

**Guitard Vs. Stoddard**

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**Court :** US Supreme Court

**Decided On :** 1853

**Appeal No. :** 57 U.S. 494

**Appellant :** Guitard

**Respondent :** Stoddard

**Judgement :**

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**Guitard v. Stoddard**

**57 U.S. (16 How.) 494**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF MISSOURI*

## **SYLLABUS**

The Act of Congress passed on the 13 of June, 1812, 2 Stat. 748, entitled "An act for the settlement of land claims in Missouri" confirmed the rights, titles, and claims to town or village lots, outlots, common field lots, and commons in, adjoining, and

belonging to the several towns and villages therein named, including St. Louis, which lots had been inhabited, cultivated, or possessed prior to the 20th of December, 1803.

This confirmation was absolute, depending only upon the facts of inhabitation, cultivation, or possession prior to the day named. It was not necessary for the confirmee to have received from the Spanish government a grant or survey or permission to cultivate the land.

In 1824, Congress passed a supplementary act, 4 Stat. 65, making it the duty of claimants of town and village lots to designate them by proving before the recorder the fact of inhabitation, the boundaries &c., and directing the recorder to issue certificates thereof. But no forfeiture was imposed for noncompliance, nor did the government, by that act, impair the effect and operation of the act of 1812. Claimants may still establish, by parol evidence, the facts of inhabitation &c.;

In the act of 1812, the surveyor was directed to survey and mark the outboundary lines of the towns or villages, so as to include the outlots, common field lots, and commons. This was done. Whether a claimant can recover land lying outside of this line, or whether the evidence in this case is sufficient to establish the plaintiffs' title, this Court does not now decide.

This was a petition in the nature of an ejectment brought by the plaintiffs in error against Stoddard in the St. Louis Court of Common Pleas. Stoddard, who was a citizen of Ohio, removed it into the circuit court of the United States.

The ejectment was for the following lot of ground lying in the City of St. Louis, namely, commencing at a point on the north side of Laclede avenue, five feet fifty-three inches east from the junction of Laclede and Leffingwell avenues, it being the south east corner of block No. 24, in what is known as the "Stoddard addition" to the City of St. Louis; runs thence north parallel to Leffingwell avenue one hundred and seventy-two feet six inches to a point; thence west along a line parallel to Laclede avenue one hundred and twenty-five feet to a point; thence south along a line parallel to Leffingwell avenue one hundred and seventy-two feet

six inches to the line of Laclede avenue; thence east along that line one hundred and twenty-five feet to the beginning; it being part of block No. 24, in what is known as the Stoddard addition to St. Louis.

On the trial the jury, under the instructions of the court, found a verdict for the defendant. The bill of exceptions explains the whole nature of the case, and as it is short, it is here inserted, as follows:

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"Be it remembered that on the sixth day of May, 1853, came on the above entitled cause to be tried, when the plaintiff introduced the following parol evidence, to-wit: That from a period long prior to the 20th December, 1803, to-wit, from 1785 or 1786, to the period when the common fence fell down, which was six or seven years before the change of government, Paul Guitard, who was then an inhabitant of St. Louis, claimed and cultivated a piece of land in what was then known as the 'Cul-de-sac' prairie, near St. Louis, which land was one arpent wide in front on the east, and forty arpens long towards the west. There were several persons who cultivated lands in the 'Cul-de-sac' commencing on the south extreme of the prairie; the first was Matard; then going north the next was Guion; the next or third was Tabeau; the fourth Joachim Roy; the fifth Madame Vachard; the sixth Madame Dubriel; the seventh Madame Verdon; the eighth Noise; the ninth Yosti; the tenth LaRochella; the eleventh Madame Camp; the twelfth Paul Guitard. The 'Cul-de-sac' fields laid at the end of the St. Louis prairie, forty arpent fields on the west, and they commenced about where Pratte avenue now is. The 'Cul-de-sac' field of Madame Camp was the north land of that part of what is called Chouteau mill tract, west from the St. Louis prairie fields, and the north line of the Chouteau mill tract was the north line of Madame Camp's Cul-de-sac field; and the same line was the south line of Paul Guitard's Cul-de-sac field. The 'Cul-de-sac,' which means 'end of a sac,' was formed by the hills on each side north and south, and the hills on the west. The lands cultivated there were called lands of the 'Cul-de-sac.'"

