ST. LOUIS
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THE BEGINNINGS OF TITLE IN ST. LOUIS.

Our old friend Tiedeman tells us that title by discovery is the first and original title. Then, he says, when a government has thus acquired title it passes it on to individuals by public grant.

These principles are wonderfully clear and simple to state. They are fearfully complicated, however, when they come to be applied to the development of a given locality.

For example, in St. Louis the period of time that elapsed between the inception of title by discovery and the final act of governmental grant was no less than two hundred and one years—from 1673 to 1874. The process of grant occasioned the passage of some nineteen general acts of Congress and many special acts, administered by five successive boards and commissioners. The litigation that arose caused the creation of a special court, the Land Court, and appeals were so numerous as well nigh to fill the early Missouri reports, not to mention the Peters and Howard reports of the United States Supreme Court.

INDIAN TITLE

The so-called Indian Title has been held by our highest tribunal to be no title at all.[1] This holding, to the effect that

1. Johnson v. McIntosh, 8 Wheaton, 543.

the red man has no rights which the white man is bound to respect, seems most remarkable to us now—(almost as remarkable as the later declaration of the same court that the black man was similarly situated). Notwithstanding this holding as to the Indian lands, numerous treaties were entered into with various tribes, whereby they relinquished their claims to vast tracts for considerations ridiculously small. Thus in the "council grove" now within the limits of the City of St. Louis (at Goodfellow and Natural Bridge Avenues), treaties were signed with the Osages, Shawnees, Delawares, Sacs, Foxes, and Iowas whereby the Indian claims to Missouri were finally relinquished.

TITLE BY DISCOVERY.

As the Indians had no title, it becomes necessary to ascertain what European nation acquired title by discovery, and when. It can safely be asserted that the nation was France and the date 1673, the year of the journey of Marquette and Joliet. (Call him "Zholiaye",—"Jollyett" is the penitentiary.) Two other nations, however, urged shadowy claims to Nouvelle France. Spain based its claim on the discovery of the river by De Soto, but palpably without merit because no settlement had been attempted during the 131 years between De Soto and Marquette. England also laid presumptuous claim to our valley as part of the western extension of the Atlantic settlements. Neither of these pretensions was ever adjudicated either by courts or by wars, as the claims became merged by subsequent historical developments.

And so our title by discovery commenced when the adventurous père paddled from the Wisconsin out into the Mitchi-sipi, or Big River, "avec une joye que je ne peux pas expliquer,"—with a joy that he couldn't explain.

CONVEYANCES TO THE UNITED STATES.

After having labored ninety years among wild beasts and

wilder men to colonize this greatest of valleys, France had the unspeakable misfortune to lose it all. As a result of the Seven Years', or French and Indian war, she was compelled to cede the East half of the Mississippi watershed to England and the West half to Spain. Thus was the tract "under examination," the Illinois country or land of the Illinois Indians. divided in 1763 and 1764. By this division the future state of Illinois became Northern and Eastern in character and the Missouri to be, Southern and Western. In this way the laws and ideals of these adjoining states came to differ as widely as those of New York and Texas, a condition very noticeable even now.

The Illinois part of St. Louis was transferred from England to the United States by the cession of 1783.

The next conveyance in the chain of title to the Missouri part was the "quit claim" by Spain back to France. This was by the Treaty of St. Ildefonse, executed on October 1, 1800, but not "recorded" until 1803, on the Day of the Three Flags.

Then came the last of the governmental transfers, that from France to the United States. It is important to know that this Louisiana Purchase became effective in New Orleans on December 20, 1803, and in St. Louis on March 10, 1804.

THE EARLY TOWNS.

