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notice of the contents of this certificate to every purchaser. But this reference to the certificate of the executive appears on the face of every warrant, and contains no other information than is given by law. The law requires this certificate, as the authority of the register; it is considered as a formal part of the warrant. These warrants are, by law, transferrible. They are proved by the signature of the officer, and the seal of office; this signature and this seal are considered as full proof of the rights expressed in the paper; no inquiry is ever made into the evidence received by the public officer. If the purchaser of such a paper takes it subject to the risk of its having issued erroneously, there ought to be some termination to this risk. We think it ought to terminate, when the warrant is completely merged in a patent, \*and the title consummated, without [\*218 having encountered any adversary claim.

The title under this warrant was considered in the case of *Miller v. Kerr and others* (*ante*, p. 1). In that case, the claimant under Powell had the junior patent, and the court thought that the equity growing out of a prior entry might be rebutted by the person holding the legal title, by showing any defect in that equity; but nothing was said in that case, which indicates an opinion, that a complete legal title might be overthrown, by an entry made after the consummation of that title.

Decree affirmed, with costs.

BROWN and others v. JACKSON.

*Decision of land commissioners.*

The decisions of the board of commissioners under the acts of congress providing for the indemnification of claimants to public lands in the Mississippi territory (commonly called the Yazoo lands) are conclusive between the parties, in all cases within the jurisdiction of the commissioners.<sup>1</sup>

This determination reconciled with that of the court in *Brown v. Gilman*, 4 Wheat. 255.

Appeal from the Circuit Court of New York. This suit was brought in consequence of the decision of this court in the case of *Brown v. Gilman*, 4 Wheat. 255, \*and for the general history of the facts, reference was [\*219 made to that case.

The bill charged, that on the 13th of January 1795, the state of Georgia was seised in fee of a certain territory, within the boundaries of said state, &c., estimated to contain 11,380,000 acres, and bounded, &c.; that on the same day, by force of an act of the legislature of said state, passed on the 7th of January 1795, George Matthews, the governor, by letters-patent, conveyed said territory to Nicholas Long and others, and their associates, called the Georgia Mississippi company, reserving 620,000 acres for the use of the citizens of Georgia; that afterwards, on the 20th of January 1796, certain articles of agreement were made between the defendant, Amasa Jackson, and William Williamson, authorized by said company to sell, and George Blake and sundry persons, who became the New England Mississippi Land company; that it was stipulated in the said articles, that on or before the 12th of February then next, said Jackson and Williamson should fill up

<sup>1</sup> S. P. Landes v. Brant, 10 How. 348.

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and complete to said Blake and others, a deed of conveyance (which had been executed by the Georgia Mississippi company, in Georgia), of all the right and title of the Georgia Mississippi company, derived from the state of Georgia; that said Blake and others agreed, by the articles, to deliver their notes for the payment of two cents for each acre of land by them subscribed for, previous to the first of May then next; and for the further payment of one cent more for each acre, on or before the 1st of October then next; and a further payment of two and a half cents per acre, within twelve months from said 1st of May; and a further payment of two and a half cents, &c., on the 1st of May 1798; and a further payment of \*220] two cents more, on the 1st of May 1799; in the whole, ten cents per acre, &c. And thereby it was agreed, that as soon as said deed should be prepared, &c., said deed should be delivered by said defendant, Jackson, to some person appointed by said parties, to be held as an escrow, on condition that if the notes or moneys due on the 1st of May, should not be paid, the deed should be re-delivered, and the associates should not be liable for the failure of each other; but if the notes were paid, the deed should be delivered to said Blake, &c., who were then to be severally liable for their own notes. That on the 11th of February 1796, said Blake and others entered into articles of association, by the name of the New England Mississippi Land company, by which it was agreed that Leonard Jarvis, Henry Newman and William Wetmore should be a committee to receive a deed from the defendant, Jackson, and William Williamson, of the said lands, belonging to the Georgia Mississippi company, for the use of the New England Mississippi Land company; and should execute to the several subscribers thereto, deeds of their respective proportions, to hold as tenants in common, and also, a deed of trust to trustees, &c., and a board of directors should be appointed; and it was agreed, the trustees should give each proprietor a certificate, in the form, &c., which should be complete evidence, &c., and transferable by indorsement. And to carry such articles of agreement into effect, a deed of indenture, dated 13th of February 1796, purporting to be made by said Long and others, of one part, and Wetmore, Jarvis and Newman, of the other, was executed, whereby they conveyed said territory \*221] (excepting \*said 620,000 acres) to said Wetman, Jarvis and Newman, and the survivor, in fee; and was delivered to G. R. Minot, as an escrow, with an indorsement. The first payment to be made on the 1st of May aforesaid, was duly made by every member, except, &c.; and the defendant, Jackson, and Williamson, personally delivered said deed to said grantees, and indorsed thereon, &c., "free of conditions."

