

E. MARINER.

133 MASON ST.

Milwaukee, Wis., Dec. 16, 1901.

Mr. F. de Vivaldi Coaracy,

Rua de S. Clemente No. 205,

Rio de Janeiro, Brazil.

Dear Sir:-

I have yours without date, returning to me two letters which I sent to Dr. Olympio Pereira Purtagal and Mr. Louis Caracciolo Alves, and for which I never received any acknowledgment. Some Jesuit priests, to whom I applied to help me, who are at the head of Marquette College, in this city, did get a reply, but nothing that was satisfactory.

In regard to your affairs in my hands, the suit remains in the same condition that it was when I wrote last, undecided. It is a pretty tough case.

The facts are that in 1790 a Frenchman of the name of Ducharme purchased from some Indian chiefs the river front on the Fox river at Kaukauna and obtained a deed from them of the property. The deed was gotten contrary to the laws of the United States, which provided that a conveyance made by Indians to individuals should be void. The land conveyed was used as a portage around the rapids in the river, about a mile front. Ducharme lived there and got what living he could from hunting, trading with the Indians and carrying people and goods across the portage.

By the treaty between the United States and Great Britian, which ended the war between the United States and Great Britian, in 1812, it was provided that the claimants of lands in the territory ceded by Great Britian to the United States, which included this land, should be protected.

In 1820, Congress, passed a law providing a commission to receive the claims of occupants of land and report them to the Land Officers of the United States at Detroit, and required those officers to pass upon the

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claims and report their recommendations to Congress. That act provided for a report within a year.

Ducharme made claim to this property described in his Indian deed and the claim was taken, reported to the Land Officers at Detroit, and by them reported favorably to Congress, and Congress in 1823 confirmed Ducharme's selection, by the description of private claim one at the Grand Cacalin. That made in the law Ducharme a perfect title to the property, but the act provided that a patent should be given by the Land Department. This was not done until 1835.

By the same act of 1823 Congress further provided that persons whose claims had not been presented to the first commission might be presented to a new commission that was created by that act.

Under that action a man of the name of Grignon made a claim to land which covered ^{the downstream} part of the land described in the Indian deed and also described in Ducharme's claim. *This makes the first complication*

In 1827 those claims were confirmed by Congress, with a proviso that the latter confirmation should not interfere with any previous confirmation.

Ducharme did not follow his claim up by demanding a patent and Grignon did follow up his and obtained a patent in 1828, I think it was. *This made Grignon's patent the easiest and is the second complication*

In 1834 Ducharme applied to the Land Department of the United States for a patent and the Land Department referred it to Congress.

The Committee of Public Lands of Congress examined the claim and rejected it on the ground that the first confirmation carried the land that Ducharme wanted, and if he wanted a patent advised him to apply then to the Land office, and the bill was defeated.

Ducharme thereupon applied for and obtained a patent on that application, which covered the upstream half of the claim ^{the land in question} and some parts of the other claims. The land was unsurveyed and the description in the

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various claims were such that a man not familiar with the locality might well have supposed that the claims did not overlap. *But I think beyond question that the confirmation of Ducharme's claim by the act of Congress of 1873 gave him a clear title and that a patent was not necessary to complete the title.* Ducharme was an old man and lived till he was nearly ninety years old, and in his latter days, went to your great grandfather, John Lawe, who was a fur trader, and he and his son George took care of him as long as he lived. Before he died Ducharme conveyed to John Lawe the whole of private claim one, which included the entire prairie at Kaukauna, and John Lawe conveyed the upper half of it to his son George and died possessed of the lower or downstream half of the claim. Your mother bought from her sisters all their interest in this claim, and that is the end of the paper title to the land.

Grignon exercised some acts of ownership over the lower or downstream half of the claim that belonged to your mother while John Lawe was still living, and John Lawe brought two or three suits against Grignon, but they never came to trial. The lawyers who brought the suits were the lawyers of a new country and didn't understand the facts or the law, as we do now, and they ~~abandoned~~ *discontinued* these suits.

In the meanwhile a great deal of this land was fenced. A piece of the land that ran down the river and was between that and the Green Bay and Mississippi Canal, which you saw as a child (whether you remember it or not I don't know), and in looking up the title of the Canal Company I found the condition of the title of this property, and I wrote to your mother in regard to it and advised her to bring a suit, and we brought the suit for the part of the land between the canal and the river. It is still pending. When your mother died I had it revived in your name, by me as your guardian ad litem--that is, guardian for the suit, and it stands now so revived.

The judge of the court who tried the case is the chief justice of the appellate court of the United States for this circuit, and nearly

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lost his sight about the time of the trial. Cataracts formed over his eyes, which were slow in developing, and while he could always read a very little with a strong glass, he could not very much, and his business as chief justice of the appellate court took all the time that he could spare. He is an intimate friend and had a little rather impose upon his friends, you know, than on the community generally, and so he did the business that he could and must do to keep his appellate court running, and let this suit stand over. Last summer he had the operation for cataract performed successfully as to one eye, and he is now picking up his unfinished business. I spoke to him about a week ago and he said that just as soon as he could get things done that must be done he would take up this case and decide it.

