Ivory, John C. v. Delore, Peter et al 1858 St. Louis 425/6

593/20

Ivory
plaintiff
res

wanted case dismissed at his costs - court granted - he took non suit

Delore aka Delor
app

Marie Delore daughter of Gamache
William Provost Lerrs
resisted action of court in permitting non suit ?

57/M58

26 Mo. 505

want an equal & just partition

partition

John Baptiste Gamache
tract of land

Rich - Affirmed

diff in dividing land - # parties involved

Gen notes - Includes maps

The State of Missouri, ss.

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

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

wherein John C. Ivory was plaintiff and Peter Delor, and Marie his wife, William Provost senr. & William Provost junr., Edward Tamache, Thomas Leitenscorfer guardian of said Edward Tamache and Toupaint Racine, Curator of said William Provost Junior. ~~were defendants~~

in ~~an action of~~ a 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 eighteenth day of September in the year of our Lord one thousand eight hundred and fifty seven

$1.50 paid by E. Capelberg atty.

Wm S. Glanville, CLERK.

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

In obedience to the command of the within Writ, I Charles A. Mantz, Clerk of the St. Louis Land Court do herewith transmit to the Supreme Court of the State of Missouri held at St Louis, a full true and Complete transcript of the Record and proceedings of said Land Court, in the case of John C. Ivory against Peter Delor and others, decided in said Land Court at the March Term AD 1857.

In testimony whereof I hereto set my hand and the seal of said Court this 18th day of September AD 1857.

Charles A. Mantz Clerk
By E. F. Walsh D. C.

SEAL OF THE ST LOUIS LAND COURT MO

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

Be it remembered that on the Fifteenth day of February, in the year of Our Lord One thousand Eight hundred and fifty four, there was filed in the Office of the Clerk of the St. Louis Land Court, a petition, which is in the words and figures as follows, to wit:

Petition

John C. Ivory, Plaintiff
vs
Peter Delore, and Marie, his wife, William Provost, Senr and William Provost, Junr, and Edward Gamache, Defendants.

In the St. Louis Land Court.
March Term 1854.
St. Louis County. S.S.

The plaintiff states John Baptiste Gamache, late of the County of St. Louis aforesaid was in his life time seized of the following described tracts of land situated, lying and being in the County of St. Louis aforesaid, to wit: First, a tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to West, situated in the Common Fields of Carondelet; being the East half of the tract confirmed to John Baptiste Gamache, Junr under Gregoire Sarpy, and known as Survey number Eighty eight (88).
Secondly, a piece or parcel of land situated in the Commons of St. Louis in front of and adjoining the tract first above described on the East, containing one acre and forty three hundredths of an acre, and being the same piece or parcel of ground which was conveyed by the City of St. Louis to John Baptiste Gamache,

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under the name of Baptiste Ganache by deed dated February 19th 1839. recorded in the Office of the Recorder of St. Louis County, in Book No. No 2 page 582. and whereof a duly certified copy is herewith filed marked Exhibit "A" and to which reference is hereby made for a more particular description. That the said John Baptiste Ganache, died seized as aforesaid of the above described two tracts of land having previously made his last will whereof a duly certified copy is herewith filed marked Exhibit "B" by which last will he devised the two above described tracts together with other property to his widow Francis Vien. Ganache, for the term of her natural life should she so long remain a widow, and after her death

Petition

equally to his seven children following, to wit: Marie. wife of the said Peter Delor. Margaret, Pierre. Eliza. Francis. Bridget. and Edward. Ganache, of whom the six last mentioned were born of the said widow Francis Vien. Ganache; that the said Bridget died without issue during the life time of the said testator. That afterwards the said Margaret Ganache, intermarried with the defendant. William Provost, Senr. by whom she had three children. to wit: Frances, Emily, and William. that afterwards the said Margaret died as also her two children. Frances and Emily, the first having survived her mother two months, and the Second a short time only, so that the said William Provost Junr. named defendant is the sole surviving issue of the said Margaret and William Provost, Senr. likewise named defendant. That after the death of the

said Margaret the said William Provost Senr. intermarried with her sister the said Eliza Gamache, who died some time in the year 1851, without having had issue. That the said Pierre Gamache, sold all his right title and interest in the said two tracts, to Edward P. Pesson, by deed dated January 19th 1853, and which deed is herewith filed and marked Exhibit "C" - and that the said Pesson, sold the interest so acquired to the plaintiff by deed dated September 30th 1853.

Petition

which deed is likewise filed herewith and marked Exhibit "D" - That the said Frances Gamache, intermarried with Augustin Grenon, who with his said wife, Frances afterwards sold all their interest in the said two tracts to the plaintiff, by deed dated August 31st 1853, herewith filed and marked Exhibit "E" That the said Edward Gamache, is a minor aged about fifteen years. That afterwards the said widow Frances Vien Gamache, sold to the plaintiff all her right title and interest in the said two tracts, being the life interest in the whole thereof which she had acquired by virtue of the will aforesaid and the interest which she had inherited from her deceased daughter Eliza the second wife of said William Provost, Senr, being the undivided Sixth of an undivided Sixth, by deed of said widow Frances Vien Gamache, to the plaintiff being dated November 16th 1853, and which is herewith filed and marked Exhibit "F" Plaintiff therefore states that by virtue of the said several deeds of Edward P. Pesson, Augustin Grenon, and Frances his wife, and of the said widow Frances Vien Gamache, to him, he is seized in fee of fifteen

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undivided thirty Sixths (15/36) of the said two tracts, and of a free hold Estate for the life of the said Francis Vien Gamache, in the remainder thereof. That subject to the Plaintiffs said life Estate the said defendant William Provost, Senior, as one of the heirs of his said deceased children Frances and Emily is entitled to two undivided Thirty Sixths (2/36) of said two tracts; that subject likewise to the said life Estate the said William Provost, Junr, is entitled to five undivided thirty Sixths (5/36) of said tracts; that subject likewise to the said life Estate the defendants Marie Delore, and Edward Gamache are each entitled to seven undivided thirty Sixths (7/36) of said tracts. Plaintiff therefore prays that a judgment of partition of the said two tracts between the plaintiff and defendants according to their respective interests therein be rendered; and that if a partition cannot be effected without prejudice to the interests of said parties, that an order for the sale of the said tracts be made by the Court, according to the form of the Statute in such case made and provided. And the plaintiff further prays the Court to appoint a guardian or guardians for the said minors William Provost, Junr, and Edward Gamache.

Petition

A. J. & P. B. Gauche,
for Pltff.

John C. Ivory, on his oath says that he believes the above petition and matters therein as stated, are true.

Sworn to & Subscribed before me
this 14th February 1854.
Charles A. Spearing Clk

Jno C. Ivory,

upon which petition a writ was issued to the Sheriff of St. Louis County in the words and figures as follows, to wit:

The State of Missouri.

To the Sheriff of St. Louis County - Greeting:

Summons

We command you to summon Peter Delor, & Marie, his wife, William Provost Senr. William Provost Junr. and Edward Gamache, to appear before the Judge of our St. Louis Land Court, on the first day of the next term thereof to be held at the City of St. Louis within and for the County of St. Louis, on the First Monday of March next, then and there to answer the complaint of John C. Ivory, as set forth in the annexed petition, and have you then and there this writ:

Witness, Charles A. Maury, Clerk of our said Court, with the Seal thereof hereto affixed at Office in the City of St. Louis this Fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty four.

Seal

Chas A. Maury, Clerk.

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

Sheriffs Return.

Executed this writ in the County of St. Louis on the 17th day of February 1854, by delivering a copy of it and the petition to Peter Delor, and by delivering a copy of the writ to each of the following parties viz: Marie Delor,

6. William Provost. Jr. and Edward Gamache, and by offering to read the petition to them which they refused to hear. Wm Provost. Senr. not found in my County.

Jno M. Wimer Sheriff.
By J. H. Douglass. Depty.

And afterwards the following proceedings were had in this cause. to wit:
March Term 1854.

Monday March 6th 1854.

order of Publication

John C. Ivory.
vs
Peter Delor. et al.

Order of Publication.

It appearing to the Court from the return of the Sheriff herein that said defendant. William Provost. Senr. one of said defendants against whom process issued in this cause cannot be found. and it further appearing to the Court that said defendant is a non-resident of the State of Missouri. and that process cannot be served upon him; it is, therefore, on motion of plaintiffs attorney, ordered that said William Provost. Senr, be notified by publication according to law of this order. that said plaintiff has instituted suit against him. in the St. Louis Land Court. the object and general nature of which is to obtain partition of certain Real Estate. described in said plaintiffs petition as follows. to wit: First. a tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to West situated in the Common Fields of Carondelet. being the East half of the tract confirmed to John Baptiste Gamache. Junr. under Gregoire Sarpy. and known as Survey Eighty eight (88) Secondly a piece.

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say that they do not know whether the said John Baptiste Gamache, Junior, the father of the said Marie, ever made a lawful will or not, nor have they a sufficient knowledge whereof to form a belief; and they therefore require strict proof as to whether there is any such will as is pretended by the plaintiff in his petition. These defendants for answer to so much of said petition as relates to the tract of land described in said petition in words and figures as follows, to wit: A tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to West, situated in the Common Fields

Answer

of Carondelet, being the East half of the tract, confirmed to John Baptiste Gamache Junior, under Gregoire Sarpy, and known as Survey No Eighty eight (88), say that the said Marie is entitled in fee simple to one undivided half of the whole of said tract and to seven thirty sixths in fee simple of the other half thereof and that the right, title and interest of the said Marie to the same were acquired as follows, to wit: The said John Baptiste Gamache, Junior, was married twice and had the said Marie by his first wife, and his other children by his second wife. The name of his first is Bridget Riviere, and the name of his second wife is Frances Vien. On the 14th of June 1813, the said John Baptiste Gamache, Junior, and the said Bridget Riviere, a few days before their marriage entered into a marriage contract in the French language establishing a community between them in relation to their property and stipulating therein

among other things, that each party thereto was to have equal proportions of all movable and immovable property which each had at the time of the execution thereof and which might be acquired by them or either of them during said marriage; that after the making of said Contract and during the month of June 1813. the said parties to said marriage contract were lawfully married and lived together as husband and wife, until the death of said Bridget, which took place sometime during the month of August 1825. that said tract of land of one and a half by twenty arpens was acquired by said John Baptiste Gamache, Junior, before the death of the said Bridget, and became by virtue of said contract a part of

Answer

the property of said community, and the death of said Bridget dissolved said community, and her interest in said land descended to and was inherited by said Marie, who was the only child and heir of said Bridget, and who was the only child which the said John B. Gamache Junior, and his said wife Bridget had during their said marriage; that said Marie, as heir of her said deceased mother and by virtue of said contract is entitled to one undivided half in fee simple of said tract of one and a half by twenty arpens of land and as heir of her deceased father and sister she is entitled in fee simple to the following proportions of the other undivided half thereof: that is to say Six thirty sixths as heir of her father, and one thirty sixth as heir of her deceased sister Eliza; that said marriage contract was duly recorded in the Recorder Office of said County of St. Louis on the 13th day of March 1813. in record Book E. page 153. and 154. and

10 a duly certified copy, thereof is attached to this answer and made a part hereof and a correct translation thereof is filed with this petition. The original marriage contract aforesaid is not in the possession or control of these defendants, and cannot therefore be filed herewith: but these defendants hope that they will be able to produce said original on the trial of this cause. These defendants prays for a division and partition of said tract of one and a half by twenty arpens of land according to their respective rights of the parties interested therein as set forth in this Answer and for a sale of said tract if it shall

Answer appear to this Court that partition of said tract cannot be made without great prejudice to the parties interested therein; and these defendants ask for such other further and general relief in the premises as they may be lawfully entitled to. E. Casselberry, Attorney of said Peter Delor, and Marie, his wife,

State of Missouri }
County of St. Louis } S.S. Peter Delor, one of the within and foregoing named defendants makes oath and says he believes the above and foregoing Answer, and the matters therein as stated are true.

Sworn to and Subscribed before me this 7th day of March 1854.
Peter, W. Johnstone,
Justice of the Peace.
} Peter his mark Delor.

Ont comparu pers onn ellement. J. Bte Gamache, fils majeur at legitime de J. Bte Gamache, et Catharine

Constant ses pere et mere natif de Carondelet District de Saint Louis, Territoire du Missouri, represente par le Sr J. Bte Gamache, son pere, stipulant de pour lui et on son nom d'une part, et Brigitte Riviere, fille majeure et légitime de J. Bte Riviere, et de Marguerite Vial, ses pere et mere nee au village de Saint Ferdinand, representée par le dit J. Bte Riviere, aussi territoire du Missouri stipulant de pour elle et en son nom d'autre part,

Marriage Contract

Lesquelle parties de l'avis et conseil de leurs parens et aines ici assemblée et cy aprés nominée savior de la part du dit J. Bte Gamache, pour le dit J Bte Gamache les sieurs Ambroise Aubry, et Francois Xavier, Aubry, domiche de ce District, et de la part du dit J. Bte Riviere, pour ladite Brigite Riviere, les sieurs Saint Gyr, et Jl Beaudoin, aussi domicilée de ce district tous temoins appellés au present contract, ont fait et accorde unts-eux te traité et consentione de mariage qui suivent savior, que le dit J. Bte Riviere, au dit nom a promis et promets bailles la dite Briquette Riviere, de son dit consentement au dit. J Bte Gamache, lequel a promis la prendre pur sa legitime spouse au nom et loi de marriage et le faire célébrer en face de notre mere Ste Eglise, C. A. R. vuquen ce moment il ya du pretre Catholiquce on ce pays, S. unissant les dits futurs épouse pour etre une et communs a tous biens meubles et conquets immembles qu'ils pour ont avoir ou acquirir pendant leur communante qui vera par égale portion suivant les loix usitées. Laqueble Communante du biens its vendent et entendent qu'dle suit entieux gardes quand bien meme its transportroient cy aprés

12. Cur domicile on peroient des acquisitions on pays de loix usages et coutumes contraires aux quels ils derogent et renoncent très expressement pour raison de la dite clause ne seront tenus les dits futurs epoux l'un de l'autre de satisfaire les dettes que l'autre auroit pu créer devant le dit futur mariage et s'il s'en trouvoient elles seront acquittées par celui ou celle qui les auroient sur son bien sans que l'autre ni ses biens soient nullement tenus. Le future époux apporte en mariage pour valuer de la somme de deux cents piastres. Et pour sincere amitre que le dit futur epoux porte à la dite future epouse, il l'a douée et doue par les presentes de la somme de cent piastres de donaire prefic une fois payés à l'avoir et prendre par la dite future silôt que donaire aura lieu sur tous les biens du dit future epoux que demeurent dés à present affectér et hypotequeé le prece

Marriage Contract

put sera reciproquee au suivante des dits futurs epoux de la somme de cinquante, guordes à prendre par le dernier survivant en biens menbles de leur communante suivant la prisés de l'ventaire que en seroit fait on da dite somme en argent au choix de survivant. En consideration du dit futus mariage les dits futurs epoux se sont fait comme its se font par ces présents donation pure simple et irrevocable ou la Meilleure forme que donation puisse voloir de tous et un chacun des biens menbles immenbles et conquets et propres que le promier mourant laissera ou jour de son decês pour enjoinr par le dernier vivant en pleine et entiere propriete et comme ae chose a lin appartenante. Cette presente donation ainsi faite au cas qu'il n'y ait pas d'enfants nês ou à naitre du dit futur mariage, et au ces d'enfants, la donation sera nulle 6 plein

droits. Car ainsi a été convenu et accordé entre les partees promettant and obligeant and renonçant, & fait et passe à Saint Ferdinand district de Saint Louis, Territoire du Missouri le quatorzieme jour du moix de Juin de l'annee de N. S. mil huit cent trieze. Et ont les dites partees et temoins signes et scelles les uns de leur main les autre sans leur marque ordinaire apres lecture faite meme jour et an que dessus.

Marriage Contract

Marque de J. Bte sa X Gamache marque | J Bte sa X Gamache marque (seal)

Marque de J Bte sa X Riviere marque | Brigite sa X Riviere marque (seal)

Marque de Ambroise sa X Aubry. Marque de Franc Xav sa X Aubry. Marque marque Francois sa X Marichal, Marque de Hyacinte Saint Gyr, Joseph marque Badgy, Dom Froussant. Recorded this 13th of March 1815.

M. P. Leduc. Clk.

State of Missouri } Sct.
County of St. Louis } I Stephen D. Barlow. Clerk of the County Court, and ex officio. Recorder, for said County certify that the foregoing is a true and correct copy of the marriage contract between J. Bte Gamache, and Brigite Riviere, as the same remains of record in my Office in book E. page 153. and 154.

Seal

In testimony whereof. I have hereto set my hand and affixed the seal of said Court at office in the City of St Louis this Thirteenth day of November eighteen hundred & forty four.

Stephen D. Barlow. Recorder.

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

March Term 1854

Monday March 20th

John C. Ivory
vs
Peter Delor and
Marie Delor his wife,
William Provost Senr.
William Provost Junior,
and Edward Gamache.

Default and Enquiry

Default and Enquiry.

Now at this day comes the said plaintiff by his attorney, but the said defendants William Provost Junior, and Edward Gamache although duly summoned, come not but make default, therefore, on motion of said plaintiff, it is ordered by the Court, that the plaintiffs petition filed in this cause, be taken as confessed against said defendants William Provost Junior, and Edward Gamache, and that an enquiry of damages be had herein.

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

October Term 1854

John C. Ivory
vs
Peter Delor, and
Marie his wife,
William Provost, Senr.
William Provost, Junr.
and Edward Gamache

Proof of Publication

Proof of Publication filed

Now at this day comes the said peaintiff by his attorney and proves to the satisfaction of the Court, that the order of publication heretofore made in this cause has been published according to law, proof whereof is herein filed

John C. Ivory
vs
Peter Delor. et.al.

St. Louis Land Court.
March Term 1854.
Monday March 6th

Order of Publication.

It appearing to the Court from the return of the Sheriff herein that William Provost, Senior, one of said defendants against whom process issued in this case cannot be found, and it further appearing, to the Court that said defendant is a non resident of the State of Missouri, and that process cannot be served upon him it is therefore, on motion of plaintiffs attorney ordered that said William Provost, Senior be notified by Publication according to law of this order, that said plaintiff has instituted suit against him, in the St. Louis Land Court, the object and general nature of which is to obtain partition of certain Real Estate described in said plaintiffs petition as follows, to wit: First, a tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to West, situated in the Common Fields of Carondelet being the East half of the tract confirmed to John Baptiste Gamache, Junior, under Gregoire Sarpy, and known as Survey number Eighty eight (88). Secondly a piece or parcel of land situated in the Commons of St. Louis in front of and adjoining the tract first above described on the East containing One acre and forty three hundredths of an acre and being the same piece or parcel of ground which was conveyed by the City of St. Louis to John Baptiste Gamache under the name of Baptiste Gamache,

Order of Publication

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by deed dated February 19th 1839. recorded in the office of the Recorder of St. Louis County in Book H. No 2. page 582. said lands being situate lying and being in the County of St. Louis aforesaid and that unless he be and appear on or before the first day of the next term of this Court. to be begun and held on the first Monday of October next. and answer the plaintiffs said petition. the same will be taken against him as confessed

Attest.

Charles A. Maury. Clk.

A. J. P. and P. B. Garesche. Attorneys for plaintiff.

Proof of Publication

State of Missouri } S.S.
County of St. Louis }

Personally appeared before the undersigned. a Notary Public within and for the County of St. Louis Jacob J. Letcher. who. being duly sworn. deposeth and saith that the annexed adverstisement was published in the "Weekly St. Louis Pilot" printed in this State the newspaper of which he is clerk. for nine times the first insertion being on the first day of April A. D. 1854. and the last insertion on the Twenty Seventh day of May. A. D. 1854. as follows. The 1st insertion being in No 10- dated April 1- 1854. 2nd in No 11. April 8th. 3d in ~~April~~ No 12. April 15th. 4th in No 13. April 22nd. 5th in No 14. April 29th 6th in No 15- May 6th. 7th in No 16. May 13th 8th in No 17 May 20th and the Ninth in No 18. May 27. A. D. 1854.

Jacob J. Letcher.

Sworn to and subscribed. before me this 31st day of August 1854.

Seal

Edwd W. Shands.
Notary Public

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And afterwards the following further proceedings were had in this cause. to wit:
October Term 1854

Thursday November 2nd 1854.

Laid over on Attachment

John C. Ivory.
vs
Peter Delor. and Marie. his wife. et al,

On the Statement of E. Casselberry, Esquire, this case is laid over until 30th day of November instant on attachment for Benoist Mareschal.

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

Wednesday December 6th 1854.

Default set aside

John C. Ivory.
vs
Peter Delor and Marie Delor his wife, William Provost, Senior, William Provost Junior. and Edward Gamache

Now at this day comes said plaintiff by his Attorney, and on his motion. it is ordered by the Court, that the judgment by default heretofore rendered in this cause against said minor defendants William Provost. Junior, and Edward Gamache, be and the same is hereby set aside, and on further motion Peter I. Hurck. is appointed guardian ad litem for said minor defendants, and files his consent in writing to act as such guardian, and also his bond as their said guardian in the sum of Two thousand dollars, with Patrick H. Slevin, as his security which bond is approved by the Court: and the answers of said minors filed; thereupon come also said defendants Peter Delor and Marie Delor, his

wife, by their attorneys, and this cause is submitted to the Court, upon the petition, answers, evidence of title and argument of Counsel, and the Court not being fully advised of and concerning the premises, takes time to consider thereon.

Which consent and Bond of guardian is in the words and figures as follows, to wit:

Consent and Bond of Guardian

John C. Ivory
vs
Peter Delor, and Marie his wife, William Provost Senior, and William Provost, Junior, & Edward Samache.

In the St Louis Land Court.
St. Louis County, S. S.
October Term 1854.

I hereby consent to act as such guardian, of the minor Defendants William Provost, Junior, and Edward Samache in the above entitled cause.

Peter S. Kurck.

Know all men by these presents that we Peter S. Kurck, as principal and Patrick C. Slevin, as security are held and firmly bound unto the State of Missouri in the penal sum of Two thousand dollars to be paid to the said State of Missouri; for which payment well and truly to be made, we hereby bind ourselves our heirs executors and administrators firmly. Witness our hands and seals this twenty eighth day of November in the year 1854.

The consideration of the above obligation is such that whereas there is now pending in the St. Louis Land Court a proceeding for the partition of certain premises lying and being in St. Louis County in the State of Missouri, wherein John C. Ivory

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is plaintiff, and Peter Delor and wife and William Provost, Senior, and William Provost Junior and Edward Gamache being minors: and whereas the said Hurch has been by the said Court appointed Guardian in the said proceedings of the said minors William Provost, Junior, and Edward Gamache, and has consented to act as such guardian: now if he the said Hurch, shall faithfully discharge the trust committed to him and render a just and true account of his said guardianship in all courts, and places when thereunto lawfully required, then this obligation shall be null and void otherwise shall be and remain in full force and effect.

P. J. Hurck (Seal)
Patrick H. Slevin (Seal)

Which Answer of Guardian is in the words and figures as follows, to wit:

Answer of Guardian

John C. Ivory, Plaintiff
vs
Peter Delor, and Marie his wife, and William Provost Senior and William Provost, Junior and Edward Gamache, defendants

In the St. Louis Land Court.
St. Louis County, S. S.
October Term 1854.

Guardian ad litem of William Provost, Junior and Edward Gamache, for an answer on the part of the said minors defendants to the petition of the plaintiff states that the said minors are not advised whether the petition of the plaintiff and the matters therein as stated are true or not, and they ask that the Court inquire into the same and ac-

20 quire strict proof thereof.

Peter I. Hurck.

Peter I. Hurck. being duly sworn on his oath says that he believes the foregoing answer and matters therein as stated are true.

Peter I. Hurck.

Sworn to and subscribed before me this Thirteenth day of November. A. D. 1854.

C. A. Mantz. Clk.

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

Thursday January 11th 1855.

John C. Ivory, vs Peter Delor. and Marie. his wife William Provost Senr William Provost Junr. and, Edward Gamache — Judgment and Decree. In Partition.

Decree and Appointment of Commissioners

And now at this day the Court being fully advised of and concerning the premises. this cause having heretofore submitted to the Court. doth ascertain and determine. that the parties herein plaintiff and defendants are the owners of the real Estate described in the said plaintiff's petition in this cause. as follows. to wit: Situated. lying and being in the County of St. Louis. aforesaid. to wit: First. A tract of land of one and a half arpens in front from North to South. and twenty arpens in depth from East to West situated in the Common Fields of Carondelet: being the East half of the tract confirmed to John Baptiste Gamache. Junr. under Gregoire Sarpy. and Known

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as Survey number Eighty eight (88). Secondly, A piece or parcel of land situated in the Commons of St. Louis in front of and adjoining the tract first above described on the East, containing one acre, and forty three hundredths of an acre and being the same piece or parcel of ground which was conveyed by the City of St. Louis to John Baptiste Gamache, under the name of Baptiste Gamache by deed dated February 19th 1859, recorded in the office of the Recorder of St. Louis County in Book H No 2. page 582. and the Court doth further ascertain and determine the respective rights and interests of said parties and their shares and proportions in said real Estate as follows, to wit: That the said plaintiff John C. Ivory, is entitled in fee to fifteen undivided thirty sixths (15/36) of said two tracts, and of a freehold Estate for the life of the said Francis Vien, Gamache, in one third of the said two tracts being her dower therein that subject to the plaintiffs said life estate in the remainder of said two tracts, the said defendant William Provost, Senior, is entitled to two undivided thirty sixths (2/36) of said two tracts; that subject likewise to the said life Estate, the said William Provost, Junior, is entitled to five undivided thirty Sixths (5/36) of said tracts; and that subject likewise to the said life Estate of said plaintiff, the defendants Marie Delor, and Edward Gamache, are each entitled to seven undivided thirty sixths (7/36) of said two tracts. The Court doth therefore order adjudge and decree that partition of

said two tracts of land be made among said owners, according to their respective rights and interests as above ascertained and determined

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

Friday January 12th 1855.

John C. Ivory.
vs
Peter Delor, and Marie his wife William Provost, Senr, and William Provost, Junr & Edward Gamache } Motion for New Trial filed. (For Motion see Bill of Exceptions Clerk)

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

Saturday January 13th 1855

Amended Motion for New Trial filed

John C. Ivory.
vs
Peter Delor, and his wife, and others } An amended Motion for a New Trial filed.

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

Saturday March 10th 1855

March Term 1855.

John C. Ivory.
vs
Peter Delor, and Marie his wife, William Provost, Senr and William Provost, Junr, and Edward Gamache } The defendants Peter Delor, and Marie, his wife, by their attorney withdraw the their amended Motion for a New Trial and submit to the Court, their motion herein before filed, for a New

25 Trial, and the Court being fully advised of and concerning the premises, doth order and adjudge that said motion be overruled.

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

Tuesday March 15th 1855.

Motion for Judgment for Peter Delor and wife

John C. Ivory.
vs
Peter Delor, and Marie his wife, William Provost, Senr. & William Provost, Junr. and Edward Gamache, by their guardian ad litem Peter I. Kurck,

Motion in arrest of Judgment and for Judgment for said Peter Delor, and wife, according to their Answer or plea. {See Bill of Exceptions for motion clerk}

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

Friday March 16th 1855.

Motion in Arrest of Judgment

John C. Ivory.
vs
Peter Delor, and wife, et. al.

The defendants motion in arrest of Judgment being submitted to the Court, and the Court being fully advised of and concerning the premises, doth order that the same be overruled = Bill of Exceptions filed.

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

Bill of Exceptions

John C. Ivory.
vs
Peter Delor, and Marie Delor, his wife & others.

In the St. Louis Land Court March Term 1855.

Be it remembered that

during the trial of the above cause the parties admitted as follows, to wit: That John Baptiste Gamache, Junior, died in the Spring or Summer of the year 1846. Leaving Francis Vien Gamache, his widow, who is yet living: That before his death he made a will in words and figures as follows, to wit: ~~It was admitted that this will conveyed all the right and title of Jno B. Gamache, Junior, in and to the land named therein, to the widow during her life.~~

Last will and testament of J. B. Gamache.

Last will of J. B. Gamache

Know ye, by these presents that J. John Baptiste, Gamache, of Carondelet in the County of St. Louis State of Missouri, being sound of mind, memory & natural acquirements, attending and seeing to my business and knowing that there is nothing more certain than death, the hour uncertain and wishing ~~before~~ before passing from this life to another to dispose of the few goods, and chattels which it has pleased God, to bless me with. I have to this effect ordered (or dictated) and named the present writing my testament, to wit: Firstly, I wish my debts to be duly paid if there be any. Secondly, I declare to have been married in my first wed-lock to Brizatte Reixne, of which the living fruit is Maria. 3dly I declare to have been lawfully married to Frances Vien, my beloved wife, of which marriage, there are living at this day Six children, to wit: Peter, Margaret, Eliza, Frances, Edward, Bridgett, and Should there hereafter be an additional number I wish and order, that they be considered on the same footing with those above mentioned. 4thly I give and bequeath to my above named beloved

wife. all my furniture, cattle, horses, hogs & cook-
ing utensils and money which may be found or
belonging to me on the day and hour of my
demise, to enjoy, do and dispose of as her own real
property, without any difficulty or discount whatever.
5th I give and bequeath to my above named
beloved wife my lands, lots of commons, and town
which may belong to me at the day of my death
that she may enjoy do and dispose of and draw,
the revenues thereof, during her widowhood, every
rents and profits for her benefit, but to be well un-
derstood that if at her death if she be again joined
in matrimony, that then the above grants of lands,
lots of commons and town are to be considered as
null and void and may be divided among my heirs
above mentioned and to those who may legitimay
born hereafter. 6th I nominate as my executrix
of my present will, my above named beloved wife,
Frances Vieu, that she fulfil my will in regard
to my heirs, according to my will rejecting and an-
nulling all other wills, codicils, powers or other dis-
positions, that I may have made previous to the
present, my full intention and last will, and to
read and re-read, declaring and asserting my
voluntary act made signed and sealed by me
at St. Louis in the above county, this twenty seventh
of July in the year of Our Lord, Eighteen hun-
dred and forty one.

Last will of J. B. Gamache

John Baptiste his + mark Gamache,

Witness H. Renard,
Theodore Pappin,
M. P. Leduc,

State of Missouri }
County of St Louis } County Court of Jefferson County
In Vacation. July 27th 1846

26. Be it remembered, that H. Renard, and Theodore Papin, two of the subscribing witnesses to the within will, personally appeared before me Johnson H. Alford, clerk of the County ~~County~~ Court aforesaid and being by me duly sworn, deposeth and saith that they saw the within named testator, John Bte Gamache, sign the within instrument of writing which he published as his last will and testament, that he the said testator was at the time of sound mind and over the age of twenty one years, and that these deponents attested said will as witnesses thereto by subscribing their names to the same in the presence of the said testator, which said proof is deemed by me, sufficient to establish said will. H. Renard, Theodore Papin.

last will of J. B. Gamache

Seal

In testimony whereof, I hereto set my hand and affix the seal of said Court at Hillsboro July 27th 1846

J. H. Alford Clerk

Recorded Sept 25th 1856

J. H. Alford Clk.

State of Missouri
County of Jefferson } S.S. I, Thos C. Fletcher Clerk of the County Court within and for said County of Jefferson do hereby certify that the foregoing is a true copy of the will and testament of J. B. Gamache, as proved and recorded in my office and the date of recorded.

Seal

In testimony whereof, I hereto set my hand and affix the seal of said Court at office in Hillsboro Feb 18th 1854.

Thos C. Fletcher Clerk.
County Court

It was admitted that this will conveyed all the right and title of Jno B. Gamache, Junior, in and to the land named therein, to his widow during her life. that the plaintiff acquired all of the right, title and interest of said Francess Vien. Gamache, of in and to the real Estate in controversy; that the plaintiff has also acquired all of the right, title and interest of the said Peter Gamache, and the said Francess Grenon, and Augustin Grenon, her husband of in and to said real estate: that the tract of land of one arpen and a half in front by twenty arpens in depth first described in the petition being the aforesaid real Estate in controversy was confirmed by the United States to said John Baptiste Gamache, Junior, by the act of Congress passed on the 18th day of June 1812, entitled "an act making further provision for settling the claims to and in the territory of Missouri" that said real Estate has been lawfully surveyed by the United States to said John Baptiste Gamache, Junior, being United States Survey No 88. in said common field of Carondelet: that said John Baptiste Gamache, Junior, on the 14th day of June 1813 entered into a marriage contract with Bridget Riviere, in the French language in words and figures as follows, to wit: (for marriage contract see pages 11. 12. and 13) that said contract was recorded in the Recorders Office in St. Louis County on the 13th day of March 1815. in record book E pages 153 and following; that on the 14th day of June 1813, and after the execution of said contract the said John Baptiste, Gamache, Junior, and Bridget Riviere, were lawfully married, that said Bridget died on the 10th day of August 1823. that the said Marie

Bill of Exceptions

Delor. (wife of said Peter Delor) was born on the 15th day of August 1819. during said marriage and is the only child and heir of said Bridget: that said Marie married the said Peter Delor. on the 29th day of July 1839. that some time in the year 1824. the said John Baptiste Gamache. Junior. married the said Francis Vein Gamache. by whom he had all his other children which are correctly named and set forth in said petition; that the said Marie Delor. is the child which the said John Baptiste. Gamache. Junior. had by his first wife. whereupon the Court decided against the claim set up by said Peter Delor and his said wife in their said Answer. to which the said Peter Delor. and wife. excepted: and after said decision. and within four days after said trial the said Peter Delor. and his said wife. filed their motion for a New Trial in words and figures as follows, to wit:

John C. Ivory. Plff. } Partition in St. Louis Land
v } Court. Oct T. 1854.
Peter Delor, &c Defts }

Motion for New Trial

The said defendants Peter Delor. and wife comes by his attorneys and prays the Court to grant a New Trial in the above case for the following reasons:

1st Because the judgment of the Court is against Law

2nd Because the judgment of the Court should have been for the defendants. Delor. and wife.

Casselberry. Morehead
Attys

which said motion was overruled by the Court

and the said Peter Delor and his said wife, excepted to the decision of the Court overruling said motion; and afterwards the said Peter Delor and his said wife, made their motion in arrest of judgment in words and figures as follows to wit:

John C. Ivory
v.
Peter Delor, his wife, and others

In the St. Louis Land Court, March Term 1855.

Motion in arrest of judgment.

And the said Peter Delor and wife, two of the defendants in the above cause came and move the Court to stop all process and arrest the judgment in said cause and set the same aside as null and void for the following reasons:

1. There was no finding of the facts in writing by the Court sitting as a jury in said cause according to the new code of practice.

2. There was no replication to the Answer or plea of said two defendants making an issue or issues to be tried.

3. The judgment ought to have been given for said two defendants on said Answer or plea for want of a replication.

4. There was no lawful issue or issues to be tried on which a judgment for the plaintiff could be founded:

5. The judgment of said Court is null and void, and wholly inconsistent with law.

The said two defendants also ask for judgment according to their said answer or plea, because, there was no replication to said Answer or plea, and for want of said replication the

averment in said answer, or plea ought to be taken as true: and for this reason, judgment ought to be given for said two defendants as the facts avered in said answer or plea were sufficient to entile said two defendants judgment as therein asked for by them.

Cassellberry & Morehead.
Attys for said two defendants.

which said last motion was overruled by the Court, and the said Peter Delor, and his said wife except to the decision of the Court in overruling said last motion and tender this their Bill of exceptions and pray that the same may be signed and sealed by the Judge of this Court and made a part of the records in this cause which is accordingly done this 16th day of March Eighteen hundred and fifty five.

Edwd Bates (Seal)

And afterwards the following further proceedings were had in this cause, to wit:
March Term 1855

Tuesday April 3d 1855

Appeal granted

John C. Ivory,
vs.
Peter Delor, et al.

On motion of the Attorney for the defendants, an appeal is granted said defendants from the Judgment rendered herein to the Supreme Court. Whereupon said defendants file their bond for such appeal in the sum of One hundred and fifty dollars, conditioned according to law, with Peter Delor, as principal, and Gregoire Delor, as surety, which bond is approved by the Court.

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

appeal Bond

Know all men by these presents, that we Peter Delor, as principal and Gregoire Delor, as surety are held and firmly bound unto John C. Ivory, in the sum of One hundred and fifty dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severly firmly by these presents. Sealed with our seals, and dated at St. Louis, this third day of April, A. D. 1855.

The condition of the above obligation is such that whereas Peter Delor, has appealed from the judgment rendred against him and in favor of John C. Ivory, in the St. Louis Land Court, for the sum of dollars and cents, together with costs. Now, if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal; and shall prosecute his appeal; and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court, may direct the St. Louis Land Court, to give; and shall, if the judgment or any part thereof be affirmed, comply with and perform the same so far as it may be affirmed; and pay all damages and costs which may be awarded against him by the Supreme Court, then this obligation shall be void, otherwise at shall in full force and effect.

Peter his × mark Delor. (Seal)

Gregoire his × mark Delor. (Seal)

St. Louis Land Court. March Term, 1855.
Be it Remembered, that on this Third day of April 1855, appeared Peter Delor, the principal, and Gregoire Delor, - the security in the foregoing bond, and acknowledge that they executed the same for the purposes therein expressed.

Seal

In witness whereof, I hereto set my hand and affix the seal of said Court, at office, in St. Louis, the and year last aforesaid.

Charles A. Maury, Clk.

And afterwards the following further proceedings were had in this cause, to wit:
March Term 1856

Tuesday June 17th 1856.

John C. Ivory,
vs
Peter Delor, and Marie his wife William Provost, Senr. and William Provost, Jr. and Edward Gamache.

appointment of Commissioners

Appointment of Commissioners,

Now at this day comes said plaintiff by his attorney and moves the Court, for the appointment of Commissioners ~~to make partition of the real Estate in this cause sought to be divided~~, in this cause, and it appearing to the Court that on the appeal hereinbefore taken to the Supreme Court, the judgment heretofore rendered by this Court, has been duly affirmed and held firm and effective. And it further appearing to the Court that no Commissioners have been appointed to make partition of the real Estate in this cause sought to be divided. The Court doth therefore appoint John Fester, Bernard Poepping, and Sylvester Papin, three respectable freeholders, residents of St. Louis County to be Commissioners to make said

partition according to law. It is further ordered by the Court that said Commissioners make report of their proceedings herein according to law.

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

Saturday June 28th 1856.

John C. Ivory. vs Peter Delor. et al. } Affidavit and report of Commissioners filed.

