

## THE OLDEST LAND TITLES IN THE STATE OF IOWA

In no county of the State of Iowa has there reigned so much confusion in the matter of land titles as in Lee County. First, a vast amount of litigation arose out of conflicting claims to lands belonging to the reservation established by the United States government for the half-breed members of the Sac and Fox tribes in 1824.<sup>1</sup> Then, in the wake of the judicial settlement of titles to these lands, there followed a legal dispute which involved a Spanish land grant of the year 1799.

At the head of the channel obstructions, or Des Moines rapids of the Mississippi, and within the later borders of the Half-breed Tract, Louis Honoré or Louis Tesson, as he is variously known in early history, obtained permission from the Spanish government of Louisiana to settle upon 7056 arpents of land — an area about three miles square. There, upon the site of the present town of Montrose, the French-Canadian built his cabins, cultivated a small patch, and bought furs from the Indians.<sup>2</sup> Most of the details of his life in the Iowa wilderness in those days have not yet been discovered — the whole story would be interesting and readable.

During his researches into the history of the half-breed lands in Lee County Mr. Karl Knoepfler came across a

<sup>1</sup> The complete history of this Half-breed Tract has been compiled by Mr. Karl Knoepfler for The State Historical Society of Iowa. His monograph is yet to be published.

<sup>2</sup> For other facts about Louis Tesson and documentary material on Spanish land grants in the Iowa country see the writer's article in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XII, pp. 367-371.



manuscript deposition made by Edward Brooks in August, 1864, in the suit of Mary E. Cuddeback *et al. vs.* D. C. Riddick *et al.* The following material, consisting of extracts from the deposition, which is to be found on file in the courthouse at Keokuk, Iowa, forms a history of the oldest chain of title to land in the State of Iowa.

JACOB VAN DER ZEE

THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY IOWA

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DEPOSITION OF EDWARD BROOKS

My personal knowledge of the Riddick Title to the Montrose Lands commenced in the year 1834, arising from my intermarriage with Virginia C. Riddick, the eldest child of the late Thomas F. Riddick, and my individual interest in said lands is only a life interest derived by said marriage. In the year 1836 I took charge of said lands, as Agent for all of the Heirs, and from that date have had the management of the same and prosecuted all of the suits towards perfecting their title to the same.

On investigating the title of the late Thomas F. Riddick, who died in the year 1830, leaving a widow and four minor children as his heirs, I found that he claimed a regular derivative title from Louis Tesson Honoré<sup>3</sup> an Indian Trader who settled among the Indians in the year 1799 at the head of the Lower Rapids on the Mississippi River, at the location now known as the "Old Orchard"<sup>4</sup> in the town of

<sup>3</sup> The Louis Tesson, *alias* Honoré, here mentioned was probably the son of a tailor of the same name, the latter having been born in Canada in 1734. Lieutenant Pike on his expedition up the Mississippi in August, 1805, met the younger Louis near his establishment in the Iowa country and described him as "much of a hypocrite, and possessing great gasconism".— Coues's *The Expeditions of Zebulon M. Pike*, Vol. I, p. 222.

<sup>4</sup> Settlers in Lee County after 1833 found an old apple orchard, the planting of which has always been ascribed to Tesson. Nicolas Boilvin, the first Indian



Montrose, under a Permit to settle from the Spanish Governor dated in March 1799, that he cultivated the land, and resided there until the year 1805 or 1806, that being indebted to Joseph Robidoux of St. Louis, he transferred to him in the year 1806,<sup>5</sup> his claim to a league square of land at the Head of the Lower Rapids, originating under the Treaty between France and the United States in the year 1804. In the year 1810 the said claim was sold at the Church door in St. Louis, as the property of Joseph Robidoux Deceased, and was purchased by Thos. F. Riddick at that sale and date.

