thest from Harrodsburg; consequently, it is nearer the distance required by the location. There is no doubt, then, respecting the identity of this lick.

The lick called for in Pinn's entry being found and identified, there can be no difficulty in finding his land. It lies one and a half miles due north of this lick, on the dividing ridge. The place at which the mensuration is to commence being ascertained, the rules established in Kentucky will give form to the land, and direct the manner of making the survey.

It is the opinion of this court, that the decree of the circuit court is erroneous, and ought to be reversed; *and that the cause be remanded to that court, with directions to order the land claimed by the *151] appellant to be surveyed conformable to his location. In doing this, a point will be taken one mile and a half due north of the buffalo lick mentioned in Pinn's entry, from which a line is to be extended east and west, to equal distances, until it shall form the base of a square to contain 2000 acres of land, which is to lie north of the said line.

Decree reversed.

J. & T. Barr *v.* Lapsley *et al.*

Contract.

If a proposal be made by letter, stating also that the writer *will* empower A. to act for him, and the other party apply to A. and make known his acceptance, but A. informs him that he has received no instructions, and will not act, there is no complete and binding contract.[1]

Appeal from the Circuit Court of the district of Columbia. This cause was argued by *Jones*, for the appellants and complainants, and *Harper*, for the respondents and defendants.

March 6th, 1816. Johnson, J., delivered the opinion of the court.—The object of this bill is to obtain a specific performance of an alleged agreement to receive a quantity *of cotton bagging, at a specified price, in satisfaction of certain judgments at law. The defendants deny that the [*152 circumstances proved ever rendered the agreement final and obligatory upon them; and this is the principal, perhaps, the only, question the case presents.

It appears, that the complainants were indebted to one West, who assigned this debt (then unliquidated), together with the residue of his estate, to Lapsley *et al.*; that Lapsley liquidated the debt with the Barrs, and took their notes, payable at different periods, making up, together, the amount due. These notes having become due, and judgment being recovered on some of them, in October 1811, the Barrs addressed a letter to Lapsley, in which they offered to pay him in cotton bagging, at thirty-three cents per yard, by instalments, at certain periods. On the 17th of December, in the same year, Lapsley answered their communication, and the following words contained in that letter, are all that the court deem material to the point on which they propose to found their decision. "We are willing to take cotton bagging, in liquidation of the three last notes, delivered at the period you propose, but not at the price you offer it." "We expect that you give us satisfactory accounts for the punctual performance of your

---

[1] See Insurance Co. *v.* Lyman, 15 Wall. 664; Deshon *v.* Fosdick, 1 Woods 286. Also, note to Head *v.* Providence Ins. Co., 2 Cr. 170.

engagements, and to this effect we shall direct Mr. McCoun, to whom we propose to write by the next mail." On another passage of this letter, and a letter written by West, on the 18th of December, it has been contended, that certain conditions were imposed upon the Barrs, which it was *incumbent upon them to comply with, before they could claim the benefit of the offer contained in Lapsley's letter. But as the opinion [*153 of this court is made up on a ground wholly unaffected by this question, we deem it unnecessary to notice this point.

It appears, that Lapsley never, in fact, instructed McCoun on the subject of this letter of the 17th of December. But Warfield, the agent of the Barrs (who were absent from home on the receipt of that letter), supposing his principals to be referred to McCoun as the authorized agent of Lapsley, notified to him the acceptance of Lapsley's offer, and remained under the impression that the agreement had become final, notwithstanding McCoun's declining altogether to act, for want of instructions. Lapsley, on the other hand, alleges, that the notification of acceptance ought to have been made to himself, and assigns the want of an answer from the Barrs, as his reason for never having given instructions to McCoun.

