

# ST. LOUIS LAW REVIEW

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## SOME ST. LOUIS CASE LAW.\*

We hear much of the use of cases to supplement the study of law books; cases are a sort of legal clinic, or laboratory, where practical application can be had of the principles learned in books. Much of the value of the case system is because of the fact that actual situations in actual locations are more readily understood and remembered than are ponderous abstractions. This being true, it will follow that if the states of facts concern scenes that are familiar to us from daily association, their value as concrete examples is just that much greater.

We little think as we ride about St. Louis that many of the scenes at which we look in a rather indifferent manner were the locations on which were staged legal conflicts whose decision by the higher courts has become part of our *corpus juris*.

1. Lindell Boulevard brings to mind two rather celebrated suits—one about the Lindell and the other about the Boulevard. The farm through the center of which a street was dedicated by the Lindell heirs, was originally owned by one Sam-

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uel Hammond. He became financially embarrassed and his farm was sold at an execution sale, and a sheriff's deed duly delivered. The sheriff's acknowledgment was taken in due form by the Clerk of the Circuit Court, and properly endorsed upon the deed, except for one mistake—the seal of the court was not impressed thereon. Afterward Peter Lindell, a prominent merchant of ante bellum days, bought the farm and used it as such during the time when St. Louis was growing from Twelfth street toward Grand Boulevard. By the sixties the city had almost reached that goal, Lindell's Grove, at what is now Theresa avenue and Olive street, being used as a soldiers' camping ground, the famous Camp Jackson. During all this time the Hammond heirs were content to allow Lindell to pay the taxes on the land. Shortly after the war, however, Lindell's heirs were about to subdivide the tract into residence lots and the Hammonds brought suit on the supposedly defective deed, basing their contention upon the well-known and barbarous Missouri rule that an official deed is absolutely void and not merely defective as to record, notice, and evidence, if the acknowledgment be incorrect. The Supreme Court, however, turned a deaf ear to this plea and in the case of *Hammond v. Gordon*,<sup>1</sup> held that the affixing of the seal would be presumed and the deed was held valid; although this decision was not rendered until many of the owners had bought off the claimants rather than engage in a protracted legal battle that would ruin the chance of an immediate sale of the ground.

2. The Boulevard cases so called are *City of St. Louis v. Hill*,<sup>2</sup> and *City of St. Louis v. Dorr*,<sup>3</sup> and were the result of an attempt to impose by ordinance a building line and other restrictions upon certain streets to be called boulevards, including Lindell avenue. No suit was brought nor any service had upon the abutting owners, nor were any damages allowed to

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1. 93 Mo. 223, 150 S. W. 633.

2. 116 Mo. 527.

3. 145 Mo. 466.

those whose lots would be of smaller value after the change. Such a condition was shown to exist particularly with reference to corner lots which were more valuable without the restrictions than with them. The Court consequently held that this was an appropriation without just compensation and without due process of law and hence was void, and particularly held that "the use of property is property."

3. The title to the Des Peres valley, now the site of the golf links in Forest Park and the residence section north of the park, is derived by *mesne* conveyances from Madame Papin, who originally obtained a concession or permission to settle from the Spanish Government, which concession was later confirmed. Another concession had, however, been previously issued for part of this land to one Chauvin, and said Chauvin asserted that his prior claim should be confirmed. But the Board of Commissioners decided that the first confirmation was final even though there was a prior outstanding concession. This same conclusion was also reached by the United States Supreme Court in the cases of *Chouteau v. Eckert*,<sup>4</sup> *Mackay v. Dillon*,<sup>5</sup> and *Les Bois v. Bramell*.<sup>6</sup> The claimants under the Chauvin concession being thus disappointed, then attempted to re-locate the claim east of the Papin tract, or extending from the present Union avenue to about Taylor avenue. Here they would encounter only New Madrid titles to which their concession would be superior. But this ingenious theory did not meet with the approval of the Government, and so the notorious Chauvin claim became a bursted bubble.

4. Another case in the same neighborhood concerned the ground on the south side of West Pine Boulevard from Taylor avenue to Euclid avenue. This property was owned by the Rex Realty Company which sold off several lots and imposed

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4. 2 Howard 34.

5. 4 Howard 421.

