Marguerite vs Chouteau

150/13

State of Missouri }
County of St Louis } ss

St Louis Circuit Court
March Term 1827

Marguerite
vs
Pierre Chouteau Senior } Marguerite by Isaac C. McGirk her agent and attorney files her affidavit in this case and prays an appeal to the Supreme Court, which is granted and the record and proceedings ordered to be certified up accordingly

County St Louis }
State of Missouri } ss I Archibald Gamble Clerk of the Circuit Court for the County of St Louis do certify that the above is a correct transcript of the record as the same remains in my office Witness Archibald Gamble Clerk of our said Court at Office this Eighth day of May in the Year of Our Lord One Thousand Eight hundred and twenty seven

Archibald Gamble Clerk

Marguerite

vs Addition to transcript

Pierre Chouteau

filed 8th May 1847

H. Douglass Clk

State of Missouri } In the Circuit Court
County of St Louis } ss July Term 1825

Be it remembered that heretofore to wit on the second day of June in the year of our Lord one thousand eight hundred and twenty five Marguerette a free woman of Colour by her Attorney filed in the office of the Clerk of the Circuit Court for the County of St Louis and State of Missouri her declaration against Pierre Chouteau Senior in the words and figures following to wit

Marguerite a free Woman of Color, who is permitted by the Court to sue by her next friend Pierre Rauvebeau, as a poor person for her freedom, by her Attornies Farris Gamble & McGirk appointed as Counsel by the Court, Complains of Pierre Chouteau Senior of a plea of trespass, For that the said Pierre heretofore to wit, on the first day of January, in the year of our Lord ~~eight~~ eighteen hundred and twenty five, with force and arms, at the County of St Louis, unlawfully an assault did make in & upon the body of the said Marguerite and then and there beat bruised and ill treated her the said Marguerite and then and there imprisoned her the said Marguerite, and kept and detained her in prison without any reasonable or probable Cause whatsoever, against her will, and has ever since kept and detained her in prison, & still keeps and detains her in prison against the will of the said Marguerite, and contrary to the laws of this State, and other wrongs to the said Marguerite then and there did — against the peace of the State, Wherefore the said Marguerite says that she is greatly injured, and hath sustained damage to the amount of five hundred dollars, and therefore she brings her suit. by Farris Gamble And McGirk
Attys for Plff

Whereupon the Clerk of the said Circuit Court issued ~~the~~
the following writ to wit:
County of St Louis ss. The State of Missouri - To the Sheriff
of said County Greeting - We command you to summon
Pierre Chouteau Senior that he be and appear before the
Judge of our Circuit Court at the next term thereof to be held
at the City of St Louis within and for the County of St Louis
on the fourth Monday in July next, then and there to answer
unto Marguerite a free woman of Color, who is permitted
by the Court to sue by Pierre Barreau her next friend
as a poor person of a plea of trespass to the damage of said
plaintiff of five hundred dollars. and have you then there
this writ. Witness Archibald Gamble Clerk of our
said Court at office this second day of June 1825
Archibald Gamble Clerk
Upon which the Sheriff of the aforesaid County endorsed in
the words and figures following to wit
Executed this writ on Pierre Chouteau Senior. June 11th 1825
in the City of St Louis by giving the writ and declaration to him
to read and his acknowledging the service thereof
John H. Walker Sheriff by D Simonds Jr. Deputy
And afterwards to wit at the same term of the said Court Pierre
Chouteau Senr by his Attorney files his plea in the words
and figures following to wit -
And said Pierre Chouteau by
his attorney comes and defends the force and injury when &c
and says as to the assaulting beating bruising ill treating and
imprisoning the said Marguerite as in said declaration
mentioned, that the said Marguerite ought not to have or
maintain her aforesaid action thereof against him because
he says that before and at the time when &c in said declaration
mentioned to wit at St Louis aforesaid the said Marguerite
was a slave in the lawful possession and service of said

Pierre Chouteau Wherefore the said Pierre Chouteau then and there detained and still doth detain said Marguerite in his service and possession which detention and possession in the assaulting beating ill treating bruising & imprisoning the said Marguerite in said declaration mentioned and this the said Pierre Chouteau is ready to verify - Wherefore he prays Judgment if the said Marguerite ought to have or maintain her aforesaid action against him

Lawless & Cozzens Attys for Defts

And afterwards to wit at the succeeding term of the said Court the plaintiff by her attornies files her Demurrer to said plea in the words and figures following to wit -

And the said plaintiff says that the plea of the said defendant and the matters and things therein contained in manner and form as the same are therein stated and set forth, are not good and sufficient in law to bar or preclude the said plaintiff from having and maintaining her aforesaid action thereof against the said defendant and that the said plaintiff is not bound by the law of the land to answer the same, and this the said plaintiff is ready to verify; wherefore for the want of a sufficient plea in this behalf the said plaintiff prays Judgment &c. McGirk & Harris for Pltff.

Whereupon on motion of the attorney for the defendant leave is given to plead the general issue -

And afterwards to wit at the same term of the said Court Pierre Chouteau Sen.r by his Attorney files the following plea

And the said defendants come and defend the force & injury when &c. and say that they are not guilty of the said several supposed trespasses or any of them in manner and form as the said Marguerite hath above thereof complained against them &c. Lawless for defts. And the said Marguerite doth

The like &c. Gamble McGirk & Farris Attys for Plff.
And afterwards to wit in vacation before the November term
1825 the said Marguerite by her Attornies files her replication in
the words and figures following towit:
And the said Marguerite by her Attornies, as to the said
plea of the said Pierre Chouteau or by him first above pleaded
as to the said several trespasses in the introductory part of
that plea mentioned, and therein attempted to be justified,
saith, that She the said Marguerite, by reason of any
thing by the said Pierre in that plea alleged, ought not
to be barred from having and maintaining her aforesaid
action thereof against him the said Pierre, because she saith,
that she the said Marguerite was not, at the time of the
committing of the said several trespasses by him the said
Pierre, in her said declaration set forth, nor is she now
a slave, as the said Pierre in his said plea hath above
alledged, but that She the said Marguerite was at the
time of the committing of the said several trespasses by
the said Pierre, in her said declaration above set forth,
and is now a free person by and according to the usages,
customs and laws of the land, and ought not to be held
and detained as a slave in the possession and service
of the said Pierre, nor of any other person by or under whom
the said Pierre may claim, and this She the said
Marguerite prays may be enquired of by the Country &c
Gamble McGirk & Farris Attys for Plff
This cause was continued from term to term until the November
term eighteen hundred and twenty six &c. Now at this day come
the parties aforesaid by their respective attornies aforesaid
and thereupon also come a Jury to wit Thomas Estes, Jacob
Hawkins, Nezekiah B. Simmons, William Higgins, James
B. Sutton, Michael Riely, Thomas B Stephens, Wilson N.
Bell, William G. McCulloch Caleb Jones, John J. Anderson
man and Phineas Bartlett twelve good and lawful
men who being duly elected tried and Sworn well and

2)

truly to try the issues within joined between the parties aforesaid upon their oaths aforesaid do say as to the first issue within joined between the parties aforesaid that the said defendant is guilty of the said several trespasses in manner and form as the said Marguerite hath above thereof complained against him, and as to the second issue within joined between the parties aforesaid the jury aforesaid upon their oaths aforesaid do say that the said Marguerite was not at the time of the committing the said several trespasses by him the said Pierre in his said declaration set forth, nor is she now a slave as said Pierre in his said plea hath above alleged but that she the said Marguerite was at the time of the committing of the said several trespasses by the said Pierre in his said declaration set forth, and is now a free person by and according to the usages and customs and laws of the land, and ought not to be held and detained as a slave in the possession and service of the said Pierre nor any other person by, or under whom the said Pierre may claim, and they assess the damage of the said plaintiff by her sustained by reason of the said trespass in the ~~said~~ declaration mentioned to the sum of six and one fourth Cents

And afterwards to wit at the same term of the said Court — On Motion of the attorney for the defendant it is ordered by the Court that the verdict in this case be set aside and a new trial granted — On Condition of the payment of the costs of this term —

And afterwards to wit at the March term of the said Court in the year eighteen hundred and twenty seven come the parties aforesaid by their respective attornies

aforesaid and thereupon also come a jury to wit John Lacy, James Walton, Absalom Link Thomas M. Clark, George Little, Robert Quarles, Junior, James L. Douglass, Joseph Walton, Benjamin Terry, Mark. Sappington Tyre Wells and James Keepers twelve good and lawful men, who being duly elected tried and sworn well and truly to try the issues within joined between the parties aforesaid upon their oath aforesaid do say that the said Pierre Chouteau Sr. is not guilty of the said several trespasses or any of them in manner and form as the said Marguerite hath above thereof complained against him, Therefore it is considered that the said Marguerite take nothing by her said writ and that the said Pierre Chouteau Senior go thereof without day

And thereupon the plaintiff by her attornies files her bill of exceptions in words and figures following to wit

Be it remembered, that on the trial of this cause, the plaintiff produced and offered to read in evidence to the jury sitting on the trial of said cause, the following deposition of Marie Louise Chauvin, to wit,

Bill of Exceptions

Be it remembered that on this twenty sixth day of November 1825 between the hours of eight O'Clock A. M, and six O'Clock P. M, at the house of Superior Chouteau in the County of St Louis in pursuance of the annexed notice Came Madame Marie Louise Chauvin of lawful age who being duly sworn to testify the whole truth in a certain action now pending in the Circuit Court of the County St Louis. between Marguerite a free woman of colour plaintiff and Pierre Chouteau Senior Defendant upon her oath saith — She is acquainted with Marguerite the plaintiff in the present action who lives with Pierre Chouteau who she believes was born in the year

Deposition of Mde Chauvin —

1778 — She saith she was acquainted with the Mother of the said Margarite whose name was Marie Jean and was sometimes called Marie Scipion who belonged to and lived with the father of the deponent Joseph Fayon — The said Marie after the death of Madam Fayon lived at Mr. Choutteau's where Joseph Fayon lived until his death — After the death of Madam Fayon Marie Scipion lived with Mr. Choutteau several years until she was taken sick when she came to the house of this deponent where she died she was at the time of her death about fifty years of age as well as this deponent recollects — This deponent saith that Joseph Fayon after the death of his wife lived with Mr. Pierre Choutteau where he died. Marie Scipion died in June 1802 — In January 1801 This deponent sent for the said Marie Scipion to Mr. Pierre Choutteaus where she was sick & in June in the year following she died remaining with this deponent more than a year. The said Marie Scipion was in the possession of this deponents father from the time of his marriage until she was removed from Mr. Choutteau's to the house of this deponent and this deponent has always understood she came to her father by his marriage, This deponent knows Catiche and Celeste Children of the said Marie Scipion, the said Catishe is now in the possession of Mr. Pierre Choutteau and Celeste is a part of the estate of Madame Helen Chevalier — Mr. Choutteau claims the said Catishe by virtue of a sale from this deponent but when this deponent sold her pretensions to the said Choutteau she knows not whether her husband signed the article of sale — This deponent raised the said Catishe from a year old — and she was about forty years old

when this deponent sold her to Mr. Chouteau, during this time Mr. Chouteau obtained possession of the said Catiche and kept possession about ten years, and this deponent regained possession about a year before she sold her pretensions — This sale was somewhere about eight or ten years since — The said Catiche was a gift from this deponents parents to this deponent — Madame Chevalier raised Celeste from her birth at which time she was given to her by Joseph Jayon & wife who were the father & mother of the said Madame Chevalier — The said Celeste was in the continued possession of the said Madame Chevalier until she was taken therefrom by Mr Chouteau about the same time he took Catiche from the possession of this deponent. This deponent knows not under what title the said Chouteau claimed the said Catiche & Celeste unless it was as the administrator or one of the heirs of the said Joseph Jayon

This deponent has heard from her father & mother that the said Marie Scipion was bought by this deponents grand mother from Madame Crué and given by her to the mother of this deponent — This deponent has heard from her mother & father that the said Marie Scipion was on the mothers side an Indian and this deponent knew a negro man who was generally said and believed to be the father of the said Marie Scipion his name was Scipion — The last this deponent knew of this negro man his master took him to New Orleans — This deponent has generally understood that the mother of the said Marie Scipion was an Indian captured by the french near Natchez and brought to Fort Chartres where she was sold as a slave and this she has heard as well from her father & mother as others, This deponent knew Marie Jata the sister of Marie Scipion who had every appearance of being a full blooded Indian who was a slave when this deponent first knew her, but was afterwards sold by a

Frenchman and set at liberty, he having lived with her as a wife and had Children. The father of this deponent had an Indian Woman named Marie Louise who had two male Children Pierre & Julien who ran away and passed for free men at the Commencement of the Spanish government and went to Orleans where one of them married a white woman — They went away after the publication of an ordinance by O'Reily the Spanish Governor of Louisiana declaring all the Indian Slaves then in the province of Louisiana free on the death of their Masters and those born after the publication free at their birth prohibiting any sales by the persons then in possession of any such Slaves this deponent read the ordinance to her father and conversed with him on the risk he ran of losing his Indian Slaves, and remembers that he sold one of these Slaves and was compelled to take it back and hush it up least he should be fined under the ordinance — This ordinance was posted up at the Church door and in hand bills in St Louis where this deponent then lived which was before her marriage but the exact time she does not now recollect — This deponent remembers that her father has often said after the publication of this ordinance that Marie Scepion and her Children would be free at his death in consequence of that ordinance —

Marie Louise Chauvin —

part objected to & excluded by the court

And the counsel on the part of the defendant objected to the reading of that part of said deposition which relates to the publication and contents of the proclamation of O'Reily the Spanish Governor of Louisianna, on the ground of the incompetency thereof, And the Court sustained said objection and prohibited said plaintiff from reading that part of said deposition in evidence to the Jury but permitted the ballance or remaining part of said deposition to be read which was accordingly done

Objection to part

Sustained

remainder read

The plaintiff then produces and offers to read in evidence to the jury the following deposition of John B. Riviere alias Baccanniss, to wit — Personally came before me the undersigned a Justice of the peace within and for the County and State aforesaid at my office in the Village of St Louis ant alias St Ferdinand in the County aforesaid John B. Riviere alias Baccanniss a free white person of lawful age who being by me first sworn upon his Corporal oath to testify the whole truth touching his knowledge concerning the matters in Controversy in the above mentioned suit, wherein Marguerite a woman of colour is plaintiff and Pierre Chouteau is defendant deposeth and saith that he knew Joseph Jayon Junior formerly a resident of the town of St Louis and Louise Jayon his wife in their life time, that they have both been dead for many years and that the said Jayon and wife were the father and mother of Madame Chouteau, Madam Valle Chevalier and John & Francis Jayon and Charles Jayon, that he first became acquainted with said Jayon and wife at Fort de Chartres in Illinois from his earliest recollection and that he was acquainted with them afterwards and until their deaths, and that this deponent was intimate in the family of said Joseph Jayon and was very often at the house and in the family of said Jayon as well at Fort Chartres as at St Louis and that his intimacy and intercourse with said Jayon and family rendered the house of said Jayon almost as familiar to this deponent as his own house — That this deponent was perfectly well acquainted with all the members of said Jayons family his domestic servants Slaves and dependants, as well as the other members of the family, that this deponent knew a mulatto woman who lived in the family of said Jayon