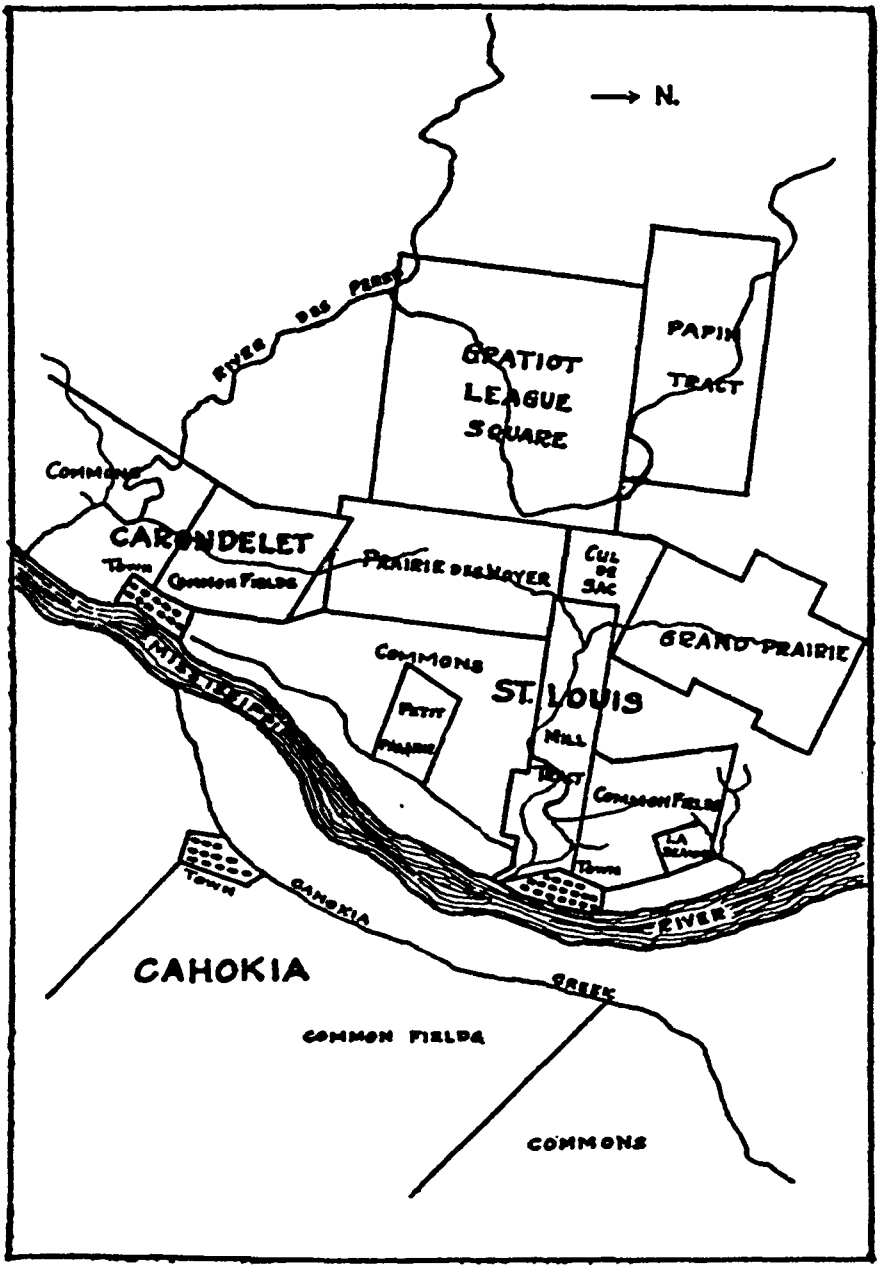
Having thus traced the title, it will be well to consider the settlements that the Usonians found in their new acquisitions. The earliest were founded by remnants of the followers of La Salle and other explorers. These adventurous voyageurs and couriers du bois settled in the villages of the Peoria, Cahokia, and Kaskaskia Indians on the Eastern side of the river. This occurred a few years before 1700, and by 1722 Cahokia (now partly in East St. Louis) was of sufficient importance to receive a grant of four square leagues of land from the Royal Company of the Indies. Other settlements were subsequently

made at Ste. Genevieve, St. Charles, St. Philippe, Ste. Marie, St. Ferdinand de Fleurissant, and St. Louis, as well as Vide Poche or Carondelet, Ville a Robert or Bridgeton, Portage des Sioux, Prairie du Pont, and Ainse a la Graise or New Madrid.