"There were other prairies near St. Louis, to-wit: the St. Louis or Big Mound prairie, the Grand prairie, and Barrier des Noyer prairie. In all of these, the lands were cultivated in strips by different individuals, and they were all protected by the same fence; there was but one fence, which commenced at the half moon just north of the old Spanish town, ran thence west to a little beyond Third Street, thence southwest to the fort a little south of the courthouse, thence westwardly around the St. Louis and Cul-de-sac fields, to the east line of the Barrier des Noyer fields, thence south along that east line, and east around the St. Louis commons to the river. This fence was a common fence, and was kept up by those who cultivated the fields in the prairies, one cultivator making and mending part, and another another part, under the supervision and direction of a man who was called a syndic. This fence kept the cattle and stock inside the commons and away from the fields that were cultivated. The St. Louis prairie fields, the Grand prairie fields, the Barrier des Noyer prairie fields, and the Cul-de-sac prairie fields were all

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worked at the same time, until the common fence fell down and was neglected to be repaired, and Paul Guitard cultivated the land lying adjoining and north of the said Chouteau mill tract until the common fence fell down. His cultivation was towards the west on the hill, and he did not cultivate the land on the very eastern end, because it was rather low ground there. The cultivation of Guitard, starting from the hill, went west towards the middle of the piece of land; but how far it commenced from the eastern end, or how far it extended towards the west, was not proved. It was called Guitard's Cul-de-sac field from the west end of the St. Louis prairie fields to the west end of the Chouteau mill tract, which was the west line of the Cul-de-sac fields, now near the rock spring. The land sued for was proved to fall within one arpen in width, north of the Chouteau mill tract, and forty arpens in depth or length west from the St. Louis prairie fields; but whether it was a part of the very spot cultivated by Guitard was not proved. The plaintiffs introduced a deed from Paul Guitard which conveyed all his property and rights of property in St. Louis County, to his grandson, Vincent Guitard, but this specific claim was not mentioned; the deed was dated the 11th of January, 1822, and he

died in 1823. Vincent Guitard died in 1836, leaving but three children, who are the plaintiffs and the sole representatives of their father. Vincent Guitard never in any way disposed of this land. Paul Guitard never had any concession for this land from the Spanish authorities; he never presented any claim he had to it under the act of 1812, to the recorder of land titles, nor made any claim for it before any board of commissioners. His grandson Vincent, nor none of the family, ever presented any claim to it before the recorder of land titles, under the Act of the 26th of May, 1824, nor was the land ever surveyed either by the Spanish or American government, as a field lot. The defendant introduced a confirmation and patent, by virtue of the Act of the 4th of July, 1836, to Mordecai Bell's representatives, and a survey of the United States which included the land in controversy and a regular chain of title to defendant. He also introduced map X, purporting to contain the outboundary lines of the Surveyor General, at St. Louis, projected under the first section of the Act of the 13th of June, 1812, and it was proved that the land described in the declaration, but not the whole forty arpens claimed by plaintiff, lies within said outboundary lines. Plaintiff introduced an experienced surveyor, who stated that in his opinion the outboundary line, as projected on map X, was not correctly run under the act of 1812; that said outboundary line should have been run so as to include the outlots, common field lots, and commons, in, adjoining, and belonging

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to St. Louis, which he thought it did not do. It did not include the Grand prairie fields or the Barrier des noyer fields, nor the Cul-de-sac fields, either as they purport to be located on the township plat of the township in which St. Louis lies, nor as proved in this suit, except about one-third of their length as proved on the eastern end, nor does it include all of the commons of St. Louis; that in his opinion, an outboundary line run under the act of 1812, so as to include the outlots, common field lots, and commons of St. Louis, would necessarily include the outlots, common field lots, in all the prairie fields as laid down on the township plat and commons. And such survey would also necessarily include land that was neither outlot, common field lot, nor commons."

