which deed were recited several conveyances of parcels of the tract to several individuals, and particularly one of 11,000 acres, to one Berriman. Barney brought an ejectment against Hawkins, and proved that he had entered on the fifty thousand acre tract. This court held his action could not be sustained, unless he proved the defendant was not only in possession of the large tract, but he must show that the possession was not upon any one of the tracts sold and conveyed.

To apply the principle to the case before us. Had Bogardus brought an action of ejectment to sustain it, he must have proved the trespasser was within his patent, and outside of any one of the reserved lots. The words, "subject to all the rights of any persons under the act of 1823," showed that those rights were not granted by the patent; and if Bogardus himself could not have recovered, it is strange how the defendants could recover, who claim to be in possession under his patent.

The agreed case admits that the "defendants respectively had vested in them, before the commencement of this suit, all the right of Bogardus." But whether this possession under the right of Bogardus was for a day or a year, is nowhere shown by the evidence; and unless I am mistaken, the statute requires a seven years' possession under title to protect the trespasser, and in effect give him the land.

Bogardus was in possession, claiming a pre-emption, but I do not understand, from the opinion of the court, that such a possession will run, even against the French claimants. Bogardus himself was a trespasser on the lands of the United States, and until he received his patent in 1838, I suppose he could not set up a claim to the land under title.

I hold, and can maintain, that the instruction of the district judge was right, in saying that the patent of Bogardus did not grant or convey the ground in controversy. And if it did, there was no such possession under it, which, by the statute of limitations, protected the right of the defendants.

CHARLES BALLANCE, PLAINTIFF IN ERROR, *v.* ADOLPH PAPIN, HENRY PAPIN, AND MARY ATCHISON.

Under the circumstances described in the preceding case, if there was no sufficient evidence of a survey under the act of 1823, the title claimed under that act could not be held superior to that claimed under a patent issued in the interval between the act of 1823 and the alleged survey.

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the northern district of Illinois.

It was similar in most of its features to the preceding case, and was argued by *Mr. Ballance* for the plaintiff in error, and submitted on printed arguments by *Mr. Williams* and *Mr. Gamble* for the defendants.

Mr. Justice CATRON delivered the opinion of the court.

In the case of Charles Ballance against Papin and Atchison, the same title was relied on by the defendant below (Ballance) that was set up in defence in the preceding case of Forsyth *v.* Brien and Rouse. The plaintiff sued to recover a village lot in Peoria, No. 42, confirmed to Fontaine, in right of his wife, Josette Cassarau, dit Fontaine. A plat of lot No. 42 was given in evidence, and is found in the record, but no certificate of the surveyor accompanies this plat, and without such certificate there is no evidence that lot No. 42 was lawfully surveyed. The act of 1823 (sec. 2) required that a survey should be made of each lot confirmed to the claimant, and a plat thereof forwarded to the Secretary. The evidence of a legal United States survey is not a mere plat, without any written description of the land by metes and bounds; neither the plat, nor less proof than a written description, will make a record on which a patent can issue. That most accurate evidence of separate surveys of the village lots of Peoria exists, we know; but as none is found in this record of lot No. 42, it follows, from the reasons given in the previous case, that no title was adduced in the Circuit Court that authorized it to reject the instructions demanded by the defendant; that, comparing the titles of the parties by their face, the defendant's was the better one. But as the same question of the application of the act of limitations arises in this case as it did in the former one, it must of course have been reversed, had the certificate of survey been found in the record. We therefore order that the judgment be reversed, and the cause remanded for another trial to be had therein.

Mr. Justice McLEAN dissented.

THE UNITED STATES, APPELLANTS, *v.* DOMINGO AND VICENTE PERALTA.

Where a claimant of land in California produced documentary evidence in his favor, copied from the archives in the office of the surveyor general and other original grants by Spanish officers, the presumption is in favor of the power of those officers to make the grants.