Each of these settlements was laid out as a French "town system." That is, there was a Town, a Commons, and Common-fields. The Town was a little tract divided into small square blocks, each block individually owned by an "habitant." The Commons was not owned individually but the title was in the town as a corporation, and it was used as a grazing ground for the cattle of the village. The Common fields were owned by individuals, and were long narrow strips placed side by side and cultivated as farms. The Town of St. Louis extended as far west as Third or Barn St., a name naively self-explanatory. The Common Fields went out to the present Jefferson Avenue and to a little north of the Big Mound at Mound Street. A farm a mile and a half long and only an arpent or 192 feet 6 inches wide would seem queer indeed to us now, but the business part of St. Louis once consisted of farms like this. The Commons ran south to Meramec Street and west to the fence then called the Barriere a des Noyers, but better known now as Grand Avenue. There were besides, three overflow common field tracts extending to Kingshighway, as well as a Petite Prairie lying diagonally across the commons from Geyer Avenue to Arsenal Street. The Town of Carondelet likewise had a common field betweeen Meramec Street and Carondelet Park and a commons extending down the river to beyond Jefferson Barracks. Similar systems existed across the river at the towns of Cahokia and Prairie du Pont (now phonetically spelled Dupo).

THE FARMS OF ST. LOUIS.

In addition to these town settlements there were many outlying plantations. Thus Charles Gratiot, a merchant of Ca-



THE THREE FRENCH TOWN-SYSTEMS AT ST. LOUIS.

hokia and St. Louis, owned a league (or three miles) square extending from the "chemin" which he cut through the woods, (Kingshighway) to the road that afterward was opened to the Big Bend of the Meramec, and from the Art Museum to Tower Grove Park (modernly speaking). That is, he owned all of this nine square miles except the bed of the rivière des Peres, title to which was retained by the crown. Another large tract of forty by eighty arpens was owned by Marie Louise Papin, who used it as a "vacherie" or stock farm. The best view of this ranch can now be had from the front terrace of Washington University, for it extends from Union Avenue to Hanley Road and from Wydown Boulevard to Maple Avenue.

Another interesting tract was that conceded by St. Ange to Tayon as a site for a water mill. This included the valley of the "petite riviere," as far west as the "rock spring" at Vandeventer Avenue. Tayon conveyed this concession to Laclede, who died owning it. It was sold at the church door at Second and Walnut Streets to satisfy his debts and bought in by Auguste Chouteau, who continued to operate the mill. This is where the present Cupples Station property of Washington University is now situated. The tract was later subdivided and the streets on its north and south lines appropriately named Laclede and Chouteau Avenues.

Still another farm was that of Joseph Brazeau, which was of so early an origin that it antedated the original St. Louis common fields and was adjudged superior to them. This survey 3333 lay diagonally across the common fields and hence can be identified on the map of today by the bias trend of the streets from Chambers Street to St. Louis Avenue. The title to parts of this tract, in the words of Judge Lamm, was "prone to trouble as the sparks fly upward," and has been in the courts for eighty years on various questions of description, riparian rights, and partnership interest.[2]