Which affidavit and Report are in the words and figures as follows. to wit:

Affidavit & Report of Commissioners

John C. Ivory. vs Peter Delor. and Marie his wife, William Provost. Sr. William Provost Jr. and Edward Ganache. } In the St. Louis Land Court. October Term 1854. Thursday January 11th 1855. Judgment and Decree in Partition

And now at this day the Court being fully advised of and concerning the premises. this cause having been heretofore submitted to the Court. doth ascertain and determine that the parties plaintiff and defendants are the owners of the real Estate described in the said plaintiff's petition in this cause as follows "to wit: Situated lying and being in the County of St. Louis aforesaid. to wit: First A tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to west situated in the Commons Fields of Carondelet being the East half of the tract confirmed to John Baptiste Ganache. Sr. under Gregoire Sarpy. and known

as Survey Eighty eight (88). Secondly. A piece or parcel of land situated in the Commons of St. Louis in front of and adjoining the tract first above described on the East, containing one acre and forty three hundredths of an acre and being the same piece or parcel of ground which was conveyed by the City of St. Louis, to John Baptiste Gamache, under the name of Baptiste Gamache, by deed dated February 19th 1839, recorded in the Office of the Recorder of St. Louis County in Book U. No 2. page 582. and the Court doth further ascertain and determine the respective rights and interest of said parties and their shares and proportions in said real Estate as follows, to wit: That the said plaintiff John C. Ivory, is entitled in fee to fifteen undivided thirty Sixth (15/16) of said two tract and of a freehold estate for the life of the said Francis Vien. Gamache, in the said two tracts; that subject to the plaintiff's said life Estate, the said defendant William Provost, Senior, is entitled to two undivided thirty Sixths (2/36) of said two tracts: that subject likewise to the said life estate of said plaintiff the said William Provost Jr. is entitled to five undivided thirty Sixths (5/36) of said tracts and that subject likewise to the said life estate of said plaintiff the said defendants Marie Delor and Eduard Gamache, are each entitled to seven undivided thirty Sixths (7/36) of said two tracts. The Court doth therefore order, adjudge, and decree that partition of said two tracts of land be made among said owners according to their respective rights and interest as above ascertained and determined.

Affidavit and Report of Commrs

John C. Ivory
vs
Peter Delor and Marie his wife, William Provost Sr. and William Provost Jr. and Edward Gamache.

In the St. Louis Land Court
March Term 1856.
Tuesday June 17th 1856

Appointment of Commrs

Now at this day comes said plaintiff by his attorney and moves the court, for the appointment of Commissioners to make partition of the real Estate in this cause sought to be divided, and it appearing to the court that no Commissioners have heretofore been appointed: the court doth therefore appoint John Pester, Bernard Poepping, and Sylvester Papin, three respectable freeholders residents of St. Louis County to be Commissioners to make said partition according to law. And it is further ordered by the court that said Commissioners make report of their proceedings herein according to law.

State of Missouri }
County of St. Louis } S.S. I Charles A. Maury, Clerk of the St. Louis Land Court within and for said County certify the foregoing to be a true and correct copy of the Decree and Appointment of Commissioners rendered by our said Court as fully as the same remains of record in my office.

Seal

In testimony whereof, I hereto set my hand and affix the seal of said Court at office in the City of St. Louis this Twenty Sixth day of June, A.D. 1856.

Charles A. Maury,
Clerk.

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John C. Ivory,
vs
Peter Delor, et. al. } John Fester, Bernard Poepping, and Sylvester Papin, Commissioners appointed to

make partition of the estate in the above entitled cause make oath and say that they will honestly and impartially execute the trust reposed in them as such commissioners.

Sworn to & Subscribed before me this 28th day of June 1857.
Peter W. Johnstone
Justice of the Peace

John Fester,
Bernard Poepping
Sylvester V. Papin.

Report of Commrs

John C. Ivory, Plaintiff
vs
Peter Delor, and Marie his wife, William Provost, Sr. William Provost, Jr. and Edward Gamache

In the St. Louis Land Court
March Term 1857.
St. Louis County, S. S.

To the Hon. the St. Louis Land Court.

The undersigned Commissioners appointed under the annexed order of Court made in the above entitled case to make partition of the land therein described between the parties to said suit according to their respective interests as by the said order ascertained quantity and quality considered, do respectfully report, that they have been duly qualified according to law as will appear by the affidavit by them sworn to and subscribed, and which is hereto likewise annexed, and that they have viewed the said land, and they do further report that partition of the premises cannot be made without great prejudice to the

owners thereof.

Jno Pestor,
Bernard Poepping,
Sylvester V. Papin,

State of Missouri }
County of St. Louis } S.S. Be it remembered that on this Twenty eighth day of June in the year eighteen hundred and fifty six, before me the undersigned a Justice of the Peace, personally appeared John Pestor, Bernard Poepping, and Sylvester V. Papin, who are to me personally known to be the same persons whose names are subscribed to the foregoing instrument of writing (report) as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned, Taken and certified the day and year above written.

Report of Commrs

Peter W. Johnstone,
Justice of the Peace
St. Louis County.

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

Monday June 30th 1856.

John C. Ivory,
vs
Peter Delor, et al. } Motion to set aside report of Commissioners filed.

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

John C. Ivory, Plaintiff
vs
Peter Delore, William Provost, Senior, ~~William~~

William Provost, Jr. & Edward Gamache defendants. } In the St. Louis Land Court March Term 1856.

Motion to confirm report of commissioners

The petitioners William Provost, Senior, who appears here in his own right and who claims to represent his son William Provost, Jr. and to protect his rights herein: and of Edward Gamache, who appears by his guardian Thomas Leitensdorfer, duly appointed on the application of said Edward Gamache who is a minor above the age of Sixteen years, by the St. Louis Probate Court, respectfully sheweth. That said William Provost, Jr. and said Edward Gamache are minors and have heretofore been represented in this cause by Peter J. Kurck, who was appointed by the Court guardian ad litem for said minors. That William Provost, Senr. is the father and natural guardian of the said William Provost, Jr. That he has not been appointed the guardian of said William Provost, by any Court of Missouri, but that it is his purpose before the next term of the St. Louis Land Court, to be come appointed as such guardian or else to procure the appointment of some friend in that capacity. That the land whereof partition is sought can be divided and apportioned in kind among the parties entitled and that a sale thereof is unnecessary and that if a sale be made the plaintiff will be able to engross the whole of the land, and get the same at his own price. That the share of the plaintiff can easily be set aside in kind - and that it will be vastly better for the de-

fendants to have their share set off to them together if necessary. than that there should be a sale thereof. But that there can readily be a partition in Kind by means of which all of the parties interested can have their share of the land without a sale. That the said plaintiff is entitled to two fifths of the whole of the land sought to be divided and a life estate in one third of one share or a life estate of one fifteenth of the whole. That if two fifths of said real Estate be set apart to said plaintiff, then he is further welcome by way of his life estate in one fifteenth of said land, to have one third of the share of Edward Gamache, a minor as aforesaid during the life of the mother of said Gamache. Your petitioners show that they truly believe that if other Commissioners be appointed they will be able to make a satisfactory partition in Kind, of the premises described in said petition. And therefore your petitioners pray that the report of the Commissioners already appointed be set aside and <u>and</u> that other Commissioners be appointed to make partition of said premises. And as in duty bound they will ever pray.

Thomas Leitensdorfer
William Provost.

William Provost, Senr. and Thomas Leitensdorfer, being duly sworn say on their oaths that they verily believe the matters and things herein set forth to be true.

Thomas Leitensdorfer.

William Provost.

Sworn to and Subscribed before me this 30th day of June 1856.

Liberty Waite,
Justice of the Peace,

And afterwards the following further proceedings were had in this cause, to wit:
October Term 1856.

Wednesday October 29th 1856.

John C. Ivory.
vs
Peter Delor. and Marie his wife William Provost Sr. William Provost, Junr. and Edward Samache } Exhibits of defendants filed.

which Exhibits are in the words and figures as follows, to wit:

Appointment of Thomas Leitensdorfer Guardian for E. Samache

State of Missouri }
County of St. Louis } ss. At a Term of the Probate Court, begun and held at the City of St. Louis, within and for the County of St. Louis in the State of Missouri on the first Monday being the third day of March in the year of our Lord one thousand eight hundred and fifty six, were present Peter Ferguson, Judge of said Court, William F. Ferguson, Clerk, and William H. Timberlake, Esquire, Marshall of the County of St. Louis. Court adjourned from day to day until Thursday 13th March 1856. Thursday 13th March 1856. Court met pursuant to adjournment

present same Judge.

Thomas Leitensdorfer }
Curator
of Edward J. Samache } Curator Chosen.

Edward J. Samache. appears and says he is aged Seventeen years four months and seventeen days and moves to be permitted to make choice of a Curator which he is allowed to do on which he choses Thomas Leitensdorfer, who is approved of and appointed Curator of the Estate of said minor and the Court order that he enter into bond in the sum of Four thousand dollars with sufficient security conditioned according to law. Whereupon he accepts such Curatorship and offers Pierre A. Barthold, as his Security, who is approved of by the Court, and the bond required is executed and filed.

State of Missouri
County of St. Louis } S.S. I William F. Ferguson, Clerk of the Probate Court of the County of St. Louis certify that the foregoing is a true copy of the proceedings of said Court. in the appointment of Thomas Leitensdorfer as Curator of the Estate of Edward J. Samache therein named as the same now remains of Record in the office of the Judge of Probate of the County of St. Louis.

Seal

In testimony whereof, I hereto set my hand and affix the seal of the Probate Court of St. Louis at office in said County this fifteenth day of October in the year of our Lord one thousand eight hundred and fifty six.

William F. Ferguson, Clerk.

And on the same day the following Exhibit was filed, which is in words and figures as follows, to wit:

State of Missouri }
County of St. Louis } S.S. At a term of the Probate Court begun and held at the City of St. Louis, within and for the County of St. Louis, in the State of Missouri on the first Monday being the first day of September in the year of our Lord, one thousand eight hundred and fifty six, is present Peter Ferguson, Judge of said Court, and William F. Ferguson, Clerk. William C. Smith appears and exhibits a certificate of his having been elected Marshall, of the County of St. Louis at the Election in August last and of his having given bond and taken the oaths required by law. Court adjourned from day to day until Wednesday 3d September 1856. Wednesday 3d September 1856. Court met pursuant to adjournment. Present same Judge.

Appointment of T. Racine, Curator of, Wm Provost Jr.

Toussaint Racine, Curator }
of William M. Provost. } Curator appointed.

On motion of Toussaint Racine, the Court appoint him Curator of the Estate of William M. Provost, who is aged seven years six months and nineteen days and order that he enter into bond in the sum of Four thousand dollars with sufficient security conditioned according to law, whereupon he accepts such Curatorship and offers David Desilets, as his security who is approved of by the Court and the bond required is executed and filed.

State of Missouri }
County of St. Louis } S.S. I, William F. Ferguson, Clerk of the Probate Court of the County of St. Louis certify that the foregoing is a true copy of the proceedings of said Court in the appointment of Toussaint Racine, as curator of the Estate of William M. Provost, therein named as the same now remains of Record in the office of the Judge of Probate of the County of St. Louis.

In testimony whereof, I hereto set my hand and affix the seal of the Probate Court of the County of St. Louis at office in said County this fifteenth day of October in the year of our Lord, one thousand Eight hundred and fifty six.

Seal

William F. Ferguson, Clerk.

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

Friday October 31st 1856.

John C. Ivory
vs
Peter Delor and Marie, his wife, William Provost, Sr. William Provost, Junr. and Edward Gamache } Motion of Peter Delor, and wife, to set aside the Report of the Commissioners filed.

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

John C. Ivory
vs
Peter Delor, & others } In the St. Louis Land Court.

and the said Peter Delor,

and his said wife, move the Court, to set aside the report of the Commissioners herein for the following reasons, to wit:

Motion to set aside report of Commissioners by Peter Delor and wife.

First. Because the real estate sought to be divided in the above cause can be divided - without great prejudice to the owners thereof.

Second. Because the proceedings of the Court in appointing the said Commissioners are premature in this, that the Supreme Court has not yet delivered its opinion and given its directions to this Court in the appeal taken from this Court so that this Court can tell how to proceed herein:

Third. Because the plaintiff secretly assembled said Commissioners without the knowledge of the defendants, in order to prevent the defendants from being present with said Commissioners when they went on the ground and by this means the plaintiff had an undue advantage by being present and by making erroneous statements which the defendants had no opportunity of correcting.

and Fourth. Because the proceedings of said Commissioners are in all other respects contrary to law.

E. Casselberry. Attorney
for said Delor & wife.

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

Saturday November 8th 1856.

John C. Ivory.

vs

Peter Delor, and Marie, his wife, William Provost

Senr. and William Provost. Junr } Report of Commissioners
and Edward Samache } set aside. And New Com=
missioners appointed.

And now at this day come said plaintiff, and said defendants by their respective attorneys, and the motion of said defendants herein before filed, to set aside the Report of the Commission=ers in this cause, being by the Court, heard and fully understood, doth order and adjudge that said motion be sustained. It is therefore order=ed by the Court, that the Commissioners Report heretofore filed, in this cause be held for naught and void. It is further ordered by the Court that William Milburn, John Wittnell, and Henry T. Blow, three respectable free holders and residents of St. Louis County, be appointed Commis=sioners, to make partition of the real Estate, described in the Judgment and decree heretofore rendered in this cause according to law. It is further or=dered by the Court that said Commissioners make report of their proceedings herein according to law.

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

Tuesday November 11th 1856.

John C. Ivory.
vs
Peter Delor, and wife.
Wm Provost, Sen. et. al. } Sheriffs report of Sale filed.

And afterwards the following further proceed=ings were had in this cause, to wit:

Wednesday November 19th 1856.

John C. Ivory,
vs
Peter Delor. and Marie his wife. William Provost. Sen. et. al.

It appearing to the Court from the Statement of the Attorney for the plaintiff that Henry T. Blow. heretofore appointed one of the Commissioners to make partition of the real Estate in this cause sought to be divided has neglected to act as such Commissioner, on motion of said Attorney, it is ordered by the Court, that Edward Haren, be appointed a Commissioner, in place of said. Henry T. Blow. The Court being satisfied that said Edward Haren, is a respectable freeholder and resident of St. Louis County.

E. Haren appointed Commissioner

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

Wednesday January 28th 1857.

John C. Ivory,
vs
Peter Delor. et. al.

Report of Commissioners filed.

Now at this day come John Withnell, Edward Haren, and William Milburn, Commissioners heretofore appointed to make partition of the Real Estate in this cause sought to be divided, and file their report in writing herein.

Report of Comm'rs filed

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

John C. Ivory,
vs
Peter Delor. and Marie, his wife, William Provost,

47

Sen. William Provost Jr. } In the St. Louis Land Court.
and Edward Gamache } October Term 1854.
Thursday January 11th 1855.

Judgment and Decree in Partition.

To the Honorable St. Louis Land Court.

Report of Commrs

The undersigned, free holders residents of the County of St. Louis were appointed Commissioners in the above cause to make partition of the real Estate sought to be divided in the proceedings of said cause in words and figures as follows, to wit: First. A tract of land of one and a half arpens in front from North to South, and twenty arpens in depth from East to West, situated in the Common fields of Carondelet being the East half of the tract confirmed to John Baptiste Gamache, Jr. under Gregoire Sarpy, and known as Survey eighty eight (88). Secondly A piece or parcel of land situated in the commons of St. Louis in front of and adjoining the tract first above described on the East containing one acre and forty three hundredths of an acre and being the same piece or parcel or ground which was conveyed by the City of St. Louis to John Baptiste Gamache, under the name of Baptiste Gamache by deed dated February 19th 1839. Recorded in the Office of the Recorder of St. Louis County in Book. No. No 2. page 582.

And being furnished with a duly certified copy of the judgement of said Court which is hereto annexed and marked Exhibit B. and makes a part of this report

and before proceeding to the execution of our duties as aforesaid we were duly sworn by a Justice of the Peace of said County, honestly and impartially to execute the trust reposed in us as such commissioners — which said oath was subscribed by us and certified by said Justice of the Peace, and is hereto annexed and made a part of this report and marked. Exhibit b. and after being sworn as aforesaid we forthwith proceeded to make division and partition of said tracts of land according to the said judgement of this Court and to divide said first described tract of land and to allot and assign the several portions and shares thereof to the respective parties quality and quantity relatively considered by us according to the respective rights and interests of the said parties so adjudged as aforesaid by this Court, designating the several shares and proportions by metes and bounds in the manner hereinafter described. We made a plat and a description by metes and bounds of the entire tract first described in these proceedings in this cause and also of each of the sub lots into which we divided said first described tract of land as is particularly represented, designated and specified on pages one and Sixteen of Exhibit A. which is attached hereto, and made a part of this report. It is our opinion that the thirty feet street which we have laid out along the entire South western side of this tract and the eleven avenues numbered from

Report of Commrs

49.

Seven to seventeen, which we have laid out across the tract at right angles to said thirty feet street, will be to the interest of the parties in this cause, the said thirty feet street, and the eleven avenues are hereby dedicated to public use. We assigned allotted, designated, and set apart to the said John B. Ivory, and to his heirs and assigns in fee simple forever the lots numbered one and three as platted on pages five and nine, and described on pages six and ten of said Exhibit A with the reservation of the street and avenues hereinbefore dedicated to public use. We assigned, allotted, designated, and set apart to the said Edward Isamache, and to his heirs and assigns in fee simple forever, the lot numbered two as platted on page seven and described on page eight of said Exhibit A, subject to the free-hold estate of John B. Ivory, during the life, of Frances Vien Isamache, and with the reservation of the street and avenues hereinbefore dedicated to public use.

Report of Commrs

We assigned, allotted, designated and set apart to the said William Provost Junior, and to his heirs and assigns in fee simple forever, the lot numbered four as platted on page eleven and described on page twelve of said Exhibit A subject to the free hold estate of John B. Ivory, during the life, of Francis Vien Isamache, and with the reservation of the street and avenues hereinbefore dedicated to public use.

We assigned, allotted, designated, and set apart to the said William Provost, Senior, and to his heirs and assigns in fee simple forever, the lot numbered five as platted on page thirteen and described on page fourteen of said Exhibit A, subject to the free hold estate of John C. Ivory, during the life, of Francis Vien, Gamache, and with the reservation of the street and avenues hereinbefore dedicated to public use.

We assigned, allotted, designated and set apart to the said Maria Delor, wife of Peter Delor, and to her heirs and assigns in fee simple forever lot number six as platted on page fifteen and described on page Sixteen of Exhibit A, subject to the free hold estate of John C. Ivory, during the life of Frances Vien Gamache, and with the reservation of the street and avenues hereinbefore dedicated to public use.

Report of Commrs

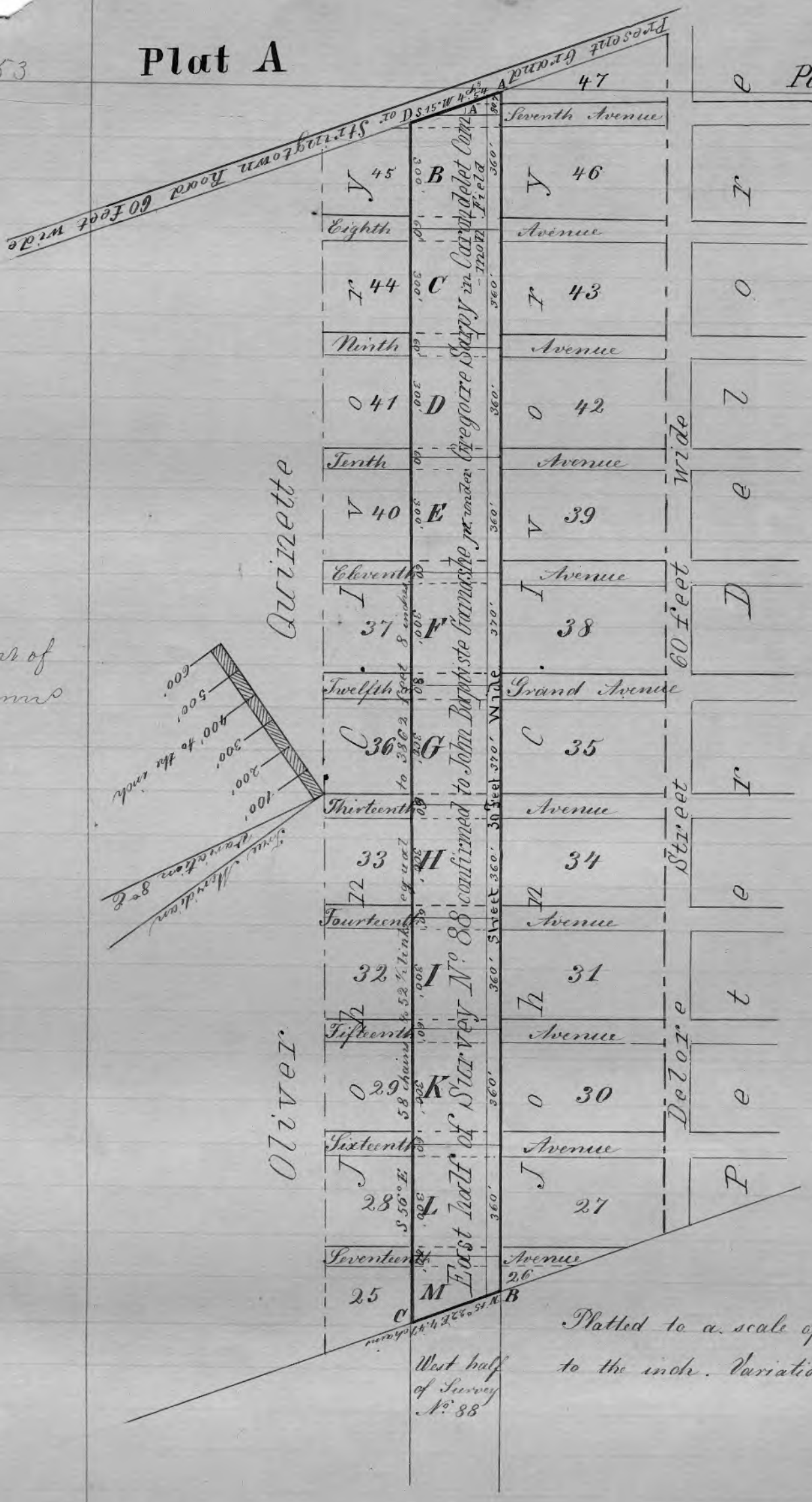
We believe that partition of the tract secondly described in the proceedings in this cause cannot be made without great prejudice to the owners, we therefore make report of that fact to the Court as required by law, and we return herewith a plat and a description of the Survey of this tract see pages 18 and 19, of Exhibit A. All of which is most respectfully submitted to the Honorable Court.

William Milburn,
Ed Warren,
John Withnell } Commissioners

State of Missouri }
County of St. Louis } S.S. Be it remembered that

53

Plat A


Proposed Grand Avenue or Stringtown Road 60 feet wide
D S 15° W 4.5.4 A
Seventh Avenue
Eighth Avenue
Ninth Avenue
Tenth Avenue
Eleventh Avenue
Twelfth Grand Avenue
Thirteenth Avenue
Fourteenth Avenue
Fifteenth Avenue
Sixteenth Avenue
Seventeenth Avenue
Olivet
Quinette
Delozier
Stryker
Y 45 B Y 46
Z 44 C Z 43
O 41 D O 42
V 40 E V 39
T 37 F T 38
C 36 G C 35
33 H 34
32 I 31
29 K 30
28 L 27
25 M
Gregoire Stryker in Carondelet Cons. Field
Reported to John Bapiste Gamache in Survey No. 88 continued
East half of Survey No. 88
West half of Survey No. 88
30 feet wide
60 feet wide
Report of Commrs
Scale 400 feet to the inch
Platted to a scale of 400 feet to the inch. Variation 8° East

54

Description of the Survey of a tract of land of one and a half arpens in front from North to South and twenty arpens in depth from East to West situated in in the Common Fields of Carondelet being the east half of the tract confirmed to John Baptiste. Ganache, Jr. under Gregoire Sarpy, and known as Survey eighty eight (88) showing the exact position of the Center line of each of the eleven streets or avenues. which the Commissioners in partition in this case have have laid out across this tract and showing also the position of the North line of the thirty feet street; which the said Commissioners have laid out along the South western side of this tract - See plat marked A on page two.

Report of Comms

Begin at the most Southern corner of this tract on the eastern line of the Common Fields of Carondelet on the western edge of the present Grand Avenue or Stringtown Road: thence N 56° W. with the South western boundary line of the tract.

80 feet 7 inches to the Center line of 7 Avenue.
440 feet 7 inches to the center line of 8th Avenue.
800 feet 7 inches to the center line of 9th Avenue.
1160 feet 7 inches to the center line of 10th Avenue.
1520 feet 7 inches to the center line of 11th Avenue.
1890 feet 7 inches to the center line of 12th or proposed Grand Avenue
2200 feet 7 inches to the center line of 13th Avenue.
2620 feet 7 inches to the center line of 14th Avenue.
2980 feet 7 inches to the center line of 15th Avenue
3340. feet 7 inches to the center line of 16th Avenue

3700 feet 7 inches to the center line of 17th Avenue.
3867 feet 8 inches equal to 58 chains and 60 links more or less to the western boundary line of the east half of Survey number eighty eight in the Carondelet Common Fields Thence N 15° 22' E with the west boundary line of this tract 31 feet 8 and 3/4 inches to the North line of the 30 feet street laid out along the South western boundary of this tract 295 feet equal to four chains and forty seven links to the most northern corner of this tract (this distance more or less)

Report of Commrs

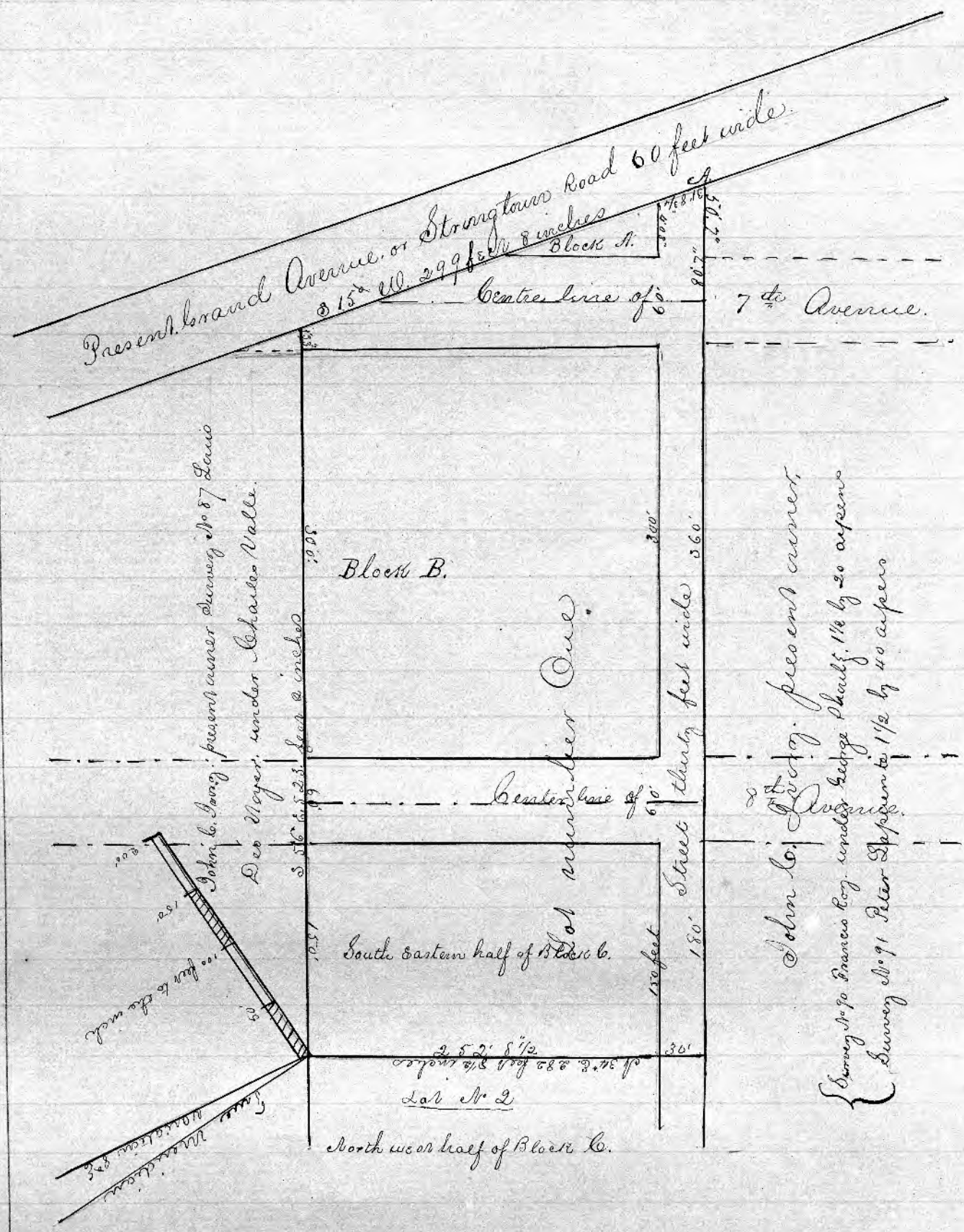
Thence S 56° E. with the north eastern boundary of this tract of land (passing the several streets or avenues noted in the description of the South western boundary at the distances set down on the plat page two) 3862 feet 8 inches equal to 58 chains 52 1/2 links more or less to the most eastern corner of the tract on the eastern boundary line of the Carondelet Common Field.
Thence S 15° W. with the eastern line of the Carondelet Common Field. 267 feet 11 1/4 inches to the Northern line of the Street laid out 30 feet wide along the South western side of this tract.
299 feet 8 inches equal to four chains and fifty four links to the place of beginning containing 24 acres and 80 hundredths of an acre of land and bounded on the North east by Irving, on the east by the

east boundary of the Carondelet Common Field, on the South west by Ivory, on the west by the line dividing the east from the west half of the Survey number eighty eight in the Carondelet Common Field. Ivory holds the land bounding this tract on the north east under survey number eighty seven, and he holds the land bounding on the South west under Surveys numbered ninety and ninety one in the Carondelet Common Field of lot number one comprising fractional block marked A. Block marked B. and the South eastern half of block C as platted on page two. containing with the streets or avenues, three acres and seventy two hundredths of an acre, and assigned by the Commissioners in partition to John C. Ivory.

Plat B

Repeal of Commo

Report of Commrs



Description of the Survey of lot number one as platted on page number five. Begin at the most Southern corner of Survey number 88 in the Carondelet Common Field. Thence N. 57° W. with the South western boundary line of said Survey 88. 80 feet 7 inches the center of 7th Avenue.

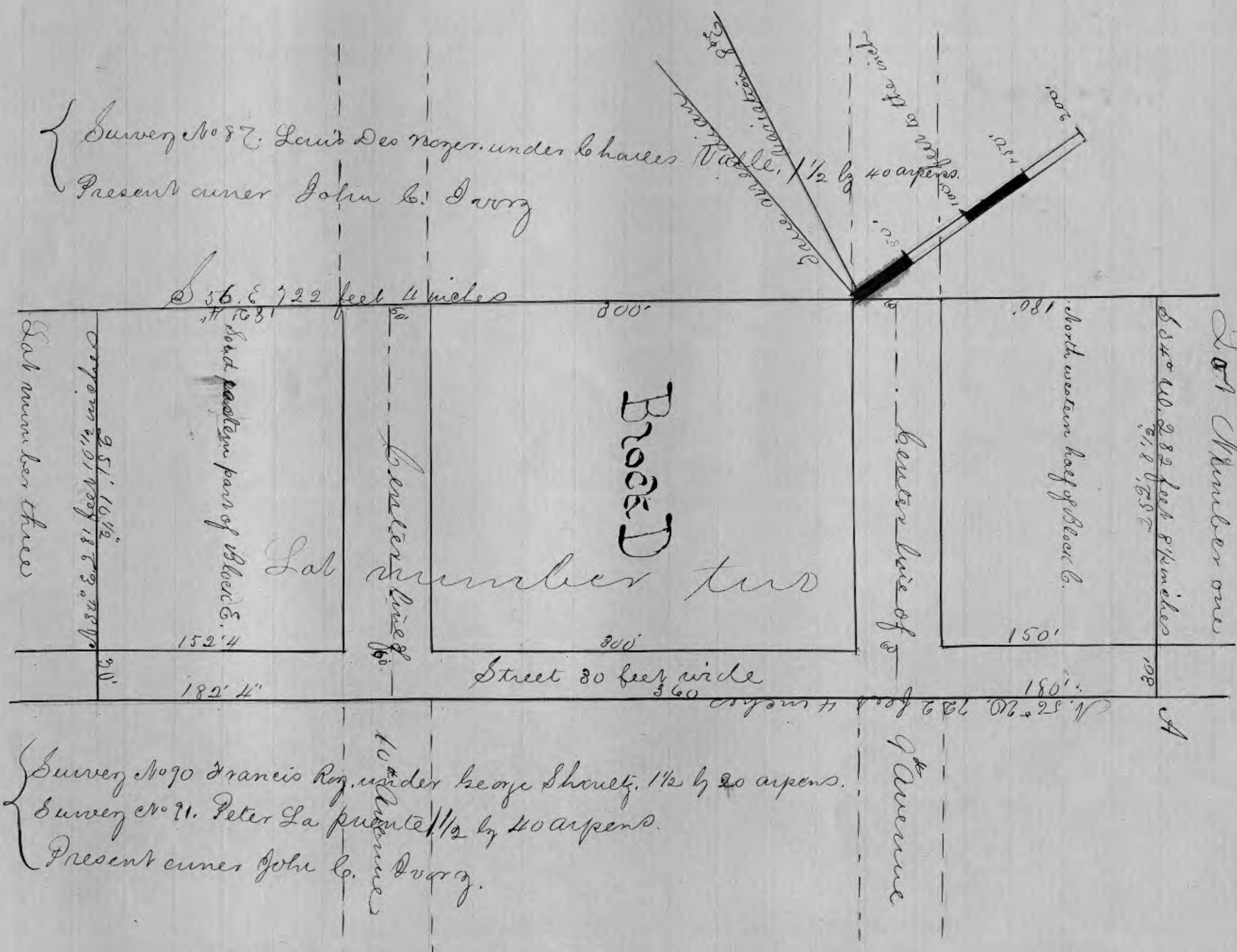
58

440 feet 7 inches to the center of 8th Avenue.
620. feet 7 inches the most western corner of this lot.
Thence N. 34° E. through the center of Block C. 282 feet 8½ inches to a point on the North-eastern-boundary of the aforesaid Survey 88 the most northern corner of this lot.
Thence S 56° E. with said north eastern boundary.
180 feet to the center line of 8" street or avenue.
510 feet to the western line of 7" avenue.
523 feet 2 inches to the most eastern corner of this lot on the eastern line of the Carondelet Common Field.
Thence S 15° W. with the eastern line of the Carondelet Common Field
299 feet 8 inches to the place of beginning.
Bounded Northeastwardly by Survey number eighty seven in the Carondelet Common Field.
Southeastwardly by the eastern front line of the Carondelet Common Field.
Southwestwardly by Surveys numbered ninety and ninety one of the Carondelet Common Field.
and Northwestwardly by lot number two to be hereafter platted and described.

Report of Commrs

Plat C. of lot number two comprising the North western half of block C. Block D. and the South eastern part of Block E. as platted on page two, containing with the streets and avenues four acres and sixty eight hundredths of an acre and assigned by the Commissioners in partition to Edward Gamache.

{ Survey No 87. Louis Des noyer under Charles Vallé, 1½ by 40 arpens.
{ Present owner John C. Avery



{ Survey No 90 Francis Roy, under George Shoultz. 1½ by 20 arpens.
{ Survey No 91. Peter La Puente 1½ by 40 arpens.
{ Present owner John C. Avery.

Description of the Survey of lot number two as platted on page seven.

Begin at the most western corner of lot number one as platted on page five. Thence N 56° W. with the South boundary line of Survey number eighty eight in the Carondelet Common Field.

180 feet the center line of Ninth Avenue.

540 feet the center line of tenth Avenue,

722 feet 4 inches the most western corner of this lot

Thence N. 34°. E. with the north western boundary of this lot 30 feet to the north eastern line of the 30 feet street.

281 feet 10 1/2 inches to a point on the North eastern boundary line of Survey No 88 in the Carondelet Common field. the most northern corner of this lot.

Report of Commrs

Thence S. 56. E. with said north eastern boundary of Survey 88.

182. feet 4 inches the center line of tenth Avenue.

542 feet. 4 inches the center line of Ninth Avenue

722. feet 4 inches the most northern corner of lot number one and which is the most eastern corner of this lot.

Thence S 34° W. with the north western boundary of lot one 252 feet 8 1/2 inches to the north eastern line of the 30 feet street 282 feet 8 1/2 inches to the place of beginning.

Bounded Northeastwardly by Survey number eighty seven in the Carondelet Common Field.

South eastwardly by lot number one platted on page 5.

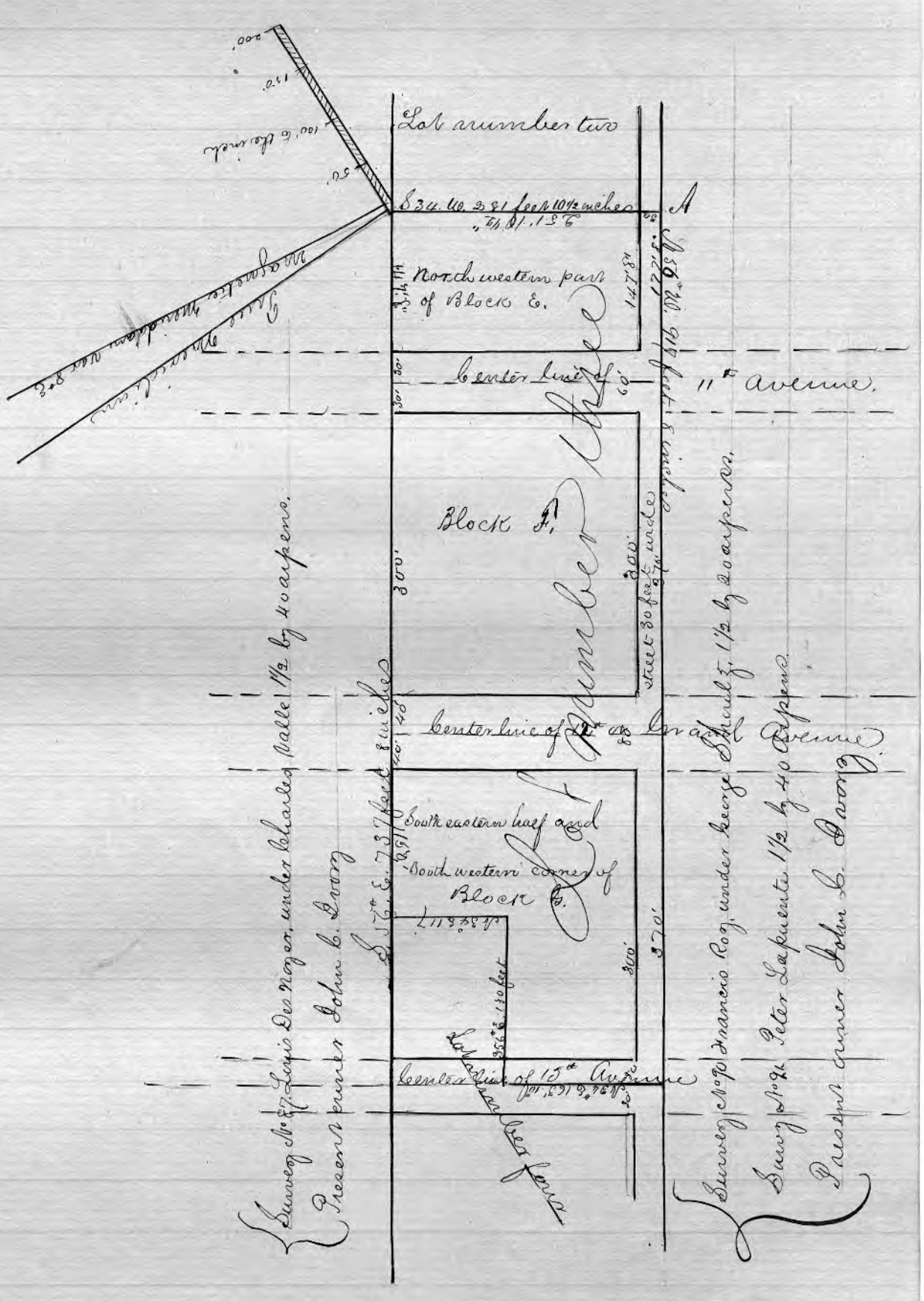
Southwestwardly by Surveys number ninety and Ninety one in the Carondelet Common field.

