JOURNAL

OF THE

SENATE OF THE STATE OF MISSOURI,

AT THE

FIRST SESSION OF THE FIFTEENTH GENERAL ASSEMBLY:

BEGUN AND HELD AT THE CITY OF JEFFERSON,

ON MONDAY, THE TWENTY-FIFTH DAY OF DECEMBER, IN THE YEAR OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY-EIGHT.

JEFFERSON CITY:
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1848.

be the first, or one of the first cases to be taken up, after the meeting of the court, if the counsel for the State of Iowa should be ready for the trial. On our part, we have been ready all the time. We have thus a fair prospect of a speedy adjustment of this troublesome question.

DE LISLE CLAIM.

In the DeLisle case, involving the question of title to a portion of the seat of government, a trial was had in the Circuit Court and a decision rendered in favor of the defendant, but a writ of error was taken to the Supreme Court, where, one judge not sitting, the decision of the Circuit Court was affirmed, the two remaining judges dividing in opinion. The case will probably be taken to the Supreme Court of the United States, and in that event, a further appropriation will be needed to pay counsel for managing the case at Washington City.

LUNATIC ASYLUM.

The last Legislature made some provision for the erection of a Lunatic Asylum. To make the location, three commissioners were appointed, who selected Fulton, in Callaway county, as the place entitled to the asylum, under the provisions of the law. It was intended to appropriate that portion of the surplus revenue allotted to this State to the erection of the asylum, but the law providing for its reception by the State, was never signed by the Lieutenant Governor, and was, therefore, very properly decided by the Tresury Department to be no law. In consequence we were not permitted to draw the surplus revenue, and not receiving this fund, and having no other, the commissioners made the location, but no progress with the buildings for the asylum. This subject will call for action. An asylum ought long since to have been erected in this State, and should not be further delayed.

GOVERNOR'S HOUSE.

During the last legislature several efforts were made to get an appropriation to furnish the Gover nor's House and put it in condition to receive the next governor, but all of them were unsuccessful. With an appropriation previously made, and the expenditure of some private funds and the contraction of some debts which remain unpaid, such repairs have been made as seemed to be essential to preserve the buildings and property adjoining them. An appropriation should be made to pay these debts as far as they may seem to have been properly contracted. The whole of them were deemed necessary; if otherwise the improvements would not have been made. The house itself is in much better condition than it was four years ago, the roof having been made tight and the cellars dry. It is now deemed a healthy residence, and if furnished, would be comfortable enough. The rooms with smoking chimneys have been supplied with stoves, and these ought to be retained for the use of the House.

GOVERNOR'S FURNITURE.

The old furniture belonging to the Governor's House—if not the whole, a large portion of it—should be sold and new purchased. Some pieces of this furniture must have been on hand fifteen or sixteen years, and are no longer fit for such a building. Of many things, essential to the use of a family, the house has been for years almost wholly destitute. To expect the Governor to furnish the House out of his own private funds is out of the question. To do this, and extend a little hospitality to visitors from different parts of the State, a matter expected of him, would consume more than a governor's income. No man in medium circumstances can do this without reducing himself to beggary and want; and no rich man should be required to do it; because the government should act upon principle, and alike to the rich and the poor, favoring and restraining all in the same manner, and to the same extent.

GOVERNOR'S SALARY.

As the advocate of high salaries, the people of the State have never known me. In most cases my reflections upon the subject have forced me to consider them an evil. They create a scramble and contest for offices which should not be encouraged. In our State, some of them might be even reduced, but the salary of the Governor should be made an exception. That is too small. His sacrifices are many, his responsibilities great; his labors often excessive, and, if he stands up to his duties faithfully, the envy, and malice, and hatred, and slander, and abuse, and detraction, and calumny and vituperation heaped upon him is unbounded, and beyond the measure of any salary, even when the Goverr or is so constituted as to regard these things in a proper light. And but few are so constituted. Almost every executive, in our State has fallen, politically, before them. One—a good man and a patriot—resigned and left his post before his term expired; the next left before his term was out, and not in good odour; the next committed suicide a year in advance of the close of his four years; and the next has moved, at all times prepared to meet the assassin, during at least three and a half years out of the four of his administration. If a man is not driven to do it, he must at least be willing to fight his way, if he does his duty to his country and his constituents as an executive of this State. And the matter is not better now than it was formerly, but it is worse.

