being survey No. 2541, from which post a red oak, 3 inches in diameter, bears S. 78 deg. 15 min. W. 41 links distant, and red oak, 3 inches in diameter, bears N. 12 E. 27 links distant, at 10 chains 5 links, which is the whole length of the line, intersect the old ditch, which is in part the northern line of this survey, where set a post for corner, near an old stone found lying on the ground, not set in, [probably the old corner stone], from said post a sycamore, 6 inches in diameter bears N. 85 deg. E. 40 links distant. Thence along said old ditch, being from this corner westward, so far as it goes, the north line of this survey, S. 74 deg. 30 min. W. 31 chains 27 links, set post for corner of this survey; from which a red oak, 6 inches in diameter, bears N. 72¼ deg. E. 27 links distant, and a red oak, 5 inches in diameter, bears S. 32½ deg. W. 35 links distant. Thence S. 15 deg. 30. min. E. along a new line, the western boundary of this survey, 46 chains 95 links, set a post for S. W. corner; from which a white oak, 5 inches in diameter, bears N. 44 deg. E. 43 links distant, and a white oak, 5 inches in diameter, bears S. 42¾ E. distant. Thence N. 74 deg. 30 min. E. along the south boundary line of this survey, at 49 chains 28 links, intersect the east boundary line of the St. Louis Common Fields, and set a post there in the old ditch, which is a corner to the survey No. 2571, of a New Madrid location of 160 acres, under certificate No. 184, in the name of Henry Peroux, or representatives, under Francis Hamelin; from which corner post a sycamore, 14 inches in diameter, bears S. 74 deg. 30 min. W. 5 links distant. Thence continue said line, on said course, along said ditch, to the end of it, and further to the beginning corner of this survey, making this whole south boundary line 60 chains 28 links.

Surveyed on the 2d and 3d days of May, 1833.
June 8th, 1833. JOSEPH C. BROWN, D. S.

SURVEYOR'S OFFICE,
St. Louis, 14th December, 1837.

This survey, No. 2974, recorded on pages 114 and 115, is this day approved, as being conformable to the confirmation by the old Board of Commissioners, [certificate No. 982]; but in approving the said survey, no importance is attached to the words "between high and low water mark." The actual POINTS CALLED for, in running to the Mississippi and meandering it, are more definite, and the river boundary thus defined is the one approved.

DANIEL DUNKLIN, Surveyor General.

[EXHIBIT **BB.**]

LETTER FROM COMMISSIONER OF GENERAL LAND OFFICE TO F. R. CONWAY, SURVEYOR GENERAL.

General Land Office, July 19th, 1841.

SIR :—I have had the honor to receive from you two patent certificates, and the plates of surveys connected therewith, which you enclosed to me for the following claims, viz:

First Patent Certificate No. 1162, and plat for the claim (No. 982) of Louis Labeaume, confirmed by the old Board, for 356 arpents.

Second Patent Certificate No. 1163, and plat for the claim of Joseph Brazeau, under Joseph Calve, for a lot in St. Louis, designated in the report of February, 1816, thus: 60 by 180 feet, barn lot, town of St. Louis, possession and improvement 20 years ago, granted 60 by 180 feet, to be surveyed.

In the first case (that of Labeaume,) I find certain differences between the survey according to the *separate* plat, accompanying the certificate, and the township plat in this office, viz :

By separate plat.	*By township plat in G. L. Office.*
The S. line is 60 82 chains.	The S. line is 63 60 chains.
The W. " 47 31 "	The W. " 47 60 "
The line of that part of the N. boundary, parallel to the S. line, is, 31 51 chains.	The line of that part of the N. boundary, parallel to the S. line, is, 34 10 chains.
The line running from Rocky Branch S. 15 deg. 30 minutes, is 10 12 chains.	The line running from Rocky Branch S. 15 deg. 30 min., is, 10 20 chains.

The survey, however, in this case, on the township, appears to include a claim of Joseph Brazeau, for four arpents. (Confirmation Certificate No. 983.)

The Surveyor General should furnish a diagram, exhibiting distinctly and separately, the correct and approved survey of each of the

claims, (982 and 983) as also their connection with the contiguous surveys, in order that the same may be attached to the township plat in this office.

In the *second* case, that of Brazeau, for a lot of 60 by 180 feet, the area of the lot, according to the survey, is much greater than that confirmed :

The North line being 153 feet 3¼ inches.
" East " " 101 " 5 "
" South " " 179 " 4½ "
" West " " 80 " 3 "

The report, as stated, represents the lots to be 60 by 180 feet. The plat of survey accompanying the certificate, is headed: "Plat and description of a lot, 60 by 180, French measure, as described; but agreeabty to the boundary lines called for, said lot is found to be as it is represented by the plat and description; which lot is confirmed to Joseph Brazeau," &c.

I find no authority, with the papers submitted for such a deviation, in the survey, from the *size* of the lot as given in the report; and therefore the said survey is not recognized as correct by this office.

The above is an extract from Fractional Township 45 N., Range 7 E, 5th Principal Meridian, as certified by W. McKee, Surveyor, Sept. 6th, 1825. E. G.

When an accurate survey is executed for the lot, according to the confirmation, there should be returned with the plat and certificate a diagram, exhibiting the connexions with the adjacent blocks, in which lots may be confirmed.

A copy of this letter will be sent to the Surveyor General, at Saint Louis, from whom a report will be required in relation to these surveys.

The papers, including a letter to you of the 21st ult., from Col. J. O'Fallon, are herewith returned, as that gentleman may desire to retain them until the further action of the Surveyor General.

With great respect, your obedient servant,
(*Signed*) E. M. HUNTINGTON,
Hon. JOHN J. CRITTENDEN, present. Commissioner.

General Land Office, July 19, 1841.

SIR :—Herewith I enclose a copy of my letter of this date to the Hon. John J. Crittenden, relative to the claims of—

1st—Louis Labeaume, for 356 arpents, survey No. 2974, T. 45, N. R. 7 E. Confirmation by the Old Board, No. 982.

2d—Joseph Brazeau, under Joseph Calvi, for a lot in St. Louis, 60 by 180 feet.

You are requested to report to this office—1st, in reference to the differences between the survey for Labeaume, as exhibited on the township plat in this office, a sketch from which is herewith sent, and the survey, the plat of which has been furnished by your office to the Recorder, returning at the same time a diagram to be attached to the township plate in this officce, exhibiting the survey for this claim of 356 arpents (No. 982,) and that of the survey of four arpents for Joseph Brazeau's claim (No. 983).

2d—In relation to the deviation in the survey for Brazeau from the size of the lot as given in the report, which has been confirmed, viz: 60 by 180 feet, with copies of any papers in the nature of evidence on which the present survey is based.

Very respectfully, your obedient servant,

E. M. HUNTINGTON, Commissioner.

Surveyor Guneral, St. Louis, Mo.

Office of the Surveyor General,
St. Louis, March 4th, 1853.

I certify that the above is a correct copy of a letter from the Commissioner of the General Land Office, of the 19th of July, 1841, on file in this office.

D. A. SPAULDING,
Surveyor General.

(EXHIBIT CC.)

REPORT OF SURVEYOR GENERAL CONWAY,

Made to the Commissioner of the General Land Office, in compliance with instructions from the Commissioner, on the claims of Labeaume, Brazeau, Chouteau and Esther, in the upper part of the city.

Surveyor General's Office, St. Louis.

Sir:—In compliance with the instructions of Commissioner Huntington, of the 19th July, 1841, to the Surveyor General at St. Louis, which do not appear to have been attended to, and your instructions of the 11th of March last, I now proceed to report on the claims of Labeaume, Chouteau, Brazeau and Esther, situated in the upper part of this city.

On account of the great value of the lands, the adverse claims thereto, and the amount of litigation that they have already produced, and are still likely to produce, I have been induced, not only to dwell at length on the subject, but also to accompany this report with the evidence which illustrates it, in order that the opinion I am required to give be the better investigated by you for its final decision.

I enclose a full and complete transcript, from the records and papers in the Recorder's Office, of the following four claims. To each there is attached a translation of such parts as are in the French and Spanish languages.

1st, Letter **A.**—Of the concession of four by twenty arpents to Joseph Brazeau, which was subsequently merged in a concession of 306 arpents to Louis Labeaume, and the proceedings of the old Board under certificates Nos. 982 and 983.

2d, Letter **B.**—Of the concession of four by twenty arpents to Esther, which was confirmed by the act of the 4th of July, 1836, under decision No. 70 of the late Board.

3d, Letter **C.**—Of the concession to Peter Chouteau of the vacant space between Labeaume's and Roy's tracts, the Spanish survey of 133 arpents, and the confirmation of 93 arpents one perch by the old Board, certificate No. 671.

4th, Letter **D.**—Of the concession to Antoine Roy of eleven arpents and fifty-eight perches, confirmed by the old Board, certificate No. 181.

5th, Letter **E.**—A copy of New Madrid certificate, No. 184 (160 arpents for Henry Peroux, under Francis Hamlin,) of its location upon a part of Peter Chouteau's claim, of the survey of the New Madrid land, and of the protest of Peter Chouteau against it.

6th, Letter **F.**—A certified copy of the deed, dated 9th May, 1798, from Joseph Brazeau to Louis Labeaume, of the sale of his concession of four by twenty arpents, with the reserve of four arpents.

7th, Letter **G.**—A certified copy of the deed of sale by Esther to Jacque Clamorgan of her concession of four by twenty arpents, (see B,) dated the 2d of September, 1794; and a certified copy of the deed of sale of the same land, by Clamorgan to Peter Chouteau, of the 6th of November, 1810.

8th, Letter **H.**—A copy of the U. S. survey, Nos. 982 and 983, in a single tract of 360 arpents, including the confirmation of 356 arpents to Louis Labeaume, and of the four arpents to Brazeau, the survey executed in November, 1817.

9th, Letter **I.**—A copy of survey 2974, of the confirmation of 356 arpents to Labeaume, not including the confirmation to Brazeau, executed in May, 1833, with a document attached thereto.

10th, Letter **K.**—A copy of the same survey, No. 2974, but showing its connection, made in 1838, with the individual lots of the common fields of St. Louis.

11th, Letter **L.**—A diagram, showing the original Spanish survey

of Labeaume, Chouteau and Roy, the U. S. survey of Labeaume and Chouteau, the position of the unsurveyed claims of Brazeau and Esther, a part of the New Madrid location under certificate No. 184, and some other data illustrative of this report.

12th, Letter **M**.—A plat of the U. S. survey of such of the claims in question as are run out, and their connection with the adjacent surveys.

13th, Letter **N**.—Mr. Bird's letter to you of the 29th of January last, that accompanied your letter to me of the 11th of March last, and which I am required to return.

I will now begin with the investigation of the claims.

Transcript A, Joseph Brazeau and Louis Labeaume.—The concession to Joseph Brazeau, dated the 25th June, 1794, is for twenty arpents, along the Mississippi river, bounded south by the land of the mulattress Esther, and north by the vicinity of the Rocky Branch, by four arpents wide to the west.

This land was sold on the 9th of May, 1799, by Brazeau to Labeaume, reserving four by four arpents. Louis Labeaume, in a petition (not dated,) asks for 360 arpents, including the land he acquired from Brazeau: that is, twenty arpents west from the Mississippi, by sixteen arpents front along that river; and the compliment in that space, between Rocky Branch and the Mississippi, which was granted on the 15th of February, 1799, by the Lietenant Governor.

On the 2d of March, 1799, the tract was surveyed by the Spanish Surveyor General, and 374 arpents included therein by Labeaume, and recorded in Book , page .

A notice of this claim was filed with the Recorder, on the 3d of September, 1806, before the Board appointed under the act of the 2d of March, 1805. Louis Labeaume claims 374 arpents, and produces in evidence the concession to Brazeau of four by twenty arpents; his own concession for 374 arpents, including the said four by twenty arpents; the survey of the said 374 arpents, and the certificate by Zenon Trudeau of the sale of the four by twenty arpents, with the exception of the four by four arpents. On the 22d of September, 1810, the Board confirmed to Louis Labeaume 356 arpents, and four arpents to Joseph Brazeau, agreeable to the concession to Louis Labeaume, and as respects the four arpents, agreeable to the reserve made in the sale from Joseph Brazeau to Louis Labeaume, recorded in Book C, page 339, of the Recorder's office.

From that evidence it is inferred that the Brazeau tract of four by twenty arpents is included within the survey of the 374 arpents for

Labeaume. In his claim before the Board, Labeaume states that the concession for 374 arpents embraces that of four by twenty to Brazeau: he goes farther—he abandons the concession of four by twenty, and claims immediately that for 374 arpents; that is, the land within the bounds of the survey by Soulard. And the Board, acting thereon, confirmed 356 arpents to Louis Labeaume and four arpents to Joseph Brazeau, according to the concession to Labeaume, as respects the four arpents, agreeably to the reserve of four arpents, &c.

The deed of sale embracing this reserve, (of which document F is a copy, obtained from the Clerk of the Saint Louis Circuit Court,) it will be remarked, is not recorded with the other evidence in the case, but only the certificate by the Lieutenant Governor of its having been executed; nor was the deed produced in support of the claim before the Board. But as the certificate mentions four arpents reserved, the Board, (in the absence of the original document, or its record,) decided that the confirmation thereof should be agreeable to a reserve made in a deed of sale, &c. They did not by this provision settle a question of locality, for this was already done by their including the land in the concession to Labeaume, but they intended to secure to Brazeau the benefit of the clause of his deed, which shows that the reserve consisted of four square arpents, or sixteen superficial arpents, at the south part of the tract of four by twenty.

The Spanish survey of Labeaume is shown on diagram L by the lines *a*, *g*, *hi*, *ik*, *kl*, *la*. The lines *ab*, *bc*, *cd*, *da*, within that survey, purport to represent the original concession to Brazeau of four by twenty arpents; and the lines *ab*, *bc*, *ef*, *fa*, at the south thereof, exhibit the four arpents reserved for Brazeau. The lines from the point *a*, at the south-east corner of Labeaume, is reserved to *b*, the twenty arpents in front. which are the extent to the vicinity of the branch. According to the concession, they hardly reach that limit; and to remove further south the south boundary of Brazeau, would still be a greater deviation from the terms of the grant.