That prior to said absolute delivery, to wit, on the 10th of December 1796, an agreement of two parts was entered into between the associates of the New England Mississippi Land company, and the defendant, Jackson, wherein it was agreed that certain proceedings of certain scrip-holders of the Georgia Mississippi company, being also members of the New England Mississippi Land company, so far, &c., should be void; and that the associates of the New England Mississippi Land company should have no control over papers of the Georgia Mississippi company; but would deliver to the defendant, Jackson, so many of their certificates or scrip, as amount to 103,480 acres, computing the whole at 11,380,000, as an equivalent to the Georgia Mississippi company, for a loss by failure of Seth Wetmore, &c.,



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subscriber for 100,000, who had not paid—said defendant, Jackson, to be accountable to said associates for such portion of Wetmore's notes, if recovered, as was equivalent to the debt assumed to be paid, *i. e.*, \$10,348; and thereupon, said defendant, Jackson, should deliver said deed of conveyance absolutely, and within, &c., procure from the Georgia Mississippi company a confirmation, and deliver the same to said associates; and the defendant Jackson, covenanted not to negotiate the notes, until the confirmation was procured. And on the 17th of February 1797, said defendant, Jackson, delivered to Wetmore, \*Jarvis and Newman, a deed of confirmation [ \*222 from Long and others, reciting, &c., and ratifying said deed of conveyance of said tract of land, excepting said 620,000 acres. That on the 28th of February 1797, an indenture of two parts, between Oliver Phelps and others, of the one part, and Jarvis, Newman and Hull, of the other, was made, wherein, reciting said conveyances, said associates conveyed to Jarvis, Newman and Hull, and survivor, to hold said land in trust, &c., according to articles of agreement constituting the New England Mississippi Land company. That William Wetmore, Jarvis and Newman, still retained their shares of said purchase as subscribed, viz: the said Wetman, 900,000 acres, Newman, 2,000,000, and Jarvis, 500,000, who, to place their shares in the same condition, on the same 28th of February 1797, by deed poll, released to John Peck, their several proportions, being  $\frac{34,000,000}{113,800,000}$ , in trust to convey the same to Jarvis, Newman and Hull, and survivor, to be held by them in trust for same uses as expressed in deed of associates; and on same day, said Peck conveyed the same land to said Jarvis, Newman and Hull, to be held accordingly; by which means Jarvis, Newman and Hull were seised of all said tract; and Hull, the survivor, continued so seised, until his deed to the United States. Trustees delivered certificates to the members of the New England Mississippi Land company, expressing, &c., whereby each became entitled to an equitable interest in his share.