To a good man who is poor reputation is every thing. And what is the salary of a governor, placed in opposition to a stain upon a fair reputation, however base, and false and foul the slander which the calumnious may have fastened upon him, even in the estimation of the most ignorant and least informed of his fellow men. No matter how false and base a slander may be, there will be some ignorant enough to believe and repeat it; and others mean enough to pretend to believe and base enough to repeat what they know to be false. If we measure either by the expense, the labor, or the slander an executive must suffer, the salary is too small and should be increasod.

SWORD TO MAJ. RILEY.

In pursuance of an act of the legislature a handsome sword has been procured to be presented to Maj. B. Riley, but in consequence of his being ordered to California the sword has not yet been delivered to him. This sword was ordered to

and at the same time make provision by which the minority counties may render the law inoperative within their limits, by enabling them to elect between the system herewith submitted and the present county court system, thus reducing the number of different systems in the State. from some eight or ten, in number, to two; which would be a rapid advance towards effecting an uniform system throughout the State.

Your committee accordingly, very respectfully report the following bill, for the action of the Senate:

LEWIS BURNES.

REPORT OF COMMITTEE ON THE JUDICIARY.

Mr. PRESIDENT:—

The committee on the Judiciary to which was referred so much of the Governor's Message as relates to the Delisle claim, have examined into the same and have instructed me to report

That the committee (except the chairman) are unanimously of opinion that the title of the State to the land granted by the act of Congress, approved March 6th, 1820, is perfect. That a suit was instituted in Cole Circuit court in the name of Godfrey Lessieur and others, vs. Thos L. Price, for the purpose of testing the validity of the said Delisle claim. That the late Governor, by virtue of an act of the Legislature to employ counsil, employed Miron Leslie and Truston Polk, to defend the said suit; and the said counsel have performed the duties of their said engagement, which was to try the case in the Cole Circuit court and in the Supreme court of this State. The said suit was decided in both courts in favor of the defendant, and consequently in favor of the State title. The plantiffs have taken the case to the Supreme court of the United States. And your committee deem it the duty of the Legislature to provide for further defending the suit, and for that purpose to pass an act appropriating ——— dollars to employ and pay counsel—and herewith report a bill for that purpose.

Your committee, for the purpose of imparting all the information necessary to a clear understanding of the facts and the law, herewith give a copy of the opinion of the Supreme court and make it a part of their report.

M. LESLIE, *Chairman.*

GODFREY LESSIEUR ET AL vs. THOMAS L. PRICE,

Error from the Cole Circuit court.

McBRIDE, J., *delivered the opinion of the Court.*

The plaintiffs in error brought their action of ejectment in the Cole Circuit court, against the defendant for a lot of land in the city of Jefferson, and numbered 455 on the plat of said city, where the judgment being against them they moved for a new trial, which having been refused, they excepted and sued out a writ of error from this court.

Upon the trial in the circuit court the plaintiff gave in evidence the following chain of title, to wit:

1. A confirmation, made by the board of commissioners, on the 8th January 1811, of two hundred arpens of land in the county of New Madrid, to Baptiste Delisle, as described in a plat of survey certified 27th February 1806.

2. The commissioners, or New Madrid certificate, issued on the 20th of November 1817, to Baptiste Delisle for two hundred arpans in lieu of his land injured by earthquakes lying in the county of New Madrid.

3. A notice of location given to the Surveyor General by Thomas Hempstead and A. L. Langham as the legal representatives of Baptiste Delisle, dated 2d June 1821, that they had located two hundred arpens under the foregoing certificate "so as to include fractional section number six, the north east fractional quarter of fractional section number seven; and so much off the north part of the west fractional half of fractional section number eight as will make the quantity of two hundred arpens, all in township number 44 north of the base line of range number 11, west of the 5 principal meridian south of the Missouri River."

4. Survey made by the deputy surveyor of the above location dated 5th August 1821, and filed 11th February 1822.

5. Patent certificate dated 25th February 1822, and delivered to Charles L. Hempstead.

6. Patent from the United States to Baptiste Delisle dated the 13th November 1822.

7. Deed from Delisle and wife to Robert D. Dawson and Godfrey Lessieur for the land patented to him, dated 13th September 1842.