Although it is not the object of this report to indulge in suppositions, it may be reasonably believed that, in asking an extension of sixteen arpents to the west of Brazeau's concession, Labeaume intended to avail himself of the sixty-four arpents west of the reserve by Brazeau, shown by the lines *ab*, *bg*, *g*, and = =, on diagram L, and not the space *ki*, *ih*, *hz*, *zk*, on the west of his survey, which latter space would have fallen therein had he taken the line *fe* (the north boundary of the Brazeau reserve,) prolonged to, and for his southern boundary. Had he done this, he would have carefully avoided before the Board the mention of the fact of the inclusion of Brazeau's land into

his own; and the Commissioners would not have done him (and chiefly to Brazeau,) the injustice of blending the two tracts into one. The concession to Brazeau calls for its southern boundary the land of Esther—that its south side shall be bounded by the grant to the free mulattress Esther. It also says, "a tract of land situated beyond the foot of the small mound called the Grange de Terre;" and also twenty arpents in length, which are to begin from the foot of the hill upon which stands the Grange the Terre, and which means that the land does not begin at the foot of the Grange de Terre, but at the end of the declivity of the hill on which it rests.

By examining the claim of Esther (transcript B,) called, as aforesaid, the southern boundary of the concession to Brazeau, it will be seen that the tract is described by the Lieutenant Governor as being situated between the mound, called "La Grange de Terre, and the banks of the Mississippi," as appears by the plat. The plat here referred to is a part of the concession, so recognized by Mr. Trudeau, and is used by him to establish the position of the land. It shows that this land was situated and granted, as asked for—*i. e.*, between the Grange de Terre and the river, and that about $3\frac{1}{2}$ arpents of it projects farther north from that outside land mark. If the Grange de Terre had bounded that tract on the north, then the tract would not have been between it and the river, but south thereof; and in this supposition the concession could be explained but by a contradiction in terms.

In addition to the foregoing information, I am required by the instructions of the 11th of March to report the case of the omission of the Brazeau survey on the township plat of 1845, and also the proceedings under the former government and ours, in regard to the residue of that claim. The action of the former government in relation to the residue of the Brazeau claim (sold to Labeaume,) being fully explained by the document A, it will be necessary now only to comply with the remainder of the instructions.

The omission of the Brazeau claim on the township plat of 1845 is owing to the fact, that at that date there was no survey thereof.

Document H, a plat and description of survey, Nos. 982 and 983, for 360 arpents in a single tract (or two tracts in one, as says the text) shows that the confirmation of four arpents to Brazeau was run out in 1817, according to the decision of the Board, as it was then understood by the Surveyor General.

It appears that a return of these surveys was made on the 24th of October, 1832, to the Recorder of Land Titles, who refused to issue

his patent certificate thereon. See the reason therefor, in the copy of the instructions of 2d May, 1833.

To Joseph C. Brown, attached to Document I, which is a copy of the plat and description of survey No. 2974, for 356 arpents, the confirmation to Labeaume.

The survey which cut off the four arpents of Brazeau was approved on the 14th of December, 1837, by Surveyor General Dunklin, document R, shows that this survey, No. 2974, was connected with the lines of the St. Louis Common Field lots, and as such approved by Surveyor General Milburn. A plat and description was subsequently returned to the Recorder, and a patent certificate issued by him, No. 1262, which was in part the subject of the Commissioner's letter of the 19th of July, 1841, to which these explanations are an answer.

The Brazeau tract seems to have been dormant since it was severed from the collective survey of 1817.

TRANSCRIPT B.—ESTHER'S CLAIM OF FOUR BY TWENTY ARPENTS.

The northern part of the land called for in this petition is to be situated between the mound, called La Grange de Terre, and the banks of the Mississippi; and to that petition is attached the plat already referred to, showing the tract and its relative position to the objects called for, in the delivery of possession which follows the petition.

The Lieutenant Governor describes the land as lying between the Grange de Terre and the banks of the Mississippi; and, to elucidate his views, he adds—"*as appears by the plat;*" and, in his formal concession, Mr. Trudeau uses the same description.

From document C and G, it appears that Esther, on the 2d of September, 1794, sold her land to Clamorgan, and that on the 10th of November, 1810, Pierre Chouteau acquired it from Clamorgan; but these deeds have but little bearing on the subject. Its confirmation had been refused by the old Board, on the 22d of August, 1806, and on the 17th of February, 1809; but the tract having been recommended for confirmation on the 8th of November, 1833, by the late Board, under their decision (No. 70,) it was confirmed to Esther, or her legal representatives, by the act of Congress of the 4th of July, 1836. It does not appear that any attempt to survey it was made since the passage of that act, by this office, although applications therefor are on file.

The concession in this case being older than any of the adjoining or interfering grants, it was, as a matter of course, bounded on its southern, northern and western sides by the King's domain, the east boundary being the bank (ecore) of the Mississippi river; and the width

running four arpents westward. These two latter boundaries are settled. It seems that the two others (southern and northern,) can be ascertained also from the words of the petition, delivery of possession and concession. They state that the land is *between* the Grange de Terre and the river—that it is, as already mentioned in the observations on the preceding case, that both ends of the land project from the said object, which is thereby separated from the river. The petition and concession state, it is the northern part of the tract, that is *between* the Grange de Terre and the river: by which is meant that the projection of the land beyond it is shorter on the north than on the south side. The plat represents the intended proportion. By dividing the western line of that plat in twenty parts, (the number of linier arpents granted,) it will be seen (*vide* plat in translation,) that from a point opposite the middle of the parallelogram intended for the Grange de Terre, there is a distance of $3\frac{1}{2}$ arpents to the north-western angle of the tract. Then it is on the northern side that we are likely to find one of the lateral boundaries; and if this be ascertained, the opposite line will easily be found, by running twenty arpents south from the point identified north.

Returning to document A I, we find that in the delivery of possession by Zenon Trudeau, of the twenty by four arpents, asked for in 1794, one year after the grant to Esther by Brazeau; and in his grant the Lieutenant Governor first describes the land; and then, to procure more particularly its south boundary, most probably for the purpose of avoiding conflicts, he decrees in one instance that it *shall*, and in the other that it *must* be bounded by the land of Esther.

If the positive assurance from the evidence in document A, that the concession to Brazeau was subsequently merged into that of Labeaume, is correct, and that Labeaume had his tract of 374 arpents measured out accordingly, that survey shows that Labeaume conformed to the strict orders of the Lieutenant Governor in the Brazeau grant, by running his south boundary at the distance of about four arpents from the centre of the mound (see diagram L and M,) as indicated on the plat of Esther's land.

As a matter of course, the line so run became the common line to the tracts of Esther and Labeaume: its position cannot be either mistaken or misconstrued.

In his prudence, or for his convenience, Labeaume dug a ditch along it for about the distance of seven arpents westward from the river. The ditch is shown on the survey of 374 arpents; is laid down on the Spanish survey of Peter Chouteau (see document C); was followed

by Mr. Brown, in 1817, in his ruuning survey, Nos. 982 and 983, in a single tract, and was finally used by him as the south boundary of Labeaume for his survey in 1833, and re-survey in 1838, of the confirmation of 356 arpents, under survey No. 2974.

Having thus ascertained the north boundary of Esther's tract by actual surveys on the ground, made by the Spanish and U. S. authority, in conformity with what I conceive to be the requirements of her concession and that of the subsequent grants adjoining to the north thereof, I have laid down the unsurveyed claim of Esther on diagram L, by beginning at A, the south-east corner of Labeaume; thence along his south boundary four arpents to B; thence (meeting the Grange de Terre at about four arpents,) twenty arpents to V; thence four arpents to W; thence along the bank of the river to A;—so that the south boundary runs into the lands of Antoine Roy and John Mullanphy, under Egliz.

It will be perceived by diagram M, of the U. S. survey, that the distance left by Labeaume between the centre of the Grange de Terre and his south boundary, which, agreeably to the plat of Esther, would be $3\frac{1}{8}$ arpents, was found by actual survey to be $4\frac{1}{2}$ arpents—a slight difference, when all circumstances are duly considered.

Although the north boundary of Esther appears so far to be correctly ascertained, I have been at pains to examine whether there is any data in relation to her south boundary, in the written evidence of the claims to the south thereof, viz:

The claim of Antoine Roy, of 11 arpents 58 perches, granted 7th July, 1798; Jacinth Egliz, 12 arpents, 94 perches, granted 22d October, 1799; Emiliana Yosti, 5 arpents, 50 perches, granted 2d September, 1799; Antoine Soulard, 7 arpents, $80\frac{1}{2}$ perches, granted 5th January, 1800; Jacque Clamorgan, 7 arpents, $38\frac{1}{2}$ perches, granted 28th November, 1799.

But I found nothing but what is related in Roy's transcript (letter D), of the protest of Clamorgan against the survey of the concession to Roy; and of the decision of the Lieut. Governor of Clamorgan under Esther, so far as it interfered in giving the preference to Roy. Clamorgan was willing to give one arpent front of his land, by a convenient depth, for the benefit of Roy's mill. That donation, which was no doubt intended to be the south end of Clamorgan's tract, is shown on the plat by the space in Roy's claim, within the letters *g*, *w*, *x*, *y*.

In the proceedings of the late Board upon the Esther claim, I have carefully examined the deposition (made in 1833, above 40 years after

the grant,) of Reve Dodier and Baptiste Reviere. Babtiste Reviere dit Baccane.

Dodier says that the fence of Esther's field was *running this side*, (nearest St. Louis,) of where now lives Mr. Mullanphy; that is, along the southern line ef the tract of John Mullanphy, under Egliz. The vague statement of Reviere, as to the locality of the land, does not much improve the data afforded by other witness; and under these circumstances, Dodier's testimony of Esther's fence running near or along the south line of Egliz, should not, in my opinion, be considered as an evidence of her south boundary, in contradiction of the plainer evidence we have of the northern boundary, which is based upon the action of public officers, whose duty it was to decree, define and establish it,

DOCUMENT C—PIERRE CHOUTEAU.

Pierre Chouteau, on ths 15th October, 1799, petitioned for a strip of land, which, in consequence of the annulment of the Lieut. Governor of the pretentions of Jacque Clamorgan thereto, had become vacant, as expressed in manuscript D of the Roy claim. The land asked for was bounded north by the line of Mr. Labeaume; south by the line of Mr. Roy; east by the Mississippi; and was to run west six arpents therefrom. The petition, which does mention that the area of the tract can be determined only by a survey, was acted upon the same day by the Lieut. Governor, who granted the land as asked for; and on the 10th of March, 1803, it was regularly surveyed by Antoine Soulard, as containing 133 arpents. The claim thus surveyed is shown in diagram L, by the yellow lines *ao*, *ap*, *pg*, *gd*. It was presented to the Board of Commissioners on the 25th January, 1809. The evidence produced was the petition, concession, and survey, already mentioned, Claimant renounced all claim to 39 arpents, 99 perches, which interfered with land heretofore surveyed, leaving the quantity claimed 93 arpents, 1 perch.

On the 17th February, 1809, the Board confirmed to Pierre Chouteau 93 arpents and 1 perch, and ordered that the same be surveyed, so as not to interfere with the field lots of the little prairie, adjoining the town of St. Louis; and in their certificate No. 671, issued on the 29th May, 1811, the Commissioners to the words above identified, add the explanation *by virtue of a concession or order of survey from Don Carlos Delassus*.

The part abandoned by Mr. Chouteau of his original concession, as interfering with the field lot of St. Louis, is shown on diagram L, by the triangle *os*, *sr*, *ro*. The tract was surveyed by the United States

on the 2d of April, 1817, under No. 671, as containing 93 arpents, 1 perch,—(see lines *gp*, *ps*, *st*, *zu*, *ug*, on diagram L,)—and on the 4th November, 1822, the return of it was made to the Recorder, who, as it appears from the registry in his office, issued thereon patent certificate No. — . The survey thus made of this confirmation, does, as required, not interfere with the eastern part of the common field lots but it has not been extended to the southern line of Labeanme, this left the space *a*, *r*, *rt*, *tu*, *ua* vacant, or rather open for the introduction of new claims, in as much as that of Esther was then reconfirmed. Although the land covered by it was reserved from sale or any other disposition, by the United States, by the act of the 15th January and 3d March, 1811, and 17th February, 1813. It will be seen by Document E, that in consequence of the curtailment of the Spanish survey of Chouteau, a location was, on the 7th April, 1817, (five days after the United States survey of Chouteau,) made upon the space le vacant thereby, under certificate No. 184, issued for 160 acres, to legal representatives of Henry Peroux, under Francis Hamelin, in lieu of an injured lot of *one arpent*, in the town of New Madrid, in pursuance of the New Madrid act of the 17th February, 1815. The survey No. 2571, of this location, was made in March, 1822, five years after the location, and the return issued to the Register in January, 1824, two years after the survey, notwithstanding the Protest of Peter Chouteau, of the 24th June, 1818, against that location on file here, with the papers in Peroux's case, and a copy of which is in document E. Before the Board, Chouteau, the claimant, renounced all claim to 39 arpents and 99 perches which interfered with land *heretofore surveyed*, leaving the quantity at present claimed 93 arpents and 1 perch. Mr. Chouteau states, in his protest, "it is not for me to account for the phrase or mode of entry adopted by the Board, in recording this abandonment—the act is *theirs* and not *mine*." He declares that before the Commissioners he did abandon only so much of his claim "as might be found to interfere with the front of the field lots,"—that the object of the abandonment was to avoid a contest with any of the holders of field lots to the west of his tract; and so goes on with observations, worthy of careful perusal and attention. The confirmation and the certificate of the Board make this restriction alone the interference of the field lots, because there was no room or necessity for any other. The words "land *heretofore surveyed*," can point only to the surveys of those field lots made by Martin Duralde, in 1770 or '71 and '72, under the authority of the Spanish Governor, and recorded in Livre Terrien No. 2.