John B. Riviere alias Baccanniss deposition

whose name was Marie Saypion, that her complexion was that of a dark red Indian cast partaking of the complexion of Negroe and Indian that he thinks the said Marie Saypion was about eighteen or twenty years of age when he first saw her at Post Chartres and that this deponent knew Marie Saypion ever after till the time of her death, that the hair of the head of said Marie Saypion was about one foot in length and curled a good deal but not so much curled as the hair of an Affrican negroe and that he has seen the hair of Mulattoes more curled then the hair of said Marie Saypion, that said Marie Saypion generally wore a hand Kerchiff on her head after the fashion of the French but that he has also seen her without any covering on her head except her hair that Marie Saypion had several children one named Louise which he believes was a nick-name who was a girl and has several now lives with Pierre Chouteau senior in the town of St Lewis and that Marie Saypion had several other children whose names he does not now know — And this deponent further saith that he was well acquainted with an Indian woman who always exercised her personal freedom without the restraint of any person as far this deponent knows and believes who who was a perfect Indian in appearance, and was universally allowed to be of the Natchez tribe who had adopted the french mode of life and their manners and habits and lived at Prairie du Rocher with a half breed man called Basques, and that her name was generally called Marie Tata — And this deponent further saith that he has after hears his deceased father Antoine Riviere, say that the said Marie Tata was the sister of the Mother of Marie Saypion, whose name he does not

recollect to have heard, and that what his father said confirmed by common opinion and report of other people generally who knew the said Marie Tata and the said Saypion and further this deponent saith that he has often heard his said deceased father often say that he was well acquainted with the Mother of the said Marie Saypion, who was an Indian Woman of the Natchez tribe of Indians, and that the mother of Marie Saypion was the sister of Marie Tata, that this deponent recollects of having heard it said when this deponent was a boy by other people in their jokes that this deponents Father was verry intimate with Marie Tata and had sometimes played the part of her Beau — And this deponant further saith, that he has often heard his deceased father say and other persons in general as well as Joseph Fayau Senior and his family say that the Father of Marie Saypion was a Negro Man, and that his name was Saypion also and that the said Saypion was drowned or smothered in the bottom of a well at Bairie du Rocher which caved in upon him whilst he was cleaning it out where his body remains and that this deponent has often heard Joseph Fayau Senior say the same thing as well as many other persons — And this deponent further saith that he recollects to have formerly seen a half Indian woman at the house and in the family of the said Joseph Fayau Senior whos name was called Marie Louise and this deponent recollects to have heard the said Fayau say that the said Marie Louise was a half Indian Woman that the said Fayau gave this deponant to understand that the said Marie Saypion and Marie Louise were given to the wife of said Fayau by a Cousin to his wife whose name was Gagnon or Guyon, who was a priest at Fort du Chartres

and Rarie Du Rocher, and that this deponant understood the said Jayan and his wife both to say that said Marie Jaypion and Marie Louise were given to the said Jayan's wife by the said Gargnion or Guyon upon the condition that the said Marie Jaypion and Marie Louise and all their children should be set at liberty from servitude whenever the said Jayan and wife should both be dead, And further that this deponant has heard the said Jayan and wife both say, several times that the said Marie Jaypion and Marie Louise and their Children were all to be free at their death and should serve no body afterwards, because such was the condition on which they were given to them by the said Gargnion or Guyon, And this deponant further saith that many years ago fifty years ago or more that a Proclimation was promulgated and published in St Louis by authority of the Spanish Governor then in office at Orleans and during the time that Pierre Ignate was Lieutenant Governor or Commandant at the Post of St Louis by hand bills at the Church door which this deponant heard read being unable to read it himself whereby it was declared that all the Indians and the descendants of the Indians who were or had been held in Slavery by the French and Spaniards whether taken in war purchased from the Indians and all those who should thereafter be taken by the inhabitants of Louisiana in war or in any way should be purchased by the inhabitants from the Indians were and should be free and be discharged from servitude as Slaves and be allowed to remain in the Settlements if they chose or to depart to their own Country at what precise time this Proclimation was made this deponant cannot now remember but this deponant is positively certain that such proclimation was made and also that he then heard the Lieutenant Governor say the same things which he has above Stated Concerning the Contents of said

objected to as being no evidence of emancipation

objected to as incompetent to prove the existence or contents of the proclamation

Proclimation and also this deponant well remembers that immediately after the said Proclimation was published that many Indian Slaves were set at liberty in pursuance thereof and went to other places wheresoever they pleased, And this deponent further saith, that after the said Proclimation was made as aforesaid that two men the discendants of Indians who was as this deponant believes the sons of the said Marie Louise who had lived with the said Jayau went to the lower Country in a bout leaving the services of the said Jayau and remained in the lower Country where one of them got marries and the other died some time afterwards as this deponant was informed and believes, and this deponant further saith that he understood the said Joseph Jayau to say soon after the publication of said Proclimation that the said Marie Saypion and Marie Louise lived in his family of their own free Consent because they were well treated and chose to remain with him but that he the said Jayau had no right to restrain them of their liberty and that they the said Marie Saypion and Marie Louise and their Children were at liberty to leave him whenever they pleased but if they chose to remain with him till his death they should never serve any any body— This deponant saith that he is seventy nine years old, that he does not think that his recollection is in the least impaired at least as far regards occurrences which took place in the early part and during the prime and decline of his life that his health is and has always been verry good and that he is yet stout for his years, but that he does not feel as though he could safely attend a Court of Justice as a witness on account of the infirmities of his old age and further this deponant saith not

Objected to—

John B. [illegible] Riviere
mark

Objection to part

and the counsel for the defendant objected to the reading of all those parts of said deposition which relate to or speak of & concerning the publication contents and effects of a proclamation (in said deposition mentioned) promulgated and published in St Louis by the authority of the Spanish Governor then in office at Orleans, which objection was made on the ground that such evidence was incompetent; which said objection was sustained by the Court, and the said Court decided that those parts of said deposition should not be read in evidence to the jury but permitted the remainder of said deposition to be read in Evidence to the jury which was accordingly read — The plaintiff then produced and offered to read in evidence to the jury the following deposition of Margrete Vial Rivoire, to wit — Margarite Vial Rivoire alias Bacharnie deposeth and saith that she knew Joseph Sayou senior before she was married which is about thirty nine or forty years ago at St Louis and also that she knew Madam Sayou the wife of the said Joseph and that she has understood that both Sayou and his said wife have been dead for many years, that she was frequently at the house of the said Sayou in his life time and knew the domestic servants of the said Sayou when she saw them, and recollects to have seen one frequently at the house of said Sayou a woman whose name was Sayjeon that her complexion was that of a dark red Mulatto — that she supposes that Sayjeon was then about thirty or thirty five years of age as she had several Children the eldest of which was about seventeen or eighteen years of age as this deponent supposes that this deponent does not know any thing concerning the description of the hair of said Sayjeon whether it was long or short straight or curly as she never saw the said Sayjeon bare headed — that she recollects her head being always covered after the fashion of the French with a turban

Sustained

Remainder read

Deposition of M. V. Rivoire

or handkerchief, That this deponent has frequently heared her father in law Antoine Riverre who was a very aged man who is now dead and has been dead about nine years say that the said Saypion was of Indian descent that the father of the said Saypion was a negroe man whose name was Saypion and that the said woman called Saypion took her name after her father Saypion and that the said woman Saypions Mother, was an Indian woman of Natchez tribe of Indians ~~and this~~ and this deponant saith she has frequently heared Antoine Riviere her father in law declare the same thing when speaking of the descent and blood of the said woman Saypion — And this deponant further saith that she knew an Indian woman whom she had sometimes seen at the house of Mr. Jacques Chouvis when he resided in St Louis whose name was Marie Jata as she was generally called and who was the sister of the said Saypion as this deponant always understood from the said Antoine Riverre as well as from other persons in general and never heard otherwise from the family of said Jayou or Jayou himself nor any other person, And this deponant saith that the Complexion of Marie Jata as she was called was brighter somewhat than the complexion of the woman Saypion and looked like a clear blooded Indian woman and that the said Marie Jata was in the exercise of her freedom and was generally said to be a free woman that she dont know that she ever heard who was Marie Jata's father but that she understood from the said Antoine Riverre and other people that the said woman Saypion and Marie Jata were sisters by the mothers side. And this deponant further saith that she has heard the said Antoine Riverre say that he knew the said woman Saypion and her sister Marie Jata at Fort du Chartres when quite young before Jayou brought or had them in his

possession at St Louis — And this deponant further saith that when she was quite young and during the time that Count O'Reily was Commandant of Louisianna &c as this deponant believes that she heard generally said as a publick matter of notoriety that the then Governor or Government had ordered by a proclamation that no more Indians should be bought and sold as Slaves by the inhabitants of the Louisianas whether prisoners of war or not, and that all Indian Slaves and their descendants who were then held in Louisianna should be set at liberty, and this deponant saith that she knew one instance of an Indian descendant who was a woman claiming her freedom under the said proclamation as this deponant believes and on proving the fact that she was of Indian descent that she was liberated — This deponant saith that she is fifty eight years of age as she believes and that nothing but her age would render her attendance at Court inconvenient further this deponant saith not — Margarite Vael her mark Riviere

And the Counsel for the defendant objected to the reading of all those parts of said deposition which relate to or speak of or concerning the publication contents and effects of a proclamation of Count O'Reilly the Commandant or Governor general, of Louisiana, in said deposition mentioned, which objection was made on the ground that such parts of said deposition were incompetent evidence, which said objection was sustained by the Court; and the said Court decided that those parts of said deposition objected to were incompetent testimony and prohibited the plaintiff from reading from reading the same in evidence; but said Court permitted the remainder of said deposition, not objected to, to be read in evidence to the jury, which was done accordingly —

Objection to part

Objection sustained

Remainder read

The plaintiff then produced and offered to read in evidence to the jury the following deposition of Rene' Dodier and Francois Dorlac

to wit — René Dodier being duly sworn on his oath saith that he knew Marie Scipion, that she lived with Mr. Joseph Sayou that her Complexion was of a brown colour, or what is called a half breed of Indian and Negro without designating whether the mother or father were of Negro blood or Indian blood — That her hairs were about five inches long more or less and undulating That he is fifty nine years old, and knew her first at Mr. Sayou when he was about nine or ten years of age — She was there in the Capacity of a servant — That She was then a grown person and believes about thirty years of age — That he knew her Children to wit Catiche. Celeste & Marguerette, that She had also a son who was called Sauvage (Indian) — that Marguerette lives now at Pierre Chouteaus, Catiche is hired out as also Celeste That the public opinion was that Scipion was a descendant from a Negro father and an Indian Woman — heard it mentioned by Mrs. Chauvin as well as Mrs. Chevalier (objected to by Col Laveuse) — That Mrs. Chauvin and Mrs. Chevalier were daughters of Mr. Joseph Sayou the father — Question by plaintiffs Counsel — What was the public report concerning her freedom or slavery? — Objected to by Col. Laveuse — Answer That the public opinion was ~~that~~ these persons could not be slaves being of Indian blood — The deponent saith that he saw Marie Scipion for the first time at Mr. Sayou's in a Stone house on the lot now occupied by Mr. Chenie in St Louis — Question by Counsel for plaintiff — Was it the universal custom among the french inhabitants of this country under the french government, to make Slaves of every Indian? Answer — He never heard of it, under the french government it was not the case — Question by same — Did you not understand that Court O'Riley did by proclamation prohibit the enslaving of Indians and holding them as Slaves? Answer — O'Riley forbade the Enslaving of Indians — the same was done by proclamation

Deposition of Dodier —

made at the sound of the drum at the corners of the streets both at New Orleans and in St Louis / objected to by Col Lawless / Question by same – Did not O'Reilly by proclamation declare the Indians held as slaves, to be free and direct their being set free? objected to as aforesaid – Answer – Yes and it was further ordered that none should be made slaves thereafter be held as slaves – That the same regulations applied to both Lower Louisiana and this Country – that all Indians held as slaves were to be emancipated / Question by the same – Did you know of any Indian held as slave previous to the proclamation aforesaid – to have been set at liberty in consequence of the same – Answer – Yes –

Francois Dorlac being duly sworn on his oath saith that he is sixty five years of age, was born in St Genevieve – he further saith that he knew Marie Desiris for the first time about forty three years ago, she was then living at Mr Sayou the father in the town of St Louis on the lot now owned by Mr Chenie she was of a reddish hair – the custom at that time was to wear the hair concealed under a handkerchief, but what was out of her hairs, appeared to be curly some what like a half breed – heard from Mrs. Chevalier and Mr Chauvin that she was born of a Negro father and an Indian mother / objected to by Mr Lawless / heard of it at St Charles That he heard it said that she was half Indian and half Negro – understood (by proclamation from the government) that the government did not sanction Indian Slavery, that Indians held in slavery, on application to the Commandant or governor at New Orleans, were set at liberty – he knew of two of Mr Sayou's Indian slaves being set at liberty under that proclamation – one of a Mr Lorrain immediately after the promulgation of the Spanish decree relating to Indian Slavery all the Indian slaves were set at liberty, never heard the proclamation

Francois Dorlac
Deposition

published, this it might have been so when he was absent — Never saw it stuck up any where — Knew of its publication by public report and understood at the same time that a provision of the said proclamation that no other Indians should be brought down the Mesipsipi, to be enslaved — Supposes that Marie Scipio might have been set free at New Orleans as others were upon application, if she had had the means of going down — Knew Marie Tota, she was the sister of Marie Scipio — he knew her at Ste Genevieve forty nine years ago — She afterwards lived at Prairie du rocher — She was a full blood indian Never saw the father of Marie Scipio, understood that he was a Negro — Question by Mr McGirk — What was the practice of the french with respect to the enslaving slaves? Answer I do not know — Question by same — Was it the custom of Indians who came about the french villages to engage themselves to the inhabitants as laborers and live with them as servants? Answer. No — Question by the same — Did you ever know any Indians to go among the white inhabitants and remain with them as servants? — Answer — No — Question by the same what became of the Indians held in slavery under the french and Spanish governments? — Answer the few that were here went down to New Orleans, whereupon application, they were set free (for they never would have been set free here) and afterwards scattered about — Question — Do you know any others of the indian slaves held by the French inhabitants of this country other than the Children of Marie Scipio, being held in slavery at this time? Answer — No — I know of no others that were not liberated at New Orleans went about here, and never were attempted to be again enslaved —

Objection to part.

And the Counsel for the defendant objects to the reading of those parts of said depositions which relate to or speak of a

proclamation of the governor or government of Louisiana and the publication contents and effects thereof, which objection was made on the ground that such parts of said depositions as relate to, or speak of & concerning said proclamation & its contents publication and contents were incompetent testimony to go to the jury — which said objection was sustained by the court and the said Court decided that those parts of said depositions objected to as aforesaid were incompetent evidence to go to the jury and prohibited the plaintiff from reading the same in evidence; but said Court permitted the remainder of the said depositions to be read in evidence to the jury no other objections having been made, which were read accordingly — The plaintiff then called and examined Josette Borgier, who being sworn in the cause to testify, upon her oath deposed and said, That she was raised from a child by Madam Helen Chevalier, and continued in the family of said Helen about sixteen years; That she (the Witness) was intimate in the family of Joseph Sayou the father of said Helen, and knew the members and slaves in said Sayou's family — That there were in said Sayou's family some Colored people who were not slaves, particularly an Indian woman named Marie Louise and her children Witness also knew another colored woman in said Sayous family called Marie Scypion in the quality of a servant in the family, who was in said Sayou's detention — Said Mary Scipion was a Mulattress, and appears to be half Indian and half Negro That Witness did not know it of her own knowledge, but always heard and understood in said Sayou's family that the Mother of Mary Scypion was an Indian woman and her father a Negro man named Scypion; That Madam Chevalier has been dead for some years, Witness further stated

Objection sustained

Remainder read

Testimony of Josette Borgier

that she had heard (without stating from whom) that Madam Jayou had gotten Marie Seypion, the mother of the plaintiff, as a gift or as an heir — The plaintiff then called and examined François Marechalle, a very old man, who being sworn in the cause to testify upon his oath deposed and said, That he knew Joseph Jayou and his family well whilst ~~they lived~~ at said Jayou lived at Fort Chartres in the State of Illinois; that he first knew said Jayou at fort Chartres upwards of sixty years ago in 1759 and about fifty years ago said Jayou removed with his family from Fort Chartres to St Louis in this State — That witness knew Jayou till his death, and that Jayou remained in St Louis from the time of his removal till his death, Witness further states that he knew Marie Seypion the mother of the plaintiff; that she lived in the family of Jayou, and passed for a griffe or half Indian and half Negro; that her father was said by every body, and particularly by Antoine Riviere the father in law of the witness, who was a very old man and is now dead, to be a negro man and that her mother was an Indian ~~woman~~ of the Natchez tribe of Indians, Witness also knew the sister of Marie Seypion who was by appearance a full blooded Indian — whose name was Marie Tata — Witness further states that he always understood by general report and public opinion, that the mother of Marie Seypion was a full blooded Indian; that he first heard it upwards of fifty years ago, and that he often heard it from Antoine Riviere his father in law who was about 112 or 114 years of age when he died, and that said Riviere has now been dead nine or ten years, that Antoine Riviere stated that he was well acquainted with the mother of Marie Seypion when she first came to Fort Chartres from the Natchez Country —

Testimony of Frs. Marechalle

The plaintiff then called Madame Marechalle

Testimony of Madame Marschalk.

who being Sworn to testify in the cause, upon her oath deposed and said — That she Knew Joseph Tayon Senr. first when he lived at Fort Chartres in the Illinois, nearly opposite to the town of Ste Genevieve in this State in which latter place Witness then lived; she first Knew said Tayon at Fort Chartres more than sixty years ago, That Tayon then had a family, — She also Knew Tayon in St Louis after his removal from Fort Chartres which happened more than fifty years ago That Tyon died nearly 20 years ago in St Louis at the house of Pierre Chauteau Jr. That Tyon had several Children amongst whom were Madame Delin Chevalier and Madame Chauvin, who are now both dead, Tayon had another daughter called Jannette — Witness also Knew a coloured woman in Tayons family called Marie Seypion, who passed for half Indian and half Negro amongst every body who Knew her; Witness first remembers to have seen Marie Seypion in St Louis at the house of Tayon about the time St Louis was first Settled and thinks She was then about 20 years of age. Witness always understood by general reputation that the mother of Marie Seypion was an Indian Squaw and that her father was a Negro man — Witness also heard it from Ole Pierre Le Beckel and Antoine Riviere who were very old men, and are now both dead Witness Knew the sister of Marie Seypion, whose name was Marie Tata and was a full blooded Indian woman, Witness recollects to have heard Antoine Riviere say about 40 years since, that he Knew the Mother of Marie Seypion well, and that the Mother was an Indian Squaw and the father a Negro man — That the hair of Marie Seypion was black and several inches in length and somewhat curled, but not like the hair of a Negro — her Complexion was reddish, but darker than that of a Common Mulatto —