8. It was admitted that the parties sueing as the heirs of R. D. Dawson, were his heirs and their names were correctly set out.

9. It was further admitted, that the defendant was in pssession of the land in controversy, at the commencement of this suit.

10. The monthly and yearly value of the premises was agreed upon between the parties.

The defendant to show title in himself, relied upon the following facts:

1. An act of Congress, approved 6th March 1820, the 4th paragraph of the sixth section, of which provides as follows:

Four entire sections of land be, and the same are hereby granted to said State (the State of Missouri) for the purpose of fixing their seat of Government thereon, which said sections shall, under the direction of the Legislature of said State, be located, as near as may be, in one body, at any time, in such township and ranges, as the Legislature aforesaid may select on any of the public lands of the United States, provided that such locations shall be made prior to the public sale of the lands of the U. S. surrouding such location." U. S. Statute at large, vol. 3, page 547.

2. An ordinance, adopted by the convention of the State of Missouri, on the 19th July 1820, accepting the said grant of land, R. C. 1845, page 22.

3. "An act of the Legislature of the State of Missouri, entitled an act providing for the location of the permanent seat of government for the State of Missouri," approved 16th November 1820. 1 Terr. laws 649. This act appoints commissioners to select a site for the permanent seat of government, and requiring them to make their report to the next session of the General Assembly of said State.

4. An act supplementary to the foregoing act; approved 28th June 1821. 1 Terr. laws 773. This act provides for filling vacancies that may happen in the board of commissioners, and extends the time of making their report until the next session of the General Assembly.

5. A joint resolution of the General Assembly, approved 28th June 1821. 1 Terr. laws 780, requiring the Governor of the State to notify the surveyor general for the state of Illinois and Missouri, and also the register of the land office in which the lands are selected, that the commissioners appointed for that purpose, "have selected the fractional sections six, seven and eight, the entire sections seventeen and eighteen, and so much of the north part of sections nineteen and twenty as will make four sections, in fractional township 44 south of the Missouri river in range number 11, W. fifth principle meredian, and that he requests the said surveyor and register to withhold the same from sale or location, until the General Assembly determine whether said selection be accepted by this State."

6. An act of the general assembly entitled "An act fixing the permanent seat of government," approved 31st December 1821. 1 Terr. laws 825.—The first section of which accepts the land above described, for the use and benefit of said State.

The second section provides for the laying out of a town thereon, and the third section requires the Governor to notify the surveyor general of the acceptance of said land by the general assembly for the permanent seat of government, by transmitting to him an authenticated copy of said act.

7. Also an act of the general assembly entitled "An act supplementary to the act fixing the permanent seat of government," approved 11th January 1822. 1 Terr. laws 859.

This act further provides for the laying out of a town on the land selected; authorizes the sale of the lots in said town, and prescribes the terms of said sale, and requires the commissioners to make a report of their acts to the next general assembly. It further provides that "any proposals made by any person or persons having claim to any part of the said lands selected for the permanent seat of government, in order that any claim or claims may be adjusted, *provided*, nothing herein contained shall in any wise be construed to legalize or acknowedge such claim as valid in law" shall, by said commissioners, be communicated to the general assembly.

8. A proclamation by the President of the United States dated 13th June 1823, bringing into market by public sale in the ordinary way, township N. 40 41 42 43 and 44 in range 11 west, and townships N. 40 41 42 and 43 in range 12 13 and 14 of the fifth principle meredian. Sales to take place on the 1st Monday of October 1823.

9. It was admitted that the premises in dispute are a part of the lands described in the foregoing resolution and the acts of the Legislature given in evidence by the defendant subsequent thereto, and that the defendant holds whatever title the State had to the said lands.

To rebut the defendants, title, the plaintiffs gave the following evidence:

1. A copy of a letter from the Governor of the State of Missouri, addressed to the Surveyor General of Illinois and Missouri, dated 3d July 1821, informing him of the selection made by the commissioners for locating the permanent seat of government, and requesting him to withhold the lands thus designated from sale or location, until the general assembly shall determine whether they will accept the same. This letter is endorsed as having been received 8th July 1821.

