Chouteau, Sophie v. Magenis, Arthur J. et al 1859 St. Louis 394/6

593/12

Magenis, William
Blair, Montgomery (executor)
Arthur S Magenis (deceased)
John Bissell Jr.
Charles Bissell
Charles Semple Samuel M. Farnsworth
Edwin Janney

57
459 28 Mo 187

Chouteau - claims land through her sister's divorce
Magenis - owned land for 10 yrs - made improvements - says divorce was not valid
Bar - down to divorce act of 1816 passage of deed was inoperative

Napton - affirms - worried about balance of power between state & territory - really no evidence to persuade him otherwise

Scott - dissents -

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* St. Louis Court of Common Pleas *in said State, GREETING:*

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of St Louis

wherein Sophie Chouteau was plaintiff & Arthur J. Mogenis and others were defendants

in a~~n action of~~ Civil Action manifest error hath intervened, to the great damage of said defendants as by their complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in October next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the Sixth day of April in the year of our Lord one thousand eight hundred and fifty Seven.

Wm. S. Glanville,

CLERK.

$1.50

...ed to
...g as having
...ly acknowl=
and deed

State of Missouri } ss. I, Charles W Hicks, Clerk
County of St Louis } of the St Louis Court of Common
Pleas, in and for said County, in obedience to the
command of the within Writ, herewith furnish
a true and complete transcript of the record and
proceedings in the case therein named as fully as
the same remain 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 10th day of April 1857.

C W Hicks Clk

The State of Missouri, ss.

The State of Missouri, *To the Honorable the* Court of Common Pleas *in said State, GREETING:* Saint Louis

WHEREAS, In the record and proceedings in a certain cause lately pending in the Court of Common Pleas held in and for the County of St Louis — — —

wherein Sophie Chouteau was plaintiff — and Arthur J. Mogennis and others were defendants

in an action of manifest error hath intervened, to the great damage of said plaintiff as by his complaint we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held in the City of Saint Louis, in the County of Saint Louis, in said State, on the third Monday in March next, so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right, and according to law, ought to be done.

Witness, WILLIAM S. GLANVILLE, Clerk of our said Supreme Court, at office, in the City of Saint Louis, the twenty sixth day of January in the year of our Lord one thousand eight hundred and fifty seven

W. S. Glanville,

CLERK.

$1.50

State of Missouri }
County of St Louis } I Charles D. Hicks
Clerk of the St Louis
Court of Common Pleas in and for said
County in obedience to the Command
of the within writ. herewith furnish
a transcript of the record and proc-
-eedings in the case therein named
as fully as the same remain in
my office

In Testimony whereof I
hereto set my hand &
affix the Seal of said
Court at office in
St Louis this 21st January
A. D. 1857

C D Hicks
Clerk

State of Missouri } Ss
County of Saint Louis }

Be it remembered. That on the First day of September A.D. 1854, there was filed in the Office of the Saint Louis Court of Common Pleas, a certain Transcript of proceedings before that time had in the Circuit Court of the County aforesaid, being removed from said Circuit Court by change of venue in accordance with the Statute in that case made and provided;

(1)

Said Transcript is in the words and figures following to wit;

"State of Missouri County of St Louis Ss
Be it remembered, that heretofore to wit, on the 15th day of June Eighteen hundred and fifty, there was filed in the office of the Clerk of the Circuit Court, within and for the County of St Louis, a Petition which is in the words and figures following to wit;

Petition } In the St Louis Circuit Court
April Term 1850

Sophie Chouteau Plaintiff

vs.

Arthur J. Magenis, William M. Magenis Montgomery Blair, Executor of Arthur J. Magenis deceased, Charles Semple, William Semple, John Bissell Jr, Charles Bissell Edwin Tanner, Samuel V. Farnsworth Defendants

St Louis County

The plaintiff Sophie Chouteau

(2) Shaber that she is the widow of Auguste P Chouteau deceased, and is one of the lawful heirs of her deceased mother Pelagie Labadie formerly of St Louis, and also one of the heirs of her deceased Sister Marie Antoinette Little, formerly the wife of John Little late of St Louis, deceased, and as such heir, is entitled to a distributive share of their respective estates, That said Pelagie Labadie mother of the plaintiff in her life time and until the time of her death, owned and hopeped a lot of ground in the City of St Louis fronting westwardly on first Main Street Sixty Seven feet eight inches, English Measure, and fronting eastwardly the Bluffs of the Mississippi River Sixty Seven feet eight inches English Measure, and being parcel of the block of the City which is bounded on the South by Chesnut Street, On the North by Pine Street, that said lot was bounded on the North by a lot in the same block formerly hopeped and claimed by Gregoire Sarpy, and Separated therefrom by a Straight line running from Main Street to the River, and bounded on the South by a lot in the same block formerly hopeped and claimed by Sylvester Labadie and Separated therefrom by a line running from Main Street to the River, but not Straight, there being in this line (at the distance from Main Street of forty two feet eleven inches) a notch or offset towards the North of eight feet four inches wide from north to South by One hundred and Six feet from East to West, That the said Madame Pelagie Labadie died

without disposing of the said lot, and the same descended to her heirs, of whom the said Maria Antoinette was one, That the said Marie Antoinette in her life time, owned and possessed the said lot, and died without disposing of it, and it descended to her heirs of whom the plaintiff is one, That after the death of said Marie Antoinette one Robert Bentley (now lately deceased,) became the possessor and owner, as this plaintiff has been informed and believes true, of the northern part of said lot, of the width of thirty three feet ten inches from Main Street to the River, and separated from the Southern part by a straight line running from the Centre of the Northern front to the Centre of the Eastern front, And one Arthur L. Magenis, after the death of the said Marie Antoinette, obtained possession and claimed the ownership of the Southern part of said lot, being thirty three feet ten inches in front westward, on Main Street, and thirty three feet ten inches in front eastward towards the River, and the said Arthur L. Magenis has died leaving his two infant Children Arthur L. and William M. Magenis above named, his only heirs at law, having also made his last will, which has been duly proved, whereby all his interest in said lot of ground was vested in his said infant Children above named, having also thereby appointed divers persons executors thereof, of whom one only, Howell, Montgomery Elgin, has taken out letters testamentary and who

(3)

4

is now the acting executor of the will of said Arthur L. Magenis. And the said plaintiff further states that by inheritance, as such heir as aforesaid, she is entitled in an absolute property, to one undivided fourth part of the Southern part of said original lot of Ground, so held lately by the said Arthur L Magenis until his death, and since his death until now held by his said legal representatives. And, that she is entitled also to a fair Compensation in damages, for the use, rents and profits of her share of the said land which have been had received and enjoyed by said Arthur L. Magenis in his life time, and his said representatives since his death, the amount of which she does not know, but estimates by conjecture at three thousand dollars. And that she is also entitled to the immediate possession of her said share of the land as above described. And the plaintiff further states that the legal representatives aforesaid of said Arthur L. Magenis, have now upon a portion of said land as their tenants the following persons. The lot on Water Street by the firm of Semple Pipell & Co, Composed of Charles Semple, William Semple, John Pipell Jr and Chas Pipell. The South lot on Main ~~Street~~ or 1st Street by Edwin Tanner, and the North lot by Samuel V. Farnsworth. This plaintiff does not know whether or not the said Arthur L. Magenis in his life time had, or his said legal Repre=sentatives now have any legal and valid title

to the other three fourths of the Southern part of said lot, or to any part thereof, and she prays that the defendants may be required to set forth and show to the Court, what right and title they have or any of them has to the said land or any part thereof, And if it appear to the Court that they have no right and title, then she prays Judgement for the Recovery of her share, one fourth and damages for the profits of the same, and writ of Possession; And if it appear to the Court that said defendants or some of them have no right and title to a part of said land, then she prays Judgement for partition of said land and the immediate possession of her share thereof, and damages for the use and profits had and received by the said Arthur L Magennis, and his said Representatives

(5)

Gamble and Bakes attys

Edward Bakes, being duly sworn says that he is attorney for the plaintiff and believes the foregoing petition and the matters therein as stated. Subscribed Edwd Bakes

Sworn to and Subscribed this 15th day of June 1850. P. Tippett CK

Edward Bakes being duly sworn says that he has been informed and believes that Arthur L Magennis and William M. Magennis two of the defendants in the foregoing petition are non residents of the State of Missouri

Sworn to and Subscribed { Edwd Bakes
this 15th day of June 1850. P. Tippett CK

And afterwards towit at the April Term of the said Court for the year 1850 on the 15th

O day of June 1850, the following proceedings were had, towit:

Petition & Order of Publication

Now at this day comes the said plaintiff and files her petition and on her motion it is ordered that the said defendants Arthur J. Magenis and William M Magenis be notified of the pendency of this suit by a publication of the following notice according to law in the St Louis Intelligencer Newspaper. To Arthur J. Magenis and William M. Magenis, You are hereby notified that said Plaintiff has Commenced against you (with others) a Civil action in the St Louis Circuit Court, the object and general nature of which is that said plaintiff avers that as an heir of Pelagie Labadie deceased and also an heir of Marie Antoinette Lipkle deceased, she is entitled in absolute property to one undivided fourth part of a lot of ground in the City of St Louis fronting westwardly on Main Street thirty three feet two inches, and fronting ~~Westwardly~~ Eastwardly the Bluff of the Mississippi River, the same width and being parcel of the block of the City which is bounded on the South by Chesnut Street and on the North by Pine Street, that said lot is bounded on the North by a lot formerly supposed and owned by Robert Rankin on the South by a lot in the same block formerly supposed and owned by Sylvestre Labadie and separated therefrom by alley running from Main Street to the River that

not Straight (there being in this line at the distance from Main Street of forty two feet eleven inches, a notch or offset towards the North of Eight feet four inches wide from North to South by One hundred and Six feet from East to west,) that Arthur L. Magenis before his death possessed and claimed the said lot, but that he is dead and you are his heirs and devisees, and pray Judgment if you have no title to any part of said land for her share of said lot and damages for the profits of the same, and if you have no title to a part of said lot for Judgment of partition of said land and the immediate possession of her share thereof, and damages for the use and profits had and received by the said Arthur L. Magenis and his representatives and that unless you appear at the next term of this Court to be begun and held at the City of St Louis, on the third Monday of November next and on or before the third day thereof answer said plaintiffs petition the same will be taken against you as Confessed.

(7)

And afterwards to wit: at the November Term of said Court for the year 1850, on the 23rd day of January 1851, the following further proceedings were had,

Order of Publication Renewed

Now at this day Comes the said plaintiff and it appearing to the satisfaction of the Court that the Order of publication made in this cause at the last term of this Court has not been Complied with, on motion of the said plaintiff it is ordered that the said defendants Arthur

(8) J. Magenis and William M. Magenis be notified of the pendency of this Suit by a publication of the following notice according to law in the St Louis Intelligencer newspaper To Certain J. Magenis and Wm M. Magenis, Yous are hereby notified that said Plaintiff has Commenced against you (with others) a Civil action in the St Louis Circuit Court the object and general nature of which is that said Plaintiff avers that as an heir of Clagie Labadie deceased and also as an heir of Marie Antoinette Little deceased She is entitled in absolute property to one undivided fourth part of a lot of Ground in the City of St Louis fronting Westwardly on Main Street thirty three feet two inches and fronting Eastwardly the Bluff of the Mississippi River the same width and being parcel of the block of the City which is bounded on the South by Chesnut Street and on the North by Pine Street, that said lot is bounded on the North by a lot lately occupied and owned by Robert Rankin on the South by a lot in the same block formerly occupied and owned by Sylvester Labadie and separated therefrom by a line running from Main Street to the River, but not straight there being in this line at the distance from Main Street of forty two feet eleven inches a notch or offset towards the north of Eight feet four inches wide from North to South by One hundred and six feet from East to West, that Antoine L. Magenis before this

death proceeded and claimed the said lot, but that he is dead and that you are his heirs and devisees, and pray Judgement if you have notice to any part of said land, for her share of said lot and damages for the profits of the same, and if you have no title to a part of said lot, for partition of said land and the immediate possession of her share thereof, and damages for the use and profits had and received by said Authus L Magenis and his Representatives, and that unless you appear, at the next term of this Court to be begun and held in the City of St Louis on the third Monday of April next and on or before the third day thereof, Answer said plaintiffs petition the same will be taken against you as Confessed

And afterwards, towit, at the April Term of the said Court for the year 1851, the on the 26th day of April 1851, the following further proceedings were had, towit,

Proof of Publication

Now at this day comes the said plaintiff by her Attorney and files proof satisfactory to the Court of the due publication of the renewed order of publication hereinbefore made. And afterwards towit, at the November Term of the said Court for the year 1852, on the 29th day of November the following Answer of Authus L Magenis and William M Magenis was filed,

Answer

The defendants Authus L. and William M Magenis by their Guardian Montgomery Blair for answer to the plaintiffs petition say that they and their Ancestor Authus L

(10) Magein's deceased, and those under whom they claim have had Continuous hopefion of the premises described in the plaintiffs petition Claiming the same as their own property for More than twenty years prior to the Commencement of this Suit, and the said defendants further Say that at the time the plaintiffs supposed Right of action accrued she was the wife of Auguste P Chouteau deceased and such disability Continued until on or about the 20th day of December in the year 1838, when her husband the said Auguste P Chouteau died, and the said defendants insist that said plaintiff is barred from having or Maintaining her said action by the Statute of Limitations in such Case made and provided, More than ten years having elapsed between the time of said plaintiff becoming discovert and the Commencement of this Suit, And the said defendants further Say that they have good title to said premises and rely on the following deeds and Copies of deeds and Copies of Records to show title in them and out of said plaintiff 1st a Deed from the plaintiff and others to John P Honey dated 22nd December 1814, herewith filed, 2nd Copy of a Deed from the Sheriff of St Louis County to John P. Shatzell dated 21st October 1822, the Original of which is not in the possession or Control of said defendants; together with a transcript of the Record and Judgement under

which said Sheriffs deed was made. 3rd A Deed from the plaintiff and others to Robert Rankin dated 13th day of June 1827, 4th Copy of a deed from Sylvester Labadie and others to said Rankin dated 20th Jany 1829, the original of which is not under the Control of the defendants, 5th Copy of a deed from the plaintiff to said Rankin dated 20th January 1848, the Original of which is not within the Control of the defendants, 6th Copy of proceedings in partition between said Rankin and Shatzell and the deed of the Commissioners appointed by the Court to said Rankin, 7th A Copy of the deed from Robert Rankin to Arthur L. Magenis dated 5th day of April 1828, the father of the said defendants Arthur and William.

(11)

M & F. P. Blair atty for defts.

Montgomery Blair on his Saith that he verily believes the Statements Contained in the foregoing answer to be true M Blair; Subscribed and Sworn to this 29th day of Novr 1852 before me M. J Cerré CK And afterwards to wit; at the November Term of said Court for the year 1853 on the 9th day of Feby 1854 the following Ans of part of defts was filed.

Ans of part of defts

The defendants Charles Semple, William Semple, John Bissell Jr and Charles Bissell admit that at the Commencement of this Suit, they were in possession of the said lot on Water Street as tenants of the said representatives

of said Arthur L. Magenis, the defendants Samuel V. Farnsworth admits that at said time he was in possession of said north lot on Main Street as the tenant of said Representatives, The said defendant Farmer admits that he was at the ~~time~~ said time in possession of said South lot on Main Street, as the tenant of said Representatives, Defendants State that they have no Knowledge or information sufficient to form a belief as to the rights of the plaintiff asserted in her petition and they hereby refer to and adopt the Answer of said Blair and others heretofore filed in this Case as their answer.

Geyer and Dayton defts attys

And afterwards towit at the Term last aforesaid on the 24th day of February 1854, the following proceedings were had

Jury Trial } Now at this day Come the parties aforesaid by their respective attorneys, and thereupon Come also a Jury towit Alexander McCurdy, Henry Wisenfels, J. W. Smith, John Hoffmann, James Chardon, Turner Maddox, George A McKay, Henry Branson, Frederick Jenkins, B. Greyon, John Bumberry, and John O. Quinn, twelve good and lawful men who being duly elected tried and sworn the matters in Controversy well and truly to try, the trial of this Cause not being finished, is laid over until to Morrow Morning at nine O clock, By leave of Court plaintiff amends

Pet amended } her petition by striking out of said petition

so much thereof as asks partition of the premises,
And afterwards, towit; at the term last
aforesaid, on the 25th day of February
1854, the following further proceedings were
had "

(13) Now at this day Come again the par-
ties aforesaid, by their respective attorneys,
Trial progressed { and and the Jury duly empannelled and
sworn herein also Come, and the Cause
having progressed but not being Concluded
the Court adjourned until Monday Morning
at Nine Oclock.
And afterwards, towit; at the term last
aforesaid on the 27th day of February
1854, the following further proceedings
were had towit;
Trial progressed { Now at this day Come again said parties by
their Respective attorneys and the Jury em-
pannelled and sworn herein also Come, the
trial of the Cause having progressed but not
being Concluded is laid over until tomorrow
Morning at Nine Oclock,
And afterwards towit; at the term last
aforesaid on the 28th day of February
1854 the following further proceedings
were had towit;
Judgt { Now at this day Come the parties aforesaid
by their Respective attorneys, and thereupon
Come the Jury, duly empannelled and sworn
herein and the trial of this Cause ~~progressed~~,
being finished the Jurors aforesaid, upon their
oaths aforesaid, find the issue joined in favor
of said defendants, It is therefore Considered
by the Court, that said defendants go hence

without day and recover of said Plaintiff their costs and charges herein expended and have execution therefor. Motion to Set aside verdict and grant anew trial filed. And afterwards on the same day the following Motion to Set aside verdict and grant a New trial was filed

Motion } And the said Plaintiff comes and moves the Court to Set aside the verdict rendered in this Cause and grant a new trial for the following reasons 1st Because the verdict is against the evidence. 2nd It is against law. 3rd It is against the instructions of the Court. 4th The Jury grossly misconceived their rights and duties in rendering the verdict in direct opposition to the instructions, which fully settled the whole case, upon the Case made in evidence and the instructions given to the Jury, their finding was absurd and ridiculous 5th The Court permitted the defendant to give to the Jury illegal and improper testimony objected to by the Plaintiff

Richardson & Bates for Plaintiff.

