

## \*AUGUSTE CHOUTEAU'S HEIRS, Appellants, v. UNITED STATES.

*Missouri land-claims.*

A concession of one league square of land, in Upper Louisiana, was made by Don Zenon Trudeau, the lieutenant-governor of that province, to Auguste Chouteau, and a decree made by him, directing the surveyor-general of the province to put him in possession of the land, and to survey the same, in order to enable Chouteau to solicit a complete title thereof from the governor-general, who, by the said decree, was informed, that the circumstances of Chouteau were such as entitled him to a grant of the land; the land was surveyed, and the grantee put in full possession of it, on the 20th of December 1803; he retained possession of it until his death. The objection to the validity of the concession was, that the petitioner had not as many tame cattle as the eighth regulation of Governor O'Reilly, governor-general of Louisiana, required; that regulation required, that the applicant for a grant of a league square of land should make it appear, that he is possessed of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants, &c. In the spirit of the decisions which have been heretofore made by this court, and of the acts of confirmation passed by congress, the fact that the applicant possessed the requisite amount of property to entitle him to the land he solicited, was submitted to the officer who decided on the application, and he is not bound to prove it to the court which passes on the validity of the grant. These incomplete titles were transferrable, and the assignee might not possess the means of proving the exact number of cattle in possession of the petitioner, when the concession was made. The grant was confirmed.

If the court can trust the information received on this subject, neither the governor nor the intendant general has ever refused to perfect an incomplete title granted by a deputy-governor or sub-delegate.

The regulation made by Don O'Reilly, as to the quantity of land to be granted to an individual, is not, that no individual shall receive grants for more than one league square, but that no grant shall exceed a league square; the words of the regulation do not forbid different grants to the same person; and, so far as the court are informed, it has never been so construed.

APPEAL from the District Court for the district of Missouri. Under the authority of an act of congress, entitled "an act enabling the claimants of lands within the limits of the state of Missouri, and the territory of Arkansas, to institute proceedings to try the validity of their claims," the appellants, on the 18th of May 1829, filed the following petition and documents.

\*148] "To the Honorable judge of the District Court of the United States for the state of Missouri. Respectfully sheweth, your petitioners, Auguste A., Gabriel Ceré, Henry and Edward Chouteau, René Paul and Eulalie his wife, Gabriel Paul and Louise his wife, Thomas F. Smith and Emilie his wife, that Auguste Chouteau, late of the city and county of St. Louis, state of Missouri, deceased, on the 5th day of January, in the year 1798, being then a resident of the province of Upper Louisiana, presented his petition to Don Zenon Trudeau, lieutenant-governor of said province, and of the western part of the Illinois district, whereby he prayed that a tract of land, consisting of 7056 arpents, or a square league, situated on the Mississippi river, about fifty miles, more or less, distant from the town of St. Louis, should be granted to your petitioner, for the purpose of enabling him to establish a grazing and agricultural farm thereon, when his means should permit him so to do. That on the 8th day of January, in the year last aforesaid, the said lieutenant-governor did, in compliance with the prayer of said petitioner, decree and direct that the surveyor of said province, Don Antoine Soulard, should put your petitioner in possession of the land so