This state of facts presents an alternative of extreme difficulty. On the one hand, Lapsley, by writing that he shall direct McCoun by the next mail, plainly pointed to a mode of expediting the conclusion of the agreement, through the agency of a representative on the spot, and when he intimated his intention to write by the next mail, showed that it was not his intention to await Barr's answer. This was well calculated to delude Barr into the idea that Lapsley would recognise no notification but that which should be made to McCoun. On the other hand, how far could McCoun, unempowered, uninstructed *as he was, legally act, to bind Lapsley by his accept- [*154 ance of the notification? Or, if he had received instructions from Lapsley, what obligation was he under to have undertaken the agency? Under the pressure of this dilemma, there is but one principle to which the court can resort for a satisfactory decision. Something remained for Barr to do. The notification of his acceptance was necessary to fasten the agreement upon Lapsley. For this purpose, he very rationally addressed himself, in the first place, to McCoun; and the reference to Lapsley's letter would have been a sufficient excuse for not returning an answer, until a reasonable time had elapsed for McCoun to receive the expected communication from Lapsley. But when he found McCoun uninstructed, and unwilling to act under the letter addressed to Barr, his course was plain and unequivocal. A letter to Lapsley, transmitted by the mail, would have put an end to all doubt and difficulty. This is the method he ought to have pursued, and for not having pursued this course, we are of opinion, that the bill was properly dismissed below.

Decision affirmed.(*a*)

(*a*) In England, the court of chancery will not, in general, entertain a bill for a specific performance of contracts for the sale of chattels, or which relate to merchandise, but leaves the parties to their remedy at law, where it is much more expeditious. One exception to the general rule is, where the agreement is not final, but is to be made complete by subsequent acts, without which it would be deemed imperfect at law. *Buxton* v. *Lister*, 3 Atk. 383; 1 P. Wms. 570; Bunb. 135; 10 Ves. jr. 161; The

*Danforth's Lessee *v.* Thomas.

Indian reservation.

The acts of assembly of North Carolina, passed between the year 1783 and 1789, avoid all entries, surveys, and grants of lands set apart for the Cherokee Indians, and no title can be thereby acquired to such lands.[1]

The boundaries of the reservation have been altered by successive treaties with the Indians, but it seems, that the mere extinguishment of their title did not subject the land to appropriation, unless expressly authorized by the legislature.

Error to the Circuit Court for the district of East Tennessee. This cause, depending mainly on the same principles with the preceding case of *Preston* v. *Browder* (*ante*, p. 115), was argued by *Key*, for the plaintiff, and by *Jones*, for the defendant in error. The facts are fully stated in the opinion of the court.

*156] March 8th, 1816. *Todd, J., delivered the opinion of the court, as follows :—This was an action of ejectment, brought by the plaintiff in error against the defendant in error. On the trial of the cause, in the circuit court, it appeared from evidence, that the land in controversy was situate in the tract of country lying south of Holston and French broad river, and between the rivers Tennessee and Big Pigeon, the Indian title to which was extinguished by the treaty of Holston. The plaintiff claimed by virtue of a grant, issued by the state of North Carolina, bearing date the 26th of December 1791. The defendant claimed under a grant from the state of Tennessee, bearing date the 2d of January 1809. The defendant, by his counsel, objected to the grant under which the plaintiff claimed title being admitted in evidence, on the ground, that it was for land which the laws of North Carolina had prohibited from being entered, surveyed or granted. The court sustained the objection, and prohibited the grant from going in evidence to the jury; whereupon, a verdict and judgment was rendered in favor of the defendant. A bill of exception was taken to the opinion of the court, and the cause was brought up to this court by writ of error.

The correctness of the opinion of the circuit court depends on the sound construction of the act of the general assembly of the state of North Carolina, passed in 1783, c. 2, § 5, 6, whereby the lands, within certain limits therein designated (including the lands in controversy) are reserved for the *157] Cherokee *Indians, and the citizens prohibited from entering and surveying lands within those limits. It is contended, on the part of the plaintiff, that this act cannot be construed, nor did the legislature mean

---

ground upon which a specific performance is refused, in these cases, is, that an adequate remedy exists at law, where damages may be recovered, and that the value of merchandise varies so much, at different times, and under different circumstances, as to render it frequently unjust to compel a specific performance. But where the question was, upon what terms a party should be relieved against the penalty of a bond, which had been forfeited, for not transferring stock at a given day, according to his agreement, the English court of chancery decreed him to transfer the stock in specie, and to account for all dividends accrued since he ought to have transferred it. 2 Vern. 394; 1 Bro. P. C. 193.

[1] Danforth *v.* Wear, 9 Wheat. 673; Patterson *v.* Jenks, 2 Pet. 216; Lattimer *v.* Potheet, 14 Id. 4.