And afterwards towit: at the term last aforesaid on the 4th day of March 1854, the following proceedings were had.

No Sustd } The Court having duly heard and Considered the Motion of said Plaintiff by their attorney to Set aside the verdict and grant anew trial and being thereof fully advised, doth order that the said Motion be sustained.

And afterwards, towit: at the April Term of

Said Court for the year 1854 on the 16th day of May the following further proceedings were had, to wit,

15

F. P. Blair substituted Guardian for Minors instead of M. P. Blair & Change of Venue to Com Pleas

Now at this day come the said defendants by their attorney, and suggest the resignation of Montgomery Blair as Guardian of the Minor defendants herein and of the appointment of Francis P Blair Jr as guardian of said Minors, thereupon on motion the Court substitutes Francis P Blair Jr as defendant in place of Montgomery Blair, Guardian Merely, and the said defendant thereupon files his petition, praying a change of venue in this Cause on the ground that said Plaintiff has an undue influence over the mind of the Judge of this Court, And upon Consideration of the premises, it is ordered by the Court, that the prayer of said petition be granted, and that the Clerk of this Court make out a full, true and Complete transcript of the Record and proceedings in this action and that he transmit the same duly Certified together with all the original papers not forming part of the records to the Clerk of the Storm Court of Common Pleas,

Motion Change of Venue & affidt

And afterwards to wit, on the 15th day of May the following motion and affidavit were filed,

The defendant in the above suit asks the Court to change the venue in their Case to the Storey Court of Common Pleas because the plaintiff has an undue influence over the

16 mind of the Judge of this Court
F. P. Blair Jr
Guardian of A. J. Magevi & Wm Magevi
State of Missouri County of St Louis ss
Francis P Blair Jr being duly sworn
says that he verily believes the foregoing
petition to be true, and he further states
that he has just cause to believe that the
defendants cannot have a fair trial on
account of the cause alleged
F. P. Blair
Sworn and Subscribed before me this 15th
May 1854. Wm K. Hammond Clk
State of Missouri County of St Louis ss
I Wm K Hammond Clerk of the Circuit
Court in and for the County aforesaid Certify
the foregoing to be a true and correct tran-
script of the Record and proceedings together
with the Original papers not forming part of
the record in the Case of Chouteau vs Magevi
et al as fully as the same remain 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 27 th day of May A D 1854
Wm K Hammond Clk "

And afterwards towit: At the October
Term 1855, and on the 28th day of
January 1856, the following further
proceedings were had in this Cause towit.

"Now at this day comes the plaintiff by

her attorneys and dismiss this Suit as to Arthur L. Magenis, executor Edwin Tanner and Samuel C. Farnsworth and thereupon Come the Remaining defendants by their attorneys and also the following Jurors towit; James Thomas, Robert Chapman, J. W. Sawyer, Daniel Mickey, Jacob Jeffrey, James Reed, William Costin, C. J. Lynch, Jerome Aubuchon, William Thomas, Paul Washburn and H. D. Phillibert, twelve good and lawful men, who being duly elected tried and sworn, the issues herein, well and truly to try, and the trial progressed but not being finished is laid over to to Morrow Morning."

Dismissal & Trial

(17)

And afterwards, towit on Tuesday the 29th day of January 1856, the following further proceedings were had in said Cause, towit;

Trial

"Now again Come the parties and also the Jurors aforesaid, and thereupon the trial progressed and not being finished is laid over until to Morrow morning"

And afterwards towit; on Wednesday January 30th 1856 the following further proceedings were had in this Cause towit;

Trial & Verdict

"Now again come the parties and Jurors as aforesaid and the trial thereupon progressed, and being finished, the Jurors aforesaid upon their oaths aforesaid say they find the following verdict towit; We the Jury find

(18) "for the plaintiff. that she was at the Com=
"mencement of this suit, and still is entitled
"to the possession of One undivided fortieth
"part of a certain lot of ground in the City
"of St Louis, in the block East of Main Street,
"and between Chesnut and Pine Streets, and
"being the lot occupied in 1850, by the house
"of Semple, Bissell and Company, fronting
"24 or 25, feet on front Street and running
"back to Commercial Street, and being the
"Eastern portion of the South half of a certain
"lot of ground, formerly owned by Pelagie
"Labadie, fronting Westerly on Main Street
"Sixty Seven feet eight inches, english Measure.
"and fronting eastwardly the bluffs of the
"Mississippi River, Sixty Seven feet eight
"inches, bounded on the North by a lot in
"the same block formerly possessed and claim=
"ed by Gregoire Sarpy, and separated there=
"from by a straight line running from
"Main Street to the River, bounded on the
"South by a lot in the same block formerly
"possessed and claimed by Sylvester Labadie
"and separated therefrom by a line run=
"ning from Main Street to the River but
"not straight, there being in this line begin=
"ning at the distance of 42 feet and 11
"inches from Main Street a notch or offset,
"towards the North, of eight feet four inches,
"wide from North to South by One hundred
"and six feet from East to West, and we
"find that Arthur J. Magenis, William M
"Magenis, Charles Semple, William Semple

" ~~and Charles~~ John Bissell and Charles
" Bissell unlawfully withhold the possession
" of said lot from plaintiff, and we assess
(19) " the plaintiffs damages against said defen=
" dants One hundred, sixty dollars; and we
" further assess the monthly value of the plain=
" tiffs interest in said lot at One fortieth
" of One hundred and twenty five dollars.
James Reed Foreman, "

And afterwards on Tuesday February 26th 1856, the following further pro=ceedings were had in this cause towit:

Motions Ovd & Judgt

"Now again come the parties as aforesaid by their respective attorneys and their motions for a new trial being submitted to the Court, and the same being by the Court fully under=stood, it is ordered that both said motions be overruled. Whereupon it is considered by the Court that the plaintiff recover of the defendants the one undivided fortieth part of the premises described in the verdict of the Jury herein, and also the sum of One hundred and sixty dollars for her damages, and monthly value of said premises at the rate of three dollars and twelve and a half cents as assessed by the Jury, together with her costs herein expended and have execution therefor, "

And afterwards towit: on the 29th day of February the defendants file their bill of Exceptions in the words and figures

20

Following, Towit,

Bill of Ex

"Be it Remembered, that on the trial of this Cause the following evidence was offered by the Plaintiff

That the Subscription was a part of a large debt owned by Pelagie Labadie in her life time; that Pelagie Labadie died intestate prior to the year 1814, leaving as her only heirs, her Children, the Plaintiff Sophie Chouteau then wife of Auguste P. Chouteau, Pelagie Sarpy wife of Gregoire Sarpy, Marie Antoinette Money wife of John W Money, Emilie Pratte wife of Bernard Pratte and Sylvestre Labadie,

Plaintiff gave in evidence" deed of Bernard Pratte and Emilie his wife, Gregoire Sarpy and Pelagie his wife, Auguste P. Chouteau and Sophie his wife and Sylvestre Labadie to John W Money, dated December 23d. 1814,

Deed Heirs of Labadie To Money

"This deed made and Concluded this twenty Second day of December, in the year of our Lord One thousand eight hundred and fourteen, by and between Bernard Pratte & Emilie his wife, Gregoire Sarpy and Pelagie his wife, Sylvestre Labbadie and Victorie his wife, Auguste P Chouteau and Sophie his wife, all of the Town and County of St Louis in the Territory of Missouri lawful heirs of Pelagie Labbadie deceased of the one part and John W Money of the County and

Territory aforesaid of the other part, Witnesseth: That they the parties of the first part for and in Consideration of the sum of Two thousand four hundred & fifty^{00} dollars lawful Money of the United States to them in hand well and truly paid as will more fully and at large appear Reference being had to the Book of accounts of Settlement of the estate of the said Pelagie deceased, the receipt whereof is hereby acknowledged and thereof and of every part & parcel thereof do acquit and forever discharge him the said John W Money his heirs and assigns: They the said parties of the first part have given, granted, bargained & sold and do hereby give, grant, bargain & sell, make over and convey unto him the said John W Money, his heirs and assigns forever, a certain town lot or piece of ground situate lying and being in the aforesaid Town of Saint Louis, on first Main Street Containing fourteen thousand five hundred and forty four feet eight inches, English Measure, Superficial Measure and bounded as follows towit: beginning at the South west Corner of Pargoins Harpys lot on Main Street thence running Southwardly course in a parallelle line with said first Main Street Sixty Seven feet eight inches english Measure to the North west Corner of Labadies house, thence Easterly with said Labadies line in a parallelle line with the Gaff Street forty two feet and eleven inches English Measure, to the North west Corner of the said Labadies House thence

(21)

(22) Northwardly course with Sylvester Labadie's line eight feet four inches English Measure to said Labadie's North west Corner lot, thence Easterly with the line of said Labadie's lot in a paralelle line with the Cross Street One hundred and Six feet English Measure to the North east Corner of said Labadie's lot thence Southwardly in a paralelle line with the Main Street eight feet four inches, English Measure, thence Eastwardly in a paralelle line with the Cross Street Seventy Nine feet and ~~xxxx~~ Seven inches to the Mississippi Bluffs, thence Northwardly Course with said bluffs in a paralelle line with said Main Street Sixty Seven feet eight inches to Gregoire Sarpy's South west Corner on said Mississippi Bluffs, thence Westerly in a paralelle line with said Cross Street with the line of said Gregoire Sarpy's lot, to the beginning two hundred & twenty eight feet Six inches English Measure, bounded Easterly by Main Street which separates the same from the lot of Charles Watrot, Northerly by lot of Gregoire Sarpy, Southerly by lot of Sylvester Labadie, and Easterly by the Mississippi Bluffs, on which lot there is a part of the Mansion house occupied by said Pelagie deceased, to wit: the three Southern rooms and an other building adjoining the house of Sylvester Labadie, Being well understood that he the said John W Honey is to give a passage or a lane of ten feet wide running Southerly and Northerly to go on the lot of

(23)

said Gregoire Sarpy, and in order to better identify the said granted and bargained premises the said parties have hereunto subjoined a Copy of the plat of the said lot, it being a part of a lot which was formerly purchased by Sylvestre Labadie late heirs of said Pelagie Labadie from Joseph Conay, by Deed bearing date the twenty eighth day of March One thousand Seven hundred and seventy eight as well more fully & at large appear Reference being had for the same in the Recorders office of the County aforesaid, To have and to hold the said granted and bargained premises unto him the said John W Kinzie his heirs & assigns forever together with all and singular the privileges and appurtenances to the same belonging or in any wise appertaining free and clear of any manner of Claim or Claims and of any kind of encumbrances whatsoever.

24 In witness whereof the parties of the first part have hereunto set their hands and affixed their seals the day, Month & year first above written.

Signed Sealed & delivered in the presence of J. C. Garnier Hubert Guion	Bernard Prathe	L.S.
	E. T. Battenee Labbadie	L.S.
	Gre Sarpy	L.S.
	Etre Labbadie	L.S.
	Patriot Labbadie	L.S.
	Labbadie Sarpy	L.S.
	A. P. Chouteau	L.S.
	Sophie Chouteau	L.S.

County of St Louis } ss
St Louis Township } Be it remembered that heretofore towit on the sixth day of July in this same year personally appeared before the subscriber one of the Justices of the peace in and for the Township ~~and~~ aforesaid Emilie Batee, Gregoire Sarpy, Sylvester Labbadie, Pelagie Sarpy, Victoire Labadie Auguste P. Chouteau and Sophie Chouteau who acknowledged the aforegoing instrument of writing to be their act and deed for the purposes therein mentioned and that the property thereby sold and transferred to be the property of John W Honey.
And the said Emilie Prathe, Pelagie Sarpy Victoire Labbadie, and Sophie Chouteau, being by me examined separately and apart from their said husbands acknowledged that they had executed the same without being induced or compelled thereto either by the hope or promise of reward or through fear

or threats of their said husbands, but of their own free will and accord,
Given under my hand and seal this tenth day of July in the year of our Lord 1815,
J. C. Tanner J.P. (Seal)

(25)

Missouri Territory
County of St Louis } Before me the undersigned Clerk of the Circuit Court within & for the County of St Louis Missouri Territory personally came and appeared the within Named Bernard Prathe who acknowledged the within instrument in writing to be his act and deed hand and seal for the purposes therein contained,
In testimony whereof I have hereunto set my hand and seal (there being no seal of office yet procured) at my office in St Louis this Ninth day of January in the year of our Lord, One thousand eight hundred and Sixteen
M. P. Leduc Clk (Seal)
County of St Louis ss.
Recorded this 9th day of January 1816, Book E Pages 341 & following
M P Leduc Clk & ex-offc Recorder, "

and read the Territorial act of the Legislature of Missouri found in acts of General Assembly for December & Jany 1815 & 1816, and dated January 22nd 1816, divorcing John W Honey and Marie Antoinette his wife,
And deed of John W Honey to Marie

(26) Antoinette dated January 23rd 1816

Deed J.W. Honey to M.A. Honey

This deed made and Concluded this twenty third day of January in the year of our Lord one thousand eight hundred and Sixteen by and between John W Honey of the County of St Louis in the Territory of Missouri of the one part and Marie Antoinette Honey formerly Marie Antoinette Labbadie late the wife of the said John W Honey of the other part, Witnesseth, that the said John W Honey, for and in Consideration of the Sum of four thousand dollars lawful money of the United States, to him in hand and before the ensealing and delivery of these presents well and truly paid the receipt whereof is hereby acknowledged and therefrom and of every part and parcel thereof do acquit and forever discharge her the said Mary her heirs and assigns, he the said John W Honey has given, granted, bargained and sold and hereby does give, grant, bargain and sell unto her the said Marie Antoinette her heirs and assigns forever, a certain town lot or piece of ground, situate lying and being in the aforesaid town of St Louis, on first Main Street, Containing fourteen thousand five hundred and forty four feet and eight inches English measure in superficies, butted and bounded as follows towit, being at the South West Corner of Gregoire Sarpy lot on Main Street, thence running Southwardly course in a parallele line with said first Main Street

Sixty feet eight inches english Measure to the North West Corner of Sylvestres Labbadies house thence eastwardly with said Labbadies line in a parallele line with the Cross Street forty two feet and eleven inches english Measure, to the North East Corner of said Labbadies house, thence Northwardly Course with said Labbadies line eight feet four inches english Measure to said Sylvestres Labbadies North West Corner lot thence Eastwardly with the line of said Labbadie in a parallele line with the Cross Street Seventy nine feet and seven inches to the Mississippi Bluffs, thence Northwardly Course with said Bluffs in a parallele line with said Main Street sixty feet eight inches to Gregorie Sarpy's South East Corner on said Mississippi Bluffs, thence Westwardly in a parallele line with said Cross Street with the line of said Sarpy's lot to the beginning two hundred and twenty eight feet six inches, English Measure, bounded Westwardly by Main Street which separates the same from the lot of Charles Gratiot, Northwardly by lot of Gregorie Sarpy, Southwardly by lot of Sylvestres Labbadie and Eastwardly by the Mississippi Bluffs on which lot is a part of a Mansion house occupied by the said Pelagie Labbadie deceased, to wit, the three Southern Rooms of said house and another building adjoining the house of Sylvestres Labbadie, & being the same lot of Ground which the said John M Gowen purchased from Bernard Pratte and Emilie

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(28) his wife, Gregoire Sarpy and Pelagie his wife, Sylvester Labbadie and Victoire his wife and Auguste P Chouteau and Sophie his wife heirs of Pelagie Labbadie deceased by deed bearing date the twenty second day of December one thousand eight hundred and fourteen, as will more fully and at large appear reference being had to the record of said deed in the Recorder, office of the County of St Louis, aforesaid book E. pages three hundred and forty one and following; To Have and To Hold the said Granted and Bargained premises together with all and singular the privileges and appurtenances thereunto belonging or in any wise appurtaining unto her the said Marie Antoinette her heirs and assigns forever In testimony whereof the said John W Honey hath hereunto set his hand and seal on the day month and year above written

John W Honey (Seal)

Signed, Sealed and delivered in presence of
Stre Labbadie M P Leduc

Missouri Territory, County of St Louis ss
Be it remembered that on the twenty third day of January in the year of our Lord One thousand eight hundred and sixteen before me Mary Philip Leduc Clerk of the Circuit Court, within and for the County of St Louis; Missouri Territory, personally came and appeared the within named John W Honey and acknowledged the ~~the purposes~~ within instrument in writing to be his

act and deed hand and seal for the purposes therein mentioned, Intestimony whereof I have hereunto set my hand and seal (there being no seal of office yet procured) at my office in St Louis on the day Month and year above written

(29) L.S. M P Leduc A K

Recorded this 23rd day of January 1816

M P Leduc A K

State of Missouri County of St Louis, ss. I the undersigned recorder for said County Certify the foregoing to be a full and Complete Copy of an instrument of writing and also of the Certificate of acknowledgment and of the date of recording thereof as fully as the same remains recorded in my office in book E Pages 350 & 351,

L.S. { Witness my hand and official seal at St Louis the 9th day of February A.D. 1849,

S D Barlow Recorder, "

The defendants objected to the reading said Territorial act and said deed in evidence and excepted to the Courts permitting the same to be read in evidence, next that Marie Antoinette Honey between January 1816 and February 1818, married John Little and on the 17th February 1818, died without issue

That said Marie Antoinette at her death left the following persons surviving her, John Little her husband and Emilie Prattie and Bernard Prattie, Pelagie Sarpy, the

(30) plaintiff Sophie Chouteau and Auguste P Chouteau, and Sylvester Labbadie three sisters and one brother.
That the plaintiff Sophie Chouteau and Auguste P Chouteau, were married in the year 1809, and that said Auguste P Chouteau died December 25th 1838, leaving plaintiff his widow and Children of their Marriage Now living.
At this point the Plaintiff dismissed this action as to Montgomery Blair and Edwin Farmer and Samuel V. Farnsworth and all other parties except Semple Bissell & Company and Magenis' heirs (Arthur and William)
Whereupon the defendants moved the Court to dismiss the action as it thus stood after such dismissal by plaintiff

And now

Mo to dismiss } Come the defendants and move the Court to dismiss this action as it now stands.
Because The plaintiff has materially and substantially changed the Cause of action from what it was before her dismissal against the other defendants,
And because the matters to be tried by the Court are totally different from the matters set out Originally in the petition,
F. A. Dick with
S Simmons for defendants,
Which motion of the defendants the Court overruled. to which action of the Court, the defendants at the time excepted.
It was proved that the defendants were

in possession of between twenty four and twenty five feet of the lot fronting on Water Street and extending West to Commercial Street and evidence was given to show the value of the damages and Monthly Rents, the same as found by the Jury,

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Plaintiffs here rested

The following evidence was offered by defendants.