2. Maguire v. Tyler, 8 Wallace 650, 668. Swearingen v. City, 151 Mo. 348. Troll v. City, 257 Mo. 626.

One of the quaint customs of the French resulted in the very interesting Tow Path litigation of recent years. On the river side of the towns of St. Louis and Carondelet a tow or path was left to allow the lusty Frenchmen an opportunity to pull the keel boats up the river by means of a tow line or cordelle. These tows were of course abandoned upon the introduction of steamboats. The river afterward deposited a large alluvion in front of Carondelet and the owners of the blocks next to the river extended their possession eastward and eventually built great factories on this new land. Quite recently the City brought suit to recover these lands claiming that they were accretions to the long forgotten tow path. The Supreme Court denied the City's claim advancing the ingenious argument that the tow path moved with the stream, and hence that the accretions belonged to the lot owners.[2]

The European method of irregular settlement is in sharp contrast to our Jeffersonian system of Sections. We divide the whole face of the land into a gigantic gridiron of Townships, Ranges, and "Forties," and compel the settler to conform thereto. On a Section map of St. Louis County, for instance, the early tracts, odd shaped and oddly placed, look for all the world like little fossils protruding through rock of later date—which indeed they are. There are only four or five American sections in the City of St. Louis and they are very "fractional."

CONCESSIONS AND GRANTS.

The method of obtaining title to individual tracts of the public lands under the French and Spanish regime differed from our American system. First a concession or permission to settle was obtained from the Lieutenant-Governor of Upper Louisiana "et Commandant de la partie occidentale des Illinois," at St. Louis. Then it was necessary to have this conces-

2. St. Louis v. Blast Furnace Co., 235 Mo. 1.

sion perfected into a complete grant by the Governor or Intendant, at New Orleans, according to the regulations of Morales (American State Papers 3-432, 4-84, 5-291). It is remarkable that out of several thousand concessions in Upper Louisiana only thirteen concessionaires ever went to New Orleans and had their inchoate rights completed into perfect titles. The Gratiot League Square, previously mentioned, is one of the thirteen. About the only thing that could defeat a complete grant was for it to have been granted after the secret treaty of 1800.[4]

After the Purchase the status of the Spanish titles became one of the most acute questions of politics and litigation. It was readily admitted, and so decided by the United States Supreme Court, that a complete grant must be recognized as valid by our government under the treaty.[5] The status of the concessions was not so easily disposed of, however, and after much argument the Supreme Court held that all concessions were void and not binding upon the United States government.[6] It is said that the reason for this astonishing decision was the fact that many of the later concessions were fraudulent and antedated, although it is not easy to see why private property rights should be annulled, contrary to the well recognized principles of international law, merely because some of the claims were fraudulent.

ACTS OF CONGRESS.

Congress, however, came to the relief of those concessionaires whom it deemed worthy of aid.

In Illinois, it was provided by the Act of 1804 that the Register of Lands and later the Governor of "the Indian Territory," as it was then known, should take evidence of actual settlements and confirm the claims of the settlers.

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4. Harvey v. Rusch, 67 Mo. 551.
5. Menard v. Massey, 8 Howard 293.
6. Chouteau v. Eckert, 2 Howard 344. Bird v. Montgomery, 6 Mo. 510.

In Missouri, by the Acts of 1804, 1805, 1806, 1807 and 1811, similar provision was made, provided the claimant had been in possession either on October 1, 1800, or December 20, 1803. A board of commissioners was appointed to take testimony. This was the so-called Old Board and was composed of J. B. C. Lucas, Clement B. Penrose and Frederick Bates, prominent citizens of St. Louis, each of whom, by the way, now has a street named for him.

It was seen that the above acts did not authorize confirmation of those tracts conceded between December 20, 1803, the date of the transfer at New Orleans, and March 10, 1804, the date of transfer at St. Louis. Nor did they permit confirmation of commons to the towns or common fields to the grantees of the towns. And still further no disposition was made of abandoned claims within the common fields.[7] So the Acts of 1812, 1813 and 1814 were passed rectifying these matters and providing that abandoned claims, that had been reunited to the "domaine de sa majeste," should be confirmed to the schools. Frederick Bates was the sole commissioner or recorder under this Act.

