

Return In Ten Days To
H. CLAY HORNER,
ATTORNEY-AT-LAW.
CHESTER, - ILLINOIS.



F. W. Havill

Mt Vernon
Ill.

24
Clark Sup. Court.



H. CLAY HORNER,⁺
ATTORNEY-AT-LAW.

Chester, Ill., May 16, 1896.

Dear Sir:-

There will arrive in this Saturday evening's mail Briefs in the Trustees v. Mc'Clure which please notify me have been duly filed. I am assured that the mail will arrive in time for distribution this evening, or I would come over.

Yours &c.

H. Clay Horner.

Recd 12 May 16 1896

RALPH E. SPRIGG,
CHESTER, ILLINOIS.



Hon J Q Chance

Mt Vernon

24 May
1897

Illinois.



Hon J O Chance

Chester Ill May 24th 97

Dear Sir

My fees for
making up the record in the case of the President and
Trustees of the Commons of Kaskaskia vs Charles McClure
are \$25 ⁰⁰

Respt Yours &c
Wallace Snook

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss. In Circuit Court, September Term, A. D. 1895
Randolph County, }
 PLEAS, before the Honorable Geo W Wall one of the Judges of the
3rd Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit
 Court of Randolph County, in the State aforesaid, and at a term thereof
 begun and held at the Court House, in the City of Chester in said County,
 on the first Monday (being the 2nd day)
 of September in the year of our Lord one thousand eight hundred and ninety five
 and of the Independence of the United States, the one hundred and twentieth
 Present—Honorable Geo W Wall Judge of the 3rd
 }
Wallace Snook Clerk.
R J Goddard State's Attorney.
D H McFarland Sheriff.
 Attest, Wallace Snook Clerk.

24
 FILED.

MAY 6 1896

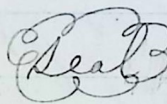
Frank W. Hawley
 CLERK

20

State of Illinois } ss.
Randolph County }

The People of the State of Illinois, to the Sheriff of said county: Greeting

We command you to Summon Charles McClure if he shall be found in your County, ^{personally} to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House in Chester in said Randolph County, on the 2nd day of September 1895, to answer unto the President and Trustees of the Commons of Kaskaskia in an action of ejectment, to the damage of said plaintiff as they say in the sum of Five Hundred Dollars, and have you then and there this Writ with an indorsement thereon in what manner you shall have executed the same.

Witness Wallace Snook clerk of
our said Court and the Seal thereof
 at his office in Chester in said Randolph County this 27th day of June A.D. 1895,

Wallace Snook, clerk.

State of Illinois } ss.
Randolph County }

I have duly served the within by reading the same to the within named Charles McClure as I am therein commanded July 23, 1895

D. H. McFarland Sheriff
By A. J. Campbell Deputy.

Filed July 26, 1895
Wallace Snook,
clerk.

State of Illinois } ss. In the circuit court - To the
Randolph County } March term. 1895

The President and Trustees of the commons of Kaskaskia plaintiff by Wm Hartzell & Ralph E. Sprigg their attys. complain of Charles McClure defendant of a Plea of ejectment - For whereas the plaintiff on the first day of January 1895 was possessed of a certain parcel of land with the appurtenances, lying in the county aforesaid to wit: The East half of out Lot No one (1) of the commons of Kaskaskia lying south of the third (3) and fourth (4) surveys of said commons and containing Two hundred (200) acres more or less in Townships seven (7) and eight (8) South of Range seven (7) west in Randolph County Illinois which said tenements the plaintiff claims in fee. And the plaintiff being so thereof possessed the defendant afterwards to wit on the second day of January A.D. 1895 entered into such tenements and such unlawfully withholds from the plaintiff the possession thereof to the damage of the Plaintiff of Five hundred Dollars and therefore they bring suit & etc.

Wm Hartzell
Ralph E. Sprigg

Filed Feby 18. 1895
Wallace Snook
clerk

State of Illinois } In circuit court - September
Randolph County } Term 1895;

Trustees Kaskaskia Commons } Ejectment
vs }
Charles McClure } Defendant comes and
defends &c. and says he is not guilty in man-

ner and form as plaintiff in their declaration thereof charge and allege. And of this he puts himself upon the country.

By H. Clay Homer
T. B. Whittedge
attys.

And the Plt doth the like
Hartzell & Sprigg attys.

Filed Sept-3rd 1895.
Wallace Snook
clerk.

Appearances.

For the Plaintiff.
For the Defendant.

Wm Hartzell, R. E. Sprigg
H. Clay Homer, T. B. Whittedge

Be it remembered that upon the hearing of the above cause at this term the plaintiff, to sustain the issues on its part, offered the following evidence that is to say

Mr Hartzell. We offer in evidence, first, the Grant of the French Government,

Pierre de Rigault de Vaudreuil Governor and
Edme Gatiens Salmon Commissary, Order of the
province of Louisiana. Seen the petition to us
presented on the sixteenth day of June of this present year
by the Inhabitants of the parish of the Immaculate
Conception of Kaskaskia dependence of the Illinois,
tending to be confirmed in the possession of a common,
which they have had a long time, for the pasturage of their
cattle in the point called le point de bois which runs to the
entrance of the River Kaskaskia. We by ^{virtue} of the power to us
granted by his Majesty, have confirmed and do confirm
to the said Inhabitants the possession of the said Common,
on the following conditions, first, that the concessions hereto-
fore granted, either by the India Company, either by our
predecessors, or by us in the prairie of Kaskaskia on the side
of the point which runs to the entrance of the river, shall
terminate at the land granted to a man named Cavalier,
and in consequence, that all concessions that may have been
made on the said point, from the land of the said Cavalier
forward, on the side of the entrance of the said River shall
be null, void and of no effect; In consequence of which
the said point as it is above designated, shall remain in
common without altering its nature, nevertheless reserving
to us the power, whenever the case may require it of granting
the said Commons to the Inhabitants established, and who
may establish and this on the representations which may be
made to us by the Commandants and sub-delegates on
the said places.

Secondly, On the road vulgarly called
at the Square line, between the large and small line shall
be rendered practicable and maintained for the passage of the
Carts and cattle going into the common, and this by
each of the proprietors, as well of the great as of the small
line, whose lands border on the roads of the Square line.
And as to the fences which ought to run along

8 the side of the village from the said road of the square line, unto the river. As also the one on the side of the point running to the Mississippi and to the Kaskaskia River, they shall be made and maintained at the expense of the Community to the end that the cultivated lands be not injured by the Cattle.

Thirdly. To facilitate to the Inhabitants the means of making their autumnal harvest, and preventing its being damaged by the cattle - We forbid all persons to leave their cattle range upon cultivated lands, they are notwithstanding permitted to graze upon their own proper lands and having them diligently watched,

Fourthly. Willing that the wood which is on the land granted, belong to the proprietors of the said land, we forbid all persons to cut down any elsewhere than on their own lands, and as to the wood which may be found in the commons, it will be allowed to each of them having a right to the said commons, to cut down for their own ^{entire} use, for building, or firewood and shall be the present regulation read, published and affixed to the end that no person maybe ignorant thereof.

Given at New Orleans the fourteenth day of August 1743.

(Signed) Vaudreuil
" Salmon

Recorded in Book A. page 343rd and 344th.

Auditor's Office, Illinois.

Springfield, August 12th 1891.

I Charles W. Pavey, Auditor of Public ^{the} Accounts of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full and correct transcript of the record of the concession made by Vaudreuil Salmon to inhabitants of Kaskaskia as their common, as the same appears at pages 38+39 in Volume of translations

of French Records now on file in and forming a part
of the records of this office.

Seal

In Testimony Whereof, I hereunto sub-
scribe my name and affix the seal of my
office, at Springfield, the day and year first
above written.

C. W. Pavey

Auditor of Public Accounts

We offer the American State papers, page 148, report of
Commissioners and plat accompanying it.

Report on the claims to the Commons, common fields
and town lots of the village of Kaskaskia.

First of the Commons.

On the 14th August, 1746, Monsieur Naudrieul Governor,
and Monsieur Salmon, Commissary, Ordonnateur of the
Province of Louisiana granted to the inhabitants of
Kaskaskia a tract of land as a common for the use of
the said inhabitants: which seems to have been bounded north
by the southern limit of the village: east by the Kaskaskia
river: and south and west by the Mississippi and the limits
of the common field, so called: which will be found laid down
in the plat annexed, on certain conditions, unnecessary here
to state, since they relate to the domestic police of said
village: reserving however, to the Government a right
to grant away to such individuals as had settled, or
might settle, in said Village, such portions of said com-
mons as it might think necessary.

(See United States Register Book of Translations. Page
38)

Secondly of the Common field.

This tract, as will be seen by the plat, and the list of
claims annexed, is composed of the various grants, in
severalty, to the inhabitants of the village, and from the
first, has been enclosed by one common fence, and
subjected to certain village regulations, relating to fences

roads &c. Those grants to individuals were made at different periods, and have passed down, by purchase or descent, to the present ^{relatives} ~~possessors~~; but, from the loss of most of the ancient records, it has become generally impossible to trace up the chain of these titles.

This Board, however are satisfied that the whole land within the limits of the annexed plat, has been granted to individuals by the French Government; and it seems probable, that the persons whose names are entered as present claimants on said plat are the proper owners; but it is impossible for this Board to decide on this point satisfactorily to themselves, and they are unwilling to risk the doing an injury to any individual; they are however satisfied that the United States have no interest here.

Of the Town Lots.

These are similarly situated with the common field land. Many of these lots have not, we suppose been entered with the Register; but the exterior limits of the village, as well as we could ascertain them are laid down on the annexed plat and we are satisfied that all the land within the limits is private property although it is impossible for us in many cases, to decide who are the rightful owners. We do therefore affirm, in toto the lands in this report described (See note below) to the legal representatives of the original coveepees and recommend the passage of a law to this effect, hereby declaring all the confirmations and rejections which we have heretofore made and which have from time to time been entered in our records of particular claims to land within the before described limits to be null and void, saving of individuals concerned to settle their claims between themselves. We further observe, that as the Governor of the Territory has, in many instances made of claims to land within these limits special confirmations, and in some cases (at least in the opinion of the Board) improperly it is highly desirable that a law be passed declaring such

confirmations void especially as he has issued no patents for the same; and as this measure can in no case injure the right-ful owner.

Note. And as laid down in a plat annexed executed by David Robinson under the direction of this Board viz: bounded by the Kaskaskia, by the Mississippird by the upper line of the common field as laid down in the plat herewith transmitted, executed by William and Elias Rector being eleven and one half Arpents above the upper line of the Indian Village so called.

Michael Jones } Commissioners.
E. Backus } 3

Commissioners' office Kaskaskia

December 31, 1809.

Mr Hartzell. We also offer the Act of Congress confirming Commissioners report, United States Statutes, Vol. 2, page 607.

Chap. XL. An Act confirming the decisions of the Commissioners in favor of the claimants of land in the district of Kaskaskia. Statute II. May 1, 1810 Act of March 3, 1807, ch. 17, Sec. 6.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the decisions made by the commissioners appointed for the purpose of examining the claims of persons claiming lands in the district of Kaskaskia, in favour of such claimants as entered in the transcript of decisions, bearing date the thirty first day of December, eighteen hundred and nine, which have been transmitted by the said commissioners to the secretary of the Treasury according to law, be, and the same are hereby confirmed.
Approved May 1, 1810. Decisions of the commissioners confirmed.

Chap. XXII. - An Act for the revision of former confirmations, and for confirming certain claims to land in the District of Kaskaskia. Statute II. Feb. 20, 1812 Act of Feb. 27, 1815, ch. 63.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the register and receiver of public Monies of the Land-office at Kaskaskia Register and receiver of the land-office at Kaskaskia to inquire into validity of certain claims to land and such other person as the President of the United States shall appoint for that purpose, be, and they are hereby authorized to examine and inquire into the validity of claims to land in the district of Kaskaskia, which are derived from confirmations made, or pretended to have been made, by the governors of

A clerk to be employed
by them
Report to be made to
Secretary of the Treasury,
which is to be
laid before
Congress.

Commissioners,
clerk and agent:
Their compensation:
how to be paid.

Decisions of
commissioners
when to be con-
firmed

their North West territory, respectively.
They shall employ a ^{clerk} and shall, in relation
to the claims aforesaid, have in every respect,
the same powers which had been vested in
the commissioners appointed to ascertain
the claims to land in the said district.
And they shall report to the Secretary of
the Treasury, to be by him laid before
Congress at their next session, their
opinion on each of the claims aforesaid.

Sec. 2. And be it further enacted, That the
commissioners and clerk, appointed by
this act, and such agent, as may be ap-
pointed on behalf of the United States by
the Secretary of the Treasury, shall each re-
ceive five hundred dollars in full for
the services performed by them under this
act; which compensation, and also ^{the} contin-
gent charges for office rent, fuel, stationery
and summoning witnesses on the part
of the United States, shall be paid out
of the monies appropriated by law for
surveying the public lands of the United
States.

Sec. 3. And be it further enacted, That the
decisions made by the commissioners, hereto-
fore appointed for the purpose of examining the
claims of persons to lands in the district of
Kaskaskia, in favour of such claimants to
town or village lots, out-lots or rights in
common to commons and common fields,
as entered in the transcripts of decisions,
bearing date the thirty-first day of December,
one thousand eight hundred and nine, which
have been transmitted by the said commissioners

Proviso
as to decisions
in other
cases

to the Secretary of the Treasury, according to law, be confirmed to all such rightful claimants according to their respective rights thereto; Provided, that nothing herein contained, shall be construed to confirm any particular decision, heretofore made in favour of any individual, or to affect the right of any other individual claiming the same land; but such conflicting claims shall be decided according to law by the proper tribunal.

Approved, February 20, 1812,

Captain W. C. Postal, sworn for the plaintiff testified as follows:

Direct examination by Mr Hartjell.

Q. Captain what was your business fifteen or twenty years ago?

A. I was following the river as a pilot.

Q I will ask you to state to the Court what you may know about this island here-low-head, it was formerly called, a little below St Mary's. How long have you known that?

A. Since 1847.

Q State on which side of the island was the main channel of the river at the ordinary stage.

A You mean what is now Kaskaskia Island?

Q No sir, the low-head - McBlures Island?

A Well I don't recollect. I can't state when I knew it first -

Q As a matter of fact didn't the channel run next to St Mary's?

A It run down the Missouri shore.

Q It has always done that since you have known the river since '47,?

A Yes sir.

Q That being the case, on which side of the channel was this McBlures Island.

A On the east-side the Illinois side.

Q How often did you pass this, quite frequently, I suppose.

18
A Well, along in the 40's I passed it - as often as once a month, and for a time in the 50's I was out of the river business until about '58 or '9 and from that on I passed it every week twice a week. I was in the Memphis trade; before that I was in the New Orleans trade and didn't pass it more than once a month.

Q And the channel was always you say - -

A The main channel was always down the Missouri' shore.

Q West of this Island?

A Yes Sir.

Cross-Examination.

Q (by Mr Horner) you first knew it - in '47, as I understood you.

A Yes, that was about my first boat down this way.

Q Was it an island at that time?

A I can't say whether there was an island there or not.

Q You have no very distinct memory of it.

A No, only the channel.

Q But it was entirely surrounded by water - there was water on the Illinois side as well as the Missouri' side?

A This low-head - - I am not certain there was any there; I don't recollect, - -

Q Well - -

A That is as early as that. I think along in the '50's there was an island there. I speak of when I first went on the river.

Q When you went back in '59 and '60 what was it then an island?

A To the best of my recollection there was an island there.

Q Water on both sides of it?

A No, not on both sides I think, only in extra high water; I don't recollect about that.

Q You are not sure about that?

A No, because we never paid any attention to it; we always run the bend.

Re-Examination.

Q You always went around the bend. On which side of the island was that?

A That was on the left of the island,

Q Between it and the Missouri shore?

A Yes, sir; always went right around the bend.

Newman K. Dobbs, sworn for plaintiff testified as follows,
Direct by Mr Hartzell,

Q Where do you reside?

A At Kaskaskia point.

Q How long have you resided there?

A Sixty-two years.

Q How long have you known this Island--We'll call it McBure's Island?

A Well, I knew it ever since it formed there. I knew it when there was an island ^{formed} there before that and washed away; in 144 what island was there washed away.

Q When did you notice one there again first?

A I don't remember what year; it has been there a good while, but still I have known it ever since it was an island.

Q I will get you to state if you know on which side of this island the boats run--the main channel was?

A Invariably next to the Missouri shore.

Q State what you may know of the inhabitants there using this island for pasturage purposes, or otherwise, if you know of anything.

A Well, the people on the point there in Kaskaskia have always used it as a pasture since it has been an island till the last four years, I think, or five years--since that last survey; there was no stock to run out and it hasn't been used since.

Q How long have you known it since it was first pastured?

A Oh, it has been first pastured ever since it has been an island; I ~~don't~~ remember any year, to my recollection, since it has been an island but what the stock would get on it some time in the year. Some time in the year when the water was up--in the spring the water was so high the stock couldn't get there. There might have been one or two years

20 that the water staid up there, but generally, speaking they used it as a pasture all the time.

Q How many years about, Mr Dobbs, have they used it, as nearly as you can get it?

A It has been used for the last -- our's been there twenty years, I suppose -- been there twenty years -- ever since it has been an island.

Q Wasn't that island there in 1861?

A Well, I expect it was, I couldn't say exactly. It has been an island there a long while.

Q Well, you speak of it's being used as a pasture, now what part of the other commons was used for pasturage purposes?

A Before -- No, since the third and fourth surveys were made -- we ran our fence to the river which gave the stock access through that slough to the island.

The Court: Just state that again please.

A The commons up there -- We have had four surveys -- after the first two surveys were made the stock law was in force and we got a permit from the Board -- the people at the point got a permit from the Board those two last surveys have been made since that into a pasture on the island, and they join the pasture fence at the river which included McClure's Island; that was in the last two surveys --

The Court: Joins the pasture next the river on which side?

A On both sides. It joins the river right above St Marys and above the second survey, but they run a lane up the road and let the bank be one line for about a mile; then they came to the lower end of the second survey, the south side of it, and they run the fence due east across the second survey, and ^{then} they run it due north about a mile and got up to the first survey, and then they run it due south and joined what they call the "Okaw" River -- the Kaskaskia River it joined both rivers.

Q The fence extended from the bank of the Kaskaskia River to the Bank of the Mississippi river?

17
A Yes, sir.

Q Was this island included in that?

A This island was in that land that was fenced off.

Q For a pasture.

A Pasture. We used that for our stock there always up to the last three, four or five years.

Q Well, about when was that fence built there, if you can tell?

A Well, it has been a good many years; can't tell just what year it was. It was right after the second survey was made, about the time the stock law took force; somewhere about that time.

Q What was done before that? how was the common lands used before that?

A Before the stock law the leased lands, the commons, the first survey and the second survey, was fenced up; they was all fenced up.