First the marriage contract between Auguste P Chouteau and Sophie Labbadie the plaintiff dated February 15th 1809,

Marriage Contract Chouteau & Labbadie

Par devant le Notaire de la ville, et District de Saint Louis Territoire de la Louisiane y resident soussigné fut present en sa personne St Auguste Chouteau fils majeur et legitime de St Pierre Chouteau et Dme Pelagie Kerceseau ses Pere et Mere, né a Saint Louis, Paroisse Saint Louis District et Territoire cy dessus stipulant avec l'assistance de son Pere d'un part, Et Dame Pelagie Chouteau veuve Labbadie, Epouse de feu Sieur Silvestre Labbadie en sa qualité de Mere et Tutrice stipulant pour Damoiselle Marie Anne Sophie sa fille majeure et legitime ici presente et acceptante native de la Paroisse District et Territoire cy dessus des autres parts, Lesquelles parties de l'avis et conseils de leur Parens, amis et autres ici assemblés et cy apres nommes savoir, de la part du dit Sieur Auguste Chouteau fils audit St Pierre Chouteau les Sieurs Auguste Chouteau Oncle et Parrain du dit Auguste Chouteau, fils de St Pierre Chouteau et Pierre Menard Ecuyer & et de la part de la dite Dame Pelagie Chouteau veuve Labbadie Mere

Tutrice de la dite Demoiselle Marie Anne Sophie sa fille et de son consentement des Sieurs Bernard Patte beau frere et Joseph Marie Pahin, Oncle de la dite Demoiselle tous temoins a appeller au present contract et Domiciliés en cette ville excepté le Sieur Pierre Menard Negotiant demeurant ordinairement aux Kaskaskias ont fait volontairement, reconnu, confessé et donné d'accord entr'elles du Traité Pacte, clauses et Conventions de mariage Contract, qui suivant c'est a savoir Que la dite Dame Pelagie Chouteau de St Silvestre Labbadie a promis et promet de donner la dite Marie Anne Sophie Labbadie sa fille et de son Consentement en mariage au dit Sieur Auguste Chouteau fils de St Pierre Chouteau lequel a promis et promet de la prendre en nom et loi de mariage et celui faire celebrer pardevant un Magistrat de cette ville en attendant qu'ils puissent le faire en face de notre mere Sainte Eglise Catholique Apostolique et Romaine le plutot que faire se pourra quelune des parties en requerera l'autre ou Suivant qu'il en sera deliberé entr'elles pour etre les dits futurs Epoux mis et Commis en tous leurs meubles Immeubles, acquets, Conquets et propres, qui ils pourront avoir ou acquerir pendant leur Communauté qui sera reglé Suivant les loix en faveur dudit Mariage de Sieur futur Epoux a apporte dans la Communauté qui va s'établir une Somme de mille Piastres fortes que lui donne de Sienne Pierre Chouteau Pere, laquelle Somme de mille Piastres argent des Etats Unis a été tout presentement remise au dit Sieur futur Epoux accepté en presence des dits Parens amis et temoins et de la part de la dite Demoiselle future Epouse en faveur du

dite mariage la dite Dame Pelagie Chouteau veuve Labbadie en sa qualite de mere & Tutrice de la dite Demoiselle future Epouse a Constituée en Dote au Sieur futur Epoux au profit toutefois de la dite Demoiselle Marie Anne Sophie sa fille future Epouse la somme de deux mille neuf cent soixante treize piastres dieuit sols trois quarts en peaux de chevreuil a raison de deux livres et demie soides français par chaque piastre pour sa part et portion dans la succession de feu Sieur Silvestre Labbadie, laquelle somme sera payée au dit Sieur Auguste Chouteau futur Epoux a sa volonte lors de la Celebration du dit futur mariage reservant au surplus la dite Dame Pelagie Chouteau veuve Labbadie la dite Demoiselle Marie Anne Sophie Labbadie sa fille au portage commun de ses enfans apres son Décés, Ledit Sieur futur Epoux pour donner a la dite future epouse des preuves de la sincere affection qu'il pour elle et de l'estime qu'il lui porte promet de lui donner le jour de la benediction nuptiale la somme de mille piastres argent des Etats unis pour en disposer a sa volonté laquelle donation de mille piastres argent des Etats unis, sera neanmoins propre aux Enfans qui naitront du dit Mariage et il sera loisible a la dite Demoiselle future epouse en renonçant a la dite Communauté de reprendre tout ce quelle apporte au dit Mariage et ce qui pourrait lui avenir ou échevir soi par leg succession, donnations ou autrement même les mille piastres cy dessus mentionnées et a elle donné par le dite futur Epoux tel que de droit, le tout franc quitte et Act de toutes les dettes que les dits futurs Conjoints auraient pu ou pourraient contracter pendant leur dite Communauté, encore que la dite future epouse, sy fut obligée y eut été appellée y

(34) Suivait été condamné on y eut renoncée, constant
ledit mariage et pour se donner reciproquement des preuves
incontestables du tendre attachement qu'ils se port mutuelle=
ment et du consentement, tant de la part des dits futurs
Conjoints que de la part du Sieur Pierre Chouteau Pere du dit
futur epoux et de celle de Dame Pelagie Chouteau veuve
Labbadie mere et Tutrice de la dite future Epouse, les dits
futurs Epoux se sont fait de leur propre mouvement et volon=
et determinée, avec l'approbation unanime de toutes les par=
tiés sans induction suggestion in contrainte de personen, par
par leur propre volonte determiné, donnation pure et sim=
ple et irrevocable en la meilleure forme que donnation puis=
se valoir, de tous et uns chacquns les biens meubles immeubles
acquets conquets et propre qu'ils pourront avoir ou acqueris
Constant la dit mariage et que le premiere mourant aur-
et laissera au jour et heur de son trepas, pour en jouir
par le survivant en pleine et entiere propriete et en disposer
comme de chose a lui appartenant, sans difficultés ni
reddition du compte la quelle donation ainsi faite n'au
=ra de force et de valeure qu'autant qu'il n'y aura aucun
cafant vivant né ou a naitre du dit futur mariage car
ence cas la dite donation sera nulle et éteinte de plein
droit, et le survivant sera restraint aux clauses conditions
et remport stipulés au present contract qui pour la
surcti de toutes celles y enoncées il y aura hypotheque
speciale et privilegié sur tous et un chacuns les biens meu=
bles et immeubles presens et avenir du dit Sieur futur
Epoux qu'il a des a present affecte pour responsibilite
des droits et reprises de la dite Demoiselle future Epoux
Cavaint 1ce, obligeant 1ce promettant 1ce renoncant 1ce
En foi du quoi at de tout ce que dessus les dits futurs
Epoux ont signé et scellés le present avec leur Pere
et mere qui ont aussi signé ainsique les temoins sus

Nommés en presence de Sieur Merriwether Lewis Gouverneur de ce Territoire et William Clark General avec de dit Notaire en la ville District et Territoire cy dessus cequinz. Février d'Lannier de notre Sci-greur mil huit cent neuf et la trente Troissiene de l'Independence Ameri=quaire

(35)

Augne Chouteau	A Chouteau
Pierre Menard	Sophie Labbadie LS
Bernd Pratte	Pr Chouteau LS
Fr Papin	Cour ve Labbadie
Merriwether Lewis	Labbadie Pratte
Wm Clark	Labbadie Sarpy
	Stre Labbadie
	M P Leduc

Louisiana Territory } Sf Recorded Book B
District of St Louis } page 212 & following
this 15th day of February AD 1809. M P Leduc
Recorder

State of Missouri County of St Louis Ss
Be it remembered, that on this 21st day of March Eighteen hundred & thirty eight before me the undersigned Clerk of the Circuit Court within and for the County aforesaid, Came Sylvester Labbadie known to me to be the real person whose name is subscribed to the foregoing instrument of writing as a witness thereto, and who being duly sworn upon his oath says, that Auguste Chouteau whose name is subscribed as A Chouteau and Sophie Chouteau whose name is also subscribed ~~as A Chouteau~~ to said instrument as parties thereto are the real persons who executed the same, that they signed the said instrument in the

85 1/4 presence of said Sylvester Labbadie who thereupon subscribed his Name thereto as a witness thereof. In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at office in the City of St Louis the date last aforesaid. Jno Ruland Recorder Filed for Record 21st March 1838. Recorded 2nd April 1838. Jno Ruland Recorder

State of Missouri } ss I the undersigned Recorder
County of St Louis } for the County aforesaid do hereby Certify that the foregoing is a true Copy of an instrument of writing, and of the Certificate of acknowledgment and the date of filing thereof that was filed in my office the 21st day of March AD 1838. as fully as the same remain of Record in Book D No 2 page 263 and following, Given under my hand and Seal this 30th day of October Anno Domini Eighteen Hundred & forty nine

L S J D Barlow Recorder

Translation of above Deed

Before the undersigned, residing in and Notary of, the village & District of St Louis Territory of Louisiana personally came Auguste Chouteau of lawful age the legitimate son of Pierre Chouteau and Pelagie Kercereau born at St Louis Parish of St Louis District & Territory aforenamed, stipulating with the appearance of his father of the one part and Madame Pelagie Chouteau, widow Labbadie wife of the late Sylvester Labbadie in her character of mother & guardian stipulating for her legitimate daughter Miss Mary Anne Sophie of lawful age, who is here present & agrees hereto, a native of the Parish District & Territory aforenamed, of the other part.

35½ The said parties by the advice & counsel of their parents friends & others here assembled and hereinafter named to wit; on the part of the said Auguste Chouteau son of the said Pierre Chouteau Messrs August Chouteau his uncle & good-father & Pierre Menard Esqr. and on the part of the said Madam Pelagie Chouteau widow Labbadie mother & guardian of the said Miss Mary Ann Sophie & with her consent Messrs Bernard Pratte brother in law & Joseph Marie Papin uncle of the said young lady all of whom are witnesses to this contract & with the exception of Pierre Menard merchant who ordinarily lives at Kaskaskia are domiciled within this village, have voluntarily made recognized conferred and between themselves agreed to the treaty compact clauses and conventions of marriage following, that is to say; The said Madame Pelagie Chouteau widow of Sylvester Labbadie has promised and does promise to give her daughter the said Mary Ann Sophie, with her consent in marriage to August Chouteau son of Peter Chouteau who has promised and does promise to take her in the name & law of Marriage and to have the same celebrated before a Magistrate of this village, until the same may be celebrated in face of our Holy Mother the Roman Catholic Apostolic Church, which shall be done whenever requested by either party or as may be agreed between them The said future husband & wife to be one & common in all the goods moveables & immoveables acquests, conquests & property (et propres) which they may have or acquire during their community which shall be governed according to the laws. In consideration of said marriage the said future husband brings into the community which is to be established the sum of $1000 in cash given to him by his father the said Pierre Chouteau which sum of One thousand dollars has been just paid in silver money of the United States to the said future husband, and accepted in

35 3/4 presence of the said parents friends & relations, And on the part of the said future wife in consideration of said marriage, the said Madame Pelagie Chouteau widow Labbadie in her character of mother & guardian of the said future wife has given in Dowry to the said future husband for the benefit always of the said Miss Mary Anne Sophie her daughter the said future wife the sum of $ 2973. 18 three fourths to be paid in deer skins at the rate of 2½ pounds french weight for every dollar for her part and portion of the estate of the late Sylvester Labbadie which sum shall be paid to the said August Chouteau future husband whenever he may desire after the celebration of the said future marriage the said Madame Pelagie Chouteau widow Labbadie reserving the remainder for her daughter the said Miss Mary Ann Sophie Labbadie until a general division among her children after her death.

The said future husband in order to give his said future wife proof of his sincere affection & of the esteem in which he holds her, promises to give her on the day of the marriage benediction the sum of $ 10000 — money of the United States to dispose of as she may choose which donation of $ 10000 — silver coin of the United States, shall nevertheless belong to the children who shall be borne of the said marriage, and it shall be lawful for the said future wife by renouncing the said community to take back all which she brings to the said marriage, and every thing which may descend or come to her by legacy succession donation or otherwise, as well as the $ 2000 above mentioned & to her given by the said future husband as her own all of it free acquitted & clear of all debts which the said future husband & wife may or can contract during their said

36 community, even although the said future wife shall have bound herself or have been sued & judgment obtained against her, or although she may renounce her rights thereto during the said marriage, And in order to give reciprocally uncontestable proofs of the tender attachment which they mutually bear one another & by the agreement as well of the said future husband & wife as of the said Pierre Chou=
=teau father of the said future husband & of the said Madame Pelagie Chouteau, widow Labbadie, mother & guardian of the said future wife, the said future husband & wife have of their own accord & determined will, with the unanimous approbation of all parties without the influence suggestion or constraint of any one of their own determined will, ~~with the unanimous~~ pure simple & irrevocable gift in the best form of law made, of all and every the goods moveables immoveables, acquests conquests & property which they may have or acquire during the said marriage & which the one who dies first may have & leave on the day & hour of his death, to the survivor to be by him or her enjoyed in full & complete ownership, and to be disposed of as his or her own property without any hindrance or account, This gift thus made shall not take effect or be valid, if there shall be any living child born or to be born of the said future marriage for in that event the said gift shall be null & void & the survivor shall be bound by the clauses, conditions & "remports" stipulated in the present contract. And for surety of all things herein declared there shall be a special and privileged hypothication of all & every the goods moveable & immoveables present or future of the said future husband, and that he has for the present time taken charge of the rights and dower of the said

young lady, the future wife. Therefore &c obliging &c, promising &c renouncing &c In faith of all which the above named future husband & wife have signed and sealed these presents, with their father and mother who have also signed the same as well as also the witnesses above named in presence of Meriwether Lewis Governor of this Territory & William Clark General with the said Notary in the Town District and Territory above named this 15th Feby 1809 & in the 33d year of American Independency Next the record of petition and proceedings had in the St. Louis Circuit Court between John P. Schatzell and others against John Little in which judgment for $2747.19 was rendered against Little's administrator on the 17th day of April 1821 which judgment was regular.

Levy laid of John Little's administrator by Sheriff to John P. Schatzell dated October 21st 1822 made under regular execution on judgment.