The plaintiff then called Madame Alexis La Sand, who being sworn to testify in the cause upon her oath deposed and said — That she first knew Marie Scypion in the family of Joseph Tayon, thirty five or six years ago — and frequently saw her passing about the town — She was a griffe or half Indian and half Negro — that some people said she was an Indian and some that she was a griffe — her hair was several inches long and inclined to curl — Witness always heard and understood that Marie Scypion was the daughter of an Indian woman and a Negro man — Witness heard Pierre O'Beckett and Antoine Riviere say so more than twenty years ago — and from many others —

Testimony of Madame Alexis La Sande

The plaintiff then called and examined John B. C. Lucas who being sworn in the cause, upon his oath deposed and said; That about 20 years ago this deponent was one of the Judges of the General Superior Court in the then Territory of Missouri That sometime in the year 1805 or 1806 there was a suit in said Court, between Joseph Tayon senior and one or more of the Children of Marie Scypion, probably the present plaintiff & others which involved a contest for the freedom of the plaintiff here who was then one of the defendants that the pedigree and descent of the defendant in the suit then before the Court came directly in question — The question was whether the then defendant & others were descended in the maternal line from Indian woman — Witness was sitting on the bench as a Member of the Court during the trial and devoted much attention to the testimony given on both sides: Amongst other witnesses on the part of the then defendant — Antoine Riviere, Pierre O'Beckett, Louis Labraume Madame Chevallier, and Madame Chauvin the daughter

Testimony of John B. C. Lucas

of Joseph Sayou Sen.r were sworn in Court to testify, in the cause then on trial:- Also on the part of Sayou the plaintiff a certain Madame Cochon of Prarie du Rocher was sworn to testify in the cause - Antoine Riviere sometimes called Baccannie, who was then a very aged man, who stated that he was then upwards of ninety years old, and seemed to boast a little of his great age and seemed to be proud of his knowledge of events long past by, was a stout healthy man for his years, and seemed to have the perfect use of all his senses and understanding - Riviere states on oath on the trial of said cause, that the Mother of Marie Seypion was an Indian woman of the Natchez tribe of Indians - That the Mother of Marie Seypion was brought to Fort Chartres after the defeat of the Natchez Indians by the French, or about the time of the Massacre, as it was called - Riviere further stated that the father of Marie Seypion was a Negro man, and that he was well acquainted with both the father & Mother of Marie Seypion; also that the name "Marie Seypion" was a combination of the names of her father & mother as he understood it - Riviere further states on oath, that when the mother of Marie Seypion was brought to Fort Chartres that he the witness was a young man, not old enough to go to hunt or to fight - Pierre O Becket another witness, who testified in the same cause, stated as well as the witness remembers, that he was then about 80 or 82 years old; That he knew the Mother of Marie Seypion at Fort Chartres in the Illinois, and that she was an Indian squaw; That he understood from general report, that she was of the Natchez tribe - and was brought to Fort Chartres about the time of the defeat of the Natchez Indians, and that he saw her in the Station of a servant in the Kitchen -

Testimony of Antoine Riviere 20 years ago

Testimony of P.O. Becket 20 years ago

but knew nothing of her slavery or freedom — Mr. Lucas further states that both Baccanne or Rivière and Obeckit spoke in the most positive terms concerning their knowledge of the mother of Marie Seypion — Mr. Lucas further testifies that Louis Labraume Stelin Chevalier and Madame Chauvin, who all testifies on the part of the descendants of Marie Seypion in said suit and who all agreed in their testimony, that some time about the change of Government in this Country, and just before or about the time that the United States took possession of this Country, Joseph Sayan Senior, in conversation with the Witnesses in St Louis at the house of Madame Loiselle states that if Indians and their descendants were free, that Marie Seypion and her descendants were all free, because the mother of Marie Seypion was an Indian woman

Testimony of L. Labraume Mde. Chauvin & Mde. Chevalier 20 years ago

Mr. Lucas further testifies that Madame Cochon who testifies on the part of Sayan in said suit swore, that when she was a girl of some 9 or 10 years old, She lived at Prairie du Rocher in Illinois, not far from Fort Chartres; that she lived either with her mother or aunt in that Village who was by profession a mid-wife; that Joseph Sayan sent a Negro woman there, who was pregnant, to be delivered and nursed by her mother or aunt, and that Marie Seypion was the issue of that Negro woman, born at that birth, That when Madame Cochon testified she was then about 65 or 66 years old — that Madame Cochon was the only Witness who testified that the Mother of Marie Seypion was a negro and states no other means of knowledge of that fact than that circumstance before mentioned — Mr. Lucas further states that he knew nothing of these facts of his own knowledge

Testimony of Mde Cochon 20 yrs ago.

Nor indeed any thing touching the pedigree & descent of Marie Seypion till they were detailed in evidence by said Witness on the trial of said cause — Mr. Lucas further Stated that Mr. O'Brien testified the name Marie Seypion was given to the said Marie Seypion because it was the names of her father & Mother Combined — She was therefore called by both names —

The defendant then produced and offered to read in Evidence the following deposition of Sebastian Pratte taken

S. Pratte's deposition

Sebastian Pratte of lawfull age being produced Sworn and examined on the part of the defendant deposeth and saith he arrived in 1756 in the Country and in 1757 went to Fort Chartres he lived with Mr. Vayon. Joseph Vayon the father in law of Mr. Pierre Chouteau &c. while he lived with Mr. Vayon he observed the Slaves of Mr. Vayon in the first year of his residence, he had a Negroe woman called Mary one Indian woman named Mary Louise, the Indian had two children. there was one Slave also female called Seypion who appeared to be about 10 or 11 years old, she was treated and well known as a Slave he knew her in the possession of Mr. Vayon after he removed to St Louis and for Several years after, and he had no other Slave by that name but her, did not know the mother of Seypion — there were at Fort Chartres and elsewhere through the Country a great many Indian Slaves and but few Blacks, the Indians were universally acknowed as Slaves and frequently sold as such before the governor — he himself sold, Several one to the Commandant that he brought from the Mississippi — Seypion was very black, had hair like a Negroe, the Commandant he speaks of was the English Commandant at Kaskaskia from his belief of the Character of Mr. Vayon, he is certain

he would not have sold a person as a slave who was not so - he was in the habit of frequenting M. Sayan's house in Fort Chartres and a long time after in St Louis and never heard M. Sayan say Sypion was free but on the contrary she was always treated as a slave - a majority of the Indians held them as slaves came down the Mississippi brought by the traders, and were of different nations, there were many Indian slaves after the first establishment of St Louis and few blacks, in it M. Sayan removed to St Louis soon after its establishment —

objection to part

The plaintiffs counsel objected to the reading of those parts of said deposition which speak of & concerning the number of Indian slaves and the existence of Indian slavery in Illinois and Louisiana, and also objected to those parts of said deposition which speak of or concerning the number of Negro slaves in the country and the sale of Indian

overruled

Slaves, which objection was by the Court overruled and those parts of said deposition objected to as aforesaid were permitted by said Court to be read in evidence to the jury. The

another objection

plaintiffs Counsel also objected to so much of said said deposition being read in evidence as relates to or speaks of the Knowledge of deponent concerning the Character of Joseph Sayan; and to the conclusion drawn by the deponent from his Knowledge of Sayan's Character,

Sustained

which said objection was by the Court sustained, and those parts of said deposition were not read — The defendants

remainder read

Counsel read the remaining parts of said deposition, not excluded by the Court as aforesaid to the jury —

The defendants counsel then produced and offered to read in evidence to the jury, the following deposition of Augusta Chouteau to wit

Augustin Chouteau Deposition

Augustin Chouteau. Sworn — Marie Lyppion was a negroe slave belonging to Mr. Joseph Tayon (a female) he always understood that She was the daughter of a negro woman slave to Mr. Guyon which Mr. Guyon gave to Mr. Joseph Tayon his relation Marie Lyppion was of a brown colour with very woolly hair like that of a Negroe knew Marie Lyppion a verry long time, the first time in the year 1764 he hired her often some time for 15 days sometimes more, he allways knew her as a slave belonging to Mr. Tayon, of whom he hired her, and paid for her service, he never knew the mother of Marie Lyppion does not know when she died, did not know her father. She was universally known to be of Negroe blood, on the mothers side — at the arrival of the Spanish government heard there were slaves of Indian blood and after of the mothers side Question by plaintiffs Attorney — knew he knew the fact that Mr. Guyon gave the Mother of Marie Lyppion to Mr. Tayon? he heard it publickly say'd that Mr. Guyon gave a Negroe woman and man with other slaves and a plantation to Mr. Tayon his relation — Question did you know it any other way than by public report? Answer No — only by public report at Fort Chartres — Question did you know the name of the Mother of Marie Lyppion? Ans. No — Question — did you ever see the Mother her? Ans: No — Question how old was Marie Lyppion when you first saw her? Answer She was a young girl — does not know her age but She was able to do the work of the house — Question — do you think She was as much as fifteen years old? Ans. he does not know — Question — was Marie Lyppion a Negroe woman? Answer Yes She she was a Negroe, at least I considered her as such — Question — had she not the Complexion of an Indian? Answer — No she was a reddish black, not the least of an Indian Colour — Question — was Mr. Tayon in possession of Marie Lyppion until her death? Answer — does not know Question — How long since he saw Marie Lyppion last? Answer

25 or 30 years ago – Question – Had Mr. Fayon no other Slave by the name of Marie Sypion? – Answer – Not that he knows of – Question – Do you know how many Slaves Mr. Fayon had – Answer He has several but does not know how many – Question – Did you know all the Slaves of Mr. Fayon – Answer – No – he had many Question – Do you know whether Marie Sypion was the Mother of Margarete Plaintiff in this action – Answer – She has several Children – but does not know if this was one, Celeste Catiche and others – –

The plaintiffs Counsel objected to the reading of such parts of said deposition as speaks of or concerning the existence or number of Indian Slaves in the Country; and also to such parts of said deposition as speak of or concerning the gift of Marie Sypion & other things by Pagnion or Lucon to Fayon But the Court overruled the objection and allowed the whole of said deposition to be read in evidence to the Jury which was read accordingly – The defendants Counsel then produced and offered to read in evidence the following depositions of Madame Veuve Dubreuil to wit.

Objection to part

Madame Veuve Dubreuil Sworn – I Knew Marie Sypion well – She was often hired by my self Mr. Joseph Fayon. She was always known as a Mulatto Slave – She was a dark Mulatress – I Knew her for the first time about 30 years ago when I first came to this Country – She was with Nurse to one of her Children for six Months, at her Masters house Mr. Joseph Fayon. She was generally considered as a Slave of Negro blood – She had several Children Catiche, and one Kabled Sauvir which was a nickname She does not Know the real name, always Knew her as the Slave of Mr. Fayon & Marie Sypion – is certain She was of Negro blood as certain as that She is one day to die

Mde Dubreuils Deposition

Examination of plaintiffs attorney—
Question—Of what age was Sypion when you first knew her
Answer—More than 25 and had several Children— Question
did you know either the father or Mother of Sypion Answer
Oh no— Question was she in Mr Tayon's possession when
the witness first saw her Marie Sypion— Answer— Yes—
How do you know that Marie Sypion was of Negroe blood
Answer she was black and had wool upon her head she
did not want pasticots to curl her hair— Question— was
she a Negroe or Mulatto woman— Answer— She was
so dark a Mulatto that she appeared more like a Negroe
Question— are you certain her hair was curly— Answer—
It was curled like a Sheep— Question. do you know of Sypion
was a slave or not— Answer— always knew her as a slave
Question— have you never heard Joseph Tayon say Sypion
was a free woman— Answer. Oh no— she was always a slave
she would not have remained there if she had been free—
Question— How do you know she would not have remained
Answer. If I knew it? If my my Mulatto woman knew
she was free. would she remain? Question— did you know
all the slaves of Mr Tayon— Answer— I paid no attention
to how many. but this woman was frequently hired by me
I knew her well, did not know how many— Question—
was you intimate with Mr Tayon's family and were you
frequently at his house during his life time— Answer
She was intimate and on most friendly terms of course
frequently there ever since she has been in the Country
until ~~this~~ death— Question— do you recollect ever to have
seen in the possession of Mr Tayon Indian or half Indian
Slaves— Answer— Yes there was one, who died lately
She does not know how many he had— Question. Had Mr
Tayon any female Indian Slaves about his house when

you Know him — Answer — There was an old woman who died about 12 years ago — Question — What was her name Answer — Marie Louise — Question — was she not sometimes called Marie Sypion — Answer — No certainly not, she was a slave until the Spanish government declared her free — many Indian Slaves remained with their Masters after they were so declared — Question — did Marie Louise remain with Mr. Tayon after she was declared free — Answer — She does not Know — Question, were you in this country when the Spanish government took possession Answer — No. I was at New Orleans — Question — did you ever Know any other Joseph Tayon in this country Answer — No. except his son — Question was Marie Sypion the Mother of Margarette the plaintiff — Answer — She was Question — how do you Know it — Answer, I have heard it so said — Question — do you Know Margarette — Answer No — but I believe her to be the one named Louise — Question how old are you — Answer. Seventy —

Defts Witness.

which said deposition was read to the Jury — The following deposition of Julie Papin Vasques was then produced and read to the Jury by the defendants Attorneys, to wit

Julie Vasques Deposition

Julie Vasques Sworn — I Know Marie Sypion at Mr. Joseph Tayon's about 40 or 45 years ago as a Slave, She was nearer to a Negroe than Mulatto in Colour her hair was woolly like that of a Negroe — I went often to Madame Tayon's and saw her there as a servant never Know any other Slave but her belonging to Mr. Tayon of the same name — Marie Sypion had Children, one named Catishe and Celeste, and Louis — She saw Marie Sypion frequently in possession of Mr. Tayon's Children

sent to them by their father – She was generally known here to be the slave of Mr. Tayon and a mulatress, never knew her mother — Cross Examination by Plaintiffs Attorney – Question – Was not Marie Sypion sometimes called Marie Tatin – Answer She knows nothing about it She always heard her called Sypion — Question – did you know the father of Sypion – Answer – No – Question did you know all of Mr. Tayon's slaves when you saw them Answer – She knew them when she saw them but does not know how many — Question – Had Mr. Tayon any Indian slaves – Maid and female – Answer – No – I do not know — Question – were there any Indian people living with Mr. Tayon – Answer several one called Marie Louis – Knows not the name of any other – Question – were those Indians living with Mr. Tayon as slaves, or as free persons, Answer at that time they passed as slaves – Question – did you know Marie Sypion until her death Answer – No – Question how long did you know Marie Sypion from first to last – Answer – about 10 years but is not certain – Question – when did Mr. Tayon die – Answer She does not know – but has not seen him for 20 years Question – do you know what became of Sypion after Mr. Tayon's death — Answer – does not know but knew her as the Slave of Mr. Tayon –

The defendant then produced and read in evidence to the Jury the following deposition of Elizabeth Hortiz to wit

Elizabeth Hortiz sworn – I knew Marie Sypion as a slave of Mr. Joseph Tayon 38 or 39 years ago – a very dark mulatress – saw her frequently as she was hired out by Mr. Tayon as a slave – knew her until her death about 20 years ago always as the slave of Mr. Tayon, had the hair

of a Mulatress She had three children Catish, Celeste Louis as she was called, Margarette her real name. Marie Lyppion was allways publickly known as the Slave of M. Jayou — Cross Examination by plaintiffs Attorney Question — Which died first M. Jayou or Lyppion — Answer Lyppion — Question — how many years before M. Jayou — Answer — One or two — Question — did Lyppion live with M. Jayou at the time of his death Answer — She died with her master at Pierre Chouteau Seniors — Question did you know the father or Mother of Lyppion — Answer No — Question — did you know of your own knowledge that Lyppion was the Slave of M. Jayou Answer — Yes — always saw her serve in his house or hired out as his Slave — Question — Marie Lyppion — had she no nick name — Answer No — never heard any other than Marie Lyppion — Question — do you know that Marie Lyppion was mother of Celeste, Catish and Louis — Answer — Yes they always called her Mother — Question — How do you know that Louis is Margarette — Answer — She has heard her called Margaret and baptized as was said by that name — Question — was Lyppion not reserved at the Sale of M. Jayou and also her Children — Answer — She knows nothing of it — — — — The defendant gave no other evidence to the Jury — nor was any other given by the plaintiffs but as above set out — The plaintiffs Counsel then prayed the Court to instruct the Jury as follows — to wit —

Instructions prayed for by Plaintiffs —

1st That if the Jury find from the evidence that the Ancestor of the plaintiffs in the Maternal line was an Indian Woman they must find for the plaintiffs —