Q Did they have access to these unsurveyed commons?

A Yes, sir.

Q Including the Island?

A Yes, sir.

Q Now, how long have you known stock to run on that McClure Island?

A Oh, I run stock on there, I can ^{say} safely, for the last fifteen years, even since it was - even since stock could go on it; they go on there in the fall of the year when the river gets low -- go there even at this time of the year to get rid of the Mosquitoes; open sand bars part of it and part of it has grown up in willows.

Q You spoke awhile ago about the first island that formed there washing away in '44.

A Yes, sir, there was quite an island formed there and washed away.

Q Now, about how long after that before this island, or the upper part of it, formed, or the part that is there anyhow?

A The first I remember was after the high water of '51.

21

22 It was always a flat-bar. The channel of the river, ever since I can recollect, was always close to the Missouri shore, when the water would be low there would be a bar on the north side run out half a mile some places; was rather a flat bottom.

Q Well, now, what has made McBlures island. what bar? This bar that you spoke of?

A Well, it formed--made up--I suppose the river has deposited on that flat ground there, deposited sand there.

Q Where were the additions made, on what end of the island? Down the river or up the river?

A Oh, well it has been building down the river all the time.

Q Your first recollection of this present island forming there was in 1851?

A I think '51 was the first I remember of any island to be there.

Cross Examination?

Q (By Mr. Homer) You say you can safely say the cattle was run on there for fifteen years last past?

A Oh, yes.

Q That is as far as you go back positively?

A Oh, yes, I am satisfied they went there that time.

Q Whose cattle were they?

A All of our cattle.

Q You are not a resident of Kaskaskia, are you?

A Part of the time I am.

Q You are a lessee not an inhabitant of the town?

A Now's that?

Q You are speaking of the people who had lands leased down there, that is the cattle you are speaking of going over, isn't it?

A Well, I am speaking of the whole bottom, Kaskaskia, and every body's cattle was there and horses.

Q How often have you been on that island the last fifteen years?

A I couldn't tell.

Q Been over there every year?

A No sir.

Q Every two or three years?

A Oh, yes, I have been there to get my cattle every two or three years, sometimes every year and sometimes it would be two years I wouldn't be.

Q Do you know where McClures live, where their corn land is?

A Oh, yes, I know where his fence is.

Q Do you mean to say their land that they have fenced and in cultivation has been used as a pasture for you people, any of it up there?

A Part of it has.

Q During the last fifteen years?

A I don't say the whole, but part of the land we have pastured for the last fifteen years.

Q The land where the corn is, the main land where the house is, you mean that has been pastured?

A No, I say part of that land has been fenced up more than fifteen years.

Q It wasn't used for a pasture of course.

A Part of it, part they have fenced up now has been used for the past fifteen years.

Q This is what is known as McClure's island?

A Not to my knowledge.

Q It has been known as an island?

A Yes, sir, known as an island.

Q What is the first name it was known by?

A The first name I remember was Duggers-Duggers shanty.

Q It was also known as Brewer's Island before it was McClure's Island wasn't it?

A It lay there a good while just a sandbar: Nobody's Island: water run over it every year.

Q They called it an island?

24 A It was an island in low water; sometimes in high water it run clear all over; even up to '58 the water run over it every year every spring.

Q Now as a matter of fact, between the main bank and the land in cultivation to day there is nothing but sand, isn't that so, grown up with willows?

A That's all.

Q The main bank out to where McClure's land is between them is nothing but sand grown up with some brush, willows?

A Willows some places some places water brush.

Q There is a slough running clear through?

A Part of the time there is water in it and part of the time it has been dry this summer.

Q Hasn't there been water in there all this summer - go out there from the grandline, isn't there water there now?

A There is now, but there was one time for a few weeks it was dry just mud. Just along that deep place there by Speckman's corner there is water now, but it wasn't quite full once this summer.

Q How high is the bank next to the water along the Illinois side?

A Oh, it is a big, high bank, as nearly as high as in the bottom.

Q When you get out there that is high land where the corn is?

A Yes, when you cross the low place between you get to high land.

Q Why do they call it an island?

A Well, because in high water the water runs through there; in low water it goes dry.

Q Forty years ago that was so?

A Forty years ago there was no island there.

A Well, Captain Postel says it was there in '47.

A Captain Postel misunderstood you; I am satisfied he meant Kaskaskia Island.

Q Captain Postel spoke of this island in there as being there in '47.

A He misunderstood you.

Q What do you mean by the main channel?

A The deep water where the steamboats run. There never was but one channel in that part of the river since I know it. I have been up and down it for the last forty-five years, and my knowledge of the channel was always—

Q You mean you never knew but one channel for steamboats?

A Yes, sir.

Q There is water all around through there?

A Yes, and now and then the boats run up the short way; it cuts off a mile or two.

Q How long since boats have run up there?

A Oh, several years now.

Q How many years?

A I guess '92 was about the last high water.

Q In '92 it ran between the main Illinois shore and this McBlure's Island?

A I don't say it ran there, but that is the last time the water was high enough to run.

Q You mean it could have run?

A Well, there was a good deal of brush.

Q When is the last time you remember boats running through there?

A Oh, I can't tell; before that brush.

Q Between ten or fifteen and twenty years ago?

A Oh, yes, sometime ago; I can't tell how long.

Q Now, this fence you spoke of ran from the Kaskaskia on the east side across the point to the Mississippi on the west side, the Kaskaskia Island.

A Yes, sir.

Q That is what you mean by fencing in McBlure's Island?

26.
A Yes, sir.

Q It struck the Mississippi opposite St. Mary's.

A It first struck about a mile above St. Mary's and the last survey they put ^{it} down to the south line of the second survey.

Q That would be about opposite St. Mary's?

A Yes, sir.

Q That is away above this island isn't it?

A Yes, sir.

Q You simply cut off the end of the Kaskaskia Point when you fenced across?

A Yes, sir.

Q And on this island we are down below from the point of Kaskaskia?

A Well, it stands right against the commons.

Q But is down below where these fences come out there.

A Oh, this fence was away above this land on both sides, but at the same time it included the land because there was nothing to keep the stock from the commons after they were put in there.

Q Now, do you say that ever since you have known that land that it has gone dry between the island and the main land so that cattle could pass across there?

A As I said before, there might have been one or two years during that time, it appears appears to me like there were one or two times --

Q You are speaking of the last fifteen years now?

A Yes, sir --

Q Well, you say since you have known this island every year it dried down between the main land and this land that cattle could have gone across there.

A I believe there was one or two years they couldn't go across.

Q When was that? You are speaking of the last fifteen years are you not?

A Yes, sir, fifteen years.

Q I want to go beyond that. Did you ever know a time when cattle couldn't get from the main land to the island some

time during the year?

A I say I don't remember, but it appears to me like there was one or two years that the river kept up during the summer.

Q And it has been an island since sometime during the 50's.

A 50 is the first that I remember, or '51-'50.

Q Since 1850 up to now there has always been a time during the year that cattle could get from this land out to the main land.

A Pretty near every year.

Q What did you do with your cattle out there?

A Well, when they would be on the range on the common's they would go there.

Q You said it was only a sand-bar at first.

A Yes, I said awhile ago that cattle would go out there to get rid of the mosquitoes.

Q You are speaking now of where McClure has land in corn?

A At that time there was nothing growing there; it was a sand bar.

George Woodley, sworn for the plaintiff, testified as follows:

Direct by Mr Hartzell.

Q Where do you reside?

A On Kaskaskia Island now.

Q How long have you resided there?

A Since 1856.

Q How long have you known ^{this} island which Mr McClure now claims?

A Well, along in the 60's sometime is the first time I was ever over it; I don't remember what year but in '60 some time we went over there and drove some cattle off.

Q Well, now, how long have you ^{known} this island to be used for pasturing purposes, stock going on it from the common?

A Sometime in the 60's, I couldn't tell just what year - since - it was during the war there was a lot of us went over there.

28 on horse-back: we had a lot of cattle over there and we went over on horse back and drove them off.

Q State if you know of stock running over there after that.

A Oh, yes, I have driven cattle off of there lots of times.

Q About how much of the time, now, since there was no stock been running over on that island?

A Well, I don't know. I believe I would be safe in saying half the time until this last four years when we had no stock up there.

Q Since the stock law was in force?

A Yes, sir.

Q Now prior to that time?

A Well, before we had any stock law we had the big field all fenced off to itself, when the commons was first surveyed off, and our cattle before the cutoff all went across and got out on those sand bars to get away from the Mosquitoes, on them tow-heads.

Q Did that include the island?

A Yes, been over there several times. We have lost some - I have myself - get on there and we couldn't get them off.

Q Now what do you know about the main channel of the river there and where it has run since you have been there?

A It always run on the west side of that tow-head, we called it in them days, that is next to the Missouri shore. In high water I have seen boats run up there.

Q Can run over most of the commons land anywhere in high water?

A Yes, sir.

Q Now, what was the condition of the commons as to water being on them when the boats would run up through that cut-off?

A Why, we always called it generally pretty high water.

Q What proportion of the commons, about, was covered with water when boats could run that way, would run through the cut-off?

A Around Kaskaskia there was there's field, the first survey, would be right smart of a cut-off, and this fourth survey was covered with water; but the banks have got higher, and on the west side where the river now runs it has filled up there and the water don't ^{get} in so quick.

Q Do you know about when this fence was built from the Kaskaskia River to the Mississippi, fencing off the unsurveyed commons?

A I guess about '82 or '83, I ain't sure; one of the two years though.

Q Well, why did it become necessary to build this fence?

A They enforced the stock law on us, you know, and we built this fence so we could have pasture. A good many of us had stock but no place to keep them.

Q Did you ever have any conversation with any of the McClures in reference to this island?

A No, sir, never.

Q When you first went on the island was there a house on it?

A I think there was a little shanty on it the first time I ever was on it; a little log cabin.

Q Was there any one living in it?

A I couldn't say for certain. There was nobody around the shanty when I was there.

Q You didn't see anybody?

A No, sir.

Q Was the land under cultivation?

A Not them days, no, sir.

Q Not at that time?

A No, sir.

Q About when was that now?

A That was along about in the '60's sometime. I don't remember just what year.

Q Was it during, before or after the war?

A It was during the war, I think, that was the first time I ever was over there; there were five or six others and we drove some cattle. It was in '60 sometime, I don't know

exactly what year. I guess, maybe, '63 or '64. Must have
have been '63 or '64, because Cavonauighs had already moved
up on their place: they built-in '62.

Cross Examination.

Q (By Mr. Horner) You went ^{on} here about (indicating)?

A Yes, sir.

Q How did you come to get way up there?

A That is the way we went to drive the cattle generally.

Q You drove them off where?

A Off the tow-head there.

Q It is known as an island, isn't it? Always called an island?

A Been called an island since that.

Q Wasn't it known as Digger's Island as Dobbs said?

A I have heard it called that.

Q Brewer's Island?

A I have heard it called that, but there with us we always
called it the "tow-head".

Q Isn't "tow-head" an island?

A I expect so, I don't know.

Q It is surrounded by water?

A Yes, sir.

Q When it was first called tow-head it was surrounded
by water?

A Yes, sir.

Q That is what you mean by tow-head?

A Yes, sir.

Q Was water on it that time you first went over horseback?

A Well we waded across about knee deep to the horses.

Q Couldn't get across on dry land then?

A No, not then, but I have went across dry footed.

Q When you had gotten over there to what you called the tow-
head you found pasturage?

A Yes, sir.

Q You say the upper end of the chute back there has been
filled up so that the water don't get in as easily as it used to.

A Yes, sir.

Q You said water could get in there (indicating), much more easily than it can now.

A Yes, sir.

Q Always water going through there for the last ten years most of the time, hasn't there?

A Yes, sir.

A Yes, sir.

Q Most of the year?

A Well, always generally in the fall when we went to drive our cattle up there.

Q You found water there then?

A Found sometimes a little water, yes, sir.

Q Fall was the time you usually drove your cattle up.

A Yes, sir.

Q You know the particular land the McClures have in possession there under cultivation?

A No, sir, I don't know that.

Q Don't know where it is?

A No, sir.

Q Where it is they claim possession?

A No, sir.

Re-Examination.

Q The water running through the chute there you spoke of awhile ago, you said there were times you crossed the water and sometimes you wouldn't. That depended upon the stage of the river, didn't it?

A The stage of the river, yes sir.

William L. Cohen, sworn for the plaintiff testified as follows:

Direct by Mr Hartzell.

Q Mr Cohen, I will ask you to state when you first saw this island or low-head where the McClures are now located?

A The first I noticed of it was about the fore part of the war, along about '62, I guess, or '63.

32 Q On which side of that island, or low-head was the principal channel of the river?

A On the Missouri side.

Q Now, state all you may know about the use of that island, what it was used for by the inhabitants of the point now the island.

A Well, they used it for farming and pasturing both; farmed part of it and pastured some of it.

Q Which, the island?

A You mean McClure's Island?

Q Yes, sir.

A Oh, I don't know; lately some folks been working it.

Q Do you know what the inhabitants of the commons there, the lessees, whether they pastured their stock or allowed their stock to run over on it?

A Why, we turned our stock out and it went down in the woods there; the upper end of the island was all clear and the lower end all woods, and they would often go on McClure's Island, or Dugger's whatever you call it. I know I would always go over there once in a while to look after my stock. The first time I went through was the fall of '72.

Q The stock was then running on it?

A Yes, sir, the stock ran there. I remember distinctly I went to where they were getting out logs from the river once and I went to the island to look for the stock; I think it was along in October, along in the fall some time.

Cross-Examination.

Q (By Mr. Horner) Why did you call it an island at that time?

A Well, everybody called it an island: there was water around it the biggest part of the year. In the fall when the river

got down it was fordable, and sometimes dry.

A ^{It wasn't often dry?} Good deal, from the fall to the spring.

Q You say it could be forded.

A We could ford it early in the fall. Then it would get dry some years and some years it wouldn't quite get dry.

Q It was fordable but not often dry?

A Well, generally when the river got down late in the fall it would get dry.

Q You mean during all these last twenty-five thirty or forty years since you knew it?

A Well, the first I noticed it being dry through there I went to Kaskaskia to farm, it was either the year of 1866 or '71. I didn't have much stock the first year I went there, till I was there four or five years; then I began to have some stock and treated it as the balance of the people did. The first time I looked for the stock across there was the fall of '72, and I went over--

Q How did you go over there?

A Over on horse-back.

Q There was water there, then, wasn't there?

A Yes, sir, there was water-- which I crossed.

Q And your cattle had gone over through the water.

A Yes, I suppose they did. Well, I didn't find them then, but found them along the year afterward and drove them across.

Q It was always known or called an island, wasn't it?

A Yes, sir.

William R. Burch, sworn for the plaintiff testified as follows:

Direct by Mr Hartzell.

Q Where do you reside?

A In Kaskaskia precinct.

Q On the Island?

A Yes, sir.

Q What is called now

A What is called now the Island.

Q How long have you lived there?

A Since 1847.

Q State what you may know in reference to the island in controversy in this case.

A Well, I don't really remember when there was no island there.

When I was a boy I used to hunt-down in that country. When the island first-formed there was nothing but small willows on it; I suppose that must have been about '52, '53 or '55, along there about, maybe '56 or '57; I remember when the willows were only two or three years old, small willows.

Q Well where was the main channel of the river?

A Well, I think in 1849 and '50 probably, the boats went up on this side, the north side of the island. I know there were wood-yards there several of them, and they sold wood, and I think boats went up through that; but after the flood of '51 they always went on the other side, excepting in high water.

Q Well, do you know about any stock being pastured over there?

A Yes, sir, In the year 1866 I and my brother bought a lot of stock-- in fact, we bought them from my father-- And we had, I suppose, fifty or sixty head of stock mixed cattle, some young and some old and so on. Well that summer they strayed over and got onto that island-- low-head, - or whatever they called it; there was nobody living there, and the water kept up pretty high that year, so they staid there all that winter. It was too high for them to come across onto this side; and there was a man discovered them there John Binney, and took the stock up as strays, and when they brought them over I discovered they were mine, mine and my brother's; That was in March, '67. The water was about three feet deep and when we went after them they had to ride a horse and tie each head of stock to a rope and get them across that way. After that, though the river always got lower than that; went dry generally every year after that.

Q There were times when it would be dry?

A Frequently it would get entirely dry, and then some seasons it wouldn't get quite as low as others, the channel maybe shallower.

Q Do you know about that fence that was built-fencing off

the commons, the unleased commons?

A Yes, sir, that was about the year, I suppose, of '77 or '78 along about that time, on account of the stock law having been passed, incorporated in our courts, and the people got permission from the Board of Trustees of the Commons to make a fence from the Mississippi on the west to come around to the Okaw River to go along its bank so they could turn stock on the southern side so they could range over the whole country.

Q Was this island included in that arrangement?

A Oh, yes, that was included of course.

Q Permission was obtained of the Board of Trustees for that purpose.

A Yes, sir, we got up a petition and asked them to permit us to make that fence.

Q Were there any people living on the island after you started out there after your stock?

A Well, at that time, in '66 or '67, there was nobody living on the island then at all.

Q How often have you been over on that island, frequently, I suppose?

A Well, when I was young, from 13 to 15 years of age, I was over there very often; used to hunt; the hounds would often run deer over that land.

Cross-Examination.

Q (by Mr. Homer) Judge, you know where McClure lives now, the land in controversy?

A Yes, sir.

Q Is this island you are speaking of where is it from McClure's residence, where is the land?

A Well, now, just to be positively perfect about the truth of where it is at I wouldn't say, because I was there so irregularly in the last twenty years that it might have washed away some of this land; this original island I spoke about may have been washed off --- but then I

34 I know where the houses are at now.

Q As a matter of fact, the island you are speaking of now was pretty well around towards St-Mary's on the grand line.

A When I first knew the island it was a small piece of land, rather long, probably half a mile; but since that time it has been built up, probably three or four miles long; it has been built up and down both.

Q Now, this island you speak of, wasn't around the grand line towards St-Mary's.

A Well, that big timber on the original--I know I was over there probably about a year ago or so, in going over I had to go afoot, couldn't drive very well there, and I noticed a grove of timber, and I just supposed that was the original island from the fact of that timber being big.

Q Is that where McBlure lives?

A Well, McBlure lives on the west end, the better part, I am better acquainted with this, it is the older part of the island; where Charley lives is the newer land, made later than when I first knew it.

Q What year was it they had woodyards there?

A That was in 1849 and '50, Sam McDonald, John Drew and Vincent Brewer.

Q Was that on the Illinois side opposite this island?

A Yes, sir, it was opposite--Well, this wood-yard was farther down than the island gets.

Q It ran between the island and the Illinois side?

A Well, the island I knew and speak of is about opposite the grand line.

Q And the boats run in between there--did the boats run in between the island you speak of and the wood-yards?

A When this boat run along there this island wasn't in existence at that time; that was in '49 and '50: these islands wasn't made then; they came afterwards, I think the witness has stated here that it was about after

the flood of '51.