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prayed for, and should survey the same, and make a plat and certificate thereof, in order that the petitioner might make use of the same to solicit a complete title thereon from the governor-general of the province of Louisiana, who, by said decree, was informed, that the said petitioner's circumstances were such as to entitle him to that favor. That in pursuance of said decree or order of possession and survey, the deputy-surveyor, Don Santiago Rankin, duly thereto authorized by the principal surveyor, the said Antoine Soulard, did, on the 20th day of December, in the year 1803, locate and survey said tract of a league square, on a part of the royal domain, about fifty-seven miles north of St. Louis aforesaid, and about three miles south of the Mississippi boundary ; the said 7056 arpents, on the north-west quarter north, by the lands of Don Joseph Brazeau, on the south-east quarter south, north-east quarter east, and south-west quarter west, by the royal domain lands; and said Don Santiago Rankin did, then and there, by virtue of the decree and authority aforesaid, deliver possession of said tract of a square league, so bounded and \*located, to said Auguste Chouteau ; all which [\*149 will more fully appear by the following documents here brought into court and ready to be produced, to wit : said original petition and decree, and by the certificate of survey, dated the 9th of December 1803, and duly signed and sealed by the said surveyor of the province of Upper Louisiana, Don Antoine Soulard, and which said survey is duly recorded in book B, folio 27, No. 26, now in the office of the surveyor-general of this district. And your petitioners aver, that said Auguste Chouteau, at the date of his said petition, and of said order or decree of said lieutenant-governor, and at date of said survey, was possessor of at least one hundred head of tame cattle, from two to three hundred hogs, from thirty to forty horses, about forty sheep, and from fifty to sixty slaves. The said original concession and survey have been submitted to the board of commissioners heretofore established for the adjudication of unconfirmed land-claims, and by it refused to be confirmed. Your petitioners further show, that at the date of said decree of concession and survey, and ever since, until his death, the said Auguste Chouteau has been a resident of the province of Upper Louisiana, or state of Missouri. That said Auguste Chouteau, by virtue of the act of congress in that case made and provided, procured the said tract and survey to be laid down on the general plat in the office of the register of the land-office of this district, and the same has been and is reserved from public sale, until a decision shall be had by the proper authority thereon. That the sectional boundary lines on the general plat are as follows : commencing at the north-west corner of Joseph Brazeau's confirmed claim of 7056 arpents, in the south-east quarter of section No. 35, in township No. 52, north, of range No. 1, east ; running thence, N. 30° E. 245 chains, to a point near the line, between sections No. 15 and 22, in township No. 52, north, of range No. 1, east ; thence N. 60° E. 245 chains, to a point in section No. 12, in township No. 52, north, of range No. 1, east ; thence S. 30° E. 245 chains, to the north-east corner of the survey of Brazeau, before mentioned, in the north-west quarter of section No. 29, in \*township No. 52, north, of range No. 2, east ; thence, with Brazeau's line, S. 60° W. 245 chains, [\*150 to the beginning. Your petitioners further show, that no part of said tract, so laid down and surveyed, is occupied or claimed by any person or persons, adverse to the title of your petitioners. Your petitioners further show, that

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Auguste Chouteau has departed this life, and that previous to his decease, he devised to your petitioners the said tract of 7056 arpents, by his will, duly executed, and now ready to be produced. Wherefore, your petitioners pray, that the validity of the claim and title to said square league, as hereinbefore set forth, may be inquired into and decided upon by this honorable court; and that, inasmuch as the same might have been perfected into a complete title, under and in conformity to the laws, usages and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States, your petitioners pray, that the said title and claim be confirmed to said tract of land so surveyed, bounded and located as aforesaid; and your petitioners pray, that a citation be directed to the district-attorney of the United States, requiring him, on a day certain, to appear and show cause, if any he can, against the decree prayed for by your petitioners."

The documents referred to in the foregoing petition of the heirs and devisees of Auguste Chouteau, deceased, translations of which were filed in evidence on the hearing of said cause, being truly copied, were as follows, to wit:

"To Mr. Zenon Trudeau, lieutenant-colonel, captain in the first regiment of Louisiana, and lieutenant-governor of the western part of Illinois.

"Auguste Chouteau, merchant, of this town, has the honor to represent to you, that having heard it reported, that there were good lands on the Mississippi river, at about fifty miles of this town, and being possessed of sufficient means to establish a grazing farm, has the honor to request you to have the goodness to grant him, at the place above named, a league square of land, or seven thousand and fifty-six arpents in superficies, a quantity \*151] which never was refused, either in the \*lower or upper part of this colony, for similar establishments; the suppliant having also the project to establish on the said land a considerable farm, hopes that you will favor his views, which cannot but be advantageous to the safety of those establishments, and to the internal communication, by keeping away the Indians, who, at divers periods of the year, spread themselves in our neighborhoods to lay waste our farms that are too far apart from each other to lend the necessary assistance in similar cases. Your suppliant, confident in your justice and in the generosity of the government of which you are the representative, hopes that you will grant his request.

"St. Louis of Illinois, January 3d, 1798. AUGUSTE CHOUTEAU."

"St. Louis of Illinois, January 8th, 1798.