2d That if the Maternal Ancestor of the plaintiffs was taken a prisoner in war she did not thereby become a Slave —

3d That hearsay evidence is not competent to prove the fact that the maternal ancestor of the plaintiff was taken a prisoner of war—

4th That evidence of the maternal ancestor of the plaintiff being held as a slave during the French Government of Louisiana does not establish the legality of the slavery in which the plaintiff may be held—

5. That no practice of enslaving Indians during the time Louisiana belonged to the French is evidence that such practice was sanctioned by law—

6. That a prisoner of war can not be reduced to slavery, unless under such circumstances as would authorize putting him to death, and that unless evidence of such circumstances is given to the Jury, they must consider such slavery under the pretence of the ancestor of the plaintiff being taken a prisoner in war as illegal

7. That the right to hold a prisoner of war in slavery, continues no longer than the political necessity exists for such slaving, and that when such necessity ceases, the prisoner can no longer be held in slavery — All of which said several Instructions were by the Court refused

Instructions refused—

The said Defendant by his Counsel then moved the Court to Instruct the Jury as follows to wit—

Instructions prayed for by Defendant

1st If the Jury find from the evidence that the maternal grand Mother of the plaintiff was an Indian woman of the Natchez Nation taken Captive in war by the French, and that she was held and sold as a slave in the province of Louisiana while the same was held by the French and prior to the year 1769 she and her descendants ought to be considered as being lawfully slaves—

2d If the Jury find from the evidence that the Maternal

grand Mother of the plaintiff was an Indian woman taken Captive in war by the French and was held and sold as a slave in the province of Louisiana while the same was held by the French and prior to the year 1769, she and her descendants ought to be considered by the Jury as being lawfully Slaves —

3d. If the Jury find from the evidence that the Maternal grand Mother of the plaintiff was an Indian woman taken Captive in war by the French, and was held and sold as a slave in the province of Louisiana while the same was held by the French, and prior to the year 1769 she and her descendants ought to be deemed by the Jury as being lawfully Slaves —

4th. If the Jury find from the evidence that the Maternal grand Mother of the plaintiff was an Indian Woman taken Captive in war and held as a slave in the province of Louisiana while the same was held by the French and prior to the year 1769. she and her descendants ought to be taken by the Jury to have been lawfully slaves

5th — If the Jury find from the evidence that the Maternal grand Mother of the plaintiff was a Negro or Indian woman and that she was held as a slave in the province of Louisiana while the same was held by the French and prior to the year 1769. she and her descendants ought to be taken by the Jury to have been lawfully Slaves —

6th. That the declarations of Joseph Sayon as testified to by John B. Riviere in his deposition, do not in law operate to emancipate said Marie Seypion or any of her Children, nor is the plaintiff entitled to her freedom in consequence of said declarations —

7th That Indians taken in war might be held as slaves in the province of Louisiana while the same was held by the French and prior to year 1769 —

8th That Indians might lawfully be reduced to and held in slavery in the province of Louisiana while the same was held by the French and prior to the year 1769 — all of which said instructions were by the Court given to the Jury —

Def's Instructions given —

To all of which said opinions and decisions of said Court in rejecting the said Evidence offered by said plaintiff; in admitting said evidence offered by said defendant and objected to by said plaintiff by her counsel; in giving the said instructions to the Jury as prayed for by said said defendant by his Counsel and in refusing to give the said instructions to the Jury prayed for by the plaintiff by her Counsel; the said plaintiff by her Counsel excepts, and prays the Court to sign and seal this her bills of exceptions, and prays that this her said bills may be made a part of the record of the Court in this cause; — which is done accordingly —

Exceptions

It was in proof that the mother of Marie Scipion before the of said Marie Scipion was held and claimed as a slave & continued so to be until her death, & that Marie Scipion and her issue have been so held & claimed ever since —

W. Lucas also stated that it seemed to be given up on all hands by the old witnesses he mentioned at the time of the trial spoken of by him, that the mother of Marie Scipion was de facto a slave and held and treated as such —

Wm. L. Carr

Seal

State of Missouri }
County of St Louis } ss I Archibald Gamble Clerk of the Circuit Court for the County of St Louis do certify the foregoing to be a correct transcript of the Record and proceedings in the case of Marguerite vs Pierre Chouteau Sr as the same remains in my office

Given under my hand and Seal of Office at St Louis this Twenty third day of April in the Year of Our Lord One Thousand Eight Hundred and Twenty Seven

Archibald Gamble Clerk

567 No 16 (8)
May Term 1827

Marguerite 482
vs
Pierre Chouteau

Transcript — $12.49
Certificate — 0.50
Seal — 1.—
$13.99

Filed 26th April 1827
H Douglass Clk

May Term 1827
Assignt of Errors filed Book C page 298 — argued & under advist 306 — Court divided & Judgt affirmd — Novr 27 — 326 { 298 306 310 326 327
Mo for rehearing & New hearing granted 327 —
Novr 1833 Agreement for rehearing — Judgt [illegible] & case docketed 1 — Book D — argued [illegible] 7 [illegible] 23 — 1-7-23-25
Judgt Reversed 25 — (Oct 24)

Fee bill [illegible]
52

Marguritte a woman of colour appellant

vs

Pierre Chouteau Appellee

And now at this day comes the said Marguritte by her attorney into the Supreme Court and says that in the record and proceedings aforesaid and in giving the judgment aforesaid there is manifest error in this

1st that the said Circuit Court refused to give to the jury each and all of the instructions aforesaid asked by the said Marguritte therefore in that there is error

2 There is also error in this that by the record and proceedings aforesaid it appears that the said Circuit Court gave to the jury each and all the instructions asked by the said Chouteau whereas by the law of the land each and all the said instructions should have been refused therefore in that there is error

3 There is also error in this that the said Circuit Court rejected the evidence of O'Kelly proclamation contained in the depositions of Lorette Chouvin ~~and~~ of Baccane ~~and~~ Madam Baccane + Pierre Godier which was by the law of the land competent evidence therefore in that there is error

4 There is also error in this that the said Circuit Court admitted the evidence in S Pratte's deposition of ~~in~~ many Indians being held in slavery in Louisiana and admitted the other evidence objected to by the said Marguritte which by the law of the land should have been rejected therefore in that there is error

Wherefore as well for the errors aforesaid as for other errors in the said record and proceedings appearing the said Marguritte prays that the judgment aforesaid in form aforesaid rendered be reversed annul

led and altogether for nothing held and esteemed and that she be restored to all she hath lost thereby

Gamble & McGirks attys
for Appellants

[illegible]

[illegible]

Marguritte
3 3 assignment
Pierre Chouteau

filed 8th may 1827
H Douglass Clk

Marguerite
vs
Choteau

Appeal from the Circuit Court of St. Louis county

Marguerite brought her action against Choteau in the Circuit Court of St Louis County to recover her freedom. In that court judgment being given against her she appealed to this court. On the trial of the cause she gave in evidence that her maternal grandmother was an Indian woman: and some of the witnesses stated, that they had heard aged persons say, that she was of the Natchez nation, and made a prisoner by the French in the war which terminated in the extinction of that nation.
On the part of the defendant, evidence was given that the appellant was descended from a negro woman in the maternal line. Evidence was also given by the defendant that many Indians were sold as slaves in the province of Louisiana while it was under the dominion of France; and also that the maternal ancestors of the plaintiff, appellant here, had been alienated as slaves
The counsel for the defendant prayed the Circuit Court to instruct the jury 1st. that if they found, from the evidence, that the maternal grandmother of the plaintiff was an Indian woman of the Natchez ~~tribe~~ nation taken captive in war by the French, and that she was held and sold as a slave in the province of Louisiana, while the same was held by the French, and prior to the year 1769, or if they found that her maternal grandmother was an Indian woman taken captive in war, and was held and sold as a slave, as above mentioned, then she and her descendants ought to be considered by the jury as being lawfully slaves
2nd " If the jury find that the maternal ancestor of the plaintiff was an Indian or negro woman and that she was held as a slave in the province of Louisiana while it was held by the French she and her descendants ought to be taken by the jury to have been lawfully slaves.

3d. That Indians might lawfully be reduced to and held in slavery in the province of Louisiana while it was subject to the crown of France.

These instructions were given by the court and resisted by the plaintiff. Other instructions prayed by the defendant and resisted by the plaintiff were given. But each side being anxious for a decision on the merits of the case, no notice need be taken of minor objections

On the part of the appellant it is insisted that all Indians in the late province of Louisiana, were while it was held by France and Spain absolutely free and that their descendants are so now. Negroes it is admitted are to be presumed slaves, their ancestors being imported to the continent as slaves. But Indians were around and among the settlements of the white men in the full enjoyment of their personal liberty, acknowledging no inferiority to white men, and treating them either as national friends or national enemies. To show a descent from this race it is contended is to show a right to freedom, and if in the history of the country there were a time when Indians might under the sanction of law be reduced to slavery then the proof of a right to freedom by virtue of a descent from an Indian becomes liable to be rebutted by evidence bringing the case of the claimant under the operation of such law. 1st. Washington. 123 & 233. Jenkins vs. Tom and Coleman vs. Dick and Pat. and 2 Hen & Mun. 160.

On the part of the Appellee it is contended that his right to hold the appellant in slavery is established by the practice of the country at the time her supposed maternal ancestor was made a prisoner of war; and he gave evidence that while Louisiana belonged to the crown of France there were many Indian slaves at Fort Char-

tres and other villages in that province. One of the witnesses, most relied on, says that he arrived in the country in 1756, and in 1757 went to Fort Chartres; and that there were then at that place and elsewhere through the country, a great many Indian slaves, and but few blacks; the Indians were unversally acknowledged as slaves, and frequently sold as such before the governor; he himself sold several, one to the commandant, and afterwards added that the commandant he spoke of was the English commandant at Kaskaskias. The appellee puts his right to hold the appellant in slavery on the same ground whether she be descended in the maternal line from an Indian or a negro woman. It was further contended for the appellee as evidence of the law of the land that the French commandant Bourgmont bought Indians for slaves on the Missouri and sent them down to New Orleans to work on his plantation and urges that this act demonstrates more clearly what was the law of the ~~Louisiana~~ land than a speech of the same person in which white men were censured for trading with Indians for slaves. Reference is made to 3 Martin Rep 295 Seville vs Chretian and 3 vol. Du Praty history of Louisiana where the author gives an account of Bourgmonts voyage from Fort Orleans on the Missouri to the Padoucas a tribe living ~~on the~~ west of the Kansas River, and of the object of that voyage

It appears from the evidence that nearly one hundred years before the commencement of this suit the supposed maternal grandmother of the appellant was brought to Fort Chartres in Louisiana and was there held as a slave till her death. If then under the laws of France she was ~~rightly~~ justly held as a slave, the ap-

pellant is at this time in the same condition
the law of nations securing to the claimant his
property when the province was transferred by
France to Spain by the secret treaty of 1763, and
the several treaties when the same was transferred
by Spain to France and by France to the U-
nited States. The only case in point decided
by any court in the United States since the
transfer of Louisiana, of which this court is
informed, is that of Seville vs. Chretian re-
ferred to by the Appellee. Seville the plaintiff
in that case was the grandchild in the mater-
nal line of an Indian woman brought into the
province by an Indian trader in the year
1765, and by him sold to the Father of the appel-
lee. Her introduction into the province and the
sale to the ancestor of the appellee both took place
after the cession of France to Spain and before
Spain had taken possession. She like the an-
cestor of the appellant in this case before this
court was held as a slave till her death, and
as she was reduced to slavery before Spain
had introduced her laws into the province the
question of freedom or slavery was decided
under the laws of France. That court decided
that, during the time Louisiana was held by
the French government, Indians might lawful-
ly be held in slavery. A manuscript copy of
the report of that case has been submitted to
this court. According to it "a number of de-
"positions (admitted by the parties to have
"been correctly taken and to be proper evidence
"in the cause) were read to prove that at the
"time the Spanish government took possession
"of the country, viz. in the year 1769, under the
"secret treaty of cession made between France and
Spain in 1763 many of the inhabitants of the
colony which had been established and settled

" under the authority of the French government
" held and possessed Indians as slaves; and it
" seems, adds that court to have been a belief
" pretty general among them that the practice
" of holding Indians in slavery was tolerated
" and authorised by the government. The
" fact that a considerable number of Indians
" and their descendants were held in slavery
" at the period alluded to is clearly proven."

The case of Seville vs Chretian being mostly relied on by the counsel in the cause before this court and in fact the arguments in each case being nearly the same, that case will be particularly examined. In that case the court are made to say, according to the manuscript report furnished us,

" Slavery notwithstanding all that may have
" been said and written against it as be-
" ing unjust, arbitrary and contrary to the laws
" of human nature, we find in history, to have
" existed from the earliest ages of the world
" down to the present day
" In investigating the rights of the parties
" now before the court, it is deemed unneces-
" sary to enquire into the different means, by
" which one part of the human race have, in
" all ages, become the bondsmen of the other,
" such as captivity, being the offspring of those
" already enslaved &c. However we are of opin-
" ion that it may be laid down as a legal
" axiom that in all governments in which
" the municipal regulations are not absolutely
" opposed to slavery, persons already reduced to
" that state may be held in it, and we assume
" it as a first principle that slavery has been
" permitted and tolerated in all the colonies

" established in America by European powers - most
" clearly as relates to the blacks, or Africans, and al-
" so in relation to the Indians in the first periods
" of conquest and colonization. Taking this
" principle for granted it accounts in some
" measure for the absence of any legislative
" act of the European powers for the introduc-
" tion of slavery into their American domin-
" ions. If the record of any such act exist,
" we have not been able to find any trace of
it.

" It is true that Charles the fifth, in the first
" part of the sixteenth Century, granted a pat-
" ent to one of his Flemish favorites, for the
" exclusive right of importing four thou-
" sand negroes into America, which were
" purchased by some Genoese merchants,
" who were the first who brought into a reg-
" ular form the commerce for slaves between
" Africa and America. A few years before a
" small number of negroes had been introduced
" by the permission of Ferdinand. But the
" privilege granted by the Emperor so far from
" being the first introduction of slavery into
" the new world, was intended as a means
" of enabling the planters to dispense with
" the slavery of the Indians who had been re-
" duced to a state of bondage by their Europe-
" an conquerors. A full account of these trans-
" actions may be seen in Robertson's History
" of America. On turning our attention to the
" first settlement of the British Colonies
" in America we find that the introduction of
" negroe slaves into one of the most important
" was accidental. In the year 1616 as stated
" by Robertson, and 1620 by Judge Marshall
" in his life of Washington, a Dutch Ship "

" from the coast of Guinea sold a part of her
" cargo of negroes to the planters on James river.
" This is the first origin of the slavery of the
" blacks in the British American provinces
" About twenty years after slaves were introduced
" into New England. All this took place with-
" out any previous legislative act on the subject.
" And it is believed, that Indians were, at the
" same time, and before, held in bondage —
" The absence of any act or instrument of gov-
" ernment under which their slavery origin-
" ated is not a matter of greater surprise than
" that there should be none found authorizing
" the slavery of the blacks.
" The first act of the legislature of the province
" of Virginia on the subject of the slavery of
" the Indians was passed in 1670 and one of
" its provisions as we are informed by Judge
" Tucker, prohibits free or manumitted Indians
" from purchasing Christian servants.
" The words "free or manumitted" are useless and
" absurd, if there did not exist Indians in
" slavery, and Indians who had been slaves
" and had been manumitted before and at
" the time this act was passed. Indeed from
" the history and legislative proceedings of the
" British colonies, both in the West India Is-
" lands and in North America it clearly ap-
" pears that in most if not in all of them, the
" slavery of the Indians was tolerated by gov-
" ernment in the early periods of the settle-
" ment without any specific legislation
" on that subject. The French government
" was later in establishing colonies in A-
" merica than the British and Spanish —

" In our researches on the subject under consid-
" eration, we have not been able to discover any
" legislative act of it, by which the colonies were
" authorised to hold Indians in bondage, but
" that it was customary to purchase and hold
" some classes of them in slavery cannot be
" doubted. This cannot have been without the
" permission, or at least the toleration of govern-
" ment, Moreau de St Mery speaking of the
" black population of St Domingo observes,
" that among it are the descendants of some
" Indians from Guiana Louisiana &c. ~~whom~~
" whom governments and individuals in vio-
" lation of the law of nature, deemed it profit-
" able to reduce to slavery —. 1 hist. St. Dom. 67.
" In the beginning of the eighteenth century,
" he adds, there were upwards of three hun-
" dred Indian slaves in the French part of
" St Domingo. In 1730 the governor of Louisi-
" ana sent three hundred of the Natchez tribe
" to be sold. Several arrived after that pe-
" riod from Canada and Louisiana. Here
" we have historical facts, establishing be-
" yond contradiction the holding of Indians
" as slaves in one of the French colonies,
" many of whom were transported from
" the very colony in which the ancestors of the
" plaintiff and appellant ~~were~~ were
" held in bondage. Were it necessary to prove
" that they were legally held so the evidence
" of it would be found in their being taxed
" as slaves. 2 St Dom. Laws 541: a circumstance
" which creates at least a very violent presump-
" tion that the municipal regulations of the
" French Colonies did not prohibit the slavery
" of the Indians. This appears to have been

" The opinion of the Spanish government
" which, we have seen, succeeded to the French
" in Louisiana. Governor O'Reilly in 1769
" on taking possession of the colony discover-
" ed that a considerable number of Indians
" were held in slavery by the French colonists
" This he declared by a proclamation to
" be contrary to the wise and pious laws
" of Spain: but by the same instrument
" he confirmed the inhabitants in posses-
" sion of such Indian slaves until the
" pleasure of the King in this respect could
" be known. Here is then a recognition of
" the right of the possessors to hold their Indian
" slaves, until the legislative will of the mon-
" arch should deprive them of it. This nev-
" er did happen. In conformity with this
" opinion is a decree of the Baron de Caron-
" delet, twenty five years after, in 1794 by
" which he orders two Indians, Alexis and
" David to return to and abide with their
" owners until the royal will was expressed
" to the contrary. The inhabitants of the col-
" ony of Louisiana while under the gov-
" ernment and dominion of France, held
" Indians in slavery. The Spanish govern-
" ment under which they passed, recog-
" nized their right to hold them until it
" should be altered by a declaration of the
" King's will. It never was declared. The
" colony without any change in the con-
" dition of the original population is receded
" to the French nation, and by it transferred
" to the United States under a treaty securing
" to its inhabitants their rights to property

"as they stood under the former goverment.