By the latter provision the public schools of St. Louis were provided with a large fund, which was their main support for many years, and to which fact can be attributed some of their early excellence. One of the chief workers for the passage of this Act was Thomas F. Riddick, for whom the Ridrick School was afterward named. The schools unfortunately failed to establish their claim to the vacant lands in the Grande Prairie west of Grand Avenue, because of the fact that the official survey of the town did not include these outlying common fields.

NEW MADRID LOCATIONS.

New Madrid locations or "floats" arose out of the Act of Congress of 1815, which gave to those whose lands had been

7. Fine v. Schools, 23 Mo. 570.

injured by the New Madrid earthquake the right to surrender such lands and locate on any other unsettled land in Missouri.[8] Most of these location rights were bought by speculators and located throughout the State and particularly at St. Louis. The title to the large farm of Peter Lindell through the center of which now runs Lindell Boulevard originated in New Madrid Certificates.[9] Much litigation arose because of New Madrid claims, particularly as many of them were fraudulent or forged. One of these early manipulators was caught with a trunk full of old deed paper and counterfeit seals during a suit wherein he was attempting to impose a New Madrid claim on property in North St. Louis now including the present Ball Park. He escaped and migrated to Mexico where he originated the famous Peralta-Reavis claim to a tract of several thousand square miles in Arizona. To do this he invented a "Baron Peralta" and an imaginary family of ancestors and descendants as well as all of the necessary documents of title. He also provided the proper records in Spain and Mexico by writing the desired entries on blank pages found at the rear of the record books, and then taking the binding apart and inserting the pages in their proper places. By constructing the whole scenario of this plot he supposed that no discrepancies could be detected, and none were for many years. Finally a Special United States Court was created to try this one case. This court was remarkable in that it could hold sessions anywhere. Finally after a vast amount of evidence had been collected, the whole scheme came to light.

MORE LIBERAL LAWS.

In 1820 Benton was elected senator and much of his later popularity was due to the fact that he advocated a more liberal policy as to allowing confirmations. In 1824 provision

8. Gibson v. Chouteau, 39 Mo. 536. Stoddard v. Chambers, 2 Howard 284.

9. Hammond v. Schools, 8 Mo. 65.

was made for confirmation by the United States District Court but only a few actions were brought.[10] About the only result of this law was the impeachment of Judge Peck, and his acquittal by the uncomfortably close margin of 22 to 21. The report of this trial is replete with the lore of the Spanish land law.

Later in 1824 the time for proving claims was further extended and Theodore Hunt appointed recorder. Each of the commissioners had kept a journal or minutes. Hunt's Minutes are particularly interesting because he recorded much testimony of the early inhabitants as to the early history of the town. For example, there is a spirited account by Jean Baptiste Riviere, dit Bacanné, as to how he was captured by the Indians at Cardinal's cabin. Cardinal lived at a spring near the intersection of the present Spring and Natural Bridge Avenues. The two captives were taken out this road and Cardinal, having been wounded, died when they had proceeded as far as the Beaver Ponds, that is to say, Union Avenue.

Still there were some claims, mostly in the hands of American assignees, that could not pass even the now relaxed regulations. So by the Acts of 1832, 1833 and 1836, a New Board was created with powers to confirm any claim "which in their opinion would have been confirmed by the Spanish Government or which had ever been settled or cultivated." The reports of all these boards are set out at length in Volumes 3 to 6 of the American State Papers.

It would seem that ample opportunity had been given to prove up claims, during the thirty years that the various commissioners had held forth, but it was discovered in 1866 that many small concessions in the City of St. Louis were still unconfirmed. In this year an Act was passed giving the U. S. District Court at St. Louis power to confirm to the person

10. Soulard v. U. S., 10 Peters 100. Chouteau v. U. S., 9 Peters 137, 147.

"having the best claim thereto." Numerous claims were confirmed under this act and as it is still in effect such confirmations can be obtained even at the present time. This act applies only to the City of St. Louis, but it is not stated whether the original Town of St. Louis was intended or the City of St. Louis as it existed in 1866, extending to a line 660 feet west of Grand Avenue.