That on the 31st of March 1814, the congress of the United States passed an act for the indemnification of claimants of public land in the Mississippi territory, &c., by which act \$1,550,000 were appropriated [ \*223 \*for persons claiming under the Georgia Mississippi company. That on the 25th of January 1815, congress made a supplementary act, appointing a board of commissioners, instead of the first, to meet on the 4th Monday of January, &c. That on the third of March 1815, congress passed another act, &c., providing, that in certain cases, the commissioners might allow further time, not over two months from the third Monday in March, and to adjust all such claims as should be, or might have been released, &c., within the time limited; and empowering the president to issue certificates for decided claims. That on the 18th of January 1814, the members of the New England Mississippi Land company authorized their directors to release to the United States the whole claim of said company, under the act of Georgia, and required the trustees to execute deed, &c.; and certificates to be received therefor from the United States should be held by the treasurer, to be disposed of by order of the directors, for the use of the claimants. And on the 24th of November 1814, W. Hull, sole surviving trustee, made a deed poll to the United States releasing, &c., territory described, being the same conveyed by Georgia, as aforesaid, and on the 25th of January, took the oath. And that the directors, on the 7th of

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December 1814, made their deed poll, releasing all right of said company and the members thereof to said land ; also, all claims to money, &c., to the United States, in fee.

The said directors conformed in all things, &c., and became entitled to the whole indemnity provided, &c., amounting to \$1,550,000. Nevertheless, said commissioners did decree that certain individuals \*holding \*224] scrip under the New England Mississippi Land company, to the amount of 2,795,017 acres in all, who personally applied to said commissioners, among whom was said defendant Jackson, who (said Jackson), held scrip to the amount of 691,677 acres, should receive their indemnity directly, without permitting the same to go through the hands of the directors, &c.; and said individuals have received their several proportions accordingly, estimating the same at \$13.62 *per* acre, deducting a certain sum for expenses. Whereas, said commissioners did not estimate said expenses correctly, by a sum exceeding \$7000, and no provision was made to compel said individuals to contribute to future expenses, or any subsequent diminution of the remaining amount of indemnity, as hereafter stated, which reduces the amount to more than two cents per acre less than the amount received by said individuals. Commissioners did, secondly, decree that indemnity upon 957,600 acres, amounting, at the rate of \$13.62, to \$130,425.12, should be deducted from claims by the New England Mississippi Land company, on account of certificates issued to its members, who appeared to be in default in payment of purchase-money to the Georgia Mississippi company ; and determined said certificates to be bad, and the parties claiming under them not entitled to indemnity ; and allowed said sum of \$130,425.12 to be issued to the defendant, Jackson, for the benefit of himself and the other members of the Georgia Mississippi company, or to him, for his own benefit, or on pretence that he was entitled to it as being \*225] a creditor of said Georgia Mississippi company, whereby manifest \*injustice was done to the New England Mississippi Land company because :—

(1.) No deduction was made or allowed by the commissioners from the said sum of \$130,425.12, for expenses incurred in managing the affairs of said company.

(2.) It appears among the notes exhibited by the said Jackson, as given for purchase-money to the Georgia Mississippi company, on which indemnity was claimed as unpaid, there were certain notes of said Seth Wetmore, for \$25,760, which, at the rate of ten cents, would have been the price of 257,600 acres ; whereas, in truth, said Wetmore was purchaser for 100,000 acres, and no more, as appears by his original deed, so that the greatest part of said notes must have been given for other consideration.

(3.) It appears by the decrees, indemnity was allowed to Jackson for 957,600 acres, and by certificates filed by the commissioners, that there issued certificates to individuals for 2,795,017 acres ; and by certificates issued to other original purchasers, and delivered by the plaintiffs to the commissioners, that there is still 7,734,983 acres entitled to indemnity under said acts. But these quantities amount to 11,487,600 acres, which is 107,600 acres more than the whole purchase of 11,380,000 ; to that 107,600 acres too much have been allowed to the said Jackson, even upon the princi-



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ples of the commissioners, amounting at the rate of \$13.62 per acre, to \$14,655.12.