The rule of law first settled by that court and which is called a legal axiom viz. "that in all governments in " which the municipal regulations were not " absolutely opposed to slavery persons al- " ready reduced to that state may be held "in it" might perhaps be more accurately expressed in these terms "that in all gov- " ernments where there is no positive law " against slavery, those persons already " reduced to that state may be held in it."

As all the reasoning both in the case of Seville & Christian and in that before this court seems to be founded on this legal axiom here adjourned, it becomes necessary to examine whether it be true in fact. Under the dominion of the Roman Emperors, it is well known to all persons conversant with history that there were great numbers of slaves in Europe. On the decline of that empire, when it was overrun by the northern barbarians, the number of slaves was not lessened. At this period slavery no longer exists there.

Those who recollect the difficulties encountered by Peter the first of Russia, an arbitrary and most politic prince, when he attempted to change the uniform of his life guards will scarcely contend that the kings of Europe, never arbitrary, were able by written laws alone to abolish slavery. By the force of public opinion alone it has been abolished in Europe.

Montesquieu in Chap. 8th B. fifteenth of the Spirit of Laws says "Plutarch tells us, in the life of

" Numa, that in the age of Saturn there was nei-
" ther master nor slave. In our climates Chris-
" tianity has restored that age". Dans nos cli-
" mats le Christianisme a ramené cet age".
In the succeeding chapter of the same book en-
titled "~~de~~ inutility of slavery among us" he
" says "what makes me think so is, that be
" fore Christianity had abolished civil slavery in
" Europe &c. ...." Ce qui me fait penser ainsi
" c'est qu'avant que le christianisme eut abol-
" i en Europe la servitude civile &c." Doctor
Robertson, the historian above referred to, in
a sermon preached in Edinburgh on 6th. Jan.
1775 before the society for the propagation
of Christian Knowledge, ascribes the aboli-
tion of domestic slavery in Europe to the
influence of Christianity. This sermon is
prefixed to some of the later editions of the
works of the historian.
Vattel speaking of the right to make slaves
of prisoners of war concludes the article in these
" words. "I shall dwell no longer on this subject,
" and indeed this disgrace is now happily ex-
" tinct in Europe". See Law of Nations B. 3. Ch.
8. Sec. 152.
Sir William Blackstone tells us that when
" tenure in villenage was virtually abolished
" by the statute of Charles the 2d. there was
" hardly a pure villein left in the nation,
" and then he adds "Sir Thomas Smith testifies
" that in all his time (and he was secretary
" to Edward the 6th) he never knew a ~~[illegible]~~
" villein in gross throughout the realm. See
1. 4th Bl. Com. p. 96.
The abolition of slavery in England too is
by that author ascribed to the influence

of Christianity. The same author informs us also that when an attempt was made to introduce slavery into England by Stat. 1st Edward 6th chap. 3 which ordained that all idle vagabonds should be made slaves &c. the spirit of the nation could not brook this condition even in the most abandoned rogues, and therefore this statute was repealed in two years afterwards.

Thus we see that, in England so far were the people from being disposed to suffer one man by force to enslave another, even the boasted omnipotence of parliament was unable ~~to~~ to introduce slavery in the reign of Edward the 6th. If the Parliament of England dare not attempt to enforce slavery by law, it will scarcely be contended that any other government in Europe would be strong enough to succeed in the attempt. None of them at least have been rash enough to make the experiment

We will pass over the writ granted by Lord Mansfield to bring before him the body of James Sommerset and the unanimous decision of the Court of Kings Bench in consequence of which Mr. Christian declares that the air of England is too pure for a slave to breathe in

Thus we ~~have seen~~ see that in Europe where slavery once prevailed, it has by the silent influence of the Christian religion alone been abolished, and so far is the spirit of the people from tolerating the practice, that the most energetic government on that con-

tinent has not been able to restore it.
The legal axiom then of the Supreme Court of Louisiana viz "that in all governments in which the municipal regulations are not absolutely opposed to slavery, persons already reduced to that state may be held in it" is no axiom. The natives of Europe then migrating to America carried with them no unwritten law to authorise them to enslave an Indian.

But that court assumes the ground "that
" slavery has been permitted and tolerated in
" all the the colonies established in America
" by European powers most clearly as relates
" to blacks or Africans in the first periods of
" conquest and colonisation, and refers to
" to Robertson's history of America as au-
" thority to sustain the assumption". But it is also contended that this toleration and permission of slavery was not by means of any legislative act for such purpose made.

Admitting that the European powers silently permitted their subjects to enslave the Africans, this would be no evidence in a court of law against an Indian contending for freedom. It would be a violation of the plainest rules of evidence. It is not therefore conceived necessary to embarass this question with an enquiry whether the several powers of Europe tacitly or expressly by legislative act permitted their subjects to capture Africans and sell them as slaves in America.

As however the counsel for the appellant has furnished an authority to show that it was by an expreſs law of France that her subjects traded in African slaves; that authority will be given to satisfy those who may think there is need of it. It is found in the 4th. Chapter of 1st. Vol of Spirit of Laws, entitled "Another origin of the right of slavery" The author concludes his chapter in these words "Lewis 13th. was extremely uneasy at a law by which all the negroes of his colonies were made slaves: but it being strongly urged to him, as the readiest means for their conversion, he acquiesced without further scruple."

But although Spain might either by an expreſs legislative declaration or by her silence and forbearance permit the Indians within the limits of her colonies to be enslaved, yet still this is no evidence that France ever extended the same privilege to her colonists. It does however not appear that Spain ever granted her assent to this practice either expreſsly or impliedly. She acquiesced in it and assented to it, as England acquiesced in and assented to the Norman conquest, because she could not prevent it: and to prove this we need resort to no other authority than that of the great and accurate historian by whom, according to the report of the case of Seville vs. Chretian submitted to us, the Supreme court of Louisiana undertakes to prove the contrary.

In the 8th Book of the History of America Robertson takes a view of the interior government, commerce &c. of the Spanish Colonies; after vindicating the Spanish monarchs from the charge of forming a plan to exterminate the natives he says "The Spanish monarchs, far from acting upon any "such system of destruction, were uniformly "solicitous for the preservation of their new subjects. With Isabella, zeal for propagating the "Christian faith, together with the desire of communicating the knowledge of truth, and the "consolations of religion, to people destitute of "spiritual light, were more than ostensible motives for encouraging Columbus to attempt his "discoveries. Upon his success, she endeavoured "to fulfil her pious purpose, and manifested the "most tender concern to secure not only religious "instruction, but mild Treatment, to that inoffensive race of men subjected to her crown. Her "successors adopted the same ideas; and on many occasions which I have mentioned, their authority was interposed in the most vigorous exertions, to protect the people of America from the "oppression of their Spanish subjects. Their regulations for this purpose were numerous & often repeated. They were framed with "wisdom and dictated by humanity. After their possessions in the New World became so extensive, as might have excited "some apprehension of difficulty in retaining "their dominion over them, the spirit of their "regulations was as mild as when their settlements were confined to the islands alone, Their

" solicitude to protect the Indians seems rather to have
" augmented as their acquisitions increased; and
" from ardour to accomplish this, they enacted, and
" endeavoured to enforce the execution of laws, which
" excited a formidable rebellion in one of their colonies,
" and spread alarm and disaffection through all
" the rest. But the avarice of individuals was too
" violent to be controuled by the authority of
" laws. Rapacious and daring adventurers, far
" removed from the seat of government, little ac-
" customed to the restraints of military discipline
" while in service, and still less disposed to
" respect the feeble jurisdiction of civil power
" in an infant colony, despised or eluded ev-
" ery regulation that set bounds to their exactions
" and tyranny. The parent state, with persever-
" ing attention, issued edicts to prevent the oppres-
" sion of the Indians, the colonists regardless of
" these, or trusting to their distance for impuni-
" ty, considered and treated them as slaves. The
" governors themselves, and other officers em-
" ployed in the colonies, several of whom were
" as indigent and rapacious as the adventurers
" over whom they presided, were too apt to adopt
" their contemptuous ideas of the conquered peo-
" ple; and instead of checking, encouraged
" or connived at their excesses. The desolation of
" the New World should not then be charged on the
" Court of Spain, or be considered as the effect of
" any system of policy adopted there. It
" ought to be imputed wholly to the indigent
" and often unprincipled adventurers, whose
" fortune it was to be the conquerors and first
" planters of America, who, by measures no less

inconsiderate than unjust, counteracted the edicts of their sovereign, and have brought disgrace upon their country."

We have still higher authority that in the state of Virginia Indians never were enslaved but by expreſs law viz. the acts of the provincial aſsemblies. It will not here be enquired whether Judge Tucker in his notes on Blackstone is at variance with himself sitting as a judge of the court of appeals in his own state. Suffice to say that he does not intimate any change of opinion.

In 1679 the legislature of Virginia by a legislative act permitted Indians taken prisoners in war to be enslaved, and this act was repealed in 1691. The courts of that state have uniformly decided that any person claiming an Indian as a slave must show properly acquired within the twelve years during which the law remained in force, and Indians have sued for and obtained their freedom in the courts of that state after being held in bondage nearly one hundred years. See 1 Washington's Rep. 123. Jenkins vs Tom and page 233 Coleman vs Dick. 1 Hen & Mun. 134 Hudgins vs Wrights & 2 Hen & Mun 149 Pallas and others vs. Hill & others. In the last cited case viz. Pallas & others vs. Hill & others, the subject is most fully investigated. Before that time some doubt had existed, not as to the time when the statute had

first authorised the enslaving of Indians, but as to the time when that right was taken away. The court it appears had taken time to search for the original acts and had found them & the decision was
" that the act of 1691 and not the printed revisal
" of 1705 fixes the period at which the right of ma-
" king slaves of Indians was restricted.
In such a cause as this it might not be improper to attend to the argument of the counsel employed in the cases cited as authority. In the cases cited from the Virginia Books they were men not unknown to fame. In the case of Coleman vs. Dick and Pat, Wickam was for Coleman who claimed a right of property in the Indians & Marshall was for them; and in the case of Hudgens vs Wrights, Randolph (Edmund) was for the persons claiming the right of property in the Indians. In neither of the cases cited did the counsel pretend to claim for their clients a right of property in Indians, except by the statute of the province.

In the case of Hudgens vs. Wrights the persons suing for freedom had been brought before the high court of Chancery. The defendant in that court being about to send them out of the state, a writ of Ne Exeat was obtained from the chancellor, on the ground that they were entitled to freedom. On the hearing, the Chancellor perceiving from his own view, that the youngest of the appellees was perfectly white, and that there were gradual shades of color between the grandmother, mother and granddaughter (all of whom were before the court) and

considering the evidence in the cause determined that the appellees were entitled to their freedom; and moreover ~~that~~ on the ground that freedom is the birthright of every human being which sentiment is (he says) strongly inculcated by the first article of our political catechism the bill of rights - he laid it down as a general position that whenever one person claimed to hold another in slavery the Onus Probandi lies on the claimant. The case was elaborately argued by Randolph for the appellants and George K. Taylor for the appellees. Judges Tucker and Roane delivered long opinions, reviewing the opinions in the cases of Jenkins vs. Tom and Coleman vs. Dick and Pat, in 1st. Washington; Judges Fleming, Carrington & Lyons president concurred and the latter ~~delivered~~ pronounced the decree of the court as follows, "This court not approving of the chancellors principles and reasoning) on his decree made in this cause, except so far as the same relates to white persons and native American Indians, but entirely disapproving) thereof so far as relates to native Africans, and their descendants who have been and are now held as slaves by the citizens of this state, and discovering no other error in the said decree affirms the same.

This case it may be observed, afforded counsel, always prolific in expedients, a fair opportunity to excite apprehensions for the security of the slave property in that state; so much of the Chancellors reasoning, as relates to the bill of rights, might in ordinary cases have been passed over as extra judicial; for

the complaunants had made out their case by proof. But the cause was taken up; and the chancellors judicial decision affirmed, but his extrajudicial decision was in part reversed, in order, it is reasonable to suppose, to quiet the apprehensions of the slave holders.
So far then as the conduct of Spain & Virginia towards the native Americans may be regarded as a precedent we are yet left to judge of the right of the French colonists to enslave Indians by the conduct of their own government. It is not pretended that there is any written law authorising the act, and it has been shown by a quotation from Montesquieu that negro slavery was authorised in the French colonies by express law. So that we are not left at liberty to conclude that because without any written law to that effect the crown of France permitted Negroes to be reduced to a state of slavery, therefore it permitted the Natives to be so.
The next inquiry will be whether the assent of the crown of France to Indian slavery can be inferred from the acts of its officers, and from the acts & practice of the colonists within the limits of the colony.
It will be recollected that it has been stated in the case of Seville vs. Christian that "in 1730 the Governor of Louisiana sent three hundred "of the Natchez tribe to be sold in St Domingo, &

and that several after that period arrived from Canada and Louisiana, and that it appeared from the depositions of a number of witnesses (admitted by the parties to have been correctly taken and to be proper evidence in the cause) that at the time the Spanish government took posoefsion of the country, viz in 1769 many of the inhabitants of the colony held and posoefsed Indians as slaves, and that it seemed to have been a pretty general belief among them that the practice of holding Indians in slavery was tolerated & authorised by the crown of France; and by testimony taken in this cause it appears that at Fort Chartres and elsewhere in the colony while it was subject to France there were many Indian slaves and but few blacks; and that the Indians were universally acknowledged as slaves and frequently sold as such before the governor, that one of the witnefses had himself sold several, one to the commandant; and that afterwards he added that the commandant he spoke of was the English "Commandant"-

We are indebted to the case of Seville vs. Chretian for the knowledge of the fact that in 1730 the governor of Louisiana sent three hundred of the Natchez tribe to be sold as slaves in St Domingo. [illegible] Du Pratz a historian of considerable merit and an eye witnefs of the Embarkation of the Natchez sent to be sold in St Do-

mingo observes a cautious silence on the subject of the number sent out.
From Barbé Marbois we learn all perhaps, that M. Perier governor general of Louisiana ever wished to be known of the number sent. Of. Marbois it is sufficient to say that he was the minister of Napoleon who negotiated the treaty by which Louisiana was ceded to the United States and that he has lately written a history of Louisiana. He had access to the registers of the company and there found an account of the facts he states viz. that the tribe of the Natchez was exterminated with the exception of a few families who escaped the general Massacre and were received and protected by the neighbouring tribes. Their chiefs believed to be of the family of the Sun were conveyed by general Perier's order to Cape Français.
The most important member of the dynasty died there a few months after his arrival. The other Suns were maintained by the company for the moderate sum of 1.888 livres 7 sous. The company applied to M. Maurepas to defray the expense. On the 22d of April 1731 the minister wrote the directors as follows: "I am not
" aware that there is any other course to adopt
" in this matter than to order the survivors
" of those two Indian families to be sold
" or sent back to Louisiana. The registers of
" the company contain the following resolution
" It was resolved to order the sale of the survivors
of said families of Natchez Indians". Upon this the Author remarks that at the very time this order was given, the company was pretending to the glory of civilizing a people whose Chiefs were sold as slaves. Here we may

pause to ask, if the company dare not sell a few prisoners of war without permission from the crown (for Maurepas was prime Minister) whence did M. Perier their agent derive the authority to enslave three hundred of the same tribe. Of the number sent to be sold as slaves in St Domingo by order of Perier as was before observed. Du Pratz is silent. He only says that some escaped from the Fort who retired to the Chickasaws. The rest surrendered at discretion: of the number was the great sun and the female suns his wives, several warriors, many women, young people and children. The reason of this reserve we learn from Marbois for but one volume of Du Pratz is accessible to us. Marbois tells us that Du Pratz ingenously states, in the 1st volume of his history printed in 1758 twenty eight years after the capture and sale of the Natchez Chiefs that all the letters which were sent to France were intercepted. We consulted together, continues Dupratz, on the means of forwarding them to their destination. We discovered it and availed ourselves of it.