Deed Sheriff to Schatzell

To all to whom these presents shall come I John L Walker Sheriff of the County of St. Louis in the State of Missouri send Greeting Whereas a certain execution issued from the Clerk's office of the Circuit Court within and for the County of St. Louis returnable to the October Term of the said Court in the year of our Lord eighteen hundred and twenty two in favor of John P Schatzell John Woodward Robert Alexander and Alexander Cranston against Wm Lecton administrator of John Little deceased & the said execution being directed to the Sheriff of the County of St. Louis and to me the said Sheriff delivered, a copy of which execution is hereunto annexed and make part and parcel of this deed, by virtue of which said execution, & the said Sheriff on the Sixteenth day of September in the year of Our Lord Eighteen hundred and twenty two did levy and seize all the ~~all the~~

(37)

right title, claim, interest and property of the said John Libble deceased in and to a lot of ground in the Town of St Louis fronting thereon Main Street Sixty feet and eight inches, thence North Eight feet four inches thence East two hundred and twenty two feet six inches having along the Centre of a Storehouse on Main Street the North part whereof is now occupied by Gregoire Sarpy to the place of beginning, Which lot also includes the Barbours Shop and the Store occupied by Robert Rankin being advertised agreeably to law, as will appear from a copy of the advertisement thereunto annexed and which also makes a part and parcel of this Deed, By virtue of which said Execution and advertisement, I did on the tenth day of October in the year of our Lord Eighteen hundred and twenty two agreeably to the advertisement thereof at the Court house door during the sitting of the said Court, expose to public Sale for Ready Cash all the right title claim interest and property of the said John Libble deceased in and to the above described property and John P Schatzell being the highest and last bidder for the same at the sum of Seven hundred dollars, Now therefore Know ye, that I John K Walker Sheriff as aforesaid for and in Consideration of the Sum of Seven hundred dollars, lawful money in hand paid by the said John P Schatzell the receipt whereof I do hereby acknowledge, and by virtue of the Authority in me vested by law, I do hereby

(38)

transfer and assign to him the said John P Schatzel all the right title and interest and property of him the said John Little deceased in and to the aforesaid lot of ground that I might sell agreeably to law as Sheriff aforesaid, by virtue of the aforesaid Execution and advertisement

To Have and to Hold the said lot of Ground to him the said John P Schatzel his heirs and assigns forever. In witness whereof I John K Walker Sheriff of the County of St Louis have hereunto set my hand and seal on this twenty first day of October in the year of our Lord Eighteen hundred and twenty two, and of the Independance of United States the forty seventh

John K Walker Sheriff (Seal)

Signed Sealed and delivered in presence of

County of St Louis Sct

The State of Missouri To the Sheriff of the County of St Louis Greeting, Whereas John P Schatzel, John Woodward, Robert Alexander & Alex Cranston at our Circuit Court before our Judge thereof recovered against William Rector administrator of John Little deceased the sum of Seven hundred & forty seven dollars and nineteen Cents, for their damages by them sustained by reason of the nonperformance of the premises and undertakings in the declaration mentioned and also their Costs and charges by them about their suit in that behalf expended which to the said Schatzel, Woodward Alexander & Cranston

were adjudged as appears to us of Record
These are therefore to Command you that
of the Goods and Chattles ~~and~~ Lands and
Tenements of the said John Little at the time
of his death in the hands of the said adminis=
itrator to be administered in your baili=
wick you cause to be made the aforesaid
damages and Costs and that you have the
same before the Judge of our said Court on
the first Monday of October next to render
to the said Jno P. Schatzell & Co the damages
& Costs aforesaid, Witness Archibald Gamble
Clerk of our said Court at St Louis this Six=
teenth day of September in the year of our
Lord One thousand eight hundred and
twenty[illegible] Archibald Gamble Clerk
A true Copy of the Execution
Jno K Wacker Shff.
Sheriffs Sale, By virtue of a writ of
execution to me directed from the Circuit
Court of the County of St Louis in favor of
John P. Schatzell, John Woodward, Robert
Alexander, and Alexander Grayson against
Wm Rector administrator of John Little
deceased, I have levied upon the following
described property, towit: a lot of ground
in the town of St Louis fronting West on
Main Street 60 feet 8 inches running east
from the South west Corner 42 feet 11 inches
thence North 8 feet 4 inches thence east 79
feet 7 inches, thence along the Mississippi
bluffs, 52 feet 4 inches thence west 222
feet 6 inches shaping through the Centre
of a Stone House on Main Street the

(40) North part of which is now occupied by Gregoire Sarpy to the place of beginning this lot ~~lot~~ also includes the Barbours Shop, and the Store occupied by Robert Rankin, all the right, title, interest and claim of William Rector administrator as aforesaid in and to said lot and improvements, I will sell for Ready Cash to the highest bidder at the Court house door in the Town of St Louis on Thursday the 10th of October next between the hours of nine and five of that day to satisfy said execution and Costs, St Louis 16th Sept 1822. John K Walker Sheriff

State of Missouri } ss
County of St Louis } Be it remembered that on the first day of November, in the year ~~of our Lord~~ 1822, John K Walker Sheriff of the County of St Louis personally appeared in open Court and acknowledged the execution of the within deed from him as Sheriff to John P. Schatzel therein named, which said acknowledgment is entered on the records of the Court of that day (L.S.) Given under my hand and seal at office at St Louis Nov 1st 1822. Archibald Gamble C.K.

Recorded Jany 3d 1822. Archibald Gamble C.K.

State of Missouri } ss
County of St Louis } I the undersigned Recorder for the County aforesaid do hereby Certify that the foregoing is a true Copy of an instrument of writing and of the

Certificate of acknowledgment and the date of filing thereof, as fully as the same remains of Record in my office in Book LL Page 238, and following

(41) LS Given under my hand and seal of office this first day of November Anno Domini Eighteen hundred and forty nine S.D. Barlow Recorder, " and next deed of Bernard Pratte and Emilie his wife Mrs Sarpy, Auguste P Chouteau & Sophie his wife (the plaintiff) and Sylvester Labbadie to Robert Rankin dated June 13th 1827,

Plaintiff objected to the reading of this deed and objection overruled, deed allowed to be read to which action of the Court the plaintiffs excepted,

Deed Pratte &c To Rankin

This deed made this thirteenth day of June in the year of our Lord one thousand eight hundred and twenty seven, between Sylvester Labbadie and Victorie his wife, Bernard Pratte and Emilie his wife, Palagie Sarpy and Auguste P Chouteau, and Sophie his wife, grantors, as heirs and devisees of Marie Antoinette Little of the first part and Robert Rankin Grantee of the second part, all of the City and County of St Louis, in the State of Missouri, Witnesseth; That the said party of the first part, grantors, for and in Consideration of the sum of two thousand dollars to them in hand paid by the said Robert Rankin at and before the ensealing and delivery hereof, the receipt whereof they do hereby acknowledge and thereof acquit

(42) and discharge the said Robert Rankin his heirs executors and administrators, by these presents, have granted, bargained, sold aliened enfeoffed, released and confirmed and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said Robert Rankin and to his heirs and assigns all that certain lot piece or parcel of ground lying and being situate in the City of St Louis aforesaid, containing thirty four feet more or less fronting fronting Westwardly on first Main Street and the Northern half of the lot or piece of Ground between the lots of Pelagie Sarpy on the North and Collier and Powell on the South and running Eastwardly by the said width of thirty four feet more or less, two hundred and twenty six feet more or less to the river Mississippi bounded Westwardly by said first Main Street which separates the same from the lot of Charles and Frederick Billon, Northwardly by lot of Pelagie Sarpy, Eastwardly by the river Mississippi, and Southwardly by lot of John P. Chatchel, and in block Number nine on the plat of said City of St Louis together with all and singular the privileges hereditaments and appurtenances whatsoever thereunto belonging or in anywise appertaining and the reversion and remainder, rents, issues and profits thereof. To have and to hold the said lot piece or parcel of Ground hereby granted or mentioned or intended so to be

(43)

with the appurtenances unto the said Robert Rankin his heirs and assigns, to the only proper use, benefit and behoof of the said Robert Rankin his heirs and assigns forever, free and clear of all kind of incumbrances whatever, subject to an alley of ten feet wide. In witness whereof the said parties have hereunto set their hands and affixed their seals on the day, month and year first above written,

Signed, sealed in presence of The words "subject to an alley ten feet wide" written at the Conclusion before signing John B. Sarpy

J Labbadie	L.S.
Victorie Labbadie	L.S.
Bd Pratte	L.S.
E Battence Labbadie	L.S.
Veuve Sarpy	L.S.
A P Chouteau	L.S.
Sophie Chouteau	L.S.

State of Missouri } If Be it remembered,
County of St Louis } that on this thirteenth day of June in the year of our Lord one thousand eight hundred and twenty seven before me Mary Philip Leduc, one of the Justices of the County Court within and for the County aforesaid, personally appeared Sylvester Labbadie, and Victorie his wife, Bernard Pratte and Emilie his wife, Pelagie Sarpy and Auguste P Chouteau and Sophie his wife, all personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed

for the purposes therein contained, they the said Victorie wife of said Sylvestre, Emilie wife of said Bernard, Sophie wife of said Auguste P. being by me first made acquainted with the contents thereof and examined separate and apart from their respective husbands whether they executed the said deed and relinquish their dowers to the lands and tenements therein mentioned voluntarily freely and without compulsion or undue influence of their respective husbands, acknowledged and declared that they executed the said deed and relinquished their dowers in the said lands and tenements therein mentioned voluntarily, freely and without compulsion or undue influence of their said respective husbands. Taken and certified the day and year aforesaid. M P Leduc
Justice County Court St Louis County
State of Missouri County of St Louis ss
I Archibald Gamble Recorder of the County of St Louis, do certify that the within deed is truly recorded in my office in Book A Page 462, Given under my hand and L S seal of office this 6th day of July 1827
Archibald Gamble Recorder, &

Next the record of partition proceedings from St Louis Circuit Court had in 1827, between John P. Schatzell and Robert Rankin for partition of lot on Main Street and report of Commissioners

State of Missouri } In the St Louis Circuit Court
County of St Louis }

Be it remembered that on the twenty first day of September A. D. Eighteen hundred and twenty seven, there was filed in the office of the Clerk of the Circuit Court within and for said County a petition in Partition in the words and figures following to wit, Petition To the Honble the Circuit Court of the County of St Louis. The petition of John P. Schatzel respectfully sheweth that in the year one thousand eight hundred and twenty three at the County aforesaid your petitioner became the purchaser of all the right, title, interest and claim of one John Tebble deceased in and to a lot of ground situate on Main street in the City of St Louis and County aforesaid that said purchase was made at Sheriffs Sale. That the interest of said Tebble was an undivided half of said lot which was bounded as follows and contains thirty seven feet eight inches English Measure, bounded east wardly by the Mississippi River, Northwardly by lot of Pelagie Saucy, West and on the front by said Main street, South by lot of Collier and Powell, that the other half of said lot is at present owned by Robert Rankin who claims title to the same as vendee of the heirs of Marie Antoinette Tebble late wife of said John Tebble deceased. Your petitioner further shew that there are several tenements erected on said premises. Your petitioner therefore pray that your Honorable Court will direct that said lot may be divided by Com-

(45)

Pet & proceedings for partn Schatzel & Rankin

40

missioners appointed by your Honorable Court in pursuance of an act of the General Assembly of the State entitled "an act to provide for partition of lands," and according to the respective rights of your petitioner and said Robert Rankin therein and your petitioner as in duty bound will ever pray. John P. Schatzell by A. G. Magenis his atty.

And afterwards to the September Term A.D. 1827, on the same day the further following proceedings were had, John P. Schatzell by his Attorney filed his petition praying the partition of a certain lot of ground in the City of St Louis bounded North by the lot of Pelagie Saulay West by Main Street, South by Lots of Collier and Powell and Eastwardly by the Mississippi River. the one undivided half of which said lot is claimed by the said John P. Schatzell and Robert Rankin by Mr Magenis his Attorney appears and acknowledges to have received notice of this application. It is therefore ordered by the Court, that Mary P. Ladue, James Lane, William Higgins, Thornton Grimsley and Thomas Riddick be appointed Commissioners to divide said lot of Ground if the same be susceptible of division according to the several rights of the said John P. Schatzell and Robert Rankin and that they report their proceedings in the premises at the next Term of this Court.

State of Missouri } Cs Before Me Mary
County of St Louis } Philip Leduc one of
the Justices of the County Court within &
(47) for the County aforesaid personally came
and appeared James Lane, William Hig-
gins, Thornton Grimsley and Thomas
Andrews, Commissioners appointed by
the Circuit of the County aforesaid as
appears by the foregoing Copy of the order
of the said Court and took the oath
that they will honestly and impartially
execute the trust reposed in them as
Commissioners aforesaid, for making
partition of the lands and tenements and
hereditaments as directed by said Court
Thos Andrews, Thornton Grimsley, Wm
Higgins Jas S Lane. Sworn to and
Subscribed before me this 18th day of
December 1827, M P. Leduc Justice
County Court St Louis County.
State of Missouri County of St Louis Cs
~~Personally~~ Pursuant to the within order
of the Circuit Court of August Term last
past we the undersigned Commissioners
duly appointed by said Court, and
duly Qualified to make a partition
and division of the lands, tenements &
hereditaments mentioned in said order
do report as our Opinion that the lands
tenements and hereditaments in said
order mentioned are so situated that
a division thereof cannot be made without
great prejudice to the owners of the same.
Dated St Louis December 1827,

(48) Thos Andrews. Wm Higgins, Thornton Grimsley Jr, S Lane, M. P. Leduc.
State of Missouri } ss
County of St Louis } Before me Joseph V. Garnier a Justice of the peace, within and for the County aforesaid personally appeared Mary Philip Leduc Commissioner appointed by the Circuit Court of the County aforesaid as appear by aforegoing Copy of the order of said Court and took the oath that he will and impartially execute the trust reposed in him as Commissioner as aforesaid for making the partition of the lands, tenements and hereditaments as directed by said Court M P Leduc. Sworn to & subscribed this 18th day of December 1827. before me
J. V. Garnier J. P.
And afterwards at the November Term A. D. 1827. on Thursday the Twentieth day of December A D 1827. An order of Sale was made by said Circuit Court. in the words and figures following towit
Order of Sale.
The Commissioners appointed to make partition of a Certain lot of Ground Situated in the City of St Louis between John P. Schatzell and Robert Rankin towit Thomas Andrews. William Higgins. Thornton Grimsley James S Lane. and Mary P Leduc. report that the said premises are so situated that a division thereof Cannot

be made without great prejudice to the owners of the same it is therefore ordered by the Court that the Commissioners appointed to make said partition to wit Thomas Andrews, William Higgins Thornton Grimsley, James S Lane and M P Leduc or a Majority of them do proceed to sell the said lot of Ground at Public Vendue, on the premises for Ready Money to the highest bidder on Monday the Seventh day of January next between the hours of ten O Clock in the forenoon and two of the Clock in the afternoon of that day. And afterwards on the 24th day of March A.D. 1828, there was filed in the office of the said Circuit Court the report of said sale by the Commissioners in the words and figures following to wit

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Report of Sale

State of Missouri County of St Louis ss

To the Honorable the Judge of the Circuit Court within and for the County of St Louis, in the State of Missouri.

We the subscribers Commissioners appointed by your honor at the November Term 1827, of the Circuit Court to sell at public Vendue a certain lot belonging to John P Schatzel and Robert Rankin, Do make report that agreeably to the order of your honor of the said November Term of the said Circuit Court, 1827, a Copy whereof is hereto annexed and marked A On Monday the Seventh day of January 1828, expose to sale the lot in said order men=

(50) tioned by way of public vendue, and at the said sale on the said Seventh day of January 1828, which was held on the premises and between the hours of ten of the Clock in the forenoon and two of the Clock in the afternoon, as by said order directed, we did sell the said lot and premises to Robert Rankin upon the term and Condition in said order mentioned and sold it to said Robert Rankin who was the highest bidder for the same. for the sum of Three thousand dollars towit: $3000, which sale so as aforesaid Made we pray may be Confirmed by the Court of Saint Louis January 9th 1828. M. P. Leduc. Wm Higgins Thornton Grimsley Commissioners.

For order of sale Marked A See page 3. And afterwards at the March term A.D. 1828. on the Twenty fourth day of March A.D. 1828. the said sale was approved and a deed of Conveyance directed to be made in the words and figures following towit Thornton Grimsley, William Higgins and Mary P. Leduc, three of the Commissioners Appointed by the Court to make sale of the lot of Ground on Main Street belonging to John P. Schatzell and Robert Rankin make their report of their proceedings under said order, which Report and the matters and things done under said order are approved by the Court, and the said Commissioners are directed to make a deed

of Conveyance to the purchaser and pay over the proceeds of said Sale in equal proportion to the said Robert Rankin and John P. Schatzel.

