

**Chouteau Vs. Eckhart**

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**Court :** US Supreme Court

**Decided On :** 1844

**Appeal No. :** 43 U.S. 344

**Appellant :** Chouteau

**Respondent :** Eckhart

**Judgement :**

Chouteau v. Eckhart - 43 U.S. 344 (1844)

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**Chouteau v. Eckhart**

**43 U.S. (2 How.) 344**

*ERROR TO THE SUPREME COURT*

*OF THE STATE OF MISSOURI*

## **SYLLABUS**

This Court has jurisdiction under the twenty-fifth section of the Judiciary Act in a Missouri land cause, where the title is not to be determined by Spanish laws alone, but where the construction of an act of Congress is involved to sustain the title.

The obligation of perfecting titles under Spanish concessions, which was assumed

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by the United States in the Louisiana treaty, was a political obligation to be carried out by the legislative department of the government. Congress, in confirming or rejecting claims, acted as the successor of the intendant general, and both exercised in this respect a portion of sovereign power.

The Act of Congress passed on 13 June, 1812, confirming the titles and claims of certain towns and villages to village lots and commons, gave a title which is paramount to a title held under an old Spanish concession confirmed by Congress in 1836.

The facts were these:

On 11 January 1797, Charles Tayon presented the following petition:

"To Don Zenon Trudeau, Lieutenant Governor of the western part of Illinois, at St. Louis: "

"Charles Tayon, sub-lieutenant of infantry, pensioned by the King, captain of militia, commandant, under your orders, of the Village of St. Charles, of Missouri, has the honor to pray you to grant him a tract of timbered land of six arpens in width, fronting on the [marcies croche de la prairie basse] Crooked Swamp, in the low prairie, and extending to the Missouri, adjoining, on one side, to Mr. Ant. Janis, and on the other side, to lands not heretofore granted; favor which he expects of your justice."

"[Signed] CHARLES TAYON"

"St. Louis, 11 January, 1797"

On 23 January, Trudeau returned the following answer:

"St. Louis, January 23, 1797"

"Having been informed that the land asked for, in order to procure timber, is in no way fit to be improved, on account of the inundations to which it is subject every year, and that the timber thereon is only good to burn, and will renew itself in a short time, and therefore cannot be ruined, as the timber growing on the hills, which experience has shown will never grow up again; and the said land being in the vicinity of the Village of St. Charles and of various farms, in the prairie of its dependency, which would have to go a great deal further to procure wood; said tract shall remain (as well as all others adjoining, either in ascending or descending the Missouri, and which have been asked for by sundry petitions, addressed to us, together with the present, by Mr. Tayon) to the royal domain,

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and for the common use of the said Village of St. Charles, and for the lands already granted in the prairies, or to be granted hereafter, all which Mr. Tayon shall make known to all the inhabitants, and especially to those who have asked for land, and whose petitions I herewith return."

"[Signed] ZENON TRUDEAU"

On 17 November, 1800, Pierre Chouteau applied for an augmentation of a previous concession as follows:

"To Don Carlos Dehault Delassus, lieutenant colonel attached to the stationary regiment of Louisiana, and lieutenant governor of the upper part of the same province: "

"Peter Chouteau, lieutenant of militia and commandant of the fort of Carondelet in the Osage nation, has the honor to represent to you that formerly he obtained of Don Manuel Perez, lieutenant governor of this part of Illinois, a concession for a tract of land of 10 arpens in front by as many in depth, to be taken on the left side of the Missouri at about 20 arpens above St. Charles, upon which concession your petitioner has made all preparatory works for the construction of a water grist mill, which was to be built on the creek comprised in his concession. The lieutenant governor, Don Zenon Trudeau, was pleased to grant to your petitioner an

augmentation to the said tract of 30 arpens in depth, all which is proven by the authentic documents necessary to this object. The desire of profiting of the favor which the general government granted to all those who presented their titles to obtain their ratification caused your petitioner to address those same above-mentioned documents to a friend at New Orleans, to whom probably they have not been remitted, since he could not effectuate their presentation; the said original documents having not been registered in the archives of this government, your petitioner would be in great perplexity had he not to offer to you the attestation of Don Carlos Tayon, captain commanding the Village of St. Charles, of Missouri, who at that time had a perfect knowledge of the original documents here above-mentioned, by virtue of which your petitioner was authorized to begin an establishment for which he has made considerable sacrifice."

