

IN THE SENATE OF THE UNITED STATES.

JULY 14, 1856.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 377.]

The Committee on Private Land Claims, to which was referred the petition of Ambrose Lanfear, praying confirmation of a survey of a certain tract of land in Louisiana, have had the same under consideration, and submit the following report :

It appears that the heirs of Paul Toups filed their claim, under a concession from the Baron de Carondelet, then the governor of the Spanish province of Louisiana, before the commissioners to adjust private land claims in the Territory of Orleans and District of Louisiana, and that said commissioners reported the said claim for confirmation, which said report was communicated to the House of Representatives on the 9th day of January, 1812, and, in reference to the claim of the heirs of Paul Toups, say : (Am. State Pap., public lands, vol. 2, page 324.)

“No. 74. The children of Paul Toups claim a tract of land, situated in the county of Acadia, at the place called *les Coteaux de France*, at about the distance of three and a half leagues from the western bank of the Mississippi, containing eighteen arpents in front, and a depth of two leagues and a half. Paul Toups, the father of the claimants, obtained from the Baron de Carondelet a regular warrant of survey for this land in the year 1796, for the purpose of establishing a vacherie ; and the conditions of the warrant of survey having been complied with on his part, confirmed.”

That, by the act of Congress, approved April 12, 1814, this claim, among others, was confirmed.

It further appears, that Daspit St. Amand filed his claims to lands by concession from the Baron de Carondelet before the commissioners appointed to adjust private land claims under the act approved February 27, 1813, which said commissioners, in their report, which was communicated to the Senate on the 20th day of January, 1817, (American State Papers, public lands, vol. 3, page 225,) class said claim as number 529 of the first class, which “comprehends such claims as stand confirmed by law,” and in reference thereto say :

“No. 529. Daspit St. Amand claims a tract of land situated in the county of German Coast, about nine miles from the banks of the Mississippi, and forming a part of a high ridge called *les Coteaux de France*. This tract fronts to a water course called Bayou Crocodile, and extends in depth to Bayou *Aux Canes*, bounded on both sides by marshes, and containing 5,824 superficial arpents. This land is claimed by virtue of an order of survey, dated in the year 1796.”

That, by the act of Congress approved May 11, 1820, this claim, among others, was confirmed.

The said Daspit St. Amand, about the year 1813, purchased all the interest of the heirs of Paul Toups in and to their said claim No. 74.

The petitioner in the year 1845 purchased from the estate of Daspit St. Amand the two tracts of land covered by claims Nos. 74 and 529, as aforesaid.

In 1854 and 1855 the United States caused the said claims to be surveyed by Maurice Hawké, a United States deputy surveyor, which surveys were approved and confirmed by W. J. McCulloh, surveyor general for the State of Louisiana, on the 5th day of May, 1855, as appears from a duly certified copy of the township map accompanying the papers.

On the 17th of July, 1855, the Commissioner of the General Land Office requested of the surveyor general of Louisiana to state the reasons upon which he had approved of the survey under said claim and certificate, No. 74, in the name of the children of Paul Toups, deceased.

Under date of the 1st September, 1855, the surveyor general gave his reasons for approving of the said survey in a communication to the General Land Office, of which the following is a copy:

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, Louisiana, September 1, 1855.

SIR: Pursuant to your instructions of the 17th of July, 1855, I now submit the reasons on which this office approved the contested location of “the children of Paul Toups, deceased.” Certificate No. 74 of Robertson & Lewis, in townships 13 and 14 south, range 20 east, southeastern district, west of the Mississippi river.

The documentary evidence in the case consists of—

- 1st. Requête of Paul Toups, addressed to Carondelet.
- 2d. Order of survey by Carondelet.
- 3d. Application of 31st of December, 1806, by Toups' children, to the commissioners of the eastern district, for a confirmation of the inchoate title.
- 4th. Certificate of confirmation by commissioners.
- 5th. Commissioner's report on the claim.