" *Agreement* "

"It was agreed that in any court to which this action might be carried, map X and township plat, above alluded to, might be introduced and used without including them in this bill of exceptions."

"It is also agreed that the property in dispute is worth more than two thousand dollars, exclusive of costs. This was all the evidence in the case, and thereupon the plaintiffs asked of the court the following instructions, namely: "

" *Plaintiff's instructions.* "

" 1. The Act of Congress of 13 June, 1812, is in its terms a grant, and confirms the right, title, and claim of all town lots or village lots, outlots and common field lots, in, adjoining, and belonging to such towns and villages as are mentioned in the act, to those inhabitants of the towns and villages or to their legal representatives who inhabited, cultivated, or possessed such lots, rightfully claiming them prior to the 20th December, 1803. And the principal deputy surveyor of the Territory of Missouri was required by said act to run an outboundary of the towns and villages mentioned in said act, so as to include the outlots, common field lots, and commons thereto respectively belonging, which outboundary line should be one continuous line, and not separate surveys of the town and lots, and should include the outlots, common field lots, and commons, and said towns and villages."

" 2. A common field lot, as intended by said act of Congress, is a piece of land of larger or smaller dimensions, as the case may be, according to ancient cultivation, lying alongside of, and parallel to, other similar pieces of land, and claimed or cultivated under the protection of a common fence by those who inhabited said towns or villages prior to the 20th December, 1803; and said pieces of land might not have been conceded or surveyed by any French or Spanish authority, or surveyed officially by the United States as a common field lot. "

" 3. If then the jury believe, from the evidence, that the land sued for formed part of a common field lot, as just defined in instruction 2, and that said common field lot was rightfully claimed, and in part or altogether cultivated prior to the 20th December, 1803, by Paul Guitard, the plaintiffs are entitled to recover, which were refused, to which plaintiffs at the time excepted, and defendant asked the following instructions: "

" *Defendant's instructions.* "

" 1. If the jury believe, from the evidence, that the cultivation by Paul Guitard, testified to by the witnesses, was on a tract of land called a Cul-de-sac common field, and if the jury shall also believe, from the testimony, that the Cul-de-sac common fields, including the one cultivated by Paul Guitard, were at a place to the southwest from the premises sued for, and that neither of said Cul-de-sac common fields include the premises in question, then the plaintiff cannot recover in this action."

" 2. If the land sued for is within and forms a part of the tract confirmed to Mordecai Bell, or his legal representatives, and within the official survey of said Mordecai Bell tract, then the defendant has shown a title in him paramount to the title of the plaintiff, and the latter cannot recover."

" 3. There is no evidence that Paul Guitard, under whom the plaintiff derives and claims title to the premises in question, cultivated any outlot or common field lot, nor that anyone existed at the place where the cultivation that has been spoken of by plaintiffs' witnesses, existed, nor had the act of 1812 application to this land, so far as Paul Guitard and those claiming under him are concerned. The plaintiff, therefore, cannot recover in this action."

" 4. If the outboundary line of the Town of St. Louis run under the Act of Congress of 13 June, 1812, as shown by the official survey and plat, marked X, read in evidence, includes the land in controversy, then the plaintiff cannot recover. Which were given by the court, and the court of its own motion gave the following: "

" *Instruction by the court.* "

" The court also instructed the jury, that there having been no concession nor grant, nor survey, nor permission to settle or cultivate, or possess the land claimed by Paul Guitard, to said Guitard, under and by the Spanish authorities or government, and no location of said claim by or under said government, nor under the French government, and no proof having been made at any time by said Paul Guitard, or those claiming under him, or any inhabitation, cultivation, or possession, or of the location and extent of said claim, either under the provisions of the act of the 13th June, 1812, or those of the Act of the 26th May, 1824, either before the recorder of

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land titles or other United States authority; and there having been no survey or location of said land by or under the authority of the United States, the said plaintiffs cannot now set up said claim and locate it, and prove its extent and inhabitation and cultivation by parol evidence merely, and therefore cannot recover in this action,"

"to which plaintiffs also excepted at the time, and here now tender this their bill of exceptions, and pray that it be signed and sealed and made part of the record in this cause, which is done accordingly."