"Full of confidence in the justice and generosity of the government, he hopes that after the attestation you may be pleased to take from the commandant of St. Charles, you will have the goodness to ratify to him, and in the place, the security of a property which he has been enjoying for more than ten years by virtue of the titles to him

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expedited by your predecessors, and of which he should wish that you would be pleased to order the surveyor of the Upper Louisiana to put him in possession in the following manner: to take two arpens below the creek comprised in his concession, and above said creek all the space which is between the said creek and the next plantation, by the depth of forty arpens, in order that, being possessed of the certificate of survey which shall be delivered to him, he may, if needed, have recourse to the superior authorities to obtain the ratification of the said title. The petitioner presumes to hope everything from your justice in the decision of the case which he has the honor to submit to your tribunal."

"PIERRE CHOUTEAU"

"St. Louis of Illinois, 17 November, 1800"

On 18 November, 1800, Delassus referred the matter to Tayon, who replied as follows:

"St. Louis of Illinois, 17 of November, 1800"

"Cognizance being taken of the foregoing statement, the sub-lieutenant in the royal army and captain of militia, commandant of the post of St. Charles, shall give, in continuation, information of all he knows upon what is here asked."

"DELASSUS"

"In compliance with the foregoing order, I do inform the lieutenant governor that the statement of Don Pierre Chouteau is in all conformable to truth, having had full knowledge of the titles mentioned by him in his petition, as well as of the considerable works he has done on said land, of which he has always been acknowledged as the proprietor."

"CHARLES TAYON"

"St. Louis, 25th November, 1800"

On the next day, 26 November, 1800, Delassus issued the following order:

"St. Louis of Illinois, 26 November, 1800"

"Having seen the foregoing information and the just rights stated by Don Pedro Chouteau, to whom an unexpected accident has deprived of his title of concession, and considering that he has been for a long time proprietor of the land in question, the surveyor of this Upper Louisiana, Don Antonia Soulard, shall put him in possession, in the manner solicited, of the tract of land he petitions for, and the survey being executed, he shall draw a plat of said survey, which he shall deliver to the interested party, to serve to the said party to obtain the title in form from the general intendency, to which tribunal alone

corresponds, by royal order, the distributing and granting all classes of lands of the royal domain."

"CARLOS DEHAULT DELASSUS"

On 18 January, 1801, the inhabitants of the Village of St. Charles had a meeting and adopted the following proceedings:

"In the year eighteen hundred and one, on 18 January, at the request of Mr. Louis Barrada, syndic for the fences of this parish, we, Charles Tayon, captain-commandant of the said St. Charles, have given notice at the door of this said church that all the inhabitants of this place should have to assemble this day in our government [house] in order to determine whether the commons at the lower end should be increased or not. The said inhabitants being then assembled and the question being under deliberation, they all unanimously agreed that for the interest of the said parish, the enclosed of the lands shall begin (acote) by the side of Mr. Antoine Lamarche, and it shall be continued in descending to the Crooked Swamp, all the way through the woods, to nearly opposite the house of the late Louis Hunault; thence it shall run in a straight line to the Missouri."

"The said inhabitants having thus determined on this head, it was agreed that the syndic on duty this year shall cause to be measured the quantity of arpens of land which are included in the new augmentation of the commons, in order to [separter] distribute to each inhabitant what he is to do with it according to the usages which have always been observed, without wronging anyone whosoever in the said distribution."