(4.) The commissioners were wrong in determining, that persons claiming under certificates of purchasers who had not paid, should lose their indemnity. One \*Mary Gilman, holder of three scrip certificates, under the New England Mississippi Land company, for 20,000 acres [\*226 each, the same having been issued to R. Williams, and indorsed, he being assignee and grantee of William Wetmore, an original purchaser in default, whose unpaid notes were before the commissioners, as appears by the 3d decree, which notes entered into the reason of deducting from indemnity to said Jackson, exhibited to the circuit court of the United States for Massachusetts district, her bill in equity; and recovered for the whole amount of her claim against the plaintiff, without deduction on account of the proportion of indemnity she might be entitled to claim of individuals who received indemnity in person, which decree was affirmed in the supreme court. By reason of all which, the plaintiffs were entitled to recover of Jackson the whole \$130,425; also, his proportion of the expenses of said company, since said decrees were made, including said \$7000 as aforesaid, and also, the costs recovered by M. Gilman, and all future expenses. The bill further stated, that the defendant, Jackson, ought to deliver all the stock or indemnity of said \$1,550,000, excepting thereout so much as he is entitled to, as holder of scrip under the New England Mississippi Land company.

The defendant (Jackson) in his answer, admitted the several conveyances set forth in the bill, and that the commissioners, by first decree, decreed to reserve indemnity upon 691,677 acres on account of scrip of the New England Mississippi Land company, then in the hands of the defendant, and did so reserve it; but averred the truth to be, that neither he, nor any other person in his stead, or by his direction, received any part of indemnity for \*claims under the Georgia Mississippi company. That the certificates of the New England Mississippi Land company came to [\*227 his hands as follows: at the time of maturity of several of the notes, such notes being dishonored, or the parties being insolvent previous to maturity, they proposed to defendant (who agreed) to pay such notes by certificates of the New England Mississippi Land company; that accordingly, scrip, to the amount of 691,677 acres, was delivered to him, and notes to equal amount were given up by defendant, and that he never had any other certificates of the New England Mississippi Land company, and these have been given up to the commissioners, and appropriated by them to account of the Georgia Mississippi company. Admitted, that commissioners deducted from indemnity awarded to the individuals, a sum as their proportion of expenses of the New England Mississippi Land company; but averred, that said New England Mississippi Land company produced statements, and litigated before the commissioners as to such expenses, and such sum as was allowed, was allowed after deliberation: but insisted, that the decree as to expenses was conclusive as to the amount, and that any portion of any extra-expenses could not be recovered of him; and that no deduction or provision for payment of future expenses of the New England Mississippi Land company, ought to have been made. Commissioners awarded that indemnity upon 957,600 acres, amounting to \$130,425.12, should be deducted from the whole amount claimed by said New England Mississippi Land company, on

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account of certificates issued by the company to purchasers who were in default of payment to the Georgia Mississippi company; that they determined such scrip void, and parties claiming under it, \*should lose \*228] indemnity: but averred, he did not receive certificates for said \$130,424.12, on behalf of the Georgia Mississippi company, or himself, as such member; on the contrary, he was not then a member thereof, and never received any part of indemnity or certificates therefor, save for the amount found due him for the balance of his account with the Georgia Mississippi company, as their agent; that, as to said award, there remained, at the time it passed, unpaid notes of members of the New England Mississippi Land company, given for purchase-money, to the amount of \$95,760, and the indemnity of \$130,421.25, was ordered on account of such unpaid notes: that he delivered up said unpaid notes, being required so to do; that the said company contested the allowance, and are concluded by the decree. That, after said decrees, deducting the amount of the unpaid notes, and also the amount of scrip of said company, taken in payment of other notes, and held by defendant as aforesaid, the members of the company, separately and individually, according to their shares, did apply to the commissioners, and receive certificates entitling them to the indemnity. That the commissioners made no allowance on said \$130,425.12, on account of expenses incurred by plaintiffs in managing the affairs of the company, and insisted they did right, and their decree was conclusive. That it appeared from the schedule to the articles of agreement between him, Williamson and Blake, of 26th January 1797, that Seth Wetmore subscribed for 100,000 acres. That between the date of said agreement, and the complete delivery of said notes to him, many changes were made in the amounts and purchasers from those \*229] in the schedule: \*that it appeared by an account of said notes and scrip, kept by the defendant (a true copy of part whereof was annexed), that defendant received from Seth and Samuel Wetmore, notes to the amount of \$25,760, together with scrip of company, to amount of \$11,740, making \$37,500, which was the purchase-money of 375,000 acres, and therefore, Seth and Samuel were interested in the purchase to that amount. Whether notes were made jointly by them, or as principal and indorser, could not answer, but believed jointly, because, in said amount, in other instances, he distinguished whether drawers or indorsers. That he took an oath before commissioners, that said notes were not taken on any other account than purchase-money of said land. And averred the same in answer; and therefore, whether Seth or Samuel were joint makers, or one drew and the other indorsed, or were reciprocally makers and indorsers for each's part, or whether Seth was really interested to the amount of the notes, could not answer; but insisted, that being in his hands, and given for no other consideration, whether given for his own interest or that of another, was immaterial, and the decree was right. That, after passing the first decree, defendant was summoned as witness before the board, and required to deliver up all vouchers, papers, notes, scrip and accounts, touching purchase by the New England Mississippi Land company; he complied, and the commissioners stated an account between him and the Georgia Mississippi company, leaving a balance of \$24,631.90 in his favor. In stating the account, the Georgia Mississippi commissioners credited the New England Mississippi Land company with the total amount of sales to the com-