2. A letter from same to same, dated 1st January 1822, transmitting an authenticated copy of the act of 31st December 1721 entitled "An act fixing the permanent seat of government. This letter, by the endorsement therein appears to have been received on the day of its date.

3. A letter from the Surveyor General to Governor McNair in answer to the above letter, dated 2d January 1822. After acknowledging the receipt of the letter of the 1st January 1822 and the copy of the act of the general assembly of 31st December 1821, the letter proceeds as follows:

"I conceive it proper for me to inform you for the information of the general assembly, that a part of this land (referring to the land selected by the commissioners and accepted by the act of 31st December 1821) was located in virtue of a New Madrid certificate on the 2d June 1821, as represented on the sketch and described in the entry mrde thereof, which you will find herewith enclosed. You will also receive a copy of a paper purporting to be a copy of an entry or location of fractional section number 7, township No. 44, north of the base line of range No. 11, west of the 5th principal meridian, this day filed in this office by Maj. Taylor Berry. For the character of this last mentioned paper, as I view it, see my remarks on the back thereof."

4. It was admitted that the journal of the Senate of Missouri of the 23d November 1821, shows that a committee of the Senate, to which had been referred the report of the commissioners for the location of the permanent seat of government of the State, reported to the Senate that the propositions made by Angus L. Langham ought to be accepted; and that the seat of government should be permanently located on the 892 acres of land situated at Cote San Dessien, the one half of which Langham propose l to donate to the State, which was concurred in; on motion. the report was laid on the table unti next day, and afterwards on the 25th November 1821, the same was indefinitely postponed.

5. That the journal of the House of representatives shows that on the 28th November 1821, the House had under consideration the location of the permanent seat of government. On the 15th December next following, the committee of the Judiciary of the House, reportd to the House the state of the title at Cote San Dessien. On 28th of same month the House had the same subject under consideration.

6. It was further admitted that the journal of the House of Representatives shows that on the 3d January 1822, Governor McNair laid before the general assembly the communication received by him from the Surveyor General of date 2d January 1822.

7. A joint resolution of the two Houses of the general assembly requesting the Governor to notify the President of the U. S. of the selection made for the seat of government, approved 14th December 1822. 1 Terr. laws 984.

8. An act of the general assembly of the State of Missouri approved 19th December 1822. 1 Terr. laws 1018, authorizing the trustees appointed by the act, to contract with the claimant for the removal of the New Madrid location from the lands selected for the seat of government on certain conditions, if an adjustment be not obtained then the trustees are required to select eight squares for public purposes, and the land so selected together with the streets and alleys laid out, are condemed for public use &c.

9. The survey of the lands selected by the State of Missouri, made in Au-

gust 1824 and approved by the Survey General on the 25th September 1847.

Thereupon the defendant offered the following additional evidence, to wit:

1 A copy from the books of the recorder of the land titles of the relinquishment of lands in New Madrid, by which it appears that the land in lieu of which the certificate in favor of Baptiste Delisle was issued, and which the plaintiff had given in evidence, was made by Carter Beamon.

2. A copy of a deed from Delisle for the land in New Madrid to Carter Beamon, dated 4th August 1817, acknowledged on same day and recorded on 17th September 1817. It was certified by the Recorder of land titles as being a true copy of the origional on file in his office, and was also a sworn copy. Having first proved by a witness that he had applied to said Recorder for the original which he had seen in his office, and had compared with the copy, stating to him that he wished to use it on the trial of this case. But the recorder refused to let it go out of his office, saying that it was one of the files of his office, and that he was not authorized to let it go out of h s office.

3. A certified copy of a deed from Delisle to Alexander Conier dated 17 October 1810, proved on the 29th January 1823, before the judge of the county court of St. Louis county and recorded 6th May 1723 in Cole county. This deed conveys the same land in New Madrid county.

The plaintiffs objected to the introduction of both deeds as evidence in the case and their objections were sustained and said deeds rejected.

4. The defendant then read in evidence the deposition of John Baptiste Delisle, which show that until the year 1842 he never knew that the certificate issued in his favor, by virtue of which the location on the land in question was made, had been issued, nor of the location, nor survey thereof, nor of the issuing or existence of a patent to him of said land, nor even that Congress had passed a law for the relief of the sufferers by earthquakes in New Madrid county; and that consequently until said last mentioned date he never had given any assent to any of the proceedings touching the N. Madrid location in his name.