(57)

State of Missouri County of St Louis ss I M S Cone Clerk of the St Louis Circuit Court within and for the County aforesaid Certify the foregoing to be a true and Correct transcript of the record and proceedings in the Case of John P Schatzel in Partition as fully as the same remains in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at office in the City of St Louis this 15th day of November A D 1849. M S Cone Clk

Deed Chouteau to Rankin

This deed made this twentieth day of January in the year Eighteen hundred and forty eight, Witnesseth that Sohlie Chouteau of the City of St Louis in the State of Missouri for and in Consideration of the Sum of One dollars to her in hand well and truly paid by Robert Rankin of the same City the receipt whereof is hereby acknowledged and Quit Claimed and by these presents doth bargain, sell, Convey and Quit Claim unto the said Robert Rankin a lot or

(52)

piece of Ground in the City of St Louis in Block Number Nine bounded on the west by First or Main Street on the north by property of Peter Sarpy in part and in part by George Collier, on the East by the Mississippi River having a front on First or Main Street of thirty four feet and extending back to the Mississippi River two hundred and twenty six feet more or less being the same lot of ground described in a deed from Sylvester Labadie and wife Bernard Pratte and wife, Pelagie Sarpy and Auguste P Chouteau and the said Sophie Chouteau, then his wife to Robert Rankin dated the thirteenth day of June in the year Eighteen hundred and twenty seven, Recorded in the office of the Recorder of St Louis County in Book N, Page four hundred and sixty three and following, and being the Northern half of a lot of ground which formerly was described as the lot between the lots of Pelagie Sarpy on the North and of Collier and Powell on the South, To Have and To Hold the premises above described and Conveyed unto the said Robert Rankin and his heirs forever but without any recourse to said Sophie Chouteau on account of any defect of title. Witness whereof the said Sophie Chouteau has hereto set her hand and seal the date above written

Sophie Chouteau (Seal)

State of Missouri County of St Louis ss
Be it remembered that on this Seventh
day of February eighteen hundred and
forty eight, before me the undersigned
a Notary Public, within and for the County
of St Louis, duly Commissioned and qual-
ified Came Sabbie Chouteau who is
personally known to me to be the same
person whose name is subscribed to the
foregoing instrument of writing as a party
thereto and acknowledged the same to be
her act & deed for the purposes therein
mentioned, In testimony whereof I hereunto
L S set my hand and affix my notarial
Seal at St Louis, the date last
aforesaid L R. Corbambert
Not Pub.
County of St Louis I certify that the
foregoing deed was filed in my office Feb
8th 1848. & is duly recorded in Book
D 20 Page 162.
Given under my hand and Seal
of office the date last aforesaid
L D Barlow Recorder. "

Testimony of Darby

John P. Darby a witness for defendant
states that he wrote his name as subscri-
bing witness to said deed in evidence
dated June 13th 1827. of Auguste
Chouteau & Sabbie Chouteau Plaintiffs
& others to Robert Rankin, that he wit-
nessed the execution of said deed by the
parties whose names are signed to it. that
the Consideration Money Two thousand dollars

(54) stated in said deed was paid by Robert Rankin, that the said Rankin took possession under said deed of 1827, that he the witness received the part of the purchase money belonging to Mrs Sophie Chouteau under the sale, and he Sarpy deposited it with Bernard Pratte & Co to the Credit of Auguste P Chouteau, that two thousand dollars was the value of the property at the time it was sold, that Auguste P Chouteau and Sophie his wife lived in the City of St Louis, at the time and lived on Main Street from 1827, to 1839 or 1840, that he Sarpy knew nothing of partition between Schatzell and Rankin, that John Little before his death was in possession of the lot, of 67 feet 8 inches, after this Magenis was in possession of South half of it, that he knew Mr Little and he occupied this property for several years after the death of Mrs Little, that Mr Little had the possession after the death of his wife, that he knew of no division of this lot after the death Mrs Little, Witness looks at the Deed of 1827, to Robert Rankin and says it is for the North half of the large lot of Mrs Honey, the whole lot of Mrs Labbadies was 120 feet front, the north line of Mrs Honey's lot would pass through the middle of the Stone house, that witness Mother occupied the Northern half of this house and Mrs Little lived in the Southern half. did not know how the heirs

Came to Convey the entire northern lot to Rankin. Witness looks at deed of Sophie Chouteau, date January 20 1848, to Robert Rankin and said that he never heard
(55) Mrs Chouteau say anything about this deed, said that the lot was occupied from Main Street back to the Mississippi River. that he knew nothing about the improvements put on the lot by Magenis. on Cross Examination by plaintiff said that Mrs Little occupied the Southern part of the Stone Mansion House,

Gay { John H Gay a witness for defendant said That he Came to St Louis in March 1824, knows the property in dispute, that he bought a piece of ground adjoining it on the South in 1828, that Magenis was in possession of the lot in dispute when he Gay bought, that witness bought a piece of Magenis's lot from him, on its South side. Magenis's possession has Continued I believe upto the present time. In 1830 there was an obligation between Magenis and me about a division wall, I built on my north line being the South line of the lot in dispute, and he agreed to pay me for half the wall when he built and he paid me when he put up a Store on his lot about 1833, or 1834. He built a Stone Store on the levee, he owned through to Main Street, and had improvements on Main Street, there was a Barber Shop on the Main Street front of the lot in early

56 times. The Barber Shop I think was North of Rankins Store, which was adjoining the Store of Rowell and Collins which was on the lot South of the entire lot, but I am not Certain whether the Barbers Shop was next North or South of Rankins Store. Question. Were the improvements put on this lot by Maginis of a permanent and valuable Character? Objected to by Plaintiffs. Objection Overruled. Plaintiff excepted, Answer. The improvements of Maginis were valuable they were Stores. The building on this lot were destroyed by fire of 1849, after this improvements were put up on both fronts of the lot by Maginis' Representatives, Semple & others got loans from Mr Blair executor of A L Maginis Estate. I knew Robert Rankin, knew of his occupying property next North of Maginis. Rankin purchased in 1827, I understood. Can't say when he took possession Witness shown deed of Sophie Chouteau to Robert Rankin dated January 20th 1848, Says this deed describes the property bought by Robert Rankin in 1827, When I was the Guardian of Rankin previous to the date of this deed probably in 1847, I had a Notice served on me in Reference to Rankins Lots by some person acting for Mrs Sophie Chouteau (the Plaintiff) I think for this lot, I called to see Mr Sylvester Labbadie Mrs Chouteau's Relative in Regard to Rankins lot. I think that Rankin showed me the

deed of Mrs Sophie Chouteau & others to him dated 1827, I dont Know whether Mr Labbadie was authorized to act for Mrs Chouteau. The writ in this suit brought by Mrs Chouteau was served on me, and this was before the execution of this deed dated 1848, by Mrs Sophie Chouteau, to Robert Rankin. After Rankin came from Europe I turned over the matter to him, Mr Labbadie died about four or five years ago & subsequent to the date of the deed of 1848. I dont Know the exact date of Mr Labbadie's death,

57

Elliott { "Andrew Elliott a witness for defendants said, I Know the property in dispute Knew John Little, I came to St Louis in 1815, John Little & wife lived in the Southern half of the Stone Mansion House, of the Sarpys and old Mrs Sarpy lived in the Northern half of same house, I Knew of Mrs Littles death and after her death in 1818, Moses Scott Occupied this half of the house, previously occupied by Mrs Little. There was a Barber Shop on the lot in dispute and it was situated between the Stone dwelling House and Collier and Powells lot which was next South of Mrs Littles entire lot, His Barber Shop was next to and adjoining Collier & Powells Store I think, I lived in St Louis from 1815 to 1825. I dont Know when the Barber Shop and Stone house were put up on this lot,

58

Catherwood

Robert Catherwood witness for defendants said, that he knew the property in dispute that his knowledge of the lot commenced in 1820. Also knew John Little that witness rented a store from Little in the fall of 1820. this store was on the lot in dispute and near Mrs Darby's house there was a space between it and Mrs Darby's house a cart could pass between this store and Mrs Darby's house.

Defendants offers to prove by the witness that John Little after 1818. and before his death of the one part and the brothers and sisters of Mr Little deceased of the other part made a division of the entire Darby tract by agreement, and that possession was held by the parties agreeably to such partition subsequently thereto

The Court refused to permit such evidence to be given to the Jury to which action of the Court defendants excepted.

Hall

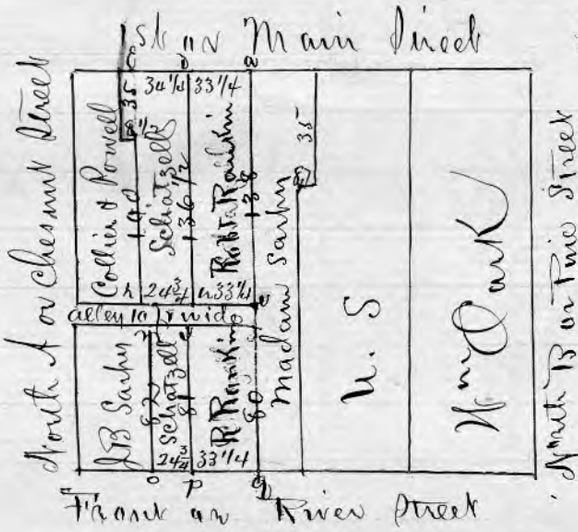
Charles R Hall witness for defendants said that he knew this property in 1827, at which time he witness occupied a house on Main Street on the Southern line of Rankin lot of thirty four feet. that he leased of Rankin and was there six or eight months that he gave up possession to Robert Rankin. There was an old frame building on Rankin lot extending out to Main Street and witness occupied a part of this building, did not

Know that this lot was owned by Mageni at that time nor that it was ever owned by Mageni except from Report.

(59) Defendants next offered a paper Containing a Survey which paper was shown to have been found by ~~[illegible]~~ Mr Say among Robert Rankin's paper and that it is in the hand writing of Rene Paul This paper excluded by the Court on motion of plaintiff to which action of the Court defendants excepted.

St Louis July 16th 1827

Survey {



This is to Certify that at the request of Mr Robert Rankin I have this day Surveyed and Measured a lot of Ground in block No 9. in this City of St Louis as ~~[illegible]~~ Represented in the annexed diagram of block No 9. under the letters e a g o i k e. Along the lines of which diagram the distance measured are laid down in english feet And after having ascertained the size and shape of the aforesaid lot divided it into two parts

(60) as shown by the line d w v p
The point K is the northeast Corner of Mr Powells house. The point h is the northern extremity of a stone wall on the west edge of the alley, at the points d a q p o m.
Set pine Stakes R Paul,

The defendants introduced Wm H Cozens, witness who stated that the Survey last offered in evidence was in
Cozens { the hand writing of Rene Paul and that the Signature of Paul as County Surveyor was his Signature, that he Knew Mrs Sophie Chouteau the plaintiff, that she lived in St Louis from 1825. to this time, from 1825 to 1838. or 9. on Main Street opposite the Bank and since then on Gratiot Street that plaintiff is a very intelligent woman that he Knows the property owned by Magenis heirs on Main Street that Magenis has buildings on his lots that they were put up shortly after the fire of 1849, and are next north of Adolphus Meyers house on Main Street. Question, are the improvements erected on Magenis lot since the fire of 1849 valuable? This question objected to by plaintiff and overruled by the Court to which action of the Court defendants at the time excepted. Defendants then asked witness the following question, Do you Know if the defendants erected any improvements on the lot in dispute after

the fire of 1849, and before June 1850,
which question was objected to and exclu=
ded by Court, and defendants at the time
(61) duly excepted to this action of the Court.
Defendants here offered to prove by Com=
petent testimony that after the fire of 1849,
and before the Commencement of this suit
the defendants erected valuable improvements
on the lot in dispute. To the giving of such
evidence the plaintiff objected and the Court
sustained the objection and excluded the
evidence to which action of the Court the
defendants duly excepted.
Mrs Cozens stated that Mrs Chouteau is an
intelligent woman, transacts her own bus=
iness. She was formerly an active women
and stated further that the lot of which
he had been speaking runs through from
Main Street to the levee and the improve=
ments put up since 1849 are on the entire
lot.

Walker { John K Walker witness for defen=
dant stated that the lot described in
deed dated October 21st 1822, & sold by
him as Sheriff to John P Schatzell as
the property of John Little had a Barber
Shop spoken of in said deed situated
on the Southern part of the lot adjoining
the building formerly Tabbadies building
on Main Street.

Rogy { Louis N Rogy witness for defendants
stated that since the death of Auguste P

(62) Chouteau the Plaintiff had Claimed property of her husbands under the Marriage Contract, given in evidence between them,

Also admitted by Plaintiff that the deed dated June 13th 1827 from Auguste P Chouteau and Sophie his wife and others to Robert Rankin was signed by the parties to it and acknowledged as stated in the Certificate on the deed and was delivered to Rankin,
It was also admitted by plaintiff that about April 1828, Arthur L Magenis took possession of the Southern half of the large lot, that is the lot now in dispute and by his tenants up to his death in 1849, and by the tenants of his Representatives since his death to the present time, entire and exclusive possession of the same has been held and that they Claimed the same adversely to all other persons,
It was admitted by the plaintiff that John P Schatzell and John P. Chatchell are the same persons.
Defendants then offered deed dated April 2nd 1828 of Robert Rankin to John P. Schatzell by Commissioners to Robert Rankin,

This indenture made the second day of April in the year of our Lord one thousand

eight hundred and twenty eight between Thornton Grimsley James S. Lane, William Higgins, Thomas Andrews, and Mary Philip Leduc, Commissioners Appointed by the Circuit Court of the County of St Louis in the State of Missouri at the November Term of the said Court, in the year of our Lord One thousand eight hundred and twenty seven, of the One part and Robert Rankin of the other part, all of the County aforesaid. Whereas Robert Rankin and John P. Schatzell are seized in their demesne as of fee, of in and to a certain lot of ground of sixty six feet and seven inches more or less fronting westwardly on first Main Street in the City of St Louis, as hereinafter described And whereas the said Robert Rankin and John Schatzell by their petition to the Judge of the said Circuit Court at the July term of the said Court setting forth the premises & praying that a partition be made of the lot in said petition mentioned, and thereupon it was considered and ordered by the Court that Commissioners be Appointed to proceed to the division and partition of said premises, and having proceeded accordingly, the said Commissioners reported to the said Court at the said November term that the premises in said petition mentioned were so situated that a division thereof could not be made without great prejudice to the owners of the same, And thereupon it was considered and ordered by the Court that the said lot and premises

(63)

Deed Commrs To Rankin

be Sold at Public vendue on the premises on the Seventh day of January in the year of our Lord One thousand eight hundred and twenty eight between the hours of ten of the Clock in the forenoon and two of the Clock in the afternoon of that day, for Ready Money. And whereas in pursuance of said order and by force and virtue of the Laws of this State in such Case made and provided, Afterwards to wit, On Monday the Seventh day of January in the year of Our Lord One thousand eight hundred and twenty eight on the premises in said petition mentioned, in the City aforesaid, We the Commissioners aforesaid did expose to Sale at Public vendue or auction the herein after described Lot and premises in said petition Mentioned agreeably to law and according to said order, and then and there did sell the same to Robert Rankin for the Sum of Three thousand dollars He being the highest bidder and that the highest and best bid for the same, which Sale we Report thereof made to the said Judge at the March term of the said Circuit Court, in the year one thousand eight hundred and twenty eight, was Confirmed by the said Court and it was ordered by the said Court that the same should be and remain firm and stable forever, as by the Records and proceedings of the same Court reference thereunto being had, more fully and

at large appears. Now this indenture
witnesseth that we the Commissioners afore
said, by virtue of the power and authority
(65) in us vested as aforesaid and for and in
Consideration of the sum of three thousand
dollars lawful money in hand paid by the said
Robert Rankin at and before the ensealing
and delivering hereof the receipt whereof we do hereby acknowledge and thereof
acquit and forever discharge the said
Robert Rankin, his heirs executors and ad-
ministrators, by these presents have gran-
ted bargained and sold, released and
confirmed and by these presents do grant
bargain, sell, release and confirm unto
the said Robert Rankin all that piece
or parcel of ground lying and
being situate in the City of St Louis afore-
said and containing sixty six feet
seven inches more or less fronting west-
wardly on first Main Street and run-
ning Eastwardly the front street on
River Mississippi bounded as follows
towit: Westwardly by said first main
Street which separates the same from
the lots of Messrs Spratt and Pelton
and others, Northwardly by lot of Pelagie
Sarpy, Eastwardly by said front street
on Mississippi river and Southwardly
by lots of John Baptiste Sarpy, and
Collier and Powell in Block No (illegible)
on which said lots there is a house and
several buildings, together with all
and singular the privileges hereditaments

and appurtenances whatsoever thereunto or in anywise appertaining and also the estate, right, title, interest, property claim and demand whatsoever of them the said Robert Rankin and John P Schatzell in law, equity or otherwise howsoever, of in, to, or out of the same. To have and to hold the said granted and described lot or piece of ground hereditaments and premises hereby granted or mentioned or intended so to be with the appurtenances unto the said Robert Rankin his heirs and assigns to the only proper use and behoof of the said Robert Rankin his heirs and assigns forever. In witness whereof we the Commissioners aforesaid have hereunto set our hands and seals the day month and year first above written to wit the second day of April in the year of our Lord One thousand eight hundred and twenty eight.

State of Missouri } Thornton Grimsley (Seal)
County of St Louis Cy } Wm Higgins (Seal)
Be it remembered } M P Leduc (Seal)

that on this second day of April in the year Eighteen hundred and twenty eight personally appeared in open Court Thornton Grimsley, William Higgins and Mary P Leduc, Commissioners appointed by the Circuit Court of St Louis County at the November term thereof in the year Eighteen hundred and twenty seven to sell the said

Lot and premises in said order mentioned
And they the said Commissioners being
personally known to the Court to be the
persons in said order named acknowl=
edged the execution of the foregoing deed
by virtue of the aforesaid order of Court
to the within named Robert Rankin
which said acknowledgement is entered
on the records of the Court of this day
Witness my hand and official
seal this 2nd day of April in the
year 1828.

Archibald Gamble Clerk

State of Missouri County of St Louis ss
I Archibald Gamble recorder of the
County of St Louis certify that the
foregoing instrument of writing is truly
recorded in my office in Book K O
Page 130 and following. Given under
my hand and seal of office this 2nd
day of May 1828.