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pany, deducting \*a number of acres of W. Williamson, and debited the company thus :

(1.) For 292 full scrip of said company, which scrip was received by defendant, in payment for part of the purchase-money engaged to be paid by members of the New England Mississippi Land company ; and it having depreciated, in consequence of the repeal of the act of Georgia, and purchased by the members of the New England Mississippi Land company, at a low price, was received in payment as aforesaid, by defendant, at their original value.

(2.) For amount of unpaid notes, as delivered to commissioners.

(3.) For said company's proportion of loss on notes of members of the New England Mississippi Land company, consequent to compromise to which he was compelled by said repeal, nine-tenths of which loss only was charged to said company, the other, upon defendant's commissions.

(4.) For amount of scrip of New England Mississippi Land company, delivered up to commissioners.

(5.) For commissions at ten *per cent.* on sales to the New England Mississippi Land company ; and that the commissioners, by decree (copy exhibited), awarded said balance to defendant, and issued to him, a certificate for so much indemnity ; which sum was the whole amount of the indemnity received by defendant, or any other person for him, on his own account, or the account of any persons or company whatever. Insisted, that said decree was wholly irreversible ; and defendant having received the amount of indemnity as agent of the Georgia Mississippi company, could not be called upon to account to complainants. Admitted, that indemnity was reserved upon 957,600 acres, on account of notes unpaid, but never allowed to defendant, as stated in bill. Averred, the same was the true amount of unpaid notes. That according to the \*schedule annexed to bill of certificates [ \*231 surrendered by individuals, it was certified, that the total amount so surrendered was upon 2,795,017 acres ; but whether said schedule was a true list, or whether the amount stated was the true amount, defendant was ignorant. As to the amount of certificates by members represented by complainants, defendant was ignorant ; but averred, there was no allowance to him, nor was they a reservation of indemnity for 107,600 acres too much, but the excess (if any) between the total amount of acres reserved for individuals, or for unpaid notes, together with the amount represented by plaintiffs, and the original purchase, was owing to error in amount surrendered by individuals, or the amount represented by plaintiffs.

Edward Stow, a witness examined on the part of the plaintiff, testified, that the agent of the Georgia Mississippi company, and the members of the New England Mississippi Land company, agreed, that the deed of the land purchased of the former, should remain, for certain purposes, an escrow, and on the failure of Seth Wetmore to pay his notes of \$10,000 for his 100,000 acres of land, the defendant, Jackson, as agent of the Georgia Mississippi company, declined delivering said deed to the New England Mississippi Land company, unless they would agree to deliver him, or some other agent of the Georgia Mississippi company, certificates for 103,480 acres, in the stock of the New England Mississippi Land company ; and in consequence thereof, they entered into a contract with the defendant Jackson, on the 10th of December 1796, to deliver