Q When you speak of the main channel being on the Missouri side you mean the deeper channel; there was a channel on both sides.

A Yes, sir, channel on both sides.

Re-Examination.

Q The channel on the Illinois side was generally fixed by high water, wasn't it?

A I think it was.

Q You are acquainted with Mr. McClure, are you?

A Yes, sir.

Q Ever have any conversation with him in reference to this island?

A Yes, sir.

Q State what it was and how it was brought about.

A Well, I was deputy assessor some two or three years ago, three years ago, I believe it was, and I went over there to assess these McClures. I went to see William McClure first; he objected to giving his property, claimed that he didn't live in Illinois, that this land belonged to Missouri on account of the cut-off or something, I don't know what he did say -- said that his father said that that was the case; I told him that if he would send for his father -- he lived on the Missouri side -- I would wait till he came back. So I did but the father didn't come, and he came back and said it was all right and gave his property in then, personal property.

Q Did he say anything about any claim to that island?

A Well I don't think I talked with him about the claim to the island; don't remember that I did.

Q Well, do you know of these young men voting in Illinois?

A Yes, they voted up at our precinct. We consider it all our precinct. He voted there, I think two or three times the last four or five years back, six years.

William Selzer, sworn for the plaintiff testified as follows:

30 Direct by Mr Bartzell.

Q Where do you reside?

A Kaskaskia.

Q How long have you lived there?

A About twenty-seven years, in that neighborhood.

Q Do you know this island in controversy here?

A I don't know anything particular about the island; I have only known it the last seven, eight or ten years.

Q Acquainted with the McBlures?

A I am.

Q Ever have any conversation with them in reference to any part of this island?

A I have.

Q State what it was.

A Well I was deputy assessor about six years ago; I went over. There met Mr McBlure and told him my business. He said that he didn't think he could be assessed, that the island belonged to Missouri. Well, we parried around a little while and finally he came to the conclusion that he would give his property in, and he turned in the personal property. As deputy assessor I asked him "Have you any real estate?" and he said he had not.

Q Did he swear to the schedule?

A He did, sir. I think it was six years ago; it was during Alfred Adams' term as assessor. It is either five or six years. I may not be positive about it but the schedule will show for itself; it is down in the office. It maybe under Allen Short's first term; I believe I am mistaken about that.

Q He succeeded Mr Adams.

A Yes, sir, it is one year later; just one year later.

Cross-Examination.

Q (by Mr Horner) Were you assessing real estate?

A Yes, sir. I asked him if he had any real estate and he said he had not.

James S. Douglass, sworn for the plaintiff testified as follows:

Direct by Mr Hartzell.

Q Mr Douglass, what official position do you hold?

A County Surveyor for the County of Randolph.

Q How long have you been County Surveyor about?

A I believe about fifteen years.

Q I will ask you what you know about the survey of this island here.

A I made a survey of this island in dispute.

Q Will you please show to the Court what part of it is occupied by the McClures?

A Yes, sir, I believe I can.

Q What part of it, Mr Douglass, was occupied by William McClure, indicate ^{it} by numbers?

A Well, it is opposite 68 of the fourth survey; right straight down is where the house is -- that is William's.

Q The West half or the east half of the lot?

A Well it isn't on lot 68.

Q Is it on out-Lot-No. 1?

A Yes, sir, about opposite 68.

Q Well he was in possession of out-lot 1 or part of out-lot 1?

A Yes, sir.

Q About how many acres?

A Well there was about five hundred and sixty-eight acres; that included both ^{of the} buildings.

Q I mean that he was in possession of, that he was occupying.

A Well, I don't remember just exactly.

Q About.

A Well, I don't know, maybe thirty acres, I don't know, in cultivation right at his house.

Q That is on the west part, is it?

A Very near the middle, counting up and down the river, the length of the island, a little nearest the west end of the island.

Q According to your statement it would be on the west half of out-lot-1.

A Yes, sir.

The Court. Is the island known as the west-half of the out-lot-1? Is that the same thing as to say the west-half of the island?

A Yes, sir.

Q Does that out-lot-1 include the whole island?

A No, sir, not what you might call the whole island because a portion of it I surveyed, and you might consider the island was not subject to cultivation or anything much. Out-lot-1 included most of the island that might be considered subject to cultivation.

Cross-Examination.

Q (by Mr Horner) What is out-lot-1 there, one of these squares?

A Runs from here to here (indicating). I have designated those lines by pencil marks; I didn't have very much time to work on it.

Q What does this line represent there?

A This represents the present bank of the Mississippi River.

Q What does this line represent here?

A That is my line. I made the survey for the Trustees at this date. Part of it was a sand bar, and a bar down here (indicating).

Q Is there water here (indicating)?

A No, sir, wasn't at the time.

Q The outside of this line, water along there?

A Yes, sir.

Q You didn't measure the distance across here to the Missouri shore you don't know anything about that.

A No, sir.

Mr Hartzell. We offer Mr Douglass' plat in evidence.

1st Survey
Kaskaskia Commons

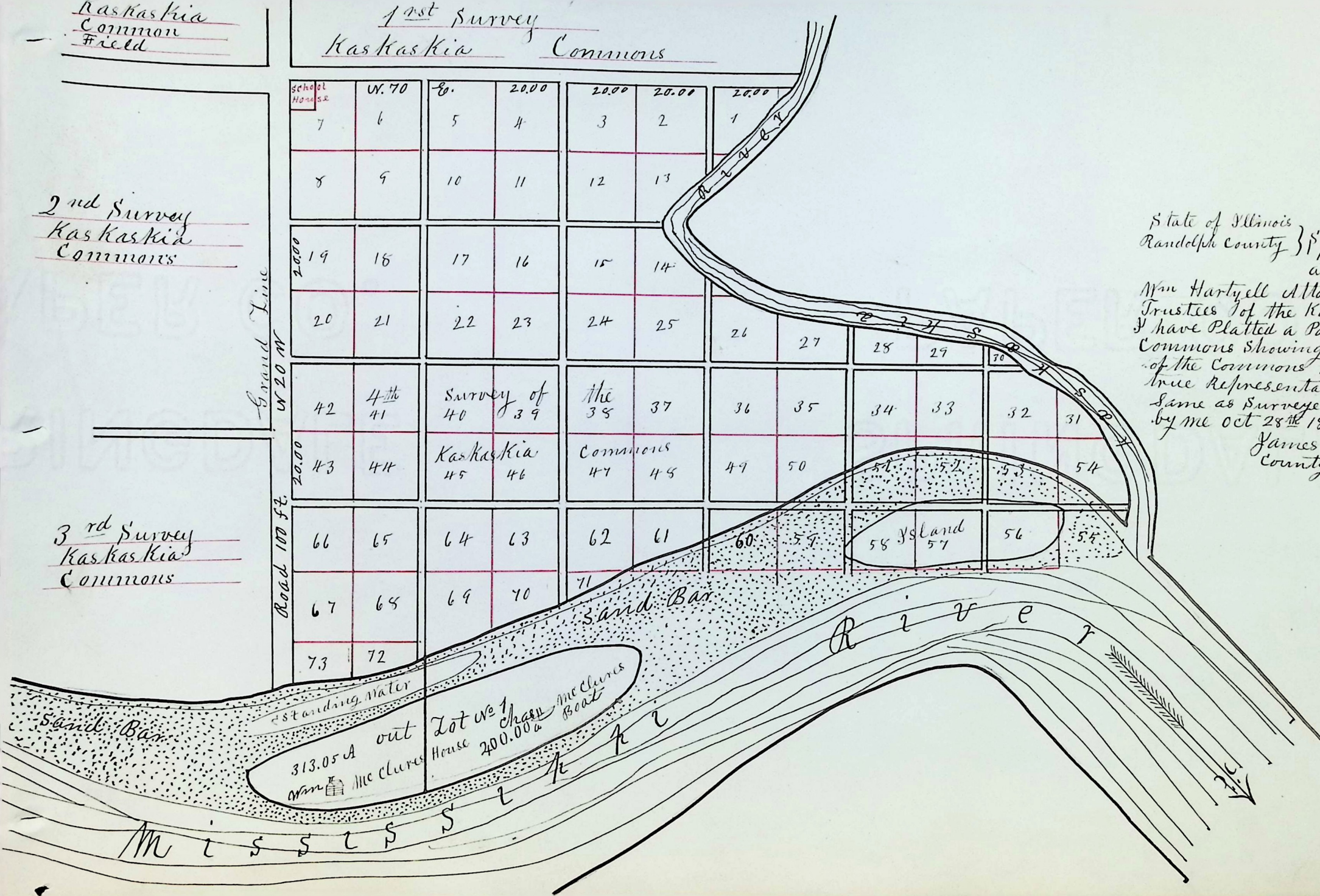
2nd Survey
Kas Kaskia
Commons

3rd Survey
Kas Kas Kia
Commons

State of Illinois
Randolph County } ss

at the Request of
Wm Hartwell Attorney for the
Trustees of the Kaskaskia Commons
I have Platted a Part of said
Commons showing out Lot No one (1)
of the Commons of which is a
true Representation of the
Same as Surveyed and Platted
by me Oct 28th 1893

James T. Douglas
County Surveyor



37

A Merand, sworn for the plaintiff, testified as follows:
Direct - by Mr. Hartzell

Q Where do you reside

A Well, the call it - Pujol -- Dozainville.

Q Now what is now termed the Kaskaskia Island.

A Yes, sir.

Q How long have you resided there on Kaskaskia island?

A Since 1841.

Q How long have you known this island that the McBlures are in possession of, or part of which they are in possession of?

A I don't exactly remember; I was around in there often. I was on part of that island, I don't know exactly whether it is where McBlure is or not, in '67. I heard there was some stray stock there belonging to John Dowling, he was making some inquiries for them, and I went over to see for him.

Q How often have you been on that island since that?

A I don't think I have been on there only last spring when I was deputy assessor.

Q Did you have any conversation with the McBlures at that time?

A I went over there last spring sometime; that is about the conversation I had with the McBlures.

Q What character of property did they give in?

A Gave in personal property.

Q Give in any real estate?

A No, sir, no real estate; gave in their personal property.

Q Did you inquire of them about their real estate?

A I don't remember whether I did or not, I don't think that I did. I told them my business, told them I wanted to assess them, to give in whatever they had.

Q And they just listed the personal property.

A Yes, sir. I didn't think they had any real estate there and didn't call for any.

No Cross-examination.

Plaintiff Rests.

44
And now the defendants, to sustain the issues on their part, offered the following evidence, that is to say: Mr Homer. We offer first the deposition of Josiah H McAuley.

Objected to by Plaintiffs attorneys.

Trustees of Kaskaskia } In the Circuit Court
Commons } County of Randolph
vs. } State of Illinois.
Charles McClure }

Deposition for Defendant.

Appearances:

For Plaintiffs: R. E. Sprigg, Esqr.
For Defendant: R. B. Whitledge, Esq.

The attorneys for plaintiff & defendant herein being present agree & consent that the testimony taken herein in the case of Trustees of Kaskaskia Commons, vs. William McClure may be used in the case of Trustees of Kaskaskia Commons vs. Charles McClure.

The deposition of Josiah McAuley, of the city of St. Louis & State of Missouri a witness of lawful age produced, sworn & examined, upon his corporal oath on the 31st day of August in the year of our Lord 1894, at my office 506 Olive St. St. Louis, Mo. by me, Edward A. Feehan, a commissioner duly appointed by a *dedimus potestatem* issued out of the Clerk's office of the Circuit Court of Randolph County in the State of Illinois, bearing test in the name of Wallace Snook Esqr. Clerk of said Circuit Court with the seal of said court affixed thereto & to me directed as such commissioner for the examination of said Josiah McAuley, a witness in a certain suit & matters in controversy now pending & undetermined in the said Circuit Court wherein Trustees of Kaskaskia Commons are

39

plaintiffs & Charles McClure is defendant, in behalf of the said defendant.

The said Josiah McAuley being first duly sworn by me as a witness in said cause: previous to the commencement of his examination, to testify the truth as well on the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff & defendant, so far as he should be interrogated testified & deposed as follows:

On direct Examination by Mr. Whithedge:

Q(1) State your name age place of residence & business?
A Josiah McAuley, 54 years 1321 Krattan St, St Louis
Conductor on a street car.

Q(2) Where did you reside before you came to St. Louis?
A Perry County, Mo.

Q(3) What year did you move to St. Louis?
A I have been here 7 or 8 years.

Q(4) State whether you know of an island in the Mississippi River between St. Marys Mo. & Chester Ill. called Brewer Island?
A I do.

Q(5) When did you first know that island?
A I guess about 1871.

Q(6) State whether or not you ever owned any portion of the said island, if so what portion?
A The middle portion.

Q(7) How did you acquire the ownership of that portion?
A I traded for the claim that Vince Banell had in the fall of 1871.

Q(8) How long did you own & occupy that claim?
A I made a crop in 72 & 73 & my wife did in December 1873 on the island.

Q(9) How did you dispose of that interest?

A I sold out to Dr. Strong of St Marys in 1874

January or February.

45

- 46
Q 10 Did you ever repurchase & when & of whom?
A I repurchased that in 1877 from James A. Blanford.
- Q 11 State whether you moved back on the claim?
A I moved back in Spring of 1877 & I fix that date by a school certificate in my possession & I fix the other dates by the age of my children.
- Q 12 Describe the relation of that island in reference to the land & sloughs running through it?
A It was a long island with two sloughs angling across it nearly east & west. I purchased the middle part. The upper part was inhabited by Vince Panell and the lower part was occupied by Vince Brewer.
- Q 13 When did Mr Vince Brewer first settle on the lower part?
A In 1870 or 71, I think in the Spring of 71.
- Q 14 How long did he live on that portion?
A He left between 77 and 80.
- Q 15 To whom did Mr Brewer sell & when?
A I traded for that too about 1879.
- Q 16 ~~He~~ when did you sell your interest in the Island & to whom?
A It was in 1881, to Remy Sides.
- Q 17 What was the nature of the transfer.
A It was by deed.
- Q 18 Look at that deed & see if it was the one you made at that time?
A Yes, that is the one.
- Defendants counsel offers in evidence the Deed identified by the Witness and counsel for plaintiff objects to said introduction for the reason that said deed has no signature nor acknowledgement. Said deed purports to be executed Sept 13, 1881 said deed is marked Exhibit - "A."
- Q 19 State whether yourself & wife executed & acknowledged that deed at the time of its execution
A yes, we did.

Q 20 State what officer took the acknowledgment.
A I don't remember.

Q 21 During the time you had possession of the island or any part what kind of a title did you claim?

A I claimed title by possession

Q 22 During the time you so claimed the island what sort of possession did you have of it & in what way was the possession manifested?

A I used it - cultivated & pastured it & sold part of the brush off it - to the Government to put in the ^{spring} after I was there the second time.

Q 23 State where you resided during the time of your possession of the island;

A I resided on the middle part with the exception of a few months.

Q 23 Where did Mr Brewer reside when he owned the lower portion.

A Most of the time he lived on the lower part but the last year or two he moved up on the ridge where I was because his house caved in

Q 24 What claim of title did Mr Brewer have to his portion.

A The same as I had.

Q 25 What acts of ownership did he exercise.

A He cultivated it

Q 26 What portion was fenced?

A No part was fenced there were fences running through A fence separated me from the upper part it was not there all the time.

Q 27 How was the water

A There was water all around it all the time

Q 28 State whether during the time you occupied the island the water ever became low enough at any season to permit stock to pass to and from the island;

A I never knew of any to pass.

Q 29 State whether a fence was necessary for the purposes for which

- Q 48 you used the land?
- A We had very little stock & did not need a fence, we had a little lot for the stock to stay in. There was no crop after the corn crop in the fall.
- Q 30 State if that paper is like the island as you occupied it?
- A It is as near as I can judge I drew it.
- Defendants counsel offers the paper referred to Marked Exhibit "B," in evidence.
- Q 31 State what portions, parts of the island as marked on Exhibit "B," you owned & conveyed in your deed marked Exhibit "A,"
- A No 1. No. 2 & part of No 3.
- Q 32 State whether or not these parts referred to are the same land described in the Deed, Exhibit "A."
- A Yes sir it is.
- Q 33 State whether or not the island or inhabitants were ever assessed while you were there by the State of Illinois?
- A They never were to my knowledge.
- Q 34 State how you obtained the meter & bounds as described in deed marked Exhibit "A,"
- A Sides and I measured it off I don't remember how we got the bounds unless from J. B. Dunprie. I had a small compass & we measured it ourselves. We measured the upper line between me & the part above.
- Q 35 State what was the nature of your claim with the title & what the nature of your possession during all the time you were there
- A I claimed absolute ownership. It was wild land & I went & cleared it & pastured it & raised crops on it & built & resided on it.
- To each and every question above written & the answers thereto, plaintiffs by attorney enter their objection.
- Cross Examination by Mr Sprigg.
- Q 18 You bought from whom?
- A Vince Parnell.

Q 2 Did you get a deed?

A I did not.

Q 3 you simply went into possession?

A Yes, sir

Q 4 When

A In 1871 I bought

Q 5 How much land was cultivated when you bought & went there.

A I don't know that there was any. there was a water melon patch around the house. the house was not covered you could hardly call it a patch, there were a few vines planted. I suppose to designate possession.

Q 6 you lived there continuously how long?

A $2\frac{1}{2}$ years the first time from the Spring of 72 to Jan 74

Q 7 How long were you away before you went back?

A Went back in 77, it was about 3 years.

Q 8 Who occupied the place during your absence?

A I sold it to Strong; he sent Leclair down to work on it - when I went back there was no one on it - the water had got up & there was no one living on it.

Q 6 How much did you pay for it?

A It was mostly a trade I gave my watch for it. I bought other things with it.

Q 7 What was the watch worth?

A \$20.

Q 8 you bought the other part from some one else?

A Yes from Brewer between 78 & 79.

Q 9 Did you get a deed from Brewer

A I did not - I only got possession

Q 10 How much land that you got from Brewer was improved?

A About 20 acres more or less.

Q 11 What did you pay Brewer?

A That was a trade too it amounted to \$100 maybe more.

Q 12 From whom did you buy the meet?

A From Brewer.

Q 13 What did you pay for that?

A I traded him a piece of mine for it.

Q 14 Did you get a deed or exchange deeds

A No sir No deeds passed

Q 15 Was any of that improved

A 4 or 5 acres.

Q 16 This last piece referred to you got from Brewer you acquired before you purchased the main piece from him?

A Yes sir.

Q 17 you then undertook to convey all this land to Sides?

A Yes I sold him my title, my right of possession & he insisted on a writing. He would get what title I had if I had any. Sides knew I only had possession.

Q 18 Did you ever pay pay any taxes to any one on this land.

I did not.

Q 19 Ever have it listed for taxation in Illinois or Missouri?

No sir

Q 20 State whether that piece of land was situated nearer to Missouri or the Illinois shore.