On the close of the evidence the counsel for the plaintiffs prayed the court to declare the following in the nature of instructions to be the law of this case:

1. The patent from the United States to J. B. Delisle, if the same be true and genuine is snfficient in law to vest the legal title to the land therein mentioned in the said Delisle, if he were living at its date.

2. The deed from Delisle and wife to Robert D. Dawson and Godfrey Lesseur, if true and genuine, is sufficient in law to vest said title in said Dawson and Lessieur.

4. That if the New Madrid certificate granted to said Delisle was on the 2d June 1821, located on the land in controversy. and was afterwards surveyed by a United States surveyor according to law, was approved by the Surveyor General, and said land was finally patented to Delisle according to said location and survey, then the effect of said patent is to vest said legal title in said Delisle (as against any other title derived from the U. States) from said 2d, 1821, the date of said location.

5. That to vest the legal title to the four entire sections granted to the State for a seat of government by the act of 6th March, 1820, it was necessary that said location should have been made of four whole and entire sec-

tions, and that a location thereof on two whole sections and five parts of sections, was not in conformity with said act, and therefore void, unless subsequently ratified by the government or some department or officer thereof authorized so to do.

6. That a location of said land by the State should have been made in the office of some officer of the land department of the United States, and that a record of said location should have been made in such office.

7. To give validity to such location, it should have been sanctioned by some officer of the United States having authority in disposing of the public lands.

8. That such location could not lawfully be made in the office of the surveyor of public lands in Missouri and Illinois.

9. There is no evidence before the court sitting as a jury, that any location of said four entire sections ever was made in fact.

10. That if the New Madrid certificate granted to John B. Delisle was on the 2d June 1821 located on the land in contryversy, and that said location was on the 5th August 1821 surveyed by the proper officer of the United States, and afterwards patented to said Delisle in conformity to said survey, the effect of said patent is to vest the said title in said Delisle or his legal representatives, from said 5th August 1821, as against any person deriving title from the United States after said location and before said patent.

11. That the notice of location, survey, patent and other documents and acts shown in evidence by the plaintiffs, touching the location the New Madrid certificate No. 347, issued to John B. Delisle jr., if true and genuine documents, show a better title than any which has been shown by the defendant.

12. That the neglect of the Surveyor General or the Recorder of land titles to perform any act of mere duty on their part, towards a consumation of a title on said location, could not affect the rights of the party interested.

The court gave the instructions numbered 1 and 2, but refused to give those numbered 4, 5, 6, 7, 8 9, 10, 11 and 12.

The counsel of the defendant then prayed the court to declare the law as applicable to this case, to be as follows:

1. The title of the United States to the land described in the copy of the patent given in evidence by the plaintiffs, was not devested out of the U. States until the plat of survey made in pursuance of the notice given in evidence by the plaintiffs, was returned to the office of Recorder of land titles, and the title of the United States to the land located under the direction of the Legislature of the State of Missouri, in pursuance of the fourth proposition of the sixth section of the act of Congress of the 6th March 1820, was rested in the State as early as the acceptance by said State, of the selection of land made by her commissioners. If therefore, said acceptance was made prior in point of time to the returning of said survey of the office of the Recorder of land titles, and if the land so selected and located is the same land mentioned in said copy of the patent given in evidence by the plaintiffs, then said plaintiffs are not entitled to recover in this action.

2. If the John B. Delisle who was the owner of the land in the county of New Madrid in lieu of which the certificate No. 347 was issued, until the year 1842, knew nothing of the issuing or the existence of said certificate, nor of the notice, survey or patent given in evidence by the plaintiffs, and never assented to the same prior to that date, and if prior to that date the four sections of land mentioned in the fourth proposition of the sixth section of the

act of Congress approved March 6th, 1820, had been located under the direction of the Legislature of this State upon the premises in question, then no title passed to said Delisle in or to said premises as against the State of Missouri.

3. If Langham and Hempstead obtained the certificate of location No. 347, claiming to be the legal representatives of J. B. Delisle, and in that character made the location when in fact they were not the legal representatives, nor in any manner entitled to said certificate, or to the land located in virtue thereof, said location is void as against this defendant.

The court gave the second instruction asked, and refused the first and third.