Archibald Gamble Clerk

Next the deed from Robert Rankin
to Antoine L Mageni dated April
5th 1828,

Deed Rankin To Mageni } Know all men by these presents that I
Robert Rankin of the City of St Louis and
State of Missouri for and in Considera=
tion of the sum of Fifteen hundred
dollars to me in hand well and truly paid
by Antoine L Mageni of the City and
State aforesaid, before the sealing and

(68) delivery of these presents, the receipt whereof is hereby acknowledged, Have given granted, bargained and sold unto the said Author L Wagenis all the right title interest and Claim that Grow have or may hereafter acquire in and to a Certain lot or parcel of ground situate and being in said City of St Louis, on the first or Main Street of said City, beginning at the ~~North~~ South east Corner of a house the property of said Gankin at present occupied by one Charles R Hall on said Main Street thence running Southwardly in a parallel line with said Street thirty three feet ten inches be it more or less English Measure to the North west Corner of a house formerly the property of Sylvester Labbadie and at present the property of George Collier and Peter Powell thence eastwardly with the line of said Labbadie or said Collier and Powell in a parallel line with the Cross Street (which bounds the said lot of the said Labbadie or said Collier and Rowell, on the South) Forty two feet and Eleven inches English Measure, to the North Eastern extremity of said house, thence Northwardly Course with the line of said Labbadie or said Collier and Rowell eight feet four inches English Measure, to said Labbadie or said Collier and Rowell's Northwest Corner lot thence Eastwardly with the line of said Labbadie or said Collier and Powell's lot in a

parallel line with said Cross Street One hundred and six feet English Measure to the North East Corner of the lot of
69) said Labbadies or said Collier and Rowell thence Southwardly in a parallel line with the said Main Street eight feet four inches English Measure thence Eastwardly in a parallel line with said Cross Street Seventy nine feet Seven inches to the Mississippi River thence northwardly Course with said bluffs in a parallel line with said Main Street thirty three feet ten inches be the same more or less English Measure to said Rankin's South East Corner of said Mississippi bluffs thence, westwardly in a parallel line with said Cross Street with the Southern boundary line of said Rankin to the place of beginning two hundred and twenty eight feet six inches English Measure, bounded westwardly and in front by said Main Street North by lot of Rankin South by lot of said Labbadie or said Collier & Rowell and lot of John B. Larpy and on the East by the Mississippi bluffs, it being a part of the same lot Conveyed by the heirs of Pelaige Labbadie to John W Honey by deed bearing date twenty second December in the year One thousand Eight hundred and fourteen recorded in the office of the Clerk of the Circuit Court for the County of St Louis in book E page 341 and following it being well understood that he the said Magenis is to give

(70) a passage or lane of ten feet wide Running Northwardly and Southwardly to go on the lot of said Rankin and the lot of Pelagie Sarpy. To Have and to hold the aforesaid and described premises with all and singular the tenements, hereditaments and appurtenances thereunto in anywise appertaining or belonging unto him the said Magenis his heirs, executors, administrators and assigns forever, It being hereby expressly stipulated by me the said Robert Rankin that the words "grant bargain and sell" are not to be taken as a Covenant on my part that I am duly seized in fee simple of the said premises and have good right full power and lawful authority to sell and dispose of the same but that I, the said Rankin will defend the title of said Magenis to said premises against the claim or claims of any person claiming title to the same, by through or under me. In testimony whereof I have hereunto set my hand and affixed my seal at the City of St Louis in the State aforesaid this fifth day of April in the year One thousand eight hundred and twenty eight Robert Rankin (Seal) Signed sealed & delivered in presence of — the word "it" interlined in the first page and the word January obliterated and the word April interlined in the third page of this deed before signing sealing and

delivery Chs Shewart Saml H Scott
S V Garnier.

(71) County of St Louis Ss Personally appeared before the undersigned a Justice of the peace in and for the County of St Louis Robert Rankin, whose name is subscribed to the within instrument of writing and is personally known to the said Justice to be the same person who executed the same and acknowledged the said instrument of writing to be his act and deed for the purposes therein mentioned. Given under my hand this 5th of April 1828. J V Garnier Justice of the Peace

Note In addition to the words mentioned in the deed as having been interlined the word "Court" in the sixth line of this page is interlined in the original the word January is erased in the original and the word "April" where it stands in the seventeenth line of this page is written over it. Recorded 10th of April 1828 Archibald Gamble Clerk.

State of Missouri
County of St Louis Ss I the undersigned recorder for the County aforesaid do hereby certify that the foregoing is a true copy of an instrument of writing the certificate of acknowledgment and the date of filing thereof as fully as the same remains of record in my Office in book O page 164 & following

Given under my hand and seal of Office the first day of November A D 1849

S. D. Barlow
Recorder

Seal

Next the deed dated May 2nd 1829

(72) From Sylvester Labbadie & Pelagie Sarpy, Bernard Pratte & Emilie his wife to Robert Rankin Plaintiff objected to the reading of this deed and the Court overruled objection and allowed the deed to be read to which ruling of the Court plaintiff excepted.

Heirs of Labbadie To Rankin

Know all men by these presents that whereas the undersigned did by deed bearing date the twenty second day of December in the year One thousand eight hundred and fourteen did sell and convey unto John W Honey of the County of St Louis and then Territory of Missouri a certain lot or parcel of ground situate and being in the town of St Louis and territory aforesaid on Main Street of said Town containing fourteen thousand five hundred and forty four feet eight inches English Measure butted and bounded as follows beginning at the South West Corner of Gregoire Sarpy's lot on Main Street thence running Southwardly course in a parallel line with said first Main Street sixty seven feet eight inches English Measure to the North West Corner of Sylvester Labbadie's house thence Eastwardly with said Labbadie's line in a parallel line with the Cross Street forty two feet and eleven inches English Measure to the North East Corner of said Labbadie's house thence Northwardly course with Sylvester

Labbadie's line Eight feet four inches English Measure. to said Labbadies North West Corner lot thence Eastwardly with the line aforesaid Labbadie's lot in a parallel line with the Crop Street one hundred and six feet six English Measure to the North East Corner of said Labbadie lot thence Southwardly in a parallel line with the Main Street Eight feet four inches English Measure thence Eastwardly in a parallel line with the Crop Street seventy nine feet and seven inches to the Mississippi River thence northwardly course with said river in a parallel line with said Main Street sixty seven feet Eight inches to Gregoire Sarpys North East Corner on said Mississippi River. thence westwardly in a parallel line with said Crop Street with the line of said Gregoire Sarpy's lot to the place of beginning two hundred and seventy eight feet six inches English Measure more or less bounded Eastwardly by said Main Street which separates the same from lot formerly owned by Charles Patriot Northwardly by lot of Gregoire Sarpy Senior Southwardly by lot of Sylvester Labbadie Eastwardly by the Mississippi River and whereas afterwards said John M Henry did by deed bearing date 23rd January in the year One thousand eight hundred and fifteen Recorded in the office of the Recorder for the

(74) County of St Louis in book E page 351 & foll 7 did sell and convey to Marie Antoinette Honey alias Labbadie the said described premises and whereas the said Marie Antoinette afterwards intermarried with John Little and the said Marie Antoinette died without issue leaving her husband John Little living and whereas the undersigned as the Heirs of said Marie Antoinette did by law become entitled to the one undivided moiety of said property and one John P. Schatzell become the purchaser of the interest of said Little in said premises and afterwards it was agreed upon by and between the undersigned and said Schatzell that the Northern Moiety of said lot should belong to the undersigned and the Southern moiety to said Schatzell and the undersigned did by deed bearing date 13th day of June 1827 sell and convey their interest in said premises to said Robert Rankin and the said Rankin afterwards became the purchaser of the interest of said Schatzell Now Know ye that in consideration of the premises and in consideration of the sum of One dollar, to us in hand paid by said Rankin before the sealing and delivery of these presents the Receipt whereof is hereby acknowledged, We the undersigned

do hereby release convey sell and quit
Claim unto the said Rankin his heirs
executors administrators and assigns
forever all our right title interest
(75) and Claim unto the aforedescribed
premises. To Have and to Hold the
said premises together with all and
Singular the privileges and appurtenances
thereunto in any wise appertaining or
belonging unto him the said Rankin
his heirs executors administrators and
assigns forever, It being understood
and agreed upon and it is hereby
required that the said Rankin his
heirs, executors, administrators, and
assigns shall so soon as the same
may be Conveniently effected by him,
have surveyed and laid off an alley
of fifteen feet ~~wide~~ in width, to Com=
mence at the Southern extremity of
said lots as near as may be midway
between said main street and said
Mississippi River, and running north=
wardly to the Southern boundary line
of the said lot of said Gregoire Sarpy
deceased and Relazie his wife.
In testimony whereof we have hereunto
set our hands and seals at St Louis this
second day of May in the year one
thousand eight hundred and twenty nine
J Labbadie (Seal) N Labbadie (Seal)
V Sarpy (Seal) B Pratte (Seal)
E J Pratte Labbadie (Seal)
State of Missouri County of St Louis Ss

76 Be it remembered that on this 5th day of May in the year aforesaid one thousand eight hundred and twenty nine before me Mary Philips Ledue a Justice of the County Court, within and for the County aforesaid, Came and appeared Sylvester Labbadie and Victoire his wife, and Pelagie Saucy all personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the said instrument to be their act and deed for the purposes therein mentioned. She the said Victoire wife of the said Sylvester being by me first made acquainted with the Contents thereof and examined seperate and apart from her husband whether she executed the said deed and relinquished her dower to the lands & tenements therein Mentioned freely voluntarily and without Compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquishes her dower in the said lands and tenements therein mentioned, voluntarily, freely and without Compulsion or undue influence of her said husband. Taken and Certified the day and year aforesaid

M P Ledue Justice County Court
St Louis County,

State of Missouri, County of St Louis

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Be it Remembered That at a term of the County Court for the County of St Louis in the State of Missouri, begun and held at the City of St Louis in said County on the fourth day of May in the year of our Lord eighteen hundred and twenty Nine before the Justices thereof in open Court, personally appeared Emilie' Prophe, Labbadie, the wife of Bernard Pratte, and she the said Emilie' being personally known to one of the Justices to wit: Mary Philip Ledue, Esquire, to be the person whose name is subscribed to the foregoing instrument of writing as having executed the same, the Contents of the said instrument of writing was made known & explained to her and she the said Emilie' Pratte Labbadie was examined Separate and apart from her husband whether She executed the same voluntarily freely & without Compulsion or undue influence of her husband, and being so examined, She the said Emilie' acknowledged the said instrument of writing to be her act & deed that She executed the same voluntarily freely and without Compulsion or undue influence of her husband and does not wish to retract, In testimony whereof I Henry L S Chouteau Clerk of said Court have hereunto set my hand & affixed the Seal of said Court, at office this eighth day of May in the year of our Lord eighteen hundred and twenty Nine

L. S. Henry Chouteau Clerk

(78) State of Missouri } ss Be it remembered that
County of St Louis } on this eighth day of may
in the year of our Lord one thousand eight
hundred and twenty nine, before me Mary
Philip Leduc, a Justice of the County Court
within and for the County aforesaid Came
Bernard Prattle who is personally Known to
me to be the person whose name is subscribed
to the foregoing instrument of writing as having
executed the same and acknowledged the
said instrument to be his act and deed
for the purposes therein mentioned,
Taken and certified the day & year aforesaid
M. P. Leduc Justice County Court

St Louis County
State of Missouri } Ss.
County of St Louis } I Archibald Gamble
Clerk of the Circuit Court and ex officio
Recorder for the County of Saint Louis do
Certify that the foregoing deed from the heirs
of Labbadie, S Labbadie N. Labbadie E Sarpy
B Prattle and E T Prattle Labbadie to
Robert Rankin is truly recorded in my
office Book P pages 200, 201, 202 & 203
L S } Given under my hand and the Seal
of said Court at office this third day
of October 1829,
Archibald Gamble Recorder,
Defendants offered no further evidence
The above was all the evidence in the cause
On the motion of plaintiff the Court gave
the following instructions to the Jury

Pl. Ds Instructions

A. If the jury believe from the evidence that the plaintiff made the marriage contract read in evidence, that with her husband she signed sealed and acknowledged as stated in the certificate of acknowledgement the deed to Rankin given in evidence dated 13th June 1827, that the lot described in said deed was sold for its value at that time and that the plaintiffs portion of the purchase money was paid to her husband, that after the death of her husband she made the deed to Rankin given in evidence dated in 1848, conveying to Rankin her interest in the northern part of said lot of 67 feet 8 inches and in said deed ~~described~~ referred to said deed, dated 13th June 1827, the said Rankin and Schatzell were parties to the proceedings in partition given in evidence that the Commissioners appointed by the Court made to Rankin the deed read in evidence, that the judgment was rendered against the administrator of Lipple and the sale and sheriffs deed made as stated in the record read in evidence that Rankin after his purchase at the sale made by the Commissioners sold the southern ~~half~~ part of said lot to Arthur L Magenis by deed dated 5th April 1828, that the other heirs of said Maria, A Lipple made the deed to Rankin given in evidence dated 2nd May 1829, that Magenis or his heirs or persons claiming under him having made improvements on the Ld that Rankin and his tenants

A. B. & C

(79)

(80) as staked by the witnesses occupied the northern part of said Ld. Yet if the Jury believe that the plaintiff was a Married woman from 1809, to 1838, these matters do not divest her of any title to the the Southern part of said whole Ld. or estop her from claiming her rights in the same,

B. If the plaintiff was a married women from the time of the Commencement of the possession of Magenni until the year 1838, she is not barred of her rights to Recover in this suit by virtue of the statute of limitations,

C. If the Jury find for the plaintiff they ought to assess by way of damages one fortieth part of the rents and profits from the Commencement of the suit of the portion of the said Ld described in the petition, occupied at the Commencement of this suit by the defendants Charles Semple, William Semple, John Bissell & Charles Bissell and to stake in their verdict the monthly value of the plaintiffs interest in the said part of said Ld occupied by the said defendants, to the giving ~~the~~ of which the defendants objected and excepted,

The plaintiff asked the Court to give the following instructions

(81)
Pl. Ds
Instruct'
D & E

D. If the jury find that Mrs Little the plaintiffs sister died intestate between the years 1816, and 1820, without children being the owner of the whole ~~lot~~ of the lot of 67 feet 8 inches, leaving surviving her her husband without issue three sisters of whom the plaintiff was one and one brother, then the plaintiff became and was entitled to one undivided 8th part of the said lot of 67 feet 8 inches.

E. That if the whole land of 67 feet 8 inches described in the petition belonged to Pelagie Labadie that she died in 1814, owning the same, leaving as her only heirs her children to wit: Emilie wife of Bernard Pratte, Pelagie wife of Gregoire Sarpy, Sylvester Labadie, and Marie Antoinett wife of John W Honey and the plaintiff that the said Emilie and ~~the plaintiff~~ her husband, Pelagie & her husband Sylvester Labadie and the plaintiff and husband by their deed read in evidence dated 22 December 1814, conveyed the same to said John W Honey that the Legislature of the Territory of Missouri passed the act read in evidence January 22nd 1816, that the said Honey made the deed read in evidence dated January 23rd 1816, that after that time Mrs Honey, Married John Little and died in 1818, leaving no children he the said Little survived her that then on her death the plaintiff became entitled to an undivided interest of one eight in the said ld of 67 feet 8 inches,

(82) which the Court refused to give and to which opinion of the Court directing to give the same, the Plaintiff excepted.

The Court of its own accord, gave the following instruction

Court's instruc' { F. Under the admission made in this cause, the Court instructs the Jury that if John W Honey on the 23rd of January 1816, was not divorced from his wife Marie Antoinette except by the act of the Louisiana Legislature read in evidence then by the deed dated January 23, 1816 his title or interest of said John W passed to his wife, and therefore she had title to only an undivided half to inherited by her from her mother on the subsequent death of said Marie Antoinette leaving a husband three sisters and a brother the Plaintiff being one of said sisters took only one eighth of said one half that is, an undivided one fortieth,

to the giving of which the Plaintiff objected and excepted

On motion of the defendants the Court gave the following instructions

Defts instruct D.H.D.K. { G. The deed to John W Honey dated December 22nd 1814, given in evidence vested him in all ~~title~~ the right title &

(83)

interest of the grantors in said deed to the lot therein described

4. The act of the Territorial legislature approved January 22nd 1814 & given in evidence did not affect a divorce between John W Honey & Marie Antoinette Honey, therein mentioned.