And Northwestwardly by lot number three to be hereinafter platted and described

Plat D. of lot number three comprising the northwestern part of block E- Block F. and the east half and

the Southwestern corner of block B. as platted on page two: containing with the streets and avenues five acres and forty four hundredths of an acre of land and assigned by the commissioners in partition to John C. Prong.

Report of Commrs



62 Description of the Survey of lot number three as platted on page nine.

Begin at the most western corner of lot No 2 as platted on page seven. Thence N 56° W. with the S. W. boundary of Survey 88 in the Carondelet Common field.

177 feet 8 inches the center line of 11th Avenue.

547 feet 8 inches the center line of 12th. or Grand Avenue.

917 feet eight inches western corner of this lot in center of 13th Avenue.

Thence N 34° E. with the center line of 13th Avenue 163 feet 10 inches corner.

Thence S 56° E. 180. feet to corner N.E. & S.W. center line of Block G.

Thence N 34° E. with said N.E. & S.W. center line of Block G.

117 feet to a point on the northeastern boundary line of Survey No 88. in the Carondelet Common Field, the most northern corner of this lot.

Report of Commr

Thence S. 56° E. with said North eastern boundary line of Survey 88.

190 feet. the center line of 12th or Grand Avenue.

560 feet the center line of 11th Avenue.

737 feet 8 inches to the most northern corner of lot number two and which is the most eastern corner of this lot.

Thence S. 34° W. with the northwestern boundary line of lot 2.

251 feet 10½ inches to the northern line of the 30 feet street

281 feet 10½ inches to the place of beginning.

Bounded Northeastwardly by Survey number eighty ~~seven~~ in the Carondelet Common Field.

Southeastwardly by lot number two platted on page seven.

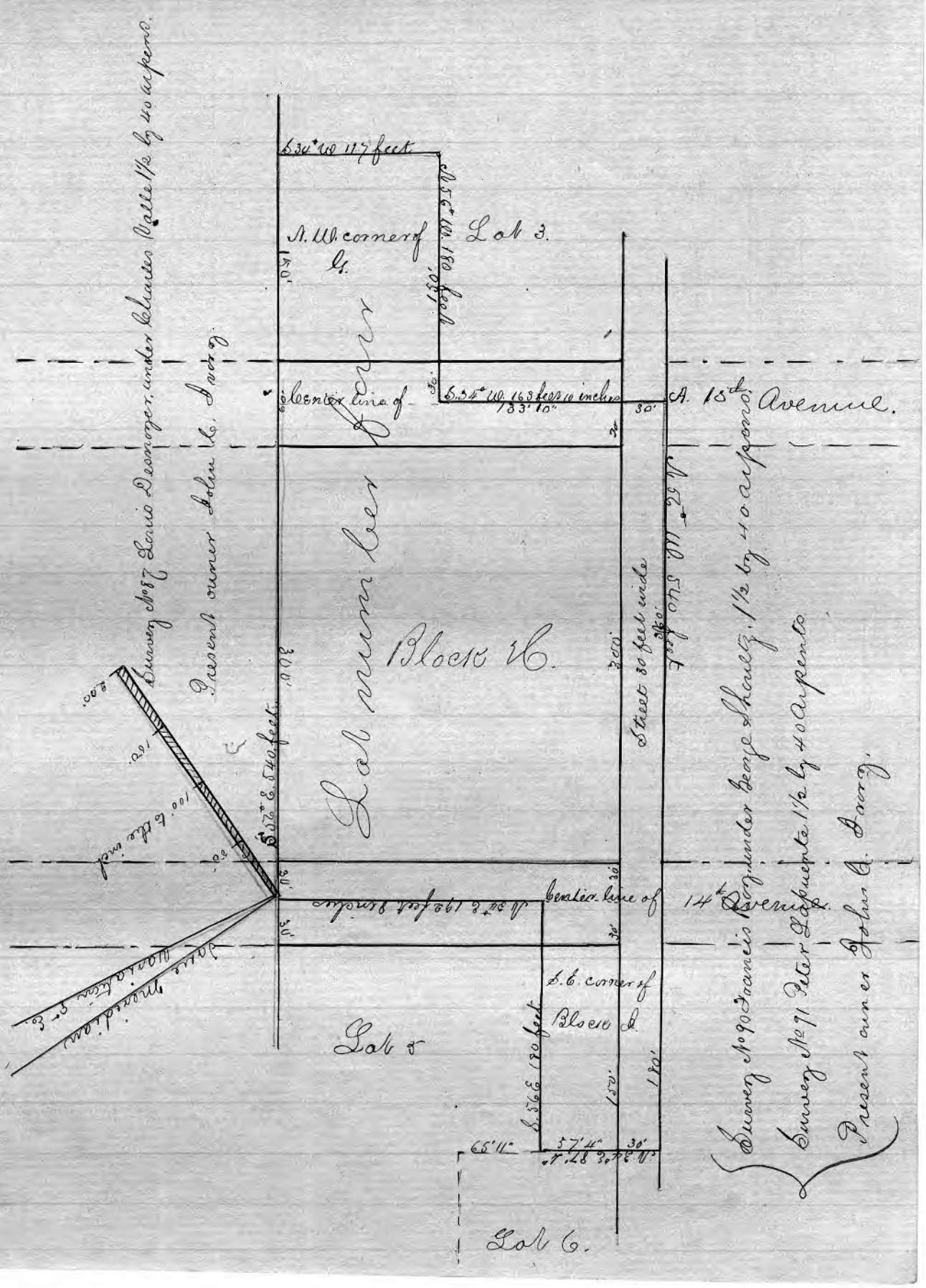
Southwestwardly by Surveys numbered ninety and Ninety one in the Carondelet Common Field.

And northwestwardly by lot number four to be hereafter platted and described.

Plat E. of lot number four comprising the northwest corner of block

G. Block H. and the South East corner of block I as platted on page 2:- containing three acres and eighteen hundredths of an acre of land including the street and avenues and assigned by the Commissioners in partition to William Provost. Junior

Report of Commrs



Description of the Survey of lot number four as platted on page number Eleven.

Begin at the most western corner of lot number three as it is platted on page nine. Thence N. 56° W. with the South western boundary line of the Carondelet Common Field 360 feet the centre line of 14th Avenue.

540 feet the most western corner of this lot.

Thence N. 34° E. with the center dividing line of block I.

87 feet 4 inches to a point thereon corner of this lot.

Thence S. 56° E. through block I.

180 feet to a point on the center line of 14th Avenue. corner of this lot.

Thence N. 34° E. with the center line of 14th Avenue.

192 feet 8 inches to a point on the north eastern line of this Survey number 88 in the Carondelet Common field. the most northern corner of this lot.

Report of Commrs

Thence S. 56° E. with the northeastern boundary of said Survey 88.

360 feet the center line of 13th Avenue.

540 feet the most northern corner of lot number three and which is the most eastern corner of this lot.

Thence S 34° W. with a line of lot number three.

117 feet to another corner of said lot 3 and which is also a corner to this lot.

Thence N. 56° W. with another line of lot 3.

180 feet to another corner of said lot 3 and which is a corner to this lot on the center line of 13th Avenue.

Thence S. 34° W. with the center line of 13th Avenue.

163 feet 10 inches to the place of beginning.

Bound_ Northeastwardly by lot 5 and Survey No 87

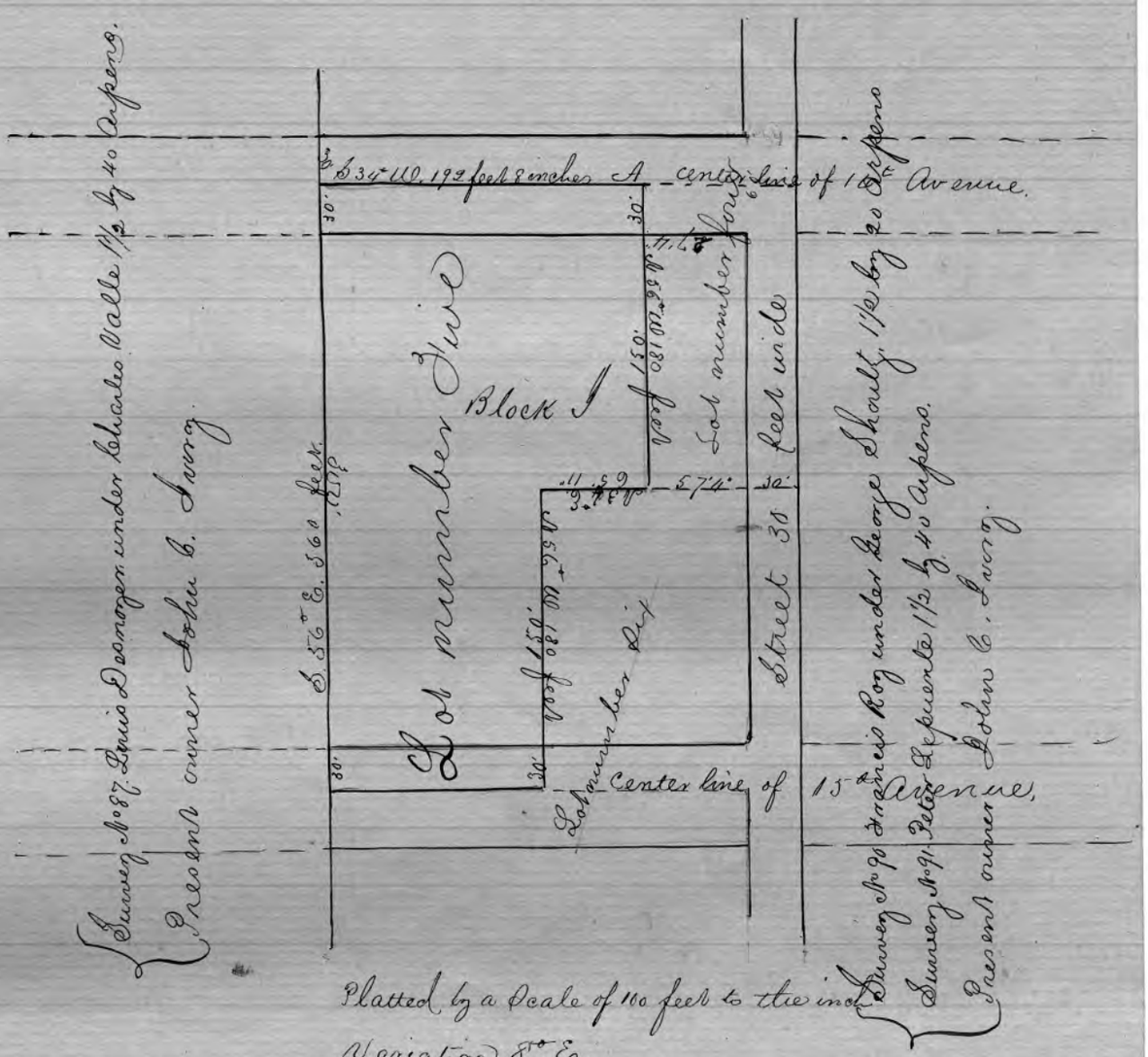
Southeastwardly by lot 3.

Southwestwardly by lot 3. and Surveys 90. and 91.

And Northwestwardly by lots 5 and 6.

Plat F - of lot number five comprising the northeast quarter of Block I that northern part of the north west quarter of said Block which is not included in lot 6. and that northern part of the Southeastern quarter of said Block I. which is not included in lot four - for plat of Block I see page two. This lot five contains one acre and thirty hundredths of an acre including the streets and is assigned by the Commissioners to William Provost. Senior.

Report of Commrs



66

Description of the Survey of lot number five as platted on page 13.

Begin at a corner of lot number four in the center line of fourteenth avenue 87 feet 4 inches N 34° E. from the South western boundary line of the Survey 88–

Thence N. 56° W. with a line of lot number four as platted on page eleven and designated on page twelve.

180 feet to a corner of lot four on a line of lot Six and which is a corner of this lot.

Thence N. 34° E. with a line of lot Six.

65 feet 11 inches to a point corner common to this lot and lot Six.

Thence N. 56° W. with another line of lot six.

180 feet to a corner of this lot and lot 6. in the center line of 15th Avenue.

Report of Commr

Thence N. 34° E. with the center line of 15th Avenue.

126 feet 9 inches to a point corner of this lot and lot Six on the North eastern boundary line of Survey 88 in Barondeler Common Field.

Thence S. 56° E. with said north eastern boundary of Survey 88.

360 feet to a corner of this lot in the center line of 14th Avenue.

Thence S. 34° W. with the center line of 14th Avenue.

192 feet 8 inches to the place of beginning.

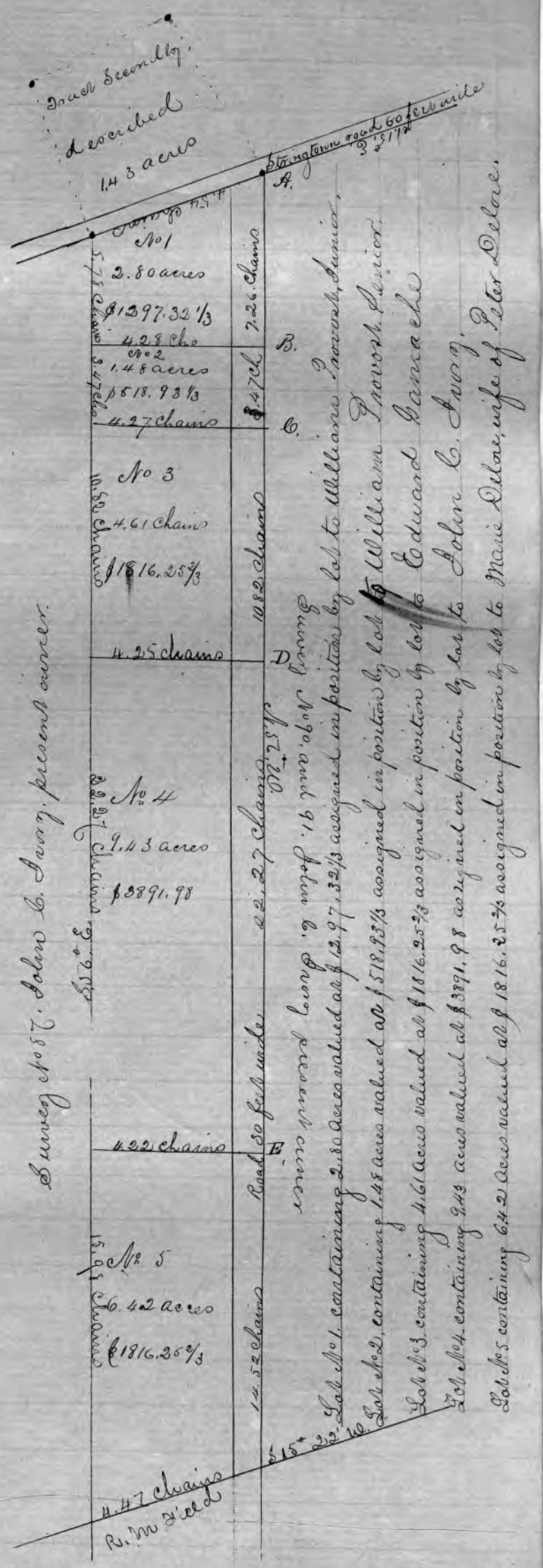
Bounded, Northeastwardly by Survey 87

Southeastwardly by lot number four.

Southwestwardly by lots numbers four and Six.

And Northwestwardly by lot number Six.

corner of the tract. Thence North fifty six degrees West with the north East-ern boundary of the tract five chains and Seventy eight links. to a point thereon. Thence South thirty four degrees west four chains, and twenty eight links to a point on the South west boundary of the tract marked B on the plat. Thence South fifty six degrees East with the South western boun-
2d Report of Commr. dary of the tract seven chains and twenty six links to the place of be-ginning. containing two acres and eighty hun-dredths of an acre and bounded Southeastward-ly by the eastern line of the Carondelet Com-mon field. North east-wardly by survey eighty seven in the Caronde-let Common Field, North-westwardly by lot num-ber two. and Southwest-wardly by Surveys num-ber Ninety and Ninety one, subject to the free-hold estate of John C.



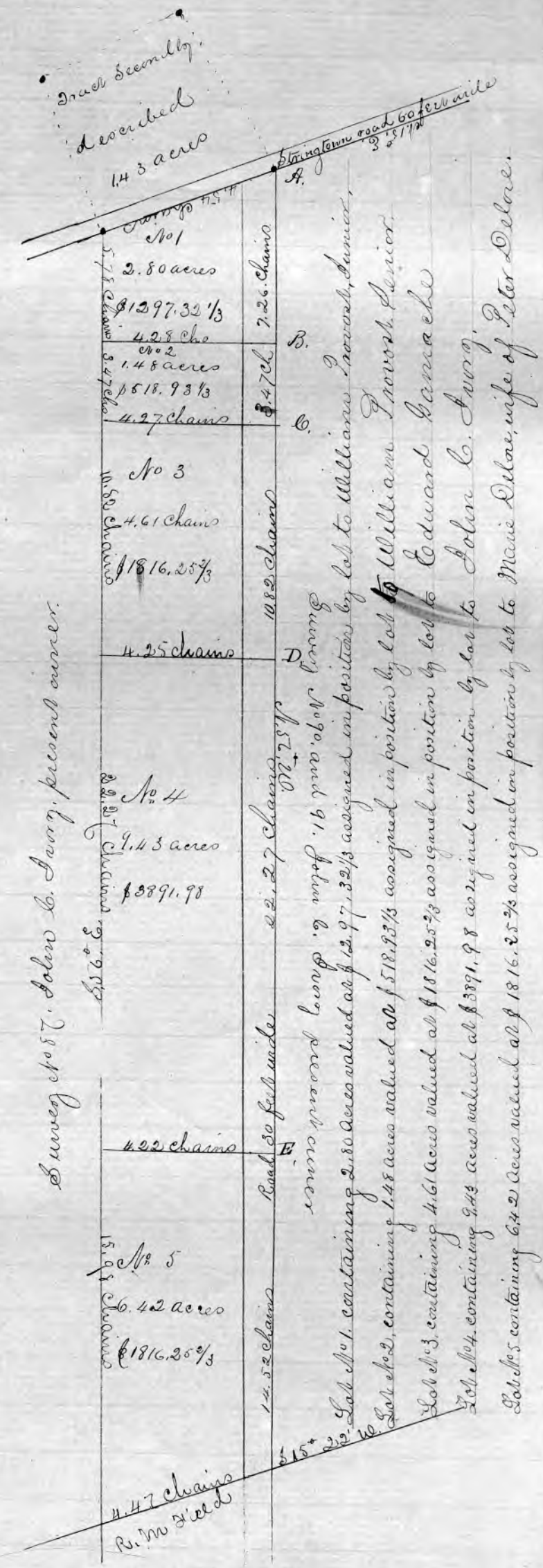
separate portions or pieces greatly to his disadvantage and injury, as to this objection all we have to say is that Mr Ivory expressed a desire to have the front on the Stringtown road, and both sides of Grand Avenue set apart to him, and as we thought his enterprise in improving would benefit the land of the other parties we complied with this desire, and as our action is now objected to we shall put the plaintiff interest in one body: We therefore proceed forthwith to make division and partition of said tract of land first described in the petition according to the Judgment of this Court and to divide said tract of land first described in the petition as aforesaid and to allot and assign the several portion and shares thereof to the respective parties quality and quantity relatively considered according to the respective rights and interests of the said parties so adjudged as aforesaid by this Court, designating the several shares and portions by metes and bounds:- We made a plat of said tract of land which is annexed on this page; and laid out thereon along the South western side a road thirty feet wide which is reserved and dedicated as a public highway at the extinction of the free hold estate of John C. Ivory, by the death of Frances Vien Garnache.

2nd Report of Commrs

We assigned, designated and set apart to the said William Provost, Junior and to his heirs and assigns in fee simple forever lot number one bounded as follows: Begin at the corner marked A. on the plat which is the most Southern corner of the tract on the eastern line of the common field of Carondelet, and on the west side of the Stringtown road: Thence North fifteen degrees East with the Eastern boundary line of the Carondelet Common Field, four chains and fifty four links to the most Eastern

corner of the tract. Thence North fifty six degrees West with the north Eastern boundary of the tract five chains and Seventy eight links. to a point thereon. Thence South thirty four degrees west four chains. and twenty eight links to a point on the South west boundary of the tract marked B on the plat. Thence South fifty six degrees East with the South western boundary of the tract seven chains and twenty six links to the place of beginning. containing two acres and eighty hundredths of an acre and bounded Southeastwardly by the eastern line of the Carondelet Common field. North eastwardly by survey eighty seven in the Carondelet Common Field, Northwestwardly by lot number two. and Southwestwardly by Surveys number Ninety and Ninety one, subject to the freehold estate of John C.

2d Report of Commrs



a good depth for lots:- As regards this tract it is a notorious fact, and we were so told by Mr Ivory, that the title to this tract is in dispute: we could not therefore fix a value upon it that would justify us in assigning it to anyone of the interested parties, and its actual front on the String town road is 299 feet 8 inches and as one of the parties has but 2/36 of the entire tract his front would be only 16 feet 8 inches which is too small for any useful purpose, we therefore still think this tract cannot be divided without prejudice to one of the owners at least.

The fifth objection is The value set upon the different portions of the tract divided as discovered from the mode of the appointment is unfairly adjusted - To this objection we have to say that we valued separately on the ground each of the eleven blocks of this tract corresponding with Mr Ivory's subdivision, and if we have not hit upon the exact **actual** values of the several blocks, we are yet of the opinion that the relative values are correct, and we see no reason for changing the same.

2nd Report of Commrs

The Sixth objection, can have no profible application to the division which we now make and will not therefore be further noticed.

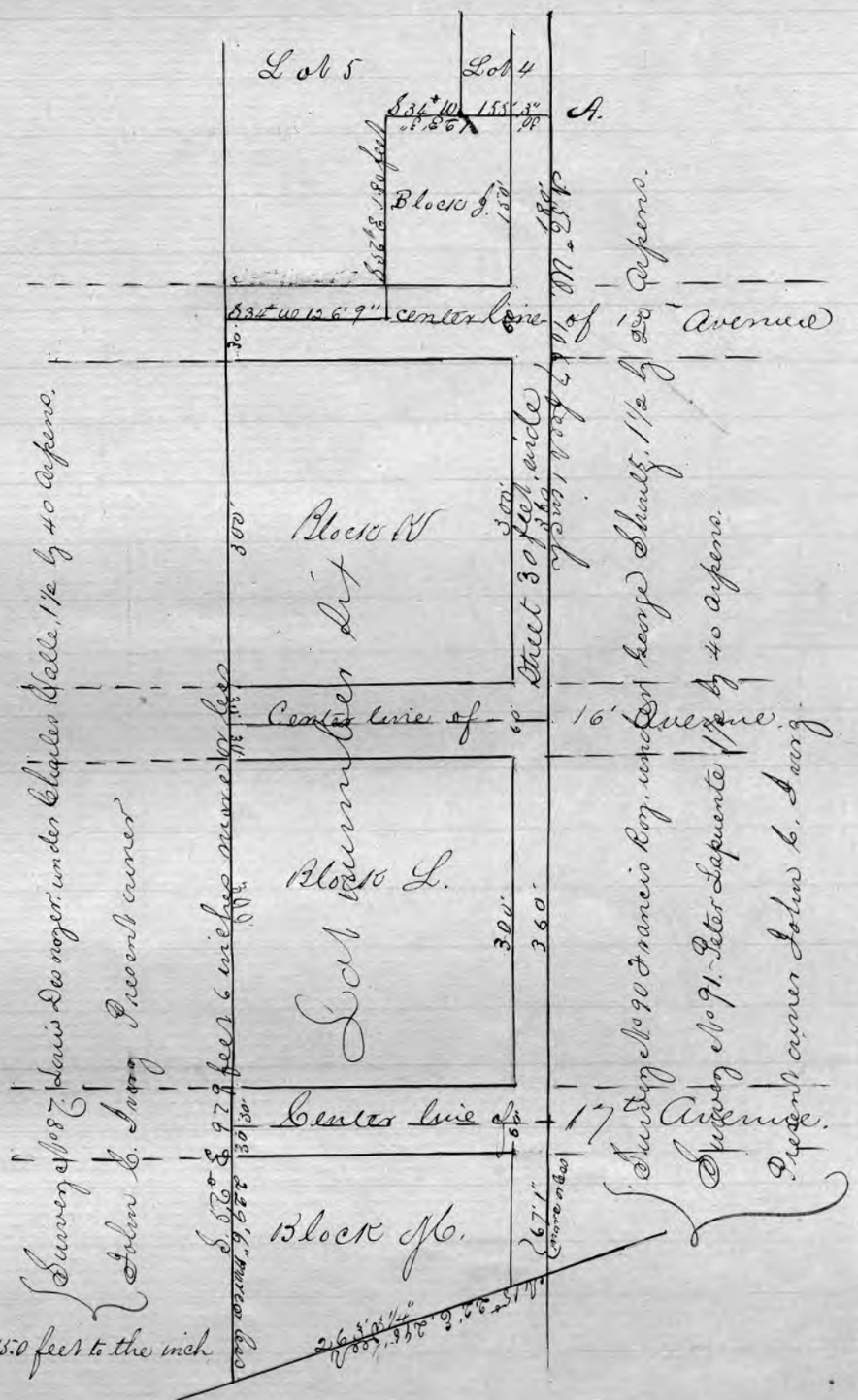
The Seventh objection is Under the partition made by the Commissioners the plaintiff does not receive his proportionate share of the land either quantity or quality considered. The appor~~tionment~~tionment was made according to our valuation as stated under objection number five, which we still think is correct, and we adhere thereto, in the present partition.

The eighth objection is The Commissioners have unnecessarily divided the interest of the plaintiff into two

67

Report of Commrs

Plat G of lot number Six comprising the South west corner of Block I- Block K. and L. and fractional Block M. as platted on page two, containing six acres and forty two hundredths of an acre of land, and assigned by the Commissioners in partition to Marie Delore wife of Peter Delore



Platted to a scale of 150 feet to the inch

Variation 8° E.

Description of the Survey of lot number Six as platted on page number fifteen.

Begin at the most western corner of lot number four.

Thence N. 56° W. with the Southwestern boundary line of Survey number 88 in the Carondelet Common Field.

180 feet to the center line of 15th Avenue.

540 feet to the center line of 16th Avenue

900 feet to the center line of 17th Avenue.

1067 feet 1 inch more or less to the most western corner of the Survey of the east half of the Survey number eighty eight in the Carondelet Common Field and which is also the western corner of this lot.

Repat of Commo

Thence N 15° 22' E. with the line between the east and west halves of said Survey number Eighty eight.

31 feet 8 3/4 inches to the north line of the thirty feet street.

295. feet the most northern corner of this lot on the northeast boundary line of Survey number eighty eight.

Thence S. 56° E. with said northeastern boundary of Survey 88.

259 feet 6 inches the center line of 17th street (this distance is more or less)

619 feet 6 inches the center line of 16th Avenue.

979 feet 6 inches the most northern corner of lot five in the center of 15th Avenue and which is also a corner of this lot.

Thence S. 34° W. with a line of lot number five in said Avenue.

126 feet 9 inches to another corner of said lot 5

and of this lot.
Thence S 37° E. with another line of lot 5.
180 feet to corner on the center line of the Block marked I.
Thence S. 34° W. 65'11" a corner of lots 4. and 5.
153 feet 3 inches the place of beginning. Bounded northeasterwardly by Survey 87. and lot 5. Southeasterly by lots 4 and 5. Southwesterly by Surveys 90 and 91. and Northwestwardly by West half of Survey 88

Report of Commrs

In constructing the plat marked A. on page two and the six several plats marked B. C. D. E. F. and G. on pages 5. 7. 9. 11. 13. and 15. and in describing the boundaries of the several pieces of land represented by said plats I combined and used for that purpose the Official United States Survey No 88 of the tract of land in the Carondelet Common Field, confirmed to John Baptiste Gamache, under Gregoire Sarpy, and the subdivision by Surveyor William H. Ozens for John C. Ivory, of the adjoining land to the Northeast and the Southwest of the tract.

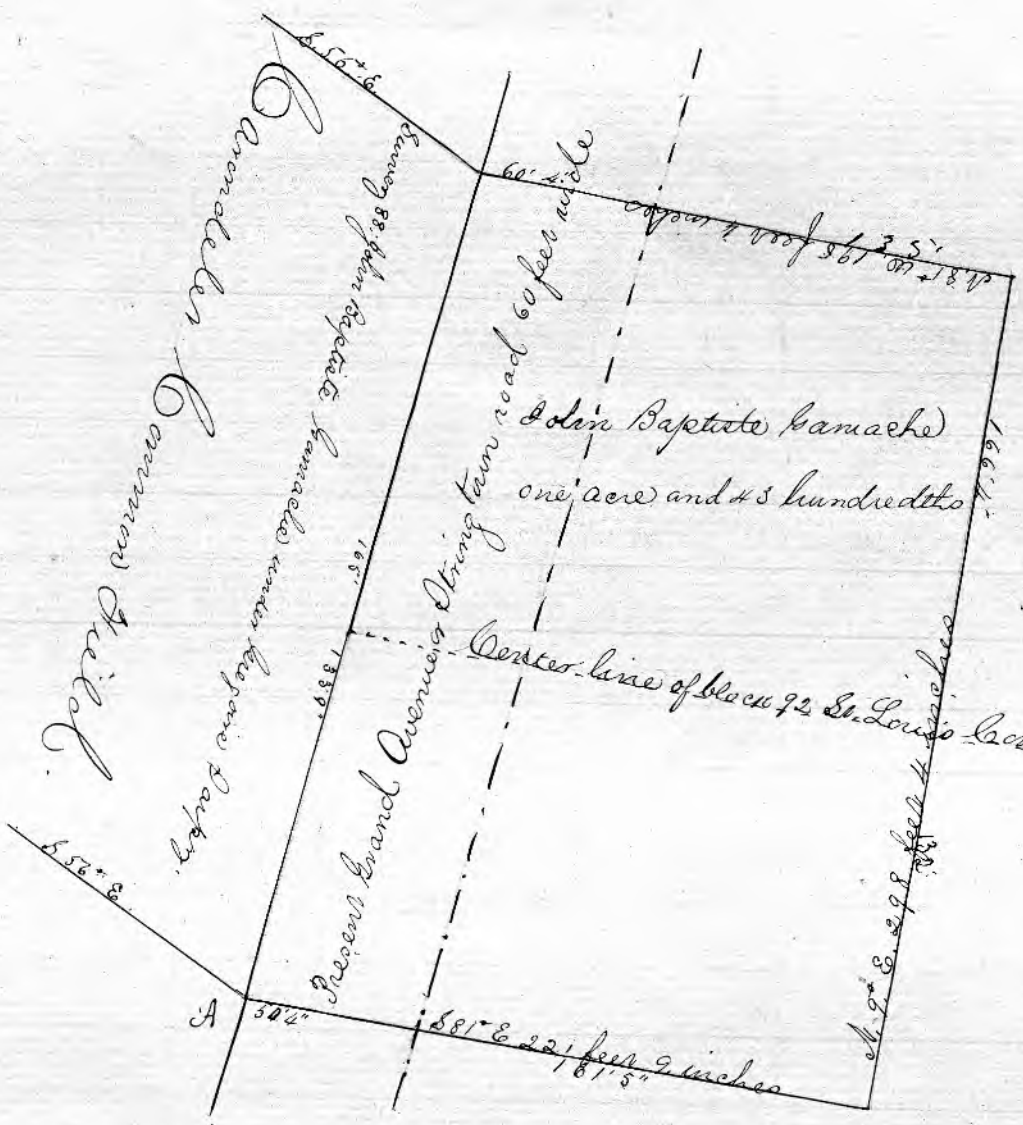
William Milburn.
Surveyor.

St. Louis Missouri
Monday 22nd of December 1836.

70

Plat and description of the Survey of a piece or parcel of land situated in the St. Louis Common in front of and adjoining Survey No 88 in the Carondelet Common Field on the East containing one acre and forty three hundredths of an acre and being the same piece or parcel of land which was conveyed by the City of St. Louis to John Baptiste Ganache, under the name of Baptiste Ganache by deed dated February 19th 1839. recorded in the Office of the Recorder of St. Louis County in book U. No 2 page 582. The plat being constructed and the description written out in conformity with the Survey of the tract by Charles DeWard as recorded with the deed above referred to.

Report of Common



on this Twenty eighth day of January in the year of our Lord one thousand eight hundred and fifty seven (1857) before me the undersigned Clerk of the St. Louis Land Court, within and for the County and State aforesaid came William Milburn, Edward Haren, and John Withnell, Commissioners, each of whom are personally known to me to be the same persons whose names are subscribed, to the foregoing report, as having executed the same as parties and they severally acknowledged the same to be their act and deed for the purposes therein mentioned

Report of Commrs

Seal

In testimony whereof, I hereto set my hand and affix the seal, of the St. Louis Land Court, at office in the City of St. Louis the day and year last above written.

Charles A. Maertz Clerk.

Exhibit A.

John C. Ivory,
vs
Peter Delor, and Marie his wife, William Provost, Senior, William Provost, Junior, and Edward Gamache.

In the St. Louis Land Court.
October Term 1854.
Thursday January 11th 1855.
Judgment and Decree
In Partition.

John Withnell, Edward Haren, William Milburn, Commissioners appointed by the St. Louis Land Court, to make partition in the above entitled cause.

By authority and under the direction of the above named Commissioners, I have platted and described according to the United

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States Survey thereof the tract of land which is first described in the proceedings in this case as being. A tract of land of one and a half arpens in front from North to South, and twenty arpens in depth from East to West situate in the Common Fields of Carondelet being the East half of the tract confirmed to John Baptiste Camache, Jr under Gregoire Sarpy and known as Survey eighty eight. (88.) see plat marked A on page two and description of the Survey on pages 3. and 4. I also laid out a street thirty feet wide along the South west side of the tract and divided the tract first into twelve blocks and fractional blocks as platted on page two with a street between the several blocks and fractional blocks as laid down on said plat and hereinafter described + and I divided the tract again into six separate lots or tracts of land see plats marked B. C. D. E. F. and G and descriptions of Survey of each separate lot or tract of land on pages 5. to 16 inclusive.

Report of Commrs

Description of the Survey of the piece or parcel of land containing one acre and forty three hundredths of an acre as platted above.
Begin at an old stone the Southeast corner of Baptiste Lamaches one and a half arpen tract in the Carondelet Common Field.
Thence S. 81.° E. - 221 feet 9 inches a long stone set deep in the ground for corner.
Thence N. 9° E. at 132' cross the line which divides the north half of block 92 of the St. Louis Common from the South half of said block, at 298. feet 4 inches a long stone set in the ground for the north east corner of this piece of land.
Thence N. 81° W. at 195. feet 4 inches an old stone northeast corner of Survey 88 in the Carondelet Common Field and the North west corner of this piece of land.
Thence S 14.° 40' W. at 165 feet the line dividing the North half of block 92. from the South half of said block - at 298 feet 4 inches to the place of beginning
Bounded North, east and South by other lands in the Saint Louis Common. owned by John C. Ivory. and West by Survey number eighty eight in the Carondelet Common Field.

William Milburn.
Surveyor.

Repat of Commons

Saint Louis Missouri
Monday 22nd of December 1856.

(For Exhibit B. See pages 33, 34. and 35)

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Exhibit C.

John C. Avery
vs
Peter Delore and others

In the St. Louis Land Court.
October Term 1857.

John Withrell, William Milburn, and Edward Naren, Commissioners being sworn on their oaths say that they will honestly and impartially execute the trust reposed in them as such Commissioners, to the best of their ability

Sworn to & subscribed before me this 24th day of November 1857.
Peter W. Johnstone
Justice of the Peace.
fee 75

William Milburn.
Jno Withrell.
Ed Naren

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

Monday February 2nd 1858

John C. Avery
vs
Peter Delore et al.

Exceptions to Report of Commissioners filed.

Which Exceptions is in the words and figures as follows to wit:

John C. Avery
vs
Peter Delore et al.

In the St. Louis Land Court.
October Term 1857.
St. Louis County

Exceptions to Report of Comm'rs

Exhibit D.

And now at this day comes said plaintiff by his attorney and moves the Court to set aside the report of Commissioners in this case filed and to appoint other Commissioners to make partition of the premises to be divided amongst the parties: and the plaintiff for grounds of this motion states the

following as his objections to the said Report.
1st because the life Estate owned by the plaintiff in the tract sought to be divided. is so impaired as to be made almost valueless under the apportionment of said premises made by the Commissioners.
2nd Because the nature of the tract which is long. narrow uneven traversed by a ravine is such as to render any division thereof, and more particularly such a division as is presented by said report. injurious to the interest of the parties, and Especially so with regard to the interest of the plaintiff.

Exceptions to Report of Commrs

3rd The road laid out according to said report along the length of said tract has a width of thirty feet only. which is much to narrow for all practical purposes and the entire value of the tract is thereby greatly demnished. and the cross roads opened through the tract connect with no roads that are now opened -
4th By the Report of said Commissioners the tract of ground secondly described in the petition and lying East of the Stringtown Road is represented as being indivisible. whereas the same fronts nearly 300 feet on said road with a good depth for lots.

Exhibit D

5th The value set upon the different portions of the tract divided. as discovered from the mode of the apportionment is unfairly adjusted.
6th The blocks into which the tract is divided by the Cross streets and which are as small as is consistent with the interest of the owners, are again subdivided for the purpose of partition into quantities and shapes which are highly injurious to the interest of the different owners.

7th Under the partition made by the Commissioners the plaintiff does not receive his proportionate share of the land, either quantity or quality considered.

8th The Commissioners have unnecessarily divided the interest of the plaintiff into two separated portions or pieces, greatly to his disadvantage and injury.

P. B. Garesche,
for plaintiff.

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

Thursday February 12th 1857

John C. Ivory
vs
Peter Delore and Marie his wife William Provost, Senr. and William Provost Junr. and Edward Samache.

Report of Commissioners set aside, and Referred back to same Commissioners.

Now at this day come said parties by their respective attorneys and submit to the Court the exceptions to the report of the Commissioners herein, and the motion here in before filed in this cause, to set aside the Report of the Commissioners, and the Court having heard and being fully advised of and concerning the premises doth order and adjudge that said Motion be sustained. It is therefore ordered by the Court, that the Report of the Commissioners filed herein be and the same is hereby set aside and held for naught. And it is further ordered by the Court that said report be referred back to the same Commissioners, namely, William Milburn, Edward Harris, and John Withnell, with instructions

Exhibit E.

to Report again to this Court.

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

March Term 1857

Monday May 4th 1857

Second report of Commr filed.

John C. Ivory
vs
Peter Delore and Marie his wife, William Provost Senr and William Provost Junr and Edward Gamache

Second Report of Commissioners filed.

Now at this day come William Milburn, Edward Karen, and John Wittnell, Commissioners heretofore appointed to make partition of the real Estate in this cause sought to be divided, and file their Second Report in writing herein, and also file their account for services in this cause.