"It has been further agreed in the said assembly that if hereafter the commons of the upper end should need to be enlarged in order to procure more pasturage for the cattle, all the said inhabitants [s'y porterons] shall help in doing the same, as this day they bind themselves to do for the lower end, always without prejudice to anyone whosoever. And as the said inhabitants will not undertake anything without the consent of the lieutenant governor, they have judged proper that the present deliberation should be communicated to him, and that he be supplicated to

preserve to the said inhabitants of St. Charles, of Missouri, their upper and lower commons, in their whole and entire state, and they will bind themselves to enclose the same as they have done heretofore, in order to preserve their grain and other property. "

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"Done and agreed upon in our government [house], day and year as above. And all the said inhabitants have signed or made their customary marks."

On 26 February, 1801, Delassus made the following reply:

"St. Louis of Illinois, February 26, 1801"

"All concessions and augmentations of property must be granted by the intendant of these provinces, on a petition which is to be presented by those persons claiming lands, but if the commons of the inhabitants of St. Charles is not sufficient for their cultivation, we do permit them, provisionally, to enlarge the same according to their wishes without ensuring to them the right of property, which they are to apply for as above mentioned. And the provisional lines of the said augmentation shall be drawn by Captain Antoine Soulard, Surveyor of Upper Louisiana, who is the only person authorized to survey under our orders. It being well understood that nothing shall be done to the prejudice of any person."

"[Signed] CARLOS DEHAULT DELASSUS"

On 23 February, 1804, Delassus issued another order as follows:

"C. -- In consequence of the representation of the inhabitants of your post, which appears to me very just and well founded, after my decree of 26 February, in the year 1801, by which the augmentation therein mentioned is granted to them, and for which they have asked a survey by their petition of 27 April of the same year -- which petition you have kept to this day without making it known to me, for which I hold you responsible -- I apprise you that the surveys made in the said place cannot belong to any individual, but to the commons of St. Charles. Therefore you shall notify those who have had surveys made in the said place of this disposition,

and you shall take the necessary measures for the execution of the whole survey asked for by the said petition of 27 April, according to the aforesaid decree of 26 February in the year 1801."

"May God have you in his holy keeping."

"[Signed in the original] CARLOS DEHAULT DELASSUS"

"Mr. Charles Tayon"

"St. Louis of Illinois, 23 February, 1804"

"I certify that the above is a copy of the original (official letter) addressed to Mr. Charles Tayon by the ex-commander-in-chief of

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Upper Louisiana, Don Carlos Dehault Delassus, and presented to me by the citizens of note of the Village of St. Charles, while I was commandant of the said village."

"[Signed] JAMES MACKAY"

On 2 March, 1804, the surveyor general, Soulard, having made a survey and plat in conformity with the above order, issued the following certificate:

"I, Anthony Soulard, Surveyor General of Upper Louisiana, do hereby, certify, that a tract of land was surveyed, meted, and bounded for, and in presence of, the syndic and inhabitants of St. Charles [Missouri], with the assistance of many of the inhabitants of said village, such as is represented in the plan hereto annexed, according to their petition therefor, dated January 18, 1801, and the decree of the lieutenant governor, by which I am ordered to put them in possession of a sufficient quantity of land to serve them as a common; which surveys being completed, I find the said tract of land to contain 14,000 arpens, (superficial measure), the admeasurement being made with the perch of Paris, of 18 pies in length, also Paris measure according to the usages or customs of this country,

which tract of land is situate on the left side of the Missouri River, at about twenty-one miles from the Town of St. Louis, bounded as follows, viz.: N.E., lands of the royal domain; S.E., the River Missouri; S.W., partly by land of St. James d'Eglise; N.W., by sundries, namely, Francis Duquette, the inhabitants of Marias Croche, lands at the Mamelles, lands of various proprietors, and lastly, by lands of Frs. Duguette, Joseph Tayon, John Tayon, and royal domain. This survey and admeasurement made without noticing the variation magnetic needle, which is (now) 730' E.; the whole as represented in the plan hereto prefixed, in which the courses, distances, metes, bounds &c., are noted."