"The writers of history are obliged" Dupratz "he farther observes to treat with equal caution the dead & the living; and so delicate a matter is it to give utterance to the truth that the pen often falls from the hands of those who are most disposed to be accurate.

The colonies of Spain were planted by adventurers who fitted out expeditions and conquered at their own expence. The crown

of Spain the historian tells us made great exertions to curb their tyranny but was unable. The colonies of France on the continent were planted at an enormous expence by the crown and were always weak and under her control

Public utility, says Marbois, as well as the greatness and glory of the the monarch had, under Louis 14th led to the favorable reception of the first proposals for the foundation of a powerful colony.

With the example of Spain before their eyes impotently struggling to restrain the insolent rapacity of her conquering soldiery in America, and stung by the reproaches of the world for her supposed barbarous and ruinous policy, what utility to the state, or glory to themselves, could the powerful and enlightened monarchs of France hope for, by suffering the colonists of the weak province of Louisiana to reduce the natives to slavery?

But the counsel for the appellee, as before observed contended as evidence of the law of France that M. Bourgmont the French Commandant had purchased Indian slaves and sent them down to Orleans and that this act of a confidential officer was stronger evidence of the law than the speech of the same commander in which he severely reprehended the practices of the white men who traded for Indian slaves. M. Bourgmont,

(according to Dupratz see Chap 9. Vol 3) commandant of Fort Orleans situated on the Missouri river (on an island a little above the mouth of the river Osage according to to Stoddard) departed from that fort on 3d July 1724 at the head of a small ~~number~~ force to make a peace with the Padoucas (Pawnees) who were at war with the Missouris, Kansas and other tribes in alliance with the French. The warriors of the friendly tribes were to accompany him. The expedition the author says was undertaken by the order of the king of France and the object was to facilitate the commercial intercourse of the French traders with the several tribes. On the arrival of the French Commandant among the Kansas he made the speech alluded to and purchased from them several Indian slaves (so called because the Indians made slaves of their prisoners). Those prisoners had been taken from the Padoucas. But M. Bourgmont & several of the persons accompanying him falling sick of the fever peculiar to the season he sent some of the slaves down the river to the said fort of Orleans and in a few days after followed himself having previously dispatched a messenger to the Padoucas to inform them of his inability to proceed. This messenger conducted two of the Padouca Slaves (esclaves Padoucas) to their tribe in order to conciliate their favor. See same vol. P. 165. The slaves, says the author at p. 169 having

arrived at their village spoke much of the generosity of M. Bourgmont, who had redeemed them; they told all that he had done to make peace; in fine they extolled the goodness, the merit and the valor of the French so much that their discourse, made in the presence of the Grand Chief, spread joy over the village and a messenger was sent to announce the news to the whole nation.

Bourgmont being restored to health resumed the expedition & on the 18th October arrived among the Pawnees (Padoucas) where he was received in the most flattering manner. The great chief in a harangue to his countrymen tells them that the Kansas would surrender all their women and children taken prisoners in war in exchange for horses; "that the French "Chief had promised it," and he continues "You have "already seen him send back two of them loaded "with merchandize, without demanding pay, "and he was bringing along with him two "others who died on the road.

Thus it appears that the prisoners purchased by the French commandant were bought or rather redeemed for that is the language used by the author with an intent to present them to their own tribe.

The author says that his account of this expedition was copied and greatly abridged from the journal of Bourgmont signed by all the officers and persons attached to the expedition and which no doubt was designed for the use of the government.
In reading it, the remarks one cannot but observe how much delicate management is necessary in such expeditions in order to gain their good will.

In the conduct of the high officers there is nothing to be perceived which would justify the belief that the French government authorised them to

reduce the Indians to slavery. Even should we admit that the sale of the three hundred of the Natchez by order of Perier was known to and approved by the government, still there is no proof that the appellant's ancestor was one of them; and if there had been any such proof, still it might be doubted whether her purchaser would have the right to bring her back from St Domingo to Louisiana

But the conduct of the directors of the company of the ~~company of~~ Indies affords the strongest presumptive evidence that the act of Perier was unauthorised and even unknown to them. For if he could of his own authority lawfully sell 300 Indians why should they apply to the minister for permission to sell perhaps half a dozen.

It is also said in the case of Seville & Chrétien other Indian slaves were sent over from Louisiana & Canada. This perhaps may be the case. But it does not sufficiently appear, under what circumstances they were sent, to enable us to decide whether the act were lawful or unlawful. Between foreign nations the acts of the public officers of each are always regarded by the other as lawful until they are disavowed. But in regard to the cause before this court we are not foreigners. In consequence of the several transfers of territory which have taken place since the year 1763 this court has succeeded to all the jurisdiction which a French court of law would have had at that day and in deciding the rights of individuals it becomes a duty to scrutinize the acts of the public officers of France as minutely as we would those of our own government. To say then that other

Indians from Canada and Louisiana were sent to be sold as slaves in St Domingo is not sufficient. As much might have been said of the transportation & sale of the Natchez, but the act was notorious; the circumstances were generally known and by reason of the notoriety we are enabled to form an opinion of its legality or illegality: of the other it is not even said by what authority they were sent.

It remains to enquire on this branch of the subject whether the practice of the French colonists is evidence of an implied assent of the government to permit them to hold Indians as slaves

And it has been contended on the authority of the case of Sevilla & Chretien that in all governments in which the municipal regulations are not absolutely opposed to slavery, persons already reduced to that state may be held in it; that is to say that in all governments where there is no express law to the contrary any person may be reduced to slavery.

We have turned to Europe and found slavery disappearing from that continent since the middle ages by the mere force and effect of public opinion, and that the most powerful & energetic government in that quarter of the world was unable by a statutory provision so far to overcome public opinion as to restore slavery even in the persons of the most abandoned and profligate convicts

We have seen Spain making the most vigorous exertions to protect the native Americans from the violence of her lawless adventurers who conquered the new world for

ther, and only desisting when her efforts became useless, thereby protesting against the practice. We have seen the highest court of Virginia, where it was contended that the aborigenes were allowed to be reduced to slavery without any expreso warrant of law, discharging from the bonds of slavery those whose ancestors had been for nearly one hundred years, held in slavery, Merely because they had proved a descent in the maternal line from an Indian woman and even the advocates of the parties claiming to hold them as slaves not presuming to base the clients claim on any thing but the statutory law, counsel too whose reputation forbids one to entertain the idea that they were not profoundly versed in the history and laws of their country

We have the authority of Montesquieu for saying that Louis 13th was with difficulty prevailed on to pass a law to authorise his colonies to enslave the Africans Consequently as before observed the Frenchman migrating to Louisiana carried with him no written law authorising enslaving the native Americans. Did then the crown of France by a silent acquiescence assent to the slavery of these persons? Mr Justice Blackstone (63 page of the first vol. of his Commentaries) tells us that the monuments & evidences of the legal customs of England are contained in the records of the several courts of Justice, in books of reports and Judicial decisions, and in the treatises of the learned sages of the profession preserved & handed down to us from the highest antiquity. The monuments

and evidences of the Roman unwritten law according to Mr Butler (see Horae Juridicae subsesivae p 43) are the Edictum Praetoris and the Responsa Prudentium, which words liberally translated mean the decisions of the Praetors Court and the opinions of the learned sages of the profession and it is fair to presume that in all enlightened countries similar rules prevail.

The opinions and legal doctrines of the civilians as well as those of the learned sages of the common law were very highly respected; but till they were ratified by a judicial decision they had no other weight than what they derived (says Butler) from the degree of public estimation in which the persons who delivered them were held.

The evidence taken in this cause and offered to prove the French law is that during the time the province was subject to France there were at Fort Chartres and elsewhere through the country a great many Indian slaves & but few blacks, the Indians were universally acknowledged as slaves and frequently sold as such before the governor. the witness himself had sold several; one to the Commandant that he brought from the Mississippi, and afterwards adds that the commandant he speaks of, was the English commandant at Kaskaskias, & from the case of Seville and Chretian further evidence of the French law is offered. It is in the following words " It appears from " the depositions of a number of witness (ad- " mitted by the parties to have been correctly taken " and to be proper evidence in the cause) that at

" the time the Spanish government took posfesion of
" the country viz. in 1769 many inhabitants of the col-
" ony held and posfesed Indians as slaves and it
" seems to have been a belief very general among
" them that the practice of holding Indians in sla-
" very was tolerated & authorized by that government.

It is here endeavoured by the counsel for the appellee to assimilate the sale before the commandant to a judicial decision. We know as a matter of history that under the Spanish rule in Louisiana a commandant was a military officer commanding at a post such as Kaskaskias then was.

To this military officer, for want of a more intelligent person, a civil jurisdiction about equal to that of a justice of the peace in our own state, was commonly entrusted. Even a judicial decision by such a person after argument by able counsel would be esteemed of very little weight. But the witness says he had seen sales of Indians made before the governor, he himself had sold several, one to the commandant. This governor & commandant are probably one & the same person. But that is immaterial. In what part of this world is a judicial officer, immaterial what may be his grade or intelligence, bound to pry into the contracts of persons who buy and sell in his presence? Or rather in what civilized country is he not a ~~judicial officer~~ bound by the rules of common sense to refrain from giving any opinion on the legality or illegality of such contracts?

But this commandant or Governor was a British officer, and, if we may judge of his rank by the importance of the post, as probably a non commissioned officer, as a commissioned officer. That however is immaterial, for no one

conversant with judicial proceedings would suppose that either the one or the other was versed in the laws prevailing in Louisiana while it belonged to France. If the acts of ownership, done by the colonist in the presence of the Governor were no evidence of a law authorising such acts there can surely be no reason why such acts done out of his presence should be evidence of such a law. The able counsel who argued the cases cited from the Virginia reports, if such arguments as these be worth any thing, must have been very inattensive to their clients interest not to have urged them.

But there remains the testimony of the witnesses who testified that it was generally believed that the slavery of Indians was tolerated and authorised by the French government. We have seen that the evidences of the unwritten laws of England and Rome were the decisions of their courts and the opinions of men learned in the laws, in the language of the civil lawyers Responsa Prudentium. The opinions of such men, says Mr Butler, were highly respected, but till they were ratified by a judicial decision, they had no other weight than what they derived from the degree of public estimation, in which the persons who delivered them were held the weakest evidence of the law hitherto recognised by law writers. But here we have the evidence of nameless witnesses mostly; and it is not even pretended that those who are named have any claims to law knowledge.

As a blind man would not be received to testify concerning colors to a jury, or a deaf man concerning sounds; so it seems reason-

able, that those who manifest by their discourse, an utter ignorance of law, should not be received to prove it before a court of law. It seems to be a wise rule to receive no lower evidence of the law than the treatises of the learned sages of the profession, or in the language of the Civilians, the "Responsa Prudentium" -

Such evidence of the general law of the land was, probably never before the case of Seville & Chretian, offered in a court of law, and had not the consequences of the decision in this cause been very important it would not have been deemed material to bestow so much attention on this matter In the case of Seville & Chretian we are also told that Governor O Reilly on taking posession of the Colony in 1769, discovered that a considerable number of Indians were held in slavery by the French colonists "This he declared by a proclamation to be contrary to the wise & prous laws of Spain; but by the same instrument he confirmed the inhabitants in the posession of such Indians slaves until the pleasure of the king in this respect could be known. Here then, it is said, is an expres recognition of the right of the posessors to hold their Indian slaves until the legislative will of the monarch should deprive them of it. In conformity with this opinion of Governor O Reilly, it is said, is a decree of the Baron de Carondelet twenty five years after in 1794 by which he orders Alexis and David to return to and abide with their owners until the royal will was expresed to the contrary".

By the law of nations the inhabitants of a ceded, and even of a conquered province

"retain their ancient municipal regulations, until they are abrogated by some act of the new sovereign", and their property too until they forfeit it by some criminal act. - - - - - - - - - - - -

If then the French colonists had under the French rule a right to hold the Indians in slavery, they could not by the subsequent introduction of the laws of Spain be deprived of that right and it would be unreasonable to suppose that any King of Spain who has sat on the throne for the last 300 years would so far disregard public opinion as to attempt to give his laws a retrospective effect

If the governor intended by his proclamation to quiet them in their claims he did a very weak act in telling them that they held their Indian slaves in violation of the laws of Spain For most certainly if they derived from the government of France no right to hold the Indians in slavery he had no power to dispense with the laws of Spain which prohibited Indian slavery. For more than two hundred years previous to that time by the famous regulations of Charles 5th. of which mention is made in the case of Seville & Christian Dr. Robertson says the high pretensions of the conquerors of the new world, who considered its inhabitants as slaves, to whose service they had acquired a full right of property were finally abrogated. From that period to the present time Indians have been respected as free men & entitled to the privilege of subjects. The historian tells us also that "All laws and ordinances relative to the police and government of the colonies

originated in the royal council of the Indies, & must be approved of by two thirds of the members before they are issued in the name of the king. To that council each person employed in America, from the viceroy downwards is accountable. It reviews their conduct, rewards their services and inflicts the punishment due to their malversations. See Rob. Hist. America B. 8

From the copy of this proclamation furnished by the counsel of the appellee dated 7th December 1769 it appears that the governor forbade any person whatever to acquire any property in any Indian whatever. We find in it these remarkable words "It
" is also ordained that the actual proprietors of said
" Indian slaves shall not dispose of those whom
" they hold in any manner whatsoever unless
" it be to give them their freedom. Awaiting the
" orders of his majesty on this subject we enjoin
" upon the said proprietors to go and make their
" declaration at the office of the recorder by giving
" the name & the nation of said Indians, and the
" price at which the proprietors shall value them"
and the commandants of the several districts are commanded to make returns to the Clerk of the Cabildo at New Orleans of all the Indians whose names shall be entered with the recorders

~~If [illegible] O'Reilly [illegible]~~

O'Reilly probably intended to liberate them. He well knew that he had no authority to restrain the colonists from alienating property which they lawfully held when they came under the dominion of Spain. But O'Reilly was removed. The court of Madrid we are told, secretly disapproved the acts of outrage which he committed on taking possession of the colony. Six of the principal colo-

nists had by his order been executed for their opposition to his landing. Marbois hist. 136

Had not O'Reilly ~~not~~ been removed from office, it is probable the will of the monarch would have been made known to them in such manner as it is usually made known in civilized countries, not by a new law to make that unlawful which was before lawful, but through a ministerial officer to summon the holders of those Indian slaves to appear before some judicial tribunal to show by what authority they were held in bondage.

It is in no part of the proclamation intimated that the colonists should be confirmed in the possession of such Indian slaves until the pleasure of the king in this respect could be known. But they were commanded in the most positive manner not to dispose of those whom they held in any manner whatsoever unless it be to give them their freedom.

How this command not to dispose of their slaves in any manner whatsoever unless it be to give them their freedom could be construed into an express recognition by the governor of their right to hold their Indian slaves until the legislative will of the monarch should deprive them of it, it is not easy to perceive. Again who in modern days makes laws to deprive ~~his~~ subjects of their property?

To make this construction plausible we were told in the argument of this cause, that although by the law of nations, the laws of a ceded province remained in force under the new rulers yet the laws by which the province was governed might afterwards be changed and their rights taken away; that the Spanish government was a despotism and not bound to respect the rights of property

in the subject. That the government of Spain is despotic ~~is despotic~~ is perhaps what no writer of the laws of Nations, or even historian has ever yet ventured to assert. We have seen on the authority of Dr Robertson that all laws, and ordinances relative to the government and police of the colonies originated in the Royal Council of the Indies and must be approved of by two thirds of the members before they are issued in the name of the king.

To deprive a man of his property is the act either of a court of law acting in obedience to the law, the act of a trespasser or the act of a Robber, and not a legislative act. In the commencement of the 16th century the son of Columbus sued Ferdinand the most powerful and unprincipled king who has sat on the throne of Spain for the last three centuries in his own court, and obtained a judgment against him on a contract between the king & his father, and also obtained what was due him after. It cannot be then that two hundred & sixty years after when Europe is so much more enlightened two thirds of the Royal Council of the Indies would be so regardless of the rights of private persons & of the law of Nations as to approve of a law, the effect of which would be to deprive their fellow subjects by its retrospective action, of property which they held under their ancient laws.