X

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

2nd Report of Commrs

John C. Ivory.
vs
Peter Delor and Marie his wife, William Provost Senr, William Provost Junr, and Edward Gamache

In the St. Louis Land Court.
October Term 1854.
Thursday January 11th 1855
Judgment and Decree in Partition.

To the Honorable St. Louis Land Court.

The undersigned free holders residents of the County of St. Louis were appointed Commissioners in the above cause to make partition of the real Estate sought to be divided in the proceedings of said cause in words and figures as follows, to wit:

First: A tract of land of one and a half arpens in front from

north to South and twenty arpens in depth from East to West situated in the Common Fields of Carondelet being the east half of the tract confirmed to John Baptiste Gamache. Sr. under Gregoire Sarpy. and known as Survey Eighty eight. (88) Secondly A piece or parcel of land situated in the Commons of St. Louis in front of and adjoining the tract first above described on the east containing one acre and forty three hundredths of an acre and being the same piece or parcel of ground which was conveyed by the City of St. Louis to John Baptiste Gamache. under the name of Baptiste Gamache, by deed dated February 19th 1839. recorded in the Office of the Recorder of St. Louis County in book U. No 2 page 582.

2nd Report of Commrs

And being furnished with a duly certified copy of the Judgment of said Court, and which is hereto annexed with our former report in this case (which former report will be herewith noted) and marked Exhibit B. and makes a part of this report. and before proceeding to the execution of our duties as aforesaid. we were duly sworn by a Justice of the Peace of said County honestly and impartially to execute the trust reposed in us as such Commissioners which said oath was subscribed by us and certified by said Justice of the Peace. and is hereto annexed with our before named former report) and marked Exhibit C. and makes a part of this report. and after being sworn as aforesaid we forthwith proceeded to make division and partition of said tracts of land according to the Judgment of this Court, and on the 28th of January 1857. we filed in this Court the report of our proceedings and partition in this

case. whereupon the plaintiff John C. Ivory by his attorney filed eight objections to our aforesaid report. a duly certified copy of said objections was furnished to us. marked Exhibit D hereto annexed and made part of this report. and on Thursday the 12th of February 1857 the Court sustained the motion to set aside our aforesaid report. and ordered that the said report be set aside and and held for naught. and the Court further ordered that said report be referred back to the same Commissioners - namely William Milburn. Edward Karen. and John Withnell. with instructions to report again to this Court, in this case on said Thursday 12th of February 1857 was furnished us. it is marked Exhibit E. and makes a part of this report: In accordance with the aforesaid - Judgment and order of the Court of the 12th of February 1857 our former report was withdrawn from the Court on the 17th of March 1857 and is hereto annexed and re-filed with this report - Exhibit B. and C. attached thereto being made a part of this report: and the rest of said former report is necessary to a correct understanding of the Comments we shall make on the objections thereto. and of the reasons we shall give for making a new division and partition:— In general we would adhere to our first report, but in this case as we can make a just and equitable division and partition: and obviate some of the objections of the plaintiff. we shall do so: but in justification of our past and present action we will give a statement of the reasons which governed our former partition. and notice the several objections thereto:

2nd Report of Commrs

a duly certified copy of the proceedings of the Court

The first objection is. that the life estate of the plaintiff is so impaired as to be made valueless - we

cannot see that the life estate is at all impaired under the apportionment for Mr Ivory. has his fee simple title to fifteen thirty sixths of the tract and the remaining twenty one ~~thirty one~~ thirty sixths of the tract was assigned to the several parties entitled thereto. "subject to the freehold estate of John C. Ivory, during the life of Francis Vien Gamache." and said assignment is in accordance with the Judgment of the Court.

The Second objection is" Because the nature of the tract which is long narrow and uneven and traversed by a ravine is such as to render any division thereof and particularly such a division as is presented by said report injurious to the interest of the parties and especially so with regard to the interest of the plaintiff. The defendants do not complain. and as the several subdivisions will occupy in their whole extent the entire width of the tract, and the division lines be run at right angles to the north and South boundaries, this objection has no more force when applied to the divisions that when applied to the entire tract in which the plaintiff purchased an interest.

2nd Report of Commrs

The third objection is" The road laid out according to said report along the length of said tract has a width of thirty feet only which is much to narrow for all practical purposes and the entire value of the tract is thereby greatly deminished. and the cross roads opened through the tract connect with no roads that are now opened." As to the thirty feet road we still think it wide enough for agricultural purposes which is probably the only was that Mr Ivory. can use the 21/36 of the land in which he has the life estate

Ivory, during the life of Francis Vien, Garnache, and with the reservation of the thirty feet road, along on the Southwestern side of this lot.

We assigned allotted designated and set apart to the said William Provost, Senior, and to his heirs and assigns in in fee simple forever lot number two described as follows, Begin at the corner marked B. on the plat which is the most western corner of lot One, on the Southwestern boundary of the tract. Thence North thirty four degrees east with the northwestern line of said lot one four chains and twenty eight links to a point on the Northeastern boundary of the tract. Thence north fifty six degrees west with the northeastern boundary of the tract three chains and forty seven links to a point thereon the most northern corner of this lot; Thence South thirty four degrees west four chains and twenty seven links to a point marked C. on the plat. the most western corner of this lot on the Southwestern boundary of the tract. Thence South fifty six degrees, East three chains and forty seven links to the place of beginning, containing one acre and forty eight hundredths of an acre, and bounded Southeastwardly by lot number one. Northeastwardly by Survey eighty seven in the Carondelet Common Field, subject to the freehold estate of John C. Ivory, during the life of Frances Vien Garnache, and with the reservation of the thirty feet road, along the Southwestern side of this lot.

2nd Report of Comm.

We assigned, allotted designated and set apart to the said Edward Garnache, and to his heirs and assigns in fee simple forever - lot number three described as follows. Begin at the corner marked C. on the plat which is the most western corner of lot two, on the Southwestern boundary of the tract. Thence North thirty four degrees east with the north western

line of said lot two. four chains and twenty seven links to a point on the northeastern boundary of the tract: Thence North fifty six degrees west with the North eastern boundary of the tract ten chains and eighty two links to a point thereon the most northern corner of this lot: thence South thirty four degrees West four chains and twenty five links to a point marked D. on the plat. the most western corner of this lot, on the South western boundary of the tract: thence South fifty six degrees east ten chains and eighty two links to the place of beginning: containing four acres and Sixty one hundredths of an acre, and bounded Southeastwardly by lot number two: Northeastwardly by Survey eighty seven in the Carondelet Common Field, Northwestwardly by lot number four, and Southwestwardly by Surveys ninety and ninety one of the Carondelet Common Field, subject to the freehold estate of John C. Ivory, during the life of Frances Ann Gamache, and with the reservation of the thirty feet road along the Southwestern side of this lot.

2d Report of Commr

We assigned allotted, designated and set apart to the said John C. Ivory, and to his heirs and assigns in fee simple forever, lot number four described as follows. Begin at the corner marked D. on the plat. which is the most western corner of lot number three on the Southwestern boundary of the tract: thence North thirty four degrees east with the northwestern boundary of lot number three, four chains and twenty five links to a point on the north eastern boundary of the tract: thence North fifty six degrees west with the north eastern boundary of the tract twenty two chains and twenty seven links to a point there on

the most northern corner of this lot: thence South thirty four degrees west four chains and twenty two links to a point, on the Southwest boundary of the tract marked E on the plat, the most western corner of this lot: thence South fifty six degrees and twenty two chains and twenty seven links to the beginning corner: containing nine acres and forty three hundredths of an acre, and bounded Southeastwardly by lot number three, Northeastwardly by Survey eighty seven in the Carondelet Common Field, Northwestwardly by lot number five, and Southwestwardly by Surveys ninety and ninety one in the Carondelet Common Field, with the reservation of the thirty feet road, along the Southwestern side of this lot.

2d Report of Commrs

We assigned, allotted, designated and set apart to Maria Delore, wife of Peter Delore, and to her heirs and assigns in fee simple forever lot number five described as follows: Begin at the corner marked E on the plat which is the most western corner of lot four on the South western boundary of the tract: thence north thirty four degrees east with the North western boundary of said lot four, four chains and twenty two links to a point on the north eastern boundary of the tract: thence north fifty six degrees west with said Northeastern boundary of the tract fifteen chains and ninety eight links more or less the most northern corner of the tract and of this lot: thence South fifteen degrees and twenty two minutes East four chains and forty seven links to the most western corner of the tract and of this lot: thence South fifty six degrees east fourteen chains and fifty two links more or less to the place of beginning: containing six acres and forty two hundredths more

or less, and bounded Southeastwardly by lot number four. Northeastwardly by Survey eighty seven, of the Carondelet Common Field. Northwestwardly by the western boundary of the tract and Southwestwardly by Survey ninety and ninety one of the Carondelet Common Field. The words "and to his heirs and assigns in fee simple forever" having been omitted in the twenty third line of page seven of this report have been interlined.

We believe (for the reasons stated on page five of this report,) that partition of the tract secondly described in the proceedings in this cause cannot be made without great prejudice to the owners we therefore make report of that fact to the Court as required by law: The said tract Secondly described in the proceedings in this cause is platted and particularly described on pages 18, and 19, of Exhibit A, attached to and made a part of our former report and which report is returned herewith, and said plat and description of this tract in said Exhibit A, is made a part of this report. All of which is most respectfully submitted to the Honorable Court.

2d Report of Commrs

William Milburn,
Ed Warren,
John Withnell } Commissioners

State of Missouri
County of St. Louis } S.S. Be it remembered that on this Fourth day of May eighteen hundred and fifty seven, before me Charles A. Maury, Clerk of the St. Louis Land Court, within and for the County aforesaid, came William

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Milburn, Edward Haren, and John Withnell. Commissioners heretofore appointed to make partition of the Real Estate in this cause sought to be divided, and who are all personally known to me to be the same persons whose names are subscribed to the foregoing report as said Commissioners and they severally acknowledged the same to be their act and deed for the purposes therein mentioned.

2nd report of Comm^s

Seal

In testimony whereof I hereto set my hand and affix the seal of our said Court, at Office in the City of St. Louis, the day and year last aforesaid.

Charles A. Mantz, Clerk
By E. P. Walsh D Clk.

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

Tuesday May 5th 1857

John C. Ivory.
vs
Peter Delor, and Marie his wife, William Provost, Senr. and William Provost, Junr. and Edward Gamache

Transferred to Law Docket.

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

Monday May 11th 1857

John C. Ivory.
vs
Peter Delor, and Marie his wife, William Provost, Senr. and William Provost, Junr. and Edward Gamache

Motion to set aside Report of Commissioners, filed in this cause.

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

John C. Avery } In the St. Louis Land Court.
vs } March Term 1857
Peter Delore et al. } St. Louis County. S.S.

And now at this day comes said plaintiff by his attorney and moves the Court to set aside the Report of Commissioners in this case filed on the 4th day of May, in the year 1857 and to appoint other Commissioners to make partition of the premises to be divided amongst the parties; and the plaintiff for grounds of this motion states the following as his objections to the said Report.

Mo to set aside Report of Commrs

1st Because the road laid out according to said report and the accompanying plat, along the length of the tract to be divided has a width of thirty feet only, which is much too narrow for all practical purposes and the entire value of the tract is thereby greatly diminished, and because said road is improperly located on said tract.

2nd Because the shape of the tract, which is long, narrow and contains much low ground, renders any division thereof prejudicial to the interests of the owners.

3d Because the interest of every one of the parties is greatly impaired by the division of the tract as now made, and the interest of the plaintiff therein is impaired in a sum not less than three thousand dollars exclusive of plaintiffs life estate.

4th Because the value set upon the different portions of the tract, as discovered from the mode of the appointment is unfairly adjusted.

5th Because the amount of land apportioned to

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the plaintiff is not equal to his whole interest in the tract. quantity and quality considered.

6th Because the Commissioners have laid out no cross road on the tract whatsoever, though the tract is about one mile long, and the distance from the string town road, in the front, and the gravois road (the nearest in the rear of this land) is about two miles

Mo to set aside Report of Commrs

7th The division is made without any reference to roads that are either already laid out, or are projected by contiguous and neighboring proprietors, but on the contrary in utter disregard to the location of all such roads - which when opened will cut through the divisions in such manner as to leave in some cases fractions as small as nine feet, in others as small as twenty feet running the width of the tract.

8th Because the Commissioners have made their former report, a part of their present report, thereby confirming the same, and unnecessarily increasing the expenses of the parties

9th Because the partition made by the Commissioners is prejudicial to the interest of the plaintiff and is also to the interest of all the parties.

P. B. Garesche.
for Pltff.

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

Thursday June 4th 1857.

John C. Ivory
vs
Peter Delore, and Marie his wife, William Provost, Senr., and William Provost Junr. and Edward Gamache

It is ordered by the Court, that this cause be set for hearing on Wednesday June 10th 1857.

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

Wednesday June 10th 1857

John C. Ivory.
vs.
Peter Delore, and Marie, his wife, William Provost. Sen. and William Provost. Jun. and Edward Gamache

Dismissal

Dismissal

Now at this day comes said plaintiff by his attorney and says he will not further prosecute his said suit and moves that his said suit be dismissed at his costs. It is therefore ordered and adjudged by the Court, that the plaintiff take nothing by his said suit, but that the Defendants go henceforth out day and recover of said plaintiff their costs and charges herein expended and have execution therefor.

And afterwards on the same day the following proceedings were had in this cause, to wit:

John C. Ivory.
vs.
Peter Delore, and Marie, his wife, William Provost. Sen. and William Provost. Jun. and Edward Gamache

Motion to set aside the order dismissing this suit, filed in this cause.

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

John C. Ivory.
vs
Peter Delore & others

In the St. Louis Land Court.
March Term 1857.

And the said defendants come and move the Court, to set aside the order herein

entered by this Court dismissing the above cause for the following reasons.

First. Because said cause was dismissed more than three terms of this Court after the rendition of the judgment of partition without the consent of all parties to said judgment.

Mo to set aside dismissal

Second: Because the plaintiff in his motion can not without the consent of all parties dismiss said cause after the same had progressed as far as said cause had progressed at the time of said dismissal.

Third. Because said judgment of partition herein rendered had been affirmed by the Supreme Court more than two years ago and this Court no larger had any control over said judgment.

Fourth. Because more than four terms of this Court have elapsed since said judgment was rendered.

Fifth. Because said order of dismissal is in all other respects, whatever unlawful oppressive and unjust.

C. Casselberry.
Attorney for the defendants.

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

Thursday June 11th 1857

John C. Ivory
vs
Peter Delore, and Marie his wife, William Provost Senr. and William Provost Junr. and Eduard Gamache

Motion overruled

Now at this day the motion herein before filed in this cause, to set aside the order dismissing this cause is submitted to the Court, and the Court

having heard and being fully advised of and concerning the premises doth order and adjudge that said motion be overruled.

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

Friday June 12th 1857

John C. Ivory.
vs
Peter Delor. and Marie his wife. William Provost. Senr. and William Provost. Junr. and Edward Samache } Bill of Exceptions filed. in this cause.

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

John C. Ivory.
vs
Peter Delor. & others } In the St. Louis Land Court. March Term 1857

Bill of Exceptions

Be it remembered. that the plaintiff moved the Court to dismiss this suit. and the defendants at the time objected to the granting of said motion and request the Court to proceed according to law to the completion of the partition of the real estate sought to be divided. but the Court granted said motion of said plaintiff and dismissed this cause. at the costs of the plaintiff. and the defendants. at the time excepted to the granting of said motion of said plaintiff and excepted to the said dismissal of said cause.

And afterwards on the same day of the dismissal of said cause as aforesaid. the defendants filed

their motion requesting this Court to set aside said order of dismissal in words and figures as follows. to wit: (for said motion see pages 90. & 91.) which said last motion was overruled. by the Court and the defendants at the time excepted to the overruling of the same and tender this their Bill of Exceptions. and pray that the same be signed and sealed according to law. and be made a part of the record of this cause which is accordingly done. this Eleventh day of June eighteen hundred and fifty seven.

C. B. Lord. (Seal)

State of Missouri }
County of St. Louis } S.S. I, Charles A. Maury, Clerk of the St. Louis Land Court within and for the County aforesaid do hereby certify that the foregoing is a true and correct copy of the Record and proceedings. in the case of John C. Ivory. plaintiff. and Peter Delor. and others defendants. as fully as the same remains of Record in my office.

In testimony whereof. I hereto. set my hand and affix the seal of said Court at office in the City of St. Louis this day of 185 7.

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(20)

March. T. 1858

John C. Ivory,

vs. D. E.

Peter Delore and others. P. E.

Land Court

A. P. B. Garesche, for Peff.
E. Casselberry for deft's

Filed 18 September 1857
Wm. S. Glanville
Clk.

This Transcript $50.50 Pd by E. Casselberry
86 ~~[illegible]~~

Filing deloc. 50, appearance, 30, ant. & fil. notice 35, jurisdn. m. $1.50
ant. of. ap. ems 45, Dept. brief / depts. brief / depts. do currents)
Abland, 24 June 58 / B. p. 455.

John C. Ivory
vs
Peter Delor & others

In the Supreme court
of the State of Missouri
October Term 1857

And the above defendants for assignment of errors come and say that the court below erred as follows to wit:

First: In dismissing this cause without the consent of the defendants;

Second: In not proceeding to complete the partition of the real estate sought to be divided as requested by the defendants.

Third: In overruling the motion ~~for~~ to set aside the order of dismissal; and

Fourth: In many other respects which will be sufficiently manifest to this court on the inspection of the record in this cause.

The defendants therefore ask that said errors be corrected and the order of the court below dismissing this cause be set aside and that said lower court be commanded to cause said partition to be completed as soon as practicable; and the defendants ask for such other further and general relief in the premises as they may be lawfully entitled to.

E. Caselberry attorney
for the defendants.

John C. Ivory
vs
Peter Delor & others

Assignment of errors

Filed 18 October 1857
W S Glassell
Cl

John C. Ivory

vs

Peter Delor & others

You are hereby notified that the above defendants have sued out of the Supreme court of the State of Missouri a writ of error in the above cause to the St Louis Land court within and for the county of St Louis in said State upon the final judgment and decision of said Land court rendered in said cause; which said writ of error is returnable to said Supreme court at the term thereof to be begun and held in the city of St Louis in said county of St Louis on the third monday of October in the year 1857.

St Louis Sept 18, 1857

E. Caffelberry atty for the defendants

(original)

John C. Ivory
vs
Peter Delor & others

Notice of the suing out of a writ of error

Filed 18 October 1857
W. F. Carmichael
Clk

Executed this ~~Writ~~ Notice in the County of St Louis on the 21st day of September 1857 by delivering a true copy of the same to the within named John C. Ivory

James Castello Sheriff
by H J Kappesser D. Cpy

Fee $ — 50 cts
paid by Casselberry

John C. Ivory
vs
Peter Delor & others

In the Supreme court of the State of Missouri
October Term 1857.

Statement of the case.

On the 15th of February 1854, the plaintiff filed his petition in the St Louis Land court against the defendants for partition of the land described in the petition, being one and a half by twenty arpens in the common field of Carondelet in St Louis county, confirmed to John Baptiste Lamache jr, and also one acre and forty three hundredths of an acre near the tract first above described, purched by said Lamache from the city of St Louis. At the March term 1854, Peter Delor, and his wife, two of the defendants, filed their answer, claiming one half of the one and a half by twenty arpens under a marriage contract between Lamache and his first wife. At the October term 1854, of the land court, the parties appeared, and the court, after hearing the evidence, rejected the claim of Delor and wife under the marriage contract, and gave judgment allowing all of the children of Lamache an equal share in the land, from which decision, Delor and wife, appealed to the Supreme court, after making the usual motions for a new trial and in arrest, which were overruled. At the March term 1856, the Supreme court affirmed the

judgment of the land court, "in all things", and ordered that said judgment "stand in full force and effect." Afterwards on the 17th of June 1856, after said judgment was affirmed by the Supreme court, ~~said judgment~~ said land court appointed three Commissioners to make partition, according to the rights of the parties as defined by said judgment. On the 28th of June 1856, the Commissioners reported, that the lands could not be divided. The defendants on the 30th of June 1856, moved to set aside the report, and for the appointment of new commissioners. On the 8th of November 1856, the report of the commissioners was set aside, and new commissioners were appointed. On the 28 of January 1857, the second commissioners ~~to~~ made their report, dividing the land. On the 2d of February 1857, the plaintiff objected to the report, and moved to set the same aside. On the 12th of February 1857, the court referred the report back to the same commissioners, last appointed with instructions to report again. On the 4th of May 1857, the commissioners, last aforesaid made a second report, dividing the land again nearly as before. On the 11th of May 1857, the plaintiff objected to this last report and moved to set the same aside. On the 10th of June 1857, the plaintiff moved to dismiss this suit at his costs, whereupon the court ordered the same to be dismissed accordingly, to

which order of the court, the defendants at the time objected for the following reasons:
First: Because said cause was dismissed more than three terms of this court after the rendition of the judgment of partition without the consent of all parties to said judgment;
Second: Because the plaintiff on his motion can not without the consent of all parties dismiss said cause after the same had progressed as far as said cause had progressed at the time of said dismissal;
Third: Because said judgment of partition herein rendered had been affirmed by the Supreme court more than two years ago, and this court no longer had any control over said judgment;
Fourth Because more than four terms of this court have elapsed since said judgment was rendered, and
Fifth: Because said ~~order of con~~ motion was in all other respects unlawful oppressive and unjust.

At the time the defendants objected to the granting of the motion to dismiss this cause they also requested the court to proceed according to law to the completion of the partition which the court refused to do. The defendants at the time excepted to the dismissal of this cause, and the next day ~~they~~ after the day of the ~~dismissal~~ dismissal, moved to set aside the order of dismissal, which last motion was overruled by the court, and excepted to by the defendants, and

they have brought this case here by a writ of error.

E. Cassellberry atty for defendants.

John C. Ivory
vs
Peter Delor & others

Statement of this case

Filed 18 Oct. 1857
W. S. Glanville
Ck

John C. Ivory
vs
Peter Delore and others

In the Supreme Court
March Term 1858

And now comes said said plaintiff, defendant in Error, and says there is no such Error as are alleged by the Defendants, the plaintiffs in Error.

R. B. Zaeschi for Pltff.

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John C. Ivory

vs

Peter Delore et al

Jaunder in Error

Filed 17 March 1858
W S Glanville
Ch

John C. Svony Deft. in Error } In the Supreme Court
vs } March Term 1858
Peter Delore et ux. et al }

Brief of Defendant in Error.

The Defendant in Error adopts the statement of the case as set for by the plaintiff and submits the following propositions to the Court.

The sole point for the consideration of this court is this: Did the court below err in permitting the plaintiff ~~below~~ to dismiss his suit, at the stage of the proceedings at which ~~such~~ leave was granted?

1st In every partition suit there are two judgments both can not be final, the 1st is therefore necessarily interlocutory – See Sellars practice 2 Vol – p. 218 All not on Partition (vol. 3d of Law Library) page 73. Sec's 14 & 26 Partition Act. Rev. Code 1845 –

2d proceedings in partition under our statute are proceedings at Law – and in any such proceedings a party may suffer a non suit after an interlocutory judgment. a judgment by default in an action of assumpsit, is such a judgment, and the plaintiff may suffer a voluntary non-suit ~~after~~ a default judgment against the defendant in ~~every~~ such case Tidd's Prac. 1st vol. 525 – As to Partition suits See Bacon's Abridgement 4th vol. page 505

3rd The 1st judgment in a partition suit is nothing more than an award of the court, it is an ascertainment of the rights of the parties in the land sought to be divided, and is a preliminary necessary to the partition but does not effect the partition itself, nor does the report of the commissioners; the final judgment of the court alone accomplishes the partition and creates the holding in severalty ~~which the~~ is the only purpose of the suit.

4th - The number of terms which had Elapsed between that at which the interlocutory judgment had been rendered and that at which the ~~leave~~ to dismiss was granted, is of no consequence; there was nothing of a conclusive nature in such a judgment, which was but an intermediate step in the progress of the case, and if after such a judgment the suit could be dismissed at all, it could be so ~~as~~ well at ~~the~~ term subsequent, as at the term at which such a judgment was rendered -

Nor is it perceived how the judgment in the Supreme Court can affect this question, though it may well be doubted whether the appeal ~~to that~~ court was properly taken for it would seem that a writ of Error does not lie on the 1st judgment - Sellons practice 2d Vol. page 219 - Rev. Code 1845 page 901 - also 25 Mo. page 349 - Stephens vs Hume

5th - Were this suit in the nature of proceedings in Chancery the right to dismiss the case at any time before a final decree and after an interlocutory decree would still exist.

Barbour Chancery practice, 1st Vol. p. 228. 1 Dickens Rep. page 281

P. B. Jacobi
for Deft. in Error

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John C. Ivory Deft. in Error

vs

Peter Delore et ux. et al. Plffs. in Error

Brief of Deft. in Error

Filed 29 March 1858
Wm. S. Hammill Ck.

John C. Ivory
vs
Peter Delor & others

In the supreme court of the state of Missouri

Defendant's Brief.

The only question of any importance in this case is whether the plaintiff could without the consent of the defendants dismiss this cause after it had progressed so far.

1. The defendants protested against the dismissal of the case and requested the court to go on and make partition according to the judgment ascertaining the rights of the parties; but the court refused to do so and dismissed the case after the defendants had been at the expense and trouble of a trial in the lower court and this court, and obtained judgment in both courts in their favor. How can the court below set aside or in any manner impair the effects of a judgment in the supreme court? On examining the proceedings of the March Term 1856 of the supreme court in relation to this case it will be found that the judgment of the land court was in "all things" affirmed and ordered to "stand in full force and effect." Where did the land court get its authority to control or interfere with the orders judgments and proceedings of the supreme court?

2. It has been suggested that a writ of error will not lie in this case. We contend

that a writ of error will lie in all cases where an appeal will lie. An appeal was taken from the court below to this court before in this case, and this court took jurisdiction and heard and determined the case at March Term 1856. If this court took juris=diction then, it will certainly do so now, either on appeal or writ of error. The judgment which was affirmed by this Court has certainly lost none of its former vitality.

3. The dismissal of this case is not in the nature of a non suit, but it is in the nature of a judgment against the defendants deny=ing them of a right to a partition of the land which is certainly a "final" judgment.

4. But even if it is not a "final" jud=gment the order of the court overruling the motion to set aside the order of dismissal was certainly and beyond a doubt "a final" judgment from which an appeal or a writ of error would lie. See a printed pamphlet filed with this brief page 235 title "Errors and Apeals" where all of learning of the courts on the subject of a "final" judgment may be found. The synopsis made by the author is a very able and accurate one and will serve to refer this court to all of the leading cases on the subject.

5. After a cause has been determined and the commissioners have been appointed and made a report it is too late to take a non suit. In no case can a non suit be taken after a cause has been submitted

to a jury. This case has not only been submitted to a jury but afterwards to the court below and to the supreme court and then to the commissioners who have brought in their report. Where has there been a single instance in this state allowing a non suit after a cause has progressed thus far?
6. It has been suggested that the court below had discretionary powers in relation to dismissing the case. This is very strange doctrine. According to this doctrine it is merely discretionary as to whether a court will grant partition or not after the commissioners have made a report dividing it. If a court has discretionary powers in this matter they can exercise similar powers in withholding any right after the same has been determined. After a right has been determined the court has no power to withhold it; but must proceed to assist the person to obtain the same.
7. The court below in dismissing this cause not only refused to make partition and deny the rights of the defendants, but set aside its former judgment and the judgment of the supreme court. The errors therefore committed in dismissing the case are <u>first</u> In refusing to make partition <u>second</u> In denying the defendants of their right to partition <u>third</u> In setting aside its own judgment ascertaining the rights of the parties rendered three years before that time <u>fourth</u> In setting aside the judgment of the

Supreme Court rendered March Term 1856, &
fifth In refusing to set aside the order of
dismissal. A writ of error will lie
from all or any one of the five cause
above mentioned. And we are
of the opinion that this court will agree
with us that the lower court committed
all five of the above errors.

We therefore ask that the order
of dismissal of the land court be set aside
and that said court be ordered to
procede with energy and dispatch to
complete the partition according to the
judgment heretofore rendered ascertaining
the rights of the parties.

E. Capelberg atty for the defendants.

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John C. Ivory
vs
Peter Delor & others

Defendants' Brief

Submitted on brief
on the part of the defendants
E. Casselberry atty
for defendants

Filed 6 April 1858.
Wm L Glanville
Ch.

No 86. Irvy v Delore et al.

In a suit for partition there are two judgments, and as the last, which is given on the coming in of the report of Commissioners, is the principal and the final judgment, the first, quod partitio fiat, is only interlocutory, upon which a writ of error will not lie; and the reason given by Bacon for this, is that before final judgment, the plaintiff may be nonsuit. Stephens v Hume 25 Mo. 349. Allnatt on Part. 73. 4 Bacon Abr. 505. And no doubt when this case was here before on another branch of it, the Court overlooked the fact that a final judgment had not been rendered.

Under our statute a plaintiff cannot take a voluntary nonsuit, after the cause is finally submitted to the Court or jury, and therefore the petitioner in an action for partition cannot discontinue after the cause is submitted on the question of confirming the report, but until that stage of the proceeding is reached, we do not see how the plaintiff can be denied, consistently with established rules of law, the right to dismiss.

This is a hard case and it seems unreasonable after it had cost so much time and trouble, and the proceedings had almost ripened into a final judgment, that the plaintiff without any apparent cause should be permitted to dismiss the suit, but the rule is too well settled to be disturbed, and we have no authority to make exceptions to it in order to save hard cases.

If there is a struggle between the parties as to whether the land shall be divided or sold, and

the difficulty in dividing results from the number of parties in interest, it may perhaps be obviated by having the shares of the defendants or a portion of them set off together in one parcel.

The other proposes concurring the judgment will be affirmed

Jno C Richardson

No 86

Ivory
Delone et al

Ofo: of the Court
affirmed

Filed 24 June 1858.
Wm S Leamillee
Ch

Richardson

BRIGHTLY'S UNITED STATES DIGEST---1789 to 1857.

FROM THE ADOPTION OF THE CONSTITUTION

TO THE END OF THE THIRTY-FOURTH CONGRESS.

[CIRCULAR.]

PHILADELPHIA, AUGUST 1857.

SIR,—We beg leave to submit for examination the accompanying Specimen Pages of a DIGEST OF THE LAWS OF THE UNITED STATES (from the Adoption of the Constitution to the end of the Third Session of the Thirty-fourth Congress), now in press and rapidly progressing towards completion; By FREDERICK C. BRIGHTLY, Esq., of the Philadelphia Bar; and respectfully refer you to the following enumeration of the Peculiar Excellences which will characterize this Work.

1. The Matter will be arranged Alphabetically, with Analytical Divisions and Subdivisions under which the Chronological Arrangement will be, as far as possible, preserved.

2. It will possess MARGINAL REFERENCES to each Section, whereby its Contents can be seen at a glance.

3. The NOTES OF JUDICIAL DECISIONS, (including not only those of the Supreme Court of the United States, but also those of the Circuit and District Courts and Court of Claims, many of which are scattered through the Legal Periodicals and not to be found elsewhere, many Decisions of the State Courts, the Opinions of the Attorneys-General and Heads of Departments) will be placed at *the foot of the page*, and will refer to the respective Sections of which they are the Judicial Interpretation. The work will also contain an accurate Table of Cases.

4. The REFERENCES TO THE ACTS will be placed conspicuously in the margin of the page.

5. The CONTENTS will comprise not only the Titles of each Subject, but also the various Subdivisions into which each Title has been distributed.

6. The INDEX will be of unique comprehensiveness and detail, and will refer not only to the Laws, but also to the Constitution of the United States. The matter will be arranged under *Local*, as well as General Titles; for instance, the names of States, Territories, Cities and many of the Ports of the United States will be found in their Alphabetical order, with a Summary of the Legislation in which each of them is interested. The *Section*, as well as the page, will be given; by means of which, greatly increased facility and speed in the use of the work will be obtained, not merely by Professional Gentlemen, but by those unlearned in the Law.

7. In order that Errors may be avoided, the PAGE OF EVERY REFERENCE will be carefully verified (in the case of the Notes, by examination of the Authorities, and in the Index, by comparison with the Text) after the matter is in type.

Lastly. Careful regard as to convenience of Size and Form has been had in the choice of the Type, to produce a book which, though typographically clear and legible, should not be amenable to the charge of *great bulk and unwieldiness.*

The Publishers feel the greatest pleasure in submitting the accompanying Letters from Eminent Jurists and Lawyers throughout the United States, who, after seeing and carefully inspecting printed Specimen Pages, warmly eulogize Mr. Brightly's preparation of this Work.

In order that no impediment may be thrown in the way of the purchase of this DIGEST, but that, on the contrary, it may become a Legal Manual in use in every Court, Law-Chamber, and Counting-House, as well as in the Legislative Halls and Public Offices, we have determined to sell the Work at SIX DOLLARS per copy; and we flatter ourselves that a Law Book so costly in its preparation has rarely before been offered at so low a price.

Your obedient servants,

KAY & BROTHER,

LAW BOOKSELLERS AND PUBLISHERS, 19 SOUTH SIXTH STREET.

BRIGHTLY'S UNITED STATES DIGEST—1789 to 1857.

Extracts from Commendatory Letters.

From the Hon. John McLean, one of the Justices of the Supreme Court of the United States.—The plan of "A Digest of the Laws of the United States, from 1789 to 1857," by Frederick C. Brightly, Esq., which you propose to publish, differs from any one that I have seen; and I have no doubt it will be found a most convenient book of reference by professional men and others.

From the Hon. B. R. Curtis, one of the Justices of the Supreme Court of the United States.—The plan of the work is excellent, and, if executed in the manner promised by the specimen I have received, cannot fail to be of great utility to the Bench and Bar of our country.

From the Hon. George P. Scarburgh, Judge of the Court of Claims, Washington, D. C.—The preparation of such a Digest by a competent Lawyer has been long desired by the Profession. The necessity for it has been felt by every man who has ever had occasion to consult the Statutes of the United States. The plan of the work is admirable, and its execution entirely satisfactory.

From the Hon. J. J. Gilchrist, Judge of the Court of Claims, Washington, D. C.—I think the work, if completed as faithfully as the specimen, will be of the greatest value to all who have occasion to examine the Acts of Congress. The legislation of that body is so inartificial, and so many subjects having no connexion with each other are so often found in places where no one would naturally look for them, that a work of the kind you propose would be of the greatest importance.

From the Hon. Isaac Blackford, Judge of the Court of Claims, Washington, D. C.—It affords me pleasure to say that the work, in my opinion, will be exceedingly valuable.

From M. Blair, Esq., Solicitor for the United States, in the Court of Claims.—The plan of the work and its execution, so far as this sheet exhibits it, seem to me to be unrivalled. Gordon's is still the best Digest of these laws, in my opinion, but his last edition is now six years old, and the arrangement of Mr. Brightly is not only far preferable for business men, all of whom ought to have such a work, but is more convenient even for the Profession. It is the general arrangement now adopted in most of the State Digests, and its general use is the best evidence of its superiority. But none of them approach the completeness of this. And besides the arrangement of the law under appropriate letters in alphabetical order, the judicial exposition it has received is subjoined in notes at the foot of the page, where the points decided are briefly but clearly expressed—and this, perhaps the most difficult part of the work, seems also, so far as the specimen enables me to judge, to be thoroughly and admirably done.

From Benjamin C. Howard, Esq., Reporter of the Supreme Court of the United States.—The titles "Constitution of the United States," "Errors and Appeals" and "Evidence," abound with notes of the most valuable kind; and I think the work will be a great acquisition to any professional gentleman whose practice is in the Courts of the United States.

From the Hon. John Anthony Winslow, Governor of Alabama.—I have no hesitancy in saying that I think the work will be one of great utility and convenience to many classes of the citizens outside of the Legal Profession.

From the Hon. John Foster, Chancellor of the Northern Division of Alabama.—Both the plan and execution of the work seem to me admirable. It will supply a want long felt by the Profession. There are many peculiar features in the arrangements, which seem to me great improvements over any similar work with which I am acquainted. The "Digest" will not only be a valuable and almost indispensable acquisition to the Library of the Lawyer, but must prove highly useful to the statesman and man of business.

From the Hon. J. B. Clark, Chancellor of the Middle Division of Alabama.—The arrangement is everything which the most fastidious can desire, and the notes will be invaluable.

From the Hon. W. Keyes, Chancellor of the Southern Division of Alabama.—I am very much pleased with the plan and the specimen pages of Mr. Brightly's "United States Digest."

From the Hon. S. D. Hale, Judge of the Fifth Judicial Circuit of Alabama.—If your circular and these pages correctly indicate what the work will be, its completion will entitle the Editor to the esteem of every citizen, and the profound gratitude of every member of the Bar in the Union. I would give ten times your price for this Digest rather than be without it. To the Legal Profession it will be invaluable.

From the Hon. E. H. English, Chief Justice of Arkansas.—The plan of the work is the very best, and the specimen pages are well executed. Such a Digest is much wanted; and, no doubt, from the high reputation of the Author, it will be generally encouraged by the Profession. I hope very soon to have a copy of it in our Library.

From the Hon. H. F. Fairchild, Chancellor of Pulaski County, Arkansas.—I am sure that if the whole work be combined and annotated as these pages are, it will be the best work of the kind that I have ever seen. Such a book will much assist any Lawyer

that consults it, and will find its way to intelligent and thorough Lawyers.

From the Hon. Felix J. Batson, Judge of the Fourth Circuit Court of Arkansas.—I am highly pleased with the specimen pages of the "United States Digest" by Mr. Brightly. I think the admirable plan, the superior execution and the low price at which the book is offered, should cause it to find a purchaser in the person of each member of the Profession, and business man. I have submitted the pages to several members of the Bar, who concur with me in opinion as to the worth of the book, and desire to become purchasers.

From the Hon. W. C. Bevens, Judge of the Third Judicial Circuit of Arkansas.—The work, as a comprehensive text-book of high authority, will be an invaluable acquisition. As a design, it is nobly executed. The plan and arrangement in every way commendable. The execution of this work, itself the evidence of so much industry and accuracy, commands for the Author the acknowledgments of the Profession.

From J. W. McConaughey, Esq., Land Attorney and State Collector of Arkansas.—The design of the work is well conceived—reflects great credit upon the compiler; and, when completed, in my opinion, cannot fail to meet the demands of, and be acceptable to the country, the Bench and the Bar.

From L. E. Barber, Esq., State Reporter of Arkansas.—If finished throughout as begun, it will be a work of much convenience to all having to consult the Laws of the United States, and the decisions touching them; its plan will be fully approved by the Profession; its accuracy cannot be questioned.

From the Hon. M. Hall McAllister, Judge of the United States Circuit Court for the District of California.—I can only say, that, in my opinion, the plan proposed, and of which the specimen gives earnest, is one demanded by the wants of the country, and will not only prove acceptable to the Profession, but will place a valuable work in the hands of the mercantile and other classes of our common country.

From the Hon. Ogden Hoffman, Judge of the United States District Court for the Northern District of California.—The plan of the work seems to me admirable. It will supply a want long felt by the Profession, and will, I have little doubt, be found indispensable to all whose business it is to make or administer the laws, as well as to the practising Lawyer.

From the Hon. D. O. Shattuck, Judge of the Superior Court of San Francisco.—I must say I very highly approve of the work, and shall esteem it a very important acquisition to my Library when I can procure a copy of it. The design seems to me most admirable; and if the specimen sheets sent me are anything like a fair specimen of the whole, Mr. Brightly's industry and method in getting it up are worthy of all praise, and will command the thanks and obligations of the Profession. I can think of no more useful book for a Lawyer's Library.