"Being satisfied that the land applied for belongs to the king's domains, the surveyor, Antoine Soulard, will put the applicant in possession of the same, and afterwards make a report of his survey, in order that it may serve in soliciting the concession of the governor-general of this province, to whom I give the information that the said applicant is in the circumstances which merit this favor.

ZENON TRUDEAU."

A survey of the land was returned by the deputy-surveyor, on the 29th of December 1803.

The district-attorney of the United States filed an answer, denying the

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validity of the claim of the petitioner, and by a decree of the district court the petition was dismissed. From this decree, the petitioners appealed.

The case was argued by *White*, for the appellants; and by the *Attorney-General*, for the United States.

MARSHALL, Ch. J., delivered the opinion of the court.—This is an appeal from a decree of the district court of Missouri, sitting under the act of the 26th of May 1824. The devisees of Auguste Chouteau, a citizen of Missouri, presented their petition to the district court, in which they \*state, that their testator, on the 8th day of January 1798, being then [\*152 a resident of Upper Louisiana, obtained from Don Zenon Trudeau, lieutenant-governor of that province, a decree directing Don Antonio Soulard, the surveyor-general of the province, to put the said Chouteau in possession of the land prayed for; and to survey the same, and make a plat and a certificate thereof, to enable the said Chouteau to solicit a complete title thereon from the governor-general; who, by the said decree, was informed, that the said petitioner's circumstances were such as to entitle him to that favor. In pursuance of this decree, the survey was executed on the 20th of December 1803, and the said Chouteau put into possession of the tract surveyed, amounting to one league square, which he retained till his death, when he devised it to the petitioners, who have remained in possession ever since. All the steps required by law for the preservation of the title acquired by the decree of the lieutenant-governor, have been taken. The petitioners pray that their right and title to the land they claim may be confirmed. The answer of the district-attorney admits nothing, and refers the claim to the court.

Some testimony was taken, to show that the said Auguste Chouteau was, at the date of his petition, and of the decree of the lieutenant-governor, and at the date of the said survey, possessed of at least one hundred head of tame cattle, from two to three hundred hogs, from one hundred and forty to one hundred and fifty horses, about forty sheep, and from fifty to sixty slaves.

The United States gave in evidence a petition of the said Auguste Chouteau, presented on the 24th day of January 1798, to the lieutenant-governor of Upper Louisiana, praying for a concession of 7056 arpents of lands, situated on the north bank of the Missouri, about 205 miles from its mouth; which petition was granted on the succeeding day. A survey of this tract was executed on the 17th of March 1801; and it appears to have been conveyed by Auguste Chouteau to Daniel Clarke, by deed bearing date the 8th of September 1804. This claim was offered to the board of commissioners, but being "unsupported by actual \*inhabitation and cultivation," [\*153 was rejected. The board, at the same time, observed, that the said concession is not duly registered.

The only objection which can be made to the validity of this concession is, that the petitioner did not possess as many tame cattle as the regulations of O'Reilly required. The eighth article of those regulations declares, that no grant in the Opelousas, Attacapas and Natchitoches shall exceed one league in front by one league in depth. The ninth is in these words, "to obtain in the Opelousas, Attacapas and Natchitoches, a grant of forty-two arpents in depth, the applicant must make it appear that he is possessed of

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one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants to be made of greater extent than that declared in the preceding article."

There is some confusion in these two articles, which would lead to a suspicion that the translation may not be accurate. The eighth declares that no grant shall exceed a league square; and the ninth, if it be understood literally, professes to prescribe the property which the applicant must possess to entitle him to a larger quantity than a league square. It is also observable, that this article is limited to the three districts mentioned, which are not in Upper Louisiana; and that they are peculiarly adapted to a grazing country, and to a grazing country only. There could be no motive for apportioning one hundred head of cattle to two slaves, in an agricultural country. It is probable, that if the regulations of O'Reilly were extended to Upper Louisiana, they were extended with modifications, at least, of the ninth article; so as to adapt the proportions of property required to the country to which the article was extended. This supposition derives great strength from the fact that the lieutenant-governor, who must have understood his orders, certifies to the governor, in his decree, "that the said applicant is in the circumstances that merit this favor." The appellant is proved to have possessed more slaves than was required by the ninth article of O'Reilly's regulations, though not so many tame cattle.