Believing then that O Reilly as Spanish governor of Louisiana had no legislative power and that the crown of Spain would neither on the one hand so far change the regulations of Charles the 5th as to give the inhabitants a right of property in the Indians which they had not derived from the laws of France, nor on the other so far violate its faith as to deprive its new subjects of property which was lawfully acquired under their former government, it appears to us to be a forced construction of O'Reilly's proclamation to suppose that

when he commanded the actual proprietors of Indian slaves not to dispose of them in any manner whatsoever unless it be to give them their freedom; that he thereby designed to recognize "the right of the possessors, to hold their Indian slaves, until the legislative will of the monarch should deprive them of it.

"The most probable construction of that proclamation seems to be, that O'Reilly well knowing the colonists derived no right from the laws of France to hold the Indians in bondage, intended by a strict judicial investigation to ascertain those persons who were so held; & therefore his orders were given that no proprietor should dispose of them except to give them their freedom, and that an exact account of each should be taken and reported to the clerk of the Cabildo in order that he might have the means of making the proprietors liable for the safe deliverance of the Indians

The decree of the Baron de Carondelet remains to be considered. By this decree we are told that he, twenty five years after (the proclamation of O'Reilly) in 1794 ordered two Indians A-
"lexis and David to return to ~~retour~~ to and
"abide with their owners until the Royal will
"was expressed to the contrary".

Nothing of the character of a judicial decision is seen here. It is well known that legal proceedings in those countries in which the civil law ~~prevailed~~ prevails, are more formal than among us where the mode of proceeding is conformable to the principles of the common law. Had these persons sued for their freedom it became the duty of the court to decide whether they were free or not, & not by its decree to order them to return to and

abide with their owners until the royal will was expresed to the contrary How was the Royal will to be expresed? The will of the kings of Europe is expresed in judicial matters through their courts of law

The kings of Europe, legislators and not executive officers, (executeurs de la loi) Princes and not judges, have discharged themselves of that part of their authority which might be odious, and bestowing favors in their own persons have committed to particular magistrates the distribution of punishments - See Montesquieu Grandeur et decadance des Romains Chap. 16

The only way to know the kings will judicially was by an appeal to a higher court, and unless an appeal had been taken it was useless to tell them to wait till the kings will were known

For any thing appearing by this statement, there might have been no suit instituted - - - It might have been a mere tradition believed and current in New Orleans, and entitled to no more credit than the legal opinions of the number of nameless witnesses whose depositions (admitted by the parties to have been correctly taken and proper evidence in the cause) were read in the case cited

The history of Louisiana affords abundant evidence that the crown of France did not feel less solicitude nor exert less industry than that of Spain did to ameliorate the condition of the original Indians of that province

than the crown of Spain did to ameliorate that of the Indians of South America. Dupratz and Marbois after him attribute the blame of the Natchez war to the ill conduct of the French officers, and not to any plan or contrivance of the French government. ~~[illegible]~~ Dupratz devotes many pages of the third volume of his history to demonstrate what ~~pass~~ interest the Crown of France felt in maintaining a good understanding with the various tribes; and indeed what history of the French settlements in America can ~~be read without finding the~~ we read without learning the same thing? As in Spain there was a Royal Council of the Indies, so in France there was a Company of the Indies formed in 1723. The duke of Orleans was declared its governor. Its privileges embraced Asia, Africa and America. In the deliberations of this association composed of great noblemen and merchants, ~~[illegible]~~

India, China, the factories of Senegal and Barbary, the west Indies and Canada were, in turn, brought into view. Louisiana holds a principal place in these discussions. See Marbois pages 115 & 116. The French government did not thus enter on the business of founding a great and powerful colony in Louisiana without a plan. A part of that plan, as has been before said on the authority of the same Author, was to civilize the Indians. In a subsequent page (122) he tells us that in 1748 the Indians were beginning to recover from the hatred with which the French government had momentarily inspired them. The missionaries exerted themselves to make them Christians, and labored with an admirable zeal to make them more humane. The governors distributed to them cattle and instruments of tillage. It is true that those benevolent cares did not produce the desired effect; but the natives were grateful for them, and the French were then able to scatter themselves among them without ~~much~~ apprehension. They sometimes married Indian women and were then incorporated into their tribes. The same author says in another part of his work (p 134) the Louisianians rendered an honorable homage to the memory of the Governor D'Abadie whose death was occasioned by the grief he felt when he was instructed to make known the cession of the colony to Spain. The eulogy states that the Governor severely repressed the excesses of masters towards their slaves: that the Indians were also protected against every kind of oppression. Speaking of the provision made for them in the treaty of cession to the United States the author says (p 293) the character of the Indians was well known to the negotiators. The efforts that had been

made and the expences that have been incurred for three centuries, have not effected any change in the habits of these tribes; but they obstinately avoid civilization — These tribes always children require to be paternally governed. They preferred the French to other nations, and willingly adopted them into their tribes. Though they were ready to use freely whatever in our huts and houses suited their convenience, or to appropriate it to themselves, they were submissive to our orders. They were well inclined to render us services, and, even as warriors, to unite their arms with ours. The case of Seville and Pretlow was decided on not only because the decision was made by the highest court of Judicature in the State, and because the judges were persons of great legal acquirements, but because of the peculiar advantages they enjoyed in the place where their sessions were held to acquire an accurate knowledge of the laws of France and of the decisions of the courts of Spain. Whence comes it, then, that we have not had a more accurate account of this decree (so called) of the Marquis de Governor Carondalet concerning David & Alexis? or if there were any attempt made to ascertain the will of the king on that subject, (as the governor is made to intimate there would be) how does it happen that we hear nothing of a decision of the royal council of the Indies in which court alone the king is supposed to be present? and that presence too is as much a fiction as the presence of a King of England in his court of Kings Bench. If it be said that it was the business of the party against whom the decision was made to take, and prosecute the ap-

peal, then it may be answered that it was no judicial decision for the governor to order them to return to, and abide with their former owners until the royal will was expressed to the contrary. For if the order, or decree (as it is called) be any thing else than an indirect denial of justice, it means that he intended to relieve them of the trouble of prosecuting their appeal. It has been sufficiently demonstrated to be inconsistent with the general practice of the European powers to suffer their subjects to enslave the natives of America; and it has also been shown that the policy of the crown of France repels the idea that such a practice ever was contemplated by it. A French subject then never could have enslaved an Indian, but by the express permission of his sovereign. We have seen that the register of the colonial regulations is now in existence in France, and if any such permission ever were granted, it is the duty of the person claiming the right to establish it by producing some better evidence than the conjectures of unknown persons who seem never to have entertained an idea of any other law than the arbitrary and capricious will of the petty magistrate of the little village where chance had located him.

Tayon the person, who held the appellant's maternal ancestor in slavery at the time of the publication of the proclamation, according to the testimony of his daughter, having seen the proclamation, said that she would be free at his death. Another witness stated that he heard Tayon declare that she was free and that she stayed with him of her own accord. And the appellee's counsel took the trouble to bring in the register of Indian slaves made at Fort Chartres in obedience to

an order made in the proclamation, by which it appeared that Tayon, then residing at that place had not registered this woman. Whence it must necessarily be concluded that he did not regard her as his Indian Slave: and that he declined registering her name as required by the proclamation under pretence that she never had been held in slavery. Were we disposed to multiply words it might be easy to cite evidence from the depositions in this cause that Indians never were considered slaves under the French government, and those witnesses too perhaps not more unlearned in the law than those who deposed otherwise. Indeed one of the appellees own witnesses, one too whose respectability and intelligence was well known in St Louis, and who would not lose by a comparison with any of the ancient inhabitants found here by the American Government in March 1804 (for the court may travel out of a record to inquire after the value and credit of a legal authority), this witness declared that the Spanish government declared Marie Louise an Indian woman residing in the family of the said Tayon free, and that many Indians remained with their masters after they were so declared. But we know that the [illegible] witness believed that the maternal ancestor of the appellant was a negro woman, and therefore remained a slave. But we know that the Spanish Government declared none free. The Governor O'Reilly's proclamation was the only public act; those who knew they had no right to hold Indians in slavery might well dismiss them as by the proclamation they were allowed to do, and thus avoid a judicial investigation in which they had nothing to gain and by which they might lose. So that if we even resort to such loose evidence of the law as the testimony of witnesses who know nothing but by common rumor, the [illegible] appellees gains nothing.

But perhaps too much has already been said on this subject. The decision however of this cause is important in its consequences: and in deciding contrary to the opinion of the highest court of Judicature of a sister state we have the misfortune not to be able to concur all in the same opinion ~~After a~~ It is the opinion of a majority of this court that the Circuit Court erred in giving to the jury the first and third instructions above mentioned. The majority of the court is further of opinion that the Circuit Court erred in so much of the second instruction as related to the descendants of an Indian woman in the maternal line; that is to say the Circuit Court erred in instructing the jury that if they found the maternal ancestor of the plaintiff was an Indian woman, and that she was held as a slave in the province of Louisiana while it was held by the French, she and her descendants ought to be taken by the jury to have been lawfully slaves. in the second instruction there is no other error committed For the reasons aforesaid the judgment of the Circuit Court is reversed

This cause was first argued before this court at the May term of the year 1828. This court being then composed of two judges only, the decision of the Circuit court was affirmed by a division in opinion of the two judges then sitting. At the October term of the year 1833 the parties by their counsel appeared in this court, and mutually agreed that the judgment in this cause before rendered in this court should be set aside, and that ~~the cause~~ it should be again argued before the court consisting of all the judges. The judgment ~~decision~~ of the Circuit Court being now reversed two of the judges concurring in opinion, the cause is

remanded to that court, and it is required to proceed therein in conformity with this opinion

M. McGirk
George Tompkins

16 May 1827

Marguerite
vs
Pierre Chouteau

Opinion of a majority of the court
delivered 12 October 1834

12421

[illegible] 163 [illegible]

To be printed
Tompkins

Marguerite
vs
Pierre Chonteau

In the Supreme Court

It is agreed in the above case that the Supreme Court shall set aside the judgment rendered in that Court and shall grant a rehearing of the cause in order finally to decide the merits of many other case depending on the same principles and save the parties from the trouble and expense of taking there cases to that Court. It is hoped by the parties and this agreement is made upon the expectation that as Judge McGirk's interest in the question involved in these cases has been determined he will asist in the decision of this cause

Edwards & Hamilton for Chonteau

June 30. 1832

J. R. Gamble atty
for Marguerite

Marguerite
by Exrs
Pierre Chouteau

Agreement

Filed 7th October 1833
Joseph C Brown Clerk

I dissent from the foregoing opinion of the Court. The reargument with further research & reflection have but served to confirm the opinion I entertained on the first hearing of this cause.

I shall not attempt a minute examination of the various questions which have been raised; the statement of them is full in the opinion delivered, and I will content myself with a concise statement of the outlines of the views then taken & which now lead me to a different conclusion from that to which the court have come.

From the most authentic histories sacred & profane, ancient & modern, we learn that slavery in a more or less absolute state, has existed in all ages & nations since the deluge. That no condition colour of [illegible] or sex has ever been considered exempt from "the bitter curse". That whilst the treatment & condition of slaves have been very different in different nations at the same period, and in the same nation at different periods of it's existence, varying according to notions of policy or of natural rights; yet that slaves have been always esteemed, and are at this day esteemed the proper goods or property of their masters or owners, and to be sold exchanged or bartered as merchandize or other property real or personal. It would be equally difficult & unprofitable to attempt to trace the origin of slavery as to the time or manner of its introduction among the different nations of the earth. In looking to the civil law (from which France & Spain derive their system of jurisprudence) we find it asserted by Justinian l. 1. 5. 5. that "jure gentium servi nostri sunt, qui ab hostibus capiuntur". This was doubtless the most fruitful origin of slavery. It was regarded as the settled law of nations that prisoners of war should be reduced to the condition of slaves. It was so practiced upon by the Jews, Egyptians, Assyrians,

Greeks & Romans — was so recognized & practiced upon by ~~most if not all of~~ the nations who overturned the Roman empire. and has been so recognized & practiced upon by most if not by all of the nations of Modern Europe. To say that nature enlightened humanity & the pure principles of Christianity cry out against slavery, is to talk not only without authority but directly in the face of authority. Greece & Rome at the periods of their greatest learning & refinement, when at the height of their power & splendour were then most remarkable for the number of their slaves & for the absolute dominion claimed & exercised over them. It is out & out, power begining to end, a pure question of power. Individually, all men have equal rights to life liberty & property. In communities or governments mere brute force or the physical strength of the majority as it is called abridges or annihilates these rights at pleasure. What the despot or the despotic will of the majority through any other medium, decrees or pronounces becomes the law of the land & cannot be resisted upon any other principle than that of rebellion which supposes that the majority have or soon will, or ought to revoke or change their decree &c. Every independent nation or organized community judges for itself & its judgment is final between those who belong to the nation or community & cannot ~~rightfully be~~ be interfered with by others, without affording just cause of war if the injured party may choose to think itself able to redress the wrong in that way. —

In monarchical governments the will of the monarch or of the majority is to be collected from what is permitted or tolerated, rather than from any express orders or decrees. —

It is also a principle of the civil law, that slavery may begin by a voluntary surrender of liberty; and that by the law of nature, children born of

persons who are de facto slaves, become ipso facto, slaves themselves "quia nascuntur servi". Among the Greeks & Romans from whom we borrow much of our boasted learning & refinement a debtor unable to pay his debts became the slave of his creditor; and criminals were sold to slavery or condemned to the ~~quarries~~ mines. The Germans according to Tacitus were so addicted to gaming that when they had parted with every thing else, they would often stake their liberty & their persons: and the losers would become the voluntary slaves of the winners & be sold or exchanged away in commerce like other merchandize or property.

I shall not attempt to ~~to~~ trace the great improvement made in modern times in these matters. It is certain that ~~the French~~ France & Spain have both asserted the right to enslave & hold in slavery. The property in a slave is to be placed upon the same footing & to be lost or acquired & enjoyed, subject ~~to~~ only to such municipal laws or regulations as each nation may provide or prescribe for itself. —

The capture of the Iroquois chiefs by ~~the~~ French in Canada ~~in~~ Raynal 48, and their reduction to slavery and the massacre in 1730 of the great part of the Natchez nation & reduction of the residue to slavery, were as distinctly the acts of the French Government as if a royal proclamation had preceded or approved the deed. The evidence derived from the old archives of the country - the registers of baptisms & burials - the records of voluntary sales, and of the sales & distributions made of the estates of intestates ~~estates~~. with the clear & positive testimony of witnesses sworn in this ~~cause~~ exhibit beyond doubt or question, numerous cases of Indian slavery commencing with the earliest settlement of the colony & continuing after the period when the Spaniards assumed the Government in 1769.

The proclamation of O Reilly at the time the Gov-
-ernment was assumed by the Spaniards in 1769 & the
decree of the Baron de Carondelet in 1794 are
proof to the same effect & show expressly, that the exis-
-tence of Indian slavery de facto, was not only
known to ~~the Spanish Authorities~~ but tolerated by the
Spanish Government. The case of Seville & Christien
cited from 3rd Martins reports was decided
by very able Judges & ~~Rules~~ the question, as I think,
upon its true grounds.

It is clear from the testimony in the cause
that the grandmother of the plaintiff was a
woman of the Natchez tribe of Indians taken a
prisoner ~~of war~~ at the time that nation was
conquered captured & exterminated by Perrier in
1730. Du Pratz & Morbois both state that
the Natchez had acted in a manner so savage &
perfidious as to make it necessary in the estima-
-tion of the French General Perrier to exterminate
them. They had indiscriminately murdered or re-
-duced to slavery such of the French as fell into their
hands, and upon the settled principles of the law of
nations, might have been all put to the sword or
rightfully reduced to slavery. The laws of nations
however have never been regarded as applicable to the
Indian tribes or nations of this continent. With them
the general practice in war is to give no quarter; and
whenever prisoners are taken they become the individual
property of those who capture them, and are either
sold, adopted into their families, or held at their mercy.