They cannot refer to the land claimed by Esther, because the Commissioners, in confirming to Chouteau, had just decided against her claim, which decision was indeed the cause of Chouteau's confirmation.

Besides, there was, in fact, no survey of Esther's land; for if the plat in her petition was sufficient to illustrate its position, and was used for that purpose, still it does not bear the character of the plat of a regular survey, executed by the Surveyor General, or his Deputies, subsequently to the grant upon the order of the Lieutenant Governor. Those words cannot allude to the surveys of Roy and Labeaume, these being the very boundaries of Chouteau; nor can they relate to the surveys of concessions not recorded, because the only jurisdiction of the Board upon claims of this nature was their rejection. How the forty arpents (38.99) were cut off from the Spanish survey, the proceedings of the Commissioners do not show. The section, it seems, was not made by the surveyor in their employ, in consequence of their order to that effect; nor do the plats of that surveyor (Silas Bent,) in this and the Recorder's office, leave any vestige of the transaction.

The surveys referred to of the field lots are not platted in Livre Terrien: they describe the lots merely. There was, in 1809, when the Board acted on Chouteau's claim, as far as I can learn, no connecting plat of the outlines of the common fields of St. Louis; and the Spanish plat of Chouteau, not calling for or showing its east line, it follows that the relative position of this line with the western line of Chouteau was not then ascertained. This led to the belief, that either the calculation by which the forty arpents here cut off was erroneous, or it was then supposed that the eastern front line of the common fields run further east than whence the U. S. survey of 1818 established and fixed it.

The area of the Spanish survey (133 arpents,) is not understood; or, rather, the tract does not contain an area above that quantity. The length of the western line is 18¾ arpents; that of the southern is 6; and that of the northern is 7 arpents. By allowing a continuous width of seven arpents to compensate for the outside curve of the river, the contents would be 131¼ arpents. To ascertain the fact, an accurate calculation of the land embraced in the Spanish survey has been made, and it produced the following results:—Survey No. 671 contains 79-12 arpents. That part thereof, between it and Labeaume (N. Madrid location,) 14-10; and the triangle *o s r* of diagram L) abandoned to the field lots, 18-24; total 111-46, which is equal to 131½ arpents. Then, as there is more land in the Spanish survey than is written on

its face, the question, it seems, is—whether the confirmation to Chouteau is to be governed by the words used by the Commissioners—93 arpents 1 perch—to be surveyed so as not to interfere with the common field lots of the Little Prairie of St. Louis, or by the calls of the concession between Roy's and Labeaume's land, with the exclusion of the interference in question. In the first hypothesis, out of 131 arpents, (the actual quantity,) Chouteau gets 93 arpents; 21½ arpents, (18-24 arpents,) are interfered with by the field lots, and there remains 16½ arpents which are neither interfered with by these lots, nor by other lands "*heretofore surveyed*," or included in the survey of Chouteau. If this curtailment of 16½ arpents be made on the south or on the north of the Spanish survey, the confirmation in this case does not agree with the calls of the concession, *by virtue of which it was made*, and deprives it of one of the intended boundaries; besides, what is to be done in order that the 16½ arpents may become interfered with by *lands heretofore surveyed*, if they are taken from Chouteau's survey?

In the second supposition, to-wit—That the calls of the concession should control the survey, regardless of the specific quantities confirmed and deducted, then the 131 arpents are to be thus divided: Chouteau will receive 109½ arpents, (the 79-12 acres in the survey No. 671, and the 14-10 acres in the New Madrid location,) and abandoned to the common fields 21½ arpents, (18-24 acres in the triangle *d, s, r*). This would satisfy the claim under all its aspects. It would not interfere *with land heretofore surveyed*, as said in the abandonment; it would not interfere with the field lots of the Little Prairie, as required in the confirmation, and its survey would preserve the integrity of the calls of the concession, under which the confirmation was based, as set forth in the Commissioners' certificate. Also, this would remedy the error caused by a random estimation of the quantity of interference, and moreover be in accordance with the principle, that the survey of a *private claim should be extended to the natural objects called for in the concession*, regardless of the specified quality,—where this proceeding, as in the case now investigated, might be adopted without injury to the adjoining valid claims.

I will suppose that in this same case of Chouteau, that had the interference with the field lots been stated below its actual amount, instead of being actually above it, would this inverse error have given him the right to transcend the lines of either Roy or Labeaume, and make good the deficiency from their land? I think not. And if so, is he not entitled to the benefit of the principle in the contrary event.

And here I beg a reference to the instructions of the 7th of July, 1845, from the Commissioner of the General Land Office to the Surveyor General, to show how the principle just set forth was respected in relation to the claims of Soulard, (survey No. 1333,) although under circumstances less formidable than in this case.

In conclusion, I will remark that if it be said that the Commissioners disregarded Chouteau's survey, and the proof of this be deduced from the omission of the notice of it in the confirmation, in return it may be asked, "why did they use it in the deduction of the interference with the lots;" and also that this confirmation was barely 93 arpents, without reference either to survey or concession, why did they state, in their certificate of that confirmation, that it was "*by virtue of a concession or order of survey from Don Carlos Dehault Delassus.*"

As the tract of Roy, south of Chouteau, cannot be affected by the decision sought for, on the claims which are the subject of this report, any further notice of it is unnecessary, except to state that the transcript thereof (lettered D) is transmitted for the purpose only of showing the relation which its evidence bears on the claims of Chouteau and Esther.

Inasmuch as this office is already furnished with general instructions, as respects the actions of the Surveyor General upon New Madrid certificates, located on French or Spanish grants, I deem it needless to notice further than already done, the location of Peroux under Hamelin.

As *the question of location* in the Esther claim, upon which I am requested by the instructions of the 11th of March, to give *my decision*, involves also the location of the claims of Brazeau, Labeaume, and Chouteau, I will now, from the written evidence and the foregoing observations, present my views upon the four cases under consideration.

1st, Joseph Brazeau.—I think that the reserve of four arpents square, made by him in his deed to Labeaume, of May 9th, 1798, and confirmed by the Board, should be surveyed on the south-east part of the survey of Labeaume, within the space embraced by the lines *ab, be, ef, fa.*

2d, Louis Labeaume.—This confirmation of 356 arpents should be surveyed so as to follow the north and western lines of the survey to be made for Brazeau, and thence the lines of the present survey No. 2974, with the exception that its western boundary, the lines *m, n,* should be removed to the west, so as to take in the 16 arpents reserved for Brazeau.

3d, It is my opinion that the claim of Esther should be surveyed within the lines *ab, bv, bw,* and *wa.*

4th, I think that the present survey, No. 671, of Chouteau, should embrace the space within the lines *ar, rs, sp, pg, gd,* so as to be bounded north by Brazeau or Labeaume, as the case may be, and south by Roy, agreeable to his concession.

I have now endeavored to fulfil the duty required from me. I have dwelt at length upon the subject, because of the great value of the lands in question, and of the bitter litigation, that for the last twenty years, the conflicting claims of adverse parties thereto have already produced, and will doubtless still produce, I have gathered all the evidence (as far as it is known,) which the united offices of the Surveyor General and the Recorder of Land Titles afford on the subject; and in the County Court office, the evidence wanting (but referred to) in the transcript of Brazeau's claim, which was necessary to ascertain the amount and locality of his reserved land. And in setting forth my opinion on the subject, I have sought to be guided only by that evidence, regardless of the conflicting interest of the adverse parties.

In dismissing the subject, I respectfully request in their behalf your early attention thereto; and also such special instructions, if necessary, to this office, when it is apprized of your decision, as will enable the Surveyor General to carry it into effect.

F. R. CONWAY.

St. Louis, June 16th, 1847.

[EXHIBIT **DD.**]

DECISION OF ALEX. H. H. STUART, SECRETARY OF THE INTERIOR.

In relation to the claims of Esther, Brazeau, Labeaume, and Chouteau, the facts of these cases, as disclosed by the record, are as follows: (*a*)

It is admitted on all hands, that the land in controversy was, in the beginning of the year 1793, part of the royal domain.

On the 2d October, 1793, Esther, a free mulattress, filed her petition to Don Zenon Trudeau, asking a concession or grant of a piece of sand situated on the borders of the Mississippi river, bounded on three

(*a*) The facts are quite different, as will be seen from what is stated before.

sides by his Majesty's domain, and on the other side by the banks of the Mississippi river. The northern part of the concession now petitioned for to be situated *between* the mound commonly called La Grange de Terre and the banks of the Mississippi, having, for its two ends, four arpents in length or depth, running about from E. N. E. to W. S. W., by twenty arpents in length or depth, running about from N. N. W. to S. S. E. Annexed to this petition was a sketch, or rough draft of a plat, which, however, does not profess to be the result of an actual survey, or to be accurate in itself; for, instead of following the river, it makes the eastern boundary touch the river only at its northern extremity. On this sketch the Grange de Terre is located about three arpents below or south of the upper or northern extremity of the tract.

On the 3d of October, Zenon Trudeau certifies that, having ascertained the land petitioned for to be part of the royal domain, he has put the petitioner in possession of the tract petitioned for, according to the boundaries designated in her petition.

On the 5th October, 1793, a concession was made of the land, describing its boundaries nearly in the language of the petition, "The northern part of the present concession to be situated between the small mound called the Grange de Terre and the banks of the Mississippi river."

No actual survey was made of this tract at the time, nor for many years afterwards, nor does it appear that the mulattress entered into actual possession of it. See Doc. B. (*b*)

On the 1st June, 1794, Joseph Brazeau filed his petition with Don Zenon Trudeau, asking a concession of "a tract of land situated beyond the foot of the small mound, or Grange de Terre, of the width of four arpents, that shall extend from the bank of the Mississippi, in a W. qr. S. W. course, by about twenty arpents in length, which are to begin *at the foot of the hill* on which stands the aforesaid Grange de Terre, and ascend to the vicinity of the Rocky Creek, on the N. N. W., so that the said tract asked for be bounded east by the banks of the Mississippi, and the other sides in part by the domain of his Majesty, and partly by lands reunited to the said domain, across which the present concession passes."

On the 10th of June, 1794, the Lieutenant Governor Trudeau, after reciting that the land is liable to concession, and that the grant will injure nobody, certifies that he has put the petitioner in possession of

(*b*) Esther did enter upon and possess the land. See proof accompanying confirmation to Esther's representatives.

the land prayed for, "having four arpents in front by twenty in length, that shall extend in the N. N. W., from *the foot of the hill*, upon which stands the Grange de Terre, to the vicinity of the Rocky Branch, and in the S. S. E. it shall be bounded by the concession granted to the free mulattress named Esther."

On the 25th June, 1794, the Governor Trudeau makes a concession to Brazeau "of the lands hereabove designated, &c., that shall begin beyond the ascent (montee) called Grange de Terre, extending N. N. W. to the vicinage of Rocky Creek, bounded on one side by the beach (ecore) of the Mississippi, and the opposite side by land reunited to the domain of his Majesty, through which passes the present concession, one end of which is to be bounded by the concession of the free mulattress named Esther."

On the 12th of May, 1798, the Governor (Trudeau) certifies "that the concession of the above tract of land, with the exception of four arpents, has been sold, ceded and transferred to Louis Labeaume, by deed executed before us on the 9th of May, this present year, and filed in the archives of this Post. The deed describes the reservation as follows:—"*Reserving to himself four arpents of land to be taken at the foot of the mound, in the south part of the said tract.*"

There is no evidence that this tract was ever actually surveyed, but it is proven that Brazeau was in actual possession of it, and that he built a lime-kiln on it, and cultivated up to the foot of the mound. See Dep. of Cerre, Vasquez and others.

Shortly after this conveyance from Brazeau, but on what precise day does not appear, Labeaume filed his petition with Don Zenon Trudeau, setting out his purchase from Brazeau, and stating "that the depth of his land being very narrow, and the petitioner having *nearly put the whole under cultivation*," and asking the Governor "to grant to him 360 arpents of land, including therein the land which the said petitioner bought from Brazeau—that is to say, twenty arpents in depth from the Mississippi, in ascending the Rocky Branch W. $\frac{1}{4}$, S. by sixteen *arpents in front*, along the Mississippi, to be taken from the descent of the road into the creek, *which is the same front of the land* of the petitioner—the angle (measuring triangle) formed by the perpendicular from the road to the river, by the creek and by the river, shall complete, or about, the tract asked for by the petitioner.

On the 15th of February, 1799, Zenon Trudeau directs "that the surveyor, Don Antonio Soulard, shall put the interested party in possession, and execute the survey in continuation, to serve to obtain the title in form from the said Governor General, which is wished for."

On the 10th of April, 1799, A. Soulard certifies, that on the 2d of March, of the same year, he executed the survey of Labeaume, pursuant to his petition for 374 superficial arpents. Said survey was made in the presence of the proprietor and his adjacent neighbors. He further certifies that "stone bounds were set at the distance of twenty arpents between each other, with dross of iron at their foot; all trees found on the lines were blazed." See doc. A, and note. (*d*)

A plat of this survey was made out by Soulard, and the points where the stone bounds or marks were placed are designated on it, viz: one each at each corner, and one at intermediate points on the N. and S. lines respectively.

We have thus traced the history of the three original titles of Esther and Brazeau and Labeaume. The claim of Esther was sold by her in October, 1794, to J. Clamorgan.

In 1797, Antoine Roy petitioned for a grant of 600 feet square of land, which was supposed to be near the southern end of the Esther grant. The petition was referred to Soulard, the surveyor; and Clamorgan, the grantee of Esther, thereupon protested against the survey, on the ground that the proposed survey was on his land. In consequence of this interference, the matter was referred to the Governor, who decided that as Clamorgan had not complied with the conditions of cultivation and settlement, always attached to such grants, Roy should have the preference over him.

