E. MARINER,
133 MASON ST.

Milwaukee, Wis., May 18, 1903.

Mr. V. Coaracy,

Rua Voluntarios da Patria 110,

Botafogo,

Rio de Janeiro,

Brazil.

Dear Sir:-

I have yours of the 1st ult. I have been unwell and I didn't get around to answer it before.

I am glad that you have taken a profession which seems to suit you, and I think there must be opportunities in Brazil to a man who is skilled in that profession. It seems to me as if the South American states must before long begin to prosper, and when they do good civil engineers must necessarily be in great demand, as it seems to me. Of course, the world is abounding with them, but there is a world of work for them, and to be a good civil engineer now means a good deal more than it did twenty five years ago--that is, it requires more skill and it requires wider knowledge, and a man to be a thoroughly competent civil engineer needs to be a pretty good mechanical engineer as well, and in such a country as I fancy Brazil to be, when people begin to work carefully and thoroughly and save their money for investments in improving the country, especially like railways, there is room for no end of employment for civil engineers.

Your law that by going into the military school you thereby attain your majority will not prevail here as regards real property situated in this country. It is a general rule of law that every country makes the laws which govern the title and transfer of land within its jurisdiction, no matter where the owners reside, but you will soon have attained the age of twenty one, when you will have control of your own property situated in this country.

I have not been well for the past three months, but I have been at work on that case of yours all the time that I was able to work, and I think that I have got it clear in my own mind. There are no end of little uncomfortable questions in regard to it, but I think ultimately we will be able to protect your title.

The property lay substantially without any assertion of your grandmother's or your mother's title or yours from 1847 down to the time we brought this suit. It was generally conceded that yours was not the better title.

Your great grandfather brought two suits, both of which he discontinued, one after a trial and a verdict by the jury against him, which the court set aside, which suit he ultimately discontinued, and another which was brought and ultimately discontinued without a trial. It doesn't seem to me from what there is saved in the record of those two suits that anybody appreciated the true situation of the title, either the lawyers or the court. I don't think your title was correctly stated by the counsel on your side, or that the true status of the title was considered by the court. That is the way it strikes me. I may, before we get through, however, be differently advised by the result of this suit, but I think not.

The complication of the title is this. Ducharme, through whom you claim, bought the land of the Indians in 1795 and paid them for it in rum. That transaction was not legal: it was forbidden by the law. In 1820 the United States passed a law, authorizing the persons who had had possession of land for a certain length of time and made claims of title to it, to present their claims to the commissioners appointed by the act, who should pass upon the title and report to the Department of Public Lands and that department was to lay the decision of the commissioners, with the opinion of the Department of Public Lands, before Congress and Congress was to act upon

it. This was done by Ducharme and his claim was confirmed by the act of Congress of 1823. This land was at a portage, upon the Fox river, and was as far from civilization as any of the larger streams in the mountains which make up the Amazon are from Ric Janeiro. What few white people there were were French, who had been settled in the country for 100 years. The only English speaking people were a few of the principal men which the fur companies sent out from New York. This confirmation by Congress gave Ducharme about 1200 acres of land, and he had no more idea what to do with 1200 acres of land than one of your peasants has what to do with a telescope. He had a house and garden and barn and a warehouse in a field of about three acres which he enclosed. That is all the use he ever made of the 1200 acres.

Between the time when Ducharme made his claim for this land and the time it was passed upon by Congress, he left the country temporarily, and Congress, by the same section of the act which confirmed Ducharme's title authorized a set of claimants by a shorter occupation than the first act to make claims for lands, and while Ducharme was away, Grignon, another Frenchman, made claim in 1823 for a piece of land bounded by the claim which Ducharme had made in 1820 and a claim that the same Grignon had made at the same time under the same act. That claim was also confirmed, to Grignon with the proviso that it shouldn't interfere with claims theretofore confirmed. There had never been any survey in the country. The claims were exceedingly indefinite, the original Indian deed being the most definite of all, and Grignon's claim as made under the act of 1823 was confirmed in 1828, with a condition that it shouldn't interfere with the title of third persons. Immediately upon the confirmation of Grignon's title in 1828 he procured a survey to be made and then in 1829 procured a patent, that is, a deed or conveyance from the government to him of some land.

Ducharme, under whom you claim, didn't get a patent until 1835,

and when these patents came to be surveyed they interfered with each other. Your title is the first claim and first confirmation and the other man's title is the first patent. The patent under which you claim recites the interference of the two claims. The first suits which were brought were brought to try just that title. The older claim and confirmation, but with the younger deed from the government, brought a suit against the older deed from the government under a younger claim and confirmation. Today there wouldn't be any trouble with such a suit as that. The principal act is the confirmation by the act of Congress and it would prevail over the older patent, which is the act of the Land Department, but as well as I can find from the record, neither the court nor counsel took just that view of the law. Apparently the court considered that the earliest patent conveyed the land, and although the plaintiff ought to have had the earliest patent he didn't get it and therefore lost his land. The rule of law well settled, as I think, now is that the act of Congress confirming the title of the earliest claim conveyed the title and therefore that the title under which you claim is the better title, although you claim under the younger patent. That view of the case apparently was not taken by the court in either of those suits. The counsel who represented your side of the case have long been buried. When I was a youngster in the practice I knew them well and they were at the head of the profession in the territory at that time. This was before Wisconsin had become a state.

Then there are complications as to whether the conveyances through which you claim are void or not. There are complications with regard to constructive, adverse possession, as against actual, adverse possession. There are tax titles. There is the question of possession. When we tried the case eleven years ago we could find only three or four men old enough to speak about the facts. Since we tried the case every

C. Cy Ctyard

one of them is dead. Every vicissitude that could happen to a title in that country seems to have afflicted this property, and I am fraid the title now is going to turn upon a little scattering proof as to adverse possession, in which the testimony is not only uncertain, but it is conflicting, and the same witness doesn't always state the same thing twice alike. No witness who could speak with regard to the early occupation was less than 74 years old and most of the witnesses were over 90. Now of course there isn't any absolute certainty with regard to the recollection of a man 90 years old as to what happened when he was a young man, and thorough cross-examination will demonstrate that.

No taxes have been paid by your grandmother, your mother or you since 1846 or '7, and if the other ownership hadn't been as slovenly in regard to taking care of the property, with the bare exception that they paid the taxes, the title would have been absolutely lost by adverse possession very many years ago, but if we lose the suit, as it seems to me now, it will be entirely for the reason that your grandmother and your mother practically abandoned the property.

When the suit was brought I was overwhelmed with all sorts of business. I retained Mr. Ordway, who first informed me of the condition of the title, to bring the suit, and while I was present at the trial and advised I never made any careful study of the case until now. Mr. Ordway has become so deaf that it is impossible for him to present the case to the court and I have had to study it up. I don't mean to say anything against Mr. Ordway. He is one of the leading attorneys in the state and is a thoroughly good real estate lawyer, but he is so deaf that it is difficult for him to understand what is going on in court, and I have had to take the case and carry it on myself. I hope to present it finally to the court this week and I will advise you of the result. The chances are that the court below, where the case is now, will decide it against us.