6. 4 Howard 449.

rather stringent building restrictions thereon, covenanting in each deed to place similar restrictions on all other lots in the tract that should be sold in the future. Soon they found themselves with only a few lots on hand and with a very tempting offer for those lots if they could be sold unrestricted. This they did and the purchaser found that he had bought a lawsuit along with his lots, for the earlier purchasers demanded that he abide by the restrictions, even though they were not a part of his deed, nor of any deed in his entire chain of title. He pointed out that surely a prospective purchaser need not examine all the deeds made by all the former owners of his lot, to ascertain whether such owners had in any of their deeds (which might be very numerous) bound themselves to restrict the tract out of which his lot was to be carved, perhaps many years later. But the Court did not agree with him and held the restrictions binding in the case of *King v. St. Louis Union Trust Co.*<sup>7</sup>

5. Along Cook avenue, from Taylor avenue to Grand, there originally stretched one of the long narrow farms that the French called common fields. Although this tract was subdivided and sold as building lots a half century ago (and some of them are ready to be built on again), a defect was recently discovered that gave rise to the suit of *Chaput v. Bock et al.*<sup>8</sup> This case never got to a trial on its merits, because of the "et al." among the defendants. The plaintiffs joined all of the many owners of lots as defendants in one suit, on the theory that the action had arisen from one transaction. It was held, however, that even under modern codes of procedure an ejectment suit brought against different owners of several tracts is multifarious and void, even though the basis of the suit was something that occurred when the tract was all owned by one person.

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7. 226 Mo. 351.

8. 224 Mo. 73.

6. Farther south on Grand avenue (or boulevard, as it is now called), one crosses the large bridge spanning the railroads that occupy the bed of the former Mill Creek. The building of this bridge gave rise to a valuable decision in the law of contracts. It seems that the company that had contracted to furnish the iron work for the bridge did not have the iron ready to deliver on the agreed date. The city sued the company for damages, which claim was resisted on the plea that even though the iron had been ready as stipulated in the contract, it could not have been installed as the city did not have the abutments in place at that time. And in this case the principle was laid down that non-performance of a contract is excused when performance is prevented by the acts or neglect of the other party.

7. A little farther south on Grand one comes to a tract just south of Neosho street over which a legal battle was waged involving some questions as to powers, limitations, and accrual of causes of action. This property was conveyed to a trustee for the sole and separate use of a married woman. This was prior to the passage of the Married Women's Separate Property Act of 1889, and at that time a great deal of property was thus held in trust for married women so as to create for them equitable separate estates and secure the benefit of the liberal views of courts of equity. Practically all of such conveyances in trust provided that the trustee could sell at the request of the woman at any time during her life. The deed conveying the Grand avenue property seemed to be in the customary form and was so considered by all concerned and a deed was obtained from the trustee and the lady in the case. But it was subsequently discovered that the original conveyance in trust gave power to sell only during the lifetime of the husband and not of the wife, or life tenant, the deed from her being executed several years after the husband's death. The heirs promptly brought suit against the new owners, but were just as promptly dismissed out of court, because they were held to have no right of possession during the life of the life tenant,

and hence their cause of action had not yet accrued. They were thus compelled to wait, more or less patiently until the life tenant died, but suffered no lapse of memory concerning the facts or principles involved, and upon the death of such life tenant they immediately brought another suit. The occupant then pleaded limitation but, of course, lost this point, as no limitation could run during the life estate. The case was later compromised and deeds obtained from the now victorious remaindermen. The case in the Supreme Court is *McDonald v. Quick*.<sup>9</sup>

8. At the extreme end of Grand avenue we look across the River des Peres toward the line of hills to the south. These hills were once claimed by General Grant's father-in-law, Frederick Dent, who had acquired by *mesne* conveyances from a French settler who held adversely to the claim of the Village of Carondelet to the vast area known as the Carondelet Commons. This case went to the United States Supreme Court, which decided against the President's wife's father, and held that possessions within commons are void unless they were confirmed prior to the taking effect of the Act of Congress of 1812, granting to all French towns the title to their adjacent commons. This case is known as *Dent v. Emmegger*.<sup>10</sup>

9. Another famous case in South St. Louis has to do with the Sublette family. The plot of this litigation is melodramatic enough to have been the basis of an old fashioned dime novel—will, "cheeild," gravestone, poison and everything. It would make a wonderful modern serial movie. It seems that one William L. Sublette was a prominent merchant and trader here in the early thirties. He married Frances Hereford and purchased a farm or country home about five miles from town on the road to Manchester. This farm now extends along the west side of Kingshighway from the Frisco tracks to South-

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9. 139 Mo. 484.