"This survey, made in conformity to the decree of the late lieutenant governor, Ch. D. Delassus, dated February 26, 1801, which is hereto annexed, the whole laid down from the field notes of my deputy, James Mackay, dated on the 27th (day following) of the month of February, of this present year, which I signed."

"ANTHONY SOULARD"

"St. Louis, March 2, 1804"

"Notes. -- All the metes and corners are designated in the plan. All the trees in the lines are blazed, with two notches below the blaze. The trees on the right and left of the lines are merely blazed. A. is

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a tract of land subdivided among several persons, and called the Cul de Sac lands. C. is a tract also granted to several persons, and called the Grand Prairie."

"I, Anthony Soulard, Surveyor General of Upper Louisiana, do hereby certify that the above plan and notes of a survey agree in every part with the originals, which are filed in my office."

"ANTHONY SOULARD, *Surv. Gen.* "

"St. Louis of Illinois, March 2, 1804."

On 2 March, 1805, Congress passed an act "for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana," the general purport of which was to recognize all existing grants. It further provided for the appointment of three persons who should examine and decide on all claims submitted to them and report the result to the Secretary of the Treasury, who was directed to communicate it to Congress.

On 3 February, 1806, the inhabitants of the Village of St. Charles laid such of the above papers as relate to their title before the commissioners appointed under the act of 1805, and claimed a common for the general benefit of the inhabitants.

On 3 March, 1807, Congress passed another act relating to these land titles explanatory and corrective of the preceding act.

Both claims, that of Chouteau and the inhabitants of the village, were presented to the commissioners, who rejected Chouteau's and took no notice of the claim of the inhabitants of the village.

On 13 June, 1812, Congress passed another act "making further provision for settling the claims to land in the Territory of Missouri," in which, amongst other things, it is enacted

"That the rights, titles and claims to town or village lots, outlots, common field lots, and commons in, adjoining, and belonging to the several Towns or Villages of Portage des Sioux, St. Charles &c., which lots have been inhabited, cultivated, or possessed prior to 20 December, 1803, shall be and the same are hereby confirmed to the inhabitants of the respective towns or villages aforesaid according to their several right or rights in common thereto, provided that nothing herein contained shall be construed to affect the rights of any persons claiming the same lands, or any part thereof, whose claims have been confirmed by the board of commissioners for adjusting and settling claims to land in the said territory."

In 1813, another act was passed upon the subject which does not appear to have any material bearing upon the case.

On 26 May, 1824, Congress passed another act

"enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims."

It allowed any persons claiming lands under old grants or surveys, under certain circumstances, to present a petition to the District Court of the State of Missouri, which court was authorized to give a decree in the matter, reviewable, if need be, by the Supreme Court of the United States. The 5th section provided that a claim not before the district court in two years, or not prosecuted to final judgment in three years, should be forever barred, both at law and in equity, and the 7th section directed that where a claim tried under the provisions of the act should be finally decided against the claimant or barred by virtue of any of the provisions of the act, the land specified in such claim should forthwith be held and taken as part of the public lands of the United States, subject to the same disposition as any other public land in the same district.

This act was continued in force by the Act of 26 May, 1826, for two years; and by the Act of 24 May, 1828, it was continued in force for the purpose of filing petitions, until 26 May, 1829, and for the purpose of adjudicating upon the claims, until 26 May, 1830.

Neither the claim of Chouteau nor the inhabitants of the Village of St. Charles appears to have been presented to the district court under any of these acts.

On 27 January, 1831, Congress passed another act, being a supplement to the act of 1812, in which it was declared,

"That the United States do hereby relinquish to the inhabitants of the several Towns or Villages of Portage des Sioux, St. Charles . . . all the right, title, and interest of the United States in and to the town or village lots, outlots, common field lots, and commons, in, adjoining, and belonging to the said towns or villages, confirmed to them respectively by the first section of the act of Congress, entitled .

