tions of the court were in all substantial respects correct. The decree of the Circuit Court, therefore, is

AFFIRMED WITH COSTS.

HOGAN v. PAGE.

1. A patent certificate, or patent issued, or confirmation made to an original grantee or his "*legal representatives*," embraces representatives of such grantee by contract, as well as by operation of law; leaving the question open in a court of justice as to the party to whom the certificate, patent, or confirmation should enure.
2. The fact that A., many years ago, did present to a board of commissioners appointed by law to pass upon imperfect titles to land, a "claim" to certain land, describing it as "formerly" of B., an admitted owner; the fact that the board entered on its minutes that A., "*assignee*" of B., presented a claim, and that the board granted the land to "the *representatives*" of B.; and the fact that A., with his family, was in possession of the land many years ago, and cultivating it, are facts which tend to prove an assignment; and as such, in an ejectment where the fact of an assignment is in issue, should be submitted as evidence to the jury.

ERROR to the Supreme Court of Missouri; the case being thus:

After the cession, in 1803, by France, of Louisiana, to the United States, Congress passed an act* establishing a board of commissioners at St. Louis, for the purpose of settling imperfect French and Spanish claims. The act provided that any person who had, for ten consecutive years prior to the 20th December, 1803, been in possession of a tract of land not owned by any other person, &c., "should be confirmed in their titles."

In 1808, one Louis Lamonde presented a claim for a tract of one by forty arpens, "formerly the property of Auguste Condé." The minutes of the board, of November 13th, 1811, disclosed the following proceedings:

"Louis Lamonde, assignee of Auguste Condé, claiming one by forty acres, situate in the Big Prairie district of St. Louis, pro-

* Act of 3d March, 1807, 2 Stat. at Large, 440.

duces a concession from St. Ange and Labuxière, Lieutenant-Governor, dated 10th January, 1770.* The board granted to the *representatives* of Auguste Condé forty arpens, under the provisions of the act of Congress, &c., and ordered that the same be surveyed, conformably to possession, &c."

The minutes did not record the fact that any *assignment* of this land from Condé to Lamonde had been presented to the board, or that other proof was made of such conveyance.

This decision of the board, among many others, was reported to Congress, and the title made absolute by an act of 12th April, 1814. In 1825, Lamonde obtained from the recorder of land titles a certificate of the confirmation.

Hogan, claiming through Lamonde, now, A. D. 1850, brought ejectment at St. Louis against Page for a part of this land. Lamonde was an old inhabitant of St. Louis, who had died some ten years before the trial at a very advanced age; and there was some evidence on the trial that he and his family cultivated this lot in the Grand Prairie at a very early day, before the change of government under the treaty of 1803; and evidence that by the early laws of the region these interests passed by parol.

The court below decided that the plaintiff was not entitled to recover upon the evidence in the case.

Mr. Gantt, for the defendant here and below, in support of this ruling, insisted here that, as no assignment or transfer of Condé's interest in the concession was proved before the land board or at the trial, the confirmation could not enure to the benefit of Lamonde, so as to invest him with the title; and that, in the absence of the assignment, the confirmation "to the representatives of Auguste Condé" enured to the benefit of his heirs.

Messrs. Browning, Hill, and Ewing, argued contra for the plaintiff, that, as Lamonde presented his claim to the board,

* This concession, about which there was no dispute, was to Condé.

as assignee of Condé, and as such set up a title in his notice of the application, the act of the board should be regarded as a confirmation of his right or claim to the land; and the cases of *Strother* v. *Lucas*,* *Bissell* v. *Penrose*,† and *Landes* v. *Brant*,‡ in this court, were referred to as supporting this view of the confirmation.

Mr. Justice NELSON delivered the opinion of the court.

On looking into the cases cited on the part of the plaintiff, it will be seen that the confirmations which there appeared were either to the assignee claimant by name, or in general terms, that is, to the original grantee and "his legal representatives;" and when in the latter form, it was the assignee claimant who had presented the claim before the board, and had furnished evidence before it of his derivative title, and which had not been the subject of dispute. The present case, therefore, is different from either of the cases referred to.