That under the Act of Congress appointing Commissioners to adjust the French and Spanish claims to lands in the Territory of Louisiana, Thos. F. Riddick proved up his claim for a league as assignee of Jos. Robidoux, assignee of Louis Tesson Honoré before said Commissioners, which claim for a league square was rejected by them, and only Six Hundred and Forty acres as a settlement right, was recommended to be confirmed by the Report of Frederick Bates Recorder of Land Titles, Dated February 3d, 1816, which Report was confirmed by Act of Congress Approved April 29, 1816. That Thos. F. Riddick not being satisfied with the decision of the Recorder in only granting 640 acres, instead of the league square as claimed, consequently petitioned Congress for an act of confirmation for the league square, but he died before the action of Congress in

agent in the Iowa country, was ordered to plant a nursery of fruit trees somewhere near the same spot.—THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XII, p. 494.

<sup>5</sup> Joseph Robidoux (1783-1868) was the founder of St. Joseph, Missouri. The late Rev. William Salter is authority for the statement that Tesson's "property was seized under the Spanish law, and sold at public sale at the door of the parish church in St. Louis, at the conclusion of high mass, the people coming out in great numbers, after due notice given by the public crier of the town in a high and intelligible voice, on three successive Sundays, May 1, 8, 15, 1803", and Robidoux got the land for \$150.—*Iowa: The First Free State in the Louisiana Purchase*, p. 46.



the premises. The petition was however continued by his heirs, and an act was passed by Congress on July 1st 1836 again confirming only 640 acres, with certain provisos, which act the Heirs declined to receive, and take a Patent under same.

In the year 1833 the tract was occupied by the United States after the Black Hawk War, and a Dragoon Post called Camp or Fort Desmoines<sup>6</sup> was erected on the same by Capt. Crossman. Said Crossman was notified, and was personally aware that he was locating said Post on the Riddick Claim, as he had proposed to purchase said claim from the heirs previous to the location of the Post. During the occupancy of the Post, an exparte survey of the Riddick claim was made by Jenifer T. Sprigg, under an order from the War Dept. for parties interested in Half Breed Claims, which survey being illegal, was not received or approved by the Commissioner of the General Land office at Washington City.

Application was consequently made in the year 1837 by the Heirs of Riddick to the Commissioner of the General Land office for an order of Survey of the Riddick Claim, under the Act of Confirmation of April 29th 1816, and by an order directed to William Willburn Surveyor General from the Commissioner, Dated October 11th 1837, he was directed to have the claim surveyed accordingly. In April 1838 he ordered Isaac T. Woods Deputy U. S. Surveyor to proceed from St. Louis, and make the survey. He consequently proceeded to the ground accompanied by myself, and after satisfying himself by parole evidence of the original location of Honore's improvements, he made the survey of the exterior boundary lines of the mile square in my presence.

<sup>6</sup> Fort Des Moines (No. 1) was completed in November, 1834, by Stephen Watts Kearny, just north of the old apple orchard, and abandoned by the dragoons in June, 1837.—THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XII, pp. 178-182.



At that date April 1838, there were no buildings, improvements, or cultivation outside of the barracks, on said tract of land. The western and farthest corner of the survey was located in an open flat prairie, and was marked by a Post on a Mound, under which was deposited three stones, and the southwestern boundary line ran from that point diagonally through said prairie to the Bluff in a South Eastwardly course. The land claimed by the plaintiffs was not occupied by any person at that date, nor any other land outside of the survey in that vicinity.

The survey made by Isaac T. Woods was returned to the Surveyor General at St. Louis, Mo, and was forwarded by him to the Commissioner of the General Land office, approved by him, and a Patent, reciting the derivative chain of title, and specifying the exterior boundary lines from the Surveyors Field Notes, was issued at Washington, on February 7th 1839,<sup>7</sup> to Thomas F. Riddick assignee of the Estate of Joseph Roubidoux, assignee of Louis Tesson Honoré, and to his heirs and assignees forever. The delay between the time of returning the survey, and the issuing of the Patent, was occasioned by the opposition, and protest of the Half Breed claimants and the New York Company at Washington, against its issue, and the case was argued there before the Commissioner on its merits. The present heirs of the late Thomas F. Riddick, to wit Virginia C. Brooks, Frances E. Billon, Walter I. Riddick, and Dabney C. Riddick, hold their title to the mile square, known as the