. . . , passed on 13 June, 1812."

On 9 July, 1832, Congress passed "an act for the final adjustment of private land claims in Missouri," which authorized commissioners to examine all the unconfirmed claims to land in that state &c.;, to class them, and at the commencement of each session of Congress during said term of examination, lay before the Commissioner of the General Land Office a report of the claims so classed &c.;, to be laid

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before Congress for their final decision upon the claims contained in the first class.

On 9 November, 1832, Chouteau presented his claim to these commissioners, who, on 2 November, 1833, unanimously determined that the claim ought to be confirmed to the said Peter Chouteau or to his legal representatives according to the concession. Before this decision was made, Congress, by an act passed on 2 March, 1833, had directed the commissioners to embrace every claim to a donation of land, held in virtue of settlement and cultivation.

On 4 July, 1836, Congress passed another act confirming claims to land in the State of Missouri, by which it was declared that the decisions in favor of land claimants made by the above commissioners were confirmed, saving and reserving, however, to all adverse claimants the right to assert the validity of their claims in a court or courts of justice, and the second section declared that if it should be found that any tract or tracts thus confirmed or any part thereof had been previously located by any other person or persons under any law of the United States, or had been surveyed or sold by the United States, the present act should confer no title to such lands in opposition to the rights acquired by such location or purchase &c.;

In January and February, 1837, Chouteau had the land surveyed which he claimed under the above confirmation, and it was admitted upon the trial that this survey included the land in possession of Eckhart for which the present ejectment was brought.

Chouteau having brought an ejectment, the cause came on to be tried in May, 1840. The defendant Eckhart endeavored to show an outstanding title in the inhabitants of the Village of St. Charles under the grant for a common.

Upon the trial, the plaintiff, Chouteau, offered in evidence such of the facts above detailed as bear upon his title, and the defendant in addition gave the following evidence:

He then proved by Judge Spencer that he (witness) came to St. Louis in the winter of 1796; that he came to St. Charles in the winter of 1798; when he came to St. Charles, the town was surrounded by a fence. The witness, looking on the plat of the survey of the commons, said that the claim of Spencer under Rybolt was granted to conform to the fence of the commons, and to have the fence of the commons as its northern line, and looking upon the plat of survey given in evidence by the plaintiff, says the whole of the land covered

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by the plaintiff's claim, as laid down on that plat, was included in the commons fence, which was standing when he came here, and remained until after 1804.

Mr. Cunningham, another witness of the defendant, said that he was a deputy surveyor of the United States and, as such, he has surveyed the exterior lines of the commons of the Town of St. Charles; that in making such survey, he in some places found the lines of the Spanish survey, in others the timber was cut down, and, in prairie land, no lines of courses could be found, and that the Spanish survey conformed to the plat given in evidence in this cause.

This being all the evidence, the court, on motion of the defendant, instructed the jury that

"If they believed from the evidence that the premises in controversy are included in the tract of land surveyed under the authority of the Spanish lieutenant governor of Upper Louisiana, for the commons of the Town of St. Charles, and held by the inhabitants of said town, and enclosed by them as their commons, under the

Spanish government, the plaintiff cannot recover in this action,"

to which instruction the plaintiff by his counsel excepts and prays the court to sign this his bill of exceptions, which is done, and the same is made part of the record.

Both plaintiff and defendant gave in evidence sundry acts of Congress, and defendant gave in evidence a private act of the Legislature of the State of Missouri, which they agree shall not be set out in the bill of exceptions, but may be read and considered evidence in the supreme court, as if here inserted.

The jury under this instruction found a verdict for the defendant. The case was carried to the Supreme Court of Missouri, where the judgment was affirmed, from which it was brought by writ of error to this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

For the statement of the facts, the report is referred to.