"R. W. WELLS [SEAL]"

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MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The plaintiffs claim a lot of ground in the City of St. Louis, as representatives of Paul Guitard, an ancient inhabitant of that city, under a confirmation in the Act of Congress of the 13th of June, 1812, for the settlement of land claims in Missouri. 2 Stat. 748.

The record shows that Guitard, from 1785-1786 till the common fence which surrounded and protected the field lots and commons of that city was thrown down, in 1797 or 1798, claimed and cultivated a parcel of land, one arpen in width and forty in depth, in the Cul-de-sac prairie. The tract claimed was called Guitard's Cul-de-sac field to its whole extent, and was in the usual form of field lots in that village. His cultivation did not extend over the whole claim, nor was it ascertained whether the portion sued for was within that part cultivated. There were eleven other lots of the same description, claimed and cultivated at that period by different persons in the Cul-de-sac prairie lying together, that of Guitard's being to the north of the others. The land sued for is within the survey directed by the first section of the act referred to. The defendant produced a patent from the United States for the land in dispute, but as the case was determined upon the title of the plaintiffs, that becomes of

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no importance. The circuit court instructed the jury,

"That there having been no concession, nor grant, nor survey, nor permission to cultivate or possess the land claimed by Paul Guitard to said Guitard under and by the Spanish authorities or government, and no location of said claim by or under said government, nor under the French government, and no proof having been made at any time by said Paul Guitard, or those claiming under him, of any inhabitation, cultivation, or possession, or of the location and extent of said claim, either under the provisions of the act of 1812 or those of the Act of the 26th of May, 1824, either before the recorder of land titles or other United States authority, and there having been no survey or location of said land, by or under the authority of the United States, the said plaintiffs cannot now set up said claim and locate it, and prove its extent and inhabitation and cultivation by parol evidence merely."

This instruction comprehends the entire case, and the examination of this will render it unnecessary to consider those given or refused upon the motions of the parties to the suit.

The Act of 13 of June, 1812, declares

"That the rights, titles, claims to town or village lots, outlots, common field lots, and commons in, adjoining, and belonging to the several towns and villages named in the act, including St. Louis, which lots have been inhabited, cultivated, or possessed prior to the 20th of December, 1803, shall be and they are hereby confirmed to the inhabitants of the respective towns or villages aforesaid, according to their several right or rights in common thereto."

This act has been repeatedly under the consideration of this Court, and to ascertain what has been decided upon it will facilitate the present inquiry. In [\*Chouteau v. Eckhart\*](#), 2 How. 345, the defendant relied upon the title of the Village of St. Charles to the *locus in quo*, as being a part of the commons of that village, and confirmed to it by the Act of June, 1812. In that case, the right of the village was established from a concession made by the lieutenant-governor of Upper Louisiana, and a formal survey by the Spanish authority. The judgment of this Court was that a title of this description was confirmed by the act of 1812, and that this confirmation excluded a Spanish concession of an earlier date, which had been confirmed by a subsequent act of Congress.

In the case of [\*Mackay v. Dillon\*](#), 4 How. 421, the defendant defended under the claim of St. Louis to its commons, and produced evidence of a Spanish concession, of a private survey which had been presented to the board of commissioners, and of proof having been made before the recorder of land titles. Whether the private survey made in 1806, and submitted to the

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government, was conclusive of boundary, was the question before the court. MR. JUSTICE CATRON, in delivering the opinion of the Court, says,

"By the first section of the act of 1812 Congress confirmed the claim to commons adjoining and belonging to St. Louis, with similar claims made by other towns. But no extent or boundaries were given to show what land was granted; nor is there anything in the act of 1812 from which a court of justice can legally declare that the

land, set forth in the survey and proved as commons by witnesses in 1806, is the precise land Congress granted: in other words, the act did not adopt the evidence laid before the board for any purpose; and the boundaries of claims thus confirmed were designedly, as we suppose, left open to the settlement of the respective claimants by litigation in courts of justice or otherwise."