10. 14 Wallace 308.

west avenue. William died childless and devised the east half of his farm to his wife. She then married Solomon P. Sublette, brother of William, and conveyed to him the north half of her portion. Three children were born to them, but all died early in life, the last, Esther, dying rather mysteriously after a birthday party given by her maternal relatives. As neither Solomon nor Frances had left wills, the farm had descended to little Esther and when she died the property passed by descent to her Hereford relatives, the only Sublette relations being too far removed. After the title had rested in the Herefords and their grantees for thirty years, two startling things happened. One was the finding, or alleged finding, of the bones of Pinckney W. Sublette, uncle of Esther, and of his gravestone marked with the date 1865. The place of this find was a lonely gulch in Wyoming which fitted in well with the fact that Pinckney was a trader with the Indians and died in the West. If the date were authentic he would have survived Esther Sublette and become heir to an eighth of her estate and numerous Sublettes would inherit from him. About the time of this find an ancient paper purporting to be the will of Solomon P. Sublette was mailed on a train near Kansas City. This document purported to devise all of the testator's property to his Sublette relatives. From these two events two suits arose. One was an ejectment for the eighth of Pinckney Sublette. His alleged bones and gravestone were brought here as Exhibit A and reposed in the court house file room for many years. The question of the authenticity of these gruesome relics was never decided, as the Supreme Court in the case of *Peniston v. Schlude*<sup>11</sup> decided against the plaintiffs on the remarkable theory that there were probably two Pinckney Sublettes. The other suit prays for the establishment of the will of Solomon Sublette, and a person was found who testified that he was one of the witnesses thereto. The proponents are confronted, however, with several hundred letters

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11. 171 Mo. 132.

written by Solomon to his wife, Frances, while he was on trips to the then wild West, and the signatures on all of these are almost exactly alike, but none resemble the signature on the will.

10. In the northern part of the city the student of case law finds some interesting local color. As one stands upon the high bluff or hill that forms the eastern part of O'Fallon Park, one looks out across a wide stretch of flat bottom land extending eastwardly to the river. This tract was the basis of a case involving the familiar principle that the part of a description in a deed that recites the distances will be subordinate to the monuments given if the two calls are in conflict. It seems that in an early deed part of this low land was described as fronting on the River Gingrass (a creek paralleling the Mississippi River) by a depth of twenty arpents to the hills. The "hills" are now O'Fallon Park, but are more than twenty arpents from Gingrass Creek. It was held in *Clamorgan v. Railway*<sup>12</sup> that the hills being a monument were superior to the distance and that the deed conveyed to the hills.

11. To the south of this, along Broadway, there lies a tract formerly known as North St. Louis, which is a subdivision of a large concession of several hundred acres extending down to the Mississippi from Chambers street to St. Louis avenue. That is, everyone supposed the tract extended to the Mississippi until the Supreme Court in a most remarkable decision in the case of *Sweringen v. City of St. Louis*<sup>13</sup> disillusioned us. This was a simple looking action to divest the City of any rights it might have in some "paper" streets that had seldom or never been used as highways. One of the city's defenses was that even though the streets had been abandoned, Mrs. Sweringen would not own them, as they were situated on accretions to the original bank and that the accre-

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12. 72 Mo. 139.

13. 151 Mo. 348.



tions did not belong to the bank owner because certain deeds described the property as bounded east by a meandered line by courses and distances along the bank of the river, but not specifically bounded by the river. The Court inclined to this view and held against Mrs. Sweringen. This decided the street case but opened up the question as to who did own the accretions if the bank owners did not. From this resulted a suit by the Board of Education of the City of St. Louis, laying claim to such accretions under the Act of the Missouri Legislature of 1895, which granted all islands formed since 1820 to the adjacent county for the use of the schools. The theory was that if the accretions were not such in legal contemplation that they must constitute an island although they had always been firmly attached to the bank. This case was promptly decided against the school board in the local court below, however, and the suit was then dropped because of popular disfavor from the fact that a decision favorable to the school board would result in dispossessing many owners who had been there for many years.