Some of the foregoing Acts of Congress were so worded that a formal patent was not necessary, the confirmation operating as a complete transfer of the legal title. Other Acts were not so expressed and the courts held that patents must be obtained. In 1874 this condition was called to the attention of Congress and a blanket patenting Act was passed, which finally passed the legal title to all confirmees.

SECTION TITLES.

After all the concessions in St. Louis had been confirmed, very little land remained unlocated. There are consequently very few tracts known by the United States section numbers, and these are little remnants or fractional sections. They were usually cash-entered and patented in the regular way. One of the largest of these vacant tracts happened to be in Section 16 of Township 45 Range 7. Under the Missouri Act of Admission, Section 16 of each Township was reserved for the use of the schools. And so our school board subdivided and sold its Section 16 as town lots. William G. Eliot, one of the founders of Washington University, was then President of the school board, and it is not uninteresting to note that he had the three north and south streets of Section 16 named for three of his clerical friends in the East, Levi W. Leonard, William E. Channing, and Henry Ware.

PRIORITY OF CLAIMS.

Under conditions like those existing at St. Louis it was to be expected that many suits should arise to test the priority

of conflicting claims. For it not infrequently happened that a certain tract would be covered by parts of a common field lot, a New Madrid location, a section title, a part of some commons, and several overlapping confirmed concessions.

When the question arises as to priority between two confirmations the rule is established that the one first confirmed is superior even though the other was conceded first and had the better claim to confirmation.[11] The rule as to priority between two patents is of course exactly the reverse of this, the patent on the better entry prevailing without regard to the date of patent. New Madrid certificates were inferior to all existing concessions even though the other concessions were confirmed after the New Madrid confirmation. This was because the New Madrid Act allowed location only on unappropriated land. New Madrid claims were, however, superior to later section entries. The claim of the towns to the commons was subject to all previous confirmations to individuals but superior to subsequent confirmations. General Grant's father-in-law, Frederick Dent, conducted a very interesting suit in which these principles were established.[12]

This, then, is the way in which title originated in St. Louis. It was indeed a complicated, tortuous and litigious process, although withal a process that resulted in justice being done under most trying circumstances. This attainment of right was due to the untiring efforts and high character of our early bench and bar, men like Barton, Gamble, Geyer, Darby, Lawless and Casselberry, who effected the difficult transformation of a collection of little French farms into a great metropolis.

McCune Gill.

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11. Landis v. Brant, 10 Howard 348. Hence it follows that a confirmation cannot be defeated by a showing that it was erroneously made and that another person should have been the confirmee. Strother v. Lucas, 14 Peters 410.

12. Dent v. Sigerson, 29 Mo. 489. Another interesting case on priority of commons is Mackay v. Dillon, 7 Mo. 7, 4 Howard 421, involving title to the property between Chouteau and Park Avenues.

The following is a translation of the various documents comprising the complete grant of the Gratiot League Square extending from Kingshighway to Big Bend Road:

APPLICATION FOR CONCESSION.

"To Don Francisco de Cruzat, Lieutenant Colonel of the regiment established in Louisiana, and Lieutenant Governor of the Western part of Illinois, etc., etc.: Sir—Charles Gratiot, a merchant of this village has the honor to inform you that he desires to establish a habitation on the River des Peres, to cultivate wheat, oats, Indian corn, tobacco, etc., etc. This he means to do, sir, if it pleases you to accord to him a tract of land of eighty-four arpents in width, running from east to west, the line crossing the river, and eighty-four arpents in length, passing from the south to the north, following the aforementioned river at the end of the concessions at the fence of Desnoyer, to enjoy by himself, or to dispose of to his heirs, with his other property now and forever, without interference from others in the matter of enjoying or disposing of the property. When this is done, all will be right.