A I couldn't say. It was between the two.

Q 21 The main river & channel was between the island & Missouri shore.

Yes sir Boats never ran behind it except in high water.

Q 22 Ever see a boat run between the island & the Illinois shore.

Yes sir many of them

Q 23 When the water was high enough to permit boats to run between island & Illinois shore, was not your island submerged by water partially

A The water was up in the sloughs; the boats ran around there when there was no water on the island.

Q 24 State whether in ordinary stage of water boats could pass

between Island & Illinois shore?

A The river was rather high when the boats passed there
Q 25 The land adjoining this island on the Illinois shore belonged to the Trustees of Kaskaskia Commons did it not
A So I understood.

Q 26 As the main body of water receded from the former channel of the Mississippi river into the Okaw. State whether or not this island did not gradually increase in size.

A I think it did in the lower end.

Q 27 Does the purported consideration in this deed made by you to Sides express the actual amount of money received by you.

A There was no money received; I traded it for a farm Sides had near Longtown, Perry County.

Q 28 What was the farm worth

A I sold it for over \$900. there was a mortgage when I got it which I assumed Mortgage was \$700 I got something over \$100 for the island I don't remember the exact amount of the mortgage

Counsel for defense object to the questions propounded by counsel for plaintiff.

State of Missouri }

City of St. Louis }

Josiah McCauley

Sworn and subscribed to before me this 31st day of August 1894

Edward A. Feehan
Commissioner

State of Missouri }
City of St. Louis }

I Edward A. Feehan Notary public of the city of St. Louis and State of Missouri a commissioner duly appointed to take the deposition of the said Josiah McCauley a witness whose name is subscribed to the foregoing deposition do hereby certify that previous to the

commencement of the examination of the said Josiah
McCauley as a witness in the said suit between the said
Trustees of Kaskaskia Commons, plaintiffs and the
said Charles McClure defendant he was duly sworn
by me to testify the truth in relation to the matters
in controversy between the said Trustees of Kaskaskia
Commons ^{Plaintiffs} and the said Charles McClure defendant
as far as he should be interrogated concerning the
same; that the said deposition was taken in my of-
fice in the city of St. Louis & State of Missouri on the
31st day of August A.D. 1894; and that after said dep-
osition was taken by me as aforesaid the interroga-
tories and answers thereto as written down were read
over to the said witness, and that thereupon the same
was signed & sworn to by the said deponent before me
the oath being administered by me as such com-
missioner at the place and on the day and year last
aforesaid.

Edward A. Feehan
Commissioner

Mr Homer. We now offer the deposition of S.E. Strong,
County of Iron State of Missouri.
Objected to by Plfts.

President & Trustees
Kaskaskia Commons,
Plaintiffs

In the Circuit-Court of
Randolph County,

State of Illinois.

^{vs}
Charles McBlure and
William McBlure
Defendant.

The Deposition of S.E. Strong of the County of Iron
and State of Missouri a witness of lawful age, pro-
duced, sworn and examined, upon his corporal oath,
on the 23rd day of August in the year of our Lord one
thousand eight-hundred and ninety four at the office
of Wm. R. Edgar in the city of Ironton in the County of
Iron and State of Missouri, by me Wm. R. Edgar a
Notary Public, duly appointed by a *Declaratus Potesta-*
tum or Commission, issued out of the Clerk's office
of the Circuit-Court of Randolph County, in the State of
Illinois bearing Teste in the name of Wallace Snook Esq.
Clerk of the said Circuit-Court, with the seal of the said
Court affixed thereto, and to me directed as such Notary
Public, for the examination of the said S. E. Strong a
witness in a certain suit and matter in controversy now
pending and undetermined in the said Circuit Court,
wherein President & Trustees is Plaintiff, and Charles
McBlure and William McBlure are Defendants, on the
interrogatories of the said parties which were attached
to or inclosed with the said Commission, and upon
none others. The said S. E. Strong being first duly
sworn by me Wm. R. Edgar a Notary Public as a witness
in the said cause, previous to the commencement of his

57 5-2
examination, to testify the truth as well on the part of the Plaintiff as the Defendants, in relation to the matters in controversy between the said Plaintiffs and Defendants, so far as he should be interrogated, testified and deposed as follows: ---

Interrogatory First. State your name, age and place of residence and business.

Answer to first interrogatory.

My name is S. E. Strong. Age 53 years, and place of residence Ironton Mo. and my business a Physician.

Interrogatory Second. Where did you reside during the time between 1872, and 1880?

Answer to second interrogatory.

I resided in St. Louis, Mo. and St. Marys, Mo. during that time.

Interrogatory Third. State whether you know of an Island in the Mississippi River, between St. Marys Missouri, and Chester Illinois called Brewer Island?

Answer to third Interrogatory.

I do.

Interrogatory Third. State whether or not you ever owned any portion of said Island, and if so when you bought it, what portion you owned, what portion you had in possession of, and from whom you bought and what became of the deed you had for it?

Answer to third interrogatory.

I did own a portion of it. I bought it in the latter part of the year 1873. I owned the middle portion of the Island. I had possession of the middle portion. I bought it of J. McCauley. I had no deed only a written contract from McCauley. This writing was a release of all McCauley's interest and ^{right} to said Island. I do not ^{know} what became of this instrument.

Interrogatory Fourth.

How long did you own the land before, selling it and especially

State whose land you claimed it to be during the time you had possession of it?

Answer to fourth interrogatory.

I owned it a little over two years. I sold it in 1875. I claimed it as my own while I had possession of it. I had paid for it and of course claimed it as my property.

Interrogatory Fifth.

During the time you had possession of the Island or any part of it, what sort of title did you claim to have to it?

Answer to fifth interrogatory.

I had undisputed possession of it. As in answer to third interrogatory I had a written release from J. McCauley the man who formally resided on it and claimed to own it.

Interrogatory Sixth.

During the time you so claimed the Island, what sort of possession did you have of it? In what way was the possession manifested?

Answer to sixth interrogatory.

I had undisputed possession of it. The possession was manifested by building houses on the land, fencing and cultivating the land I pastured a portion of it.

Interrogatory Seventh.

What was the position of the Island during that time with reference to the Illinois and Missouri shores of the River?

Answer to seventh interrogatory.

There was a channel on both the Illinois and Missouri side deep enough for steam boats to pass. And boats did pass on both sides at times.

Interrogatory Eighth.

State whether any person or corporation during the time you so possessed and claimed the Island, set up any claim to it or any part of it?

Answer to Eighth interrogatory.

No person or corporation claimed the portion of the Island I was in possession of during the time I owned and occupied it.

Interrogatory Ninth.

State whether or not the Island or its inhabitants were assessed in Illinois during that time, and if not why not?

Answer to ninth interrogatory.

The island and its inhabitants were not assessed in Illinois during the time I owned a portion of the Island. Illinois did not claim possession of the Island. We paid personal taxes on property on the Island in Missouri.

Interrogatory Tenth.

State to whom you sold the land, or to whom you turned over your right and title, and how it was done, and when, and all about your parting with it.

Answer to tenth interrogatory.

I gave James A. Blanford power of attorney to sell it for me. He sold it to J. McAuley. J. McAuley took undisputed possession of it.

Interrogatory Eleventh.

State any other matter or thing bearing on the title and possession of the Island during the time you owned it; that you may not have already stated.

Answer to eleventh interrogatory.

I will state that during the time I owned a portion of the Island I had undisputed, open and notorious possession thereof, and no one claimed adverse ownership or attempted to interfere with my peaceable possession thereof.

L. E. Strong

Subscribed and sworn to before me this 23rd day of August 1894.

My Commission as Notary
Expires Dec 15th 1897.

Wm R. Edgar Notary
Public Iron Co Mo.

Rea B

45

State of Missouri 3rd. I Wm. R. Edgar Notary Public
County of Iron 3 of the County of Iron and State of
Missouri a Notary Public duly appointed to take the
Deposition of the said S. E. Strong a witness whose name
is subscribed to the foregoing deposition, do hereby certify
that previous to the commencement of the examination
of the said S. E. Strong as a witness in the said suit
between the said President & Trustees Kaskaskia Com-
mons Plaintiffs, and the said Charles McClure and
William McClure Defendants, he was duly sworn by
me to testify the truth in relation to the matters in
controversy between the said President & Trustees Kas-
kaskia Commons Plaintiffs, and the said Charles
McClure and William McClure Defendants, so far as
he should be interrogated concerning the same,
that the said deposition was taken in my office
in the City of Ironton in the County of Iron and
State of Missouri on the 23rd day of August, A.D. 1894;
and that after said deposition was taken by me as
aforesaid, the interrogatories and answers there to, as
written down, were read over to the said Witness; and
that thereupon the same was signed and sworn
to by the said deponent S. E. Strong before me,
the oath being administered by me, at the place
and on the day and year last aforesaid,
my commission as Wm. R. Edgar
Notary expires Dec 15th 1897 Notary Public Iron Co., Mo.

Edgar

Joseph Panel, sworn for the defendants te-
stified as follows:

Direct by Mr. Horner.

Q Do you know this island between here and St. Marys,
Brewer's Island now?

A Yes, sir.

Q Please state when you first knew it?

A Well I have known it all my life. I first lived on there about '69 or '70.

Q Who was in possession of it when you first went there?

A A. J. Panel and Vincent Panel.

Q What portion of the island did they have possession of at that time?

A The upper part.

Q What became of upper ^{part} of the island?

A Part of it is there yet and part is washed away.

Q They were the first persons on the island?

A Yes, sir. The next year George Layton and Bill Tucker settled the middle part of the island.

Q In what year was that?

A That was about '70.

Q Then who was the next person there on the island?

A Why, Macauley, he bought--well, Vince Panel he bought out Hagan, and then he sold the middle island to Macauley; that was about 1871.

Q Did you know Mr Brewer?

A Yes, sir.

Q What part of the island ^{did} he have?

A The middle part, down what is called McClure's Island now.

Q Didn't he have the lower part of it also?

A Yes, sir, Brewer had the lower part and Macauley had the lower part.

Q About what time did Brewer go there?

A I think he went there about '71.

Q What did he do with his?

A Sold to Macauley.

Q Who had possession of the land in the lower part of the island after Brewer sold to Macauley?

A Macauley.

Q How long did you stay on the island?

A Oh, I was on there from about '69 until '73. Then I left.

47
and was gone two years, and then I was on there until '81' off and on, made a crop one or two; lived there backwards and forwards.

Q Now, was there water between that island when you first went on there and the Illinois shore?

A Just as much water on one side as the other.

Q That was when?

A That was in '81: that was my fishing grounds all the time.

Q When you first went on there did the water ever get low enough to go dry, or ever go dry between that and -

A I never saw it; I seen a channel through there all the time I was there up to the time I left.

Q You say you left in '81?

A Yes, sir. In '81 the water was running through there I fished through there, and there was six foot of water.

Q What was the stage of the water when you were fishing there?

A Just common stage of water along in July or August.

Q State whether the cattle from Kaskaskia Commons, when you first went there, ranged on that island.

A No, sir, never seen no cattle from Kaskaskia Point, never was bothered with them from Kaskaskia. All the cattle I seen there was boatid across from Missouri there; we boatid them from the Missouri shore but never from the Illinois shore.

Q Isnt it a fact that Macauley, and others who owned the island, took cattle for the purpose of pasturing on that island and got pay for it?

A Yes, sir.

Q They ferried cattle over?

A Ferried cattle over every fall.

Q State about the fences on that island.

A They had a little lot to turn milk cows into, and a lot of horses, that was about all the stock they had on the island - just to keep them from running over the the island.

57

Q No occasion for a fence?

A Only for their own purposes; no cattle could get to it from either shore.

Q Did you ever measure the distance between that island from the Missouri shore to the Illinois shore?

A Yes, sir.

Q State what it was, what shore was the island closest to when you measured, the Illinois shore or the Missouri shore?

A Well, it was a fraction under a quarter of a mile nearer to the Missouri shore -- or fraction over, I forget which well, it was a good deal closer to the Missouri shore than the Illinois shore.

Q Well, to the best of your recollect when did the water first begin to get low enough so they could ford it during low water between the Illinois shore and this island?

A I never saw it that way until now. I left there in '81 and wasn't back there till a couple of years ago, and it never got that way until this cut-off came through. It isn't dry now, because we caught fish out of there no more than a week ago: there is a slough in there and fish in it.

Q Is it a fact that in an ordinary stage of water the water runs all around it now, isn't that a fact?

A Yes, sir.

Cross-Examination,

by Mr Sprigg.

Q How long did you live on that island?

A Oh, five or six or seven years.

Q How old are you?

A Forty-one.

Q How long have you known the island?

A Known it for about twenty-five or six years.

Q You were a young boy when you first knew that island?

A I was fifteen or sixteen years old.

Q How did you first become acquainted with it?

A My brother settled it.

Q Did you go with him to settle it?

A No, sir, we lived right within four miles of it.

Q Did you go with your brother?

A I would go over there.

Q Stay over there?

A Sometimes, and go backwards and forwards.

Q When was it you measured this?

A In 1878.

Q What was you trying to do when you came to measure it?

A Well, you see Caldwell in Mo had a piece of land that caved in the river; they knew how much land they had, and they measured it - and his land went near to the centre of the island, that is tillable land from bank to bank; and they wanted to see how far his land reached on the island - -

Q Did he claim the island?

A Well he was going to.

Q Did it go far enough the line?

A Yes, sir, it would take a good deal of the upper island then.

Q How did ~~you~~ happen to come and measure, then, to see which was the closest to the opposite bank, whether Illinois was closer or Missouri?

A He wanted to see what was the main channel, to see whether it belonged to Illinois or Missouri also.

Q Think the survey over here was going to claim it on this side?

A Wanted them to claim it on this side.

Q Now when we claim it on this side you want to put it over in Missouri.

A It was bound to be in Missouri then.

Q When he was having it surveyed and wanted it in Missouri you proved to him it was in Illinois.

A They was no account surveyors, just nobody but farmers.

Q Now when we get after it you say it was a good deal closer to the Missouri shore than the Illinois shore.

A Yes, sir, and it is yet.

Q you did all that in one measurement?

A yes, sir.

Q Now, you say the closest you can get at it is it was either half a mile closer to either shore or a quarter of a mile, you can't remember which.

A No, sir, a fraction over or under a quarter.

Q A fraction under a quarter or a fraction over?

A yes, I don't remember which.

Q How many rods was it?

A I don't know.

Q How far from the Missouri shore?

A I don't remember.

Q How far from the Illinois shore?

A I don't remember that exactly.

Q How do you get at it then?

A I know that Macauley said it was a quarter closer to the Missouri shore than the Illinois shore, a quarter of a mile the tillable land.

Q You are telling what he told you, now?

A I was carrying the rod pole.

Q How many rods?

A I don't remember now how many rods.

Q How many rods in a quarter of a mile

A Eighty--forty or eighty.

Q How you lived there six or seven years?

A yes, on there and off.

Q You wasn't there the last year or last week?

A Been on the island last week.

Q Fishing?

A yes, sir.

Q How did you come to go over there?

A Why just got in the boat and went over.

Q Who invited you?

A Nobody.

Q Alone?

31
A No, sir, a party of ^{us} went over to eat watermelons.

Q To freshen yourself up for this occasion?

A No, sir, I don't know particularly on that account.

Q Now, didn't you just go over there to kind of survey and look around?

A No, people go there wherever they please as long as they behave themselves.

Q Any of these other witnesses along?

A No, sir.

Q Was Mr McClure along?

A He was ^{at} his house.

Q He invited you: didn't he?

A No, sir.

Q He picked out pools and places to fish between the Illinois shore and that island, and that is what you did when over there.

A Wasn't over there to get a mess of fish.

Q Say anything about coming here?

A Of course we were notified to come knew that before we went over.

Q You came around that way first. How many years did you live on that island?

A Five or six or seven years.

Q How many acres were in cultivation then?

A On the whole island? -- I expect there was seventy-five or a hundred acres.

Q Was that on the upper piece or lower?

A On the whole thing.

Q How much on the upper piece?

A About fifty on the upper piece.

Q Did you know a man by the name of Brewer that used to live there?

A Yes, sir.

Q Ever have any talk with him about the island?

A Well, he was on there the same time I was.

Q Were you over there when he was trying to enter the island, trying to get some sort of a claim to it?

A No, I wasn't there then.

Q You know that he did that?

A No, sir, I don't know that.

Q Did you ever pretend to own any of it?

A No, sir, my brother and my father.

Q What part did your father pretend to own?

A The upper part, my brother's part.

Q Did your father buy from your brother?

A Yes, sir.

Q What did he give him?

A A Hundred Dollars.

Q For how many acres?

A For the whole thing -- that is, the upper end.

Q Do you know this man that got

A Yes, sir, I saw him trade at my father's house.

Q How many acres were in cultivation then?

A There was a hundred in cultivation.

Q How many acres were there altogether?

A He got the middle part all measured; I don't know how much there was.

Q You wasn't married, didn't have a family there?

A No, sir.

Q Were any families then living on the island?

A Yes, sir, my brother lived there from about 1869 until about '76.

Q What kind of a house did he have?

A Log cabin.

Q How many rooms?

A He had two rooms and a cellar.

Q From '69 till when?

A 'Til '76 -- seven years.

Q Just cut the timber there and made the house?

A Yes, sir.

Q Didn't you hear these men testify awhile ago that that was a sand bar there, no timber on it, and cattle went out there to keep the mosquitoes from eating them up?

53
A I don't care what they testified I never seen none. I won't swear to what I never saw - I heard them, yes, sir: if I had seen the cattle there I might have believed it, but I never saw any but what was boarded there.

Q you heard these men say that in '69 and '70 it was a sand bar -- you heard Dobbs on the stand?

A No, sir.

Q Don't you know any of these men?

A No, sir, don't know many one of them except the men that eat the watermelons.

Q Now, you say in '69 when your brother cut the timber for the logs - were the trees big enough for that?

A Big enough to build a shanty, the logs.

Q House there yet?

A No, sir, the water carried it all away long ago.

Q How big were the logs?

A I guess about six inches.

Q How big?

A I guess at the little end six inches.

Q Now as a matter of fact you didn't see any cut there in '69.

A Yes, sir, and hauled boards there to build it; I had to make the boards out on the farm and haul them down.

Q What did you raise?

A Raised corn.

Q What else?

A Watermelons.

Q How many acres of corn did you have the first year?

A I don't remember.

Q Didn't have any, did you?

A Yes, sir, but how much there was I don't know.

Q Did you help raise it?

A No, sir, not the first year.

Q How long did you stay there the first year?

A I was there off and on fishing.

Q Great fisherman?

63

66 64 A Fishing over there, hunting.

Q What did you hunt over there?

A Rabbits, coons and squirrels.

Q Heavy timber on the island then?

A No sir, nothing but willows and cottonwoods.

A. Layton sworn for the defendant testified as follows;
Direct by Mr. Horner.

Q You know this island in question I believe?

A Yes, sir.

Q Please state now when you first knew it, what year.