5. The deed from said John W Honey to said Marie Antoinette Honey dated Jany 23rd 1816. given in evidence was not operative to convey the title of John W Honey, in said lot to said Marie Antoinette if the parties were then Man and wife,

6. Under the evidence in this case the plaintiff is not entitled to recover any portion of the interest in said lot which was conveyed to John W Honey by the deed to him of Dec 22nd 1814, given in evidence,

To the giving of which the plaintiff objected and excepted,

The defendants then asked the Court to give the following instruction

L. M. N. O. P. R. 2. If the Jury find from the evidence that in April 1828, Arthur L Magenis took possession of the lot in suit & the acting as the owner thereof against all persons, and down to his death held Continued possession thereof as his own property adversely to all others, and after his death the defendants as his legal Representatives claiming under him Continued in such

(84) possession of said premises to the Commencement of this action and that Sophie Chouteau the plaintiff was a Married woman prior to such possession Taken by Magenis and her husband died in Dec 1838. and More than two years from the death of her husband elapsed before the institution of this action then the Jury are instructed that they ought to find a verdict for the defendant,

If the Jury believe from the evidence that Anthony L Magenis was in possession of the premises in dispute claiming the same as absolute owner thereof in December 1838, that at the time Auguste P Chouteau husband of the plaintiff died that the heirs of Magenis and their tenants continued to possess said lot down to the institution of this suit that from the death of the husband to the Commencement of this suit Sophie Chouteau resided in St Louis, that Magenis had valuable improvements on said lot in 1849. that in the Great fire of 1849. the same were burned, that soon after said fire this suit was Commenced the defendants as legal Representatives of Anthony L Magenis erected valuable improvements on said lot to replace those which had been burned that Sophie Chouteau knew of her claim against said premises before the last improvements were erected and stood by

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and knew that the defendants were expending their money on said lot without making her claim known, and laid by without suing upon her claim against said lot until the defendants had spent their money thereon in erecting such improvements and by her acts and conduct the defendants were misled to their prejudice then the jury are instructed that the plaintiff is estopped from maintaining this suit and they ought to find a verdict for the defendants,

N. If the jury find from the evidence that Arthur L Magenis and his heirs & their tenants for more than twenty years before the commencement of this suit have had actual continued uninterrupted possession of the premises in dispute claiming to own the same against all persons, and that the plaintiff all that time lived in St Louis and became discovet in 1838. & more than ten years elapsed after the death of her husband before she commenced this action then the jury are at liberty to presume a deed from the pltff to the defts, or some one through whom they claim for the land in dispute if such presumption would be in futherance of equity and right dealing between the plaintiffs and defendants.

O. Under the evidence the jury is instructed that the plaintiff is not entitled to recover and they will find for the defendants.

(86) "If the marriage Contract given in evidence here was genuine then the Jury are instructed that one half of any interest taken by the Plaintiff in the property in question thereby became the property of Auguste P Chouteau,
R. If the Jury find from the evidence that the Marriage Contract given in evidence by defendants was executed by Auguste P Chouteau and Sophie Chouteau in 1809 and continued in force to the death of Auguste P Chouteau & the Community thereon agreed to was not renounced by Sophie Chouteau, that they were accordingly married in 1809, that in 1818. Mary Antoinette Lisle owned the premises in the petition described and died in February 1818. leaving her three Sisters namely Mrs Emilie Gratto wife of Bernard Pratte Mrs Pelagie Sarpy wife of Gregoire Sarpy Mrs Sophie Chouteau wife of Auguste P Chouteau, and her brother Sylvestre Labadie as her heirs, and her husband John Lisle surviving her, then John Lisle took the undivided 1/2 of said lot, and the three Sisters and brother took each an undivided 1/8 thereof, that Auguste P Chouteau died in December 1838. that in 1827. the four heirs of Mary A Lisle made the deed of the 13th June 1827, to Robt Rankin for the northern half of the entire lot, in petition described as their undivided half of the entire lot and that previously

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thereto in 1822. John P. Schatzell had acquired the undivided half interest of John Little in the larger lot & under such purchase at the time the deed of 13 June 1827 was made he Schatzell was holding the South half of the entire lot as his own exclusively in pursuance of an arrange=ment then existing between him and the parties to the deed of 1827, by which they took as their exclusive part of the entire lot the Northern half thereof, and that after the deed of 13. June 1827, to Robt Rankin he Rankin became the purchaser of Schatzells interest in said premises under proceedings in partition and Con=veyance to him given in evidence by defendants and under such Conveyance and the deed of 1827. Rankin held the entire premises as his own property and subsequently in April 1828. sold the South half thereof to Arthur S Magenis and Magenis then went into possession and soon after erected valuable im=provements thereon and Continued in possession to the death of Auguste P Chouteau in Dec 1838. that Auguste P. Chouteau then died and such possession of Magenis was Continued for more than ten years thereafter by him & his legal representatives and the legal rep=resentatives of Magenis under him "put up valuable improvements on said premises" to replace others which had been destroyed by the great fire of the year 1849. after the death of Auguste P Chouteau and

(88)

before the plaintiff entitled proceedings to recover a part of said premises then the Jury are instructed that the plaintiff is estopped from asserting the claim set up in the petition, and then ought to find a verdict for the defendants,

to which opinion of the Court in refusing the said instructions the defendants at the time excepted,

Afterwards in proper time the plaintiff and defendants filed their respective Motions for New trial,

Pltffs Motion } Now at this day the said plaintiff comes and moves the Court to set aside the verdict of the Jury in this Case and grant her a new trial for the following reasons towit 1st Because the Court erred in refusing instructions asked by the pltff 2nd Because the Court erred in giving instructions asked by the defendants, 3rd Because the Court erred in the instructions given on its own motion Glover & Richardson with whom Gualtney & Alp for plaintiff

Defts Motion } The defendants move the Court to set aside the verdict in this Cause and grant a new trial because 1st The Court gave erroneous instructions at the instance of the plaintiff 2nd The Court refused legal instructions asked by defendants

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3d The Court of its own motion erroneously instructed the Jury, 4th Because the Court excluded legal evidence from the Jury offered by the defendants, 5th The Court permitted plaintiff to give illegal evidence to the Jury,
Ack with Summons for defts.

both of which motions were overruled, and at the time plaintiff excepted to the overruling of her said Motion and the defendants likewise excepted to the overruling of their motion,
And, the said plaintiff and defendants ask the Court here now to make the said several exceptions a part of the Record, which is accordingly done
Samuel Treat Judge. "

State of Missouri } ss
County of St Louis }

I Charles W Hicks Clerk of the Saint Louis Court of Common Pleas within and for the County aforesaid Certify that the foregoing is a full and true transcript of the Records and proceedings in the Case of Sophie Chouteau Plaintiff and Anthus L. Magenis and others defendants as fully as the same remains 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 17th day of September A.D. 1856

C W Hicks
Clerk

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No. 21

(12)

March. T. 1858

Sophie Chouteau
P. E.

vs Transcript

Arthur J. Magenis
and Others.
D. E.

Error to St. Louis Court
of Common Pleas

Edward Bates.

Filed 23d February 1857
Wm S Glanville
Ck

$24.50/100 paid by Jesse Bates

4. fr. Bates cts $3.20

Affirmed. 3 June 1859 - B. p. 568

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In the Supreme Court, at St Louis
March Term 1857.

Sophie Chouteau, Pltff
v
Arthur J. Magenes, Wm M. Magenes,
Charles Semple, William Semple,
John Bissell & Charles Bissell. Defendants

2/3 Error to the St Louis County Com Pleas

The Plaintiff, Sophie Chouteau, comes here into the Supreme Court, and says that in the record & proceedings aforesaid, and in the rendition of the said judgment by the said Court of Common Pleas, divers errors of law have been committed, to the great damage of this Plaintiff.

And for the more certain assignment of said errors, She sets forth & shews to the Court here the following:

1. The Court of Common Pleas erred in overruling the motion of the Plaintiff to set aside the verdict & grant her a new trial.

2. Also, in refusing to give to the jury certain instructions (embodied in the Record) as moved by the Plaintiff, which were lawful & right & ought to have been given.

3 Also, in giving to the jury certain other instructions (embodied in the record) as moved by the Defendant, which were unlawful & wrong, & ought to have been refused.

4 Also, in giving to the jury certain other instructions (embodied in the record) without the motion of either of the parties, which were unlawful & wrong, & ought not to have been given.

5 Also, in admitting to the jury, unlawful & improper testimony, against the Plaintiff, which ought to have been excluded, on the Plaintiff's motion

All which the Plaintiff is ready to verify
Wherefore she prays judgment &c
By attorney
E. Bates

The Defendants say there is no error in the record as stated in the foregoing assignment of the Plaintiff

F. A. Dick for
Dfts.

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Supreme Court, St Louis
Mark Term 1857.
=
Sophie Chouteau
v
A. J. Magenes &c

Error assigned
E. Bates p.g.
assignments on behalf
of Plaintiff

Filed 16th March 1857
Dr. S. Glanville
Ck

187

Sophie Chouteau
Plaintiff
against
Arthur J. Magenis
and others Defendants

~~In the St. Louis Court of Common~~
In the Supreme Court for the State of Missouri
March term 1857

And now come the Defendants and say that there is error in the proceedings of the St. Louis Court of Common Pleas, committed against the Defendants in these Particulars -

1st The said Court erroneously instructed the Jury that the Plaintiff was entitled to recover an undivided $\frac{1}{40}$th of the land in dispute -

2d The Court erroneously granted instructions asked by the Plaintiff -

3d And erroneously refused instructions asked by the Defendants -

4th The Court erroneously excluded legal evidence offered by the Defendants -

5th The Court erroneously admitted illegal evidence offered by the Plaintiff -

6th The Court erred in not sustaining the Defendants motion to dismiss this action filed during the progress of the trial -

7th The Court erred in rendering judgment in favor of the Plaintiff -

F. A. Dick
Atty. for the Defendants -

The Plaintiff comes & says there is no such error for the Plt. E Bates

157
Mch term 1857

Sophie Chouteau

v

A. J. Magenis et al

Assignment of
Errors in behalf
of Defendants -

F. A. Dick
Atty. for Dfts

Fited 6th April 1837
Wm S Glanville
Ck

In the Supreme Court at St Louis
October Term 1857

Sophie Chouteau plaintiff below and plf in error

vs

Anthony J Magenis Wm M Magenis Charles Semple Wm Semple John Bisell and Charles Bisell - Defts

Error to St Louis Court of Common Pleas

Edward Bates for the plaintiff

There are presented on this record several minor questions of law, but they all have reference to the two important questions which were chiefly considered in the Court below - viz

1 Was the act of the Territorial Legislature of January 22 1816, a lawful and valid divorce of John W Honey & Marie Antoinette his wife?

2 - Was the deed of enveyance from Honey to his late wife, dated on 23d January 1816. (the day after the divorce) a valid conveyance of the land

1 Unless argument is called for by the Court. I waive the question of divorce, and admit that, for the purposes of this case, the Territorial Legislature had no power to grant a divorce

2. I submit that the deed from John W Honey to his wife, was a good and valid conveyance of the land, even though the marriage remained undissolved:

& first It was good according to the Common Law, as introduced in to the Territory in a modified form, by the act of Jan 19. 1816.

Acts. p. 32.

The Com. Law thus introduced is not identical with the English Common Law, for the Statute introducing it has very important savings & exceptions - see the act; [and I suppose it is not denied that before that time a husband might convey to his wife]

[see 2. Lou^a R. 521 & especially 565 - in L'Abbé's Heirs v Abbé et al:]

And among these exceptions may be stated the forms and methods of conveyance.

I admit that by the English Com. Law: such a deed as that from Honey to his wife would not convey the legal title to the land, for Blackstone says - "A man cannot 'grant any thing to his wife or enter into any 'covenant with her; for that the grant 'would be to suppose her seperate existence; 'and to covenant with her would be only to 'covenant with himself"

1 Bl. Com p 442. Ch 15.

And herein Blackstone does but follow Littleton & Coke. Littleton says in § 168" a man may not grant or give his tenements to his wife during Coverture, for that his wife and he are one person in Law"

And Coke commenting on this section says "But a man may by his deed covenant with others to stand seised to the use of his wife, or make a feoffment, or other conveyance to the use of his wife, and now the estate is executed to such uses by the Stat. 27. Hen. 8". And this is not an equitable right, to be dealt with only by a Court of Chancery, but a title strictly legal.

This is an arbitrary, technical rule of the ~~common~~ old law, easily evaded, and habitually evaded in practice. Littleton gives no reason for it, but that husband & wife are one in law — And Blackstone follows him implicitly

4 Cruise p 21.

Cruise says — "A wife cannot by Com. Law be the immediate grantee of her husband, but she may take an estate from him through the medium of the Statute of Uses."

And thus, is set at naught the old maxim that "a man cannot do indirectly that which he is forbidden to do directly" — And though it be assumed theoretically that man and wife are one under

under the Common Law, Yet when the wife claims to be a seperate entity, under the Statute of King Henry, it is practically adjudged that man and wife are two.

It is clear then that by the law of England as long ago as the time of Coke, a man had power to convey his land to his wife, and she had power to take it. And thus the dispute ceases to touch the substantial rights and powers of the parties, but dwindles down into a technical formality about the method of conveyance

(a) See 4 Mo. R. 380. Lindell vs McNair

The husband has power to convey land and the wife has power to take a conveyance — But, says the old rule, He cannot convey to her, because that would be conveying to himself. How then can he convey it to her use, so that the statute immediately executes the use and perfects the title? Which Coke and Cruise both say that he can do — and this by the old law in England, which is not identical with the law in Missouri Territory, & is stricter in regard to the conveyance of land.

As a general rule all who have power to convey may receive. But many may receive land who cannot convey — as a feme covert

1 Co. Litt. 42b. § 57

1 Co. Litt 42b. § 57

(a) In Perry v. Price, 1 Mo. R. 553. this Court, in the beginning of its career, disregard the mere forms of the Com: Law — Yet the law is not for form, no farther than is necessary for the purposes of right. Again — "The law goes for substance; when the Com: Law requires satisfied in substance by a statutory provision, it is enough though it should not arrive at the end by the exact same means the common law would."

If the land did not pass to Mrs Honey by the deed, what became of it? At Com. Law it was no longer the grantors, for he had made a deed of conveyance of it, for value expressed.

2 Bl. Com. 249. Ch 15 & 274 Ch 18

It is like the case of an alien, a conveyance to whom is cause of forfeiture; but not actual forfeiture till office found. Against whom is the forfeiture? — Not the grantor, for he had sold and received the full value; but against the grantee, who has bought and paid for the land and holds it by valid title till office found — And so the title remained in Mrs Honey, untill divested by legal process. And it was never divested.

This Court in the late case of Farrar vs Dean (24 Mo R 17) adopts this language of Kent (2. Com: 61). "Though an alien may purchase land or take by devise, yet he is exposed to the danger of being divested of the fee & of having his lands forfeited to the State upon having an inquest of office found"

And yet the general proposition of law is, that an alien cannot hold lands.

The terms of the deed are quite sufficient to convey the land if the parties were capable - They thought they were capable: The deed was made in good faith and for a valuable consideration, and possession accompanied it. Both parties to the deed treated it as a lawful conveyance; and both parties to this suit are still claiming under it on this record

The course of modern decisions both in England and America, goes far to show that the doctrine about the ability and disability of the wife, is but a matter of expediency, varied by the Courts to suit circumstances, & according to the supposed justice of each case

In support of this view I refer to 2 Kent's Com; the whole of Chapter 28.

And the Case of Frizelle v Rosier - 19. Mo. R. 448, may be well reconciled with this view - In that case there were reciprocal releases, & beside the question raised here - whether the husband could convey to the wife there was the harder question whether the wife could convey to the husband, or indeed make a deed at all!

And so I submit that the deed was good under the Common Law, at the day of its date

Second. But supposing the deed bad, at Com. law, still it is good under the Territorial Statute

Acts p 80. of 22. Jan 1816 -

~~The first section of the act grants the~~ Divorce

§.1. of the act grants the divorce. §.2 is separate & distinct from §.1. and grants to the woman personal independence, proprietary rights & legal protection, apart from her husband.

By §.1. the divorce is perfect, if the legislature had power to grant it: And supposing the power, §.2 is useless, & gives nothing but what is a necessary consequence of §.1.

But supposing §.1. void, for lack of power, then §.2, is an independent grant of right & power, to the married parties, notwithstanding the marriage, while it exists.

The language of the act is explicit; and the motive for passing the 2d section will be apparent, if we suppose that the legislature had any doubt of its power to pass the 1st section, which grants the divorce.

The power of the legislature to pass the 2d section, I suppose is not disputed. It is a power, strictly within the terms of the Organic law of June 4. 1812, often exercised by the Territorial & State Legislatures — One striking instance is the act of Feb: 23d 1851, giving to Mr Lane the power to make a will. And the acts of the last two or three sessions contain similar enactments, by the score.

Acts p. 723

And since the principle of Territorial Government has become a ~~Territorial~~ National question, hundreds of the most eminent publicists of the country,

have

have concurred with Mr Cass in the declared opinion that – "The People of every organized Territory, possessed of a Legislature, have the right, through such such Legislature, to regulate all their domestic relations, such as husband & wife, parent & child, master & servant" – and the like.

Third, the defendants are estopped to deny the legal validity of the deed, for they are privies to it, & claim, even on this record, under that deed.

2. Co: Litt 252.a – § 667.

If the deed was void, so was Little's marriage, and for the same reason: And the marriage being void, Little had no title to the land; and then of course, Schatzel & Rankin & Magenes could derive no title from him; and the Defts: they ~~the plaintiffs then~~ have no title at all, but what they derive from the said Marie Antoinette Little. And, excluding that deed, her title extended only to one fifth part of the lot, which she inherited from her mother.

Supreme Court
March 7. 1858.

Sophie Chouteau

A. J. Magenis & others

Filed 22 March 1858
Wm S Glanville
Ch

Plaintiff's Brief

by Edw. Bates

Sophie Chouteau Pltt
v
A. J. Magenes & al Defts

In the Supreme Court
March Term 1858.