Copies of the requête and order were transmitted to the department with my letter of May 5, 1855. The application of the children of Toups is so similar to the report of the claim, as published in the State papers, that a copy of it is unnecessary. The certificate of confirmation is the only muniment of title binding this office in locating the claim; it is *literally* as follows:

"The children of Paul Toups, deceased, are entitled to a *patent* for a tract of land situate in the county of Acadia, at the place called les Coteaux de France, at the distance of three and a half leagues from the western bank of the Mississippi, having eighteen arpents front, and two and a half leagues in depth, the same being claimed by virtue of an order of survey issued in the year 1776, and having been inhabited and cultivated on the first day of October, 1800.

"T. B. ROBERTSON, }
"JOSHUA LEWIS, } *Commissioners, &c.*

"NEW ORLEANS, December 31, 1811."

The recent location of the claim, thus confirmed, was approved under the belief that the certificate, in the absence of fraud or error, precluded a departure from the dimensions prescribed by it, for the fourth section of the act of March 3, 1807, under which it was issued, makes it final against the government, "any act of Congress to the contrary notwithstanding." That section imposes upon the commissioners an observance of French and Spanish laws and customs, in issuing their final certificates, thus implying that certificates, contrary to those authorities, should not be final against the United States. It might be argued that this restriction devolves on this office the duty of comparing the certificate in question with those laws and customs, and of construing it accordingly; but it is believed that it is not empowered thus to sit in judgment on the legality of the commissioner's acts, and to determine the intricate and embarrassing question of conformity or non-conformity with colonial precedents. In case of a certificate manifestly violating this provision, the office might refuse to carry it out, without special instructions on the subject; but in the case of Toups no such difficulty exists, and the only question has, therefore, been, how shall the terms of the certificate be enforced? This involved the preliminary inquiry as to the point on the *Coteau*, whence the depth of two and a half leagues, specified in the certificate, should be computed. That the *Coteau de France*, now traversed by the New Orleans and Opelousas railroad was the locality meant, has never been a subject of doubt with the office. It appeared to be a fact at first glance, and a review of the case affords no grounds for questioning it. A beginning point for the location being thus the first consideration, it became necessary to examine evidence *dehors* the certificate. In that instrument the doubt originating, the inquiry is a latent one, and hence a recourse to other evidence was not deemed inconsistent with the conviction that the certificate was, under the circumstances, an estoppel, as to ministerial and executive officers.

Toups petitioned for land extending from a great marsh beyond the bayou Aux Cannes to *Bayou Crocodile*. But much doubt exists as to the bayou meant in his requête, under the latter name, though none has been suggested as to the position of the *marsh*. On it the *Coteau* ends. The marsh itself is almost impenetrable, and has long been known as *le grand marais*. The office, then, regarding this as a reliable basis of operations, authorized the extension of the claim, thence two and a half leagues, up the *Coteau* towards the Mississippi

river, and approved the location accordingly. Two and a half leagues by eighteen arpents, the dimensions prescribed by the certificate, gave an area of 3,163.40 acres. Hawké's location, as approved, observing the width of eighteen arpents, gives an area of 3,227.34 acres, being an excess of only 63.94 acres. This inconsiderable discrepancy, in a claim so large and so vaguely defined, indicates the general accuracy of the location, and the fidelity with which the depth required has been adhered to. But it is said by squatters, in township 14 south, range 20 east, that the Bayou Crocodile meant by the *requête* is that which bounds Daspit St. Amand on the northeast, and that the contested claim should not extend further north than its southern bank. In weighing this objection, little consideration is due to the right, actual or alleged, of the squatters urging it. Some of them are precluded from the right of protesting, by the fact that they have squatted out of the claim; others by the fact that they squatted on the claim, after its location, with full knowledge that they were trespassers, and all appear to be mere adventurers, recently attracted to the country by the facilities for speculation, more or less laudable, afforded by the great highway now intersecting the region, and pretending for their improvements neither antiquity of settlement nor pecuniary value. The fact, however, thus urged, is intrinsically important, and as such worthy of examination, independently of the precarious and dubious rights of those pleading it.