A Well, I went on the island in '69 I believe it was.

Q Who was on the island then?

A There was nobody on the island then: I guess I was the first man that was on there.

Q What portion of the island did you claim?

A I was on the upper island.

The Court. You mean the West end?

A Yes, sir the west end.

Q Then who came there next?

A Vince Puel was the next man.

Q What portion did he claim?

A Well he settled on the middle island; the islands were distinguished then in three parts; there were sloughs dividing them, and he took the middle island.

Q How long did he remain there?

A He was on there but a short time, probably a year.

Q What did he do with his part?

A Sold it to Macauley, Josiah Macauley.

Q Did you know who owned the lower portion just below that?

A Vince Brewer.

Q What time did he go on there?

A Well I suppose he must have went on there about '71,
I don't remember positively, '71 or '72.

Q How long did he remain there?

A He was there when I left the island.

Q Then I understand you to say the island was divided by sloughs into three portions: You settled the upper portion Mr. Panel the middle portion and afterwards sold to Macaulay, and the lower portion Brewer owned when you were there.

A Yes, sir.

Q State what was the depth of water between that and the Illinois shore about the time you were there?

A Oh, I couldn't say anything as to the depth; there was plenty of water on both sides when I was there.

Q State if at any time during the year the water went dry between that and the Illinois shore when you were there?

A No, sir.

Q Did cattle range there from the commons when you were there?

A No, sir, no cattle.

Q Couldn't get there unless they would swim, could they?

A No, sir.

Q When did you leave there?

A About the year '72 or '73, I believe; probably '73, I won't be positive as to the date; not later than '73; I think I was there four crops, as near as I can remember.

Q Do you know what has become of the portions of the island you claimed there?

A I don't know, I haven't been on the island since I have been back here, but I don't think that any portion that I was on is there now; I think it has all washed away.

Cross-Examination.

Q How old are you?

A Forty-five years.

Q When were you married?

A Never was married.

Q You went on this island in '69?

A '68 or '9, I won't be positive; I think though, '69, to the best of my recollection.

Q What makes you fix the date as '69, might it not have been '70?

A I don't think it was. I have various reasons for that. I will tell you one reason and I am governed in that a good deal by a nephew I have. When I left here in '73 he was about ^{that was Perry County, Missouri} a year old -- and when I came back he was twenty-two years old, or will be next birthday. That is the way I fix the dates. I don't fix it positively: there might be a year difference.

Q You are not positive of that, are you?

A No not so positive.

Q You don't know how old he is now, do you?

A Well, yes, I am governed by his mother, that's all.

Q How old is he?

A He is about twenty-two years old.

Q Well, he might be only twenty?

A Possibly: I have his mother's word for it.

Q Two or three years in matters of claims of possession makes a good deal of difference when you get up near the twenty-year line, don't you know that? you are not positive about your nephew's age or positive when you went there?

A Oh, well I am positive of his age.

Q How old is he?

A Twenty-two years old.

Q When?

A Last March.

Q He was born in 1873, was he?

A Well I have his mother's word for it -- that that is his age; of course that's what I go by.

Q How did you have occasion at the time to fix your nephew's age, for the purpose of swearing in this case?

A No, sir, I done it in order to know how long I was gone. I know when I left he was a small little babe!

Q What occasion required you to know how long you were gone, what difference did it make?

1
A No particular difference.

Q As a matter of fact, didn't you just fix this thing up to swear in this case? Wasn't that your purpose?

A No, sir, I knew nothing of this case.

Q Weren't you told that these folks, in order to establish their claim, would have to prove twenty years consecutive possession by themselves or grantors?

A No, sir.

Q Didn't you know that?

A No, sir, I knew nothing of this case until a week ago.

Q Wasn't you subpoenaed before?

A No sir.

Q Where have you been all this time?

A Been in Perry county for the last three months.

Q Where before that?

A Been in Colorado.

Q Since '73?

A Not since '73 but for the last twelve years.

Q How came your nephew's age to cut any figure in the matter of your absence?

A Just simply reckoning the time that I was gone.

Q Was that with a view of testifying in this case?

A No sir.

Q When was it you were first told you were wanted as a witness in this case?

A It hasn't been a week ago.

Q When did you make this calculation about your nephew's age, a week ago?

A No, when I first came back.

Q Three months ago?

A Yes, sir.

Q You haven't been on that island for twenty years, have you?

A No, sir, not since '72 or '73 when I left there.

Q You are not sure which year?

A No, I am not positive.

70 68
Q Not sure when you went on there.

A No, but it was '68 or '79.

Q Did you live there by yourself all that time?

A Oh, most of the time, yes.

Q As a matter of fact you didn't ^{stay} there at all. You came over backwards and forwards and made a little cabin over, planted a few watermelons and a little corn and thought you had possession.

A Well, that was ^{really} all the possession I had.

Q You didn't live there at all?

A Yes, that was my home, I lived there; when I sold out there I had about fifteen acres in corn.

Q You would go over there and kind of cultivate a little land.

A Oh, yes, I did other things.

Q Did you clear out heavy timber?

A Ordinary willows and cottonwood.

Q Now about all there was there was a just a few willows that grew up, and when the water got high enough why it --

A Oh, well, there was considerable timber.

Q Did you build a house there?

A Yes, sir.

Q Out of what?

A Built it out of cottonwood logs that would measure a foot at the stump.

Q Grown on that land?

A Yes, sir.

Q Did you hear these men testify awhile ago that the island was a sand bar, no timber on it at all?

A I did. At one time that island was no doubt a sand bar.

Q Went back as far as '49.

A No, sir, I know nothing about prior to that.

Q There was heavy timber when you went there?

A No, I don't say heavy timber, but there was timber on it of that size.

Q That is heavy timber, isn't it?

A Oh, that is fair timber.

Fred Easters, sworn for the defendants testified as follows:

Direct by Mr Whittledge.

Q How old are you?

A I am going on eighty three years of age.

Q Where were you born and where have you lived in that eighty three years?

A I was born in Perry County and have remained there from that time till now.

Q About how far is it from where you was born to this Brewer's island -- McChure's Island?

A I suppose about two mile from where I live.

Q Just tell the Judge, now, all about the island, when it first made and how it was made, in your own way.

A It first formed by a boat sinking. This Brewer's Island used to be the land of Missouri, and the boats run right up to the mouth of the Okaw River; and the boat sunk and the Missouri bank kept caving in, and the water became the channel on this side but the river was on this side altogether; there was no water on the other side, and there was the Missouri shore --

Q State how you knew that was the Missouri shore?

A I was born there and I remained there until this time. That there was Missouri because there was no water on this side; there was a big wood yard there and there was no water there and I hauled many a cord of wood across over to the main bank.

Q Where the island is now you ^{say you} hauled wood there?

A Yes, sir.

Q How did this island first commence to form?

A Commenced by a boat sinking.

Q What year?

A That I can't tell you

Q About when?

10 A About '51 or '2, somewhere there after the overflow it formed.

Q Did you say a boat sunk there?

A Yes, sir. That was the first indication of this island forming. It was sunk right close to the bank on the Missouri side, and then it kept washing around and caving in until it threw the channel over, drove it over on the Illinois side.

Q When was the island first settled?

A I think about '68 or '9.

Q Who was the first person that went on that island?

A There was Macauley, and Brewer, and Pamel, and Talon, and Tucker. There was three families.

Q What portions did Macauley and Brewer own?

A They claimed the lower end and Pamel and Tucker claimed the upper end.

Q That was about '68 or '9?

A Yes, sir.

Q Have you seen the island every year since?

A Nothing to hold me; I have to go right up and down by St. Mary's, and I can see it by looking right over.

Q State whether or not it was known in the neighborhood in which you lived that ^{Brewer and} Macauley owned and claimed that island?

A Claimed the lower part. There was two islands, with the division running east and west -- run across that way (indicating). And Macauley and him had the lower end and Pamel and Tucker took the upper end.

Q State whether or not you know whether stock was taken from the Missouri side over there and pastured on that island while Macauley and Brewer owned it.

A Yes, sir, men took off stock every winter.

Q And charged for it -- for pasturing.

A I don't know

Q Now, please state about how the water was about when first settled, how was the water between that and the Illinois shore?

A Well, the boats could go either way, either that side or this side.

Q How was the water in 1870, along -- 168 and '70 -- did the water at any time of the year get dry between that and the Illinois shore when they first settled on it?

A I can't tell you that. It was all made from this side; it kept caving in and washing out; this here Missouri land run from Dozawville, it run right ^{straight} up, you understand? I was born and raised there.

Q State which shore the island is nearest to.

A The Missouri; from the main shore it is nearest to Missouri.

Cross-Examination.

by Mr Sprigg.

Q It isn't nearest the main shore now, is it?

A If it wasn't for this bar it would be closer.

Q If it wouldn't be for the water it would be closer; the boats all run between that island and St. Mary's.

A No, they go up as far as St. Mary's and then turn around and come back again.

Q The island is between here and St. Mary's?

A Yes, sir.

Q The boats all run right along the Missouri shore.

A Yes, sir.

Q They ^{don't} run between this island and the Illinois shore?

A No, because it was dry.

Q Now, when you first knew it you say, where this island now is -- how far was that from you?

A Within two miles of my house in Missouri.

Q And this now is right across from St. Mary's?

A No, way down below St. Mary's, way down this side; this piece of land lays down below Ross' landing, lays right down by the LeLark place as near as I could locate it.

Q Now do you want to tell the court that a barge or boat was sunk that started this formation?

A Yes, way up near by St. Mary's.

Q What boat was it?

A I don't recollect.

Q What year was it?

A I don't recollect that: I didn't think I would ever be called on this side to speak as a witness.

Q You can't recollect the year nor the name of the boat?

A I can't write and put things down, but I have been living there for eighty years, you understand: this island used to be the Missouri bank.

Q Now that boat sunk right by the Missouri bank?

A Yes, sir.

Q After that boat sunk it began to form a little island there around the wreck, and the river started out from the Missouri shore and kept running out?

A Yes, sir. kept coming around the soft Missouri land and it kept slipping.

Q You was just about two miles from there?

A Just about two miles from the island.

Q The river got closer during that time?

A Oh, no, at that time I was two miles and a half.

Q How far are you now from the river?

A I suppose a little over a mile.

Q How far from St. Mary's?

A I live five miles down this way.

Q Now, during all this time St. Mary's hasn't moved, has it, it is still there?

A There was no St. Mary's then, it was a different name -- "Camp Rowdy" and "Yankee Town".

Q It is the same spot?

A Yes, it is the same spot; the old "Camp Rowdy".

Q How long ago is that?

A In 1816 I came and am here yet.

Q I mean when was that this boat sunk?

A I don't recollect because I didn't see it done nor thought about it.

Q Have you been on this island lately?

A No, I have not.

Q You don't know whether any cattle ever grazed over there or not do you?

A Yes, seen many and many.

Q All over there during the time these men owned it?

They boated them over from the Missouri shore.

A No, they would swim them over; didn't have boats and the things they have now.

Q You are not acquainted with this side of the island any?

A No, not for years, not for years.

Q Most all you know about the island is just seeing it lying off this side of the river, isn't it?

A The island, you can see it -- you can see where it lays -- sand bars thick -- way from where the old bank used to be; it has kept filling in until it has dried out and grown up. But the island I am talking about is the main body from the Missouri bank: the river used to run right straight there, and the bank kept caving in and the channel is on this side of Kaskaskia --

Q Are you speaking about the Okaw that came down clear around this island?

A Yes, sir.

Q You are speaking about the Mississippi cutting through to the Okaw and coming clear around that island?

A Just the same as that boat -- the island used to be Missouri land you understand; yes, that island was the Missouri shore.

Louis J. Bager, sworn for the defendants, testified as follows:

Direct by Mr Whittedge,

Q Now, do you know the island in controversy?

A Yes, sir, slightly acquainted with it.

Q How long have you known it?

A Ever since about '68.

Q Who was in possession of this island and claiming it when you first knew it?

A Well, Vince Panel was the first man I knowed anything about was in possession of it.

Q What part of the island had he possession of?

A Well, it is in the middle part.

Q Who at that time owned the lower part or claimed it?

A I can't testify who owned the lower part.

Q Did Brewer?

A I judge so, to tell the truth about it.

Q That was in what year?

A I knowed the island ever since '68, but in '70 Vince Panel was on the island.

Q What did he do with his part of the island?

A Well, I couldn't testify the truth as to who he traded it to.

Q Who was on it and took possession after he left?

A Well I think to the best of my knowledge it was Mr Macaulay. I think he was the man that went there next.

Q About what time did Mr Brewer move on the lower portion of the island?

A I couldn't tell you that? I can't testify, to tell the truth, as what year he was there.

Q State whether or not you know that he did claim to own and did live on the lower portion?

A Yes, sir, I know that he squatted there as a squatter or owned it; I know he lived there and cultivated it.

Q And he lived on the lower part.

A Yes, sir.

Q And Mr Macaulay on the middle part.

A Yes, sir.

Q And then Panel and Laylow the upper part?

A Yes, sir.

Q State whether or not it was known in the neighborhood that those men claimed and owned that island, portions of which they settled on.

A Well, yes, it was well known in the neighborhood at that time, yes.

Q How did they use the island? Did they cultivate it?

A They cultivated it in corn, potatoes, melons and such like stuff, as farmers generally raise.

Q Did they use it for pasturage for stock?

A I couldn't tell you whether they did or not use it for pasturage.

Q How long have you lived in the neighborhood?

A I have lived in the neighborhood for twenty-six years, in the Bottom, right across, three-quarters of a mile from the Missouri shore.

Q Did you know Mr Nares Sides?

A No, I knew Mr Reine Sides.

Q Did he at any time claim or live on that island?

A Yes, sir.

Q Who did he sell to?

A I don't know.

Q Do you know whether Mr Josiah Macauley at any time claimed or lived on it?

A Yes I have known him living there, but who they changed around about with I really know nothing about; but I am knowing all those men that lived on the island.

Q Mr Sides lived there and Mr Macauley lived there, they claimed to own the middle and lower portions of the island?

A Yes, sir.

Mr Hartzell. we don't like to interpose an objection but it seems to be getting worse and worse.

Cross-Examination.

by Mr Sprigg.

Q You don't know anything about any body, to tell the truth now, owning this island; they just claimed and squatted on there.

A Yes, sir, I know one man that owned.

Q How do you mean that he owned?

A He owned it according to squatters' rights. He just claimed it as the rest of them did -- I say I know he claimed just like the rest of them did, as squatters' rights.

Q They went and squatted there; it didn't belong to them.

A Yes, sir.

Q The idea was to go there, raise a few potatoes and corn, and then

A I don't know their idea; they raised a lot of corn there I know.

James Harr, sworn for the defendants, testified as follows:

Direct by Mr. Whilledge.

Q Where do you live?

A Live in Perry County, Missouri.

Q How long have you lived there?

A For nearly thirty five years.

Q Do you know this island in controversy, what is known as McClure's Island?

A Yes, sir.

Q How far do you live from that?

A Well, it is about three miles from where I am now to it.

Q How long have you known that island?

A I couldn't tell you. I have known it ever since it was there but I haven't dated nothing and I can't tell.

Q Who was the first person you knew that settled on that island?

A Vincent Banel.

Q After him who else?

A I can't tell who he sold to or nothing about it; I knew the men that lived there.

Q Do you know Macauley?

A Yes, sir.

Q You know Mr Brewer?

A Yes, sir.

Q State whether at the time they lived there they claimed to own it.

Mr Hartzell. Well, now, we must object to that some time.

The Court. Yes, don't make your questions quite so leading.

Q Did you know Mr Macauley?

A Yes, sir.

Q Did he at any time live on the island?

A Yes, sir.

Q About when, to the best of your knowledge?

A Well, I can't tell exactly because I don't know. I came here to tell all I remember.

The Court. As close as you can.

A I will swear to nothing but the truth. It has been a good while ago but I wouldn't say how many years.

Q Do you know whether Dr Strong ever bought a portion of that?

A Well he claimed to own, I had a man there by the name of Dougherty.

Q Do you know who occupied it after Strong?

A No, I don't know who got it next. I guess Reine Sides did.

Q Did you know Mr Sides?

A Yes, sir.

Q Did he live on it any time?

A Yes, sir, lived there and raised corn on it.

Q Who ^{was} before Mr Sides?

A Mr Macauley.

Q And who was after Mr Sides?

A Vince Brewer. I know Brewer owned it — — —

Q State whether or not the portion they lived on is the same land now that McClure has got.

A Well, the same land to the best of my knowledge.

Q State if it was generally understood in the neighborhood that you lived that Mr McClure, Mr Macauley, Sides and Panel claimed that land at the time they lived on it.

A Yes, sir, they were farming there on it and claimed it to be their land.

Q State if you know anything about pasturing cattle upon it.

A Yes, I know cattle was brought from the Missouri side over there and pastured and horses.

Q By whom?

A Well, Mr. --

Q Who owned the island?

A Mr. Macaulay.

Q Do you know about the water between that and the Illinois shore? When you first knew it how was the water?

A Well there was water there when I first knew it.

Q When first settled?

A Yes, the biggest part of the year. There were several years I never seen it clear dry, but I suppose there was times and years when the water was so low a man could have rode across or waded it. I know of some stock of mine trying to get across there once in a while in the quick sands.

Q Now in your opinion, which state is the closest to it, the main bank of Illinois or the main bank of Missouri?

A Well, I will tell you. To go to the main bank, the river bank, it is a long ways the nearest Missouri, because where the river bank used to run by John Drews I boated from the sand bar up there right where the timber is now they ^{have} got in lease, I hauled there with oxen and cows with Frank Berry and Joe Berry. I wa a chunk of a load just big enough to --

Q Now there were woodylands on this side?

A Yes, sir.

Q Opposite this island?

A Yes, sir.

Q Boats ran through there?

A There was the main channel, up this side, when I hauled wood there.

69
Q Where the main channel run then was between this island and the Illinois shore?

A Yes, sir, there was no island there then.

Cross-Examination.

by Mr Sprigg.

Q If there was no island then the main channel was between the Missouri shore and the Illinois shore?

A To be sure.

Q You don't want to testify, then, that the main channel was between this island and the Illinois shore, this island in controversy?

A Well, when it run there there was no island there.

Q The main channel was just between the Illinois and the Missouri shore.

A Yes, sir.

Q So far as your knowledge goes you don't know where the main channel is except that it is nearer the Missouri shore.

A No, I don't know whether it is the closest to the Missouri shore or comes down the chute or not; I can't tell.

Re-Examination.

Q The boats run between where the island now is and the Illinois shore?

A Yes, sir, the biggest boats; but there was no island there then.

Q (by Mr Whitledge) Before the island was formed the boats run a little too.

A Yes, sir.

Q The main channel after it began to form was still between it and the Illinois shore.

A Yes, sir, the main channel of the river was on this side when I was a boy; as this man says, between Illinois and Missouri, but I seen the boats go up on the right-hand side of that island.