The only defence that we fear is the defence of the statute of limitations--that is, the law provides that suits to recover the possession of lands held adversely must be brought within twenty years and not afterwards. This suit was not brought until many years after the twenty *country from Ducharme's patent* had elapsed, but there had not been, as we thought, any such occupation as the law required to create an adverse title.

The testimony is very hard to get. There were a few old men who lived around there who could speak as to the facts and they didn't exactly agree as to the facts. *They seriously disagreed*

You see when this title began the whole country was a wilderness, and it was thirty years after these French claims, as they call them, were allowed before the government surveyed the land around that locality. I think now that your suit will be disposed of before a great while and I will promptly advise you.

You ask me about Mr. Brothers. He is still living at Kaukauna, but since I wrote these letters you sent me he has become embarrassed in business, and I haven't seen him for a number of years. You can write

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and gave me a couple of addresses of some brotherhoods of the church, where letters would reach him, and for some reason or another, I have forgotten now, I wrote him one or two letters to the care of the first address he gave me. The letters were returned by the brothers to whose care I had written them, and with them a statement that he had not been there; that he had possibly passed them by and went to some place in New Jersey, of which they gave me the address. I wrote to him care of those brethren and those letters were returned to me and I have never heard a word from him since. He told me that after he had left Rio, I think before you were born, he had determined not to return. Your mother was settled in life and had a good husband to take care of her, and he made up his mind he would go back into the church again. He did, and went to Patagonia and obtained there a considerable grant of lands from, I think, the Argentine government, to establish colonies and to build churches, etc., and he told me that he had succeeded well. He told me that he had been to Rome and had an interview with the pope; that Bishop Ireland, who is the Catholic bishop for the diocese of Minnesota, had presented him there, and that he had been back to see his family. His brother, I think, had been Secretary of State once in Italy: I have forgotten to what king, whether it was to Humbert or his predecessor. His family was one of distinction in Italy. *If you care to find his present residence I would suppose that any point of education would be able to give you his address if he went back to Patagonia*
In regard to the value of your interest in the property: if the title was clear the whole 320 acres of land is worth a good deal of money, maybe \$250,000 or more. Very much of it is occupied. A part of the Village of Kaukauna stands on it, but as to that part a successful defence to your claim could be made by pleading the statute of limitations. The particular piece that we brought suit to recover was one as to which there was least likelihood of a successful defence of the statute of limitations. There is on that piece a paper mill that cost \$125,000, and

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those people have set up a claim under what we call a betterment law, by which where property has been occupied like this adversely and improved, the owner of the improvements may, in case the judgment goes against him for the land, have judgment against the owner of the land that he pay the value of the improvements before he gets the title, within a time that the court may limit, and if we get judgment we will have a lively fight on that score. So that it is likely that in case of any decision in your favor it will be necessary to make some adjustment. Today a paper mill is good property, and if I could have possession of the mill today I could readily get somebody to advance the value of the mill on the security of the property, but the people who own the mill are both rich men and they know your situation financially, and will, if we succeed in getting a judgment in the lower court, which I hope to, carry it up through the Appellate Court and to the Supreme Court of the United States, with the idea of tiring you out and making you abandon your claim. I am an old man, and while I am in good health and they are afraid of me, they won't have as much fear of you or anyone that you could enlist in carrying on the litigation. There have been several years since this suit has been brought, that if we got judgment against the land and they got judgment against me (I am the nominal party), for the value of the mill, I would have let the property go, rather than have undertaken to have paid a judgment for the cost of the mill. Paper mills were very poor property. I could buy all the mills there were on the river for fifty cents on a dollar of what they cost. Now you couldn't buy them for their cost. So that I fancy the result of a successful litigation will be that we must sell ~~xxx~~ them the property for such sum as I can make them pay.

The value of the property in dispute consists principally of its water power. In addition to the dispute in regard to the title as to the whole property, there is also a dispute as to where the boundary