From the Hon. John S. Hager, Judge of the Fourth District Court of California.—In my judgment the work will merit and secure universal approbation from the Profession, and be useful to our citizens generally.

From the Hon. Wm. T. Barbour, Judge of the Tenth District Court of California.—I think its arrangement and plan most admirable, and as a work of reference invaluable to the Profession. The analysis of the several subjects, with the copious notes, must greatly facilitate the labor otherwise required in the examination of the United States Laws. I have seen no similar work I like so well.

From the Hon. P. Ord, United States District Attorney for the Southern District of California.—I approve the plan of the work and the manner of its execution, as far as shown by the specimen pages. I believe the Digest of Mr. Brightly will be a valuable work to the Profession.

From the Hon. Henry M. Waite, late Chief Justice of Connecticut.—The design appears to be to bring a great amount of valuable information upon legal subjects within a small compass, convenient for use; and I think the treatise will be found highly useful and valuable to the members of the Legal Profession.

From the Hon. D. C. Sanford, Judge of the Supreme Court of Errors and Superior Court of Connecticut.—The plan of the work seems to me judicious, and I have in a considerable number of instances verified its accuracy by reference to the statutes and reports. A work of this kind faithfully executed is much needed, and will greatly facilitate the labors of the Profession, and of all who have occasion to ascertain what the law is in reference to the enactments of the Federal Legislature. I have no doubt that this work will be eminently worthy of the patronage of the Profession and of the public.

From the Hon. Charles J. McCurdy, Judge of the Supreme Court of Errors and Superior Court of Connecticut.—I feel bound to say that I greatly admire both the plan and the execution. In relation to the necessity of a thorough knowledge of the enactments of our Supreme Legislature there can be no question; and the construction which has been given to them by the decisions of Courts, and the opinions of learned commentators, is hardly

less important than the laws themselves. A publication embracing the whole in a moderate space will, as it seems to me, be invaluable to the Lawyer, the Statesman and the Judge.

From the Hon. Charles A. Ingersoll, Judge of the District Court of the United States for the District of Connecticut.—The plan of the book cannot but be approved by every Lawyer; and if faithfully executed, the work will be a most invaluable one. Judging from the specimen pages, which I have examined, the work, when finished, will be worthy of the plan, and will greatly add to the high reputation which Mr. Brightly has already deservedly acquired.

From the Hon. S. M. Harrington, Chief Justice of Delaware.—Your specimen sheet of Mr. Brightly's forthcoming "Digest of the Laws of the United States" is sufficient, even without the aid of his established reputation for accuracy and ability in this line, to assure the Profession that a much-needed work is about to be supplied, in the best mode of arrangement, citation, and reference, with the best style of printing.

From the Hon. Willard Hall, Judge of the District Court of the United States, for the District of Delaware.—The work you are publishing, "United States Digest, from 1789 to 1857," by Frederick C. Brightly, Esq., is much needed. The Statutes at Large are in seven thick octavo volumes (to 1855), with very defective indexes to the volumes, little aided by the synoptical index. This Digest will be invaluable to every one having occasion to consult these statutes, or desirous to learn the law upon any subject of them. The comprehensiveness, accuracy and ability evinced in the specimen pages, leave nothing to be desired in these respects. The moderate price, six dollars, for such a work, makes it a favor.

From the Hon. Edward Wootten, Associate Judge, Sussex County, Delaware.—The order of arrangement I think is very good, and such a Digest, with the proposed references and notes of judicial decisions, is doubtless admirably adapted to the wants and convenience of the Profession.

From the Hon. Thomas Baltzell, Chief Justice of Florida.—The arrangement seems to be very excellent, the notes very concise, yet full and complete, and contributing greatly to the value of the work, and the whole work admirably suited to the purpose. Such a book is a necessity of the times, and, executed as is proposed, I see no reason to wish for anything better. What is more, the low price puts it within the reach of almost every citizen.

From the Hon. Wm. Marvin, Judge of the United States District Court for the Southern District of Florida.—I beg you will do me the favor to send me a copy of the work as soon as published. The work promises to be just the thing the Profession has long wanted. It will save the Bench and Bar an immense amount of labor in hunting up the law on any subject embraced in the Digest.

From the Hon. McQueen McIntosh, Judge of the United States District Court for the Northern District of Florida.—I am most favorably impressed with the convenient and judicious arrangement of the proposed work. I have no doubt that it will prove eminently useful to the Legal Profession as well as to those Public Officers whose duties require frequent reference to the Laws of the United States, and the adjudications of the Courts upon them. I shall avail myself of the earliest opportunity to procure a copy after publication.

P. S. As I had concluded the foregoing, Mr. Louis J. Fleming, a member of the Bar at this place, came in, and, upon looking at the specimen pages of the Digest, expressed himself much pleased with the plan of the work, and, with myself, desires to be considered a subscriber thereto.

From the Hon. Wm. A. Forward, Judge of the Circuit Court of the Eastern Circuit of Florida.—From the peculiar features enumerated as those which will characterize this book, also from an examination of the specimen sheets, I think it superior to any work of the kind I have seen; and, the fact that the Notes contain the *Decisions of the State Courts*, will make it of additional value to the practitioner in the respective States.

From the Hon. Joseph Henry Lumpkin, Judge of the Supreme Court of Georgia.—The whole plan is admirable, expecially the copious Notes of Judicial Decisions at the foot of the page. Mr. Thomas B. B Cobb, brother of the Secretary of the Treasury, late Reporter to the Supreme Court of Georgia, and Author of the last Digest of the Laws of this State, was present when your communication was received. Glancing over the sheets, he remarked: "I will give you five dollars for this. It has saved me two days' hard labor in my office." I deemed this incident worth relating, and a better attestation of the merit of the work than any general praise which I might bestow upon it. Mr. Cobb cordially concurs in commending the Digest.

From the Hon. John C. Nicoll, Judge of the United States District Court for the Northern and Southern Districts of Georgia.—The Statutes of a State are enforced, and, of course, understood and accepted, in the sense in which they are interpreted by its highest judicial tribunals. No mode, therefore, suggests itself to my mind as more admirably adapted to present, at a single view, the laws of the United States, than that adopted by Mr. Brightly, of placing, in juxtaposition with the enactments of Congress, the expositions which they have received from the judiciary. The two together constitute the law: the statute as construed is the law. If I may be authorized to form an opinion of the execution of the work from the specimen pages, as I am confident I may, I feel assured that Mr. B. will have conferred an obligation upon the Profession, and the public generally, by furnishing them with a more comprehensive, compendious, and, at the same time, complete and less costly Digest of the Laws of the United States than has yet been within their reach.

From the Hon. David Irwin, formerly Judge of the Blue Ridge Circuit, Georgia.—I do not hesitate to say that both in arrangement and matter it suppasses anything of the kind I have seen, and that the work, when completed, cannot fail to meet the approbation of the Legal Profession throughout the Union, and I will add that in my opinion such a work should be found in the Library of every practising Lawyer.

From the Hon. D. M. Woodson, Judge of the First Circuit Court of Illinois.—I cannot hesitate to express the opinion that the Book will be an exceedingly useful one, and admirably adapted to the wants and practical purposes of the Profession, and not less so to the public and business men generally.

From the Hon. William K. Parrish, Judge of the Third Circuit Court of Illinois.—I take pleasure in saying, that I regard the plan adopted by the Editor as much the best that has yet appeared.

From the Hon. P. H. Walker, Judge of the Fifth Circuit Court of Illinois.—The plan, in my opinion, is very complete, and better than that of any similar work. The arrangement is very convenient. The marginal notes and references to adjudged cases, under the different sections of the various statutes, seem to have been prepared with unusual care and accuracy, and form a most valuable feature of the Digest. Such a Digest is much needed, and I think this deserves to and will supersede all previous Digests of the laws of the United States.

From the Hon. J. Sibley, Judge of the Fifteenth Circuit Court of Illinois.—I am satisfied that the execution of the work will meet with universal favor. The plan adopted in arranging the subject with Marginal References to the contents of each Section, and the dates of the passage of the different acts, together with Notes at the foot of the pages referring to the numerous decisions upon the matter of the text, is an excellent one. The want of such a work has been seriously felt among the Profession, especially in the country where the Statutes at Large are obtained with difficulty, or sometimes rendered useless from being too voluminous for hasty perusal. And the distinguished Author, by the production of a work that obviates these difficulties, has placed the public under many obligations to him.

From the Hon. E. N. Powell, Judge of the Sixteenth Circuit Court of Illinois.—Such a book is much needed, and, with the Notes of Judicial Decisions, will be very valuable to the Legal Profession, as well as to others. The plan of the work is admirable.

From the Hon. W. Z. Stuart, Judge of the Supreme Court of Indiana.—There can be but one opinion of its great utility. It will be a Law Library in itself, invaluable to both Bench and Bar. The decisions of the highest Court in the Union should be more familiar to the Profession than they have hitherto been. Mr. Brightly's Notes will contribute largely to that desirable end.

From the Hon. S. B. Gookins, Judge of the Supreme Court of Indiana.—It is refreshing to meet, now and then, with a work which furnishes reliable law in a condensed and methodical form. If the specimens sent me are fair samples of the work, these qualities will characterize the Digest in a high degree. I cheerfully recommend it to the Profession.

From the Hon. Samuel E. Perkins, Judge of the Supreme Court of Indiana.—I have no hesitation in saying that, if the entire work shall exhibit the same care and ability in preparation and style of mechanical execution (and I doubt not it will), the volume will be one of the cheapest, most valuable and useful ever given to the Legal Profession of the United States. At the same time it must be a very desirable book to public men, and to all citizens aspiring to become such.

From the Hon. A. C. Downey, Judge of the First Circuit Court of Indiana.—In my opinion the work will not only be of great convenience and utility, but almost indispensable. The Statutes of the United States are now in so many volumes, and the adjudications and opinions in reference to them scattered through so many books and publications, that a work embodying their substance and containing a reference to them, cannot fail to be of great value.

From the Hon. Geo. A. Bicknell, President Judge of the Second Circuit Court of Indiana.—I think it will be a very useful work. The plan is excellent, the execution accurate and thorough. The Notes exhibit great industry. Altogether, I think it better than any other Digest I have yet seen.

From the Hon. Joseph Anthony, President Judge of the Seventh Circuit Court of Indiana.—Such a Digest of the laws of the United States as you propose publishing, must be very gratifying and beneficial to every legal gentleman. I think the Profession stands in need of exactly such a work. The contemplated work would certainly be valuable, indeed almost indispensable, in his library as a book of convenient reference, if nothing more. Such a book would enable him at any moment, at a glance, to look over the whole field to its date, and insure accuracy, certainty, and duty to clients and Courts and all concerned at a small expense and great relief from embarrassing labor and loss of time.

From the Hon. Thomas J. Stanfield, Judge of the Ninth Circuit Court of Indiana.—I am satisfied that it will be of great value, and especially in this part of the country, where the laws of the United States are seldom found in any of our lawyers' offices.

From the Hon. Elisha Egbert, Judge of the Common Pleas for the Counties of St. Joseph, Marshall and Starke, Indiana.—In my judgment the whole plan of the work is judicious and excellent. It will be a work of much value. Indeed it could not be otherwise, coming, as it does, from the hands of one so learned and justly eminent in his Profession. It should, and doubtless will, find a place in the library of every Lawyer and Statesman.

From the Hon. Joseph H. Mallock, Judge of the Common Pleas for the Counties of Wabash and Kosciusko, Indiana.—I think the design and arrangement of the work, as exhibited in those pages, very excellent, and adapted to the wants of the Profession and the public.

From the Hon. F. T. Brown, Judge of the Common Pleas for the Counties of Clay, Owen, Greene and Sullivan, Indiana.—The sub-

ject-matter, and the reputation of Mr. Brightly for industry, research and a clear discriminating judgment, guaranties success. The work is indispensable to practitioners in the Federal and Territorial Courts.

From the Hon. E. M. Metcalfe, Judge of the Common Pleas for the Counties of Lagrange and Elkhart, Indiana.—I must say that I think the matter and manner, both in arrangement and contents, are entirely superior, and that the general plan of the work, together with its completeness, backed up by the just eminence of its author, *must* make it indispensable to the Legal and business public.

From the Hon. C. E. Walker, Judge of the Common Pleas of Jefferson County, Indiana.—I am highly pleased with the plan and execution of the work. Both for purposes of reference and study, it is I think the best plan as yet devised; much preferable to a mere chronological arrangement.

From the Hon. Henry S. Kelley, Judge of the Common Pleas for the Counties of Delaware, Blackford and Grant, Indiana.—I am fully satisfied from the ability manifested in the arrangement and in the execution of the work, that it will be universally approved by the Profession.

From the Hon. Frederick W. Matthis, Judge of the Common Pleas for the Counties of Crawford, Orange, Washington and Harrison, Indiana.—The publication of such a work will be a useful acquisition to the country, and especially the Legal Profession. The peculiar features of the Digest highly recommend it; and the character of the learned Author for accuracy will insure a favorable reception of the new work.

From the Hon. N. T. Hauser, Judge of the Common Pleas for the County of Bartholomew, Indiana. I am much pleased to say that it is just such a work as will answer fully the purpose proposed. The plan of your "Digest" is admirably convenient and comprehensive, yet conveniently compendious and perspicuous, and I feel quite sure will commend itself to the Bench and the Bar.

From the Hon. L. C. Dougherty, Judge of the Common Pleas for the Counties of Boone and Montgomery, Indiana.—I feel exceeding pleasure in saying that it is not only a work of great learning, perspicuity and superior arrangement, but that it is one which, on account of the wide range and compass embraced by the plan, and the truly admirable condensation of the whole work, will be able to supply the place of many other books, and thus be a great saving of expense to the purchaser.

From the Hon. Carter D. Hathaway, Judge of the Common Pleas for the Counties of Pulaski and Fulton, Indiana.—The work is much needed, and in my opinion the plan suggested most admirable.

From the Hon. J. C. Applegate, Judge of the Common Pleas for the Counties of Carroll and Clinton, Indiana.—With the general appearance of the work, its arrangement, &c., I am highly pleased. Indeed I cannot speak too highly of it. I have long and often found myself in want of just such a work. I think no intelligent Judge or Attorney will long be without a copy of the Digest in his Library.

From the Hon. R. A. Clements, Judge of the Common Pleas for the Counties of Pike, Knox, Daviess and Martin, Indiana.—The arrangement is good, and, if carried out, I have no hesitation in saying that the Digest will prove eminently useful to the Profession, as well as all others who may have occasion to refer to the enactments of the National Legislature, and the decisions which have been made in relation thereto.

From Gordon Tanner, Esq., State Librarian, Indiana.—The arrangement of the text and marginal references is excellent; and the foot notes are very full and valuable. I like the plan of the work, and I believe it will meet with general favor from the Profession.

From the Hon. L. D. Stockton, Judge of the Supreme Court of Iowa.—I am exceedingly well pleased with the plan of the work, and with its execution.

From the Hon. W. G. Woodward, Judge of the Supreme Court of Iowa.—I am rejoiced to see such a work in progress. The collection of subjects, and the reference to adjudged cases, will greatly facilitate the labors of the Lawyer and the Judge.

From the Hon. H. B. Hendershott, Judge of the Third Judicial District of Iowa.—The Laws of the United States had grown so voluminous as to render a work of the kind indispensable, not only to the Lawyer and Judge, but also to the Legislator, officer and business man. The perspicuity of the work, its marginal references, notes of judicial decisions, alphabetical, chronological, analytical and other excellencies, will make it invaluable. While Mr. Brightly's work may be regarded as a Digest of the Laws of the United States, it promises to be a most satisfactory and reliable Digest of the decisions of the State and Federal Courts on questions of construction, always most difficult and perplexing to Bench and Bar.

From the Hon. Wm. Smyth, Judge of the Fourth District Court of Iowa.—I have examined the specimen sheet with much care, and take pleasure in saying, that, judging from the specimen, the plan, as well as the execution, is admirable; I am not aware how either would admit of improvement.

From the Hon. Wm. H. Tuthill, Judge of the Eighth Judicial District of Iowa.—I consider the plan an excellent one, valuable alike for its comprehensiveness and its simplicity, and have no doubt it will commend itself to the Profession as a work of sterling merit.

From the Hon. John S. Townsend, Judge of the Ninth Judicial District of Iowa.—I do not hesitate to say that the conception of the plan, as well as its execution, is excellent. Mr. Brightly is entitled to the thanks of the Profession for thus bringing within the reach of all an accurate and reliable Digest of the cumbrous body of the acts of Congress, and rendering a reference thereto, as well as the judicial interpretation thereof, so comparatively easy. The sheets before me afford abundant proof that the work will be of great practical utility, and worthy a place in every Lawyer's Library.

From the Hon. Samuel Murdock, Judge of the Tenth Judicial District of Iowa.—The plan of the work is an excellent one. Such a work is very much needed throughout our whole country. It will be the means of placing the laws within the reach of all, and its Author is entitled to great credit, and, I trust, may be well supported in the labor he has undertaken. I take great pleasure in recommending it to the Legal Profession.

From the Hon. B. Mills Crenshaw, Chief Justice of the Court of Appeals of Kentucky.—The plan of the work is, in my opinion, an admirable one. It is a work much needed, not only by the Legal Profession, but by the community at large, and must receive general approval and patronage.

From the Hon. James Simpson, Judge of the Court of Appeals of Kentucky.—The plan of the work is well adapted to meet the wants of the Profession; and the book, when completed, will, without doubt, form a valuable acquisition, as a book of reference, not only to every member of the Bar, but also to every public Library in the United States.

From the Hon. Thomas E. Bramlette, Judge of the Sixth Judicial District of Kentucky.—Having carefully examined the specimen pages, it affords me pleasure to say that the plan and the execution of the work commend it to the Profession as of great merit. I regard it as superior to any Digest I have ever seen, both in the plan and style of execution. A Lawyer's Library cannot be complete without this very valuable Digest.

From the Hon. W. C. Goodloe, Judge of the Thirteenth Circuit Court of Kentucky.—I have examined with care and satisfaction, the specimen pages of the United States Digest you propose to publish. The editor, Mr. Brightly, has adopted a new and much improved plan, which will greatly facilitate reference and clearness of comprehension. You and he will place the profession under many obligations, for so cheap and valuable an addition to our Law Libraries.

From B. Monroe, Esq., State Reporter of Kentucky.—I am satisfied that the plan of the work is judicious, and is a work which must be well received by the legal profession throughout the country. I wish a copy as soon as published.

From the Hon. J. W. Hathaway, Judge of the Superior Judicial Court of Maine.—I think the plan is good, the work is needed, and that it will be very useful.

From the Hon. Seth May, Judge of the Supreme Court of Maine.—I do not hesitate to say, that in my judgment the work will be found to be of great utility, not only to the lawyer and statesman, but to all classes in the community who may have occasion to know much of the statutory provisions of the Federal Government under which we live.

From the Hon. Jonas Cutting, Judge of the Supreme Court of Maine.—On the receipt of the specimen sheets of Mr. Brightly's Digest, I was about purchasing the Laws of the United States in eleven volumes, at an expense of fifty dollars, more or less; but on an examination of the sheets, I have become satisfied that for all practical purposes, and at one-eighth of the cost, the proposed Digest, with its Alphabetical Arrangement, Analytical Divisions, Notes of Judicial Decisions, References to the Acts, &c., is preferable to the Congress edition of the entire Statutes. And to show my faith by my works, I authorize you to consider me a subscriber for one copy of the forthcoming edition.

From the Hon. Ashur Ware, Judge of the District Court of the United States for the District of Maine.—The convenience of having the general Statute Law of the country, now confusedly spread through seven large volumes, brought within the compass of a single volume and systematically arranged, if nothing more were done, would be very great. The addition of short notes of the decisions of the courts, forming a perpetual commentary on the text, gives to the work a great additional value. Judging from the specimen, Mr. Brightly appears to have executed the work with great industry and fidelity, and if the whole is finished with the same care, it will be a work all but indispensable to every man, professional or otherwise, who has frequent occasion to consult the statutes.

From W. H. Farrar, Esq., U. S. District Attorney, Maine.—I am highly pleased with the plan of the proposed work, and the evident care, research and learning exhibited in its preparation. A Digest of this character has been required for a long period by members of the Profession. In my judgment, Mr. Brightly's work will prove eminently valuable to all who have occasion to consult the Constitution and the laws of the United States, and the construction given thereto by its courts.

From John M. Adams, Esq., State Reporter, Maine.—I am satisfied it is a work of high merit and great value. The law is well stated, the references are full and the arrangement is admirable. It must prove a valuable acquisition not only to the Legal Profession, but also to legislators and business men. To lawyers who are unable to possess the United States Statutes at Large, this volume will be indispensable, and even those who have them, will hardly forego the advantages afforded by it, for easy reference to the various provisions of the statutes and the decided cases relating to them.

From the Hon. John C. Le Grand, C. J., and the Hon. John B. Eccleston, William H. Tuck, and John Thomson Mason, Associate Justices of the Court of Appeals of Maryland.—We have examined specimen pages of Mr. Brightly's proposed Digest of the Statutes of the United States. They plainly indicate it will be a work of great usefulness to the profession and the public generally. A clear and comprehensive Analysis of the Laws of the United States under titles Alphabetically arranged, is, in our opinion, decidedly preferable to one on the Chronological System, both for purposes of reference and general study. The notes of Judicial Decisions, interpreting the various parts of the text, constitute a valuable accompaniment to it. We cannot hesitate to commend it to the favor of the Profession and the public.

From the Hon. L. Collins Lee, Judge of the Superior Court of Maryland.—I do not hesitate to join in recommending the proposed work; it will be highly valuable to the Bench and Bar of

the country by facilitating the references so often required to the laws of the United States and the judicial decisions under them. The plan adopted is an admirable one, and I shall be glad to receive a copy of the Digest when it is completed and published.

From the Hon. William F. Giles, Judge of the District Court of the United States for Maryland.—I believe it will prove a most valuable work to the Profession. The Notes of the decided cases at the bottom of each page will save much labor to the Bench and Bar, who have now, in reference to any disputed construction of a statute, to search through some fourteen volumes of Digests to ascertain if the Courts of the United States have decided its true meaning.

From the Hon. John H. Clifford, Attorney-General of Massachusetts.—I have examined with much interest the specimen sheets of your proposed Digest of the Laws of the United States, which you did me the favor to send me. If Mr. Brightly gives to the preparation of the entire work the same degree of diligence, discrimination, thoroughness and accuracy, which characterize these opening chapters, he will make a substantial addition to his already well won reputation, and render a most important service to the Profession. The increasing interest which the constantly recurring exigencies of our national life and progress impart to questions of constitutional law, must create a corresponding demand for a work of this character; and, while it will be an indispensable volume for the Library of every "well-furnished" Lawyer in every State and Territory of our wide-spread Confederacy, it cannot fail, I think, to commend itself to that large class of non-professional readers, who are instrumental in shaping the legislation of the several States, and of the nation.

From Professor Parsons of Cambridge, Massachusetts (Author of Parsons on Contracts, &c.).—A Digest of the Statutes of the United States, made in conformity with the specimen sheets you have sent me, would supply a pressing want, and be a most valuable and useful book.

From the Hon. Joseph J. Copeland, Judge of the Supreme Court of Michigan.—I can express no other opinion, than that the work will receive the commendation of every enlightened Lawyer, Statesman and Merchant, and find a place in their respective Libraries.

From the Hon. George A. Coe, Lieutenant-Governor of Michigan.—The plan, it seems to me, is admirable; and its execution, judging from the specimen pages, is worthy of the plan.

From the Hon. J. M. Howard, Attorney-General of Michigan.—They indicate that his plan is a judicious and useful one; I shall be happy to see the work published. His references to adjudged cases add greatly to its value. Sound Judges and Lawyers will be particularly obliged to him for multiplying them, for they constitute the true key to the Statutes.

From the Hon. John McKinney, Secretary of State of Michigan.—Allow me frankly to say I am much pleased with the arrangement of the Digest, and with the collation and compilation of cases, decisions and authorities. I doubt not, it will be found an invaluable reference for all who may wish to familiarize themselves with their duties and privileges professionally, or their rights and responsibilities as citizens.

From the Hon. A. H. Handy, Judge of the High Court of Errors and Appeals of Mississippi.—I have examined the pages sent; and, if the plan and arrangement shown by the specimen are carried out, I think it will be an invaluable acquisition to our Libraries—for it not only presents the Statutes of the United States in a clear and well arranged form, but the copious References to the decisions of the Courts settling the construction of those statutes, make it a Digest of judicial decisions upon those points, which cannot fail to render it most useful and convenient in practice.

From the Hon. B. C. Buckley, Vice-Chancellor of the Southern District of Mississippi.—It will not only serve as a convenient reference, but will be almost indispensable to the Legal Profession.

From the Hon. S. S. Wright, Vice-Chancellor of the Middle District of Mississippi.—If completed as commenced it will, in my estimation, be the most valuable contribution to the Profession that has been made in many years. It will certainly be of great assistance to those whose professional engagements lead them often into the United States Courts, and who necessarily "keep up" with the national legislation; but to the majority of the Bar, whose field of labor is in the State Tribunals, with occasional retainers in the Federal Courts, it will be indispensable and invaluable; supplying information at once, which they could only obtain, if at all, after great labor, and perhaps much expense.

From the Hon. J. S. Yerger, Judge of the Third Circuit Court of Mississippi.—Such a book has been long a public and professional necessity. The public and the Profession are fortunate in having one so competent and learned as Mr. Brightly to supply their needs. His learning, ability and persevering care furnish ample assurance that the work when performed will be deserving of confidence and patronage. The plan adopted is the most plain, useful and advantageous that skill and learning could suggest. If the work is carried through according to the specimen (and the character of Mr. Brightly does not allow a doubt of it), the book will be all that can be desired for public and professional use.

From the Hon. W. L. Harris, Judge of the Sixth Circuit Court of Mississippi.—The great comprehensiveness of the matter of the Digest—including, as it proposes, the Constitution and Laws of the United States to 1857, with an authoritative exposition by the highest tribunal—so far as they have been subjected to judicial construction—together with the admirable simplicity and convenience of its arrangement, all in convenient form for easy reference, and at the low price of six dollars, render it, in my judgment, a great desideratum to the Profession, as well as to business men generally throughout the Union.

From the Hon. Carty Wells, Judge of the Third Circuit Court of Missouri.—I consider the plan of the work an excellent one—indeed much the best I have seen—being comprehensive, perspicuous and simple. That it will be of incalculable advantage to the Profession, I have no doubt.

From the Hon. George W. Dunn, Judge of the Sixth Circuit Court of Missouri.—The work will be one of great utility. It will doubtless receive, as it will deserve, a wide circulation.

From the Hon. James K. Sheley, Judge of the Court of Common Pleas of Missouri. I do not hesitate, so far as I can judge from the specimen pages before me, to declare it as my opinion that the book, both in its plan and execution, is admirable, and will be one of great value to the Profession.

From the Hon. Edward Bates, Judge of the Land Court of Missouri.—I am greatly pleased with the prospect of now becoming the owner of such a book as the Digest promises to be. I do not doubt that the plan is excellent, but beyond that, it has an excellence which cannot fail to make it greatly valuable in all the New States and Territories, where good Law Libraries are scarce, even in the larger towns, and where Judges and Counsellors are often obliged to act definitively with the aid of very few books. Under such circumstances, the Digest, abounding, as it does, with references to adjudged cases, and those references made by a man of known learning and reliable accuracy, will be of incalculable value, both to Judges and to practising Lawyers.

From the Hon. Jonathan Kittridge, Chief Justice of the Court of Common Pleas of New Hampshire.—I believe it will be a very excellent work, and have no doubt that it will prove very useful to all, and indispensable to that part of the Profession who have occasion to consult, to any considerable extent, the Laws of the United States.

From the Hon. Jonathan E. Sargent, Judge of the Court of Common Pleas of New Hampshire.—I think that the plan of the book is admirable, and that, in its general arrangement and execution, it is superior to any other Digest that has fallen under my observation. I know of no greater service that the Author could well have undertaken to perform for the Legal Profession. While heretofore, owing to the cumbrous body of our Congressional enactments, and the difficulty of access to them, comparatively few have paid much attention to that department of the Law, this work will bring within the reach of every gentleman of the Profession a summary of the Laws of the United States, with references to the various decisions on all the various subjects embraced in them, in a convenient form and at a comparatively trifling expense. I cannot doubt that the intrinsic merits of this work will insure for it a rapid and an extensive sale.

From the Hon. Matthew Harvey, Judge of the District Court of the United States for New Hampshire.—I can have no doubt that, to every one who is required to consult the voluminous Statutes of the United States, a Digest, upon the plan you have proposed, will be a most useful and often consulted addition to the Library.

From the Hon. B. Williamson, Chancellor of New Jersey.—The proposed edition of Mr. Brightly's Digest of the Laws of the United States, with the accompanying notes of judicial decisions, promises to be a most valuable addition to the library of the Lawyer. Such a Digest is greatly needed; and executed upon the plan proposed cannot but be most acceptable to the Bench and Bar.

From the Hon. Henry W. Green, Chief Justice of the Supreme Court of New Jersey.—The plan and the execution of the work are alike admirable. Experience shows that a Digest of the Laws, upon the plan of this work, will for all practical purposes supersede every other form of publication. It unites compactness with facility of reference, and presents the entire Law upon any given subject in connexion with its authorized construction.

From the Hon. L. Q. C. Elmer, Judge of the Supreme Court of New Jersey.—I have no doubt that it will fully equal his excellent edition of Purdon, and entirely satisfy those who have occasion to consult such a work.

From the Hon. Stacy G. Potts, Judge of the Supreme Court of New Jersey.—The arrangement appears to be judicious; and the Notes, which seem to be prepared with great care and labor, will render the work eminently useful to the Profession. At the very low price at which it is proposed to be furnished, it must certainly receive an extensive patronage.

From the Hon. H. R. Selden, Lieutenant-Governor of New York.—I have no hesitation in saying that the work will be exceedingly valuable, not to the Legal Profession only, but to nearly all classes of business men. I think its arrangement is calculated to make it more practically useful than any Digest with which I am acquainted.

From the Hon. Thomas A. Johnson, Judge of the Court of Appeals of New York.—I can most cordially commend it to the Profession and to the public generally. The design is admirable, and the reputation of Mr. Brightly is a sufficient guarantee that the plan will be carried out in such a manner as to render it a standard work. The need of something of this kind has long been felt by professional men, and from the specimen furnished I have no doubt whatever of the complete success of the work.

From the Hon. Wm. Mitchell, Judge of the Court of Appeals of New York.—The plan of arrangement according to subjects, is far more convenient than when all the acts relating to the same matter are left to be sought for through the statute book; and, if carefully made (as I would presume this is) it will be very valuable to the professional man, and still more so to those not familiar with the laws. The notes appear to me to be carefully and judiciously prepared.

From the Hon. Alexander S. Johnson, Judge of the Court of Appeals of New York.—The plan of the Digest seems to be well calculated to render the book useful, and the execution of the fourteen pages which I have seen, promises well for the general merit of the work.

From the Hon. C. L. Allen, Judge of the Supreme Court of New York.—The plan of the work is well conceived, and, if completed in the manner proposed in the circular and exhibited in the specimen, I have little doubt but that it will become, as you engage to make it, "a Legal Manual in use in every Court, Law Chamber and counting-house, as well as in the Legislative Halls and Public Offices."

From the Hon. George Gould, Judge of the Supreme Court of New York.—It seems to me very carefully and critically prepared; and its form and arrangement are on the very best plan to secure both readiness of reference and as much detail as the necessary condensation will allow. The book cannot but prove itself one of great value to the Profession.

From the Hon. T. W. Clerke, Judge of the Supreme Court of New York.—I do not hesitate to say, if the whole shall be completed in conformity with the specimen, that it will be a work of great utility, alike to the Bench and the Bar, well calculated to lighten their labors by facilitating reference, which, of course, is the main object of all Digests, and carefully and skilfully insured in the proposed work. In my younger days I had some experience in compiling works of this description, but I consider this the best plan I have yet seen.

From the Hon. W. F. Allen, Judge of the Supreme Court of New York.—I have been pleased with the plan and method of the work as well calculated to accomplish the proposed object, and bring together, so as to present at one view, all the statutes in force relating to a given subject, with references upon the same page to the adjudications bearing upon them; and the order and arrangement seem to be such as to make it a very ready and a very available hand-book for every member of the Legal Profession. If executed throughout with the same care, fidelity and legal discrimination, indicated by the pages which I have seen, it will supply a want that has been greatly felt by every Lawyer, a means of ready and reliable reference to the Laws of the United States, and the decisions of the Courts thereon, which now must be sought through numerous volumes; and will be indispensable to every practitioner in the Federal Courts, and highly useful to all in or out of the Profession, whose business renders some knowledge of the statutes of the general government convenient or necessary. The statutes appear to be collated with care, and the decisions of the Courts collected and cited with discrimination and accuracy, and Mr. Brightly evidently possesses all the qualifications necessary to make the work what it should be.

From the Hon. Ransom Balcom, Judge of the Supreme Court of New York.—I take pleasure in saying that I am much pleased with the plan of the work; and should it be carried out as well as it is begun, it will be one of the most valuable Digests I have ever seen.

From the Hon. A. B. James, Judge of the Supreme Court of New York.—I am so well pleased with the order, simplicity and comprehensiveness of the work, that I desire to commend it to the Profession and the public. It cannot fail to be highly useful to the Lawyer, but to the business man it will be invaluable.

From the Hon. N. K. Hall, Judge of the United States District Court for the Northern District of New York.—I cannot doubt that Mr. Brightly will make it a work of great convenience to gentlemen of the Legal Profession. The plan is excellent, and, so far as I can judge from the specimen pages, it will be faithfully and thoroughly carried out. The notes of judicial decisions and the promised index, will render it a book of daily use by the Judges and practitioners of the United States Courts.

From the Hon. J. T. Headley, Secretary of State of New York.—I take great pleasure in saying that the specimen pages of the Digest you sent me promise a work of great value, not only in the matter it will contain, but in the style in which it will be got up. The plan is an admirable one, and I do not see how it could be improved upon.

From the Hon. John Duer, Judge of the Superior Court for the City and County of New York.—I have no hesitation in saying, that if the entire work shall be executed with the same care, ability and learning, that are conspicuous on the pages you have sent, it will be one of wide utility and permanent value. I desire to have a copy as soon as it shall be published.

From the Hon. J. S. Bosworth, Judge of the Superior Court for the City and County of New York.—Its execution throughout, with the care and ability in the collection and collation of judicial and other expositions which characterize these pages, will make the Digest a work of great convenience and value, not only to the Profession, but to men of any pursuit, who may desire information as to the Laws of the United States, and the construction given to them by the Courts and Departments of the Government.

From the Hon. A. W. Bradford, Surrogate of the County of New York.—I very cheerfully express my opinion, that, in regard to its arrangement, references and notes, it offers every prospect of being a work of great excellence and value.

From the Hon. D. P. Ingraham, Judge of the Court of Common Pleas, New York.—I have no hesitation in expressing the opinion that the work will be one of great value and utility not only to the Legal Profession, but also to those whose avocations require some acquaintance with the laws of the United States.

From the Hon. E. D. Culver, City Judge, Brooklyn.—The examination I have given to the "Specimen Pages" of your contemplated Digest has satisfied me that the work will be of great value, not to the Legal Profession only, but the whole business community. I have long felt the need of something of this kind to aid in a proper construction of the Statutes and Constitution. Your plan is admirable, and the reputation of Mr. Brightly is such as to inspire the public with entire confidence in the undertaking.

From the Hon. Thos. Bragg, Governor of North Carolina.—The plan of the work seems to me to be very good; and I consider the foot notes, with references to decided cases arising under the various Acts, a most valuable feature, and especially useful to every member of the Legal Profession.

From the Hon. H. Potter, Judge of the United States District Court of North Carolina.—I find the plan proposed comprehensive and yet minute. It is well calculated to meet the wants of the whole community, but especially to aid the Profession in affording them facilities for increasing in legal acquirements. I heartily recommend the work.

From the Hon. Wm. H. Battle, Judge of the Supreme Court of North Carolina.—I do not hesitate to say that the plan is admirable, and the execution all that could be desired in such a work. The Notes of Judicial Decisions must be of great value to the practising Lawyer, and I cannot well conceive of anything better calculated to assist the general reader in referring to the Statutes at Large.

From the Hon. J. L. Bailey, Judge of the Superior Court of North Carolina, for the Fourth Circuit.—I must say, without hesitation, that the plan is excellent, and that we shall all be under obligations to Mr. B. for his useful book.

From the Hon. M. G. Manly, Judge of the Circuit Court of North Carolina.—The plan of Mr. Brightly, for digesting the Laws of the United States, has been performed in some of its principal features in the codification of the laws of this state. Two digested codes for the state have been prepared within twenty years past, and the same plan adopted in both instances, which is the highest evidence we could give of professional and popular approval. I have examined the specimen sheets, which you have had the kindness to send me, and think the work, in preparing these, has been performed with discrimination and judgment. It will, unquestionably, be highly convenient as a work for reference.

From A. W. Burton, Esq., Solicitor of the Superior Court for the Seventh Circuit, North Carolina.—It gives me great pleasure to say that I am much pleased with the arrangement of the work, and think that as a Digest it must surpass any work of the kind ever issued, and must prove to be a great benefit to the Profession at large.

From W. N. H. Smith, Esq., Solicitor of the First Circuit, North Carolina.—I am very much pleased both with the plan of the work and the manner in which it is executed. I regard the work rather as a condensation than Digest of the Laws of the United States, retaining in a remarkable degree the full sense of the original without unnecessary verbiage, and combining brevity with perspicuity, qualities rarely found united. The Notes and References to adjudicated cases, interpreting the text, appear to have been prepared with great labor, and exhibit evidence of habits of accurate thought and severe analysis in the Author. The volume must prove a valuable contribution to our law literature, and much facilitate and lessen professional labor.

From the Hon. Jos. B. Batchelor, Attorney-General of North Carolina.—I regard the plan of the work as very good, and the execution as highly creditable to the learned Editor. It is condensed without the sacrifice of perspicuity or accuracy of detail, and the general arrangement and divisions of the subjects render it a work of easy reference. The want of such a work has long been felt by myself and doubtless by other members of the Profession, and this Digest of Mr. Brightly's must greatly facilitate the labor of the student of our national statute law.

From H. C. Jones, Esq., State Reporter of North Carolina.—I have no hesitation in saying it supplies a want which every professional man (in the interior especially) has felt, and does it in the most admirable manner. The Acts of Congress are almost a sealed book to the majority of the Profession in the upper country of the Southern States, and, as the mass is increased, a knowledge of them will continue to diminish without some such facility as that provided by Mr. Brightly. I am well satisfied of his ability and great perseverance.

From the Hon. R. P. Ranney, Chief Justice of the Superior Court of Ohio.—I have no hesitation in expressing my unqualified admiration of the plan adopted, and of the ability and accuracy with which it has been executed. Scattered as the Laws of the Federal Government, and the Judicial constructions placed upon them, are, through numerous volumes, no greater service can be rendered the Profession than that of reducing them within a reasonable compass, and by a natural and obvious classification, presenting a clear and reliable reference to everything relating to each particular subject. This Mr. Brightly has succeeded in doing; and in a manner so perfect and complete, as to entitle him to the thanks of every Judge and Lawyer, and to make his work an indispensable part of every well selected Law Library.