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to him, or some other such agent, said certificates ; but as they have never been demanded, the certificates have never been issued. In said contract,

\*232] \*the defendant, Jackson, stipulated to account with the New England Mississippi Land company, for such sums as he might recover from the notes. The amount of the expenses incurred by the company, when the directors' accounts were exhibited to the commissioners, in 1815, was, in Mississippi stock, \$153,030.90, and in specie, \$20,744.36 ; but \$1500 was by them deducted from the last sum, which had been charged to support the future expenses of the company. In part of such expenses, in Mississippi stock, the company received from their agents, on account of the proportionate part thereof, due from the proprietors who surrendered individually their certificate to the commissioners, \$36,355.22  $\frac{10}{100}$  in certificates of that stock; and for the debt incurred in specie, \$4688.26, in specie. Seth Wetmore, in and by the contract of the 26th January 1896, between the defendant, Jackson, and Williamson, agents of the Georgia Mississippi company, of the one part, and the New England Mississippi Land company, of the other part, signed and executed the same, as proprietor of 100,000 acres of land in said company, and no more ; and a deed was executed to him by the committee of the commissioners, for that number of acres : and he appeared, by the records and books thereof, to be a proprietor of that number, and no more. The number of certificates, on which the indemnity was received from the commissioners, by individual proprietors of the company, was 262, and the number of acres, 2,795,017. The whole number of acres of land in the New England Mississippi Land company was 11,380,000 ; the indemnity on 957,600 acres of which was awarded to Jackson and \*233] others, being \$130,445.12. The indemnity on \*2,795,017 acres was awarded to certain proprietors of the company who surrendered their certificates individually, being \$380,681.31  $\frac{54}{100}$ . The indemnity on the remaining 7,627,383 acres was awarded to the New England Mississippi Land company, being \$1,038,849.56  $\frac{46}{100}$  ; which was on 107,600 acres less than it was entitled to, as the number of acres held by the proprietors represented by the directors, was, at the time said awards were made, and now is, 7,734,983 acres, and there can be no error in the number, as the books have been regularly kept. The witness being interrogated whether, among the notes surrendered to the commissioners by defendant, there were any notes of Seth Wetmore : answered, that at the request of the directors, the secretary of the commissioners of Washington had transmitted to them copies of ten notes, amounting together to \$25,760, signed by Seth and Samuel Wetmore ; and it was understood from him, that they made a part of the notes presented by the defendant, Jackson, to the commissioners, and represented by him to have been unpaid by the signers of them ; but whether the notes were received by any members of the New England Mississippi Land company, in payment of the land they purchased of the Georgia company, the deponent could not answer. The expenses of the New England Mississippi Land company, since its accounts were exhibited to the commissioners, exceeded \$4000, and were daily accumulating. Besides, the members of the company represented by the directors, had been obliged to pay upwards of \$80,000 in Mississippi \*234] stock, out of their own indemnity, to the holders of the certificates\*in the company, which were considered bad by the commissioners.

Being cross-examined, the witness stated, that S. Dexter and B. Joy



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appeared before the commissioners as agents of the New England Mississippi Land company, and exhibited the accounts of the company, showing the amount of the expenses incurred in the pursuit of its claims, and endeavored to obtain a full proportion of the said expenses from the individual proprietors who had surrendered their scrip, but did not succeed in this endeavor; as in the apportionment of the expense, a manifest error was committed, it being apportioned on 11,380,000 acres, when it ought to have been apportioned on 11,380,000 minus 957,609 acres, viz., on 10,422,400 acres; the commissioners exempting the indemnity awarded to the defendant, Jackson, and others, on account of the said 957,600 acres, from the payment of any part of the expenses incurred by the company. The witness repeated the same statement respecting the proprietary interest of Seth Wetmore, as is contained in his direct examination, with this addition, that Wetmore signed the deed of trust to the trustees of the company, as a proprietor therein, of 100,000 acres only, and did not appear to have been a proprietor in the company at any time, in his own name, nor jointly with Samuel Wetmore, or any other person, for more than said 100,000 acres of land therein, which was in his own name only. Nor did it appear by the records of the company, that Samuel Wetmore, in his own name, or jointly with any other person, was ever \*a proprietor, directly or indirectly, of the company, [\*235 for any land therein.