On the 15th of October, 1799, Don Pierre Chouteau filed his petition with Don Charles Dehault Delassus, praying for a grant "of the *vacant* strip of land between the tract conceded to Mr. Antoine Roy, for the establishment of a wind-mill, in annulment of the pretensions that Jacques Clamorgan could have to said land, dated 4th of August, 1797, which land is situated and bounded as follows:—*North*, by the line of Mr. Labeaume's tract; *South*, by the line of Mr. Antoine Roy's land; *East*, by the river; and *West*, by the domain of his Majesty; the said land running on the heigths, and at the distance of six arpents from the river, which shall be its depth. As to the area, it can be determined only by the survey that you will be pleased to order."

On the 16th of October, 1799, Lieutenant Governor Delassus having examined the subject, says—In consideration of the objects of the petitioner in obtaining the grant, and of a decree of my predecessor, Lieutenant Governor Trudeau, of the 4th of August, 1797, written at

(*d*) No stone bounds, or any other marks of a survey by Soulard, has ever been found on the ground; and the presumption is that Soulard never made any actual survey of the land.

the foot of the petition of Mr. Antoine Roy, from which it appears that the land asked for remains re-united to the royal domain, the surveyor of the upper Louisiana, Don Antonio Soulard, shall put the petitioner in possession of the land asked for. Soulard accordingly made and returned the survey. "The four corners and the bounds on the lines are stones rammed in with the dross of iron. They are shown on the plat registered in book B, folio 6, No. 6." The survey was made on the 10th of March, 1803, for 133 arpents, *in the presence of the owner and of his adjoining neighbors.* The surveyor, in his return dated 17th of June, 1803, says, this land is situated at about twelve arpents north of St. Louis, bounded north by the land of Louis Labeaume, south in front by another tract, owned by Antoine Roy, and in part by that of Hyacinth Egliz, east by the bank of the Mississippi, and west by the vacant lands of the domain; and in order that the whole may be proven whenever needed, I give the present certificate, with the figurative plat which precedes, on which are shown both the dimensions of said land, and *the limits, both natural and artificial, which surround it.*"

This figurative plat gives the *ditch* at the *southern* line of Labeaume's tract as the *northern* boundary of the survey; and as both surveys were made by the same surveyor, and within a few days of each other (Labeaume's having been made on the 2d of March, 1799, and Chouteau's on the 10th of March, 1803, and in the presence of the proprietors of the lands on both sides of the line, and without objection from either, great weight is given to it, not only as an official act, but explaining the views and understanding of the parties at the time.) It is proper to remark here, that before the date of that survey, Chouteau had become owner of Brazeau's reservation, which reservation, indeed, was made expressly with the view to the fulfilment of a verbal contract, previously entered into by Brazeau, to convey to Chouteau four arpents square. See Brazeau's deed in July, 1816, reciting that in the sale to Labeaume, on the 9th of May, 1794, "there had been reserved, in consequence of a verbal promise of sale to Chouteau, four arpents of land, to be taken at the foot of the said mound, in the southern part of the aforesaid land, therefore only selling sixteen arpents in depth to the said L. Labeaume." Brazeau, Labeaume and Chouteau were, therefore, all cognizant of their respective rights and pretensions long before the surveys by Soulard in 1799 and 1803 were made, and yet no objection was made by either of them to those surveys. If such objection had been made, it would have been the duty of the surveyor

to report it, and the contending parites would have been called on to litigate their rights. (*e*)

This view of the subject is further confirmed by the action of Mr. Chouteau, when Henry Peyroux attempted to locate his New Madrid certificate on the part of his survey immediately south of Labeaume's ditch. He at once addressed a letter to the Commissioner of General Land Office, stating that the location of that claim had been made so "*as to cover the whole of a small tract of sixteen arpents, which I have purchased of Joseph Brazeau, to whom it had been confirmed by the Board of Commissioners*, and also part of another tract of 93 arpents, confirmed to me by the same Board." (*f*)

The testimony of Pascal Cerre, Joseph Vasquez, Auguste Brazeau, Joseph La Barge, Joseph Hortez, Antoine Smith, Francis Noise, and Joseph C. Brown, proves conclusively that Labeaume, immediately after his purchase, as early as 1798, proceeded to enclose his land by ditches, and it appears from the surveys of Joseph C. Brown, that those ditches were from north to south sixteen arpents and twenty-two feet apart. Labeaume, and those holding under him, have continued in possession of the premises now in controversy for near half a century. I am now called to disturb that possession, and to grant the legal title to the contestants, on the ground of a better right to the land. (*c*)

Without extending this opinion by going into any elaborate argument, I will state the conclusions to which my mind has arrived.

I regard the acts of confirmation by the Commissioners, ratified by Congress, as determining nothing in regard to *location*, but merely the matter of right where the location shall be ascertained. (*g*)

I consider the figurative plat accompanying Esther's petition as possessing but little authority. It does not profess to be accurate. If the parties stand by it, they cannot go to the river. Why, then, should it be conclusive so far as the mound is concerned, when the

(*e*) Neither Governor Dalassus, who made the grant to Mr. Chouteau, nor Soulard, who surveyed it, knew any thing about the sale by Brazeau to Chouteau of sixteen arpents.

(*f*) The testimony here alluded to is a verbal statement, made out by these old Frenchmen, to the attorney of William Chambers—written down by that attorney in his own office, no one being present but himself with these witnesses—their statement was never sworn to. When these same men were called to testify in court, they made statements altogether different from what is here quoted by the Secretary of the Interior.

(*c*) Vasquez and others never testified in the case—their statement was written down by the attorney of Chambers, in his office—no one present—it was not sworn to

(*g*) The act of the Commissioners did not require to be ratified by Congress. They had the power to confirm and locate the land.

parties admit it is not conclusive in regard to the river boundary. But there is no plat attached to the grant. If there were, the same objections would apply. (*h*) But the words of the petition and concessions are, that "*the northern part shall be between the mound and the riv r.*" This language is not ambiguous: it conveys the title, and it must govern. The pretension, that Labeaume intended to embrace the whole of the Brazeau tract in his survey, is utterly untenable. He asked for 360 arpents, and he requested that his line running westwardly from the river should be twenty arpents long. (*i*)

If he designed to embrace the whole twenty arpents on the river, then he would have asked for a square twenty by twenty arpents, which would have made 400 arpents, independently of the triangle.

This was palpable, and could not have escaped observation. But it is proved positively that he asked for *sixteen arpents front.* This, multiplied by twenty in depth, gave him 320 arpents; and the triangle, (forty-two arpents) made 362 and a fraction, which was very near the quantity intimated and petitioned for.

Labeaume, Brazeau and Chouteau all understood the ditch as the southern line of Labeaume's tract. Their acts prove it. The universal understanding and representation of the country, which are legal evidence in such cases, proves it. The uninterrupted possession of the parties proves it.

The possession was taken and the lines were fixed with a great deal of solemnity by a public officer, who convoked them for the purpose of witnessing this important proceeding; and their consent and acquiescence, under such circumstances, gives to the boundaries thus settled almost the same obligatory character as if they had been adjusted by contract between the parties. Chouteau seems to have been aware of this possession, and of all the facts connected with the condition of the title, when he petitioned for his grant, on the 15th October, 1799. He was then the equitable owner, under a verbal contract with Brazeau, of his (Brazeau's) unconfirmed reservation of four by four arpents. He also believed that Esther's grant had been annulled.

His petition was based on this supposition, as it asked for a grant of the land embraced within the Esther claim. He knew also of Labeaume's survey, for it had been made but seven months before; viz, on the 2d March, 1799, and his petition is in *its very terms subordinate*

(*h*) There is a plat attached to the grant. See concession to Esther.

[*i*] Labeaume states, in the claim he filed with the records, that the survey of Soulard for 374 arpents includes the four by twenty conceded to Brazeau. See claim, filed February the 26th, 1806.

subsequently conveyed to Chouteau, is bounded on the north by Labeaume's south ditch, and extends to the foot of the mound. (*o*)

Pursuant to the principles herein settled, the necessary surveys will be made, and patents issued in conformity therewith.

(*Signed*) ALEX. H. H. STUART.

DEPARTMENT OF THE INTERIOR, July 25th, 1851.

(EXHIBIT EE.)

SURVEY NO. 3333, BY MILBURN.

The foregoing plat and the following description correctly describe and represent the survey executed by me, in the month of August, September, October and November, 1851, and January, 1852, under instructions of M. L. Clark, Esq., Surveyor General of the United States for the States of Illinois and Missouri, dated 22d of August, 1851, authorizing and appointing me to survey and connect with the lines of the adjoining surveys of private claims a tract of 374 arpents of land for Louis Labeaume, according to the survey for said Louis Labeaume, executed by Antoine Soulard, Spanish Surveyor General of Upper Louisiana, on the 2d of March, 1799, as containing the aforesaid quantity of 374 arpents of land, in conformity with, and in virtue of, the decree of Lieutenant Governor Trudeau, of the 15th of February, 1799, and ordered to be surveyed by the Commissioner of the General Land Office, on the 29th of July, 1851, according to Soulard's aforenamed survey, and in conformity with the decision of the Secretary of the Department of the Interior, of the 25th of July, 1851.

Begin on the bank of the Mississippi river, between high and low water mark, and on the extension eastward of the line of Labeaume's southern ditch, where set a stake from which the north-east corner of the ruins of a stone-house, built by the late Martin Thomas, Esq., for a destillery, and bears S. 57¾ W. 129 links distant: set a stake at this beginning, which is the place of Brown's old corner.

THENCE S. 74½° W. with the southern boundary line of the survey as

Chains.

established by Antoine Soulard, and with the line of Labeaume's southern ditch,

0 80 the top of the high bank of the Mississippi river,

[*o*] Labeaume never possessed the sixteen arpents reserved by Brazeau. See the case of Chouteau vs. Christy, page .

Chains.

4 23 a set stone at S. E. corner of an enclosure,

8 56 a set stone at S. W. corner of said enclosure,

9 72 a set stone at S. E. corner of another enclosure,

11 00 a set stone at the intersection of the east boundary of the Saint Louis common field, 233⅓ links northward of the S. E. corner of survey No. 1410,

11 76⅓ the N. W. corner stone of the survey of 16 arpents of land executed by me for Joseph Brazeau, in December, 1851, under the beforenamed instructions and decision.

14 76 Intersect the eastern edge stones of Broadway McAdamizing, (for connection run S. 13° E. 208 links to the north side of Labeaume street 42 links westward of the north-east corner of Labeaume street and Broadway;—and N. 20¾ W. 420 links to the north side of Webster street 35 links westward of the N. E. corner of Webster street and Broadway.)

14 94½ The center line of Broadway.

15 13 The edge stones on the western side of Broadway McAdamizing.

15 47 Line between surveys 1410 and 1484, 450 links west of corner on E. boundary of common field.

22 50 Ascending the hill here, there is no further appearance of the old ditch; this is about the place of the S. W. angle thereof.

22 97 Intersect a lot occupied by Mr. Aldrich, the N. E. corner—— links northward of the S. E. corner of brick house and——— links northward of S. E. corner of lot on Labeaume street.

25 85 The west edge of a set stone on the east side of 10th street.

27 22 The east edge of a stone on the west side of 10th street.

28 45 The east edge of a set stone.

30 59½ The east edge of a set stone.

32 68 A large set stone at the intersection with the line between surveys 1484 and 1483, 21 chains and 64 links north-westward of the corner of said surveys No. 1484 and 1483 on the eastern boundary of the St. Louis common field.

38 56 Intersect the south line of survey No. 1483 at the N. W. corner of a school lot, survey 379; 27 chains and 56 links north-westward from the corner of said surveys 1483 and 379 on the eastern boundary line of the St. Louis common field; this intersection is in the garden of Major Edwards Dobyns and near his house. I do not, therefore, set a stone, but perpetuate the place of said intersection by the course and distance to a corner

Chains. of his house, viz: the south-western corner of the main part of the house bears S. 77° E. 123 links distant.

40 10 Leave Major Dobyn's garden.

40 18½ A small set stone (—with the line.)

40 48 A large set stone (—with the line.)

41 42 A large set stone (1 across the line.)

42 62 A small set stone (—with the line.)

43 10 A long pond 50 links over (E. W.)

44 20 A large set stone (— with the N. line) at the intersection with the northern line of survey No. 1482 at the S. W. corner of survey No. 379, 33 chains and 27 links north-westward from the corner thereof on the east boundary of the St. Louis common field.

46 35 A large set stone (1 across the line.)

47 24½ A large set stone (1 across the line.)

49 96 A large set stone (— with the line,) at the intersection of the line between surveys 1482 and 1481, 39.14 chains north-westward from the corner of said surveys on the east boundary of the St. Louis common fields.

51 32 A large set stone (— with the line.)

52 18 A large set stone (1 across the direction of the line) is 7 links to the left.

55 38 A small set stone (1 across the direction of the line) is 7 links to the left.

55 74 Set a limestone, 15 inches long, 10 inches wide, and 4 inches thick, at the intersection with the line between surveys 1481 and 1480, from which the old white oak witness tree, *now* 8 inches diameter, bears N. 40 E. 15 links distant (the other old witness tree has gone,) and a red oak, 8 inches diameter, bears N. 59½ W. 10 links distant; this intersection is 45.04 chains north-westward from the corner of said surveys No. 1481 and 1480 on the eastern boundary of the St. Louis common field.

60 83½ Intersect Tyler's western fence 10 links northward of the S. W. corner of his enclosure.

61 48 Intersect the line between surveys 1480 and 1479, 50.89 chains north-westward from the corner thereof on the east boundary of the St. Louis common field; set a lime stone, 14 inches long, 8 inches wide, and 3 inches thick, from which the center of the northern opening of the culvert across Mullanphy street, bears S. 13½ E. 52 links distant.

63 08 Cross the water pipe in Mullanphy street.

Chains.

64 33 Cross the water pipe in 17th street.

64 72 Intersect James Clemens' fence on the west side of 17th street, 39 links S. 15° W. from the northern corner of his lot.

67 02 Intersect the line between surveys 1479 and 734, 56.74 chains north-westward from the corner thereof on the east boundary of the St. Louis common field.