Cross-Examination.

77

Q That would be in high water?

A Well, tolerable high water.

Emmett Deane, sworn for the defendants, testified as follows:

Direct by Mr. Whitley

Q Are you acquainted with this island in controversy?

A Yes, sir.

Q When did you first know of anybody being on it?

A '73.

Q Who was on the island at that time?

A Brewer, Macauley and Panel, and I have knowledge that Laton was there but I didn't see him when there that time.

Q What portion of the island did Brewer claim?

A Well the lower part.

Q And Macauley?

A He was next and Panel came next, in the upper portion.

Q State whether or not that land that was occupied by Brewer -- who is occupying that now who is claiming it now?

A Mr. McClure.

Q The same land?

A Yes, sir.

Q I will ask you to state if you know when Mr. McClure and Mr. Macauley and Mr. Brewer was on that, whether or not they used the island for stock or pasturage -- stock taken over from Missouri.

A Yes, sir, they used it in the fall for I pastured a horse there in '77 or '8, and then '80 or '81 I had two mules there: '80 I believe, in the fall of '80.

Q How did they do? Have them in a lot or turn them loose on the island?

A Turned them loose on the island.

Q How was the water between them and the shore at that time, do you know?

A Well, there was water all around.

Q So the stock couldn't get off?

A No, sir, stock stayed there all winter anyhow.

Q They claimed it at the time they lived there - it was known in the neighborhood in which they lived that Macauley and Brewer claimed to own that island as theirs, didn't they?

A Well, yes, it was theirs, I didn't hear anybody else claim it?

Q Charged people for putting stock on there?

A Yes, sir, I paid him by the head for the stock -- I believe three dollars, if I don't mistake, a head.

Cross Examination,

by Mr Hartzell.

Q Did that three dollars include the ferriage in taking them over?

A Yes, sir, they had their own boat, and when we brought them off we swam them off.

Q Did you help put the stock over?

A Yes, sir.

Q What business are you engaged in?

A Then I was farming, farming in summer and taught school in winter.

Q Well, now, when do you say this stock was taken over?

A In '78, '77 or '78; if my memory serves me right in the fall of '77, I guess, the time I put the horse there.

Q Do you know anything about who claimed the land?

A Well, Mr Brewer, Macauley and Prince Panel, and then the time I had the horse there a man by the name of Dugger was living on the upper end.

Q You term the upper end what they call the Ruark Claim?

A Well, that is the claim that Mr Laton claimed and settled.

I was on there at the time Mr Dugger and a man by the name of Lonsford was living there, and they were the men that pastured our stock; Lonsford and Dugger, if I remember rightly.

Q They were --

82
A They were the men that took the stock over anyway, and Digger helped us back with the stock.

Q Do you know the depth of the water between the island and the Illinois shore at that time?

A Not that I remember.

Q You saw water there but don't know how deep it was?

A No, sir. In '82 I fished behind that island: in '82 and '83 I worked over there a month.

Q What time in the year did you fish?

A That was in the spring, the last of April or May, May I guess.

Q There were deep holes along there that you fished in, wasn't there?

A Oh, yes, we had some deep water there.

Q In some places the water was too shallow to fish, wasn't it?

A No, we never bothered; we had one place to fish at, one good place; never bothered about other places.

Q About what part was it, near the Okaw?

A Oh, no, it was near the upper end of the island, nearer there than the lower end.

Q When was you first on that island?

A In '73.

Q Who did you say were on there then?

A Macauley, Brewer and Panch.

Q That was Vince Brewer?

A Yes, sir. Well, Dayton I suppose was there -- I didn't see him -- hear he was there but didn't see him.

Q Vince Brewer was a short, rather heavy-set man, wasn't he?

A Yes, sir.

Q He used to raise water melons and bring them in here, I think

A Yes, sir.

Mr. Horner. We offer deed of Josiah Macauley and wife to Nares R. Sides, dated September 13, 1881, and also the little plat identified as part of the deposition.

Objected to by Plff's attorneys.

Quit-Claim Deed. "Exhibit-A."

This Indenture, Made the Thirteenth day of September in the year of our Lord one thousand eight hundred and eighty one between Josiah McLeauly and Jane F. McLeauly his wife of Randolph County Illinois party of the first part and Verie R. Sides of Perry County State of Missouri party of the second part;

Witnesseth, that the said party of the first part, for and in consideration of Five Hundred Dollars in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom have remised, released, conveyed and quit-claimed, and by these presents do remise release, convey and quit claim, unto the said party of the second part his heirs and assigns forever, all the right title, interest claim and demand which the said party of the first part have in and to the following described lot piece or parcel of land to wit:

Beginning at a cotton wood tree about eight inches in diameter on the south side of the Island known as Brewers Island near the section line between sections thirty one and thirty two running in a North west direction one hundred and seventy five yards to a cottonwood about fourteen inches in diameter, thence north about thirty five degrees west about two hundred and sixty five yards to the middle of the slough, thence east about fifty yards along the said slough, thence North thirty degrees East about two hundred yards to the river in sections thirty two, thirty three and thirty eight in Township seven South range seven in Randolph County State of Illinois containing in all about one hundred and sixty acres more or less containing in said described land all of the lower part of "Brewer's Island."

60
"Exhibit B."

"Exhibit B."

1801

Barren

1802
Small

McCauley

1803

Panel

rayton

1805

1806

1807
1808
1809
1810
1811
1812
1813
1814
1815
1816
1817
1818
1819
1820
1821
1822
1823
1824
1825
1826
1827
1828
1829
1830
1831
1832
1833
1834
1835
1836
1837
1838
1839
1840
1841
1842
1843
1844
1845
1846
1847
1848
1849
1850
1851
1852
1853
1854
1855
1856
1857
1858
1859
1860
1861
1862
1863
1864
1865
1866
1867
1868
1869
1870
1871
1872
1873
1874
1875
1876
1877
1878
1879
1880
1881
1882
1883
1884
1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896
1897
1898
1899
1900

Plan of field
to by Mr. McCauley

77
Mr. Homer. We offer next deed of Vares R Sides and wife to J. H. McClure, dated September 18. 1884. Objected to by Plff's attorneys.

Quit-claim Deed

This Indenture, made on the 18th day of September A. D. One Thousand Eight-hundred and eighty-four by and between Vares R. Sides and Elizabeth Sides his wife of the County of Ste Genevieve and State of Missouri parties of the first part and Isaiah McClure of the County of Perry and State of Missouri party of the second part:

Witnesseth, that the said parties of the First Part, in consideration of the sum of Seventy five ^{xx}/₁₀₀ Dollars to them paid by the said party of the Second part, the receipt of which is hereby acknowledged, do by these Presents Remise, Release and Forever Quit-claim unto the said party of the Second Part the following described Lot, Tract or Parcel of land lying being and situate in the County of Randolph and State of Illinois to wit: Beginning at a cottonwood tree about eight inches in diameter on the South side of the Island known as "Brewer's Island" near the section line between sections thirty-one and thirty-two running in a North west direction one hundred and seventy five yards to a cottonwood about fourteen inches in diameter thence north about 25° west about two hundred and sixty five yards to the middle of the slough, thence east about fifty yards along said slough thence north 30° east about two hundred yards to the river in sections 32, 33 & 28 in Township seven South range seven. Containing about one hundred & sixty acres more or less containing in said described land ^{all} of the lower part of Brewer's Island. Being the same real Estate acquired by the said party of the first part of

80

40 Josiah McBauley and wife by Deed dated Sept- 19th 1881,
Do Have And To Hold the same, with all the rights, im-
munities, privileges and appurtenances thereto belonging
unto the said party of the second Part and his heirs and as-
signs Forever! so that neither the said parties of the first
part, nor their heirs, nor any other person or persons for
them or in their names or behalf, shall or will hereafter
claim or demand any right or title to the aforesaid prem-
ises, or any part thereof, but they and every of them
shall by these presents be excluded and forever barred.
In Witness Whereof, the said Parties of the First Part have
hereunto set hands and seals the day and year first
above written.

Signed Sealed and Delivered }
in the presence of us. }
Leon Boggy

Varies R. Sides Seal
Elizabeth Sides Seal

State of Missouri }
County of Ste Genevieve }

On this 18th day of Sept- 1884
before me personally appeared Varies R. Sides and
Elizabeth Sides his wife, to me known to be the persons
described in and who executed the foregoing instrument,
And acknowledged that they executed the same as their
free act and deed.

In Testimony Whereof, I have hereunto set my hand
and affixed my official seal at my office in
St- Marys Mo. the day and year first above written.
Seal My term expires January 12th 1886.
Leon Boggy
Notary Public

Mr Homer. We next offer deed of J. H. McClure and Mary McClure, his wife, to William McClure, dated October 1, 1889.

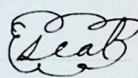
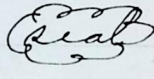
Objected to by Plffs attorneys.

Copy of Quit-claim Deed

This Indenture, Made on the 1st day of October A.D. One Thousand Eight-hundred and Eighty-nine by and between Isiah McClure Mary E. McClure his wife of the County of Perry and State of Missouri parties of the First Part, and William McClure of the County of Perry and State of Missouri party of the Second Part: Witnesseth, that the said Part of the First Part, in consideration of the sum of One Hundred & Twenty ²⁰⁰/₁₀₀ Dollars to paid by the said Part of the Second Part, the receipt of which is hereby acknowledged, do by these presents Remise, Release And Forever Quit-claim unto the said part of the second part the following described lots, tracts or parcels of land, lying, being and situate in the County of Randolph and State of Illinois to wit:

Beginning at a Cottonwood tree about eight in in diameter on the south side of Island known as Brown's Island, near the section line between section 31 & 32 running in a north West direction one hundred and seventy five yards to a Cottonwood about 14 inches in diameter: Thence North about 35° W. about 265 yards to the middle of the slough Thence East about 50 yards along the slough: Thence north 30° East about 200 yards to the river in section 32 33 & 28 in Township seven (7) South Range seven Containing in all about One Hundred and Sixty acres more or less of land being all the lower part of Brown's Island Being the same real estate acquired by the said party of the first part from

Varis Sider & wife by deed dated Sept-18th 1884
 To Have And To Hold The Same, with all the rights, in-
 munities, privileges and appurtenances thereto belonging,
 unto the said party of the Second part; and his heirs
 and assigns, Forever; so that neither the said parties
 of the First-Part, nor their heirs, nor any other person
 or persons for them or in their name or behalf, shall or
 will hereafter claim or demand any right or title to the
 aforesaid premises, or any thereof, but they and every of
 them shall by these presents be excluded and forever barred.
 In Witness Whereof, the said parties of the First-Part have
 hereunto set their hands and seals the day and year first
 above written.

Signed Sealed And	}	Isiah McClure	
Delivered in Presence of		Mary E. McClure	
T. B. Whittedge			

State of Missouri } ss
 County of Ste Genevieve } On this 5 day of August 1893 before
 me personally appeared Isiah McClure and Mary E. McClure
 his wife to me known to be the persons described in and
 who executed the foregoing instrument, and acknowledged
 that they executed the same as their free act and deed.

In Testimony Whereof, I have hereunto set my
 hand and affixed my official seal at my
 office in St. Marys Mo. the day and year
 first above written.

John B. Whittedge
 Notary
 Public
 St. Marys Ste Genevieve Mo.

My term of office as a Notary Public will
 expire Dec. 2^d 1893.

T. B. Whittedge
 St. Marys Mo.

Filed For Record this 18th day of October A.D. 1895, at-
 1 o'clock - Minutes P. M.

By J. F. Fenwick Recorder
 J. F. Fenwick Deputy.

In the Recorder's office

State of Missouri } ss.

County of Perry } I Jos. F. Fenwick Clerk of the Circuit Court and ex officio Recorder of said County, do hereby certify that the within instrument of writing was, on the 18th day of October A.D. 1895 at 1 o'clock 2 minutes P.M., duly filed for Record in this office, and is recorded in the Records of this office, in Book 41 at Page 569.

Seal

In Witness Whereof, I have hereunto set my hand and affixed my official seal, at Perryville this 18th day of October A.D. 1895,

Jos. F. Fenwick Recorder

Per J. F. Cashion Deputy.

Certificate of true copy.

State of Missouri } ss.

County of Perry } I Jos. F. Fenwick Clerk of the Circuit Court and ex officio Recorder in and for said County, hereby certify that the above is a true copy of the original Quit Claim Deed as the same appears filed and held for inspection in my office, for one year from date of filing.

Seal

Witness my hand as clerk and the seal of said Court. Done at office in Perryville this 25th day of Feby 1896.

Jos. F. Fenwick Clk. Clerk and
Ex officio Recorder

Rebuttal.

And the Plaintiff, to further sustain the issues on its part offered the following evidence that is to say

W. H. Hartzell, sworn, for the plaintiff testified as follows:

Direct- by Mr Sprigg.

Q Did you know Mr Brewer, Vince Brewer?

A Yes, sir.

Q State if you had a conversation with him, on any business to do for him in reference to some claim that he purported to have to this land in controversy in this suit; when it was and what it was.

A I wouldn't be positive as to the year, it seems to me it was '72 or '33

Objected to.

He came to me, wanted me to write to the Government Authorities about this land, and I did write some letters for him.

Q That is about all your testimony?

A Yes, sir. I told Brewer, at the time that I thought it belonged to the Kaskaskia Commons, but that I would write: And then the Commissioner stated that if it was Government land he would have to have it surveyed and pay all costs, and have to contest with others who might wish to purchase, and when Brewer found that out he decided to quit.

Objected to as incompetent.

(Witness) I was not acting as his attorney at all.

Plaintiff Rests.

And the foregoing was all the testimony offered in the case.

92
And now on this 19th day of Sept. 1895 comes the plaintiff
by Wm. Harbelle & R. E. Sprigg its attorneys, and the defendant
by H. C. Homer & J. B. Whittedge his attorneys, and
submits this case to the Court without a jury and
the Court having heard the evidence and the argument
of counsel and being fully advised in the premises, and
on consideration thereof doth find that the defendant is
not guilty of wrongfully withholding from the plaintiff
the premises described in its declaration in this cause
to wit: The East half of Out-Lot No. one (1) of the
Commons of Kaskaskia laying South of the third
(3) and Fourth (4) surveys of said Commons and
containing Two Hundred (200) acres more or less in
Townships Seven (7) and Eight (8) South of Range
Seven (7) west in Randolph County Illinois.
And that the plaintiff ought not recover against
the Defendant the possession of the said premises.
Therefore it is considered by the Court that the de-
fendant recover the costs in said cause from
the plaintiff.

And thereupon the Court found the issues for the
defendant;

Whereupon the plaintiff by its counsel then
and there moved the Court to set aside the verdict
so rendered and grant a new trial of their cause
and filed the following reasons in writing for its
motion to wit:

State of Illinois } ss In the Circuit Court
Randolph County } September term 1895.

The President and Trustees of the }
Commons of Kaskaskia } Ejectment
vs. }
Charles McClure }
and now comes the plaintiff and moves the

Court to grant a new trial in this cause as at common law and assigns the following reasons therefor:

1st Because the judgment of the Court is contrary to law.

2^d Because the judgment of the Court is contrary to the evidence.

And for other good and sufficient reasons appearing &c.

Hartwell V. Sprigg
Atty for Plt's.

But the Court denies the motion and gave judgment against the plaintiff to which decision of the Court in denying such motion the plaintiff by its counsel then and there excepted.

And forasmuch as the matters above set forth do not fully appear of record, the plaintiff tenders this its bill of exceptions and prays that the same maybe signed and sealed by the Judge of this Court pursuant to the Statute in such case made, which is done accordingly this 5th day of December 1895-

Geo. W. Wall Seal
Judge

STATE OF ILLINOIS,

Randolph County, } ss. I *Wallace Snook* Clerk of the Cir
Court of *Randolph* County, in the State aforesaid, and keeper of the record
files of said Court, do hereby certify the above and foregoing to be a true, perfect and complete
all papers and decrees of court

.....in a certain cause
pending in said Court, on the *Law* side thereof, wherein
trustees of the Community of Kaskaskia was plaintiff
Charles Mc Colense was
appears from the records and files of said Court now

IN WITNESS WHEREOF, I have hereunto set
the Seal of said Court, at *Chesler*
7th day of *April*
Walla



State of Illinois }
 Southern Grand Division } In the Supreme Court
 May Term 1896

The President & Trustees
 of the Commons of Kaskaskia }
 Plaintiff in Error }
 vs } Assignments of Errors.
 Charles M. Blaine }
 Defendant in Error }

And now comes the plaintiff in error by its
 attorneys, that in the record and proceedings aforesaid there is
 an error, in this, to wit:

- 1. Court admitted improper evidence on the part of the defendant.
- 2. Court erred in rendering judgment for the defendant.
- 3. Court erred in refusing a new trial to the plaintiff.
- 4. Court erred in not giving judgment for the plaintiff.
- 5. Court erred in giving defendant more land than he was in possession of.

By reason whereof the plaintiff prays said judgments
 may be reversed.
 Wm. Hartgill and R. E. Spring
 Attys for Plff in Error.

TRANSCRIPT OF PROCEEDINGS
 IN SUIT.

CIRCUIT COURT,
 Randolph County,
 September Term, 1895

In the Matter of
 The President & Trustees
 of the Commons of Kaskaskia
 vs.
 Charles M. Blaine

State of Illinois } In The Supreme Court
Southern Branch Division } May Term A.D. 1896.

The President and Trustees
of the Commons of Kaskaskia
Plaintiff in Error

vs
Charles M. Clure

Defendant in Error

} Error to Randolph County.

Now Comes The defendant in Error
Charles M. Clure by H. Clay Horner and T. B. Whittledge his
Attorneys and waives all process by scire facias or summons herein,
and enters his appearance in said above entitled Cause
and asks that said Cause be heard and disposed of at this
Term of Court on filing of record &c.

H. Clay Horner
T. B. Whittledge
Attys for defendant-
in Error.

FILED.

MAY 6 1896

Frank W. Havill
CLERK

24

2d

IN THE
SUPREME COURT OF ILLINOIS.

SOUTHERN GRAND DIVISION.

May Term, A.D. 1896.

THE PRESIDENT and TRUSTEES OF	)	
THE COMMONS OF KASKASKIA.	)	
Plaintiff in Error.	)	Error to
vs.	)	
	)	Randolph County.
CHARLES MCCLURE.	)	
Defendant in Error.	)	

STATEMENT OF THE CASE.