Thereupon the court rendered a verdict for the defendant which the counsel for the plaintiffs moved to set aside, assigning the ordinary reasons therefor, but the court refused to set aside said verdict and to grant to plaintiffs a new trial, to which opinion the plaintiffs accepted and now bring the case to this court by writ of error.

When this case was reached on the calender, and prior to its argument, the several members of the court informed the counsel in the case, of the relation which they sustained to the question involved and to the parties thereto. Two of the members of the court own lots within the selection made by the commissioners for fixing the permanent seat of government, and one of them a lot within the claim of Delisle, whilst the other member of the court, is related, by marriage, to one of the parties in the action.

To this it was replied, that we owning lots *are not interested in this suit*, so as to disqualify us from "sitting on the determination thereof," within the meaning of the 39 section of the judiciary act R. C. 1845 p. 345. It is true that the judgment in this case will not preclude our rights, but if the claim set up by the plaintiffs, shall be adjudged superior to the claim of the State, under whom we derive title, it would be idle for us to resist that claim, and hence, if we are not interested and disqualified according to the letter, we are within the spirit of the act referred to, notwithstanding the counsel of the plaintiffs insisted on our hearing the cause; and the defendant's counsel not objecting, it was submitted on argument and written brief to two members of the court.

In arriving at the conclusion which I have in this case, I am not aware of any consideration of interest having influenced my mind. I have endeavored to divest myself of all such feeling and to decide the case according to law and the principles of adjudged cases.

I shall notice only two questions presented by the record, as the decision of these will be decisive of the plaintiffs right to recover. The first is that presented by the first instruction asked by the defendants counsel and refused by the circuit court.

It was virtually conceded by the plaintiffs counsel in the argument, that the principle set out in the first instruction asked by the defendant, had been decided by the Supreme court of the United States in the case of Bagnell et al vs Broderick, 13 Peters R. 436, and in the case of Barry vs Gamble, 3 Howard's R. 51. But they insisted that the point was not directly before that court, or was not important to the decision of the cases, and that therefore, the remarks of that court on the point, should not be regarded as of binding authority. By an examination, however, of these cases, it will be seen that the point was distinctly decided by that court, and also that that court considered it important in the decision of the cases.

In the case first above cited, the court declared that the "United States never deemed the land appropriated, until the survey was returned," and again "the only evidence of the location recognized by the government, as an appropriation (of the land,) was the plat and certificate of the surveyor," and again, the court say, our opinion is, first, that the location referred to in the act, is the plat and certificate of the survey returned to the recorder of land titles, because, by the laws of the United States, this is deemed the first appropriation of the land, and the legislature of Missouri had no power, had it made the attempt, to declare the notice of location filed with the Surveyor General an appropriation contrary to the laws of the United States.

In the case of Barry vs Gamble, 3 Howard's R. 51, the court use the following language: By the certificate of the recorder of land titles at St. Louis, Lesseur was entitled to 640 acres of land in compensation for the lands of his, injured by the earthquake in New Madrid county. On this, the survey of 1818 is founded. Its return by the surveyor to the office of the recorder, was the first appropriation of the land, and not the notice to the Surveyor Generals office requesting the survey to be made, as the court held in Bagnell et al vs Broderick."

In each of the foregoing cases, there is a dissenting opinion, but in neither is the correctness of the opinion delivered by the court, questioned upon the point under consideration.

Although the Supreme Court of the United States labor under an error, as I apprehend, as to the power of the Legislature of Missouri in declaring what evidence shall be sufficient to support an action of ejectment, yet the remarks made by that court show most incontestibly that the question of when the United States deem the public lands appropriated, under the New Madrid act, was before that court and was considered and decided by the court. The construction given to the act of our general assembly may be the correct one, as it was doubtless the intention of the legislature to give the action of ejectment where the title had been so far matured, as to need nothing but the patent to consummate it.

The point of time, then, at which the land was appropriated, under the New Madrid act, so as to sever it from the public domain and exempt it from sale or other disposition by the general government, may be regarded as *res judicata*.