23 00 Arpents the distance called for in the old Spanish survey equal to

67 08⅓ chains, set a lime stone 30 inches long, 12 inches wide and 10 inches thick, for the south-western corner of this survey in James Clemens' enclosure.

Thence N. 15½° W. with the western boundary line of this survey.

0 03½ Intersect the line between surveys 734 and 1479, 62.43 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field.

1 17 Intersect the north-western boundary line of the City of Saint Louis, 51.53 chains S. 22° W. from a stone on said city boundary line inside this survey, which stone is 186.33 chains N. 22 E. from the angle of the city boundary line on the north side of Chouteau avenue.

1 83½ Intersect James Clemens' fence on the south side of Mullanphy street 295 links N. 75° W. from the corner of his enclosure ot the S. W. corner o. Mullanphy and 17th streets.

3 40 Intersects the line between surveys 1479 and 1480, 61.71 chains S. 75¼° E. from the corner of said surveys on the western boundary of the St. Louis common field, set a stone 15 inches square and 3 inches thick.

6 77 Intersect the line between surveys 1480 and 1481, (60.97 chains S. 75¼° E. from the corner thereof on the western boundary of the St. Louis common field,) in a pond, 150 links over; I cannot, therefore, set a stone at said intersection.

10 18 Intersect the line between surveys 1482 and 1481, 60.07 chains S. 75¼° E. from the corner thereof on the western boundary of the St. Louis common field, set a lime stone 18 inches long, 12 inches wide and 4 inches thick.

13 61 Intersect the line between surveys No. 1482 and 380, at Hanfield's southern fence 15¾ links eastward of his S. W. corner and 59.01 chains S. 75¼ E. from the corner of said surveys 1482 and 380 on the western boundary of the St. Louis common field, at said intersection set a lime stone 15 inches long, 12 inches wide and 5 inches thick.

Chains. distant; I set a lime stone at this corner, 40 inches long, 10 inches wide and 4 inches thick, 30 inches in the ground;—the distance called for in the old Spanish survey of this line is 13 arpents 6 poles, equal to 39.66⅔ chains; but I find the place of the old stone 180⅔ chains short of this distance, (1.75 chains being equal to 6 poles, so that the line may said to be only 13 arpents, as my measure makes it only 5⅔ links short of that.) Thence N. 13½ W.

0 77 a set stone on the south side of a street, is 2⅔ links to the left.

1 69 a set stone on the north side of said street, is 6 links to the left.

2 94 Intersect the north-west boundary of the City of Saint Louis, 10.44 chains N. 22 E. from a set stone on the hill on said city line, which said stone on the hill is 186.33 chains N. 22 E. from the angle of the city line at the north side of Chouteau avenue, set a stone at this intersection.

4 71 Intersect the north boundary of survey 1487 and which is also the north boundary of the St. Louis common field, 94.13 chains S. 75¼ E. from the N. W. corner of the St. Louis common field, and 19⅔ links S. 75¼ E. from the stone on said line at its intersection by the line of Mr. Brown, run N. 15¼ W.; set a lime stone 12 inches long, 4 inches wide and 3 inches thick, at this intersection.

5 35 A set stone 18 links to the left.

6 88 The west side of the N. W. prong of a double black oak, this N. W. prong is 15 inches in diameter.

3 00 Arpents 6 poles at the distance called for in the old Spanish survey, equal to

10 15 chains, intersect the old bed of the Rocky Branch, where being on the rocky bottom, I cannot set a stone; the N. W. corner of the southern abutment of the arch of the bridge across the Rocky Branch on the Belle Fontaine road, bears N. 9 E. 10 links distant, from which corner of the abutment, Brown's corner on the Rocky Branch of survey No. 2974, as executed in 1833, bears S. 26°50′ W. 63 links distant, and from this corner of my survey in the old bed of the Rocky Branch, I run to show the track of the old road S. 22 W. 3.06 chains center of the old road at the foot of the hill; thence S. 1 W. with the center of the old road ascending the hill 2.90 chains, brow of the hill 8.30 chains, intersect the north boundary line of my survey one chain and thirty-one links S. 74¼ W. from the intersection

Chains. with the line between surveys No. 1486 and 1487:—return to the corner in the old bed of the Rocky Branch at 10.50 chains on the line run N. 13½ W., and run thence down with the meanders of the Rocky Branch as near as practicable with the center of the old bed thereof, as indicated by present appearances, and from the best knowledge I could obtain by diligent inquiry of those most able to give correct information respecting the recent changes which have been made; I have also referred to the old deeds and plats of the owners on opposite sides of the Branch N. 72½ E.

0 04 Intersect the western side of the bridge across the Rocky Branch on the Bellefontaine road, 9 links S. 14½ E. from the inside of the southern abutment.

0 44 Intersect the eastern side of said bridge 5 links S. 14½ E. from the inside of the southern abutment.

1 53 Set a stake in old bed of the Branch, and on the right bank of the present bed of the Branch.

Thence N. 42½ E.

1 05 Set a lime stone 16 inches long, 8 inches wide, and 6 inches thick, marked z on the top, in the former bed of creek, on a hillock made for turning the water from the stone wall, which is 10½ links N. 42½ E. from said stone; from this stone an elm 30 inches diameter, at the foot of the aforesaid stone wall, and the southern edge of a well both bear N. 2 E., the well 11 links and the elm 69 links distant, and another elm, 10 inches in diameter, bears N. 40 W. 37½ links distant.

Thence N. 3½ E.

1 32 A point on the west side of a curve in the stone wall, from which the center of the north end of the straight part of the said wall bears S. 2 E. 60 links distant, and 113 links further, on the same course (S. 2 E.) to the south end of the said stone wall.

Thence N. 24½ W.

0 80 A point in the water of the branch 4 links to the westward from the northern end of the aforesaid stone wall.

Thence N. 55 W with the branch.

0 80 Passed on the western side of an elm. 24 inches in diameter, standing on the right bank of the branch.

1 60 A point on the left edge of the water of the branch.

Thence N. 47¼ W.

1 59 A point in the middle of the old bed of the Branch at a part

Chains. of the fence between the lots now in the possession of Habb, on the south, and of Hayne, under Farmer, on the north, 2 chains, and N. 70 E. from their division corner on the east side of the Bellefontaine road, and 14 links S. 70 W. from the corner post of their division fence on the left bank of the present bed of the branch, the point above designated as being in the middle of the old bed of the branch, is evidently so beyond dispute, the branch having been turned from its original channel by a stone wall a few links above, but the original bed is yet plainly marked.

Thence N. 3¼ W.

1 00 A point on the left bank of the branch.

Thence N. 51⅜ E.

0 73 A point in the branch.

Thence S. 72½ E.

3 39 A point in Ashbrook's pork house.

Thence N. 17½ E.

0 59 A point of the western side of a house appendant to Ashbrook's pork house.

Thence north.

1 00 To a point in the old bed of the branch.

Thence N. 64 W.

2 32 A point in the old bed of the branch.

Thence N. 1 W.

1 26 The N. W. corner of a brick house in the old bed of the branch, the center thereof and 256 links S. 69 W. from the S. W. corner of Dock street and Broadway.

Thence N. 33¾ W.

0 77 The north side of Dock street, 273 links S. 69 W. from the north-west corner of Dock street and Broadway.

0 91 A point in the old bed of the branch.

Thence N. 25½ E.

1 00 A point in Brown's old line.

Thence S. 82¾ E.

1 10 A point 30⅓ links N. 21 W. from the north side of Dock street.

Thence N. 5¾ W.

2 02 A point in the present and old bed of the branch and on Brown's old course.

Thence S. 78½ E.

0 63 Intersect the west side of Broadway 191 links N. 21 W. from the N. W. corner of Broadway and Dock street, and at the N. E. corner of a frame house.

Thence S. 79½ E. across Broadway, which is 80 feet wide at ——

Chains. and southward from these meanders

1 44 The east side of Broadway 115 links N. 21 W. from the N.E. corner of Broadway and Dock street.

Thence N. 86½ E.

0 95 A point 86⅛ links N. 21 W. from the north side of Dock str't.

Thence N. 24 E.

0 63 A point 13¾ N. 21 W. from the north side of Dock street.

Thence N. 5 W.

0 52 A point 208 links S. 69 W. from the west side of 2d and Main streets.

Thence N. 3 E.

1 99 A point 127 links S. 69 W. from the west side of 2d or Main street and 245 links N. 69 E. from the east side of Broadway.

Thence N. 9¾ E.

0 66 A point 93¼ links S. 69 W. from the west side of 2d or Main street, and near the present drain of the branch.

Thence N. 70¼ W. passing through a brick slaughterhouse.

1 18 The division line between Overman and Overfeldt, and in the old bed of the branch.

Thence S. 69 W. with the line between Overman and Overfeldt, and down the old bed of the branch.

1 79 A point on the east side of Broadway, which is here 70 feet wide.

Thence N. 55¼ W.

1 34 A point in Broadway.

Thence N. 27¼ E.

1 00 A point in the old bed of the branch on the east side of Broadway 59 links S. 21 E. from the S. E. corner of Broadway and Buchanan street, and 101 links N. 21 W. from the N. W. corner of Overman's brick house.

Thence N. 51½ E.

1 10 A point in the old bed of the branch.

Thence S. 64½ E.

1 70 A point in the old bed of the branch.

Thence N. 64½ E.

0 42 A point in the old bed of the branch.

Thence N. 27½ W.

1 70 A point in the old bed of the branch (in Buchanan street.)

Thence N. 41½ E.

1 45 A point in the old bed of the branch on the west side of 2d or

Chains. Main street, 832 links N. 21 W. from the N. W. corner of said street and Dock street.

Thence S. 48½ E.

2 62 A point on the east side of 2d or Main street.

3 07 A point in the old bed of the branch.

Thence N. 87½ E.

5 46 The mouth of the Rocky Branch, and which accords with the designation thereof in the survey of the north-western boundary line of the city of St. Louis :—From the mouth of the Branch the N. W. corner of 2d or Main street and Dock street bears S. 37¼ W. 771 links distant, and on the north-west boundary line of the city of St. Louis it is S. 22 W. 661 links to the south boundary of Dock street at a point 208 links N. 69 E. from the S. W. corner of said street and 2d or Main street; also the point adopted by Mr. Brown as the mouth of the branch in his survey of 1833, bears S. 53¼ W. 170 links distant, and the point which he adopted as the mouth in his survey of 1817 bears S. 80½ W. 462 links distant, and it is 735 links at a corner of N. 81 E. across a high and increasing sand beach of the Mississippi river to the edge of the water thereof, showing a continued augmentation of the innings; it is 466 links on the course S. 67 W. to what is called the first bank of the Mississippi river and 250 links further to the high bank; the water of the Rocky Branch from appearances not to be mistaken formerly made its way from this point which I have adopted as its mouth through the sand beach to the water of the Mississippi river in a north-eastwardly direction and united there with *some distance above*, which I believe is generally, if not universally, the case where sand bars are found at the mouths of water courses emptying into the Missouri and Mississippi rivers, and it may be so of all other large rivers, but my personal knowledge in this respect extends only to these: at present, however, the water of the branch runs from here through the sand beach in a south-eastwardly direction, and unites with the water of the river some distance, as will be presently shown, it having by unmistakeable evidence been rather recently diverted from its natural and ordinary course by manual operations intended to produce this result. From the mouth of the Rocky Branch, as before designated, I run down the right bank of the Mississippi river with the meanders thereof between high and low water mark as follows:

S. 9 E.

Chains.

8 66 Set a stake on the line of Mr. Brown's meanders of 1833, 8 chains S. 20 E, from the then mouth of the Rocky Branch, and from this stake on a course S. 53 W. it is 240 links to the first or low bank and 450 links to the high bank of the Mississippi river.

Thence S. 20 E. with Mr. Brown's meandering line of 1833.

5 50 A point from which I offset N.70 E. 183 links center of the rocky branch, as it now runs through the sand beach 6.63 chains to the bluff of the sand beach, and 7.47 chains to the water of the Mississippi river.

10 00 Set a post at an angle of Mr. Brown's meanders of 1833, 140 links N. 53 E. from a point on the high bank of the Mississippi river, from this post the south-east corner post of a stable on the slope of the bank bears S.42 W. 46 links, and the upper point of the present entrance of the water of the rocky branch into the water of the Mississippi river bears S. 62½ E. 16 chains.

Thence S. 34 E.

7 05 The extension eastward of Labeaume's upper ditch 19.75 chains N. 74½ E. from the corner of his survey with the Sycamore witness tree.

15 34 A point from which the N. E. corner of survey No. 1487 bears S. 56 W. 81 links distant, said corner is on the slope of the high bank.

25 00 Set a stake at an angle of Mr. Brown's meanders of 1833 from which the corner of surveys 1486 and 1487 on the east boundary of the St. Louis common field and on the high bank bears N. 75¼ W. 200 links distant, it being 140 links to the slope of the high bank.

Thence S. 23 E. with Mr. Brown's line of 1833.

6 30 A point from which it is 76 links S. 67 W. to the slope of the high bank, and the corner of surveys 3306 and 1486 on the high bank of the river, and on the east edge of an old lime kiln bears S. 67 W. 154 links distant.

13 67 The N. E. corner of Robertson and Patterson's steam saw mill from which the foot of the high bank of the Mississippi river is 92 links aud the top of said bank is 117 links on a course S. 67 W.

14 08 S. E. corner of said mill.

17 45 Corner of a steam saw mill is 30 links to the right.

20 57 S. E. corner of Hendrick's flour mill is 19 links to the right.

Chains.
23 35 N. E. corner of Cochran's saw mill.
30 95 The beginning corner,

Containing 339.68 acres, equal to 399.30 arpents, being an excess of 21.52 acres, equal to 25.30 arpents over the quantity called for by Soulard.

WILLIAM MILBURN,
Deputy Surveyor.

February 2d, 1852.

Office of the Surveyor General for Ill. & Mo.
St. Louis, February 26th, 1852.