All of the Natchez nation then who were not put to
death but were captured, were therefore, rightfully
reduced to slavery. - Du Pratz informs us that
those who escaped the massacre, (with exception of a few
who fled to the Chickasas) were all made slaves &
that shortly afterwards those slaves were embarked
for the Island of Saint Domingo in order that the

nation should become extinct in the colony."
much stress has been laid on this statement of
Du Pratz for two purposes 1st. as evidencing a
determination on the part of the French Government
not to enslave Indians in the province of Louisiana.
and 2nd to shew that the maternal ancestor of the
plaintiff could not have been one of those captured
& enslaved. The main object of the historian was to
state the fact that the Natchez nation was exterminated & the causes which led to it & it was not so ma-
-terial to state the precise ~~mens~~ or manner of doing
the thing. If such were not the case however, the
evidence in the cause, is abundant to shew, that the
historical account of the matter as given by Du Pratz
is not accurate and that the maternal ancestor of
the plaintiff was one of those captured at the time of
the massacre & was not sent to Saint Domingo, or
if so was brought back & held in slavery in the provin
of Louisiana. Independent of the direct proof in the
cause, the account given by Barbois in his history of
Louisiana of the destruction of the natchez nation is well
calculated to sustain this view. ~~p 119~~. He says p 119.
"the Governor of the Colony conceived that the insurrection
(of the Natchez) required that a great example should be
made, and the tribe was exterminated with the exception
of a few families who escaped the general massacre &
were protected by the neighbouring tribes. From time im-
-memorial the Natchez had been governed by a family of
chiefs whom they believed to be children of the sun.
Gen! Perrier the commanding officer had them all
carried away & transported to Cape Francois. The
most important member of this dynasty died there
a few months after his arrival. The other ~~sons~~ were
maintained by the Company for the moderate sum of
1888 ~~livres~~. 7 sous. The Company applied to the
Municipal to defray this expence. On the 22nd of
April 1731. the minister wrote to the directors as

follows. "I am not aware that there is any other course to adopt in this matter than to order the survivors of these two Indian families to be sold or sent back to Louisiana". The registers of the company contain the following resolution. "It was resolved to order the sale of the survivors of the said two families of Natchez Indians". — Here the Minister whose duty it was to make known the will of the sovereign, suggests the propriety of selling the Indians, and the company to whom the colony had been transferred by letters patent & who had charge of its settlement & government, proceeded in accordance with the suggestion provided to sell the survivors as slaves. What recognition could be more full & explicit? — The slavery in this particular case was expressly sanctioned & legalized & it need not be contended that the general practice or policy of the French in the american colonies was to enslave the indians, yet it seems to me that the proof is sufficient to establish such practice & that too, with the full & clear knowledge & recognition of the Government. To regard the question then as one to be settled by the laws which were in force prior to 1769 when Spain took possession of Louisiana I can feel no doubt. Under neither of the Governments that have preceded us, could the plaintiff have asserted successfully his claim to freedom. As property held & enjoyed by the permission & consent of the French & Spanish governments, it is contended & I think rightly, that the owners of such indian slaves, are secured & protected as well by the law of nations as by the express stipulations of the treaties of cession to the United States.

R. W. Walsh

No 16 May Term 1827

Marguerite
to
Pierre Chouteau

18th October 1834

Judge Wash

Copies for the State 19th Oct 34

(1952 words counted)

May atty's opinion (~~12,152~~ words counted)

14,104
1952
~~16 056~~

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I

Marguerite
vs
Pierre Chouteau
Suit for freedom

In this case the declaration is in the usual form: the pleas are the general issue of not guilty, and that the plaintiff was the Slave of the defendant. The plaintiff replied to the second plea, that the plaintiff was not the Slave of the defendant. At the March term 1827, these issues were tried and found for the defendant; and judgment rendered accordingly, from which, Marguerite the plaintiff below, now appeals.

From the testimony as I read out on the bill of exceptions it appears that about one hundred years ago an Indian Woman of the Natchez tribe was brought to Fort Chartres (which with all Louisiana was then held by the French) and was held and as some of the Witnesses stated was sold, as a Slave, that she was thus held and claimed as a Slave till her death; that her daughter Marie Scipion was held as a Slave all her life, and that the plaintiff is the daughter of said Marie Scipion and granddaughter of the Natchez Indian Woman above named, and has been held in Slavery from her birth. It appears that said Marie Scipion while a small girl was given or sold (See Madam Chauvin's and Auguste Chouteau's depositions') to Joseph Cayon then residing at Fort Chartres or to Cayon's Wife (See Auguste Chouteau's deposition) many years before the Cession of Louisiana to the Spanish and of the country East of the Missesipi to the English: That Joseph Cayon held in Scipion as his Slave at fort Chartres and directly after said Cession (which took place in 1763) said Cayon removed to the Town of St. Louis where he resided owning said Marie Scipion as his Slave till he died, having at his said removal carried her with him.. Several of the Witnesses state that the mother of Marie Scipion was taken captive by the French (See Madame Chauvin and J. B. C. Lucas' testimony). It appears further that prior to the year 1769 when the Spanish authorities took possession of Louisiana, Indians of various tribes were held and sold as Slaves customarily by the French at Fort Chartres and in Louisiana and that there were many more Indian Slaves in those times than African. (See testimony of Madame Chauvin, Mr. Pratte). Some of the Witnesses state (See Auguste Chouteau, J. B. C. Lucas' and Madame Dubreuil, testimony) that the mother of Marie Scipion

Mad.me Chauvin's deposition and Riviere

See the last sentence in Bill of exceptions

Scipion was a negroe Woman, and a number of them that her father was a negroe Slave at Fort chartres, - John B. Riviere in his deposition states that Layon in his life time said that Marie Scipion was given to his Wife upon the condition that She and all her children Should be "Set at liberty from Servitude Whenever the Said Layon and Wife Should both be dead" all the testimony relating to the mother of Maria Scipion, her Capture, her condition and her nationeal character &c was hearsay.

On this testimony, the plaintiff below Marguerite moved the following instructions which were all refused by the Court, Viz -

1. That if the Jury find from the evidence that the ancestor of the plaintiff in the maternal line, was an Indian Woman, they must find for the plaintiff.

2. That if the Maternal ancestor of the plaintiff was taken a prisoner in War, She did not thereby become a Slave.

3. That hearsay evidence is not competent to prove the fact that the maternal ancestor of the plaintiff was taken a prisoner of War.

4. That the evidence of the maternal ancestor of the plaintiff being held as a Slave during the French government of Louisiana does not establish the legality of the Slavery in which the plaintiff may be held -

5. That no practice of enslaving Indians during the time Louisiana belonged to the French is evidence that Such practice was Sanctioned by law.

6. That a prisoner of War cannot be reduced to Slavery unless under Such circumstances as would authorize putting him to death and that unless evidence of Such circumstances is give to the Jury, they must consider Such Slavery under the pretence of the ancestor of the plaintiff being taken a prisoner in War as illegal.

7 That the right to hold a prisoner of War in Slavery continues no longer than the political necessity exists for Such enslaving and that when Such necessity ceases the prisoner can no longer be held in Slavery.

The defendant below, Chouteau, then asked the following instructions, Which were given, Viz -

1st. If the Jury find from the evidence that the maternal grandmother of the plaintiff was an Indian Woman of the Natchez nation taken captive in War by the French and that She was held and Sold as a Slave in the province of Louisiana While the Same was held by the French and prior to the year 1769, She and her descendants ought to be considered as being lawfully Slaves.

2d - If the Jury find from the evidence that the maternal grandmother of the plaintiff was an Indian Woman taken captive in War by the French and was held or Sold as a Slave in the province of Louisiana While the Same was held by the French and prior to the year 1769 She and her descendants ought to be considered by the Jury as being lawfully Slaves.

3rd - If the Jury find from the evidence that the Maternal grandmother of the

plaintiff was an Indian Woman taken captive in War by the French and was held and Sold as a Slave in the province of Louisiana While the same was held by the French and prior to the year 1769, She and her descendants ought to be deemed by the Jury as being lawfully Slaves.

4th If the Jury find from the evidence that the Maternal grand-mother of the plaintiff was an Indian Woman taken Captive in War and held as a Slave in the province of Louisiana While the Same was held by the French and prior to the year 1769, She and her descendants ought to be deemed by the Jury as being lawfully Slaves.

5th If the Jury find from the evidence that the Maternal Grand mother of the plaintiff was a negro or an Indian Woman and that She was held as a Slave in the the province of Louisiana While the Same was held by the French and prior to the Year 1769 She and her desendants ought to be taken by the Jury to have been lawfully Slaves.

6th That the declaration of Joseph Cayen as testified by John B. Riviere in his deposition do not in law operate to emancipate Said Marie Scipion or any of her children nor is the plaintiff entitled to her freedom in consequence of Said declarations.

7th That Indians taken in War might lawfully be held as Slaves in the Province of Louisiana, While the Same was held by the French and prior to the year 1769 -

8th That Indians might lawfully be reduced to and held in Slavery in the Province of Louisiana While the Same was held by the French and prior to the year 1769 -

The facts in this case, present this broad question to the court, Viz: "Is a person that has been held as a Slave from birth, whose mother was de facto a Slave, her whole life, and whose maternal grand mother an Indian Woman a hundred years ago was held as a Slave till her death under the French government in Louisiana, to be considered as lawfully held in Slavery?

The court will perceive that all the instructions prayed for by Marguerite's Counsel, Were intended to elicit a doctrine that Should Substantially determine the above question in the negative: and that all the instructions asked by Chouteau's Counsel, except the Sixth present the affirmative of this question, or Some proposition necessary to the establishment of the affirmative. Many minor questions arising out of the peculiar phraseology of the instructions and the admission or rejection of testimony will be considered after a discussion of the foregoing.

I. Slavery of Indians was legal under the French government in Louisiana: because.

1. There is no distinction naturally between men to entitle Some to exemption from the possibility of being made Slaves; and in all or most of the English Colonies in early times the same State of facts as has appeared in this case in relation to an Indian, Would had it existed with respect to an African have unquestionably held him in Slavery. If, in the English colonies, (Since become independent States) the fact that negroes Were held as Slaves, and bought and Sold as Such, in the absence of all written Law Was considered proof of the law, as it Seems to have been held -

3. Martin. 285

1st Vol: Tucker's Black Stone 2nd part appendix 45-6

1. Dallas 167

Why should not the same principles apply to Indians? —

It seems that property in human beings has generally commenced like property in any other thing without any written law saying that such things might be owned and used as property; and the first thing we hear of it, is some statute passed, not to say that slavery may exist, but to regulate the slavery already existing.

It cannot be pretended that the general custom of enslaving negroes gave a superior right to enslave them; for in the first place, the custom of enslaving Indians, was as extensive, that is, was adopted by as many nations and colonies as that of making slaves of negroes; and secondly, the plaintiff's counsel absolutely deny that right in this matter can be substantiated by custom; and thirdly, admitting that negro slavery was more prevalent, that circumstance would only render it more easy in a given case to prove a negro slave, and would not establish the point that all indian slavery was unlawful.

2. The fact whether slavery whether of Indians or negroes existed lawfully in French Louisiana, does not depend upon the consent of many nations to make slaves of them: It depends on the municipal law of that province, that law cannot be supposed to have been written in the beginning, for slavery has not commenced any where by written law. Whether Indians were slaves by law, therefore, is to gathered in the absence of written law from facts and circumstances. Indians were generally held as slaves in Louisiana, and treated as such. a whole tribe, to wit, the Natchez were captured and held and sold as slaves in 1731, there were a great many Indian slaves at the time the Spanish authorities took possession of the country in 1769. O'Reilly then issued a proclamation forbidding Indians to be reduced to slavery for the future.

See the depositions
History of Louisiana by Le Page du Pratz - 258-326-7.
Raynal Indies Vol: 8 - 143.

Martin Reports - 275 -

3. This proclamation of O'Reilly became the law of the land, being issued and promulgated by the new sovereign, and through the same officer who also was the organ through whom the French laws were abrogated and the Spanish code introduced. This proclamation as strongly fixes the legality of Indian slavery at that time in Louisiana, as do the early statutes in Pennsylvania and Virginia, that of negro slavery. - This court is bound ex officio to know the law that existed here under the preceding governments. It will therefore inform itself from every source, whether such proclamation existed what was its tenor &c — and it has

therefore the right to look into the excluded parts of the depositions in this case, where will be found ample proof of the promulgation of the proclamation, but the tenor of which the frail memories of the Witnesses and their ignorance have greatly distorted.-

4. As evidence of the unwritten law upon the Subject of Indian Slavery. the cases cited in Martin's reports of the decisions of the Baron de Carondelet have great Weight, being the judicial decisions of the highest authority in the Province, and under a government, that had previously forbid the practice of reducing Indians to Slavery, and had intended to purchase the freedom of the Indian Slaves in Louisiana.

2d - If Indian Slavery was legal under the French Government in Louisiana, the presumption then unquestionably arises now and would have arisen then, that an Indian Whose maternal ancestor had been there held as a Slave till death, is a Slave, Wherever Slavery exists, this presumption must be entertained; otherwise after a generation or two, Slaves Would be emancipated, from necessity the children of mothers held in Slavery are presumed to be Slaves, till the contrary be Shewn; In Algiers, Where christians are Slaves, the child of an American female held in Slavery, is held to be a Slave, and to escape from the fetters must prove that the mother was not reduced to that State in a manner Warranted by their practice.

As to the Several positions here taken See 3rd Martin's reports 275. Seville & Chretien in Which case the Supreme court of the State of Louisiana decided that the freedom of Indians held in Slavery under the french government in Louisiana was not acquired by the establishment of the Spanish government, and that Indian Slavery was lawful under the French Government.

That case is a perfect parallel With this. Freedom Was claimed on precisely the Same grounds. But that case is not so Strong in its circumstances against the plaintiff as the present. The maternal ancestor there Seems to have been made a Slave in 1765, but in this case in 1731; In that case nothing is known of the manner in Which She Was reduced to Slavery, in this She Was taken in War.

There are Several questions as to the admissibility of testimony to be considered,

1. In the deposition of Madame Chauvin, and on behalf of Marguerite, the deponent States that certain Indians "Went away "after the publication of an ordinance by O Reilly the Spanish Governor "of Louisiana declaring all the Indian Slaves then in the Province

" of Louisiana free on the death of their masters and those born after
" the publication free at their birth prohibiting any Sales by the persons
" then in possession of any such Slaves" &c

The Bill of exceptions States that Chouteau's Counsel "objected to the reading of that part of said deposition which relates to the publication and contents of the proclamation of O Reilly the Spanish Governor of Louisiana on the ground of the incompetency thereof and the court sustained the objection"

This decision of the court was right; because the plaintiff below neither produced said proclamation or a copy of it or proved it lost: and therefore had not laid a foundation for the admission of parol evidence of the contents of a written instrument. Nor was evidence of the publication of a proclamation admissible, until the contents of such proclamation had been proved. Furthermore that proclamation if such an one had ever been made, became the law of the land, and the courts of this State are bound ex-officio to know its contents and meaning and it certainly was not legal to prove by witnesses to the Jury, what the court was bound to know and to declare to them judicially as a part of the law of the case and of this country at a former period.

In the deposition of Rivierre similar testimony respecting a proclamation was offered, and other statements of the Witnesses that, certain Indians had immediately gone at large as free &c. &c. The defendant, (Chouteau's) counsel "objected to the reading of all those parts of said deposition which related to or Speak of and concerning the publication, contents and effects of a proclamation &c. The Court sustained the objection and rightly; because if such proclamation existed and had been promulgated, it was the law of the land which the present courts are bound to notice judicially; and the effects of which cannot be permitted to go in evidence to prove its meaning. The difference in this objection and the preceding consists, in the use of the word effects in the latter, the same reasons apply to both

2. In the deposition of Sebastien Bratte a witness on behalf of Chouteau, it is stated that deponent went to Fort chartres in 1757 and lived with said Cayon; that "there were at Fort chartres and elsewhere through the country a great many Indian Slaves and but few blacks, the Indians were universally acknowledged as Slaves, and frequently sold as such before the governor, he himself sold several &c" said Indians Slaves were of various tribes" &c. The plaintiff Marguerite's counsel objected to those parts of said deposition "which Speak of and concerning the number of Indian Slaves and the existence of Indian Slavery in Illinois and Louisiana" and also objected to those parts of said deposition which "Speak of or concerning the number of Negro Slaves in the country and the Sale of Indian Slaves" This objection was overruled by the court.

The

The same objection was made to a portion of Auguste chouteau's deposition, to which likewise the further objection was recited that that part of his statements which speak of or concerning the gift of Marie Scipio, and other things by one Guion to said Cayon ought not to be read; (the deposition states that he always understood Scipion and other slaves and property had been given by said Guion to Cayon) the court overruled this objection and the whole was read.

The evidence de facto of Indian Slavery and its extent, is evidence in this case, for the purpose of showing the strength of the presumption to be raised against the freedom of Marguerite; Suppose the law permitted Indian Slavery under the French Government of Louisiana; and yet that in fact there had been only one Indian ever held as a Slave during that period. The presumption would be comparatively small, to what it would be provided it were proved that every White family had Indian Slaves. again the defendant had the same right to prove these facts, that he had to read an authority in law and comment upon it to the Jury. The more Indians there were legally held in Slavery, the greater the probability, that the plaintiff was a descendant of one of them.

Several questions may arise out of the peculiar phraseology of the instructions, which, are not noticed here; It is believed that the counsel on both sides wish a decision on the main questions, and are comparatively indifferent to the opinion of the court on the matters of minor importance presented by this record.

The 6th instruction asked by the defendant below and given by the court raises the question whether the verbal declarations of the owner of a Slave could emancipate such Slave, under the Spanish government. The partidas show they could not, and that emancipation was required to performed in a more ceremonious way, than by our laws at present

2 Hen. & Mun. 205 as to hearsay evidence.

Marguerite
vs
Pierre Chouteau

Statement of points for
defendant in Error

Gayer, [redacted] Lawless & Spalding
for defd.t in Error