By a recurrence to the evidence offered by the plaintiff, it will be seen that the re-survey made by the deputy surveyor, of the location of the certificate No. 347, in favor of Baptiste Delisle, was made on the 5th of Aug. 1821, and the same was returned to the Recorder's office on the 11th Feb. 1822, and upon which the patent certificate was issued 25th February 1822, and delivered to Charles L. Hempstead. Then, up to the 11th February 1822, no effective act had been done, either by the locator, or the officers of the government charged with the performance of certain duties connected with the subject, divesting the government of title to the land in controversy, or giving title to the plaintiff. On the 11th February 1822, the certificate of re-survey was returned to the Recorder's office, when if the title had been in the United States, it might have passed to Delisle or to those claiming under him.

But by reference to the evidence of the defendant, it appears that on the 31st December, 1821, whilst the title was in the United States, the General Assembly of the State of Missouri, by an act of that date, accep-

ted for the use and benefit of the State, the four sections of land selected by the Commissioners, on behalf of the State, according to the provisions of the constitution, and in pursuance to an act of Congress, approved 6th March, 1820.

This was a public act of the General Assembly, and constituted all that was then necessary to be done, on the part of the State, to vest in her all the title which the government of the United States had, in and to the land selected. It was a full and complete consumation of the grant made to the State of Missouri by the general government, for the location of her seat of government, and she needed no parchment evidence, in the form of a patent from the President of the United States, to give her title, because her title was evidenced by an act of Congress making the grant, and by an act of her own General Assembly, accepting the same, and designating the land upon which it was to attach.

Having fully complied with the terms of the grant made by Congress, the State had acquired title to the land in controversy, before the return of the certificate of re-survey to the Recorder's office, and hence, at the date of the filing of the certificate of re-survey, the government of the United States had no title to the land attempted to be located, and consequently no title passed to Delisle.

I have assumed, what I apprehend is uncontrovertible, and needs no authority to sustain, that a grant of land made by an act of Congress, vests in the grantee the title of the government as fully and effectually as a patent could do.

To impeach the act of the general assembly of 31st December, 1821, accepting the land selected by the commissioners appointed for that purpose, for the location of the permanent seat of government, extracts from the journals of the Senate and House of Representatives of the Missouri general assembly, were given in evidence, showing that subsequent thereto, the question of location was before these bodies, and was on motion, indefinitely postponed. Hence, if the action there had is entitled to any consideration, it may be regarded rather as a ratification or approval of the location made by the act of 31st Dec. 1821. But I apprehend, they are entitled to no weight.

My opinion then is, that the Circuit Court ought to have decided the law to be, as asked by the defendant in first proposition, and so deciding, that court should have found a verdict for the defendant.

2. Did the court decide correctly, in declaring the law to be as set out in the defendant's second proposition?

The evidence shows, that all the steps taken, for the purpose of obtaining a grant of land from the United States, in lieu of the land owned by John B. Delisle lying in New Madrid county, and which had been injured by earthquakes, were taken by Langham and Hempstead, or at their instance, they representing themselves to be the legal representatives of Delisle, and without the consent, knowledge, or authority of Delisle, and that what was done by them in his name, did not receive his sanction or assent until the year 1842. But it is insisted, that the law will imply his assent, as the grant was beneficial to him. This might be a safe implication, if the grant had been a pure donation, unaccompanied with any condition; but such is not the fact. The act of Congress for the relief of the inhabitants of New Madrid county, whose land had been materially injured by earthquakes, provides, that where locations are made under the act, the title of the individ

nal to the land injured, shall revert to and become absolutely vested in the United States. Instead, therefore, of its being a pure donation on the part of the government, it was a proffered barter or exchange of lands by legislative enactment. Where the value of the land in New Madrid had been entirely destroyed, it might be regarded as a donation of other land to the individual owner; but where that was not the case, it could not so be considered. Now, it is a well known fact, that much of the land exchanged with the government, under this law, is this day of more intrinsic value than the land located in lieu thereof. Where this is the case, the govermement, instead of making a donation, has driven a profitable bargain. But the government is not chargeable with any wrong in this transaction, because the owners of the land in New Madrid were not compelled to accept the provisions of the act, if they did so, it was a voluntary act on their part, and their assent should be evidence by some affirmative act done by them.