The foregoing field notes (on pages 1 to 33 inclusive,) of survey No. 3333 of 339.68 acres, equal to 399.30 arpents, as returned by William Milburn, Deputy Surveyor, under his instructions of the 22d August, 1851, from this office, have been examined and found correct, and the said survey has been executed in conformity with said instructions.

M. LEWIS CLARK,
Surveyor General.

Office of the Surveyor General for Ill. & Mo.
St. Louis, March 9th, 1853.

I certify that the foregoing on pages 1 to 30 inclusive are correctly copied from the original field notes of survey No. 3333, as executed by William Milburn, under instructions from this office, of the 22d August, 1851.

D. A. SPAULDING,
Surveyor General.

(EXHIBIT FF.)

SURVEY NO. 3332 BY WILLIAM MILBURN.

Beginning at a stake set on the right bank of the Mississippi river, the lower and most eastern corner of a tract of 374 arpents, surveyed on the 2d day of March, 1799, by Antoine Soulard, Spanish Surveyor General of Upper Louisiana, for Louis Labeaume, in virtue of an order from the Lieutenant Governor, Zenon Trudeau, dated the 15th day of February, 1799, and now No. 3333 of the United States surveys of private confirmed claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau; and from it the remains of a stone house bears S. 57 deg. 55 min., W. distant 129 links. Thence S. 23 deg., E. along the right bank of the Mississippi river, the easterly boundary of this survey, at 11 chains 66⅔ links, equal to four arpents, a stake set in rear of the workshop attached to Patterson's saw-mill, the lower and most eastern corner of this survey. Thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671; at 1 chain 79½ links intersecting the west front of the aforesaid workshop, and 10 links northward of the south-west corner thereof; at 11 chains 76⅔ links a lime stone, 15 inches long, set into the ground so deep, 8 inches wide, and 6 inches thick, the most southerly corner of this survey; from which the stone at the south-west corner of Second street and East Brooklin street, of the city of St. Louis, bears S. 28 deg. 30 min., E. distant 55 links, and the stone at the north-east corner of the said street bears N. 57 deg. 15 min., E. distant 111 links. Thence N. 23 deg., W. with the westerly boundary of this survey, at 68 links, intersecting the northern boundary of Peter Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey, at 9 chains 58⅔ links, intersecting the east boundary of the St. Louis Common Fields, and of the field lot confirmed to Gabriel Dodier's representatives, survey No. 3410; at a limestone, 21 links north of the south-east corner of said lot of Dodier, at 11 chains 66⅔ links, equal to four arpents, a lime stone, 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333. Thence N. 74 deg. 30 min., E. with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey, at 76⅔ links intersecting the eastern boundary of the St. Louis Common Fields, and of Dodier's lot, at an old stone, 2 chains 12⅓ links northwardly from the last mentioned intersection, on said common field line, and 2 chains 33⅓ links from the south-east corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner.

(EXHIBIT GG.)

PROTEST OF JOHN MAGUIRE TO RECORDER OF LAND TITLES.

St. Louis, January 22d, 1852.

To Adolph Renard, Esq.,
U. S. Recorder of Land Titles.

Sir:—I have been informed that an official survey has recently been made of *four by four arpents* of land, under a concession to Joseph Brazeau, *north of the big mound*, in the city of St. Louis; which survey, I have also been informed, locates said four by four arpents *south of Labeaume's ditch*. I have also been informed that said survey has been approved by the Surveyor General of this District, and that you have been requested by some party or parties to issue a patent certificate, in conformity with said survey.

Now I hereby protest against the issuing of a patent certificate upon the said survey, and protest against the location of said four by four arpents, as the legal representative of Joseph Brazeau, and lay before you the evidence of my being such legal representative, to wit: a copy of a deed made by said Brazeau to Pierre Chouteau, No. 1; copy of a deed from said Chouteau to George F. Strother, No. 2; and a copy of a deed from said Strother's administrator, No. 3. I also inform you that suits in ejectment, to recover the possession of the said four by four arpents—to locate as the same should be, north of Labeaume's ditch—have been instituted in the Circuit Court of the United States, in this district, and in the St. Louis Court of Common Pleas, which suits are now pending, and the trial of them will determine the proper and true location of said four by four arpents, confirmed by the United States to the said Brazeau, and now claimed by me, as his legal representative.

I have to request that you communicate this paper, with the exhibits numbered from one to three, inclusive, to the Commissioner of the General Land Office, and ask for his instructions in the premises.

Respectfully,

JOHN MAGUIRE.

Received this notice January 22d, 1852.

ADOLPHE RENARD.

(EXHIBIT HH.)

RECORDER'S CERTIFICATE ON SURVEY NO. 3333.

Office of the Recorder of Land Titles,
St. Louis, February 26th, 1852.

PATENT CERTIFICATE, NO. 1249.

It is hereby certified, that on the 15th of February, 1799, Zenon Trudeau, Lieutenant Governor of the Spanish Province of Upper Louisiana, made a concession of about 360 arpents of land to Louis Labeaume, and that on the 2d of March of the same year, it was surveyed by Antoine Soulard, surveyor of the same Province, to the amount of 374 arpents, situated three miles north of the town of St. Louis. It is further certified, that the Board of Commissioners, appointed in pursuance of the fifth section of the Act of Congress, approved the 2d of March, 1805, entitled An Act for Ascertaining and Adjusting the Titles and Claims to Land within the Territory of Orleans and the District of Louisiana, confirmed on the 22d of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the 14th of June, 1811, they issued their certificate, numbered 982, for that confirmation, under the fourth section of the Act of Congress, approved the 3d of March, 1807, entitled An Act respecting Claims to Land in the Territory of Orleans and Louisiana. It is further certified, that the Hon. A. H. H. Stuart, Secretary of the Department of the Interior, decided, on the 25th of July, 1851, that those claiming under Labeaume are entitled to a patent for the land, according to Soulard's survey and Labeaume's possession, and that he directed the necessary survey to be made and a patent issued in conformity therewith. It is further certified, that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the accompanying plat and description of survey, numbered 3333, authenticated and returned this day to this office, by M. Lewis Clarke, Surveyor General for Illinois & Missouri.

Now, therefore, be it known that Louis Labeaume, or his legal representatives, is entitled to receive a patent for three hundred and thirty-nine acres, and sixty-eight hundredths of an acre—equal to 399 30-100 arpents of land, the contents of said survey, No. 3333, which is situate in township numbered 45, north of the base line and range 7, east of the 5th principal meridian, in the State of Missouri.

(*Signed*) ADOLPHE RENARD.
U. S. Recorder of Land Titles in the State of Missouri.

To Justin Butterfield, Esq., Commissioner of the General Land Office, City of Washington.

(EXHIBIT II.)

RECORDER'S CERTIFICATE ON SURVEY NO. 3332.

Office of the Recorder of Land Titles,
ST. LOUIS, 26th of February, 1852.

PATENT CERTIFICATE NO. 1250.

It is hereby certified, that on the 22d of September, 1810, the Board of Commissioners appointed, in pursuance of the 5th section of the Act of Congress, approved the 2d of March, 1805, entitled An Act of Ascertaining and Adjusting the Claims to Land within the Territory of Orleans and District of Louisiana, confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis, and that on the 14th of June, 1811, they issued their certificate, No. 983, for that confirmation, as per the fourth section of the Act of Congress of the 3d of March, 1807, entitled An Act respecting Claims to Land in the Territories of Orleans and Louisiana. It is further certified, that from a careful examination of the record, it is the opinion of this Office that the "four arpents" of this confirmation were intended to mean four arpents in front along the Mississippi river, by four arpents in depth towards the west, or sixteen superficial arpents. It is further certified, that the same has been surveyed in strict conformity with the decision of the Hon. A. H. H. Stuart, Secretary of the Department of the Interior, on the 25th of July, 1851, as appears from the accompanying plat and transcript of survey, No. 3332, authenticated and returned on this day to this office, by M. Lewis Clarke, Surveyor General of Illinois and Missouri. Now, therefore, be it known, that Joseph Brazeau, or his legal representatives, is entitled to receive a patent for thirteen acres and sixty-one hundredths of an acre, equal to sixteen arpents of land, the contents of said survey, No. 3332, which is situated in township numbered 45, north of the base line, and range numbered 7, east of the fifth principal meridian, in the State of Missouri.

(*Signed*) ADOLPHE RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

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(EXHIBIT JJ.)

PATENT TO LABEAUME'S REPRESENTATIVES.

THE UNITED STATES OF AMERICA,

To All whom these presents shall come greeting:

Whereas, there has been deposited in the General Land Office *A Patent Certificate*, No. 1,249, of the Recorder of Land Titles at Saint Louis, Mo., whereby it appears that, on the fifteenth day of February, 1799, Zenon Trudeau, Lieutenant Governor, made a concession of about 360 arpents of land to Louis Labeaume, and that on the second day of March of the same year, it was surveyed by Antoine Soulard to the amount of 374 arpents, situate three miles north of the town of St. Louis, and that the Board of Commissioners appointed in pursuance of the fifth section of the Act of Congress, approved March 2d, 1805, entitled An Act for the Ascertaining and Adjusting the Titles and Claims to Land within the Territory of Orleans and the District of Louisiana, confirmed an the twenty-second day of September, 1810, 356 arpents to Louis Labeaume, agreeably to the aforesaid concession; and that on the fourteenth day of June, 1811, they issued their certificate, No. 982, for that confirmation, under the fourth section of the Act of Congress, approved the fourth day of March, 1807, entitled An Act respecting Claims to Land in the Territory of Orleans and Louisiana. And whereas, it appears from the aforesaid patent certificate, that, pursuant to the decision of the 25th of July, 1851, of the Secretary of the Interior, those claiming under Labeaume are entitled to the land, according to Soulard's survey and Labeaume's possession, and that the lines of the said Soulard's survey have been retraced, in conformity with the decision referred to, as appears from the plat and transcript of survey No. 3,333, which accompany said patent certificate, the said plat and transcript of survey having been authenticated by M. Lewis Clarke, Surveyor General for Illinois and Missouri, under date of the 26th of February, 1852, which survey No. 3333 contains 339 68-100 acres, being situate in township 45, &c.; and which plat is described as follows, to wit:—Beginning at a stake set on the right bank of the Mississippi, between high and low water mark, &c. The description here follows—same as in Milburn's return, &c., &c.

———

REMARKS—(*By the Surveyor.*)

The survey of this tract, as made by A. Soulard, in March, 1799, and recorded in "Register A, Arpentage," page 130, a copy of which

is attached hereto, represents the area thereof to be 374 arpents, there being 25 30-100 arpents less than found by this survey. But as no notes of Soulard's survey describes the meanders of the Mississippi river and of the Rocky Branch, the former bounding the tract on the east, and the latter in part on the north, there are, therefore, no means to ascertain whether the difference or excess in the area of this survey, over that given by Soulard, is owing to a miscalculation by said Soulard, or to the subsequent accretion along the bank of the Mississippi river since Soulard's operations. This accretion appears to be rapidly advancing. That portion of the tract eastward of the high bank shown topographically on the foregoing plat, the top of which is designated by the dotted lines "*a, b, c, d, e* and *f*," appears to be the accretion since Soulard's times, and contains about fourteen acres. The following is a copy of Soulard's survey :—

STATEMENT

Of the Interference of certain Surveys of Lots in 3,333, *in the name of Louis Labeaume.*

1st. Survey No. 1,487.—Concession of 2 by 40 arpents to widow Hebert—Survey of same certificate, May the 23d, 1772, by Piernas, Lieutenant Governor, &c., and Austin Duralde, a surveyor duly approved by said Piernas—Confirmation to widow Hebert's representatives by second section of the act of April the 29th, 1816.

2d. Survey No. 1,486 —Concession of 2 by arpents to Dubruisseau's representatives, and certified as above—Confirmation as above to Dubruisseau's representatives, Livre Terrien No. 2, 39, 67 and 68 —Bates' Minutes, page 12, and his decision, page 4.

3d. Survey No. 3,306.—Concession of 3 by 40 arpents to widow Dodier, survey and certificate as above—Confirmation to widow Dodier, or her representatives, by first section of act of 4th of July, 1836. Livre Terrien, No. 2, pages 38, 67 and 68.

4th. Survey No. 1,485.—Concession of 4 by 40 arpents to Dubruisseau, surveyed and certified as above—Confirmation to Dubruisseau's representatives by second section of act of the 29th of April. Livre Terrien No. 2, pages 37, 67 and 68.

5th. Survey No. 1,410.—Jacques Clamorgan, assignee of Ortez under Gabriel Dodier, concession of 2 by 40 arpents to Gabriel Dodier, surveyed as above–Sale by the widow of Gabriel Dodier to JohnB. Ortez the 10th of January, 1810—Sale by Ortez and wife to Jacques Clamorgan the 4th of April of the same year—Confirmation to Gabriel Dodier's legal representatives by the act of the 12th of June, 1812. Livre Terrien No. 2, pages 35, 67 and 68.

6th. Survey No. 1,484.—Concession of 3 by 40 arpents to Paul Gregoire Kiercereau, survey and certificate as above, &c., &c.

7th. Survey No. 1,486.—Concession to Joseph Taillon of 1 by 40 arpents, survey and certificate as above—Confirmation to Joseph Taillon's representatives by second section of act of April the 29th, 1816. Livre Terrien No. 2, pages 33, 67 and 68. Bates' Minutes, page 12, Decision Book, page 3.

8th. Survey No. 380 of St. Louis Lands.—A piece of vacant land of 19 88-100 acres, designated and set apart to the Public Schools of the city of St. Louis by the Surveyor General, on the thirty-first day of March, 1845, pursuant to the Acts of Congress of June 13th, 1812, May 26th, 1824, and January 27th, 1831, and the instructions of the Commissioner of the General Land Office the 15th of January and 18th of February, 1839.

9th. Survey No. 1,482, General Series.—Concession of 1 by 40 arpents to Jean Baptiste Sarpy, survey and certificate as above, by Duralde and Piernas—Confirmation to J. B. Sarpy's representatives by the second section of the act of April 29th, 1816. Also, confirmation by the act of June 13th, 1812, &c., &c.