From the Hon. T. W. Bartley, Judge of the Superior Court of Ohio.—I take pleasure in bearing testimony to the high merit of the proposed work. If executed according to the plan of the specimen, it will be of very great convenience and utility, especially to the members of the Legal Profession in this country, and in my judgment preferable to any other work of the kind heretofore published.

From the Hon. Jacob Brinkerhoff, Judge of the Superior Court of Ohio.—I think the arrangement of the work will prove convenient, and the notes valuable. From the great cost of the Statutes at Large and United States Supreme Court Reports, they are beyond the means of a large share of the Profession, and especially of country practitioners. To such, it seems to me, this Digest will be a desideratum; as its low price will place it within the reach of every one, and either afford all that would be sought for in those costly publications, or indicate where it may readily be found.

From the Hon. Thomas H. Ford, Lieutenant-Governor of Ohio.—I must say that I am well pleased with the work. It will be a great acquisition to the Bench and Bar, and the public generally.

From the Hon. Hiram V. Willson, Judge of the United States Court for the Northern District of Ohio.— I am well convinced that the "Digest," on the plan indicated, is precisely what is wanted by the Profession throughout the United States. The high reputation of Mr. Brightly is a sure guarantee that the Digest will be valuable for its accuracy and methodical arrangement.

From the Hon. H. H. Leavitt, Judge of the United States Court for the Southern District of Ohio.—I have long been conscious of the necessity of a well prepared Digest of the Laws of the United States; and from an examination of some specimen sheets of Mr. Brightly's work, I have no hesitancy in giving it my cordial approval. The arrangement of the subjects seems to be judicious, while the copious references to judicial decisions, indicating great labor and research, will render the work exceedingly useful, not only to the Legal Profession, but to all officers of the National Government charged with the execution of its laws.

From the Hon. A. G. W. Carter, Judge of the First Common Pleas District of Ohio.—I am happy in being enabled to say that I am exceedingly pleased with the plan, system, and object of the work. Its thoroughness, accuracy and completeness, in my opinion, cannot be excelled; and as a compilation of the Laws of the United States, there seems nothing left to be desired by any member of the Bar. The Profession throughout the "length and breadth" of the land must ever rest under the greatest obligation to the Editor of such an elaborated and useful work.

From the Hon. M. C. Whiteley, Judge of the Common Pleas for the Third District of Ohio.—I do not hesitate to say that the work will be invaluable, especially to the Western Lawyer and Legislator. The sanction of Mr. Brightly's name is a sufficient guarantee that the arrangement, notes of judicial decisions and context, are as perfect and reliable as human skill can make them. Such a work is much needed, and I hope its merits will be appreciated.

From the Hon. William Lawrence, Judge of the Common Pleas for the Third District of Ohio.—The high reputation of Mr. Brightly is a sufficient guarantee that this work will deserve public patronage. The admirable plan of the work, its copious and succinct notes, and the full and accurate view which it presents of the whole Law, as enacted and as construed, within a narrow compass, render it an indispensable Legal Manual for all who may have occasion to examine the Laws of the United States. Without a work of this character, it requires much research to ascertain what and where the Law, upon almost every subject, is, but that much needed want is supplied by this Digest. It supplies a place which no other work has occupied, and I regard it as a perfect and finished production.

From the Hon. John Filch, Judge of the Common Pleas for the Fourth District of Ohio.—I am pleased to say that the plan of the work and its execution meet with my entire approbation. I regard it as possessing superior merit, and eminently useful to the Profession.

From the Hon. Thomas Bolton, Judge of the Common Pleas for the Fourth District of Ohio.—Every member of our Profession has long felt the necessity of such a work; and, judging from the sheets sent me, the book will prove invaluable to both the Bench and Bar, as well as to the business community. No Law Library will be complete without a copy.

From the Hon. H. C. Whitman, Judge of the Common Pleas for the Seventh District of Ohio.—I have no hesitation in saying that if Mr. Brightly completes his work as he has begun it, he will have rendered the Legal Profession invaluable services. No Judge, either of the Federal or State Courts, and no respectable member of the Bar in the Union, can well do without the work. The whole plan of the work is most admirable. It supplies a want long felt in the Profession. The price is very low.

From the Hon. Jno. W. Okey, Judge of the Common Pleas for the Eighth District of Ohio.—I am of opinion that the labors of Mr. Brightly, the accomplished Editor, have been thoroughly and accurately performed; and I believe, furthermore, that the plan is so excellent, and will be found so convenient and practical, that the work cannot fail to meet the cordial approval of the Bench and Bar throughout the country.

From the Hon. James Pollock, Governor of Pennsylvania.—The reputation of Mr. Brightly as a careful and accurate compiler is fully established. The plan of the proposed Digest is admirable, and its publication will be hailed with pleasure by the Profession, and by every citizen who feels an interest in the statutory system of the United States.

From the Hon. Ellis Lewis, Chief Justice of Pennsylvania.—Mr. Brightly's industry, learning, and ability for the task have already been made manifest by his works, particularly by the edition of Brightly's Purdon. The system adopted is one which, for convenience and ready reference, will commend it to the Profession; while the copious and valuable Notes of decisions will make it almost invaluable to the practitioner.

From the Hon. W. H. Lowrie, Judge of the Supreme Court of Pennsylvania.—I have no hesitation in recommending it as a work on the statutes and decisions of the Federal Government that ought to be on the table of every Lawyer having any practice in the Federal Courts. The sample sent me is small, but, *ex pede Herculem*, it is a good illustration of the skill and industry of Mr. Brightly, which are so well known to Pennsylvania Lawyers.

From the Hon. George W. Woodward, Judge of the Supreme Court of Pennsylvania.—If the specimen pages you were kind enough to send me of Mr. Brightly's Digest of the Laws of the United States be, as I have no doubt they are, a fair specimen of the forthcoming work, it will be a book of rare excellence, and will command a rapid and extensive sale. The legislation of Congress and the decisions of the Federal Courts, affect the interests of the people of the several States in so many points, that every well informed man, who would keep up with the progress of the Law, needs, for frequent reference, exactly such a Digest as this is to be, whilst to every Judge, Lawyer and public officer, it will be an indispensable Manual. The text will furnish the legislation of the General Government in the best possible arrangement, and the foot-notes, copiously and accurately compiled, will indicate the course of judicial decision, so that any man, with this book in his hands, can inform himself as to the law of those various and exciting national questions which from time to time agitate the public mind. Mr. Brightly has achieved an enviable reputation already as a Digester. In Pennsylvania we have learned to repose the fullest confidence in his judgment, carefulness and skill, and this work promises to be as worthy of himself as it will be useful to others. Regard being had to his capacity, and to the plan and execution of his work, I have no hesitation in commending it, in the most unqualified terms, to the confidence and patronage of the public.

From the Hon. John C. Knox, Judge of the Supreme Court of Pennsylvania.—This work cannot fail to be a highly useful one. Mr. Brightly's manner of digesting the statutes appears to me to be the very best that can be adopted, and his foot notes will be found to be very serviceable to the Legal Practitioner. It affords me great pleasure to recommend this Digest to the Profession and to the public at large.

From the Hon. George Sharswood, Judge of the District Court for the City and County of Philadelphia.—I have been much pleased both with the plan and execution. We are in much need of such a Digest at the present—the older ones being not only out of print, but of course not containing the recent acts of Congress. Mr. Brightly exhibits great industry and fulness of research in the notes, to the parts I have seen, and I doubt not that the whole will be completed in a similar way.

From the Hon. A. G. Curtin, Secretary of the Commonwealth of Pennsylvania.—The necessity for such a Digest, and the plan adopted by the learned Editor, will commend it to the approval of the Profession.

From the Hon. Thomas Irwin, Judge of the United States Court for the Western District of Pennsylvania.—No better offering of an abridgment of the Laws could be made to the Bench and Bar. It was a desideratum, and Mr. Brightly has supplied it. The plan, references, arrangement, notes and index, with the specimen of execution, leave no desire for anything additional, and will add to the already high reputation of Mr. Brightly as a compiler.

From the Hon. Oswald Thompson, President Judge of the First Judicial District of Pennsylvania.—I know of no work more needed than a well prepared Digest of the Laws of the United States. The power of the General Government is now so sensibly felt, even within our "domestic sovereignties," that the means should be afforded to every citizen to ascertain the Laws of the United States as well as those of the State in which he resides. The proposed Digest of Mr. Brightly is admirably adapted for this purpose, and with the aid of the excellent and extensive notes, which he has so carefully prepared, the citizen may readily learn to what extent he is governed.

From the Hon. Joseph Allison, Judge of the Court of Common Pleas of Philadelphia County.—The plan of the work, which was originated mainly by the learned Author, was inaugurated with so much success in "Brightly's Purdon," that commendation of its admirable design and arrangement would add nothing to the favorable judgment long since pronounced upon it. Mr. Brightly, in the execution of his task, has done full justice to his well earned reputation as a most laborious and accurate Author. His analysis and annotations will be of the greatest value in a hand book, so long an unsupplied want of the Profession and public generally, and for which he is entitled to their thanks.

From the Hon. H. G. Long, President Judge of the Second Judicial District of Pennsylvania.—Those who are acquainted with the superior abilities of the Author in preparing works of this kind, might reasonably expect that the proposed Digest would surpass all others now in existence in regard to the same subject, but did any doubts exist, those doubts would be removed by a perusal of the sheets now before me. To those who have occasion frequently to resort to the Digest of the Laws of Pennsylvania, prepared by the same gentleman, upon somewhat a similar plan, and who know how to value its merits, it cannot fail to be properly appreciated, and there can be no doubt that the United States Digest referred to, will soon, throughout the Union, become as popular with the Legal Profession and public generally who have occasion for such a work, as the other is justly approved of in Pennsylvania. Mr. Brightly's merits as an Editor of Legal Works is not only acknowledged, but so well established, that his name is now generally considered a guarantee of the excellence of the works edited by him, and well does he appear to have sustained his reputation by his last effort.

From the Hon. H. D. Maxwell, President Judge of the Third Judicial District of Pennsylvania.—They bear evidence of the perspicuity, industry and legal research for which Mr. Brightly is distinguished. The book deserves, and will doubtless receive, the favor and approval of the public.

From the Hon. William B. McClure, President Judge of the Fifth Judicial District of Pennsylvania.—From his great and merited success hitherto, the very strongest recommendation of the book I could imagine, is that he is the Author of it. His name alone is guarantee enough for me. If Mr. Brightly has, in his "United States Digest," in anything improved upon his "Digest of the Laws of Pennsylvania," he is, I think, the only man alive who could have done so. I consider the copious notes and references, on one page of the work, as of more value to the Judge, the Lawyer and the Legislature, than the cost of the book.

From the Hon. David Derickson, Judge of the Sixth Judicial District of Pennsylvania.—From the examination I have given

to the specimen sheets of Mr. Brightly's forthcoming United States Digest, I have no doubt the work will be one of great merit, and will receive, as it should, the patronage of the Profession and of business men in general.

From the Hon. A. Jordan, President Judge of the Eighth Judicial District of Pennsylvania.—Mr. Brightly's forthcoming "Digest of the Laws of the United States" will be a valuable work; just such an one as the Legal Profession would expect from so competent an Editor. The notes to judicial decisions are valuable, and the whole arrangement of the work complete.

From the Hon. John N. Conyngham, President Judge of the Eleventh Judicial District of Pennsylvania.—The pages now examined show the same research and care which have made his Digest of the Pennsylvania Law so useful, not only to the Profession, but to other business men also, and which will insure for your book, when published, a ready sale. The nature of the proposed work, and the established reputation of the gentleman who has charge of it, will certainly recommend it to the consideration of the public.

From the Hon. John J. Pearson, President Judge of the Twelfth Judicial District of Pennsylvania.—The specimen sheets sent me of Mr. Brightly's Digest of the United States Laws, are an improvement on any compilation of that character heretofore presented to the public. In methodical arrangement and accuracy, in annotating the judicial decisions under the various statutes, the Author has even surpassed any of his former highly creditable works; and should the whole volume equal the specimen exhibited, of which the well-established reputation of Mr. Brightly is an ample guarantee, the book will be all that the Legal Profession or the people at large can desire in a Digest.

From the Hon. Daniel Agnew, President Judge of the Seventeenth Judicial District of Pennsylvania.—I do not hesitate to say, if it be completed as begun, it will be a most valuable manual. The care, accuracy and system which Mr. Brightly exhibited in his "Digest of the Laws of Pennsylvania," manifest that he is an accomplished and methodical compiler and skilful annotator, and afford a sure guarantee that his "United States Digest" will be a work of essential service. The ample foot notes are especially valuable. The whole work, as far as it has gone, has my unqualified approbation.

From the Hon. A. S. Wilson, President Judge of the Twentieth Judicial District of Pennsylvania.—The proposed "Digest of the Laws of the United States," by Mr. Brightly, with his notes of reference, as presented by the specimen sheets, is a work much needed in every Lawyer's office. The known ability of Mr. Brightly for the task of compiling such a work, and the great care with which his Digest of our State Laws was prepared and published, is a sufficient guarantee of its merits and accuracy. It will be a book of ready and most convenient reference to the members of the Legal Profession.

From the Hon. James Burnside, President Judge of the Twenty-Fifth Judicial District of Pennsylvania.—Brightly's edition of Purdon has superseded all the others, and is now the only one used by the Bench, the Bar and the Laity in this portion of Pennsylvania. Judging from the specimen sheets you have sent me, of his United States Digest, it will enhance the well earned reputation of Mr. Brightly, while it will be a most useful book to all our citizens.

From Francis Wharton, Esq., Author of "American Criminal Law, &c." Pennsylvania.—In the character of literary mechanism, I have always thought Mr. Brightly's Pennsylvania Digest unsurpassed in its department, whether in England or in this country. I deem the same high qualities in the present specimen, which, both by its analytical minuteness and its legal precision, will prove of the greatest value to both practitioner and student.

From James D. Dunlap, Esq., Author of "Dunlap's Book of Forms." Pennsylvania.—I take pleasure in saying that it is the best planned and executed work of the kind ever issued from the press. No Law Library should be considered complete without it.

From the Hon. John R. Bartlett, Secretary of State of Rhode Island.—I take great pleasure in adding my testimonial to the excellence of the plan as therein exhibited. Our voluminous statutes seem to require a condensation to render them more available a desideratum, which is fully accomplished in this edition. The marginal notes and judicial references give an additional value to the work.

From the Hon. A. G. Magrath, Judge of the United States Court for the District of South Carolina.—If the work sustains the promise which the specimen pages excite, it will be a valuable addition to, if not an indispensable part of, the collection of any one whose duties lead him to the study of the Laws of the United States.

From the Hon. Seth J. W. Lucky, Chancellor of the Eastern Division of Tennessee.—The plan adopted, and the execution thereof, is superior to any work heretofore published in this country.

From the Hon. T. Nixon Van Dyke, Chancellor of the Fifth Division of Tennessee.—I assure you I read those sheets with a great deal of satisfaction. The publication of this work of Mr. Brightly will, unquestionably, add much to his fame as an Author, and will greatly facilitate and relieve the labors of the members of the Bench and Bar who may be engaged in the administration of the Laws of the United States.

From the Hon. E. Alexander, Judge of the Second Circuit Court of Tennessee.—The plan is an admirable one, and, if completed as proposed, will be a most desirable addition to the Library of every Legal man in the United States.

From the Hon. A. J. Marchbank, Judge of the Thirteenth Circuit Court of Tennessee.—The plan of the work is as perfect as any of which I can conceive; the marginal notes will greatly facilitate the examination of any subject contained in the work; the foot notes constitute a convenient digest of the decisions of the Courts upon the subjects embraced in the work. I consider the work a valuable acquisition to the Legal Profession, as well as to every other business gentleman; and the very moderate price placed upon it puts it within the reach of every business man.

From the Hon. Thomas H. Duval, Judge of the United States Court for the Western District of Texas.—I can only say that the whole plan of the book appears to me to be highly judicious and well conceived. The marginal references and notes of judicial decisions, constitute, in my opinion, two features of peculiar excellence. From the specimen of the work sent, I have no doubt its execution will be found very accurate, and that its merits, generally, will be appreciated and acknowledged by the Profession.

From the Hon. R. S. Wheeler, Judge of the Supreme Court of Texas.—The design is admirable. The work will comprise, in a condensed and convenient compass, a large amount of valuable matter, under the most convenient and excellent arrangement possible. In my opinion it is unequalled for practical convenience and use by any similar work before the public. It will be invaluable to the Profession.

From the Hon. A. W. O. Hicks, Judge of the Fifth District Court of Texas.—I am convinced that the Digest will be an invaluable acquisition to the members of the Bar throughout the Union. It will give a ready reference to adjudications both upon the Constitution and Laws of the United States, and thereby supersede much research, besides presenting analytically the law upon any given subject.

From the Hon. P. W. Gray, Judge of the Seventh District Court of Texas.—The plan is an admirable one, and if the whole be executed as thoroughly and accurately as the specimen is, a want which the Profession has long felt will be fully supplied. I am highly pleased with it.

From the Hon. Nat. M. Burford, Judge of the Sixteenth District Court of Texas.—I take great pleasure in saying that the whole plan of the work is in the most admirable style. The methodical arrangement of the entire work must make it a great favorite, not only with the Lawyer, but with all others wishing to become acquainted with the jurisprudence of our great and glorious country. I hope the book may find its way to the Library of every Texas Lawyer, with whom the want of such a work has long been the source of constant complaint and regret. I shall take pleasure in recommending the book to the Profession of my Judicial District.

From O. C. Hartley, Esq., State Reporter of Texas.—It has been hitherto a source of both surprise and regret, that we have had no Digest of the Laws of the United States, that was at all worthy of the subject. I am gratified to learn that Mr. Brightly is about to supply the defect. His plan embraces all the improvements in digesting, which are found in fragments elsewhere; and it must be admitted that, when so brought together, they much enhance the value of the book beyond the compilations which have preceded it. It is pleasant also to see that the style of publication is as liberal as the subject demands.

From the Hon. Isaac F. Redfield, Chief Justice of Vermont.—It seems to me no work will be more valuable or more indispensable to even a moderate working Law Library.

From the Hon. Pierrepoint Isham, Judge of the Supreme Court of Vermont.—I am gratified that you have undertaken the publication of that work; and from an examination of the pages sent to me, I am satisfied that it will fully supply a want which every one must have felt, whose duties have called them to an examination of the Laws of the United States. It is a work greatly needed, and is now almost indispensable. I cannot readily conceive of a better method in the execution of the Digest, than the one you have adopted.

From the Hon. Milo L. Bennett, Judge of the Supreme Court of Vermont.—The plan and arrangement of the work, in all its parts, is just what it should be; and, for all practical purposes, it must prove a boon to the Profession. A talent for digesting and a power of condensation are of unsurpassed value to the Bench and the Bar; and Mr. Brightly will well merit the thanks of both.

From the Hon. A. Underwood, Judge of the Second Circuit Court of Vermont.—I think the work proposed by Mr. Brightly, as indicated by the specimen pages, an excellent one, and will meet the general approval of the Profession.

From the Hon. James D. Halyburton, Judge of the United States Court for the Eastern District of Virginia.—The execution is very good, and the plan of the work admirable. I have not seen, for a long time, the announcement of any new work of which I am so anxious to possess a copy.

From the Hon. Richard H. Baker, Judge of the First Circuit Court of Virginia.—I altogether approve of the plan, both for purposes of reference and general study, and not doubting that such a work, at this time especially, will be highly appreciated and acknowledged by the Profession. I am pleased to hear you have commenced its preparation, and beg that you will send me a copy of it.

From the Hon. Jno. Taylor Lomax, Judge of the Eighth Circuit Court of Virginia.—The plan of the work, faithfully executed as it may be expected to be, cannot fail to receive the favor and patronage of Professional men and of the public, to which it will be greatly entitled.

From the Hon. Richard H. Field, Judge of the Tenth Circuit Court of Virginia.—The plan is an admirable one. It presents to the reader, with the Constitution and Laws of the United States, in the form of Notes and References to adjudicated cases, a fund of legal information, which I have never before seen presented in so small a compass, nor with as much appositeness or perspicuity. No gentlemen, professional or private, who desires, as he should, to have access at all times to a work of convenient size and form, embracing the Constitution and Laws of the United States with a Reference to adjudicated cases showing their true

construction, can hesitate to pay the low price of six dollars for the Digest.

From the Hon. Lucas P. Thompson, Judge of the Eleventh Circuit Court of Virginia.—I do not hesitate to tender you the expression of my unqualified approbation of the plan and the execution. I have for some time past regarded such a work as a desideratum to the Profession, as furnishing, in a vade mecum of convenient size and form, matter which before could only be found in volumes of digests, sessions acts and reports. The analysis of each division, its marginal and foot notes, containing references to the various enactments, adjudications of the Courts, opinions of the Attorneys-General, &c., are admirably conceived and as admirably executed.

From the Hon. Edward B. Bailey, Judge of the Fifteenth Circuit Court of Virginia.—I have formed a very favorable opinion of the work. The plan of the Digest, it seems to me, is as good, if not better, than any that could be adopted. The marginal and foot notes, whilst they afford evidence of considerable labor and industry on the part of the Author, will greatly enhance the value of the work to the professional reader; and must render it a very desirable acquisition to the Library of any Lawyer.

From the Hon. Geo. W. Thompson, Judge of the Twentieth Circuit Court of Virginia.—The mechanical appearance is good; the paper clear and firm; the text-type clean, distinct and open, and the type of the Notes, while small, is legible and well adapted to the compression of much matter in small space. The execution of the specimen indicates that the work will at once give to the practical man, all the facts, as facts, which he may desire from such a source in the avocations of life, while, with its codification and references, it will suggest to the Lawyer and the Statesman various questions which they may, and frequently must, investigate, and furnish them with authorities and suggestions which must greatly abridge and facilitate their labors.

From the Hon. Gideon D. Camden, Judge of the Twenty-First Circuit Court of Virginia.—I am pleased with the plan and arrangement of the work, and feel confident that it has been prepared with care and accuracy, and that it will be highly useful to the Legal Profession and others desiring information such as it proposes to impart.

From the Hon. A. G. Miller, Judge of the United States Court for the District of Wisconsin.—I have frequently had occasion to wish that every member of the Bar had access to a work as full, complete and convenient as it promises to be. It will be indispensable to the Courts of the United States, and to gentlemen practising in those Courts.

From the Hon. Geo. W. Cate, Judge of the Seventh Circuit Court of Wisconsin.—I am much pleased with the entire arrangement of the work, and the execution being in accordance with its arrangement, must give satisfaction to the Profession. The Alphabetical Arrrangement, the Marginal References, the Foot Notes, the Analytical Contents, the Digest of each title, and the ample Index, are characteristics of this work which cannot fail to make it a most desirable acquisition to the Library. In my estimation it is a work much needed by the Profession.

From the Hon. S. S. N. Fuller, Judge of the Eighth Circuit Court of Wisconsin.—In my opinion it will be a work of rare excellence. Mr. Brightly's "Purdon's Digest" was received with well merited favor by the Profession in your state, and I have great confidence that this work, of a more national character, will be equally well received by the Profession throughout the Union. I am glad to be able to commend the work, and especially to the Bar of the Eighth Judicial Circuit, Wisconsin.

From the Hon. S. R. Cotton, Judge of the Tenth Circuit Court of Wisconsin.—The whole arrangement is superior to any that I have heretofore seen. Presenting as it does the statute and its judicial construction, where there has been one, on the same page, is a feature which, although not new, adds greatly to its value, and will save much labor to the Profession.

From the Hon. W. H. Welch, Chief Justice of Minnesota Territory.—The plan of the work is excellent. A Digest of the Laws of the United States has long been needed; and I regard this publication as one of the most useful and valuable that has issued from the American press.

From the Hon. Fenner Ferguson, Chief Justice of Nebraska.—I highly approve of the plan of the work, and of the manner in which it appears to be executed. Its publication will confer a very great favor upon the Legal Profession, and upon public officers and business men generally. The book will be a Library within itself. Its methodical arrangement must add greatly to the value of the work. I anticipate for it great popularity and an extensive sale.

From E. Estabrook, Esq., United States District Attorney for Nebraska.—I have no hesitation in expressing my unqualified admiration of the work, both as to its arrangement and its general design.

From the Hon. T. B. Cuming, Secretary of Nebraska.—The work, if completed with the accuracy and care of the specimen number, will be indispensable to the Profession, an enduring monument to the Author, and most profitable to the publishers.

From the Hon. Perry E. Brocchus, Associate Justice of the Supreme Court of New Mexico.—Forming an opinion from the representations of the specimen sheets, there can be no doubt that the work, when completed, will be an invaluable analysis of the Constitution and laws of our government. If prosecuted, to its completion, with the marks of research and elaboracy which characterize the sheets to which you have invited attention, it must prove of almost incalculable value, not only to the Judge, the Lawyer and the student, but also to those not connected with the Legal Profession, who have occasion to understand the legal effect and judicial import of the Constitution and Laws of the United States.

From the Hon. W. W. H. Davis, Secretary of the Territory of New Mexico.—I have examined the plan of the arrangement of Mr. Brightly's proposed Digest, and must say that I am pleased with it; and it cannot fail to be of great service to the Profession and citizens generally. In my opinion it will be a decided improvement over any work of the kind in use.

From the Hon. Geo. H. Williams, Chief Justice of Oregon Territory.—I am very much pleased with the plan of the work. Territorial affairs make frequent reference to the United States Statutes necessary; and I therefore know that your work, if executed with thoroughness and accuracy, will be valuable to the Profession and the country. It will bring order out of chaos.

From the Hon. B. F. Kendall, United States Attorney for Washington Territory.—I am happy to be able to say that it seems admirably adapted to meet the wants, not only of the Profession, but of all classes of citizens having occasion to consult the laws of their country.

From the Hon. G. W. Stone and A. J. Walker, Associate Justices of the Supreme Court of Alabama.—This work of Mr. Brightly promises to supply to the Profession a want which the constantly increasing bulk of our Federal Legislation, and the numerous decisions thereon, have magnified into a necessity. Founding our opinion on the "specimen pages" furnished us, we feel assured the work will be ably and faithfully executed. We are at a loss which most to approve—the simplicity and ease of consultation which mark the plan, or the research and fidelity which characterize its execution.

From the Hon. Bellamy Storer, Judge of the Supreme Court of Cincinnati.—Mr. Brightly's method is admirably suited to the thorough analysis, as well as the clear and manly treatment of his subject. He is accurate, as well as perfectly intelligible: though comprehensive, he is sufficiently minute. His volume, I am satisfied, will prove of great value to the Profession.

From Thomas E. Franklin, Esq., Attorney-General of Pennsylvania.—I have carefully examined the specimen pages of the "Digest of the Laws of the United States," prepared by you. The plan and arrangement appear to be similar to those of your admirable edition of the "Digest of the Laws of Pennsylvania," which has received the universal favor of the Profession and the public; and I take great pleasure in testifying to its excellence.

From the American Law Register.—The important, and by far most interesting feature of the Editor's labors, consists in the foot notes. Every source of authority has been explored. The decisions of the Supreme Court, the Circuit and District Courts, the Court of Claims, the decisions of the State Courts, the opinions of the Attorneys-General and heads of departments, have been collected, and the references arranged under the respective sections of which they are the interpretation. The Editor, Mr. Brightly, is well known at this Bar, and throughout Pennsylvania, as the careful and diligent Editor of Purdon's Digest in its latest and most useful editions. The plan attempted with the Federal laws seems to be much of the same character. The sheets we have seen are most fully and thoroughly annotated, and leave little to be desired. Should the entire work be completed with the same thoroughness, and in a manner equally elaborate, it will certainly supply a want in our libraries which as yet remains unfilled.

THE

CONSTITUTION

OF THE

UNITED STATES OF AMERICA.(a)

WE, THE PEOPLE OF THE UNITED STATES,(b) in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,(c) do ordain and establish this Constitution for the United States of America.(d) Preamble.

ARTICLE I.

SECT. I. All legislative powers herein granted, shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.(e) Legislative power.

SECT. II. 1. The house of representatives shall be composed of members chosen every second year by the people of the several states; (g) and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature. House of representatives.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States,(h) and who shall not, when elected, be an inhabitant (i) of that state in which he shall be chosen.(k) Qualification of members.

3. Representatives and direct taxes (l) shall be apportioned among the several states (m) which may be included within this union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Apportionment of representatives and direct taxes. Census. Number of representatives.

(a) This constitution went into operation on the first Wednesday in March 1789. Owings v. Speed, 5 Wh. 420.

(b) The constitution was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble declares, by "the *people* of the United States." Martin v. Hunter's Lessee, 1 Wh. 324. Banks v. Greenleaf, 6 Call, 277. It required not the affirmance, and could not be negatived, by the state governments. When adopted, it was of complete obligation, and bound the state sovereignties. McCulloch v. Maryland, 4 Wh. 404. Chisholm v. Georgia, 2 Dall. 471. Cohens v. Virginia, 6 Wh. 414. See Worcester v. Georgia, 6 Pet. 569, where it is said by McLean, J., to have been formed "by a combined power, exercised by the people, through their delegates, limited in their sanctions to the respective states."

(c) The preamble to the constitution is constantly referred to, by statesmen and jurists, to aid them in the exposition of its provisions. See Chisholm v. Georgia, 2 Dall. 475. Brown v. Maryland, 12 Wh. 445-6. 1 Story Const. ch. 6.

(d) The United States is a government, and, consequently, a body politic and corporate, capable of attaining the objects for which it was created, by the means which are necessary for their attainment. United States v. Maurice, 2 Brock. 109. Through the instrumentality of the proper department to which those powers are confided, it may enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. United States v. Tingey, 5 Pet. 128. As a corporation, it has capacity to sue, by its corporate title. Dixon v. United States, 1 Brock. 177. Dugan v. United States, 3 Wh. 181. It may compromise a suit, and receive real and other property in discharge of the debt in trust, and sell the same. United States v. Lane's Administrators, 3 McLean. 365. Neilson v. Lagow, 12 How 107-8.

(e) See 1 Story Const. ch. 7-8.

(g) See Latimer v. Patton, Cl. & Hall, 69.

(h) See Ramsay v. Smith, Cl. & Hall, 23.

(i) See Case of Philip B. Key, Cl. & Hall, 224. An inhabitant of a state, is one who is "*bonâ fide* a member of the state, subject to all the requisitions of its laws, and entitled to all the privileges and advantages which they confer." Case of John Bailey, Cl. & Hall, 411. A person residing in the district of Columbia, though in the employment of the general government, is not an inhabitant of a state, so as to be eligible to a seat in congress. Ibid. But a citizen of the United States residing as a public minister at a foreign court, does not lose his character of inhabitant of that state of which he is a citizen, so as to be disqualified for election to congress. Ibid. Forsyth's Case, Ibid. 497.

(k) The constitution having fixed the qualifications of members, no *additional* qualifications can rightfully be required by the states. Barney v. McCreery, Cl. & Hall, 167.

(l) A tax on carriages is not such a direct tax. Hylton v. United States, 3 Dall. 171.

(m) This does not exclude the right to impose a direct tax on the district of Columbia, in proportion to the census directed to be taken by the constitution. Loughborough v. Blake, 5 Wh. 317.

ART. I. Sect. 2. Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.(*a*)

Vacancies. 4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.(*b*)

Officers. Impeachments. 5. The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Senate. SECT. III. 1. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.

Classification. 2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year;(*c*) and if vacancies happen by resignation,(*d*) or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments (*e*) until the next meeting of the legislature, which shall then fill such vacancies.

Vacancies.

Qualifications. 3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States,(*g*) and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of the senate. 4. The vice president of the United States shall be president of the senate,(*h*) but shall have no vote, unless they be equally divided.

Officers, and president *pro tem.* 5. The senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice president, or when he shall exercise the office of president of the United States.

Trial of impeachments. 6. The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.(*i*)

Judgment. 7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Election of members of congress. SECT. IV. 1. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof;(*k*) but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

To meet annually. 2. The congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Powers of each house. SECT. V. 1. Each house shall be the judge of the elections, returns and qualifications of its own members,(*l*) and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Power to punish and expel. 2. Each house may determine the rules of its proceedings, punish its members (*m*)

(*a*) Under the seventh census, the states have the following representation in congress, viz.:

Alabama	7	Mississippi	5
Arkansas	2	Missouri	7
California	2	New Hampshire	3
Connecticut	4	New Jersey	5
Delaware	1	New York	33
Florida	1	North Carolina	8
Georgia	8	Ohio	21
Illinois	9	Pennsylvania	25
Indiana	11	Rhode Island	2
Iowa	2	South Carolina	6
Kentucky	10	Tennessee	10
Louisiana	4	Texas	2
Maine	6	Vermont	3
Maryland	6	Virginia	13
Massachusetts	11	Wisconsin	3
Michigan	4		

And the following territories of the United States each send one delegate to congress, with the right of debating, but not of voting, viz.: Kansas, Minnesota, Nebraska, New Mexico, Oregon, Utah and Washington.

(*b*) The executive of a state may receive the resignation of a member, and issue writs for a new election, without waiting to be informed by the house that a vacancy exists. Mercer's Case, Cl. & Hall, 44. Edwards's Case, Ibid. 92.

(*c*) The senate is a permanent body; its existence is continued and perpetual. Cushing's Law of Legislative Assemblies, 19.

(*d*) The seat of a senator is vacated by a resignation addressed to the executive of the state, notwithstanding he may have received no notice that his resignation has been accepted. Bledsoe's Case, Cl. & Hall, 869.

(*e*) It is not competent for the executive of a state, during the recess of the legislature, to appoint a senator, to fill a vacancy which *shall happen*, but has not happened, at the time of the appointment. Lanman's Case, Cl. & Hall, 871.

(*g*) See Gallatin's Case, Cl. & Hall, 851.

(*h*) See 1 Story Const. § 739.

(*i*) A judgment of impeachment in the English house of lords, requires that at least twelve of the members should concur in it. And "a verdict by less than twelve would not be good." Com. Dig. Parliament. L 17.

(*k*) Where the legislature of a state have failed to "prescribe the times, places and manner" of holding elections, as required by the constitution, the governor may, in case of a vacancy, in his writ of election, give notice of the time and place of election; but a reasonable time ought to be allowed for the promulgation of the notice. Hoge's Case, Cl. & Hall, 135.

(*l*) The returns from the state authorities are *primâ facie* evidence only of an election, and are not conclusive upon the house. Spaulding *v.* Mead, Cl. & Hall, 157. Reed *v.* Cosden, Ibid. 353. And the refusal of the executive of a state to grant a certificate of election, does not prejudice the right of one who may be entitled to a seat. Richards's Case, Ibid. 95.

(*m*) This does not exclude the power to punish, for contempts, others than members of the house. The constitution says nothing of contempts. These were left to the operation of the common law principle, that every court has a right to protect itself from insult and contempt, without which right of self-protection they could not discharge their high and important duties. Nugent's Case, 1 Am. L. J. 139. Anderson *v.* Dunn, 6 Wh. 204. And see 1 Story Const. § 845–9. Bolton *v.* Martin, 1 Dall. 296.

for disorderly behavior, and, with the concurrence of two-thirds, expel a member.(*a*) ART. I. Sect. 5.

Journals. 3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the

Yeas and nays. yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournments. 4. Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compensation. SECT. VI. 1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States.

Privileges. They shall, in all cases, except treason, felony and breach of the peace,(*b*) be privileged from arrest,(*c*) during their attendance at the session of their respective houses, and in going to, and returning from, the same;(*d*) and for any speech or debate in either house, they shall not be questioned in any other place.

Exclusion from office. 2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office(*e*) under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.(*g*)

Revenue bills. SECT. VII. 1. All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

Manner of passing bills. 2. Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it,(*h*) but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds (*i*) of that house

Veto power. shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days, (Sundays excepted,) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

Joint orders, resolutions, &c. 3. Every order, resolution,(*k*) or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be re-passed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

General powers. SECT. VIII. 1. The congress shall have power,

Taxation. 2. To lay and collect taxes, duties, imposts and excises,(*l*) to pay the debts, and provide for the common defence and general welfare of the United States;(*m*) but all duties, imposts and excises shall be uniform throughout the United States:

Loans. 3. To borrow money on the credit of the United States:(*n*)

(*a*) It seems to be settled, that a member may be expelled for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of a member. Blount's Case, cited 1 Story Const. § 838. And see Smith's Case, 1 Hall, L. J 459.

(*b*) This would seem to extend to all indictable offences, as well those which are in fact attended with force and violence, as those which are only constructive breaches of the peace of the government, inasmuch as they violate its good order. 1 Black. Comm. 166. 1 Story Const. § 855.

(*c*) They are privileged not only from arrest both on judicial and mesne process, but also from the service of a summons or other civil process while in attendance on their public duties. Geyer's Lessee *v.* Irwin, 4 Dall. 107. Nones *v.* Edsall, 1 Wall. Jr. 191. 1 Story Const. § 860. See Coxe *v.* McClenachan, 3 Dall. 478.

(*d*) One who goes to Washington, duly commissioned to represent a state in congress, is privileged from arrest, *eundo, morando et redeundo*, and though it be subsequently decided by congress that he is not entitled to a seat there, he is protected until he reaches home, if he return as soon as possible after such decision. Dunton *v.* Halstead, 4 Penn. L. J. 237.

(*e*) The acceptance by a member of any office under the United States, after he has been elected to, and taken his seat in congress, operates as a forfeiture of his seat. Van Ness's Case, Cl. & Hall, 122.

(*g*) Continuing to execute the duties of an office under the United States, after one is elected to congress, but before he takes his seat, is not a disqualification; such office being resigned prior to the taking of the seat. Hammond *v.* Herrick, Cl. & Hall, 287. Earle's Case, Ibid. 314. Mumford's Case, Ibid. 316.

(*h*) Every bill takes effect as a law, from the time when it is approved by the president, and then its effect is prospective and not retrospective. The doctrine that, in law, there is no fraction of a day, is a mere legal fiction, and has no application in such a case. In the matter of Richardson, 2 Story, 571. People *v.* Campbell, 1 Cal. 400. But this is denied to be law. In the matter of Welman, 20 Verm. 653. In the matter of Howes, 21 Ibid. 619.

(*i*) On the 7th July 1856, the senate of the United States decided, by a vote of thirty-four to seven, that two-thirds of a quorum only were requisite to pass a bill over the president's veto, and not two-thirds of the whole senate. 9 Law Rep. 196. In the ratification of treaties, it is expressly provided that two-thirds of the senators present shall concur. And see Cushing's Law of Legislative Assemblies, § 2387.

(*k*) A joint resolution, approved by the president, or duly passed without his approval, has all the effect of law. But separate resolutions of either house of congress, except in matters appertaining to their own parliamentary rights, have no legal effect to constrain the action of the president or of the heads of departments. 6 Opin. 680.

(*l*) The power to levy and collect taxes, duties, imposts and excises, is coextensive with the territory of the United States. Loughborough *v.* Blake, 5 Wh. 317.

(*m*) Congress is not empowered to tax for those purposes which are within the exclusive province of the states. Gibbons *v.* Ogden, 9 Wh. 199.

(*n*) The states have no power to tax the loans of the United States. Weston *v.* City Council of Charleston, 2 Pet. 449, 465.

ART. I. Sect. 8.