This was an
Action of ejectment to recover, as a part of the Commons
belonging to the inhabitants of Kaskaskia, a portion of an
island in the Mississippi river called Brewer's or McClure's
Island. Plaintiffs claimed title under an old French grant
of which no known record exists, but which, in 1743, was con-
firmed to them by grant or patent by Vaudreuil, then the
French Governor of the Province of Louisiana. This patent,
as shown by the record, was as follows:

" Pierre de Rigault de Vaudreuil, Governor, and Edme Gation Salmon, Commissary Orderer, of the province of Louisiana. — Seen the petition to us presented on the ¹⁶sixteenth day of June of this present year by the Inhabitants of the parish of the Immaculate Conception of Kaskaskia, dependence of the Illinois, tending to be confirmed in the possession of a common, which they have had a long time, for the pasturage of their cattle, in the point called lepointe de bois, which runs to the entrance of the River Kaskaskia. We, by virtue of the power to us granted by his Majesty, have confirmed and do confirm to the said Inhabitants the possession of the said common, on the following conditions, "first—that the concessions heretofore granted, either by the India company, either by our predecessors, or by us, in the prairie of Kaskaskia on the side of the point which runs to the entrance of the river, shall terminate at the land granted to a man named Cavalier, and in consequence, that all concessions that may have been made on the said point, from the land of the said Cavalier forward, on the side of the entrance of the said River, shall be null, void and no effect; in consequence of which the said point, as it is above designated, shall remain in common without altering its nature, nevertheless reserving to us the power, whenever the case may require it, of granting the said Commons to the Inhabitants established, and who may establish, and this on the representations which may be made to us by the Commandants and sub-delegates on the said places.

"Secondly,—On the road vulgarly called at the Square line, between the large and small line, shall be rendered practicable and maintained for the passage of the carts and cattle going into the common,—And this by each of the proprietors, as well of the great as of the small line, whose lands border on the roads of the Square line.

—And as to the fences which ought to run along the side of the village from the said road of the square line, unto the

river; As also the one on the side of the point running to the Mississippi and to the Kaskaskia River, they shall be made and maintained at the expense of the community, to the end that the cultivated lands be not injured by the cattle.

"Thirdly.— To facilitate to the Inhabitants the means of making their autumnal harvest, and preventing its being damaged by the cattle, we forbid all persons to leave their cattle range upon cultivated lands. they are, notwithstanding, permitted to graze upon their own proper lands on having them diligently watched.

"Fourthly.— Willing that the wood which is on the land granted, belong to the proprietors of the said land, we forbid all persons to cut down any elsewhere than on their own lands; and as to the wood which may be found in the commons, it will be allowed to each of them having a right to the said commons, to cut down for their own use either for building, or firewood, and shall be the present regulation road, published and affixed, to the end that no person may be ignorant thereof.

"Given at New Orleans, the fourteenth day of August, 1743.

(Signed) Vaudreuil.

Salmon."

This grant was

Recorded in Book A, pages 343rd and 344th, *in the Auditor's Office, Illinois.*

*All facts necessary to an understanding of the case
are stated in the opinion of the
court.*

Brink

IN THE
SUPREME COURT OF ILLINOIS,
SOUTHERN GRAND DIVISION.

May Term, A.D. 1890.

THE PRESIDENT and TRUSTEES OF	)	
THE COMMONS OF KASKASKIA,	)	
Plaintiff in Error.	)	Error to
vs.	)	Randolph County.
CHARLES McCLURE,	)	
Defendant in Error.	)	

OPINION by Carter, J.

This was an action of ejectment brought by the plaintiffs in error, to recover from the defendant in error the following lands in Randolph County, to-wit: ^{the} East half of outlot one (1) of the Commons of Kaskaskia, lying south of third

and fourth surveys of said commons, containing ^{still} 200 acres, ^{being} part of an island in the Mississippi river.

The case was tried before the court without a jury, and judgment ^{was} rendered for the defendant. Plaintiffs bring the cause to this court by writ of error.

9 It is in the first place contended by defendant in error that the land in controversy is not in the state of Illinois. Capt. W. C. Postal, an old river pilot, testified that since 1847, when he first knew of this part of the river, the channel ran down the Missouri shore; that this (McClure's) island was on the east side, - the Illinois side.

— Newman K. Dobbs, who has resided at Kaskaskia Point for ^{still} 62 years, testified that the main channel was next to the

-2-

Missouri shore. ^{William} Wm. R. Burch has resided in the neighborhood since 1847; ^{and} testified that the main channel ran on the Missouri side, although there had been at one time a channel on both sides. Fred Easters testified that he was ⁸³ years of age, and was born and had always lived in Perry County, Missouri, within two miles of the island in controversy; that the island commenced to form by reason of a boat sinking near the Missouri shore, about 1851 or 1852; that the channel used to be on the ~~west~~ ^{east} side, but by reason of the caving of the banks, it shifted to the ~~east~~ ^{west} side. Several deeds purporting to convey portions of the island in controversy were introduced in evidence by the defendant, in all of which it is described as being situate in sections 32, 33 and 38, in Township 7, south, range 7, in Randolph County, state of Illinois. We think the weight of the evidence is, that it is in Illinois.

9 The title of plaintiffs in error had its origin in an old grant of the French Government to the inhabitants of Kaskaskia. It is a matter of common historical knowledge that France claimed this portion of the Mississippi valley by right of discovery and occupation, LaSalle having, on the 9th of April, 1682, taken formal possession of the country watered by the Mississippi, in the name of Louis XIV, and in his honor called the country Louisiana. In 1673 Joliet and Mar-

quette, on their return from their famous voyage of discovery, stopped at the principal town of the Illinois Indian confederacy, situated on the banks of the river Illinois, seven miles below the present town of Ottawa. It was then called Kaskaskia. Marquette returned to the village in 1675 and established the mission of the Immaculate Conception, the oldest in Illinois. He called the religious society which he established, the "Mission of the Immaculate Conception," and the town, Kaskaskia. This curious Indian colony dispersed after the death of LaSalle, till few or none ^{Indians} were left except the Kaskaskias, a sub-tribe of the Illinois.

James Gravier, a Jesuit missionary from Quebec, as early as 1695, established the village of "Our Lady of Kaskaskias" at the ~~present~~ place where the present town of Kaskaskia now stands, the Indians having removed from the former site on the Illinois river to the latter, on the Kaskaskia, near the mouth of the little river which bears the same name. Charlevoix, who was here in 1721, calls this the oldest settlement of the Illinois, though there is some reason to believe that the village of Cahokia is by a few weeks the elder of the two.

(See ¹Parkman's A Half Century of Conflict, Vol. 1, pp. 316, 317; Hebert v. Lavalley, 27 Ill. 448.) The whole of Louisiana, including Illinois, was in 1712 granted to Anthony Crozat, his charter providing that the royal edicts and the Coutume de

Paris should be the law of the colony. Crozat having surrendered his charter in 1717, the same country was ~~ceded~~ conceded to the West India Company, and by the fifteenth article of the charter/ the Custom of Paris was established unchangeably as the fundamental law of the territory. The early records of this state, preserved in the French language, are full of grants made by this company, up to 1732, when it was dissolved, and its powers and privileges reverted to the crown.

53-7
9. The original grant to the village of Kaskaskia is not in the record, but Vaudreuil, the governor, and Salmon, the commissaire ordonnateur, or intendant, by a patent dated August 14, 1743, confirmed to the inhabitants of the parish of the Immaculate Conception of Kaskaskia, dependence of Illinois, the possession of a common, which they had had a long time, for the pasturage of their cattle, in the point called la pointe de bois, which runs to the entrance of the river Kaskaskia. (Pages 38 and 39 in volume of translation of French Records, in the Auditor's office at Springfield.) In 1763/ this territory was ceded to England, and Virginia acquired it in 1778 by conquest of arms, and by deed of cession of March 1, 1784, ceded it to the United States, said ^{of cession} deed containing the following provisions in regard to these lands: "That the French and Canadian inhabitants and other

settlers of the Kaskaskias, St. Vincents and the neighboring villages, who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties." (See a full history of the proceedings in regard to these French settlements in Doe ex dem. ~~Moore~~ v. Hill, Beecher's Breese, 304, and in Hebert v. Lavalley, 27 Ill.448.))

Congress appointed commissioners to examine these French claims, and they reported, under date of December 31, 1809, that Gov. Vaudreuil had granted "to the inhabitants of Kaskaskia a tract of land as a common for the use of the said inhabitants, which seems to have been bounded north by the southern limit of the village, east by the Kaskaskia river, and south and west by the Mississippi, and the limits of the common field, so called, which will be found laid down in the plat annexed." (² ~~American~~ State Papers, Public Lands, Vol. ~~2~~, p. 148.)) Congress passed an act, approved May 1, 1810, "that all the decisions made by the commissioners appointed for the purpose of examining the claims of persons claiming lands in the district of Kaskaskia, in favor of such claimants, as entered in the transcript of decisions, bearing date the ~~thirty-first~~ ^{31st} day of December, 1809, which have been transmitted by the said commissioners to the se-cretary of the treasury according to law, be and the same

are hereby confirmed." (2 U.S. Stat. 607.) And by the Act,
approved February 20, 1812, "the decisions made by the
commissioners heretofore appointed for the purpose of exam-
ining the claims of persons to lands in the district of
Kaskaskia, in favor of such claimants, to town or village
lots, outlots, or rights in common to commons and common fields
as entered in the transcript of decisions, bearing date the
31st day of December, 1809, which have been transmitted by
the said commissioners to the secretary of the treasury,
according to law, be confirmed to all such rightful claimants
according to their respective rights thereto." (2 U.S. Stat.
678.)

ing department of a railroad. I don't know whether
 in track that held twenty-five or thirty cars would be
 ficient for a certain amount of business a day for an av-
 station for the purpose of loading and unloading
 handise.

*If this right of way west of Myrtle avenue has been
 ed to the use solely of running trains over it, and of
 it for passing trains, and the needs of the company
 t require it to be used for freight purposes, and it is
 ad has not been so used, would, in your opinion, the
 g of this street, as contemplated by this ordinance,
 t that property?*

It would not benefit it unless in the future it should

ould put the life of this improvement at about ten
 From the general aspect of the town and the

63-8

7 ~~6-1/2~~

dependent in error?

9 It is contended by appellee, ~~h~~ that by the law in force in the Louisiana territory at the time the original grant, as well as at the time the grant of confirmation, was made to the inhabitants of the village of Kaskaskia, all islands that might be formed in the Mississippi river belonged to the king of France, and not to the owners of the lands upon the banks of the river, and that, aside from the question raised by the Statute of Limitations, the title ~~to~~^{to} the island must be determined by the old French law as it then stood before the adoption of the Code Napoleon, which, however, it is said, did not change the French law in the respect mentioned.

9 The law of France is but an adaptation of the old Roman or civil law. Chancellor Walworth, in Canal Appraisers v. People, 17 Wend. ~~2~~ 596, says: "It is true, indeed, that by the civil law the alveus or bed of the stream did not pass to the owners upon its banks, whose heritages (had the river as a natural boundary, while such bed was actually covered by the waters of the stream; but the moment the waters dried up, or the course of the river was changed, either wholly or in part, so as to render its bed susceptible of a beneficial

use, the civil law gave the land which had originally formed a part of its channel to the heritors upon its banks, to the same extent that the common law now gives it to the riparian owner/ while it is covered by the water, without the power of using it in any manner inconsistent with the public right of navigation. By the settled rule of the civil law, if a river abandoned its former bed and formed a new one, or from any other cause ceased to flow in its old channel, the soil which was thus left permanently dry was no longer the property of the public, but it immediately became the private property of the owners on its former banks,--the owners on each side taking to the center of the original ~~ex~~ channel of the river. (Vattel's Law of Nat. 122, § 270; Dig., bk. 43, tit. 12, § 7; L. 7, § 6, de acquir. dom.; 1 Biret's Applic. 218; 2 Ersk. Inst. tit.1, § 5, p. 196.)

And, as we have before seen, the islands in the river belonged to the riparian owners who had the river for their natural boundary.

That this was so by the civil law, see Cooper's Justinian, p. 74.

That the effect of the rule established by the civil and the common law was the same as bearing upon the question here

involved, has been repeatedly declared by the decisions of ^{accruing title} ~~and that not only the imperceptibly but the islands to the head of the stream,~~ ^{became the property of the riparian proprietors,} this court, [^] Houck v. Yates, 32 Ill. 179; Middleton v.

^{3 Scam. 510;} Pritchard, [^] ~~supra~~, Cobb v. Lavalley, 39 Ill. 331; Piper v.

Connelly, 108 Ill. 646; Battenuth v. St. Louis Bridge Co.

123 Ill. 535; Griffin v. Johnson, 161 Ill. 377; Rutz

v. Kehn, 143 Ill. 558.

But it is said that the civil law strictly speaking was not in force in France or its dependencies, at the time the

ⁱⁿ ~~granting~~ question was made, ^{that,} but as hereinbefore stated,

the Custom of Paris, which was a modified form of the civil

law, had been established as the fundamental law of the

Louisiana territory, and it is urged that by the Custom of

Paris, all islands arising in rivers were the property of

the sovereign, and not of the owners of the banks of the

stream.

The common law or customs of France varied with the different provinces, and it was not until the promulgation of

the Code Napoleon that a uniform rule was established for the whole country. By that Code, ~~the soil of navigable rivers (which are such as are used for purposes of navigation)~~

~~belong to the nation and islands which may be formed in navigable~~ ^{if there be no title or prescription to the contrary} such rivers ~~and~~ belong to the nation, [^] (Code, § 560, 561.)

Chancellor Walworth, in Canal Appraisers v. People, 17 Wend. 571, (already quoted) says on

p. 592: "By the French law, even before the adoption of the Napoleon Code, islands which were newly formed in the bed of a navigable river, belonged to the crown as the lord paramount, according to the principles of the feudal system.

It was not so, however, by the Roman law." Pothier says:

"By the French laws the navigable rivers belong to the king, the islands which are formed within, as well as the bed when it is abandoned to take a new course, belong to the king; the proprietors of inheritances on the bank cannot at all pretend to it, unless they show titles of concession from the king."

But it has been claimed, notably by ~~Mr~~ Edward Livingston, (3 Hall's Law Journal, ³⁰⁷~~228~~ ff.), that this was not the general law of France, but an exception to that law in particular provinces.

After Napoleon had prepared the draft of his celebrated Code, it was transmitted to the various provincial tribunals for inspection and suggestion, before it was promulgated as law. The tribunal of appeals of Rouen, in commenting on this portion of the Code, made the following remarks:

"The Roman law of the Digest de acquirendo rerum dominio

gave to the adjoining proprietors the islands which were

formed in the river,—a disposition which appears more equit-

able than this article of the Code, and more worthy of a great

nation, whose true interest is not to acquire ^{new} property to the injury of individuals. The edicts and declarations of the former kings, which claimed for the demesne the islands of navigable streams and rivers, were only exchequer laws, these laws were founded on the false pretext that the islands were an appendage of the river, which was considered as belonging to the king. (1) The river itself is not a national demesne, but a public thing; it belongs to the nation, not by a property title, but by sovereignty. (2) The islands are not appendages to the waters of the river, but to the bed of the river, the rights of individuals. to which ~~are~~ ^{not denied} ~~acknowledged~~ when the river abandons it. (3) An island cannot be formed without increasing the width of the river at the expense of the adjoining land, and the damages to which the proprietors of these lands are exposed, should entitle them to the islands ^{which are formed in the river,} as an indemnity for the risks and losses they incur. The principle which we propose would not at all invade the ^{proprietary} ~~public~~ right to those islands, which the nation possesses, or for which it has positive titles, but it would tranquilize those individuals who for ages have possessed islands in the rivers as true owners, and whom the agents of the demesne have always vexed without having ever succeeded in despoiling them of their estates."

should add to the inheritance of an individual, an island or an entire parcel of soil, although it should be united to the inheritance, this would be considered as a part of this inheritance, but not with the quality of separate property." This seems to show that the Custom of Paris, in conformity with the Roman laws, gave to the owners of land bounded by a river the islands and portions of land formed therein. The Custom of Paris was by the terms of the charter the law of Louisiana, and apparently it was in accord with the Roman law, notwithstanding the pretensions of the French kings to the rivers and islands of France, which pretensions, however, became the law of the whole of that country by the promulgation of the Code Napoleon. If this custom and law ^{were} ~~was~~ in accord with the civil law, as ^{they} ~~it~~ seems to have been, it is plain that by the grant ^{as} confirmed by Gov. Vaudreuil to the inhabitants of the parish of Kaskaskia, the inchoate right to this island was annexed to the grant by the laws of the country.

Counsel have contented themselves with a limited examination of this question, and, as we view the case, further consideration of ^{them and have here given it} ~~it~~ such question on our part becomes un-

necessary, for the reason that, even if this island ~~would~~, under the French law, have become the property of the ~~sovereign~~ ^{sovereign} govern-

~~ment~~, all right or title thereto after its cession to the

United States was relinquished to the inhabitants of Kaskaskia by the necessary effect of the acts of Congress. The patent of Gov. Vaudreuil, while containing certain reservations, purports to confirm to the inhabitants of Kaskaskia lands which had been granted to them by some former grant, the terms of which are not shown by the record; And by the cession of the territory in question by Virginia, the United States were required only to confirm to the settlers their possession and titles. Still, it is manifest that as the United States by this cession obtained all the lands, and title there-to, not previously granted, it had the power, by fixing boundaries and otherwise, to enlarge such possessions and titles which it had agreed to confirm. In the patent of Vaudreuil the grant of the lands ^{to} said inhabitants is called "a common which they have had a long time for the pasturage of their cattle, in the point called la pointe de bois, which runs to the entrance of the river Kaskaskia."

The commissioners' decision and report, which ^{were} was approved by Congress, stated that it "seems to have been bounded north by the southern limit of the village, east by the Kaskaskia river, and south and west by the Mississippi and

the limits of the common field, so called, which will be found laid down in the plat annexed." An inspection of the plat shows that the village of Kaskaskia was situated in a bend of the Kaskaskia river, that the common fields, (being the lands tilled by the villagers) extended from the village to the Mississippi river, being bounded by straight lines on the sides towards the Kaskaskia river and the Mississippi on the south, leaving a Y-shaped strip between both rivers, with the lower limb running to the confluence of the two rivers, for the commons. Portions of this common were surveyed and platted at different times, and the island in controversy lies chiefly along the river front of the fourth survey.