10th. Survey No. 1,481.—Concession of 1 by 40 arpents to Vien, survey and certificate as above—Confirmation to Vien's representatives by act of the 29th of April, 1816.

11th. Survey No. 1,480.—Concession of 1 by 40 arpents to Moreau, survey and certificate as above—Confirmed to Moreau's representatives by act of the 29th of April, 1816, &c., &c.

12th. Survey No. 1,479.—Concession of 1 by 40 arpents to Lirette, survey and certificate as above—Confirmation to Lirette's representatives by act of the 29th of April, 1816.

13th. Survey No. 734.—Notice of a claim by John Mullanphy to 80 arpents of land, as an improvement right under the assignment of Baptiste Provenchere—Deed from Baptiste Provenchere to John Mullanphy, dated August 26th, 1805—Confirmation to John Mullanphy, assignee of Provenchere, June 1st, 1811, by the old Board, as per certificate No. 734, under the second section of the act of the 3d day of March, 1807. Minutes of the old Board, Book No. 4, page 197; No. 5, page 165, and Certificate No. 734.

Now, know ye, that there is, therefore, granted by the United States unto the said Louis Labeaume, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey No. 3333, saving and reserving any valid adverse rights which may exist to any part thereof.

To have and to hold the said tract of land, according to the said survey No. 3,333, unto the said Louis Labeaume, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reservation as aforesaid.

In testimony whereof, I, Millard Fillmore, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this 25th day of March, 1852.

By the President, MILLARD FILLMORE.

By ALEX. MCCORMICK, *Sec'y.*

JOHN WILSON, Acting Recorder of the General Land Office.–Recorded Vol. 11, pages 150 and

(EXHIBIT KK.)

PATENT TO BRAZEAU'S REPRESENTATIVES.

THE UNITED STATES OF AMERICA,

To all whom these presents shall come greeting:

Whereas, there has been deposited in the General Land Office, a Patent Certificate, numbered 1250, of the Recorder of Land Titles, at St. Louis, Missouri, whereby it appears that, on the 22d day of September, 1810, the Board of Commissioners, appointed in pursuance of the fifth section of the act of Congress, approved the 2d day of March, 1805, entitled "an act for ascertaining and adjusting the titles and claims to land within the territory of Orleans and the district of Louisiana," confirmed to Joseph Brazeau four arpents of land, situate about three miles north of the town of St. Louis; and that on the 14th day of June 1811, they issued their certificate No. 983, for the confirmation, as per the fourth section of the act of Congress of the 3d of March, 1807, entitled "an act respecting claims to land in the territory of Orleans and district of Louisiana," and that from a careful examination of the records, it is the opinion of the Recorder's office, that the four arpents of this confirmation were intended to mean four arpents in front along the Mississippi river, by four arpents in depth towards the west, or sixteen superficial arpents.

And whereas, it further appears from the aforesaid patent certificate, that the said land has been surveyed in strict conformity with the

decision of the 25th July, 1851, of the Secretary of the Interior, as appears from the plat and transcript of survey No. 3332, which accompanied said patent certificate,—the said plat and transcript having been authenticated by M. Lewis Clarke, Surveyor General of Illinois and Missouri, under date of the 26th of February, 1852; which survey, No. 3332, contains 13 61-100 acres, equal to 16 arpents of land, being situate in Township 45, north of the base line of Range 7, east of the fifth Principal Meridian, in the State of Missouri, and which is platted and described as follows, to wit:

Beginning at a stake set on the right bank of the Mississippi river, the lower and most eastern corner of a tract of 374 arpents, surveyed on the 2d day of March, 1799, by Antoine Soulard, Spanish Surveyor General of Upper Louisiana, for Louis Labeaume, in virtue of an order from the Lieutenant Governor, Zenon Trudeau, dated the 15th day of February, 1799, and now No. 3333 of the United States surveys of private confirmed claims in Missouri; said lower corner of the Labeaume tract being the upper and most northern corner of this survey of Joseph Brazeau; and from it the remains of a stone house bears S. 57 deg. 55 min., W. distant 129 links. Thence S. 23 deg., E. along the right bank of the Mississippi river, the easterly boundary of this survey, at 11 chains 66⅔ links, equal to four arpents, a stake set in rear of the workshop attached to Patterson's saw-mill, the lower and most eastern corner of this survey. Thence 74 deg. 30 min. W., with the southern boundary of this survey, it being 68 links southward of the northern boundary line of a tract surveyed for Peter Chouteau, and numbered 671; at 1 chain 79½ links intersecting the west front of the aforesaid workshop, and 10 links northward of the south-west corner thereof; at 11 chains 76⅔ links a lime stone, 15 inches long, set into the ground so deep, 8 inches wide, and 6 inches thick, the most southerly corner of this survey; from which the stone at the south-west corner of Second street and East Brooklin street, of the city of St. Louis, bears S. 28 deg. 30 min., E. distant 55 links, and the stone at the north-east corner of the said street bears N. 57 deg. 15 min., E. distant 111 links. Thence N. 23 deg., W. with the westerly boundary of this survey, at 68 links, intersecting the northern boundary of Peter Chouteau's survey, No. 671, 3 chains 28 links eastwardly from the northward corner of said survey, at 9 chains 58⅔ links, intersecting the east boundary of the St. Louis Common Fields, and of the field lot confirmed to Gabriel Dodier's representatives, survey No. 3410; at a limestone, 21 links north of the south-east corner of said lot of Dodier, at 11 chains 66⅔ links, equal to four arpents, a

lime stone, 12 inches long, at Louis Labeaume's southern ditch, being on the southern boundary of this tract, survey No. 3333. Thence N. 74 deg. 30 min., E. with the old ditch, Labeaume's southern boundary, and the northern boundary of this survey, at 76⅔ links intersecting the eastern boundary of the St. Louis Common Fields, and of Dodier's lot, at an old stone, 2 chains 12⅓ links northwardly from the last mentioned intersection, on said common field line, and 2 chains 33⅓ links from the south-east corner of said Dodier lot, at 11 chains 76⅔ links to the beginning corner.

The foregoing description of the metes and bounds of said survey No. 3332, being accompanied in the said transcript of survey, certified on the 26th day of February, 1852, by Surveyor General Clarke, by the following statement of surveys of private claims, which interfere with survey No. 3332, of Joseph Brazeau, before described, to wit:

Survey No. 671, of Peter Chouteau, founded on a concession of the 16th October, 1799, by the Lieut. Governor, C. D. Delassus, to Pierre Chouteau. The grant was surveyed on the 10th March, 1803, by Antoine Soulard, as certified by him on the 17th of June, of the same, year, to the amount of 133 arpents; but said Chouteau, on the 25th of January, 1809, renounced, before the old Board of Commissioners, all claim to 39 arpents and 99 perches of the land claimed, which interfered with land heretofore surveyed, leaving the quantity at present claimed 93 arpents and 1 perch. In consequence thereof, the said Board confirmed to Pierre Chouteau 93 arpents and 1 perch, on the 29th of May, 1811, as per certificate No. 671, under the 4th section of the act of the 3d March, 1807; and they ordered that the same be surveyed so as not to interfere with the field lots of the Little Prairie adjoining the town of Saint Louis.

This confirmation was surveyed by the United States as No. 671. It was duly recorded, and a transcript survey was returned to the Recorder of Land Titles on the 4th of November, 1822. That officer issued patent certificate No. 289 for said survey; No. 671 on the 28th November, 1823, which was succeeded by a patent on the 26th of March, 1824. See Book C, pages 377, 378 and 379; also Minutes of the Board of Commissioners, book No. 3, pages 443 and 445; No. 5, page 159; and Confirmation Certificate No. 671, in the Recorder's office. And see Record Book B, page 221, Register of Private Surveys in Missouri, page 19. The letters of the Commissioners of the General Land Office, of July 19, 1841—11th March and 15th December, 1847, to the Surveyor General; and the Surveyor General's letters to the said Commissioner, of the 10th June, 1847, and 8th November, 1847, all in the Surveyor General's office; also American State Papers, vol. 2, page 586, edition of 1834.

2d. Survey No. 1410, Jacque Clamorgan, assignee of Ortez, under Gabriel Dodier, a concession of two by forty arpents, bounded south by Kerichereau and north by Debruisseau, to Gabriel Dodier; and survey of the same certified on the 23d May, 1772, by Pedro Piernas, Lieutenant Governor of the Spanish settlement of Illinois, and Martin Duralde, a surveyor duly appointed by said Piernas. Sale by Margaret, widow of Gabriel Dodier to John B. Ortez, the 10th January, 1810; sale by Ortez and wife to Jacque Clamorgan, the 14th April, 1810. Confirmation to Gabriel Dodier's representatives, by the act of the 13th June, 1812, as per proof before Recorder Hunt, on the 13th August, 1825, pursuant to the first section of the act of 13th of May, 1824. Surveyed by the United States in October, 1826, as No. 1410; but no transcript survey as yet returned to the Recorder, for a certificate of confirmation. See Livre Terrien No. 2, pages 35, 36, 67 and 68; Book F, pages 90 and 91; Bates' Minutes, pages 74 and 128, and his Decision, page 1; and Hunt's Minutes, No. 2, page 147, in the Recorder's office; see book of field notes of private surveys in Missouri, No. 18, and Hunt's list No. 666, in the office of the Surveyor General; also American State Papers, vol. 2, page 276, edition of 1834.

3d. The Brazeau survey interferes also with survey No. 2571, dated March, 1822, of a location of 160 acres, made on the 7th April, 1817, by Thomas Rector and Elias Barcroft, for Henry Peroux, under Francis Hamelin, to whom had been issued, on the 30th November, 1815, certificate No. 184, for the said 160 acres, under the act of Congress of the 17th February, 1815, entitled "an act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquake." It appears that survey No. 2571 was returned to the Recorder on the 24th January, 1824, and then patent certificate No. 408 was issued, on the 27th April, 1833, and transmitted to the General Land Office; but the Commissioner having decided in his letter of the 15th January, 1839, to the Surveyor General, that this tract not being land the sale of which was authorized by law, Peroux's claim to it must be ragarded as invalid. No notice is therefore taken of survey No. 2571. See Register of New Madrid Sections, in the Recorder's office, Book A, page 105; Register of Private Surveys in Missouri, page 70; and the aforesaid letters of the 15th January, 1839, in this office.

Now, know ye that there is therefore granted by the United States unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs, the tract of land as described in the aforesaid survey No. 3332, saving and reserving any valid and adverse rights which may exist to any part thereof.

To have and to hold the said tract of land according to the said survey No. 3332, unto the said Joseph Brazeau, or his legal representatives, and to his or their heirs and assigns forever, with the saving and reserving aforesaid.

In testimony whereof, I, Millard Fillmore, President of the United States, have caused these letters to be made patent, and the seal of the General Land office to be hereunto affixed.

Given under my hand, at the City of Washington, this 25th day of March, in the year of our Lord one thousand eight hundred and fifty-two, and of the Independence of the United States the seventy-sixth.

By the President,

MILLARD FILLMORE.

By M. P. FILLMORE, *Secretary.*

JAS. S. WILSON, Acting Recorder of the General Land Office ad Interim.

Recorded Vol., pages 172, 173, 174, 175, 176, 177, 178.

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

MARCH TERM, 1856.

MONDAY, APRIL 28TH, 1856.

JOHN MAGWIRE, vs. JAMES GUTHRIE et al. } Answer of Defendants filed.

Which answer is in words and figures as follows, to wit:

ANSWER.

JOHN MAGWIRE, vs. JAMES GUTHRIE, WM. CHAMBERS, LOUIS A. LABEAUME, and others, defs. } In the St. Louis Land Court, April Term, 1856.

All the defendants in this case named in the amended petition for answer to the petition of Plaintiff state, that many of the averments in the petition are untrue and inaccurate, and as a denial of all the averments therein differently stated from the following history of the case; the Defendants state, in answer, as follows:

That the premises in controversy are situate on the river Mississippi, about four arpents north of the Big Mound, a most noted monument in St. Louis, called by the French La Grange de Terre, (earthen barn). This mound is an artificial erection situate on the brow of the first bank of the prairie, west of the bank of the said river, at the distance of about 28 arpents 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 arpents west of the river bank, where the mound stands, and about sixty 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 arpents northwardly parallel with the river, at the distance of about seven arpents 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 arpents north of the mound. South of the Big Mound, about 18 arpents 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 Mississippi river, 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 earthen barn and the banks of the Mississippi; thence descending the said river as far as the compliment and extent of twenty arpents in length, &c." This description locates the north line of Esther's between the Big mound and the river, and the call for quantity is to the extent of 20 arpents 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 lands situated *beyond the foot of the mound*, called the earthen barn, of the width of four arpents, &c., and the grant to him was for 4 by 20 arpents "from the foot of the hill where the earthen 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 lime-kiln on the bank of the river, about 2½ arpents 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 second of September, 1794, Esther conveyed her interest in the grant to her, to Jacque Clamorgan, her lord and master, 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. (See Roy'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's tract is 19 arpents south of the north foot of the mound, and about 23 arpents south of Labeaume's south ditch.

On the 9th of May, 1798, Brazeau sold, by deed, 4 by 16 arpents of his tract to Louis Labeaume, under whom defendants claim, and reserved his fields and limekiln, near the Big mound. The descriptive words of the deed are, "which consists of four arpents of land, to be taken from the foot of the hill or mound commonly called La Grange de Terre, the earthen barn, by twenty arpents 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 arpents 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 thereof by Brazeau.

Labeaume, after said purchase of Brazeau, immediately enclosed the land with embankments 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 embankments 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 April, 1816, when he sold to William Chambers. The north and south ditches of Labeaume were 16 arpents 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 fields south of the ditch, up to the time he sold to Labeaume, and after the sale he rented the kiln to one Primeau.

It appears 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 arpents at the foot of the mound to Pierre Chouteau. (See deed referred to.)

In February, 1799, Labeaume asked for a grant of 360 arpents "of land *including the part which he had acquired of Brazeau*, that is to say, 20 arpents in depth from the Mississippi along the Rocky Branch west one-fourth south, by 16 arpents front 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. (See petition and grant referred to.)