It is insisted this Court has no jurisdiction to look into the plaintiff's concession of 1800 or to pass on it under the 25th section of the Judiciary Act, and the case in 9 Pet. 244 of *New Orleans v. De Armis* is referred to as settling the question [argument of counsel -- omitted]. If the plaintiff relied alone on a complete Spanish title, then the argument would be sound, but each party claims by force of an act of Congress, the plaintiff under that of 1836 and the defendant under the act of 1812, confirming to the inhabitants of St. Charles the village commons, and which is fortified by another act for the same purpose of 1831. The decision of the Supreme Court of Missouri was opposed to the title set up under the act of 1836 by the plaintiff. From this decision he prosecuted a writ of error to this Court.

Construction is called for on the acts on which both titles are founded, and as no occasion can arise in any instance involving construction, aside from a contest, making a case, the facts giving rise to it must be ascertained before the construction can be applied. To hold otherwise would render the 25th section a

dead letter in a majority of instances. The same question arose in the case of [Pollard's Heirs v. Kibbie](#), 14 Pet. 254, and again in that of [City of Mobile v. Eslava](#), 16 Pet. 234, both involving property at the City of Mobile; the first is not distinguishable from the present in its material features so far as the question of jurisdiction is involved, and the latter covers the whole ground before us. In the cases cited as in this, the record set out the titles on each side, together with the facts and charge of the court, from which it appeared the decision of the Supreme Court of Alabama was opposed to the plaintiff's title, the judgment below having been affirmed. This Court did not then doubt its powers to look behind the act of Congress into the Spanish concession of Pollard for the purposes of construing the act and comparing it with that under which the defendant claimed, not with the intention of setting up the concession as an antecedent title to the act that would support an action, but for the purposes of the construction and application of the acts on which the controversy depends. And the same rules apply here.

The plaintiff's title is *prima facie* a good legal title, and will support an ejectment on the act of 1836, standing alone, if the land can be identified, as confirmed without resort to the patent. This Court held in [Strother v. Lucas](#), 12 Pet. 454:

"That a grant may be

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made by a law as well as a patent pursuant to a law, is undoubted, and a confirmation by a law is as fully, to all intents and purposes, a grant as if it contained, in terms, a grant *de novo*. "

And as, according to the laws of Missouri, an action of ejectment could be prosecuted on Chouteau's title, by force of the confirmation, the construction of the acts of Congress, under which the respective parties claim, will decide the controversy.

The character and nature of the village right in this country is somewhat peculiar. The inhabitants of Upper Louisiana resided in villages almost exclusively, and cultivated common fields, enclosed by only one fence, each person who cultivated

the soil having assigned to him by the syndic of the town a certain portion of land to cultivate. In this manner the chief tillage of the soil was carried on, the other parts of the country being in the forest state.

The villages also required commons for pasturage for their horned cattle and horses and for fuel and timber, this part not being enclosed. The quantity included in the field for pasturage, timber and wood was regulated by the nature of the soil and timber and accommodated to the wants of the inhabitants, and conceded at the discretion of the government, usually to very liberal extent.

As the principal support of the population was derived from agriculture and pasturage, the village commons were deemed of primary importance by the people and government, and as a common title more favored than individual titles in cases of conflict.

In this situation the United States found the country when they came into possession of it in March, 1804, as the successor of France, or rather Spain, in virtue of the treaty of cession. So great has been the change by the introduction of a population with different habits and modes of agriculture that it is difficult to estimate at this day the former importance of the village common to the French inhabitants. It was the basis on which their society was formed to so material an extent that the early acts of Congress could not be well understood without a reference to this important circumstance, and especially not the sweeping act of 1812.

The lieutenant governor of Upper Louisiana (usually the military commandant) made concessions for lands founded on such considerations as to him seemed just and according to the policy of the province, ordered it to be surveyed by the public surveyor, who put the interested party into possession, pursuant to the lieutenant governor's order, and delivered a plat of the survey to the party in

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order that he might obtain a title in form from the general intendency at New Orleans, to which tribunal alone appertained, by royal order, the distributing and

granting all classes of lands of the royal domain. The intendent general had the power to adjudge on the equity of the claim and to exercise the sovereign authority by making the grant as the King's deputy.