It is admitted, by the parties interested in maintaining the location, that the cattle formerly kept in the *vacherie*, by Toups and his successors, were limited in their range to the southern bank of the Bayou Crocodile contended for by the squatters, and that a bridge formerly crossed it, defended by bars, to prevent the escape of the cattle. Hawké reports an old *vacherie* bridge at the same point, with the old *vacherie* road leading over it, and the bayou appears parallel to the Mississippi river. These circumstances all coincide with those mentioned in the *requête*; but that document, though calling for the south bank of "Bayou Crocodile," as the northern limit of the land petitioned for, asks for a depth of *two and a half leagues*, whereas a depth from "*le grand marais*" to the bridge is only about *one and a half leagues*. Were the call for *Bayou Crocodile* free from ambiguity, it would supersede those for area or numerical depth, on the general rule, that calls for course, distance, and quantity are subsidiary to calls for natural objects. But is the *reason* of this rule applicable to the present case? The object of evidence is the attainment of the greatest possible degree of certainty; and in view of this motive, the existence of natural boundaries being *facts* palpable to all men, and but little liable to misconception, such boundaries, in competition with imaginary lines, are justly entitled to the preference; for the latter are inherently liable to misconstruction, have no physical representation on the ground, and even when defined there, by lines and corners, are still liable to obliteration and change. Unfortunately, however, the fact of the Toups claim forbid the attainment of certainty, through any rule of interpretation. Bayous Crocodile are known throughout Louisiana; and it is proved, in this case, that the location of Toups covers *three* streams of

that name—the bayou crossed by the vacherie bridge, the bayou which traverses and forms the *Coteau*, and a little bayou running parallel to the *Mississippi river*, and emptying into the second one now mentioned, about twelve chains above the intersection of the latter by the north boundary of township 14. It is this latent ambiguity in the term *Bayou Crocodile*, as occurring in the *requête*, which defeats the application of the general rule of evidence above, and has therefore induced the office to prefer the numerical call for depth, as affording, in the peculiar difficulties of the case, a greater probability of correctness than is afforded by the call for Bayou Crocodile.

The depth assigned by the certificate is equal to 606.05 chains; that obtained by the approved location is 642.90 chains, adopting as the test the lineal distances given in the SE. lines of the claim—a mode of measurement adopted by the deputy with the previous approbation of the office. The location thus manifests an excess in depth of 35.85 chains; and it is a singular coincidence, at least, that this distance deducted from the north end of the claim, by a line parallel to the backs of the 80 arpents tracts fronting on the *Mississippi river*, in township 13 south, ranges 20 and 21 east, would make the end line of the claim cross the bayou forming the *Coteau* at the mouth of the *third Bayou Crocodile*, above mentioned.

A location reaching the rear lines of the 80 arpents tracts has been approved, because the claimants have thus held the land for many years, (as will fully appear from the testimony transmitted to the Commissioner on 5th of May last,) and because such location gives a quantity more, in accordance with that resulting from the certificate, than would be obtained by the depth if limited to Third Bayou Crocodile above.

I have, as required, recalled the map of township 14 south, range 20 east, and diagram of township 13 south, range 20 east, from the register at New Orleans, and shall detain them until your decision be communicated to me.

Respectfully, your obedient servant,

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

Hon. THOS. A. HENDRICKS,
Commissioner General Land Office, Washington City, D. C.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville, Louisiana, June 9, 1856.

I certify the foregoing, with the interlineations on pages 5 and 8, to be a true copy of the original recorded in this office.

WILLIAM J. McCULLOH,
Surveyor General, Louisiana.

Aside from such surveys the petitioner and those under whom he claims, has been in uninterrupted possession of the said lands for up-

wards of sixty years ; one of the claims has been confirmed over forty years and the other over thirty-five years.

Notwithstanding the fact of such possession, together with the survey, regularly made out and regularly approved, the General Land Office has instructed the surveyor general to cause the aforesaid survey to be obliterated, and all that part of the Toups claim north of Bayou Crocodile to be surveyed as public lands.

Your committee are of opinion that the survey of the Toups claim was made in accordance with the concession and the rules and orders of the Spanish government ; they therefore cannot agree that the claimant shall be deprived of his lands, over which he has exercised ownership for so long a period of time.

From every consideration of justice and right the committee believe that the claimant is entitled to the said lands as surveyed and approved of by the surveyor general on the fifth day of May, 1855 ; they therefore report a bill confirming the said survey of the "Toups" claim, No. 74, as also the survey of the "St. Amand" claim, No. 529, and respectfully recommend its passage.