Commerce. 4. To regulate commerce (a) with foreign nations,(b) and among the several states,(c) and with the Indian tribes: (d)

Naturalization. Bankruptcy. 5. To establish an uniform rule of naturalization,(e) and uniform laws on the subject of bankruptcies throughout the United States: (g)

Coin. Weights, &c. 6. To coin money, regulate the value thereof, and of foreign coin; and fix the standard of weights and measures:

Counterfeiting. 7. To provide for the punishment of counterfeiting the securities and current coin of the United States: (h)

Post-offices. 8. To establish post-offices and post-roads: (i)

Patents and copy-rights. 9. To promote the progress of science and useful arts,(k) by securing for limited times, to authors (l) and inventors, the exclusive right to their respective writings and discoveries:

Courts. 10. To constitute tribunals inferior to the supreme court: (m)

Piracies, &c. 11. To define and punish piracies (n) and felonies committed on the high seas, and offences against the law of nations:

War. 12. To declare war,(o) grant letters of marque and reprisal, and make rules concerning captures on land and water:

Army. 13. To raise and support armies; (p) but no appropriation of money to that use shall be for a longer term than two years:

Navy. 14. To provide and maintain a navy:

(a) This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution. Gibbons v. Ogden, 9 Wh. 196. Commerce with foreign nations, and among the several states, can mean nothing more than intercourse with those nations, and among those states, for the purposes of trade, be the object of the trade what it may; and this intercourse must include all the means by which it can be carried on, whether by the free navigation of the waters of the several states, or by a passage over land through the states, where such passage becomes necessary to the commercial intercourse between the states. Corfield v. Coryell, 4 W. C. C. 378. Pennsylvania v. Wheeling and Belmont Bridge Co., 18 How. 421. Columbus Ins. Co. v. Peoria Bridge Co., 6 McLean, 70. Columbus Ins. Co. v. Curtenius, Ibid. 209. Jolly v. Terre Haute Draw-Bridge Co., Ibid. 237. United States v. Railroad Bridge Co., Ibid. 518. This clause confers the power to impose embargoes. Gibbons v. Ogden, 9 Wh. 191. United States v. The William, 2 Hall. L. J. 255, 272. And to punish crimes upon stranded vessels. United States v. Coombs, 12 Pet. 72. It does not, however, interfere with the right of the several states to enact inspection, quarantine and health laws of every description, as well as laws for regulating their internal commerce. Gibbons v. Ogden, 9 Wh. 203. New York v. Miln, 11 Pet. 102. Nor with their power to regulate pilots. Cooley v. Board of Wardens, 12 How. 299. Or to protect their fisheries. Smith v. Maryland, 18 Ibid. 71. Dunham v. Lamphere, 3 Gray, 268.

(b) A state law which requires the masters of vessels engaged in foreign commerce, to pay a certain sum to a state officer, on account of every passenger brought from a foreign country into the state, or before landing any alien passenger in the state, conflicts with the constitution and laws of the United States. Smith v. Turner, 7 How. 283. So does a state law authorizing the seizure and imprisonment of free negroes brought into any port of the state on board of any vessel from any other state or foreign port. Elkison v. Deliesseline, 2 Wh. Cr. Cas. 56. 1 Opin. 659. (But see 2 Opin. 426, *contra*.) And so does a state law which requires an importer to take a license and pay $50, before he should be permitted to sell a package of imported goods. Brown v. Maryland, 12 Wh. 419. But a state law imposing a tax on brokers dealing in foreign exchange is not repugnant to this clause of the constitution. Nathan v. Louisiana, 8 How. 73. Nor is one imposing a tax on legacies payable to aliens. Mager v. Grima, Ibid. 490. Nor are the license laws of certain states, forbidding the sale of spirituous liquors, under less than certain large quantities. Thurlow v. Massachusetts, 5 How. 504. The State v. Allmond, 4 Am. L. R. 533. See California v. Coleman, 4 Cal. 46-7.

(c) Congress have power to prevent the obstruction of any navigable river, which is a means of commerce between any two or more states. Works v. Junction Railroad, 5 McLean, 426. Jolly v. Terre Haute Draw-Bridge Co., 6 Ibid. 237. Devoe v. Penrose Ferry Bridge Co., 3 Am. L. R. 79. But a state law granting the exclusive privilege of navigating a part of an unnavigable stream, which is wholly within the state, on condition of rendering such part navigable, is not repugnant to the constitution. Veazie v. Moor, 14 How. 568. And see Wilson v. Blackbird Creek Marsh Co., 2 Pet. 251.

(d) Under the power to regulate commerce with the Indian tribes, congress have power to prohibit all intercourse with them, except under a license. United States v. Cisna, 1 McLean, 254.

(e) The power to pass naturalization laws would seem to be exclusively in congress. Chirac v. Chirac, 2 Wh. 269. United States v. Villato, 2 Dall. 372. Thurlow v. Massachusetts, 5 How. 585. Smith v. Turner, 7 Ibid. 556. Golden v. Prince, 3 W. C. C. 314.

(g) The states have authority to pass bankrupt laws, provided they do not impair the obligation of contracts, and provided there be no act of congress in force to establish a uniform system of bankruptcy, conflicting with such laws. Sturges v. Crowninshield, 4 Wh. 122 McMillan v. McNeill, Ibid. 209. But an act of a state legislature which discharges a debtor from all liability for debts contracted previous to his discharge, on his surrendering his property for the benefit of his creditors, is invalid so far as it attempts to discharge the contract. Farmers' and Mechanics' Bank v. Smith, 6 Wh. 131. A mere insolvent law, however, is not within the prohibition. Ogden v. Saunders, 12 Wh. 213. Mason v. Haile, Ibid. 370. Boyle v. Zacharie, 6 Pet. 348, 635. Beers v. Haughton, 9 Ibid. 329. And see Suydam v. Broadnax, 14 Ibid. 67. Cook v. Moffat, 5 How. 295.

(h) This power is limited to the coining and stamping the standard of value upon what the government creates or shall adopt, and to punishing the offence of producing a false repre sentation of what may have been so created or adopted. Fox v. Ohio, 5 How. 433. Whether congress has power to provide for the punishment of the offence of *passing* counterfeit coin, has been doubted. United States v. ——, 2 Law Rep. 90. This power is certainly possessed by the states. Fox v. Ohio, 5 How. 410. But congress may, without doubt, provide for punishing the offence of bringing into the United States, from a foreign place, false, forged and counterfeit coins, made in the similitude of coins of the United States; and also for the punishment of the offence of uttering and passing the same. United States v. Marigold, 9 How. 560.

(i) It is under this power that congress have adopted the mail regulations of the union, and punish all depredations on the mail. Sturtevants v. City of Alton, 3 McLean, 393. The power to establish post-roads, is restricted to such as are regularly laid out under the laws of the several states. Cleaveland, Painesville and Ashtabula Railroad Co. v. Franklin Canal Co., Pittsburgh Leg. J. 24 Dec. 1853. But see Pennsylvania v. Wheeling and Belmont Bridge Co., 18 How. 421.

(k) Patents are entitled to a liberal construction, since they are not granted as restrictions upon the rights of the community, but "to promote the progress of science and useful arts." Blanchard v. Sprague, 3 Sumn. 535. Grant v. Raymond, 6 Pet. 218. Hogg v. Emerson, 6 How. 486. Brooks v. Fiske, 15 Ibid. 223. The power of congress to legislate upon the subject of patents is plenary, by the terms of the constitution, and as there are no restraints on its exercise, there can be no limitation of their right to modify them at their pleasure, so that they do not take away the rights of property in existing patents. McClurg v. Kingsland, 1 Ibid. 206. Therefore, congress has the power to grant the extension of a patent which has been renewed under the act of 1836. Bloomer v. Stolley, 5 McLean, 158. Their power to reserve rights and privileges to assignees, on extending the term of a patent, is incidental to the general power conferred by the constitution. Blanchard's Gun-Stock Turning Factory v. Warner, 1 Blatch. 258.

(l) In the United States, an author has no exclusive property in a published work, except under some act of congress. Wheaton v. Peters, 8 Pet. 591. And see Jefferys v. Boosey, 30 Eng. L. & Eq. 1.

(m) See American Insurance Co. v. Canter, 1 Pet. 546.

(n) The crime of piracy is defined by the law of nations with reasonable certainty. United States v. Smith, 5 Wh. 153.

(o) As a consequence of the power of declaring war and making treaties, the government possesses the power of acquiring territory either by conquest or by treaty. American Ins. Co. v. Canter, 1 Pet. 542. When the legislative authority has declared war, the executive authority to whom its execution is confided, is bound to carry it into effect; he has a discretion vested in him, as to the manner and extent; but he cannot lawfully transcend the rules of warfare established among civilized nations. Brown v. United States, 8 Cr. 153.

(p) Congress have a constitutional power to enlist minors, in the navy or army, without the consent of their parents. United States v. Bainbridge, 1 Mas. 71. Case of Emanuel Roberts, 2 Hall, L. J. 192. United States v. Stewart, Crabbe, 265. Commonwealth v. Murray, 4 Binn. 487. Commonwealth v. Barker, 5 Ibid. 423. Public policy requires that a minor shall be at liberty to enter into a contract to serve the state, whenever such contract is not positively forbidden by the state itself. Commonwealth v. Gamble, 11 S. & R. 94.

Errors and Appeals.

1. Appeals in admiralty, from district to circuit courts.
2. Error from circuit to district courts. From supreme to circuit courts. Citation. No reversal on plea in abatement. Limitation. Bail in error.
3. When a supersedeas. Damages and costs.
4. Judgment on reversal. Supreme court to issue mandate.
5. Error to the state courts. Citation. Judgment and execution. What errors may be assigned.
6. Clerks of circuit courts may issue writs of error.
7. Security for costs, where the writ is no supersedeas.
8. Where circuit judges are divided in opinion, case to be certified to the supreme court. Decision to be remitted. Case may proceed. No punishment to be inflicted where the court is divided.
9. Appeals from district courts. From circuit courts in equity and admiralty. Proceedings thereon.
10. Error from supreme to circuit courts, in cases from the district courts.
11. Error in revenue cases.

24 Sept. 1789 § 21. 1 Stat. 83.

Appeals from district courts.

1. From final decrees(a) in a district court, in causes of admiralty and maritime jurisdiction,(b) where the matter in dispute exceeds the sum or value of three hundred dollars,(c) exclusive of costs, an appeal(d) shall be allowed to the next circuit court,(e) to be held in such district.

Ibid. § 22.

Error from circuit to district courts.

2. Final decrees and judgments(g) in civil actions(h) in a district court, where the matter in dispute exceeds the sum or value of fifty dollars,(i) exclusive of costs, may be re-examined, and reversed or affirmed in a circuit court, holden in the same district, upon a writ of error; (k) whereto shall be annexed and returned therewith at the day and place therein mentioned, an authenticated transcript of the record, an assignment of errors, and prayer for reversal, with a citation to the adverse party, signed by the judge of such district court, or a justice of the supreme court, the adverse party having at least twenty days' notice. And upon a like process,(l) may final judgments(m) and decrees(n) in civil actions, and suits in equity in a circuit court, brought there by original process, or removed there from courts of the several states, or removed there by appeal(o) from a district court where the matter in dispute exceeds the sum or value of two thousand dollars,(p) exclusive of costs, be re-examined and reversed or affirmed in

From supreme to circuit courts.

Citation.

(a) A party may appeal from an interlocutory decree, having the effect of a final decree; or he may, at his election, wait until the final decree is actually entered, and then appeal. Steamboat New England, 3 Sumn. 495. Thus, an appeal lies from a decree of the district court, refusing an order for the sale of a vessel, on an application by one of two part owners, who have an equal interest. Davis v. The Seneca, Gilp. 34. If a final decree be not appealed from, no appeal lies upon any subsequent proceedings. The Brig Hollen, 1 Mas. 431.

(b) The act of 1803, *infra* 9, extends the right of appeal to all final judgments and decrees. But this act has made no alteration in the law of 1789, as it respects appeals to the circuit court, except in reducing the sum or matter in controversy from $300 to $50, on which such appeals shall be allowed. United States v. Nourse, 6 Pet. 496. Appeals from the district to the circuit courts are limited to cases of admiralty and maritime jurisdiction; all other cases are removed by writ of error. United States v. Haynes, 2 McLean, 155. United States v. Wonson, 1 Gall. 5.

(c) Altered to fifty dollars, *infra* 9.

(d) An appeal from a decree of the district court, in admiralty, it is said, must be taken in open court, before the adjournment *sine die*, unless a different period be prescribed by the court. Norton v. Rich, 3 Mas. 443. But see Hudgins v. Kemp, 18 How. 537. On an appeal to the circuit court, in admiralty, the whole decree of the district court is brought up, although only part of it is appealed from. The Roarer, 1 Blatch. 1. An appeal may be sustained in part, and dismissed in part. Westcot v. Bradford, 4 W. C. C. 493.

(e) An appeal from the district court is properly entered, at the term of the circuit court, begun next after the entry of the decree in the district court, although the term of the district court, during which the decree was entered, had not been ended when the term of the circuit court was begun. United States v. Certain Hogsheads of Molasses, 1 Curt. C. C. 276.

(g) A circuit court has no authority to issue a *certiorari*, or other compulsory process, to the district court, for the removal of a cause from that jurisdiction, before a final judgment or decree is pronounced. Patterson v. United States, 2 Wh. 221.

(h) See *supra*, note (b).

(i) See Postmaster General v. Cross, 4 W. C. C. 326.

(k) A writ of error lies upon a judgment on a case stated. United States v. Eliason, 16 Pet. 291. But not upon a judgment on an issue of *nul tiel record*; for that is an issue of fact and not of law. United States v. Cook, 2 Mas. 22. Nor upon a judgment on a writ of error *coram vobis*. Pickett's Heirs v. Legerwood, 7 Pet. 144. And in general, matters of practice do not constitute subjects upon which errors can be assigned. Parsons v. Bedford, 3 Ibid. 433, 445.

(l) That is, by writ of error; but since the act of 1803, *infra* 9, cases of equity and admiralty jurisdiction are removable only by appeal. The San Pedro, 2 Wh. 132. Conn v. Penn, 5 Ibid. [illegible] McCollum v. Eager, 2 How. 61. Saltmarsh v. Tuthill, 12 Ibid. 387. All suits brought to settle legal rights, which are not of equity or admiralty jurisdiction, whatever may be their peculiar [illegible] the state laws, are deem[ed] cases at law, and [illegible] Parish [illegible] Pet. 451. [illegible] particul[illegible] [illegible] Ellis, 15 [illegible] [illegible]orms under [illegible] removable by writ of error.

(m) A final judgment is one which determines the [illegible] cause; it need not finally determine the right. Weston v. [illegible] Council of Charleston, 2 Pet. 449, 464. Holmes v. Jennison [illegible] Ibid. 540. No writ of error lies to remove a judgment of non[suit] [illegible] Evans v. Phillips, 4 Wh. 73. Nor upon a decision overrulin[g] [illegible] motion to quash an attachment. Toland v. Sprague, 12 Pet. 300. Nor upon the refusal of a motion to quash an execution. Evans v. Gee, 14 Ibid. 1. Nor upon decree, under the practice in Pennsylvania, distributing the proceeds of a marshal's sale. Bayard v. Lombard, 9 How. 530. The writ of error, however, need not purport on its face, to be issued on a final judgment. Buel v. Van Ness, 8 Wh. 312.

(n) A final decree, in equity, is one which finally decides and disposes of the whole merits of the cause, and reserves no questions or directions for the future judgment of the court; therefore, no appeal lies from a decree granting an injunction. Barnard v. Gibson, 7 How. 650. Or dissolving an injunction. Young v. Grundy, 6 Cr. 51. Hiriart v. Ballon, 9 Pet. 156. Verden v. Coleman, 18 How. 86. Or refusing to dissolve an injunction. Gibbons v. Ogden, 6 Wh. 448. Or from one making an injunction perpetual, and leaving some matters of account open for further consideration, upon which the parties are to take further proof. Brown v. Swann, 9 Pet. 1. Or from a decree dismissing a cross-bill. Ayres v. Carver, 17 How. 595. Or from one sustaining a demurrer for multifariousness, and defects of form. De Armas's Heirs v. United States, 6 Ibid. 103. A decree awarding a new trial at law, in an action which the suit in equity is brought to restrain, is but interlocutory. Lea v. Kelly, 15 Pet. 213. And so is a decree that money shall be paid into court, or that property shall be delivered to a receiver, or be held in trust to be delivered to a new trustee. Forgay v. Conrad, 6 How. 201. And where the court below decreed, that the complainants were entitled to two-sevenths of certain property, and referred it to a master to take and report an account of the property, and reserved all other matters in controversy until the coming in of the report, it was held to be an interlocutory decree. Perkins v. Fourniquet, Ibid. 206. And see Craighead v. Wilson, 18 Ibid. 199. So, no appeal lies from a decision upon a question of practice addressed to the discretion of the court; as upon a refusal to open a decree. Wylie v. Cox, 14 Ibid. 1. Brockett v. Brockett, 2 Ibid. 238.

(o) Extended, *infra* 10, to cases removed from the district courts by writ of error.

(p) The thing in controversy must, in order to give jurisdiction to the supreme court, be capable of pecuniary estimation. Ritchie v. Mauro, 2 Pet. 243. Barry v. Mercein, 5 How. 103. And this clause excludes criminal cases, which can only be re-examined on a certificate of division between the judges of the circuit court under the act of 1802, *infra* 8. United States v. More, 3 Cr. 159. Ex parte Kearney, 7 Wh. 38, 42. The amount actually in dispute between the parties is the criterion of the jurisdiction. Grant v. McKee, 1 Pet. 248. Bank of Alexandria v. Hooff, 7 Ibid. 168. Gruner v. United States, 11 How. 163. And this has reference to the date of the judgment or decree in the court below. Bank of the United States v. Daniel, 12 Pet. 52. Where the plaintiff sues for money, and claims in his pleadings a larger sum than $2000, and obtains a judgment for a smaller amount, the sum for which judgment is rendered is the only matter in controversy, when the defendant brings the writ of error. But if the plaintiff brings the writ of error, upon the ground that he is entitled to more than the judgment was rendered for, then his averment in his declaration shows the amount he claimed; and as that claim is the matter for which he brings suit, he is entitled to the writ of error, if that claim appears to be large enough to give jurisdiction to the court. Bennett v. Butterworth, 8 How. 129. Knapp v. Banks, 2 Ibid. 73. Gordon v. Ogden, 3 Pet. 33. Winston v. United States, 3 How. 771. United States v. McDowell, 4 Cr. 316.

24 Sept. 1789 § 22.

the supreme court, the citation being in such case signed by a judge of such circuit court, or justice of the supreme court,(*a*) and the adverse party having at least thirty days' notice.(*b*) But there shall be no reversal, in either court, on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of a demurrer, or for any error in fact. And writs of error shall not be brought but within five years(*c*) after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, *feme covert, non compos mentis,* or imprisoned, then within five years as aforesaid, exclusive of the time of such disability. And every justice or judge signing a citation on any writ of error as aforesaid, shall take good and sufficient security,(*d*) that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good.(*e*)

No reversal on plea in abatement.

Limitation.

Bail in error.

Ibid. § 23.

3. A writ of error as aforesaid shall be a *supersedeas* and stay execution, in cases only(*g*) where the writ of error is served,(*h*) by a copy thereof being lodged for the adverse party, in the clerk's office where the record remains, within ten days, Sundays exclusive, after rendering the judgment or passing the decree complained of.(*i*) Until the expiration of which term of ten days, executions shall not issue in any case where a writ of error may be a *supersedeas;* and where, upon such writ of error, the supreme or a circuit court shall affirm a judgment or decree, they shall adjudge or decree to the respondent in error, just damages for his delay,(*k*) and single or double costs at their discretion.

When a supersedeas.

Damages and costs.

Ibid. § 24.

4. When a judgment or decree shall be reversed in a circuit court, such court shall proceed to render such judgment or pass such decree as the district court should have rendered or passed;(*l*) and the supreme court shall do the same on reversals therein,(*m*) except where the reversal is in favor of the plaintiff, or petitioner in the original suit, and the damages to be assessed, or matter to be decreed, are uncertain, in which case they shall remand the cause for a final decision. And the supreme court shall not issue execution in causes that are removed before them by writs of error, but shall send a special mandate to the circuit court to award execution thereupon.(*n*)

Judgment on reversal.

Supreme court to issue mandate.

Smith *v.* Honey, 3 Pet. 469. Scott *v.* Lunt, 6 Ibid. 349. The same rule applies to actions of trover and trespass. Cooke *v.* Woodrow, 5 Cr. 13. Hulscamp *v.* Teel, 2 Dall. 358. But actions of replevin stand upon different principles. The damages are not the principal subject in dispute. If the replevin be for goods distrained for rent, the amount for which avowry is made, is the real matter in dispute; but if the writ be issued as a means of trying the title to property, the value of the article replevied is the matter in dispute. Peyton *v.* Robertson, 9 Wh. 527. Bennett *v.* Butterworth, 8 How. 124. Gorman *v.* Lenox's Executors, 15 Pet. 115. Where the nature of the case does not require the value of the thing demanded to be stated in the declaration, it is the practice, both of the supreme court and of the circuit courts, to allow the value to be given in evidence. Ex parte Bradstreet, 7 Pet. 634. Williamson *v.* Kincaid, 4 Dall. 20. Hagan *v.* Foison, 10 Pet. 160. United States *v.* Brig Union, 4 Cr. 216. But in such cases the *onus probandi* is upon the party seeking to obtain a revision of the case, to establish the jurisdiction. Hagan *v.* Foison, 10 Pet. 160. Rush *v.* Parker, 5 Cr. 287.

(*a*) If the citation be signed by the clerk only, the writ of error will be dismissed. United States *v.* Hodge, 3 How. 534. Villabolos *v.* United States, 6 Ibid. 81.

(*b*) The citation must be served at least thirty days before the return day of the writ of error. Yeaton *v.* Lenox, 7 Pet. 220. If it be not issued and served, the writ of error will be dismissed. Bailiff *v.* Tipping, 2 Cr. 406. Hogan *v.* Ross, 11 How. 294. And it should accompany the record, with affidavit of service. Lloyd *v.* Alexander, 1 Cr. 365. Worcester *v.* Georgia, 6 Pet. 533. It need not be under seal, for it is simply a notice to the opposite party that the record is transferred into another court. Cohens *v.* Virginia, 6 Wh. 411. Worcester *v.* Georgia, 6 Pet. 533. And any informality in it will be cured by an acceptance of service. Peale *v.* Phipps, 8 How. 256. McDonogh *v.* Millaudon, 3 Ibid. 693. Buckingham *v.* McLean, 13 Ibid. 150. Where an appeal is made in open court, during the term at which the decree is passed, no citation is necessary to the opposite party; for he is presumed to be in court, and therefore to have notice; but when the appeal is taken out of court, the citation is necessary to give him notice. Hudgins *v.* Kemp, 18 How. 537. Reilly *v.* Lamar, 2 Cr. 344. Yeaton *v.* Lenox, 7 Pet. 220. The San Pedro, 2 Wh. 142.

(*c*) A writ of error is not brought until filed in the court to which it is addressed, and whose record is to be removed by it; and, therefore, though the writ be tested within five years, if it be not filed in the court which rendered judgment until after the expiration of that period, it is barred. Brooks *v.* Norris, 11 How. 204. If however, the court allowing an appeal, accept the security to prosecute, &c., after the expiration of the time allowed by law for an appeal, it has relation back to the time of the allowance of the appeal. The Dos Hermanos, 10 Wh. 306. This limitation does not extend to writs of error *coram vobis.* Strode *v.* The Stafford Justices, 1 Brock. 162.

(*d*) An omission to take the requisite security does not avoid the writ of error; but if any party be prejudiced by the omission the supreme court will grant him summary relief, by imposing such terms on the other party as, under all the circumstances, may be legal and proper. Martin *v.* Hunter's Lessee, 1 Wh. 361. And see Catlett *v.* Brodie, 9 Ibid. 553. Stafford *v.* The Union Bank, 16 How. 135.

(*e*) The bond must be sufficient to secure the whole judgment in case it should be affirmed, if the writ of error operate as a *supersedeas.* Catlett *v.* Brodie, 9 Wh. 553. Stafford *v.* The Union Bank, 16 How. 135. See *infra* 7, as to writs of error that do not operate as a *supersedeas.*

(*g*) The supreme court will not quash an execution, issued by the court to enforce its decree, pending the writ of error, if the writ of error be not a *supersedeas* as to the decree. Wallen *v.* Williams, 7 Cr. 278. And if, in an action at law, instead of a writ of error, an appeal be taken, which is no *supersedeas;* a writ of error, subsequently sued out, more than ten days from the rendition of the judgment, cannot so operate; and no court of the United States has any equitable power to correct the mistake, and set aside an execution in such a case. Saltmarsh *v.* Tuthill, 12 How. 387. Hogan *v.* Ross, 11 Ibid. 294. If, however, an execution has been issued by the circuit court, in a case removed by writ of error, where the plaintiff in error is entitled to a *supersedeas,* the supreme court will direct such writ to issue. Stockton *v.* Bishop, 2 Ibid. 74.

(*h*) It must be so served before the return day. Wood *v.* Lide, 4 Cr. 180.

(*i*) A writ of error is not a *supersedeas* unless served within ten days after the rendition of the judgment, although the parties have agreed to a stay of execution for two months, and the writ of error be served before the expiration of that time. Thompson *v.* Voss, 1 Cr C. C. 108. And a second writ of error, sued out more than ten days after the entry of judgment, cannot so operate. Hogan *v.* Ross, 11 How. 294. And see Moore *v.* Dunlop, 1 Cr. C. C. 180. Ex parte Ben, Ibid. 532. United States *v.* Columbian Insurance Co., 2 Ibid. 266.

(*k*) If no damages are awarded, it is equivalent to a denial of them. Boyce's Executors *v.* Grundy, 9 Pet. 275.

(*l*) It seems, that a *venire de novo* may be awarded triable in the circuit court. United States *v.* Sawyer, 1 Gall. 87, 101.

(*m*) If a judgment or decree is reversed, except for want of jurisdiction, the plaintiff in error or appellant recovers costs, in the supreme court. Bradstreet *v.* Potter, 16 Pet. 317. Strader *v.* Graham, 18 How. 602.

(*n*) The inferior court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded. Sibbald *v.* United States, 12 Pet. 491. See West *v.* Brashear, 14 Ibid. 51. If it do not conform to the decree, and provide for its entire and correct execution, a new mandate will be issued. 12 Ibid. 4[illegible]. Petition, at a subsequent term. Sibbald *v.* United States, 12 Ibid. 4[illegible]. If not obeyed, the supreme court may issue a *mandamus,* [illegible] such other [illegible] or the supreme court [illegible] 1[illegible]2. [illegible] *v.* Mi[illegible] writ as may be necessary to enforce their jurisdic[illegible] Ibid. 492-3.

5. A final judgment or decree(*a*) in any suit,(*b*) in the highest court of law or equity of a state in which a decision in the suit could be had,(*c*) where is drawn in question (*d*) the validity of a treaty(*e*) or statute of,(*g*) or an authority exercised under the United States,(*h*) and the decision is against their validity; (*i*) or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States,(*k*) and the decision is in favor of such their validity; (*l*) or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States,(*m*) and the decision is against the title, right, privilege or exemption specially set up or claimed by either party,(*n*) under such clause of the said constitution, treaty, statute or commission; may be re-examined and reversed or affirmed in the supreme court of the United States upon a writ of error,(*o*) the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the supreme court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court; and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision, as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the said constitution, treaties, statutes, commissions, or authorities in dispute.(*p*)

24 Sept. 1789 § 25.

Error to the state courts.

Citation.

Judgment and execution.

What errors may be assigned.

6. It shall be the duty of the clerk of the supreme court of the United States, forthwith to transmit to the clerks of the several circuit courts the form of a writ of error, to be approved by any two of the judges of the supreme court; and it shall be lawful for the clerks of the said circuit courts to issue writs of error agreeably to such forms, as

8 May 1792 § 9. 1 Stat. 278.

Clerks of circuit courts to issue writs of error.

(*a*) As to what is a final judgment or decree, see *supra* 2, notes (*m*) and (*n*). A writ of error lies in such case, although the judgment of an inferior state court, against a title claimed under an act of congress, is affirmed by a divided court above. Lessieur *v.* Price, 12 How. 59. And error lies in cases under this section, without reference to the amount in controversy. Buel *v.* Van Ness, 8 Wh. 312. Or to the citizenship of the parties. Cohens *v.* Virginia, 6 Ibid. 264. The constitutionality of this section has been denied by the courts of Virginia, Hunter *v.* Martin, 4 Mumf. 1; of Georgia, Padelford *v.* City of Savannah, 14 Geo. 440; of Pennsylvania, Respublica *v.* Cobbet, 3 Dall. 467; of Ohio, Stunt *v.* Steamboat Ohio, 4 Am. L. R. 49; and of California, Johnson *v.* Gordon, 4 Cal. 368; but it has been fully sustained by the supreme court of the United States, which, as a court of last resort, must necessarily have power to decide as to its own jurisdiction. Martin *v.* Hunter's Lessee, 1 Wh. 304. Cohens *v.* Virginia, 6 Ibid. 264. The writ of error need not state the judgment to be a final one. Buel *v.* Van Ness, 8 Wh. 312.

(*b*) This term is a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy which the law affords him. The modes of proceeding may be various, but if a right is litigated between the parties in a court of justice, the proceeding by which the decision of the court is sought is a suit. Weston *v.* City Council of Charleston, 2 Pet. 464. It is not limited to civil suits, but embraces criminal prosecutions. Worcester *v.* Georgia, 6 Ibid. 567. As to whether a *habeas corpus* is such a suit, see Holmes *v.* Jennison, 14 Ibid. 540.

(*c*) The judgment to be examined must be that of the highest court of the state having cognisance of the case, but the writ may be directed to any court which has the custody of the record, though not the court in which the judgment was rendered. Gelston *v.* Hoyt, 3 Wh. 246. Webster *v.* Reid, 11 How. 437. The writ of error need not purport upon its face to be directed to the highest court of the state. Buel *v.* Van Ness, 8 Wh. 312.

(*d*) It must appear on the record that some one of the questions stated in this section did arise in the state court, and that the question was decided by the state court: it is sufficient if it appear by clear and necessary intendment from the record, that the question must have been raised and decided; it need not appear in terms. But it is not sufficient that a question might have arisen or been applicable; it must appear that it did arise, and was applied. Crowell *v.* Randell, 10 Pet. 368. Owings *v.* Norwood's Lessee, 5 Cr. 344. Martin *v.* Hunter's Lessee, 1 Wh. 304, 355. Inglee *v.* Coolidge, 2 Ibid. 363. Miller *v.* Nicholls, 4 Ibid. 311, 315. Williams *v.* Norris, 12 Ibid. 117, 124. Hickie *v.* Starke, 1 Pet. 98. Willson *v.* Blackbird Creek Marsh Co., 2 Ibid. 245, 250. Satterlee *v.* Matthewson, Ibid. 380, 410. Harris *v.* Dennie, 3 Ibid. 292. Fisher *v.* Cockerell, 5 Ibid. 256. New Orleans *v.* De Armas, 9 Ibid. 234. Keene *v.* Clark, 10 Ibid. 291. McKinney *v.* Carroll, 12 Ibid. 66. Beaston *v.* Farmers' Bank of Delaware, Ibid. 102. Choteau *v.* Marguerite, Ibid. 507. Reed's Lessee *v.* Marsh, 13 Ibid. 153. Holmes *v.* Jennison, 14 Ibid. 540. Coons *v.* Gallagher, 15 Ibid. 18. Scott *v.* Jones, 5 How. 343. Kennedy's Executors *v.* Hunt's Lessee, 7 Ibid. 586. Smith *v.* Hunter, Ibid. 738. Doe *v.* Eslava, 9 Ibid. 421. Williams *v.* Oliver, 12 Ibid. 111. Grand Gulf Railroad and Banking Co. *v.* Marshall, Ibid. 165. Lawler *v.* Walker, 14 Ibid. 149. Colcote *v.* Stanton, 18 Ibid. 243. Maxwell *v.* Newbold, Ibid. 511.

(*e*) This embraces treaties with the Indian tribes. Worcester *v.* Georgia, 6 Pet. 515. Henderson *v.* Tennessee, 10 How. 311. It is, however, limited by the constitution, and must be construed so as to be confined within these limits. It is, therefore, necessary in order to give jurisdiction to the supreme court, that the party should have a right growing out of the treaty. Owings *v.* Norwood's Lessee, 5 Cr. 344. New Orleans *v.* De Armas, 9 Pet. 223. Gill *v.* Oliver's Executors, 11 How. 529. Williams *v.* Oliver, 12 Ibid. 111. The setting up of an outstanding title alleged to have been derived under a treaty, to defeat an action of ejectment, is not sufficient. Henderson *v.* Tennessee, 10 Ibid. 311.

(*g*) This applies to a case where both parties claim under the same act of congress. Buel *v.* Van Ness, 8 Wh. 312. Ross *v.* Barland, 1 Pet. 655. Or under different acts. Choteau *v.* Eckhart, 2 How. 344. Delauriere *v.* Emison, 15 Ibid. 525. This clause does not extend to the decision of a state court against the validity of a territorial law. Miners' Bank *v.* Iowa, 12 How. 1. If a state court refuses to permit a cause to be removed to the circuit court under § 12 of the judiciary act, and proceeds to final judgment, it may be reviewed under this section. Kanouse *v.* Martin, 14 How. 23. s. c. 15 Ibid. 198.

(*h*) See Gelston *v.* Hoyt, 3 Wh. 246. Searight *v.* Stokes, 3 How. 151. Udell *v.* Davidson, 7 Ibid. 769. Neilson *v.* Lagow, Ibid. 772. Achison *v.* Huddleson, 12 Ibid. 293. Fisher's Lessee *v.* Cockerell, 5 Pet. 248. Crowell *v.* Randell, 10 Ibid. 368. Matheson *v.* Branch Bank of Mobile, 7 How. 260. Menard *v.* Aspasia, 5 Pet. 505. Strader *v.* Graham, 10 How. 82.

(*i*) A decision by a state court in favor of a right claimed under an act of congress, does not entitle the losing party to a writ of error. Linton *v.* Stanton, 12 How. 423. Gordon *v.* Caldcleugh, 3 Cr. 268. McDonogh *v.* Millaudon, 3 How. 693. Fulton *v.* McAffee, 16 Pet. 149.

(*k*) The supreme court cannot declare an act of a state legislature void, because it conflicts with the constitution of the state. Jackson *v.* Lamphire, 3 Pet. 280. Watson *v.* Mercer, 8 Ibid. 88.

(*l*) The court has no jurisdiction if the decision of the state court be against the validity of the state law, drawn in question as repugnant to the constitution of the United States. Walker *v.* Taylor, 5 How. 64. Commonwealth Bank of Kentucky *v.* Griffith, 14 Pet. 56.

(*m*) If the question decided depended on the construction of a state law, and not on its validity, the court has no jurisdiction. McBride *v.* Hoey, 11 Pet. 167. Grand Gulf Railroad and Banking Co. *v.* Marshall, 12 How. 165.

(*n*) It is not every misconstruction of an act of congress which can be re-examined; the decision must have been against some right, &c., as claimed under such an act. Montgomery *v.* Hernandez, 12 Wh. 129. Doe *v.* Eslava, 9 How. 421.

(*o*) If the clerk of the state court neglects or refuses to make a return to a writ of error issued under this section, the court will lay a rule upon him to make return on or before the first day of the next term, or show cause why such return has not been made in conformity to law. United States *v.* Booth, 18 How. 476.

(*p*) The court is confined to an examination of the questions arising under the laws of the United States, and cannot consider any distinct equity arising out of contracts or transactions between the parties. Matthews *v.* Zane, 7 Wh. 164.

8 May 1792 § 9.

nearly as the case may admit, under the seal of the said circuit courts, returnable to the supreme court, in the same manner as the clerk of the supreme court may issue such writs, in pursuance of the act, entitled, "An act to establish the judicial courts of the United States."

12 Dec. 1794 § 1. 1 Stat. 404.

Security for costs where the writ is no supersedeas.

7. The security to be required and taken on the signing of a citation, on any writ of error which shall not be a *supersedeas* and stay execution, shall be only to such an amount as, in the opinion of the justice or judge taking the same, shall be sufficient to answer all such costs as, upon an affirmance of the judgment or decree, may be adjudged or decreed to the respondent in error.

29 April 1802 § 6. 2 Stat. 159.

On division in opinion, case to be certified to supreme court.

Decision to be remitted.

Case may proceed.

No punishment to be inflicted where the court is divided.

8. Whenever any question(*a*) shall occur before a circuit court,(*b*) upon which the opinions of the judges shall be opposed,(*c*) the point upon which the disagreement shall happen,(*d*) shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the supreme court, at their next session to be held thereafter,(*e*) and shall, by the said court, be finally decided. And the decision of the supreme court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from proceeding, if in the opinion of the court, farther proceedings can be had without prejudice to the merits: *And provided also*, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment.

3 March 1803 § 2. 2 Stat. 244.

Appeals from district courts.

From circuit courts, in equity or admiralty.

Proceedings thereon.

9. From all final judgments or decrees,(*g*) in any of the district courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars,(*h*) shall be allowed to the circuit court next to be holden in the district where such final judgment or judgments, decree or decrees, may be rendered;(*i*) and the circuit court or courts are hereby authorized and required to receive, hear and determine such appeal; and from all final judgments or decrees rendered or to be rendered in any circuit court, or in any district court acting as a circuit court, in any cases of equity, of admiralty, and maritime jurisdiction, and of prize or no prize, an appeal,(*k*) where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, shall be allowed to the supreme court of the United States; and upon such appeal, a transcript of the libel, bill, answer, depositions,(*l*) and all other proceedings of what kind soever in the cause, shall be transmitted to the said supreme court; and no new evidence shall be received in the said court, on the hearing of such appeal,(*m*) except in admiralty and prize causes; and such appeals shall be subject to the same rules, regulations and restrictions as are prescribed in law in case of writs of error;(*n*) and the said supreme court shall be, and hereby is authorized

(*a*) It must be a question of law, and not one of fact. Dennistoun *v.* Stewart, 18 How. 565. Wilson *v.* Barnum, 8 Ibid. 258. It may arise on a motion in arrest of judgment. United States *v.* Kelly, 11 Wh. 417. Or on the trial. United States *v.* Bavans, 3 Ibid. 336. Or on a special verdict. Somerville's Executors *v.* Hamilton, 4 Ibid. 230. But a division of opinion on a motion for a new trial, cannot be certified under this section. United States *v.* Daniel, 6 Ibid. 542. Nor matters resting in the discretion of the court. Davis *v.* Braden, 10 Pet. 286. Packer *v.* Nixon, Ibid. 408. It is the only mode by which a criminal case can be decided by the supreme court. United States *v.* Gibert, 2 Sumn. 22.

(*b*) This does not include the circuit court for the district of Columbia. Ross *v.* Triplett, 3 Wh. 600. Nor does it embrace cases removed from the district court, as the district judge cannot sit in error from his own decision. United States *v.* Lancaster, 5 Ibid. 434.

(*c*) A division of opinion cannot be certified unless both of the judges were present at the trial. Taylor *v.* Carpenter, 2 W. & M. 1.

(*d*) The points stated must be single, and must not bring up the whole case for decision. United States *v.* Bailey, 9 Pet. 257. Adams *v.* Jones, 12 Ibid. 207. White *v.* Turk, Ibid. 238. Nesmith *v.* Sheldon, 6 How. 41. Webster *v.* Cooper, 10 Ibid. 54. Dennistoun *v.* Stewart, 18 Ibid. 565. And the questions upon which the judges were opposed in opinion, must be distinctly and particularly stated, with reference to that point of the case upon which they have arisen. United States *v.* Briggs, 5 Ibid. 208. Dennistoun *v.* Stewart, 18 Ibid. 565. Ogilvie *v.* Knox Insurance Co., Ibid. 577. See United States *v.* Chicago, 7 Ibid. 192.