"At St. Louis, the twelfth of February, seventeen hundred and eighty-five.

CH. GRATIOT."

CONCESSION.

"Having considered the document presented by Mr. Charles Gratiot, resident of the village of St. Louis, I have conceded to him and do concede to him a title of property for himself, his heirs and others who represent him, etc. The land measures 84 arpents in length from east to west crossing the line of the River des Peres and 84 arpents from south to north. The point of departure of this land begins at the fence of Desnoyer, with the understanding that the River Des Peres be not included in said concession in order that the use and navigation of the same shall always remain free for the use of the public. The land is granted to him under the condition that

he will make it fertile within a year commencing from this date, otherwise the land will be taken away and made the property of the Royal Dominion, the proprietor knowing that the land is subject to the public charges and any other command of his Majesty.

"Given at St. Louis in the Illinois on the fourteenth day of the month of February of the year 1785.

FRANCISCO CRUZAT."

REPORT OF SURVEY.

"We, the undersigned, captain of militia of his Catholic Majesty, surveyor commissioned by the Government for the said district of St. Louis and New Madrid, who this day, in virtue of orders from Don Zenon Trudeau, Lieutenant Colonel, Captain of the regiment stationed in Louisiana and Governor of the Western part of the Illinois, have visited the land of Sieur Charles Gratiot, merchant and inhabitant of this village to make the necessary surveys of the land ceded to him (by Sieur Fois Cruzat, herebefore Lieutenant Governor of the Western part of Illinois of the date, February 14, 1785) consisting of eighty-six arpents in front by eighty in depth, or 6,720 of surface measurement, which measurement was made in the presence of the proprietor, with the base of the City of Paris, on a scale of 18 feet, King's measurement, and always following the custom of this colony, which finds itself at the end of the tracts of Forty arpents at the fence of the said Desnoyer, the distance from the city, being a league and a half. The said land bears southwest one quarter of a degree from the said Fort St. Louis of this city, is bounded on the front by the lands of different individuals which are marked by stone monuments a foot square and three feet high sunk into the ground at distances of twenty arpents, and all the trees on the property were blazed with the initials C. G., and that this may be made certain, we have delivered with this description a plan on which we have marked the monuments natural and artificial. St. Louis, May 17, 1796.

ANTONIO SOULARD."

"Approved: Zenon Trudeau."

COMPLETE GRANT.

"Don Manuel Gayoso de Lemos, Brigadier of the Royal Armies, Governor General, Royal Vice Patron of the Province of Louisiana and Western Florida, Inspector of Troops, etc.

"After seeing the proceedings and acts of Private Surveyor Don Antonio Soulard on the possessions given to Don Charles Gratiot, measuring 6,720 arpents of land situated in the country of the Illinois, back of tracts of forty arpents commencing at a fence of walnut called Desnoyers, a mile and a half from the City of St. Louis, southwest one quarter of a degree from the fort and bounded on the other sides by vacant lands, as is shown by the attached plan, made in accordance with the survey, and without causing any trouble or interfering with anyone's claims. Exercising the power which the King has delegated to us, we grant, in his royal name, to the said Don Carlos Gratiot, the said 6,720 arpents. As his property he may dispose of the land, but must make use of it in accordance with this document and the conditions laid down in the regulations of such matters. We issue this document signed by our hand, sealed with the seal of our arisand, examined and undersigned by the Secretary of his Majesty in this Government in New Orleans, April 2, 1798.

"MANUEL GAYOSO DE LEMOS.

"By order of the Secretary, Andreas Armesto."

(Seal)

COMMISSIONERS' RECOGNITION OF GRANT.

"Louisiana Territory, Commissioners' Room, February 22, 1808.

"United States of America.

"This is ascertained by the board to be a grant made and completed.

"By order of the board.

THOMAS RIDDICK, Clerk."