On this petition the same Lieutenant Governor who certified to the Brazeau reservation, ordered a survey, the 17th February, 1799, and on the second of March, 1799, Don Antonio Soulard, Spanish Surveyor of Upper Louisiana, 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 arpents. The south ditch of Labeaume is 4 arpents and 20 French feet north of the north foot of the Big mound, at a point 4 arpents west of the river.

The reservation of Brazeau by his deed, of 4 by 4 arpents on the Mississippi, from the foot of the Big mound, locates it south of, and adjoining the the southern ditch of Labeaume.

In February, 1806, Labeaume filed his claim for confirmation under the act of Congress of the 2d March, 1805, as follows: "Louis Labeaume (claimed) 374 arpents of land, conceded in part to Joseph Brazeau, the 20th of June, 1794, and the other part to Louis Labeaume, the 15th 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 by the Recorder of the Land Titles, to wit:

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

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

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

4th. The certificate of the sale of 4 by 20 arpents by Brazeau to Labeaume, with a note of the reservation of 4 arpents written on the grant by the Lieutenant Governor, as follows: I do certify, that the above concession, except 4 arpents, 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 arpents front purchased of Brazeau, 20 arpents west, and for the angle at the Rocky Branch, about 360 arpents.

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

7th. The survey by Soulard of 374 arpents, and his plat thereof, for Louis Labeaume.

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 arpents, 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 arpents, and four arpents 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 arpents 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 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 June, 1803. In P. Chouteau's petition of 1799, he asked 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. (See grant and survey.)

This confirmation to Brazeau, under which Plaintiff claims, is null and void; the Board had no jurisdiction over the Brazeau case, and no notice had been filed by Brazeau, or any one for him, for the confirma-

tion. Pierre Chouteau procured a confirmation in 1809 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 carthen barn. (See Deed from Brazeau to Chouteau.)

In 1817, Rector and Barcroft entered for Henry Peyroux all the land south of Labeaume's south ditch, including the reservation and all of Pierre Chouteau's tract, under a New Madrid eartquake certificate, No. 184. Pierre 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, that it covered the whole of a small tract of 16 arpents 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 Magwire, in June, 1846, and Magwire 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 now, for the title of Brazeau passed to Labeaume, in 1798, for the whole of Brazeau's tract, excepting only the 4 by 4 arpents at the foot of the mound. If Brazeau had no land where he reserved these 16 arpents, 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 arpents to William Chambers by deed of April, 1816, for $7,460, a full consideration, and Chambers had no notice of the alledged mistake in the location of Brazeau's reservation, and he was not put upon enquiry 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 defendant, 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 of stockade fence between Labeaume's land and Brazeau's reservation, and this is an estoppel against Pierre Chouteau and all persons claiming under him, including the Plaintiff. (See all the deeds and surveys and papers referred to.)

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 a 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 recognised 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 Pierre 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 said parties and their privies of the said several tracts of land, in accordance therewith, has vested a complete title in the said representatives of Louis Labeaume to the land in 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 ditch and embankments. Defendants

deny that the proper or true location of said four by twenty arpents of Joseph Brazeau, was, or is as stated in the plaintiffs' 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 recognised the right of a proprietorship of said Joseph Brazeau to said sixteen arpents 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 grantee 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 tates No. 3333, as the land belonging to him.

Defendants deny, that William Christy entered into and lawfully withheld the possession of said reservation, as stated by plaintiff. It is true, that William 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 & Wright, and held the same with his tenants 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' grantees, Chambers, Christy & Wright, laid off the said Labeaume tract into lots and blocks, they did so as owners in fee of the whole of this 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 & Wright, and their representatives and grantees, from and after the year 1816 until the year 1846.

Defendants deny, that the sixteen arpents of land, or four by four arpents, lying north of the southern ditch and embankments of Labeaume's tract, was unenclosed, as alleged, or lay open as a common to the public, as alleged, without fence 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, excepting 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 arpents, north of the southern ditch of Labeaume as stated, and defendants deny, 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 M. West of said lot of land, was made without a valuable or *bona fide* consideration, and for the purpose and with a 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 harrassing 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 assignees of Louis Labeaume, in the year 1832 or 1833, made an attempt to procure a patent certificate upon the said survey No. 982 and 983, of 1817 as stated, nor whether William Chambers, said grantee 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 the said order and direction of the Secretary of the Interior, touching said survey Nos. 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 the said patents are conclusive evidence of the location of the said two tracts of land, and that plaintiff is estopped from denying the conclusive effect thereof—at law or in equity. Defendants further aver, that plaintiff conveyed the whole of said Brazeau 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 location as given by said surveys Nos. 3333 and 3332, and the said patents, 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 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 Setretary 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, authorising 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 deed of the 2d day of January, 1852, as alleged, and Defendants have no information or knowledge sufficient to form a *believe*, whether the said John O'Fallon was authorised 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 conditions of survey, and that no title at law or in equity passed to Joseph Brazeau until such survey.

Defendants further aver, that William Chambers, Wm. 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 arpents 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 20 years next before the commencement of this suit.

Defendants further aver, that the plaintiff is bound 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 plaintiff's petition.

Defendants further aver, that the title to the 16 arpents front by four arpents 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 capable of transfering 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. Wherby 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 Defendants ask for judgment and for their costs.

All the deeds, surveys and papers herein referred and not filed or named as Exhibits by Plaintiffs, are herewith filed as Exhibits by Defendants.

Oath of Defendants waived.

KRUM & HARDING,
GLOVER & RICHARDSON,
Att's for Plaintiff.

HILL, GROVER & HILL
& JNO. R. SHEPLEY,
Att's for Defts.

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

THURSDAY, May 29th, 1856.

JOHN MAGWIRE,
vs.
MARY L. TYLER, et al. } Stipulations of parties filed.

Which "Stipulations of Parties" is in words and figures as follows, to wit:

JOHN MAGWIRE, Pltff.
vs.
MARY L. TYLER & others, Defts. } In the St. Louis Land Court.

It is stipulated and agreed by and between the parties and their attorneys in the above entitled cause, that either party may read in evidence, before the Court and jury on the trial of this cause, the testimony of any witness, which appears and is contained in the report of the evidence taken on the trial of the cause of John Magwire versus Benjamin Vice, lately depending in the St. Louis Court of Common Pleas: provided: the said witness be dead or absent from the State, or if his attendance cannot be procured upon subpoena or attachment; or if the Sheriff of St. Louis County shall return non est inventus on a subpoena for any sush witness; subject, however, to all legal exceptions to the competency, relevancy and pertinency of the said testimony, by either party.

Also copies of any deed, covenant or writing, and all documentary evidence, duly certified by the proper officer, may be read in evidence, in like manner as the originals when the originals if produced would be competent evidence without proof of their execution, subject, however, to all legal exceptions by either party, to their relevancy, or competency, or pertinency.

No objections shall be made, that the deeds, writings, documentary evidence, and testimony mentioned and referred to in the foregoing stipulation have not been filed with the papers in this cause.

St. Louis, May 26th, 1856.

Defendants have notice that the plaintiff intends to offer in evidence at the trial the Bills of Exception and the testimony therein contained in the case of Pierre Chouteau vs. William Christy, and the case of George F. Strother vs. William Christy, lately depending in the St. Louis Circuit Court. } Krum & Harding, Glover and Richardson, Att'ys for Pl'ff. / B. A. Hill & J. R. Shepley, Att'ys for Def'ts.

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

TUESDAY, June 3d, 1856.

John Magwire,
vs.
Mary L. Tyler and others. } Abstract of Petition filed.

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

THURSDAY, June 5th, 1856.

John Magwire,
vs.
Mary L. Tyler et al. } Now, at this day, come said parties by their attorneys, and thereupon came also a jury, to wit: Joseph R. Huff, Samuel Woods, Denis Galvin, J. G. Schultz; George Barroman, Charles Lumbert, H. Aherns, Terrence Brady, Richard Floyd, David B. Lownds, Samuel W. Chapin, and David Reid, twelve good and lawful men, who being duly elected, tried and sworn, well and truly to try the issues joined in this cause, and a true verdict render according to the evidence thereupon, the trial progressed, but not being fully ended at the adjournment of the Court, is continued until tomorrow.

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

FRIDAY, June 6th, 1856.

JOHN MAGWIRE
vs.
Mary L. Tyler, William C. Tyler, William C. Tyler, Mary S. Tyler, Ann Eliza Tyler, Alice Tyler, Emma Tyler, Fannie S. Tyler, Roberta Tyler, James Guthrie, William Chambers, LouisaA. Labeaume, JohnE. Shepley, Isaac H. Sturgeon, Thomas L. Sturgeon, Edward D. Hobbs, Thomas A. Dryden, Joseph Templeton, Marshall Brotherton, Calvin Case, Renjamin F. Jennings, Joseph Cochran, Thomas J. Beirne, William L. Ewing, Harriett M. Dean, Matilda N. Taylor, Edwin B. Smith and Virginia M., his wife, Susan P. Christy, George W. Goode and Francis S. M., his wife, David D. Mitchell, Mary S. Mitchell, Fanny C. Mitchell, Susan P. Mitchell, David D. Mitchell, Jr., Taylor B. Mitchell, Charles G. Mitchell, William A. Pendleten, and Mary A., his wife, William F. Wright, Thomas A.

Wright, William H. Glasgow and Mary H., his wife, Theodore P. Greene and William H. Wright, trustees of Mary H. Glasgow, Martha A. Wills, Thomas A. Wright and John C. Wickham, trustees of Martha A. Wills, Alfred Dryden and Margaret, his wife, Elizabeth Gordon, Euphemia Gordon, Minerva Gordon, Mary Gordon, Daniel A. Rawlings, Thomas Shaffey, John Brotherton, John B. Gibson, George W. Sparhawk, Joseph Dennis, Seaborn Miller, Mark Chester Jennings, James Patterson, A. B. Stone, G B. Boomer, L. B. Boomor, Benjamin Vice, Louisa R.Brown, James B. Brown, Robert B. Brown, Laura H. Brown, Mary Ann Lakenan, James R. Lackland and Orleana Schaumburg.

JUDGMENT.

Now, at this day, come said parties, by their respective attorneys, and thereupon come also the jury heretofore sworn in this cause, therefore the trial progressed, and the Court, having heard and examined the plaintiff's petition, and being fully advised of, and concerning the premises, is of opinion, that the plaintiff's pecition does not state facts sufficient to show a cause of action against the defendants, or either of them, nor has plaintiff any right to have the relief prayed for in said petition; It is, therefore, ordered, adjudged and decreed by the Court, that the plaintiff's petition be, and the same is, dismissed without prejudice to the rights of the plaintiff: And it is further ordered, adjudged and decreed by the Court, that the plaintiff pay the costs of this proceeding, and that execution issue therefor.

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

WEDNESDAY, JUNE 11th, 1856.

John Magwire, vs. Mary L. Tyler et al. } Bill of Exceptions filed.

Which Bill of Exceptions is in words and figures as follows, to wit:

John Magwire, vs. Mary L. Tyler and others. } In Land Court.

Be it Remembered, that this cause was called for trial, and the

plaintiff appeared by his counsel, and the defendants also appeared by their counsel, both parties having announced themselves ready for the trial and hearing of the case, whereupon the Court, after having examined the Petition and Answer, *Ex Mero Motu* ordered the Plaintiff's petition to be dismissed, to which action of the Court in dismissing said petition the Plaintiff at the time duly excepted and now asks that this his Bill of Exceptions may be signed and made a part of the Record, which is done.

C. B LORD.

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

SATURDAY, JUNE 14TH, 1856.

John Magwire vs. Mary L. Tyler et al. } Affidavit for appeal to Supreme Court filed, Plaintiff as principal and Charles K. Dickson as security to appeal bond in the sum of two hundred and fifty dollars. Approved by Court.

Which affidavit for appeal is in words and figures as follows, to wit:

JOHN MAGWIRE vs. MARY TYLER et al. } St. Louis Land Court.

AFFIDAVIT FOR APPEAL.

The said John Magwire, Plaintiff, makes oath and says, that he does not apply for and take an appeal in this cause for vexation or delay, but because he believes that he has been aggrieved by the judgment of the Court.

Sworn to and subscribed before me this 14th day of June, 1856. C. A. MANTZ, Clerk. } JOHN MAGWIRE.

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

WEDNESDAY, JUNE 18TH, 1856

John Magwire vs. Mary L. Tyler et al. } Affidavit for Appeal heretofore filed, submitted, and Appeal granted, Bond filed, and approved by Court.

Which Appeal Bond is in words and figures as follows, to wit:

Know all men by these Presents, That we, John Magwire, as principal, and Charles K. Dickson, as surety, are held and firmly bound unto Mary L. Tyler et al. in the sum of Two Hundred and

fifty dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at St. Louis, this 18th day of June, A. D. 1856.

The condition of the above obligation is such, that, whereas John Magwire has appealed from the judgment rendered against him and in favor of Mary L. Tyler, et al., in the St. Louis Land Court, for the sum of Two Hundred and fifty dollars, for costs of suit.

Now, if the said appellant will pay all costs and damage that may be awarded against him occasioned by such appeal: and shall prosecute his appeal: and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St. Louis Land Court to give; and shall, if the judgment, or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise it shall remain in full force and effect.

JNO. MAGWIRE. SEAL

CHARLES K. DICKSON. SEAL

Approved by Court,
C. A. MANTZ, Clerk.

STATE OF MISSOURI, } ss.
COUNTY OF. ST. LOUIS. }

I, Charles A. Mantz, Clerk of the Saint Louis Land Court, within and for said County, certify the foregoing transcript to be a true and faithful copy of the record and proceedings had in the case of John Magwire, plaintiff, and Mary L. Tyler, and others, defendants, as fully as required as the same remains of record in my office.

In Testimony Whereof, I hereto set my hand and affix the seal of said Court at office, in the City of St. Louis, this 27th day of August A. D. 1856.

Charles A. Mantz, Clerk.

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