\*154] We think also, that in the spirit of the decisions which have \*been heretofore made by this court, and of the acts of confirmation passed by congress, the fact that the applicant possessed the requisite amount of property to entitle him to the land he solicited, was submitted to the officer who decided on the application, and that he is not bound to prove it to the court which passes on the validity of the grant. These incomplete titles were transferrable, and the assignee might not possess the means of proving the exact number of cattle in possession of the petitioner, when the concession was made. It is remarkable, that, if we may trust the best information we have on the subject, neither the governor nor intendant-general has ever refused to perfect an incomplete title granted by a deputy-governor or sub-delegate. We cannot allow this objection to prevail.

The objection drawn by the United States from the concession made on the 24th of January 1798, is not, we think, entitled to more weight. The eighth regulation made by O'Reilly, is not, that no individual shall receive grants for more land than one league square, but that no grant shall exceed one league square. The words of the regulation do not forbid different grants to the same person; and so far as our information goes, it has never been so construed. Neither of these grants, so far as we understand the geography of the country, lies in Opelousas, Attacapas or Natchitoches. It does not appear, that the grant made on the 24th of January has been established, and the record shows that it was rejected by the board of commissioners, for reasons on the sufficiency of which we do not now decide. But it is conclusive, that the concession of the 24th of January was subsequent to that of the 8th, and consequently could not affect it.

We are opinion, that the district court erred in declaring the concession made to Auguste Chouteau, on the 8th of January 1798, to be invalid; and that the same ought to be confirmed. The decree of the district court is

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reversed and annulled, and this court, proceeding to give such decree as the district court ought to have given, doth declare the claim of the petitioners to the tract of land in their petition mentioned, to be valid, and doth confirm their title to the same, according to the boundaries thereof, as described in the survey made by James Rankin, \*deputy-surveyor, and certified by Anthony Soulard, principal deputy-surveyor of [\*155 Upper Louisiana, as appears by his certificate of the 29th of December 1803, contained in the record.

This cause came on to be heard, on the transcript of the record from the district court of the United States for the district of Missouri, and was argued by counsel: On consideration whereof, this court is of opinion, that the claim of the appellants is valid, and ought to be confirmed. Whereupon, it is ordered, adjudged and decreed by this court, that the decree of the said district court in this cause be and the same is hereby reversed and annulled; and this court, proceeding to pronounce such decree as the said district court ought to have given, doth declare the claim of the petitioners to the tract of land in their petition mentioned, to be valid, and doth confirm their title to the same, according to the boundaries thereof, as described in the survey made by James Rankin, deputy-surveyor and certified by Antonio Soulard, principal detputy-surveyor of Upper Louis, iana, as appears by his certificate of the 29th December 1803, contained in the record.

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*Louisiana practice.*

The district court of the United States for the eastern district of Louisiana, in conformity with the provisions of the act of congress of the 26th of May 1824, adopted, as a rule of practice in that court, the regulations established by a law of Louisiana, by which, on appeal bonds, when the appellants failed in their appeal, on the coming in of the decree or judgment of the appellate court, a summary judgment, on motion, should be entered against principal and sureties in the appeal bonds.

Under this rule, after the affirmance of a decree of the district court by the supreme court of the United States, and the filing of the mandate of the supreme court, the district court, on a motion for a rule on the surety in an appeal bond to show cause why judgment should not be entered against him, on the first day of the next term, and no cause being shown, entered a judgment against the surety.

The party against whom the judgment was entered, afterwards came into court, and prayed a trial by jury, which was refused; and he prosecuted this writ of error, to reverse the judgment of the district court refusing the said trial.

The rule of the district court of Louisiana follows the analogy of the laws of Louisiana, being modified only so far as is proper to suit the organization of the courts of the United States, and to conform to the laws thereof; the summary judgment is therefore strictly authorized, and the party had no right to a trial by jury. In becoming a surety, he submitted himself to be governed by the fixed rules which regulate the practice of the court.

An appeal was taken in the same case to a decree of the district court dissolving an injunction. Although this appeal was not before the court, the court said, the decree being only interlocutory, and not final, is not the subject of an appeal.

General rules for the government of the United States court in the eastern district of Louisiana in suits in that court. [See note a.]