(*e*) Only the questions certified are before the supreme court; the cause is not removed, and may proceed in the circuit court. Kennedy *v.* Georgia State Bank, 8 How. 611.

(*g*) Notwithstanding the generality of these terms, this act has made no alteration in the law of 1789, as it respects appeals to the circuit court, except in reducing the sum or matter in controversy from $300 to $50, on which such appeals shall be allowed. The words "final judgments or decrees," refer to judgments and decrees in cases of admiralty and maritime jurisdiction; and in such cases only has this act authorized an appeal from the district to the circuit court. United States *v.* Nourse, 6 Pet. 496. United States *v.* Haynes, 2 McLean, 155. United States *v.* Wonson, 1 Gall. 5. It does not include a decree under a law conferring a new and special jurisdiction, in which no remedy by appeal is provided, as a decree awarding an injunction to stay a treasury distress warrant. United States *v.* Nourse, 6 Pet. 470, 493; overruling Porter *v.* United States, 2 Paine, 313.

(*h*) No appeal lies by any party from a decree of the district court, unless *on his part* the matter in dispute exceeds the sum or value of $50. Shirley *v.* Titus, 1 Sumn. 447. In suits for assaults and batteries on the high seas, no appeal can be sustained, unless there be an *ad damnum* laid in the libel exceeding $50. Jenks *v.* Lewis, 3 Mas. 503. And where a libel claims $300 damages, and a decree is given for the libellant for $40, in which he acquiesces, the respondent cannot appeal. Greigg *v.* Reade, Crabbe, 64. See also United States *v.* McDowell, 4 Cr. 316. Postmaster General *v.* Cross, 4 W. C. C. 326. Godfrey *v.* Gilmartin, Law's Jurisdiction, 178 note.

(*i*) See The Montgomery *v.* The Betsey, 1 Gall. 416. Norton *v.* Rich, 3 Mas. 443. United States *v.* Haynes, 2 McLean, 155.

(*k*) This act has no reference to actions at law, and authorizes appeals to the supreme court, only in equity and admiralty. The San Pedro, 2 Wh. 132. Parish *v.* Ellis, 16 Pet. 451. But having provided for the removal of such causes by appeal, they cannot now be removed by writ of error. The San Pedro, 2 Wh. 132. McCollum *v.* Eager, 2 How. 61.

(*l*) Since the passage of this act, all the evidence, in admiralty as well as in equity cases, goes up to the supreme court with the appeal, and it must accordingly be in writing. The Schooner Boston, 1 Sumn. 328. If parol testimony was heard in the court below, it must be reduced to writing and appear on the record. Conn *v.* Penn, 5 Wh. 424. A statement of facts is not sufficient. New Orleans *v.* United States, 5 Pet. 449. By act 26 February 1853, "in case of an appeal, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, may be certified up to the appellant court." See tit. Fees. 8.

(*m*) This prohibits the receiving new evidence on an appeal in equity. Russell *v.* Southard, 12 How. 139.

(*n*) This adopts the rules, regulations and restrictions contained in the act of 1789, which respect the time within which a writ of error may be brought, and in what instances it shall operate as a *supersedeas*; the citation to the adverse party; the security to be given by the plaintiff in error for prosecuting his suit; and the restrictions upon the appellant court as to reversal in certain

3 March 1803 § 2.

and required to receive, hear and determine such appeals. And so much of the 19th and 22d sections of the act of congress, entitled, "An act to establish the judicial courts of the United States," passed on the 24th day of September 1789, as comes within the purview of this act, shall be and the same is hereby repealed.

4 July 1840 § 3. 5 Stat. 393.

Error, in cases from the district courts.

10. Writs of error shall lie to the supreme court from all judgments of a circuit court, in cases brought there by writs of error from the district court,(*a*) in like manner and under the same regulations, limitations and restrictions, as are now provided by law for writs of error to judgments rendered upon suits originally brought in the circuit court.(*b*)

31 May 1844 § 1. 5 Stat. 658.

Error in revenue cases.

11. Final judgments in any circuit court of the United States,(*c*) in any civil action brought by the United States, for the enforcement of the revenue laws of the United States,(*d*) or for the collection of the duties due, or alleged to be due, on merchandise imported therein, may be re-examined, and reversed or affirmed, in the supreme court of the United States, upon writ of error, as in other cases, without regard to the sum or value in controversy in such action, at the instance of either party.

Evidence.

I. General rules.

1. Proof to be by oral testimony.
2. In equity, testimony may be taken by depositions.

II. Mode of compelling the production of evidence.

3. Parties may be required to produce books and papers. Effect of refusal.
4. Subpœnas to run into other districts.

III. Depositions.

5. When depositions *de bene esse* may be taken. Before whom. Notice. In admiralty causes. Mode of taking down testimony. To be sealed up and directed to the court. Witnesses may be compelled to testify. Depositions to be taken in admiralty causes. To be used on appeal. When depositions may be read. Courts may issue *dedimus potestatem* as usual. And perpetuate testimony.
6. When depositions *in perpetuam rei memoriam* may be read.
7. Clerks to issue subpœnas to witnesses named in commission. Penalty for disobedience. Compensation of witnesses. Not to be required to go out of their county, or more than forty miles.
8. Judges to issue subpœnas *duces tecum*. On affidavit of party. Penalty for disobedience. Commissioner to copy papers produced. Fees of witnesses to be tendered.

IV. Records.

9. How legislative acts authenticated. And judicial records. Effect thereof.
10. How other public records authenticated. Effect thereof.
11. To apply to the territories, &c.
12. How certain foreign records authenticated.

V. Office copies.

13. Transcripts of treasury balances to be evidence. Copies of bonds, &c. When originals to be produced.
14. Copies of papers relating to land titles.
15. Extracts from the journals.
16. Solicitor of the treasury to certify copies of papers in his office.
17. Copies of papers in the several departments.

VI. Witnesses.

18. Witnesses in criminal cases may be required to give recognisance with surety. Their compensation.
19. Warrants may be issued against witnesses for the government, to compel them to find sureties. In default, may be committed.
20. Defendants to have process for their witnesses, in certain cases, at the cost of the government.
21. Compensation of witnesses, whilst under commitment.

I. General rules.

24 Sept. 1789 § 30. 1 Stat. 88.

Mode of proof.

1. The mode of proof by oral testimony and examination of witnesses in open court, shall be the same in all the courts of the United States, as well in the trial of causes in equity(*e*) and of admiralty and maritime jurisdiction, as of actions at common law.

29 April 1802 § 25 2 Stat. 166.

In equity, testimony may be taken by depositions.

2. In all suits in equity, it shall be in the discretion of the court, upon the request of either party, to order the testimony of the witnesses therein to be taken by depositions; which depositions shall be taken in conformity to the regulations prescribed by law for the courts of the highest original jurisdiction in equity, in cases of a similar nature, in that state in which the court of the United States may be holden: *Provided however*, That nothing herein contained shall extend to the circuit courts which may be holden in those states, in which testimony in chancery is not taken by deposition.

II. Mode of compelling the production of evidence.

24 Sept. 1789 § 15. 1 Stat. 82.

Parties may be required to produce books, &c.

Effect of refusal.

3. All the said courts of the United States, shall have power in the trial of actions at law,(*g*) on motion(*h*) and due notice thereof being given,(*i*) to require the parties to produce books or writings in their possession or power, which contain evidence pertinent to the issue,(*k*) in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery;(*l*) and if a plaintiff

enumerated cases. All these are applicable to appeals under this act, and are to be substantially observed; except that where the appeal is prayed at the same term when the decree or sentence is made, a citation is not necessary. The San Pedro, 2 Wh. 132. Reily *v.* Lamar, 2 Cr. 344. Stafford *v.* Union Bank, 16 How. 135.

(*a*) Prior to this act, no writ of error would lie in such a case. United States *v.* Goodwin, 7 Cr. 108. United States *v.* Gordon, Ibid. 287. Sarchet *v.* United States, 12 Pet. 143.

(*b*) See Mayberry *v.* Thompson, 5 How. 121.

(*c*) This does not extend to the territorial courts. United States *v.* Carr, 8 How. 9.

(*d*) The act 3 March 1845, § 10, (5 Stat. 736) relating to frauds on the revenue of the post-office department, is such a law. United States *v.* Bromley, 12 How. 88.

(*e*) This gives to the parties in equity a right to examine and cross-examine the witnesses *ore tenus*, which is not taken away either by the act of 1802, (*infra* 2) or by the 67th rule in equity, or in any other manner. Sickles *v.* Gloucester Co., 13 Leg. Int. 292.

(*g*) A proceeding *in rem* to enforce a forfeiture is not within the act. United States *v.* Twenty-eight Packages, Gilp. 306. And see Morgan *v.* Watson, 2 Whart. 10.

(*h*) An order to produce may be applied for before trial, upon notice. Insigi *v.* Brown, 1 Curt. C. C. 401.

(*i*) If the notice be served on an attorney, whose client lives at a great distance, the court will postpone the trial till full opportunity has been afforded to him to communicate with his client. Geyger's Lessee *v.* Geyger, 2 Dall. 332. The notice must state, that on a failure to produce, the court will be moved to award a nonsuit or judgment, as the case may be. Bas *v.* Steele, 3 W. C. C. 381.

(*k*) If deeds are on record, the court will not grant a rule on the party in whose possession the originals are, to produce them, unless a special reason be assigned. Geyger's Lessee *v.* Geyger, 2 Dall. 332.

(*l*) A *primâ facie* case of the existence of the paper, and its materiality, must be made out, and the court will then pass an order *nisi*, leaving the opposite party to produce, or show cause at

24 Sept. 1789 § 15. shall fail to comply with such order,(*a*) to produce books or writings, it shall be lawful for the courts respectively, on motion, to give the like judgment for the defendant as in cases of nonsuit;(*b*) and if a defendant shall fail to comply with such order, to produce books or writings, it shall be lawful for the courts respectively, on motion as aforesaid, to give judgment against him or her by default.(*c*)

2 March 1793 § 6. 1 Stat. 335.

Subpœnas to run into other districts, &c.

4. Subpœnas for witnesses who may be required to attend a court of the United States, in any district thereof, may run into any other district: *Provided*, That in civil causes, the witnesses living out of the district in which the court is holden, do not live at a greater distance than one hundred miles from the place of holding the same.(*d*)

III. Depositions.

24 Sept. 1789 § 30. 1 Stat. 88.

When depositions *de bene esse* may be taken.

Before whom.

Notice.

5. And when the testimony of any person shall be necessary, in any civil cause depending in any district, in any court of the United States,(*e*) who shall live at a greater distance from the place of trial than one hundred miles,(*g*) or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial,(*h*) or is ancient or very infirm, the deposition of such person may(*i*) be taken *de bene esse*,(*k*) before any justice or judge of any of the courts of the United States,(*l*) or before any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, or judge of a county court or court of common pleas of any of the United States,(*m*) not being of counsel or attorney to either of the parties,(*n*) or interested in the event of the cause, provided, that a notification(*o*) from the magistrate before whom the deposition is to be taken,(*p*) to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit,(*q*) be first made out and served on the adverse party or his attorney,(*r*) as either may be nearest, if either is within one hundred miles of the place of such caption,(*s*) allowing time for their attendance after notified, not less than

the trial, where alone the materiality can be decided. Iasigi *v.* Brown, 1 Curt. C. C. 401. Dunham *v.* Riley, 4 W. C. C. 126. Bas *v.* Steele, 3 Ibid. 381. An ex parte affidavit is sufficient on a motion for an order to produce. United States *v.* Twenty-eight Packages, Gilp. 306. A party who receives notice to produce papers at the trial, cannot be called upon to do so, until the trial has commenced. Hylton *v.* Brown, 1 W. C. C. 298.

(*a*) On the trial, the party who has obtained the order is not required, in the first place, to offer proof that the opposite party is in possession of the document called for; the party called upon must discharge himself of the consequences of not producing it, by affidavit, or other proof, that he has it not in his power to produce it. Hylton *v.* Brown, 1 W. C. C. 298. And this may be met by contrary proof according to the rules of equity. Bas *v.* Steele, 3 Ibid. 381.

(*b*) See Iasigi *v.* Brown, 1 Curt. C. C. 401.

(*c*) A paper produced on notice of the opposite party, must be proved by him who offers it, in like manner as if he had himself produced it; unless the person producing it be a party to the instrument, or claim a beneficial instrument under it. Rhoades *v.* Selin, 4 W. C. C. 715. Hylton *v.* Brown, 1 Ibid. 343. Nor does it become evidence for the party producing it, if the party who gave the notice choose to waive the reading of it, which he has a right to do. Blight *v.* Ashley, Pet. C. C. 15, 22.

(*d*) Notwithstanding this act, the issuing of an attachment to compel the personal attendance of a witness, residing in another district, is a matter in the discretion of the court. And where it would operate oppressively on the witness, and he shows no disposition to treat the process with contempt, the court will not compel his attendance. Ex parte Beebees, 2 Wall. Jr. 127. See Henry's Executors *v.* Ricketts, 1 Cr. C. C. 580.

(*e*) This only applies to cases in the district and circuit courts; it does not include the supreme court. The Argo, 2 Wh. 287. Nor can depositions taken under this act, be read in evidence, in equity suits, in the circuit court for the district of Columbia. Walker *v.* Parker, 5 Cr. C. C. 639.

(*g*) Whether in or out of the district. Patapsco Insurance Co. *v.* Southgate, 5 Pet. 604. Russell *v.* Ashley, Hemp. 546. Allen *v.* Blunt, 2 W. & M. 136. The person whose deposition is taken must reside more than 100 miles from the place of holding the court. Curtis *v.* Central Railway, 6 McLean, 401.

(*h*) "That the deponent is a seaman, on board a gunboat, in the harbor of Newport, and liable to be ordered to some other place, and not to be able to attend the trial," is not legal cause for taking his deposition *de bene esse*. The Samuel, 1 Wh. 9. See Harris *v.* Wall, 7 How. 704.

(*i*) The act does not peremptorily ordain, that the testimony of witnesses living more than 100 miles from the place of trial, should be taken by deposition; it only permits such a course; and if such witnesses be present in court at the trial, and give their testimony orally, the full costs of their travel and attendance should be allowed in the costs. Prouty *v.* Draper, 2 Story, 199.

(*k*) A deposition *de bene esse* may be taken without a rule. Banert *v.* Day, 3 W. C. C. 243. It cannot be taken during the session of the court, at which the cause is to be tried, unless by its order, or consent of parties. Allen *v.* Blunt, 2 W. & M. 122. Nor is a notice of the taking of such deposition good, if served on counsel, who could not attend, without being absent at the commencement of the court. Bell *v.* Nimmon, 4 McLean, 539. The caption of such deposition must name all the parties in the suit. Peyton *v.* Veitch, 2 Cr. C. C. 123. If the names of any of the parties do not appear in the caption, or some part of the deposition, it is a fatal objection to it. Waskern *v.* Diamond, Hemp. 701. A mistake, however, in the name of the plaintiff or defendant aforesaid, referring to him as plaintiff or defendant, the name being truly stated in the title, is no ground for rejecting the deposition. Voce *v.* Lawrence, 4 McLean, 203. And where, from the facts, there can be no uncertainty as to the case, the deposition should be admitted. Buckingham *v.* Burgess, 3 Ibid. 368. Merrill *v.* Dawson, Hemp. 563.

(*l*) Or any commissioner appointed by them, by act 1 March 1817. 3 Stat. 350. Or the clerks of the circuit and district courts, by act 26 February 1853. 10 Stat. 163. See tit. Fees, 8.

(*m*) The authority of the magistrate need not be proved, otherwise than by his own certificate. Vasse *v.* Smith, 2 Cr. C. C. 31. Ruggles *v.* Buckner, 1 Paine, 358. If, however, he omits so to certify, it seems, that his authority may be proved by parol. Paul *v.* Lowry, 2 Cr. C. C. 628. And a deposition taken before a mayor, without a seal, may be received as *primâ facie* evidence of his right to take it. Price *v.* Morris, 5 McLean, 4. Otherwise, if he usually certifies his official acts under seal. Paul *v.* Lowry, 2 Cr. C. C. 628. A judge of probate, in Mississippi, is "a judge of a county court," within the act. Fowler *v.* Merrill, 11 How. 375. s. c. Hemp. 563. And a judge, having a power to administer oaths, may administer them in any county in the state. Voce *v.* Lawrence, 4 McLean, 203. But a deposition cannot be taken, under this act, before a judge of the city court of the city of Lexington, in Kentucky. Foreman *v.* Holmead, 5 Cr. C. C. 162. Nor before a "county commissioner," in the state of Illinois. Garey *v.* Union Bank of Georgetown, 3 Ibid. 91.

(*n*) It seems, that it is not necessary that the magistrate should certify that he was not of counsel to either party. Peyton *v.* Veitch, 2 Cr. C. C. 123.

(*o*) The notice should show on its face that the contingency has happened which confers jurisdiction on the magistrate, and gives a right to the party to have the deposition taken, so that the party on whom it is served, may be able to judge whether it is necessary or proper that he should attend. Harris *v.* Wall, 7 How. 705.

(*p*) The notice must be given by the magistrate; a notice given by the party is not sufficient. Young *v.* Davidson, 5 Cr. C. C. 515.

(*q*) It is not necessary that the notice to the opposite party should require him "to put interrogatories if he should think fit." Bussard *v.* Catalino, 2 Cr. C. C. 421.

(*r*) This requires personal service on the opposite party; and service, by leaving a copy at his place of abode, is not sufficient. Carrington *v.* Stimson, 1 Curt. C. C. 437. See *contra*, Merrill *v.* Dawson, Hemp. 563, where it was held, that notice to take depositions is sufficient, if served by delivering a copy to the party, or leaving such copy at his dwelling-house or usual place of abode, with a free white person, a member of, or resident in the family. And this case was affirmed by the supreme court. 11 How. 375, 393. Notice directed to the party himself may be served on his attorney. Barrell *v.* Limington, 4 Cr. C. C. 70.

(*s*) The distance that the plaintiff and his attorney resided from the place of taking the deposition, so as to supersede the necessity of giving notice, may be shown by the certificate of the magistrate. Merrill *v.* Dawson, Hemp. 563. Or proved *aliunde*. Voce *v.* Lawrence, 4 McLean, 203–5. Travers *v.* Bell, 2 Cr. C. C. 160. If a deposition be taken in the absence of the party, he should take it again, if dissatisfied with the examination. Goodhue *v.* Bartlett, 5 McLean, 186.

24 Sept. 1789 § 30.

In admiralty causes.

Mode of taking down testimony.

To be sealed up and directed to the court.

Witnesses may be compelled to testify.

Depositions to be taken in admiralty causes.

To be used on appeal.

When depositions may be read.

Courts may issue *dedimus potestatem* as usual.

And perpetuate testimony.

at the rate of one day, Sundays exclusive, for every twenty miles travel. And in causes of admiralty and maritime jurisdiction, or other cases of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid, shall be given to the person having the agency or possession of the property libelled, at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid, shall be carefully examined and cautioned,(*a*) and sworn or affirmed to testify the whole truth,(*b*) and shall subscribe the testimony by him or her given, after the same shall be reduced to writing,(*c*) which shall be done only by the magistrate taking the deposition, or by the deponent in his presence.(*d*) And the depositions so taken shall be retained by such magistrate, until he deliver the same with his own hand, into the court for which they are taken, or shall, together with a certificate of the reasons as aforesaid of their being taken,(*e*) and of the notice, if any, given to the adverse party,(*g*) be by him the said magistrate sealed up and directed to such court,(*h*) and remain under his seal until opened in court.(*i*) And any person may be compelled to appear and depose as aforesaid, in the same manner(*k*) as to appear and testify in court.(*l*) And in the trial of any cause of admiralty or maritime jurisdiction in a district court, the decree in which may be appealed from, if either party shall suggest to and satisfy the court, that probably it will not be in his power to produce the witnesses there testifying before the circuit court, should an appeal be had, and shall move that their testimony be taken down in writing, it shall be so done by the clerk of the court. And if an appeal be had, such testimony may be used on the trial of the same, if it shall appear to the satisfaction of the court which shall try the appeal, that the witnesses are then dead or gone out of the United States, or to a greater distance than as aforesaid from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, they are unable to travel and appear at court, but not otherwise.(*m*) And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause.(*n*) *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem* to take depositions, according to common usage, when it may be necessary to prevent a failure or delay of justice, which power they shall severally possess;(*o*) nor to extend to depositions taken in *perpetuam rei memoriam*, which, if they relate to matters that may be cognisable in any court of the United

(*a*) It is no objection to a deposition, that the magistrate omitted to certify that he cautioned the witness. Brown *v.* Piatt, 2 Cr. C. C. 253. Moore *v.* Nelson, 3 McLean, 384. See Pendleton *v.* Forbes, 1 Cr. C. C. 507. Garrett *v.* Woodward, 2 Ibid. 190.

(*b*) This must be certified by the magistrate. Rainer *v.* Haynes, Hemp. 689. Pendleton *v.* Forbes, 1 Cr. C. C. 507. Garrett *v.* Woodward, 2 Ibid. 190.

(*c*) It is not properly a deposition unless signed by the deponent. Voce *v.* Lawrence, 4 McLean, 203. But it is not essential that the magistrate should certify that he signed it in his presence. Ibid. Centre *v.* Keene, 2 Cr. C. C. 198.

(*d*) It must be reduced to writing by the magistrate, or by the deponent in the presence of the magistrate. Edmondson *v.* Barrell, 2 Cr. C. C. 228. Wilkinson *v.* Yale, 6 McLean, 18. No other person is competent to perform that duty. Marstin *v.* McRea, Hemp. 688. The magistrate cannot depute a person to write it. Rainer *v.* Haynes, Ibid. 689. If the magistrate reduces the testimony to writing, he need not state that it was written in the presence of the witness, but if reduced to writing by the witness himself, it must be done in the presence of the magistrate. Vasse *v.* Smith, 2 Cr. C. C. 31. A deposition reduced to writing by the witness himself, is inadmissible, if the certificate does not clearly show that it was done in the magistrate's presence. Bell *v.* Morrison, 1 Pet. 351. And a certificate that it was reduced to writing in his presence, without stating by whom, is not sufficient. United States *v.* Smith, 4 Day, 126.

(*e*) The authority or jurisdiction conferred on the magistrate by this act, is special, and confined within certain limits or conditions; and the facts calling for the exercise of it, should appear upon the face of the instrument, and not be left to parol proof. Harris *v.* Wall, 7 How. 705. He must certify all the facts necessary to make it evidence under the statute. Jones *v.* Knowles, 1 Cr. C. C. 523. Jones *v.* Neale, Martin, (N. C.) 81. And such certificate is good evidence of the facts stated therein, so as to entitle the deposition to be read to the jury, if all the necessary facts are there sufficiently disclosed. Bell *v.* Morrison, 1 Pet. 356. For a very carefully prepared form of certificate, see Hemp. 690–1. And see Patapsco Ins. Co. *v.* Southgate, 5 Pet. 604. Moore *v.* Neilson, 3 McLean, 384. Voce *v.* Lawrence, 4 Ibid. 203. Merrill *v.* Dawson, Hemp. 563. Rainer *v.* Haynes, Ibid. 689. Vasse *v.* Smith, 2 Cr. C. C. 31. Garrett *v.* Woodward, Ibid. 190. Thorp *v.* Simmons, Ibid. 195. Centre *v.* Keene, Ibid. 198. Edmondson *v.* Barrell, Ibid. 228. Woodward *v.* Hall, Ibid. 235. Brown *v.* Piatt, Ibid. 253. Bussard *v.* Catalino, Ibid. 421. The certificate may be controverted by parol proof, especially in regard to the facts stated, of which the magistrate is not supposed to possess official knowledge. Dick *v.* Runnells, 5 How. 9.

(*g*) Harris *v.* Wall, 7 How. 704.

(*h*) A deposition not so put up and directed will be rejected. Jones *v.* Neale, Martin, (N. C.) 81–2. The law did not intend that either party should have possession of the deposition, until it should be published by the special or general order of the court. Shankwiker *v.* Reading, 4 McLean, 240. But it is no valid objection, that the envelope was not directed to "the court," if it was directed to "the judges" of the court. Thorp *v.* Orr, 2 Cr. C. C. 335.

(*i*) It is a fatal objection that the deposition was opened out of court; although opened by the clerk through a mistake. Beale *v.* Thompson, 8 Cr. 70. Or by one of the officers of the government before it came into the hands of the clerk. United States *v.* Price's Administrator, 2 W. C. C. 356.

(*k*) See Conkling's Treatise, 3d ed. 414. Law's Jurisdiction, 47 note.

(*l*) Objections to the competency of the witness should be made at the time of taking the deposition, if the party attend, and the objections are known to him, in order that they may be removed; otherwise, he will be presumed to have intended to waive them. But the objection may be made at the time of reading the deposition, if the facts constituting the objection were not known to the party when it was taken. United States *v.* One Case of Hair Pencils, 1 Paine, 400. See The Thomas and Henry, 1 Brock. 367.

(*m*) The Thomas and Henry, 1 Brock. 368.

(*n*) Where a deposition taken *de bene esse*, is offered in evidence, the party who offers it, must prove that he has used due diligence to procure the attendance of the witness. Pettibone *v.* Derringer, 4 W. C. C. 215. The Samuel, 1 Wh. 16. If he resides within 100 miles of the place of trial, it must be shown that he has been served with a subpœna, and is unable to come; unless he is so old, and generally so infirm, that his attendance could not be expected: the age of 65 is not of itself sufficient to entitle it to be read. Banert *v.* Day, 3 W. C. C. 243. It is, however, no objection to reading the deposition of a witness, who lives in another state, more than 100 miles from the place of trial, that he had been in the city during the session of the court, the fact not being known to the party. Pettibone *v.* Derringer, 4 Ibid. 215. See Patapsco Ins. Co. *v.* Southgate, 5 Pet. 604, 616. Harris *v.* Wall, 7 How. 704.

(*o*) In Walsh *v.* Rogers, 13 How. 286–7, the supreme court, adverting to the increased facilities at the present day compared with those existing at the passage of the act of 1789, for transmitting and returning commissions, expressed in the most pointed manner its disapprobation of the practice of taking depositions *de bene esse*, on account of its great liability to abuse; except for the purpose of mere formal proof, such as the signature or execution of an instrument of writing, or of some isolated fact, such as demand of a bill, or notice to an endorser. This provision, it is there said, should never be resorted to, unless in circumstances of absolute necessity, as in the excepted cases just mentioned. In reference to the execution of commissions, see Sergeant's Lessee *v.* Biddle, 4 Wh. 508. Nicholls *v.* White, 1 Cr. C. C. 58. Sutton *v.* Mandeville, Ibid. 115. Walker *v.* Parker, 5 Ibid. 639. And see the authorities collected in 4 Stat. 197 note.

24 Sept. 1789 § 30.

States, a circuit court on application thereto made as a court of equity, may, according to the usages in chancery, direct to be taken.

20 Feb. 1812 § 3. 2 Stat. 682.

Depositions *in perpetuam rei memoriam.*

6. In any cause before a court of the United States, it shall be lawful for such court, in its discretion, to admit in evidence any deposition taken *in perpetuam rei memoriam,* which would be so admissible in a court of the state wherein such cause is pending, according to the laws thereof.

24 Jan. 1827 § 1. 4 Stat. 197.

Clerks to issue subpœnas to witnesses named in commission.

7. Whenever a commission shall be issued, by any court of the United States, for taking the testimony of a witness or witnesses, at any place within the United States, or the territories thereof, it shall be lawful for the clerk of any court of the United States, for the district or territory within which such place may be, and he is hereby enjoined and required, upon the application of either of the parties in the suit, cause, action, or proceeding, in which such commission shall have been issued, his, her or their agent or agents, to issue a subpœna or subpœnas, for such witness or witnesses, residing or being within the said district or territory, as shall be named in the said commission, commanding such witness or witnesses to appear and testify before the commissioner or commissioners, in such commission named, at a time and place in the subpœna to be stated;

Penalty for disobedience.

and if any witness, after being duly served with such subpœna, shall refuse or neglect to appear, or after appearing, shall refuse to testify, (not being privileged from giving testimony,) such refusal or neglect being proved to the satisfaction of any judge of the court, whose clerk shall have issued such subpœna or subpœnas, he may thereupon proceed to enforce obedience to the process, or to punish the disobedience, in like manner as any court of the United States may do, in case of disobedience to process of *subpœna ad testificandum,* issued by such court; and the witness or witnesses, in such cases,

Compensation of witnesses.

Not to be required to go out of their county, or more than 40 miles.

shall be allowed the same compensation as is allowed to witnesses attending the courts of the United States: *Provided,* That no witness shall be required to attend at any place out of the county in which he may reside, nor more than forty miles from his place of residence, to give his or her deposition, under this law.

Ibid. § 2.

Judges to issue *subpœnas duces tecum.*

8. Whenever either of the parties in such suit, cause, action, or proceeding, shall apply to any judge of a court of the United States, in the district or territory of the United States, in which the place for taking such testimony may be, for a *subpœna duces tecum,* commanding the witness, therein to be named, to appear and testify before the said commissioner or commissioners, at the time and place in the said subpœna to be stated, and also to bring or carry with him or her, and produce to such commissioner or commissioners, any paper, writing, or written instrument, or book or other document

On affidavit of party.

supposed to be in the possession or power of such witness, such judge being satisfied, by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book or other document, is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of the court, of which he is a judge, to issue such *subpœna duces tecum,* accordingly; and if such wit-

Penalty for disobedience.

ness, after being duly served with such *subpœna duces tecum,* shall fail to produce any such paper, writing, written instrument, book or other document being in the possession or power of such witness, and described in such *subpœna duces tecum,* before, and to such commissioner or commissioners, at the time and place in such subpœna stated, such failure being proved to the satisfaction of the said judge, he may proceed to enforce obedience to the said process of *subpœna duces tecum,* or to punish the disobedience, in like manner as any court of the United States may do, in case of disobedience to a

Commissioner to copy papers produced.

like process, issued by such court; and when any such paper, writing, written instrument, book or other document, shall be produced to such commissioner or commissioners, he or they shall, at the cost of the party requiring the same, cause to be made a fair and correct copy thereof, or of so much thereof as shall be required by either of the parties:

Fees of witnesses to be tendered.

Provided, That no witness shall be deemed guilty of contempt for disobeying any subpœna directed to him by virtue of this act, unless his fees for going to, returning from, and one day's attendance at the place of examination, shall be paid or tendered to him, at the time of the service of the subpœna.

IV. Records.

26 May 1790 § 1. 1 Stat. 122.

9. The acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto.(*a*) The records and judicial proceed-

(*a*) No other authentication of an act of the legislature is required, except the annexation of the seal of the state; it is presumed that the person who affixed the seal had competent authority to do so. United States *v.* Amedy, 11 Wh. 392. United States *v.* Johns, 4 Dall. 416. s. c. 1 W. C. C. 363. A printed pamphlet containing the laws of another state is not admissible in evidence. Craig *v.* Brown, Pet. C. C. 352. In the courts of the district of Columbia, however, the statute book of one of the states, purporting to be published by authority of its legislature, and deposited in the department of state, under the act of congress requiring the secretary of state to obtain copies of the laws of the several states, is admissible evidence of the laws of such state. Commercial and Farmers' Bank of Baltimore *v.* Patterson, 4 Cr. C. C. 346. See Leland *v.* Wilkinson, 6 Pet. 317.

26 May 1790 § 1.

How legislative acts and judicial records authenticated.

ings(*a*) of the courts of any state,(*b*) shall be proved or admitted in any other court within the United States,(*c*) by the attestation of the clerk,(*d*) and the seal of the court annexed, if there be a seal,(*e*) together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be,(*g*) that the said attestation is in due form.(*h*) And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith

Effect thereof.

and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken.(*i*)

27 March 1804 § 1. 2 Stat. 298.

How other public records authenticated.

10. All records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court,(*k*) shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept, or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form,(*l*) and by the proper officer;(*m*) and the said certificate, if given by the presiding justice of a court, shall be farther authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the said certificate is made.

Effect thereof.

And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the states from whence the same are, or shall be taken.

Ibid. § 2.

To apply to the territories, &c.

11. All the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts, records, office books, judicial proceedings, courts and offices of the several states.

2 March 1849 § 1. 9 Stat. 350.

12. It may and shall be lawful for the keepers or persons having the custody of laws,

(*a*) The judicial proceedings here referred to, are generally understood to be the proceedings of courts of general jurisdiction, and not those which are merely of municipal authority. 1 Greenl. Ev. § 505. And accordingly, it has been held, that the judgments of justices of the peace were not within the meaning of these constitutional and statutory provisions. Snyder *v.* Wise, 10 Barr, 157. Warren *v.* Flagg, 2 Pick. 448. Robinson *v.* Prescott, 4 N. Hamp. 450. Mahurin *v.* Bickford, 6 Ibid. 567. Silver Lake Bank *v.* Harding, 5 Ohio, 545. Thomas *v.* Robinson, 3 Wend. 267. In Connecticut and Vermont, however, it is held, that if the justice is bound by law to keep a record of his proceedings, they are within the meaning of the act of congress. Bissell *v.* Edwards, 5 Day, 363. Starkweather *v.* Loomis, 2 Verm. 573. Blodget *v.* Jordan, 6 Ibid. 580. And see Scott *v.* Cleveland, 3 Monr. 62. But the proceedings of courts of chancery, and of probate, as well as of the courts of common law, may be thus proved. Scott *v.* Blanchard, 8 Martin, (N. S.) 303. Balfour *v.* Chew, 5 Ibid. 517. Johnson *v.* Rannels, 6 Ibid. 621. Ripple *v.* Ripple, 1 Rawle, 381. Craig *v.* Brown, Pet. C. C. 352. Hunt *v.* Lyle, 8 Yerg. 142. Barbour *v.* Watts, 2 A. K. Marsh. 290, 293.

(*b*) This does not apply to the records of the courts of the United States. Mason's Administrators *v.* Lawrason, 1 Cr. C. C. 190. But though, in terms, it applies only to the state courts, the rule is equally applicable to those of the United States. Tooker *v.* Thompson, 3 McLean, 94. And a judgment of a court of the United States is admissible, when authenticated in the manner provided in this act. Buford *v.* Hickman, Hemp. 232. See *infra* 11.

(*c*) It seems to be generally agreed, that this method of authentication is not exclusive of any other which the states may think proper to adopt. Kean *v.* Rice, 12 S. & R. 203, 208. The State *v.* Stade, 1 D. Chipm. 303. Raynham *v.* Canton, 3 Pick. 293. Biddis *v.* James, 6 Binn. 321. Ex parte Povall, 3 Leigh, 816. Pepoon *v.* Jenkins, 2 Johns. Cas. 119. Ellmore *v.* Mills, 1 Hayw. 359. Baker *v.* Field, 2 Yeates, 532.

(*d*) The clerk who certifies the record, must be the clerk of the same court, or of its successor; the certificate of his under-clerk, in his absence, or of the clerk of any other tribunal, office, or body, being held incompetent for this purpose. Sampson *v.* Overton, 4 Bibb, 409. Lothrop *v.* Blake, 3 Barr, 495. Donohoo *v.* Brannon, 1 Overt. 328. Schnertzell *v.* Young, 3 H. & McHen. 502. A surrogate acts as a clerk in certifying his proceedings, and as he also acts in the capacity of judge, he must certify as to the authentication. Catlin *v.* Underhill, 4 McLean, 199.

(*e*) Whenever the court whose record is certified has no seal, this fact should appear, either in the certificate of the clerk, or in that of the judge. Craig *v.* Brown, Pet. C. C. 353. The seal of the court must be annexed to the record itself; it is not enough that it is annexed to the judge's certificate. Turner *v.* Waddington, 3 W. C. C. 126.

(*g*) The certificate must be given by *the judge,* if there be but one; or if there be more than one, then by the chief justice, or presiding judge or magistrate of the court, from whence the record comes; and he must possess that character at the time he gives the certificate. A certificate that he is the judge that presided at the time of trial, or that he is the senior judge of the courts of law in the state, is deemed insufficient. Lothrop *v.* Blake, 3 Barr, 495. Stephenson *v.* Bannister, 3 Bibb, 369. Kirkland *v.* Smith, 2 Martin, (N. S.) 497. And so is the certificate of a judge styling himself "one of the judges" of the court. Stewart *v.* Gray, Hemp. 94. See Catlin *v.* Underhill, 4 McLean, 199. Erb *v.* Scott, 2 Harris, 22.

(*h*) A record of another state is not admissible, if the certificate of the presiding magistrate omit to state, that the attestation of the clerk is in due form. Trigg *v.* Conway, Hemp. 538. The phrase "due form," means the form of attestation used in the state from whence the record comes. Craig *v.* Brown, Pet. C. C. 354. And the certificate of the presiding judge being the evidence prescribed by law, that this form has been observed, is at once indispensable and conclusive. Ferguson *v.* Harwood, 7 Cr. 408. Tooker *v.* Thompson, 3 McLean, 93. Taylor *v.* Carpenter, 2 W. & M. 4. A certificate that the person whose name is signed to the attestation is clerk of the court, and that the signature is his own handwriting, is not in conformity with the provisions of the act. Craig *v.* Brown, Pet. C. C. 352. Where, however, the record of a judgment of a state court, is offered in evidence, in the circuit court, sitting within the same state, the certificate of the clerk and seal of the court is a sufficient authentication. Mewster *v.* Spalding, 6 McLean, 24.

(*i*) A judgment of a state court has the same credit, validity, and effect, in every other court within the United States, which it had in the state where it was rendered; and whatever pleas would be good in a suit thereon, in such state, and none others, can be pleaded in any other court within the United States. Hampton *v.* McConnel, 3 Wh. 234. Mills *v.* Duryee, 7 Cr. 481. Westerwelt *v.* Lewis, 2 McLean, 511. Taylor *v.* Carpenter, 2 W. & M. 4. Warren Manufacturing Co. *v.* Etna Insurance Co., 2 Paine, 502. Whitaker *v.* Bramson, Ibid. 209. Green *v.* Sarmiento, Pet. C. C. 74. s. c. 3 W. C. C. 17. Bryant *v.* Hunters, Ibid. 48. Field *v.* Gibbs, Pet. C. C. 157. Armstrong *v.* Carson's Executors, 2 Dall. 302. 2 Am. Leading Cases, 774. But although this act makes a judgment regularly recovered in another state, and duly authenticated, conclusive evidence of an established demand, as of the date of such judgment, it does not prevent the several states from enacting statutes of limitation, barring actions on such judgments in their courts. Bank of the State of Alabama *v.* Dalton, 9 How. 522. McElmoyle *v.* Cohen, 13 Pet. 312. Nor does it apply to a judgment recovered against a non-resident joint debtor, without notice to him; such a judgment is not entitled to any faith or credit out of the state in which it was rendered. D'Arcy *v.* Ketchum, 11 How. 165.

(*k*) These are obviously among the public writings recognised by the common law as invested with an official character, and therefore susceptible of proof by secondary means, but which are not of the nature of judicial records or judgments. Of this kind are acts and orders of the executive of the state; the acts of the legislative bodies; the journals of either branch of the legislature; registers kept in public offices; books which contain the official proceedings of corporations, if the public at large are concerned with them; parish registers, and the like. Snyder *v.* Wise, 10 Barr, 158.

(*l*) Drummond's Administrators *v.* Magruder, 9 Cr. 122.

(*m*) See 1 Burr's Trial, 98.

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