Again in the case of *Les Bois v. Bramell*, the same learned judge says of this act, "that this was a general confirmation of the common to the town as a community, no one ever doubted, so far as the confirmation operated on the lands of the United States."

The questions settled by this Court are that the act of 1812 is a present operative grant of all the interest of the United States, in the property comprised in the act, and that the right of the grantee was not dependent upon the factum of a survey under the Spanish government.

No question before this has been submitted to the court upon the interpretation to be given to the "rights, titles, and claims" which were the subject of the confirmation of the United States.

The instruction given to the jury by the circuit court implies that the confirmer, before he can acquire a standing in court, must originally have had or must subsequently have placed upon his title or claim an additional mark of a public authority besides this act of Congress, that he must evince his right or claim by some concession, survey, or permission to settle, cultivate, or possess, or some recognition of his claim under the provisions of some act of Congress by some officer of the executive department, indicative of its location and extent. The laxity of the legislation in the act of 1812 is painfully evident, when the fact is declared that the large and growing cities of the State of Missouri have their site upon the land comprehended in this confirmation. Nevertheless an attempt to correct the mischief would probably create more confusion and disorder than the act has produced.

The act, in the form in which it exists, was adopted by Congress upon the solicitation and counsel of citizens of Missouri, interested in the subject and well acquainted with the conditions of its population. The towns and villages named in it

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were then, and for many years continued to be, small, and the property of no great importance. During this time, conflicting rights and pretensions were adjusted, facts necessary to sustain claims to property ascertained, and the business and intercourse of the inhabitants accommodated to its conditions. The act itself, with all the circumstances of the inhabitants before and at the time of its passage, have formed the subject of legal judgments and professional opinions upon which mighty interests have grown up and now repose. This Court fully appreciates the danger of disturbing those interests and of contradicting those opinions and judgments.

The act of 1812 makes no requisition for a concession, survey, permission to settle, cultivate, or possess, or of any location by a public authority as the basis of the right, title, and claim, upon which its confirmatory provisions operate. It may be very true that there could have been originally no legitimate right or claim without some such authority. Congress, however, in this act was not dealing with written or formal evidences of right. Such claims in Missouri have been provided for by other acts. These pretensions to town and village lots formed a residuum of a mass of rights, titles, and claims which Congress was advised could be equitably and summarily disposed of by the abandonment of its own rights to the property and a reference of the whole subject to the parties concerned. Congress afforded no means of authenticating the rights, titles, and claims of the several confirmees. No board was appointed in the act to receive the evidence nor to adjust contradictory pretensions.

No officer was appointed to survey or to locate any individual right. All the facts requisite to sustain the confirmation -- what were village or town lots, outlots, common field lots, or commons -- what were the conditions of inhabitation, cultivation, or possession, to bring the claimant within the act, were referred to the

judicial tribunals. The act has been most carefully and patiently considered in the Supreme Court of Missouri, and conclusions have been promulgated which comprehend nearly all the questions which can arise upon it.

In *Vasseur v. Benton*, 1 Mo., that court says,

"We are of opinion that the claims to town or village lots, which had been inhabited, cultivated, or possessed, prior to the 20th of December, 1803, are by the express words of the act *ipso facto* confirmed as to the right of the United States."

In *Lajoie v. Primm*, 3 Mo. 368, the court says,

"The great object of the act was to quiet the villages in their titles to property so far as the government was concerned which had been acquired in many instances by possession merely, under an express or implied permission to settle and which had passed from

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hand to hand without any formal conveyance. In such cases, possession was the only thing to which they could look, and taking it for granted that those who were found in possession at the time the country was ceded or who had been last in possession prior thereto were the rightful owners -- the confirmation was intended for their benefit."

In *Page v. Scheibel*, 11 Mo. 167, the same court says

"The whole history of the progress of settlements in the French villages, so far as it has been developed in the cases which have come up to this court, shows that the villagers did not venture to take possession of the lots, either for cultivation or inhabitation, without a formal permission of the lieutenant-governor or the commandant of the post. These permissions, it is also probable, were most generally in writing, and accompanied by a survey made by an officer selected and authorized by the government."