<sup>7</sup> A translated copy of the Spanish grant, a copy of the legal process, and a copy of the United States patent to this square mile of land, signed by President Martin Van Buren, were exhibited at the fifteenth annual meeting of The State Historical Society of Iowa, on the 23d of June, 1873. This patent is said to be the first issued by the United States government to cover land in the State of Iowa, a similar patent for the Giard tract in Clayton County not being issued until the year 1844. See Salter's *Iowa: The First Free State in the Louisiana Purchase*, p. 47; THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XII, pp. 369, 370.



Montrose Tract, under the above specified derivative title, and a United States Patent No 3095, issued in confirmation of the same, and dated at Washington on February 7th, 1839.

When the U. S. Government proposed to abandon the Post in 1837, application was made by myself in behalf of the heirs, to the Hon. Joel R. Poinsett, Secretary of War, stating that the Post had been located on their private property, and asking that the property & buildings on the same should be turned over to said heirs in consideration of said occupancy, giving as a reason for said request, that it was generally understood that Lieut. Col. Mason, and other officers at the post intended to turn over the same to the Agent of the New York Co. in consideration of said Company buying out the officers half breed claims. In the answer of the Hon. Secty of War, Dated June 22d 1837, he states that the Department was never officially advised by the proper officers, that the Fort was located on private lands, but now finding that government was an intruder on private lands, he had directed the withdrawal of the Agent left in charge of the government property, leaving the adverse claimants to pursue their rights, and interests in their own way.

The Post was abandoned about June 1st, 1837, and an order was issued from the Quarter Master Generals Dept. dated October 17th 1837 to Captn G. H. Crossman Asst. Qr. Master, ordering him to proceed in person to the Post, and ascertain the state of the case, and if he found that Lt. Col. Mason had placed any one in possession of the premises, under lease or otherwise, to declare the same void, and order the holders to vacate the premises, and take the necessary measures to carry the order of the Secty. of War into effect. Captn. Crossman arrived at St. Louis in November 1837, and informed me of his intention of visiting Fort Des-



moines. I accordingly accompanied him, and we arrived there on Nov. 10th 1837.

On enquiry, a Mr. Henry S. Austin was found residing there, and professed to be the resident Agent of the New York Company. Capt. Crossman in company with Capt. J. B. Browne and myself had an interview with Mr. Austin in his office when Capt. Crossman informed him of the object of his visit, and notified him verbally, that he no longer held possession under any authority from the United States Government, or any of its officers, but he did not require him to vacate the premises, or attempt to carry the orders of the Secty of War into effect, as he Crossman was a Half Breed claimant himself, and for which neglect of duty I preferred charges against him. Mr. Austin replied, that he did not hold possession under the United States, but as Agent of the New York Company, who claimed the ownership of the whole tract as Half Breed claimants. I then personally informed Mr. Austin that I as Agent, and in behalf of the Heirs of Thos. F. Riddick claimed the right of possession of the land covered by the Riddick claim and demanded him and those holding possession to deliver up possession to me, which demand he declined to comply with.

The question of title remained in statu quo until after the issuing of the Patent on Feby 7th 1839, when in March 1839 I proceeded to Montrose and informed the parties located on the tract, that I intended to bring an Action of Right against all persons holding adverse possession. At the April Term 1839 of the U. S. District Court of Lee County an Action of Right was commenced against the following named parties, to wit: William Coleman, David W. Killbourne, Henry S. Austin, John Shaw, Thomas Gregg, George Stubbins, Isaac Williams, Elijah Fordham, Anson M. Bissell, Calvin Bebee, Wrandle Mace, Joseph B. Noble, John Taylor, Brigham Young,<sup>8</sup> Martin M. Kellogg, William

<sup>8</sup> The Mormons then owned considerable land in Lee County. Their temple city of Nauvoo was just across the river in Illinois.