A difficulty had occurred at the Land Office, at an early day, in respect to the form of patent certificates and of patents, arising out of applications to have them issued in the name of the assignee, or present claimant, thereby imposing upon the office the burden of inquiring into the derivative title presented by the applicant. This difficulty, also, existed in respect to the boards of commissioners under the acts of Congress for the settlement of French and Spanish claims. The result seems to have been, after consulting the Attorney-General, that the Commissioner of the Land Office recommended a formula that has since been very generally observed, namely, the issuing of the patent certificate, and even the patent, to the original grantee, or *his legal representatives*, and the same has been adopted by the several boards of commissioners. This formula, "or his legal representatives," embrace representatives of the original grantee in the land, by contract, such as assignees or grantees, as well as by operation of law, and leaves the

* 12 Peters, 453. † 8 Howard, 338. ‡ 10 Id. 370.

question open to inquiry in a court of justice as to the party to whom the certificate, patent, or confirmation, should enure.

Now, upon this view of the case, we think the court below erred in ruling, as matter of law, that the plaintiff was not entitled to recover. The question in the case is, whether or not the evidence produced by the plaintiff on the trial before the jury tended to prove that there had been an assignment by the one of forty arpens from Condé to Lamonde, prior to his notice of the claim before the board of commissioners in 1808? If it did, then it should have been submitted to the jury as a question of fact, and not of law. The transaction was ancient, and of course it could not be expected that the evidence would be as full and specific as if it had occurred at a more recent period.

The piece of land is but a moiety of the original concession to Condé; and it appears that previous to the change of government, and while Condé was living, Lamonde and his family were in possession cultivating the strip, in the usual way in which these common field lots were occupied and improved. And very soon after the establishment of a board at the town of St. Louis, for the purpose of hearing and settling these French and Spanish imperfect grants, we find him presenting this claim before the board, setting up a right to it as his own, and asking for a confirmation; and in the proceedings of confirmation, the board speak of it as a claim by Lamonde, assignee of Condé.

The title did not become absolute in the *confirme*, whoever that person might be, till the passage of the act of 1814; and in 1825, Lamonde, for he appears to have been then alive, procured from the recorder of land titles the certificate of confirmation.

We are of opinion that these facts should have been submitted to the jury, for them to find whether or not there had been an assignment or transfer of interest in this strip of one by forty arpens from Condé to Lamonde. Especially do we think that the question should thus have been submitted, as it appears that at this early day and among these

simple people, a parol transfer of this interest was as effectual as if it had been in writing.

JUDGMENT REVERSED with costs, and cause remanded with directions to issue

NEW VENIRE.

MINNESOTA COMPANY *v.* ST. PAUL COMPANY.

1. Where a bill in equity is necessary to have a construction of the orders, decrees, and acts made or done by a Federal court, the bill is properly filed in such Federal court as distinguished from any State court; and it may be entertained in such Federal court, even though parties who are interested in having the construction made would not, from want of proper citizenship, be entitled to proceed by original bill of any kind in a court of the United States.

   In such a case the question will not be, whether the bill filed is supplemental or original in the technical sense of equity pleading; but whether it is to be considered as supplemental, or entirely new and original, in that sense which the Supreme Court has sanctioned with reference to the line that divides jurisdiction of the Federal courts from that of the State courts.

2. A railroad company, owning the whole of a long railroad, and all the rolling stock upon it, *may* assign particular portions of such rolling stock to particular divisions,—certain cars, for example, to one division; the residue of the rolling stock to another,—and mortgage such portions with such divisions, so as to attend them. Whether the company have so mortgaged their rolling stock is a question of intention. In the present case it was decided that they had.

3. *Quære:* Whether a marshal's sale is valid in any case, unless supported by a judicial order previously made. It is not valid where made under the marshal's wrong interpretation of an order which the court did in fact make; not valid in such a case even where the court confirmed of record the marshal's sale; the court's attention not being specifically directed to the marshal's mistake, nor any issue raised as to what the court really meant, nor decision made, on such issue raised, that the marshal's act should remain firm.

THE La Crosse and Milwaukie Railroad Company was chartered by the legislature of Wisconsin to build a road across that State from Milwaukie to La Crosse, and began