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69 U.S. 605, 1864 WL 6635 (U.S.Mo.), 17 L.Ed. 854, 2 Wall. 605
(Cite as: 69 U.S. 605, 1864 WL 6635 (U.S.Mo.))

H

Supreme Court of the United States.

HOGAN

v.

PAGE.

December Term, 1864

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

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

1. A patent certificate, or patent issued, or confirmation made to an original grantee or his ‘*legal representatives*,’ embraces representatives of such grantee by contract, as well as by operation of law; leaving the question open in a court of justice as to the party to whom the certificate, patent, or confirmation should enure.

2. The fact that A., many years ago, did present to a board of commissioners appointed by law to pass upon imperfect titles to land, a ‘claim’ to certain land, describing it as ‘formerly’ of B., an admitted owner; the fact that the board entered on its minutes that A., ‘*assignee*’ of B., presented a claim, and that the board granted the land to ‘the *representatives*’ of B.; and the fact that A., with his family, was in possession of the land many years ago, and cultivating it, are facts which tend to prove an assignment; and as such, in an ejectment where the fact of an assignment is in issue, should be submitted as evidence to the jury.

West Headnotes

Appeal and Error 30 ↪ **1178(1)**

30 Appeal and Error

30XVII Determination and Disposition of Cause
30XVII(D) Reversal

30k1178 Ordering New Trial, and Directing Further Proceedings in Lower Court

30k1178(1) k. In General. **Most Cited Cases**

Ejectment 142 ↪ **123**

142 Ejectment

142IV Trial, Judgment, Enforcement of Judgment, and Review

142k123 k. Costs. **Most Cited Cases**

Where lower court erroneously ruled that plaintiff in ejectment could not recover as a matter of law, judgment was reversed with costs and cause remanded with directions to issue new venire.

Evidence 157 ↪ **114**

157 Evidence

157IV Admissibility in General

157IV(A) Facts in Issue and Relevant to Issues

157k114 k. Facts Relevant to Particular Issues. **Most Cited Cases**

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Public Lands 317 ↪222

317 Public Lands

317V Spanish, Mexican, French, and Russian Grants

317k222 k. Patent in Confirmation of Grant.

Most Cited Cases

As respects confirmation of French and Spanish claims, by the usage of the land office a patent is issued to a person and his “representatives,” within which word, when found in a patent for land, representatives by contract as well as by operation of law are included; the question as to whom the patent should inure being left open for settlement by law.

FN1 Act of 3d March, 1807, 2 Stat. at Large, 440.

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

‘Louis Lamonde, assignee of Auguste Condé, claiming one by forty acres, situate in the Big Prairie district of St. Louis, produces *606 a concession from St. Ange and Labuxière, Lieutenant-Governor, dated 10th January, 1770. FN2 The board granted to the *representatives* of Auguste Condé forty arpens, under the provisions of the act of Congress, &c., and ordered that the same be surveyed, conformably to possession, &c.’

FN2 This concession, about which there was no dispute, was to Condé.

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

This decision of the board, among many others, was reported to Congress, and the title made absolute by an act of 12th April, 1814. In 1825, La-

monde obtained from the recorder of land titles a certificate of the confirmation.

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

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

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

Messrs. Browning, Hill, and Ewing, argued contra for the plaintiff, that, as Lamonde presented his claim to the board, *607 as assignee of Condé, and as such set up a title in his notice of the application, the act of the board should be regarded as a confirmation of his right or claim to the land; and the cases of *Strother v. Lucas*, FN3 *Bissell v. Penrose*, FN4 and *Landes v. Brant*, FN5 in this court, were referred to as supporting this view of the confirmation.

FN3 12 Peters, 453.

FN4 8 Howard, 338.

FN5 10 Id. 370.

Mr. Justice NELSON delivered the opinion of the court.

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

A difficulty had occurred at the Land Office, at an early day, in respect to the form of patent certificates and of patents, arising out of applications to have them issued in the name of the assignee, or present claimant, thereby imposing upon the office the burden of inquiring into the derivative title presented by the applicant. This difficulty, also, existed in respect to the boards of commissioners under the acts of Congress for the settlement of French and Spanish claims. The result seems to have been, after consulting the Attorney-General, that the Commissioner of the Land Office recommended a formula that has since been very generally observed, namely, the issuing of the patent certificate, and even the patent, to the original grantee, or *his legal representatives*, and the same has been adopted by the several boards of commissioners. This formula, 'or his legal representatives,' embrace representatives of the original grantee in the land, by contract, such as assignees or grantees, as well as by operation of law, and leaves the ***608** question open to inquiry in a court of justice as to the party to whom the certificate, patent, or confirmation, should enure.

Now, upon this view of the case, we think the court below erred in ruling, as matter of law, that the plaintiff was not entitled to recover. The question in the case is, whether or not the evidence produced by the plaintiff on the trial before the jury tended to prove that there had been an assignment by the one of forty arpens from Condé to Lamonde, prior to his notice of the claim before the board of

commissioners in 1808? If it did, then it should have been submitted to the jury as a question of fact, and not of law. The transaction was ancient, and of course it could not be expected that the evidence would be as full and specific as if it had occurred at a more recent period.

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

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

We are of opinion that these facts should have been submitted to the jury, for them to find whether or not there had been an assignment or transfer of interest in this strip of one by forty arpens from Condé to Lamonde. Especially do we think that the question should thus have been submitted, as it appears that at this early day and among these ***609** simple people, a parol transfer of this interest was as effectual as if it had been in writing.

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

NEW VENIRE.

U.S.

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