There is however in this case, no ground for implication, all presumption of assent is utterly excluded by the evidence of Delisle himself, who states, that he was wholly ignorant of the existence of the act of Congress on that subject, until the year 1842. He could not be divested of his land in New Madrid, until he assented to the exchange, and he could give no assent until he was informed of the act of Congress making provision for those whose land had been injured. The title then to the land in New Madrid remained in Delisle up to the year 1842, when he assented to what had been done by Langham and Hempstead in his name, and as Congress only intended to grant other lands, on condition that the title to the land injured should revert to and vest in the government, no title could pass to Delisle until 1842. Prior to which time the State of Missouri had acquired title to the land in controversy.

But the act of Congress cannot be regarded as a direct grant of land; it was a grant on condition that the party applying for the benefit of the act should be the owner of land within the boundary, that the county of New Madrid had on the 10th November, 1812, and whose land had been materially injured by earthquakes: and who would make the necessary proof before the Recorder of land titles for the then territory of Missouri.

These steps entitled the claimant to a certificate from the Recorder, which he was to procure, to be located by the principal Deputy Surveyor, who was to cause a survey thereof to be made and return a plat of the location to the Recorder, together with a notice in writing designating the trust located, and the name of the claimant on whose behalf the same shall be made, which notice and plat the Recorder was required to record in his office, and was entitled to receive from the claimant, for his survices, the sum of two dollars for each claim. The Surveyer was also allowed to charge the claimant fees for his services. It was therefore an offer to grant land, and the act throughout contemplates the consent of the claimant, by the doing of certain acts on his part, before he is to receive the benefit of the provisions contained in the law. Congress in the enactment of this law, cannot be charged with the intention of forcing her bounty upon these people, much less is she chargeable with the iniquity of endeavoring to divest them, without their consent, of their title to land in New Madrid county. And I know of no principle of law which would authorize Langham and Hempstead, strangers as they appear to be to the New Madrid claimant, to institute and carry on proceedings by which he is divested of his title to the land owned by him in New Madrid county. They had no authority from Delisle to

act in the matter, and their acts should be esteemed and held void and inoperative until sanctioned by him 1842.

The assent of Delisle in 1842, to the acts of Langham and Hempstead in endeavoring to obtain for him other lands in lieu of his land in New Madrid cannot be made to relate back, so as to cut out the title of the State. The doctrine of relation should never be indulged to the prejudice of rights equally meritorious. It becomes necessary sometimes to effectuate justice, but should never be permitted where it works a manifest wrong to a party who had bona fide become interested in the subject matter.

When the title was acquired by the State of Missouri to the land in controversy, there was no legal obstacle in the way of the acquisition. The general government had the title to this land, as fully and completely as she had to any of the public lands, and although she had proffered to give this land, as well as any other of the public lands subject to sale, to those who would accept the same, upon the conditions contained in the act of 17th February, 1815, yet, Delisle had not, on the 31st December, 1821, taken the requisite steps to entitle him to its location. Neither was there on the 31st December, 1821, any law of Congress, or any order or direction of any department or officer of the government of the United States, excluding this land from the selection to be made the State. The land being then subject to the selection, and having been selected by the State, no subsequent act of Delisle could affect the title of the State.

I conclude therefore, that the Circuit Court decided the law correctly in the second instruction asked by the defendant's counsel.

I do not deem it necessary to notice the minor points raised in the case, for however they might be decided, their decision ought not to control the final determination of the cause, and besides Judge Napton and myself do not concur fully upon the points above discussed.

Judge Scott being disqualified by law, did not sit in the case, and Judge Napton and myself differing in opinion, the judgment of the Circuit Court is affirmed. (Signed) P. H. McBRIDE.

REPORT OF SELECT COMMITTEE ON NORTH GRAND RIVER ASSOCIATION.

Mr. PRESIDENT:

The select committee, to whom was referred a bill for the improvement of North Grand River, have had the same under consideration, and have instructed me to make the following report:

The committee fully appreciate the importance of the navigation of this highly valuable stream, and would with pleasure give their aid to any judicious measure which has for its object this important result. But the bill above referred to, contains provisions which your committee cannot approve. First, it appropriates funds belonging to several counties of this State without their consent, which funds have been given to such counties for purposes of "internal improvement," subject to the order and control of such counties, through their county courts, and which in the opinion of your committee, cannot be justly applied by the legislature to any object, without the consent of the counties to which said funds belong. Second, the bill provides for the improvement of a stream which is declared "navigable," andcon-