Lewis, Harman Booth, being all the parties living on the tract, and claiming adverse possession at that date under the Half Breed Title. No person or family of the name of Cudderback were living on the mile square at that date April 1839.

The suit against William Coleman after being postponed by the Defdt. for several terms of Court, came up for trial at the April Term 1842 and judgement was given in favour of Riddick's Heirs. The suit against David W. Killbourne was postponed from term to term and at the Entry Term May 9 1840 on motion of Reid and Johnson, Samuel Marsh, William E. Lee, and Edward C. Delavan<sup>9</sup> were substituted as landlords in place of all of the Defendants in all of the suits, and the case was continued generally. At the April Term 1842 on the affidavit of David W. Killburn that the Defendants could not have a fair trial in Lee County, for reason that the inhabitants of said County are prejudiced against said Defendants, a change of Venue was granted to Henry County.

At the September Term 1842 in the U. S. District Court for Henry County, it was agreed betwen the attorneys for both Plaintiffs and Defendants, that the case then pending should be tried, and all the other suits embracing the whole mile square remaining untried shall abide the event of said trial, and if taken to a higher Court or Courts, that the decision there made shall control the rights of the parties in all the other suits. At the September Term 1843 the case came up for trial, and judgement was rendered in favour of Riddicks Heirs. Marsh, Lee and Delavan then appealed the cases to the Supreme Court for the Territory of Iowa, and after being continued from October 31st 1843 the date of Entry, untill January 26th 1846, judgement was given by

<sup>9</sup> Marsh, Lee, and Delavan had organized a partnership under the firm name of the New York Land Company and had bought up the Half-breed Tract.



the Supreme Court on that date, affirming the judgement of the Court below in favour of Riddicks Heirs.

The Plaintiffs in Error Marsh, Lee and Delavan then appealed the case to the Supreme Court of the United States at Washington City. The case was argued at the December Term 1849 of said Court, and the judgment was reversed and the case was remanded for another trial de novo. During the long pendency of the above suits, the then Territory of Iowa had become the State of Iowa, and as Riddicks Heirs were non residents of that State, I consequently commenced the remanded suit in the U. S. District Court for the Southern District of Iowa, and at the June Term 1851 judgement was given in favour of Riddicks Heirs for the whole tract, as specified from the boundaries in the Patent.

The Plaintiffs in Error, Marsh, Lee and Delavan appealed the case again to the U. S. Supreme Court at Washington, and at the December Term 1852 of said Court, the case was argued, and the judgement of the U. S. District Court of Iowa in favour of Riddicks Heirs was affirmed. On the final decision of the suits in the U. S. Supreme Court in favour of Riddicks Heirs, I employed Orrin Baldwin a Deputy Surveyor for Lee County, to lay out the present Town Plat of Montrose and subdivide the remainder of the Mile square on May 8 1853, who proceeded and completed the same, and a certified copy of the Town Plat of Montrose and subdivision of the whole Tract dated July 30th 1853 was duly deposited in the Recorders office for Lee County at Fort Madison.

At the November Term 1853, an application was filed in the District Court for Lee County by Edward Brooks and Virginia C. his wife against the other three heirs for a partition of said lands equally among the four heirs, and at the said November Term 1853 Commissioners were duly ap-



pointed by the Court to make said partition. At the April Term 1854 the said Commissioners filed their report on April 5th 1854, stating that they had on February 28th 1854, met at the Town of Montrose, and divided the Town Lots and Outlots into Four equal shares in value, and had apportioned the same to each heir, as specified in the report, which report and partition was duly confirmed, and said partition was duly decreed by said District Court on April 5th 1854. From that date the interest and ownership of the Four Heirs to their respective shares in said Montrose Mile square, has been separate and distinct according to said decree of partition of April 5th 1854.

[The following is cross interrogatory No. 5 of the deposition and Brooks' answer.]