But the title of the claimants under this government does not depend upon the existence or proof of any such documents. Congress did not think proper to require it. In all probability, the fact that possession, inhabitation, and cultivation could not exist under the former government without such previous permission from the authorities of that government was known to the framers of the act of 1812, and constituted the prominent reason for dispensing with any proof of this character in order to make out a title under that act. However this may be, the act requires no such proof, but confirms the title upon possession, inhabitation, or cultivation alone, without regard to the legality of the origin of such title.

We have quoted these portions of the reports of those cases to express our concurrence in the conclusions they present.

We shall now inquire whether it was necessary for the confirmer to present the evidence of his claim under the act of 1824, 4 Stat. 65, supplementary to the act of 1812.

This act makes it the duty of the claimants of town and village lots

"to proceed, within eighteen months after the passage thereof, to designate them by proving the fact of inhabitation &c.;, and the boundaries and extent of each claim, so as to enable the Surveyor General to distinguish the private from the vacant lots."

No forfeiture was imposed for a noncompliance. The confirmer, by a compliance, obtained a recognition of his boundaries from the United States, and consequently evidence against every person intruding, or claiming from the government *ex post facto*. The government did not by that act impair the effect and operation of its act of 1812.

Under the act of 1812, each confirmer was compelled, whenever his title was disputed, to adduce proof of the conditions upon which the confirmation depended. As the facts of

inhabitation, possession, and cultivation at a designated period are facts *in pais*, it followed as a matter of course that parol evidence is admissible to establish them. In the case of [Hickie v. Starke](#), 1 Pet. 98, a question arose upon an act of Congress which confirmed to "actual settlers" within a ceded territory all the grants legally executed prior to a designated day, and this Court held that the fact of "a settlement on that day" must be established, and proof of occupancy and cultivation was adduced. In [City of Mobile v. Eslava](#), 16 Pet. 235, certain water lots were confirmed to the proprietors of the front lots adjacent thereto, who had improved them before the passage of the act of Congress, and this Court sustained the title upon parol proof of location and improvements. The Court said

"being proprietor of the front lot and having improved the water lot opposite and east of Water Street, constitute the conditions on which the right, if any, under the statute vests. In his charge to the jury, the judge laid down these conditions in clear terms, and instructed the jury, if the facts brought the defendant within them, that they should find against the plaintiffs. The jury did so find, and this is conclusive of the facts of the case."

The question of boundary under the act of 1812, as it was decided in *Mackay v. Dillion*, was left open to the settlement of the respective claimants by litigation, in the courts of justice, or otherwise. Nor has this Court, in any case, decided that statutes, which operate to confirm an existing and recognized claim or title with ascertained boundaries, or boundaries which could be ascertained, are inoperative without a survey, or made one necessary to the perfection of the title. A survey, approved by the United States, and accepted by the confirmer, is always important to the confirmer; for, as is said by the court in [Menard's Heirs v. Massy](#), 8 How. 294, it is conclusive evidence as against the United States, that the land granted by the confirmation of Congress was the same described and bounded by the survey, unless an appeal was taken by either party or an opposing claimant to the commissioner of the land office. This consideration depends upon the fact that the claimant and the United States were parties to the selection of the land; for, as they agreed to the survey, they are mutually bound and respectively estopped.

The cases of *Harrison v. Page*, 16 Mo. 182; *Gamache v. Piquignot*, 17 Mo. 310, which has been affirmed at the present session of this Court, and *Soulard v. Clarke*, are in harmony with the views we have expressed upon the latter branch of the instructions of the circuit court.

We think it proper to state, that we express no opinion upon the effect of the evidence to establish the plaintiff's title as a subsisting title, and none upon the claim to such of the land as lies

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beyond the boundary line, settled by the survey of the United States under the first section of the act of 1812.

*The judgment of the circuit court is reversed and the cause remanded.*

## **ORDER**

This cause came on to be heard on the transcript of the record, from the Circuit Court of the United States for the District 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 circuit court, in this cause, be, and the same is hereby reversed, with costs, and that this cause be, and the same is hereby remanded to the said circuit court with directions to award a *venire facias de novo*.