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line actually is, and unluckily the point of dispute is the point of greatest fall on the rapid: so that it is difficult to give the value of the property in dispute in this action until the boundary line is fixed. The power belonging to the disputed land is probably the fall of one fourth of the volume of the river at a head of twelve feet, or about 900 horse power. Now if we had 900 horse power clear, with land to use it on, it would be cheap at this time at \$50,000, but it is complicated, first, with the cost of the construction of the two sides of ~~the pond~~ ^{The pond} shown on the diagram enclosed, as the Hewitt Water Power, the cost of which, I think, was in the neighborhood of \$20,000. It is two heavy stone walls, beginning at the upstream end at the height of ~~about~~ two or three or four feet, and increasing as it goes downstream to about 24 feet at the lower end, and the end wall, which together, make the pond. The upper end of the riverside wall is built in the river and the land side is built entirely upon the rock. The whole surface of the tract between the canal and the river is very nearly bare rock. In addition to that, the Outagamie Paper Mill stands on the land in dispute. That cost over \$100,000, according to the proofs in the case. If we get judgment giving us the land between the canal and the river, the court will undoubtedly, I think, make the judgment conditional upon our paying this \$125,000, within some reasonable time, which the court will fix, and in case we fail to pay it will after that give judgment for the defendant. The time fixed, of course, will be, in consideration of the circumstances, a good long time, long enough to enable us to turn around ~~the~~ In the meantime the court will give them the possession of the mill. I presume that mill is making somewhere between \$50,000 and \$125,000 a year. I know the gentlemen who are running it very well. They are personal friends. The only thing between us is that I am bringing this suit, but they are close mouthed and they won't talk with me anywhere nearly as much as they would if I were not a law-

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yer.

I enclose a diagram that I used in a suit with the Kaukauna Water Power Company on the other side of the river, which shows the locality in a rough way. It has been lying around the office a while and it has got pretty dusty.

I am aware that this doesn't give you any clear idea of the value of the property or the expectation of recovering it, and yet it is as clear as I can give. If the fight were on the paper title alone I should feel sure of winning. I think too that they haven't established and such continuous possession as should give them a title by adverse possession, but we had to take the testimony of old men as to what had occurred forty or fifty years ago, and when you get to be an old man you will be reasonably sure that two honest men ^{might} ~~would~~ remember with regard to the possession of property very differently. The court must sift the testimony and get out the facts. The fact that John Lawe gave up some suits he brought without pressing them to judgment, when these matters were new in the memory of people, is a strong circumstance against us, and it is also a fact that the title of the property in dispute has always been supposed by the people in the neighborhood to have come from the government under the Grignon claim, and not under the Ducharme claim, which I presume has been because Mr. Lawe discontinued the suits he brought without trial.

In making any adjustment with the parties, that requires a conveyance of the property, you will have to have a guardian appointed here to make that sale, who must be a lawyer and who must give the court a bond with sufficient surety for ~~the~~ integrity and diligence in acting as your guardian, and to pay over to you any moneys he may receive on the sale of the property, less his reasonable charges, which must be allowed by the

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When he has conveyed the property and received the pay he must

for me to know. If we succeed in this litigation, as I hope we shall, we

may have to have quite a little correspondence, and while I do not wish

you to tell me anything which you do not desire, because a lawyer of my

age must have a great many of the secrets of his clients, I want to know

enough to guide me in any intercourse that I have with you, and if you

don't know it now I want to tell you that in this country one of the

first things a boy is taught when he enters a law office, is to keep the

secrets of his office and be loyal to his clients. It is impressed on

him day by day all through his life, and if he has brains enough to become

a fairly good lawyer he can't help keeping the counsels of his office and

his clients, and if you are going through your life to trust anybody, trust

some lawyer of good reputation--don't make any matter what his religious

faith is. He is to be trusted in business before any other class or

condition of men. He is not only educated to know the right, but he is

educated to know how surely and how vigorously the law treats any short-

comings on the part of a lawyer, and especially he can't long maintain a

reputation as a good lawyer unless he has thorough integrity of charac-

ter. There are a great many mistakes that very learned men can and

sometimes do make, that an honest man of fair intelligence couldn't make.

So the man who has the reputation of being a good, upright, desirable law-

yer, must necessarily be a safe man.

I shall write Mrs. Dansereau that I have heard from you, and I

think I will send her a copy of this letter. I think she is French and

writes and speaks it. However, she writes a good letter in English.

You may not know anything of your great grandfather, John Lawe, and if you do not it may be of interest to you to know something of him. Personally I never knew him, but I have known a number of people who were familiarly acquainted with him and who gave me this description of him. He was an Englishman of great natural ability: how much education I do

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not know, but he represented the American Fur Company, at Green Bay, for many years, and the house that he occupied has been shown to me when I have been in Green Bay. He kept open house after the old baronial plan. A great table was set in his dining room, which I think answered for kitchen as well, at which anyone was permitted without question to come and sit down below the salt and eat, and his table was well supplied with such things as the country afforded. He kept men constantly employed to hunt and fish to supply his table. He was the great man of the country, and he brought up and educated his daughters as well as he could with the facilities of the country. I think they were all of them, certainly I have been told that your grandmother was, sent somewhere to be educated in Catholic schools. One of my informants, who was a lady of your mother's age and an intimate friend, told me that she was a beautiful and accomplished woman.

If you have no picture of your mother I think I can get one for you.

This is a rambling letter, but I have attempted to write what I thought was adapted to your knowledge ~~of the country~~ ^{what you} and ~~XXXXX~~ would readily understand. I could have sent you a brief in the case, but you wouldn't have had the authorities and it would have puzzled you more than what I have written.

Yours truly,

C. Marinier

(Dictated by E.M.)

(enclosure)