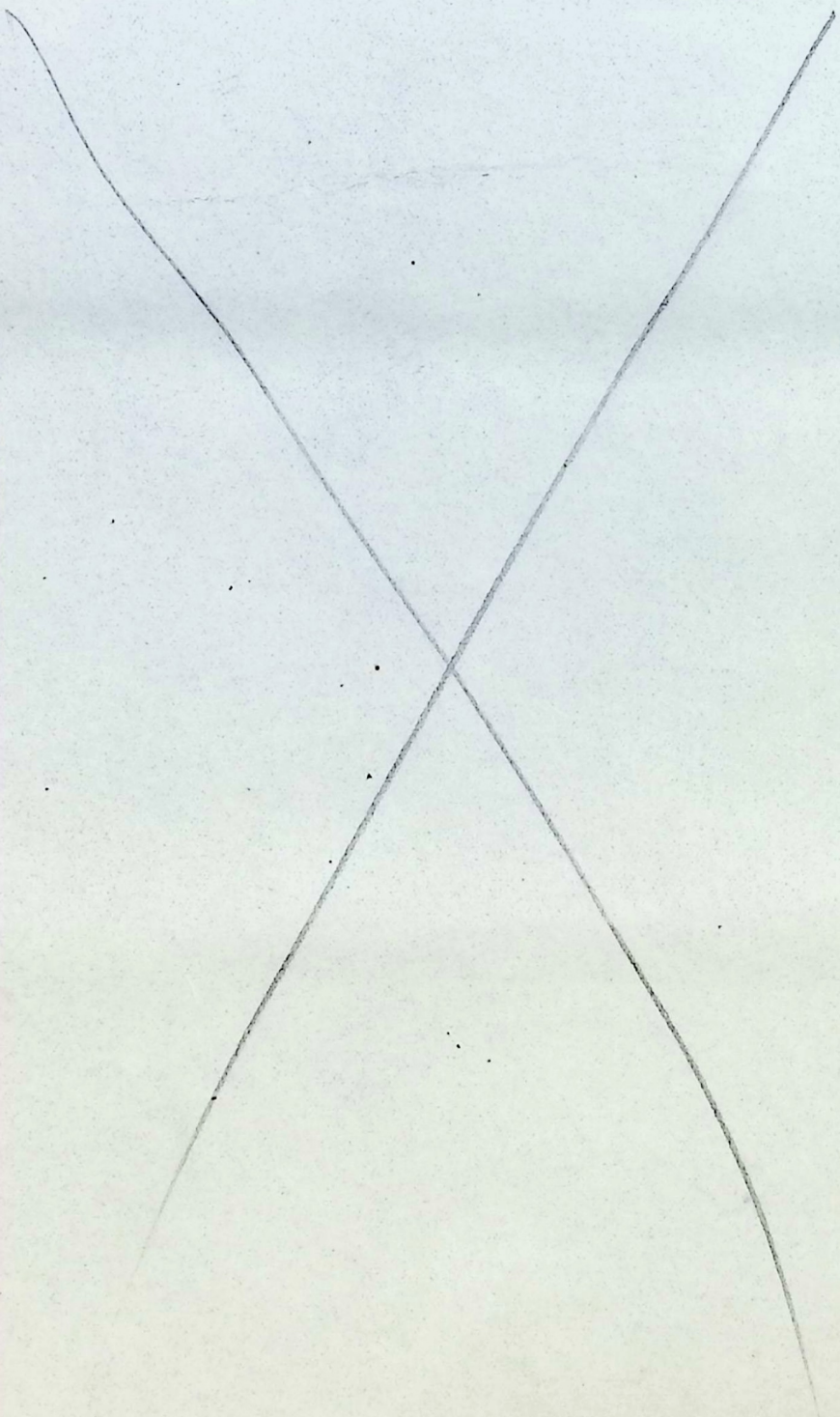
true,
It is doubtless ^{as a general proposition,}
That a confirmation does not enlarge the original grant.

~~We think, there can be no question.~~ In Reichart v. Felps, 33 Ill. 433, it is said that the confirmation by Gov. St. Clair of the Northwest Territory "is a declaration by the United States that they had no claim to the land. It was not a grant by the United States, because the title was not in them." This doctrine was affirmed in Reichart v. Felps, 6 Wall. 160. (See, also, Doe ex dem. etc. v. Hill, supra.)

however,
In Hebert v. Lavalley, supra, speaking of the act of Congress of May 1, 1810, supra, the Court says: "This act is an operative grant of all the interest the United States may, at

53-11

any time, have had in the land described in the transcript of the commissioners under that date, and confirms the land, in terms, to the inhabitants of these villages, respectively." And it was further said, that it was not "material to inquire to what uses the lands were originally appropriated by the priests of the mission, the government, having power to confirm ^{the title to} them, or to grant them, having restricted the grant to the inhabitants of those villages as a common."



So, too, in *Landow v. Hines*, 21 Wall. 521, while it was said by the Supreme Court of the United States in that case, that it was for confirmation of existing possessions and titles that the deed of cession stipulated, not the transfer of any new title", still the perfect title of all the lands embraced in the deed of cession, aside from the possessions and titles the confirmation of which was stipulated, was ceded by Virginia to the United States, so that the General Government had not only the power to confirm these possessions and titles in the inhabitants of Kaskaskia, but it had full power, by establishing fixed boundaries or otherwise, to grant to these inhabitants the titles to lands which were not embraced within the original French grant. Thus, it was held in that case that the patent provided for in the Act of Congress would have added nothing to the force of the confirmation made by the Act of Congress itself. And it was said: "A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the government. * * *

If the claim be to land with defined boundaries or capable of identification, the legislative confirmation perfects the title to the particular tract, and a subsequent patent is only documentary evidence of that title. If the claim be to

quantity, and not to a specific tract capable of identification, a segregation by survey will be required, and the confirmation will then immediately attach the title to the land segregated."

63-12
9 It has been noticed that the boundaries to the lands of the original French grant in controversy, so far as anything in this record discloses, were uncertain and indefinite, *and it* cannot be said that they were made certain and definite by the grant of Gov. Vaudreuil of 1743, confirming to these settlers the said original grant, but the commissioners appointed by the act of Congress, having full power in the premises, established and defined such boundaries, and their decision was confirmed by a subsequent act of Congress.

It is obvious, therefore, that, since the boundaries were so established, all parties, and the courts as well, must be bound thereby. It must be conceded, also, we think, that if the United States owned any lands, or interest therein, included within the boundaries as fixed by it, or any right, interest or title which would be appurtenant to any such lands. *such* ~~that~~

lands, title or interest must have
A ~~it~~ passed by virtue of its acts confirming the title and fixing the boundaries of the lands in question ^{and for} to said inhabitants.

2 We are of the opinion, also, that in making the Mississippi River the south and west boundary of the grant in

18
Congress must have used the terms employed
question, ~~the legal meaning of the terms employed, by the~~
in fixing such boundary in the legal sense ~~commonly~~
~~laws of this country must be understood as having been intended~~
attached to ~~the~~ in this country,
~~ed by Congress~~ otherwise we would expect to find some qual-

ification of or reservation to ~~such~~ terms, ~~employed~~. Even if,
as contended by ^{plaintiffs in error,} appellant, that by the old French law in force

in the territory when the original grant was made, the grant
of lands bounded by the Mississippi river on one side would
not carry with it any island in said river which might be
formed therein, still, such was not the common law generally
in force in this country. Thus, it was held in Middleton v.

Pritchard, 3 Scam. 510, that where the government makes a

grant, and its own act shows an intention ^{not} to make any reser-
vation, the grant will be intended to include all that might
properly pass under it by the terms employed, and that grants
by the government are to be construed according to the common
law, unless some act has been done by the government to qual-
ify or exclude that construction, and that all grants by the
government having their boundaries upon streams not naviga-
ble by the common law, entitle the grantees to all islands
lying between the main land and the center of the thread of

the current. In so construing the acts of Congress in
the premises we are not in conflict with the rule as
laid down by the Supreme Court of the United States,
that a ^{legislative} grant of land from the government is not to be con-
sidered as a warranty, but as a release only, and
that if there be any doubt it should be resolved against the
grantee. *Slidell v. Giraud* 111 U.S. 412. *Rice v. Ry. Co.* 1 Black 348

9 It was in the next place contended by defendant below, that the right of recovery by plaintiffs in error was barred by the statute of limitations of twenty years' adverse possession by him under claim of ownership, and evidence was given tending to prove the fact of such possession. But it is insisted by plaintiffs in error that the statute cannot be relied on to defeat the title or the recovery of these lands, for the reason that they are held in trust for a public purpose, and that the ~~lands~~ commons in question are inalienable, and the title thereto cannot be acquired by adverse possession.

9 The grant of Vaudreuil contained, among other things, the following: "In consequence of which the said point, as it is above designated, shall remain in common without altering its nature, nevertheless reserving to us the power, whenever the case may require it, of granting the said commons to the inhabitants established and who may establish, and this on the representations which may be made to ~~us~~ us by the commandants and sub-delegates on the said places."

~~the title of the plaintiffs in error such that it can be
divested by adverse possession, or, in other words, can title
by adverse possession be acquired by any one as against the
plaintiffs~~

We have seen that the deed of cession of Virginia to the United States provided "that the French and Canadian inhabitants and other settlers of the Kaskaskies shall have their *and that they were so confirmed by the United States.* possession, and titles confirmed to them," ^{Illinois} The Constitution of 1818, ~~of Illinois~~, provided ~~in~~ (Art. 8, § 8,) as follows:

"All lands which have been granted as a common to the inhabitants of any town, hamlet, village or corporation, by any person, body politic or corporate, or by any government having power to make such grant, shall forever remain common to the inhabitants of such town, hamlet, village or corporation, and the said commons shall not be leased, sold or divided under any pretense whatever." When the Constitution of 1848 was adopted, a special article in reference to "Commons" was inserted, being Art. ¹¹, which was identical with the above provision of the Constitution of 1818, except as to the prohibition of alienation ⁱⁿ any manner, in lieu of which the following was inserted: "but the said commons, or any of them, or any part thereof, may be divided, leased or granted, in such manner as may hereafter be provided by law, on petition of a majority of the qualified voters interested in

such commons, or any of them."

63-14
§ In pursuance of this provision of the Constitution of 1848, the legislature, in 1851, on the petition of a majority of the qualified voters of Kaskaskia interested in said commons, passed an act reciting that the inhabitants of Kaskaskia were entitled to the use and benefit, in common, of these lands, by virtue of an ancient grant recognized and confirmed by the Government of ^{the} United States, and that the right to lease said lands had been granted by the constitution of this state, which act constituted five persons named therein a body corporate and politic, by the name and style of "The President and Trustees of the Commons of Kaskaskia", giving them and their successors perpetual succession and existence, with power to sue and be sued, etc. Provision was made for the election of the succeeding trustees by the legal voters of the town of Kaskaskia, and power was given them to survey the lands contained in said commons and divide them into lots, and to lease them for a period not exceeding fifty years, to the best and most responsible bidder, ~~therefor~~, and to apply the proceeds "to the education of the children of the inhabitants of Kaskaskia, and such residents as are, by immemorial custom, commoners upon said commons, and the children of the lessees", with power to erect or purchase one or two buildings for schools, employ teachers, and to establish

a library or libraries for such school, and for said purposes to use the proceeds of the leasing of said lands.

The said president and trustees^{were} also authorized to institute suit against any person or persons trespassing upon said commons, and for use and occupation against any person in possession, or who might thereafter take possession without leasing. They were also authorized to appropriate such portion of the proceeds from the leasing of said commons for the support and advancement of religion, as should be requested by a majority of the voters of said town of Kaskaskia by their petition indicating the religious purposes to which the same should be applied. ^{(All Private} Laws of Ill., ~~2nd Session,~~ ~~1849 and~~ 1851, p. 5.)

This corporation so created was not ~~of course~~ vested with any title to the lands in question, but was simply clothed with a trust for the benefit of the aforesaid inhabitants, as designated in the statute. It had no power to alienate any part of said commons in fee, nor to transfer any greater interest than a lease for fifty years, nor had the inhabitants *the constitution of 1870 contains no provision on the subject* of Kaskaskia any such power. Hence, without a further enabling act of the legislature, there ^{is} no power vested anywhere to convey the fee to said lands.

9 In commenting on the title to a parcel of the Cahokia Commons in Hays v. Hewitt, 97 Ill. 498, and which was approved in Rutz v. Kohn, 143 Ill. 558, this court said (p. 552):

"We are of ~~the~~ opinion that, prior to any attempted transfer or disposition of the lot in question, through which either of the parties to this controversy claims, the inhabitants of the village of Cahokia, as a distinct community, had, by national grant and confirmation, become the owners in fee of these commons, including the lot now in controversy.

Their title has been distinctly recognized at different times and in a variety of ways, both by the ~~National~~ and State governments, and it is a matter, therefore, of no material consequence to determine the precise period and means by which it became fully confirmed in them. We do not wish to be understood, from what we now say, as holding that the various individuals who happened to be residents of the village of Cahokia at the time of such grant and confirmation, became joint tenants or tenants in common of the lands in question. On the contrary, as mere individuals, they took no legal title whatever. As individuals, they acquired only such rights as were incident to residence in a village having the ownership of so valuable a property. By virtue of the act or acts of Congress, through which this title was conferred, the inhabitants of Cahokia village were, as a community, by implication, constituted an artificial or corporate body for the purposes of receiving and holding the lands in question for the benefit of the community as a body of people, but for no other purposes. (Dillon on Muns. Corp. secs. 21, ~~and~~ 22, (1st ed.); Angell and Ames on Corp.)

The creation of this artificial body, and investing it with the title to these lands, did not necessarily clothe it with power to convey or otherwise dispose of them, but it was entirely competent for the legislature to authorize it to

do so, and provide the necessary agencies through which this might be effected, and to otherwise provide for the better management and government of the business affairs of the community, which it, from time to time, has done from the earliest period of our State government to the present time."

9 But, so far as before shown, no authority has been conferred by the legislature under which the lands in question could be aliened in fee, -that is, as to the commons of Kaskaskia.

The corporation created by the Act of 1851 was a public or quasi municipal corporation. "Public corporations are not voluntary associations at all, and there is no contractual relation between the corporators who compose them, they are merely government institutions, created by law, for the administration of the affairs of the community."

Morawetz ^{Corp. Law} (2nd ed.) § 3.

53-16 9 It has long been settled law in this state, that the statute ^{of limitations} will run against a municipal corporation in respect to property held in its private capacity, but not in respect to property held by it in trust for the public. (County of Piatt, v. Goodell, 97 Ill. 84; City of Chicago v. Middlebrooke, 143 Ill. 265; Greenwood v. Town of LaSalle, 137 Ill. 225; City of Alton v. Illinois Trans. Co. 12 Ill. 38; Logan County v. City of Lincoln, 81 Ill. 156; Lee v. Mound Station, 118 Ill. 304; Callett v. People, 151 Ill. 16.)

In County of Piatt v. Goodell, supra, it was said (p. 92):

"The county had a perfect right to sell or otherwise dispose of the same (a tract of swamp land held by it) at pleasure, at any time before the statute run. The public generally had no interest in it in common with the citizens and taxpayers of that county."

Most of the cases give as ^{one} reason for the distinction, that as to property held by such corporations in their private capacity, the corporation may sell and dispose of it at pleasure; ^{but the principal} ~~and also the further~~ ^{reason is,} reason that as to property held in trust by it for the public generally, its title is held in trust only for the general public, and that the rights of the public cannot be barred ~~with~~ by the statute of limitations, because of the ancient maxim of the common law, Mullum tempus occurrit regi. ^S It cannot be said in the case at bar that the president and trustees constituting the corporation aforesaid, held the title to these commons in trust for the general public; indeed, it cannot be said that they held ^{and they can maintain this right only by authority of the statute,} the title at all. ^{otherwise,} They were merely clothed with a portion of the power and authority which resided in the state in its sovereign capacity, to subdivide and dispose of the lands in question. It is difficult to see how by any act ^{or neglect to act,} by these officers, any greater title could be acquired by any one than they were authorized by law to confer. And the same reasoning would ⁽ seem to properly apply to the inhabitants

of the village.)

They could not divide, convey or convert to any other use these lands, or any part of them, except by authority granted to them by the sovereign power of the state. By the terms of the grant, and the express recognition thereof by the constitutions of 1818 and 1848, and by acts of the legislature, there was no power residing any where, except in the state itself, to authorize a segregation of these lands, or their diversion to any use different from that provided for in the grant, or their conveyance en masse or in separate parcels, in fee or for years. We can see no difference between such a case and one where the title should be held in trust by the state for the use and benefit of a portion of the public for certain specified purposes, as respects see Johnston v. Lewis 38 Ark. 291 ~~the applicability of the statute of limitations.~~ (As before

53-17 said, we have heretofore held, that where the title is held by the municipality in trust for the general public, ~~that~~ the statute cannot be applied, and we are of the opinion that the same rule should be applied in a case, not precisely ^{as,} the same, but in principle analagous to, the one at bar, where the title should be vested in the state in trust for a portion of the public. The statute of limitations could not run against the state in any capacity. To sustain the decision of the court below, that the title to this island of the inhabitants of Kaskaskia is barred by the statute

27

of limitations, is to hold that, in violation of the terms of the grant and of the laws of the state recognizing and protecting it, this part of the commons may be severed from the rest, diverted to another use, and the title thereto in fee be acquired and the power of the state in respect thereof be taken away. To so hold is to decide that the state itself may, by adverse possession and limitation of time, be shorn

~~off~~ and barred from the exercise, ~~of~~ of its sovereign

in respect to the alienation of these lands.

power. While the cases before mentioned, holding that the

statute will not run as to rights held by municipal and other public corporations in trust for the general public, are distinguishable in some respects from the case at bar, still,

we are of the opinion that the general principles there an-

and that the application of the statute of limitations to cases of this
nounced ought to be applied here. The case is in many res-

pects sui generis, but, applying the principles before mentioned, we must hold that the defendant below acquired no title under the statute of limitations by his adverse holding of twenty years.

53-18
In many of the states of the union, the rule adhered to in this state is not followed, but it is held that the statute of limitations will run against municipal corporations in all respects to the same extent as against individuals.

This question is elaborately reviewed in a note to City of Fort Smith v. McKibbin, 48 Am. Rep. 19, where the opinion

character would be against public policy.

in City of Wheeling v. Campbell, 12 W.Va. 36 is set out.

In reviewing the case of Morey v. City of Providence, 10 R.I. 52, —where it was held that ^{where} land ^{was} dedicated for the use of the people of Providence and not for the public or the people of the whole state, and where the state had no interest in the use thereof, a title might be acquired by adverse possession; that the use being for a limited portion of the public, the doctrine of adverse possession would apply to it, — it was said in the Wheeling case that the distinction made in the Rhode Island case was not made in any of the many cases there reviewed, and it was thought not to be founded in good reason. But however that may be, and whatever the rule may be in other states, the doctrine in this state is as we have before stated. [¶] We do not wish to be understood as holding that if the inhabitants of the Village of Kaskaskia, as the owners of these commons, had been incorporated, and endowed by the state with full authority to divide, divert and convey such commons, or any part thereof, in fee, ~~that~~ the statute of limitations would not run against them as in other cases. That question is not presented by the record.

[¶] For the reasons stated we are of the opinion that the learned judge of the Circuit Court erred in his decision, and the judgment of the court below is therefore reversed, and the cause is remanded for further proceedings not inconsistent with the views herein stated.

Reversed and remanded.

No.24.

Ag.20.

IN THE
SUPREME COURT OF ILLINOIS,
SOUTHERN GRAND DIVISION.
May Term, A.D. 1897.

THE PRESIDENT and TRUSTEES
OF THE COMMONS OF KASKASKIA,
VS.

CHARLES McCLURE

OPINION by Carter, J.

FILED.

MAY 10 1897

J. O. Carter

CLERK SUPREME COURT.