12. In the downtown district an interesting case is *Strother v. Lucas*.<sup>14</sup> Judge Lucas had bought several French concessions extending from the then city limits at Third street to the site of the old commons fields fence along whose line Jefferson avenue now runs. The tract's side lines were the Rue Bonhomme or Market street on the south and the Rue St. Charles or St. Charles street on the north. Lucas obtained a confirmation of these tracts to himself from the board appointed by the United States Government. Strother in the meantime had bought up the adverse claims of several Frenchmen to some of these tracts, and was prepared to show that his grantors had the best and only valid concession and that the confirmation should have been to them and not to Lucas. The Supreme Court of the United States, suffering from *en-nui*, no doubt, because of the maze of contention and counter-

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14. 14 Peters (U. S.) 410.

contention growing out of these and similar claims, held that the complete legal title passed from the United States upon confirmation by the proper authorities, and that such confirmation, right or wrong, was final.

13. Another case just over in the county helped to establish an important point in the law of wills and deeds. The Gannon family owned a tract just north of Clayton, and the will of their ancestor devised part of it to one of the devisees "and his heirs." The word "heirs" had been rendered unnecessary by statute many years before, so far as a fee simple was concerned. It was contended in this case, therefore, that as the word "heirs" was not needed to create a fee it should be construed to create either a remainder or a tenancy in common. This theory did not appeal to the Supreme Court, which held in *Gannon v. Albright*,<sup>15</sup> and *Gannon v. Pauck*,<sup>16</sup> that the use of the now superfluous words does not change the former rule that a fee simple is created.

14. Two cases involving a hair-splitting distinction between general and special warranties are *Tracy v. Greffet*,<sup>17</sup> and *Miller and Bayless*.<sup>18</sup> Both of the deeds contained the words of the statutory warranty, "Grant, Bargain and Sell," and both attempted to limit the warranty clause to claims by, through or under the grantor, but no others. And yet in the first case it was held that the deed was a general warranty and in the second a special warranty. Julius Greffet, the St. Louis real estate agent, who was the defendant in the first case, was very careful after this decision to cross out the "Grant" in our mysterious formula of words of conveyance.

15. On the northeast corner of Broadway and Geyer avenue there stands a building which is a monument to the inabil-

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15. 183 Mo. 238.

16. 183 Mo. 265.

17. 54 Mo. App. 562.

18. 194 Mo. 630.

ity of courts to cope with unusual conditions of fact. This building lay in the path of the tornado of 1896, which rather unceremoniously removed the top half of it. The owner immediately contracted for the repair or rebuilding of the premises, but died shortly thereafter. He left several minor children. A guardian was appointed and asked the Probate Court for an order to execute a deed of trust on the property to raise money to make the house tenantable. This order was granted, and the money properly expended. Some years later, after the children had grown up, they allowed the mortgage to default, and it was foreclosed. They resisted the purchaser's title on the plea that there was no statutory authority for the order that the Probate Court had made. The Supreme Court in the case of *Waldermeyer v. Loebig*<sup>19</sup> agreed with this contention, and also denied the request of the purchaser that he be subrogated to the lien that the mechanic would have enforced if he had not been paid. The Court apologized to the purchaser for taking his money from him, and suggested that some future legislature pass an act adjusting the relations of cyclones and guardians. This suggestion has, of course, been entirely ignored by all subsequent legislatures, which leads us to remark that judicial legislation, bad as it is, is better than none.

16. The southwest corner of Ninth street and Washington avenue, just across from the Statler Hotel, is of sufficient value to have been in the Supreme Court twice within the last few years. One Theresa Bernero owned the property. She had adopted as her son Emanuel C. Bernero. He had predeceased her leaving his son Louis Bernero. Theresa, whom we may call the adoptive grandmother, left a will giving to Louis a small legacy, but no interest in this real estate. The question arose as to whether the child of an adopted son is the heir of the grandmother. The case was very carefully briefed, with citations all the way back to the Code of Hammurabi

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19. 183 Mo. 363.

First, King of Babylon in the year 2250 B. C. The Court in *Bernero v. Goodwin*<sup>20</sup> held Louis to be an heir under our statute. Then a further question arose as to whether he was an heir under a remainder to "heirs" in the will, and this was decided in the negative, in *Bernero v. Trust Co.*<sup>21</sup> And so Theresa's grudge against her grandson by adoption (which was supposed to have arisen because of religious differences between her and the boy's mother) was put into effect.

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20. 267 Mo. 427.

21. 230 S. W. 620.