On writ of Error to St Louis Court of Com: Pleas.

Statement of the Case

This is an action for the possession of an undivided part of a lot of ground in St Louis, & damages, brought by Sophie Chouteau against A. J. Magenes & others. The lot extends from Main Street to the river, having a front on each, occupied by different tenants, holding under A. J. & Wm M Magenes, who claim the same as heirs of their & other Arthur L. Magenes deceased.

The original petition claimed to have partition, as well as recovery, and was against Montgomery Blair as guardian of the two infant heirs, & against Tanner & Farnsworth, tenants of the western or Main Street front, as well as the present defendants. But before the trial it was dismissed as a partition suit, & dismissed as against M. Blair the guardian, & Tanner & Farnsworth, the the tenants. So that the suit was tried & judgment rendered as to the Eastern or river front of the lot only, and against the defendants, the said heirs of A. L. Magenes, and their tenant Charles Semple & his partners.

The lot originally belonged to the widow Labbadie and at her death, before 1814, descended to her heirs.

The plaintiff & her sister Marie Antoinette were two of the daughters & co-heirs of said Mde Labbadie.

In 1814, Marie Antoinette intermarried with John W. Honey, and in the same year, the heirs of Mde Labbadie – all except Marie Antoinette – conveyed the said lot to the said Honey.

Thus far the title is undisputed – there being five heirs of Mde Labbadie, & four of them having conveyed to Honey, he owned four fifths in his own right, & his wife owned one fifth, subject to marital rights, if any

On the 22d of January 1816, the Legislature of the Territory of Missouri passed an act to divorce the said Honey & wife from the bonds of matrimony, & to give to them separate existence & independent rights & powers. And on the next day – 23d January 1816 – said J.W. Honey conveyed the said lot to the said Marie Antoinette, in fee simple, by a direct deed in the ordinary form, and for a valuable consideration expressed.

Under that deed she entered upon the lot & used & occupied it as long as she lived, which was several years.

Sometime after the passing of the act of divorce & the making of said deed by Honey, the said Marie Antoinette intermarried with one John Little, & they lived together as man & wife, being in possession of said lot, in right of the wife, until the death of the said Marie Antoinette, without issue, which occurred in February 1818. And after her death, the said

John Little remained in possession of the lot, as long as he lived, which was several years.

The heirs of the said Marie Antonette, at the time of her death, were (beside the said John Little, her putative husband), her brother Sylvestre Labbadie, the three sisters, Emelie Pratte, Pelagie Sarpy, Sophie Chouteau, the plaintiff.

The plaintiff was married to Auguste P. Chouteau in 1809, and the said A.P. Chouteau died December 25. 1838, leaving the plaintiff his widow, & children.

After the death of Little (which happened in or before the year 1822) the lot was treated as his, & upon a judgment against his Administrator, Wm Rector, was sold by the Sheriff to one Schatzel, by deed dated in October 1822.

The defendants were proven to be in possession of the East or river front of the lot in question, which is the South half of the original lot, claiming under Arthur J. Magenes deceased. And it was admitted by the plaintiff that said A.J. Magenes, those representing his interest, had possession of the lot ever since the year 1828, & had made considerable improvements thereon.

The defendants, in order to show title in Magenes, gave in evidence many documents - which are in the record -

1. A marriage contract between A.P. Chouteau & Sophie Labbadie (the Plaintiff) dated February 15. 1809.

2 A Sheriff's deed of Little's interest in the lot, to John P. Schatzel, on an execution in favor of Schatzel & others, against the adm^rs of John Little, dated Octo: 1. 1822.

3 A deed from S. Sabbadie & wife, Bernard Pratte & wife, Pelagie Sarpy, & Auguste Chouteau & wife, to Robert Rankin, dated June 13. 1827.

4 Judicial proceedings in partition, between J.P. Schatzel & Robert Rankin, which ended in a sale, by commissioners, of the whole lot to Robert Rankin

5 A deed from Robert Rankin to A.L. Magerac, dated April 5. 1828, for the Southern part of the lot

6 A deed from Sophie Chouteau to Robert Rankin, dated January 20. 1848.

In the course of the trial, exceptions were taken by both parties, to the admission or rejection of particular pieces of testimony, & to the giving or refusing of particular instructions.

The plaintiff claimed a right to recover one eighth part of the land. The defendant denied the plaintiff's right to recover any part.

The Court below, by its instructions to the jury, decided substantially, that the Plaintiff had not a right to recover $\frac{1}{8}$, but had a right to recover $\frac{1}{40}$ part of the land. And in doing so, the Court decided that the divorce of Honey & wife was void — That the deed from Honey to his wife was inoperative as a conveyance to the wife — And that the plaintiff was not barred by lapse of time, nor by the deed of June 13th 1827.

Both parties excepted to the decisions of the Court respectively - a common bill of exceptions was presented & signed. The Plaintiff brings the case here by writ of error; and it is agreed that the errors complained of by the defendants may be considered in this proceeding, as fully as if the defendants had also sued out a writ of error.

the Counsel for Pltff

Edw. Bates

Sophie Chouteau Plff
v
A. J. Magney & al Defts
} In the Supreme Court
March Term 1858.

On writ of Error to St Louis Court of Com. Pleas.

Statement of the Case

This is an action for the possession of an undivided part of a lot of ground in St Louis, & damages, brought by Sophie Chouteau against A. J. Magney & others. The lot extends from Main Street to the river, having a front on each, occupied by different tenants, holding under A. J. & Wm M Magney, who claim the same as heirs of their father Arthur L. Magney deceased.

The original petition claimed to have partition, as well as recovery, and was against Montgomery Blair as guardian of the two infant heirs, & against James & Farnsworth, tenants of the Western or Main Street front, as well as the present defendants. But before the trial it was dismissed as a partition suit, & dismissed as against M. Blair the guardian, & James & Farnsworth, the tenants. So that the suit was tried & judgment rendered as to the Eastern or river front of the lot only, and against the defendants, the said heirs of A. L. Magney, and their tenant Charles Semple this partners.

The lot originally belonged to the widow Labbadie and at her death, before 1814, descended to her heirs.

Scott. Judge

I do not concur in affirming this judgment. The Territorial Assembly in my opinion had authority to grant divorces, which is a different question from that arising on the right of the General Assembly to do so under our State constitution as it was originally framed. In the cases in which this question has arisen each of which were under the constitution, the argument mostly relied on against Legislative divorces, was derived from the provisions of our constitution. No such restrictions existed under the Territory on the Legislative power. The general result of the American authorities is, That the granting of divorces by the Legislative power is not the exercise of such a judicial authority, as will render them invalid :: Bishop on Marriages & divorces § 792 :: Under such circumstances there is no propriety in extending the principle of the decisions made heretofore by this court, further than the ground on which they stand will warrant

Choteau

vs

Maginis

opinion

Scott

Choteau v. Magoun & others

If the legislative divorce in 1816 be treated as a nullity, & John W. Honey survived his wife, the interest of the plaintiff in the premises is 1/40 th. & if that interest has not been disposed of or ~~the~~ in any manner barred, the judgment of the Court of Common Pleas was of course correct. If the legislative divorce ~~be upheld~~ & subsequent deed & marriage be upheld, Mrs Choteau's interest in the premises is $\frac{1}{5}$, upon the supposition, that the deed of June 1827 was inoperative & that no subsequent act of hers operated to convey her interest

We have been unable to perceive any principle which would authorise this Court to give efficacy to the second section of the Divorce act of 1816, disregarding the first. Whatever construction the language of that section might admit of, if it were an independent enactment, it is plain, that its provisions were made altogether in reference to the subject matter supposed to have been provided for & attained in the first section. The powers conferred on Mrs Honey, whatever they were, were not supposed to be given to her as a married woman. They were conferred as a consequence of the divorce previously granted. The legislature had no intention of distinguishing the marital relations, & their incidents, of John W. Honey & his wife, whilst they retained this relation to each other, from those incident to any other man & wife in the Territory.

Aside from the provisions of this act, the deed from John W. Honey to his wife cannot be sustained on common law principles, or on such modifications of them as existed in this Territory at that time. Frizzell v. Rosser 1 G Mo. R. 448.

The deed of June 1827, not being operative to convey the plaintiff's interest in the lot, because not executed in the mode which the law then made essential, there is nothing done by her to affect her title until January 1848, when she conveyed to Rankin her interest in the north half of the lot. To construe this last deed, not only as giving efficacy to the deed of 1827 for the northern half of the whole lot, but as an adoption of its recitals, so as to estop her claim to the south part of the lot, would be contrary to the plain intent of the instrument, which only professed to convey her interest in the north half owned by Rankin.

It is clear that the partition proceedings in 1827 cannot in any way affect the plaintiff's interest as she was no party to them nor in any manner concerned in them.

The decision of this case, then, depends altogether upon the validity of the Divorce law of

1816.

On this subject I have only to say, that the decisions of this Court, made ~~it is true~~ without my concurrence, have determined me to let the judgment of the Court of Common Pleas stand. It is true that these decisions are mainly based upon a provision of our State Constitution prohibiting one department of the government from exercising powers properly belonging to another, but they are also to some extent placed upon the ground that marriage is a civil contract within the provision of the Constitution of the U.S. which prohibits, its obligation. ~~for being impaired by~~ the passage of a law impairing although not responsible for the reasoning & conclusion of the Court in these cases, I am not prepared to say that the Legislature of the State had any less power in this respect than the Territorial Legislature which preceded it - & this conclusion is strengthened by observing that as early as 1807 there was a territorial law making ample provisions for divorces, which with some modification was reenacted in 1816. Moreover, the question we may reasonably presume, is likely to prove a mere abstraction, except so far as the decision of the present case is concerned & there is no peculiar hardship in its facts & circumstances which prevents the enforcement of the previous adjudications on this subject.

Judgment of C. P. affirmed

Judge Richardson not sitting.

W. B. Napton

21.

Choteau

v.

Magenis

Opinion

of the Court

Napton

Filed 3rd June 1859.

Wm. S. Glanville

Clk.

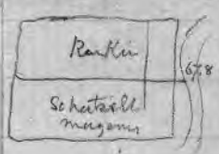
x.

Sopline Chouteau
vs
A. J. Magenis et al.

In the Supreme Court – March term 1857 –

The facts in this case are –

1st Pelagie Labadie prior to 1814 owned a lot on Main Street, running to the River of 67 feet 8 inches front, the Southern 1/2 of which is now sued for –



2d Mrs Labadie died prior to 1814 & this lot descended to her 5 Heirs –

namely –

1 Emilie married to Bernard Pratte
2 Pelagie " " Gregoire Sarpy
3 Sopline the Plaintiff, married to Auguste P. Chouteau –
4 Marie Antoinette married ~~to~~ at that time to John W. Honey –
5th her son Sylvestre Labadie –

3d ~~Sair~~ Four of said Heirs, namely nos. 1. 2, 3, & 5, by deed of 22d Dec. 1814 conveyed their interest in said lot to John W. Honey – the Husband of no. 4.

4th An act of the Territorial Legislature was passed to divorce Mrs Honey & her Husband Jno. W. Honey the 22d Jany 1816 – see session acts of 1816 page 80 –

5th The next day Jany 23d 1816 Jno. W. Honey conveyed his interest in the lot to Marie Antoinette Honey –

6th Marie Antoinette Honey, was married afterwards to John Little, and in the year 1818, she died leaving as her Heirs at law - having no child -
1st Her Husband John Little - and
2d Her 3 Sisters & 1 Brother = Nos 1, 2, 3 & 5. cite -

7th On the 10th of October 1822 the interest of John Little; being the undivided ½ of his wife's interest, in this land was sold to John P. Schatzell

8th On the 13th of June 1827 - the 4 Heirs of Marie Antoinette Little, including the Plaintiff & Her Husband, conveyed with warranty the North ½ of the lot to Robert Rankin, bounding it South by lot of John P. Schatzell, which is the lot now sued for -
This acknowledgment ~~was~~ of this deed was made before a Justice of the County Court -

9th On the 2d May 1829 - Bernard Pratte & wife Sylvestre Labadie & the widow Saupy make another deed to R. Rankin of their interest in the entire lot - reciting their deed of 13th June 1827 - and the purchase of Schatzell of Little's interest in the lot - & an agreement between them and Schatzell, giving to him the South ½, & their taking the North ½ of the lot - & of Rankin's purchase of Schatzells title -
This deed is acknowledged properly - but Mrs. Chenneau did not join in it -

10th Between the execution of nos. 8. & 19, and on the 7th January 1828, in proceedings in partition between Rankin & Schatzell the entire lot was sold by the Sheriff to Rankin –

11th On the 5th of April 1828 Rankin sold the South half of the entire lot to Arthur L. Magenis – [redacted] –

12th On the 20th Jany 1848 –
Sophie Chouteau the Plff, for $1= bargained sold & quit-claimed to Robert Rankin the northern ½ the entire lot, reciting – "being the same lot of ground described in a deed from Sylvestre Labadie and wife, Bernard Pratte and wife, Pelagie Saucy, and Auguste P. Chouteau and the said Sophie Chouteau then his wife to Robert Rankin dated the 13th day of June in the year 1827, and recorded in the Office of the Recorder of St. Louis County in book A page 463 =" ac ac –

13th In 1828 Arthur L. Magenis took possession of the lot in dispute, & built a store upon it, & continued uninterruptedly in the open visible possession of it to the commencement of this suit –
In the great fire of 1849 his improvements were burned down – Soon after his heirs erected valuable improvements on the lot –
All this time Sophie

Chouteau lived in St. Louis & knew of her claim to this property - She became dissent in the year 1838, more than ten years before this suit was begun -

When the deed of 1827, June 13th was made, it was proven by the testimony of Jno. B. Sarpy that the lot was sold to Rankin for its full value - & that Mrs Chouteau received her share of the purchase money -

79 & pl. Instructions -

57 Deed of Plaintiff to Rankin 20 Jany. 1848
5-3 Testimony of John B. Sarpy
60 " " Cozzens.
67 Deed of Rankin to Magenis 1828.
72 " " 2d May 1829. Pratte & wife - Widow Sarpy - Sylvestre Labbadie - to Rankin for undivided 1/2 of whole lot.
41 Deed of the Heirs of Mrs. Honey to Rankin 13 June 1827
45- Proceedings in partition between Schatzell & Rankin -

[redacted]

I The Court below committed no error in instructing the Jury that the deed from John W. Honey to his wife Marie Antoinette was inoperative -

see Trisell vs Rozier 19 Mo. 448-9 -

This Court in speaking of the effect of such a deed says -

on p. 449 - "according to the principles of our law, this could not be done. The legal unity of Husband and wife, prevents this.

This is a rule of law, which, however technical, this Court does not feel at liberty to over-throw. 1 Coke 130. Reeves Dom. Rel. 90. B. Mon. 545"

As Mrs. Honey could take nothing by this deed she never had more than the 1/8th of the property, the 1/8th of which vested in Mrs. Chouteau the Plff -

The Common Law was introduced by act of the Legislature approved 19 January 1816 - see Session acts of 1816 - p. 32.

II The Court below committed Error against the Defendants -

1st The deed of Auguste P. Chouteau & wife Sophie Chouteau the Plaintiff of 13th June 1827, was well executed by her, was a valid operative deed -
She acquired her interest in this land the 17th of Feby 1818, upon decease of her sister, and could then have made a deed for it -

Lindell vs McNair 4 Mo. 380,
which is affirmed in 10 Mo. 320. 5 Mass. 454.

The act of 1825 in relation to Conveyances of lands should be held to apply only to rights acquired, after the law went into effect -

See the decisions of this Court on the act of 1849 releasing married Women's Estates &c -

20 Mo. 170, 227, 269.

The deed of Mrs Chouteau to Rankin of 20th Jany 1848, ratifies and confirms her deed of 1827 -

Goodnight vs Strapham 1 Cooper 201.

The consideration of this 2d deed, being nominal only, shows the intention was not to make a new sale - but merely a confirmation of her former sale -

The 2d deed refers to the former instrument as her own deed -

2d If it be held that the deed of 1827 is valid, then it operates as an Estoppel against the Plaintiff -

For the deed is a conveyance of the entire North ½ of the lot, & it calls for the lot on the South as owned by Schatzell - and after them Rankin the grantee, bought out Schatzell - & after that sold to Magenis -

Thus there is a direct privity between the Plaintiff & Defendants -

3d The marriage contract of 1809 established a community between Auguste P. Chouteau and the Plaintiff - this property entered into it - & she as head of the community could sell it -

Moreau vs Detchmendy 18 Mo. 528 -

4th The Court committed error in refusing instruction marked "No 9" - that under the state of facts therein recited, the Jury might presume a deed, if such presumption would be in furtherance of Equity and right dealing between the Parties -

Dessaumier vs Murphy 22 Mo. 105 -

where this Court expressly recognizes the doctrine that a conveyance may be

presumed, "even against a married woman"

5th. The Court should have given instruction marked "N" – authorizing the Jury to find the Plff. estopped –

1st If a presumption of a deed may be made against a married woman, it would be no great hardship to subject her to the law of estoppel, especially where she failed to sue for more than ten years after her coverture ceased.

III The

Supreme Court

Chouteau

v

Magenis

Argument by
F. A. Dick on
behalf of
Deft.