Do you not know that Dr. Isaac Galland as Agent of the New York Company, and an owner of a large portion of the interest of that Company in the Half Breed Sac and Fox reservation of lands, in Lee County, Iowa, claimed the exclusive ownership in fee of the lands in controversy, and sold, and deeded the same to one Price Hawley about the year 1840, putting said Hawley in possession.

I never had any personal acquaintance with, or business intercourse with Dr. Isaac Galland,<sup>10</sup> either as Agent of the New York Company, nor in any other manner. I always understood that the claim of Dr. Galland as a Half Breed claimant was as an individual, and sole owner, and not as a member or Agent of the New York Company and consequently was antagonistic to the New York Company. I never knew or heard of his selling any portion of the land on the Riddick Claim to Price Hawley or to any other person, and from the year 1837 when I first visited the lands

<sup>10</sup> Dr. Isaac Galland squatted upon the Half-breed Tract in 1829 and founded Nashville (now called Galland), being convinced that the spot was destined to become a great commercial center. The assertion has been made that Galland's daughter, Eleanor, was the first white child born in the Iowa country.



as Agent for the Riddick Heirs, Dr. Galland never interfered with me, either directly or indirectly, or ever set up any claim in any manner on the tract, or in the lands in controversy.

Henry S. Austin was the first person I knew or had any intercourse with as Agent for the New York Company in the year 1837, and he was succeeded by David W. Killbourne as Resident Agent for said New York Company. The trial of title for the Riddick Claim as particularly detailed in my answer to Interog No. 3 of the direct examination, was exclusively conducted by the Heirs of Riddick against the New York Company, who claimed the special ownership of the Montrose Tract, and that all the parties living on the same were their tenants. Neither Dr. Galland nor any of the individual claimants or owners of Half Breed claims, ever contested the Riddick claim, or contributed anything towards the expences of the suit incurred by the New York Company, but that after the issuing of the Patent to Riddicks Heirs, by the United States, Dr. Galland, and all of the individual claimants, considered the Riddick Title good from that date, and consequently stood aloof waiting the event of the New York Company gaining the suit, when they would then pitch in for their respective shares in the Montrose Mile Square.

As Half Breed Claimants the New York Co. claimed that the Montrose Mile Square belonged to, and was a part of the Half Breed Reservation, and that question of title gave rise to the suits between Riddicks Heirs and Marsh, Lee and Delavan representing the New York Company, which suits finally resulted in favour of Riddicks Heirs, but in what manner, or under what right the New York Company set up the exclusive claim of ownership to the Montrose Mile Square and caused themselves to be substituted as landlords in the suits brought by Riddicks Heirs against all the parties in occupancy, I never knew, or could ascertain.



[The following is cross interrogatory No. 6 of the deposition and Brooks' answer.]

Do you not know that about the year 1840 said Isaac Galland was considered by a large portion of the people about Montrose to be the true owner in fee of the lands in controversy, and other lands adjacent thereto, and that he sold, and conveyed a great many of said lands to various persons, putting them in possession of the same.

I know nothing personally in reference to the claims or titles of Dr. Isaac Galland in the Half Breed Tract, or in the lands in controversy. I understood from common rumour that Dr. Galland professed to be the individual owner of the greater portion of the Half Breed Tract, and sold out his individual interest, or right to any piece a party might select, and located any where on the Half Breed Tract, but I never heard of his setting up any claim to the land in controversy, or selling any lots or lands within the Montrose Mile Square. In 1840 the claims or titles to the Half Breed Tract were in an unsettled condition, and Dr. Gallands titles were considered as good as any body elses. Parties bought and sold the land and claims at pleasure, whether they had any title or not, and no legal title outside of the Riddick Mile Square existed in any one for altho' the Decree Title which was engendered in fraud and brought forward in iniquity, has given, by general consent of the parties interested as Half Breed Claimants some shadow of title, and possession and the statutes of limitation may eventually settle the Half Breed Title among themselves, yet that title will not stand the legal test of trial in Courts against outsiders.