After the country changed owners, this government had imposed on it as the successor of Spain the duties previously performed by the general intendency of perfecting titles to concessions made by the lieutenant governors of St. Louis, Illinois.

Shortly after the United States came into possession, a tribunal was instituted consisting of a board of commissioners to investigate claims of this description according to the laws and usages of Spain, as they existed among the French population in Upper Louisiana, and to report to Congress, such as were by the tribunal deemed well founded, just and equitable, and that ought to have been confirmed by the general intendency, had no change of government taken place; and such as ought not to have been confirmed. On these reports' coming before Congress, it acted directly by statute on such titles as were by the legislature considered well founded and just claims. In all such instances it acted as the successor of the general intendency, and had the same discretion to confirm and the sovereign power to perfect the incipient right or to reject it that the intendent general had. Each exercising sovereign power in regard to the claim with full authority to award or to refuse a perfect title.

As the board of commissioners had no power to grant, but only to ascertain facts and report their opinions, and their powers to examine not extending to every description of claim, Congress acted in some instances independent of any recommendation, necessarily in cases where the board has no right to interfere.

Chouteau's claim had been presented to the board early in 1809. In July, 1810, the board declared the opinion that this claim ought not to be confirmed, and no action was had on it by Congress on the return of the report of 1810.

In 1812, Congress confirmed the village claim as follows:

"That the rights, titles, and claims to town or village lots, outlots, common field lots, and commons, in, adjoining, and belonging to the several Towns or Villages of Portage de Sioux, St. Charles, St. Louis . . . , which lots have been inhabited, cultivated, or possessed prior to 20 December, 1803, shall be, and the same are

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hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

A new board was organized according to an act of 1832, with powers to reexamine the claims (with others) deemed unworthy of confirmation by the former board. The new board was of a different opinion from the former in regard to Chouteau's claim, and in November, 1833, recommended it for confirmation, according to his concession, and it was confirmed by the Act of the 4 July, 1836, corresponding to a recent survey, made in conformity to the concession. The whole of the claim is included in the village common of St. Charles, as it existed on 29 December, 1803, and under which the defendant protected his possession, as an outstanding title. The state circuit court in Missouri held the village right the better, and so charged the jury, which opinion was sustained in the supreme court of that state on their former decisions, especially in the cases of *Byrd v. Montgomery*, 6 Mo. 514, and *Mackay v. Dillon*, 7 Mo. 10. The last involved a contest in which title was claimed by one party under the St. Louis common.

These cases maintain, in substance, that such inchoate claims (as that of Chouteau was in 1812, when the community of St. Charles took its title, previously also, inchoate) were not changed in their character by the treaty by which Louisiana was acquired; that the treaty imposed on this government only a political obligation to perfect them; that this obligation, sacred as it may be in any instance, cannot be enforced by any action of the judicial tribunals; and that the legislation of Congress from 1804 to the present time has proceeded upon this construction of the treaty, as is manifested by the modes adopted to investigate the claims through boards of commissioners, and then acting on them by legislation. This Court held likewise, in the [\*United States v. Wiggins\*](#), 14 Pet. 350.

We think this reasoning correct and necessarily following the nature of the claim as above set forth, it not having been perfected by the general intendency before the change of governments.

2. That court in substance also held in the cases cited that the federal government, being unable to confirm the same land to two adverse claimants, must then to some extent determine between the conflicting titles. Each claimant depends upon the justice or comity of the present government, and when the government exercises

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its powers and confirms the land to one, it must necessarily be considered in a court of law the paramount and better title.

We think this position also sound and that it is conclusive against the validity of the plaintiff's title, and therefore order the judgment of the supreme court of Missouri to be

*Affirmed.*

## **ORDER**

The cause came on to be heard on the transcript of the record from the Supreme Court of the State of Missouri and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court of the State of Missouri in this cause be and the same is hereby affirmed with costs.