A decree was entered in the court below, dismissing the plaintiff's bill, *pro formâ*, by consent, and the cause was brought by appeal to this court.

February 19th. *D. B. Ogden*, for the respondent, argued: 1. That there was a defect of parties to the suit, both plaintiffs and defendants. There is no express averment that the plaintiffs are the present directors of the New England Mississippi Land company. Nor are the plaintiffs trustees, in the view of a court of equity, nor the *cestuis que trust*. There is no example of an agent filing a bill, in his own name, for the benefit of his principal. The release to the United States, under the act of congress, left the property a personal fund. The association has then become a mere partnership, and all the partners must be before the court. 2 Bro. C. C. 331. So also, as to the defendant; he is a mere agent of the Georgia Mississippi company. His principals ought, therefore, to be made parties defendants: and if it be insisted, that the defendant is personally liable, as having received money to the use of the plaintiffs, an action at law would lie, for money had and received.

2. Even if all the proper parties were now before the court, the decrees of the commissioners, acting within the sphere of their authority, would be conclusive. In the former decision of this court, connected with the same \*subject, the true distinction is stated, that, as to the party there [\*236 suing, and as to the subject-matter of that suit, the decrees of the board were *res inter alios acta*. *Brown v. Gilman*, 4 Wheat. 255; s. c. 1 Mason 191. But here, the case was within their jurisdiction, under the very terms of the act of congress; the same parties were heard before them, as to the same controversy; and it would overthrow all sound principles, to permit their decision to be attacked, either directly or collaterally.

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*Webster*, contra, insisted: 1. That the plaintiffs were sufficiently described in the bill as directors, and that it was within the discretion of a court of equity, where the parties were numerous, to permit some to sue for all. Such is the practice in the familiar case of parishioners, societies, commercial companies, and others of the kind. But here, the plaintiffs are trustees of the fund which has been produced by selling the land. Besides, the equity jurisdiction of the federal courts would be imperfect, and incompetent to the purposes of justice, unless parties merely formal were dispensed with. As all the parties on one side, must be citizens of one state, and all the parties on the other side, citizens of another, this court has held, that the circuit court may dispense with merely formal parties, wherever the real merits of the cause can be determined, without essentially affecting the interest of absent persons. *Russell v. Clarke*, 7 Cranch 98.

2. The plaintiffs are not concluded by the decrees of the commissioners. \*237] The former decision of this \*court proceeded entirely upon the ground, that their decrees were not conclusive, and it cannot be reconciled to the notion of their conclusiveness. *Brown v. Gilman*, 4 Wheat. 255. Besides, an accurate examination of the acts of congress will show, that the present case was not within the jurisdiction of the commissioners. Here the learned counsel entered into a minute analysis of the statutes, in order to support this position.

March 5th, 1822. LIVINGSTON, Justice, delivered the opinion of the court.—This suit was commenced in the circuit court for the southern district of New York, where a decree, *pro formâ*, was pronounced, dismissing the bill, from which sentence the present appeal is taken. From the very great and unusual length of the appellants' bill, and the generality of its prayer, which points to no particular relief, it is not easy to say, to what extent they originally contemplated a decree against the respondent.

The material facts of this case are the same with those in the case of *Brown v. Gilman*, (4 Wheat. 255). In addition to the detail there given, it appears, that Jackson, who had been agent of the Georgia company, had in his possession, on the 29th of June 1815, certificates of the New England company, to the extent of 691,677 acres, which came into his hands as follows: Several of the notes which had been given by members of the New \*238] England company being dishonored, or the parties insolvent, \*it was proposed by them to Jackson, and acceded to by him, as agent as aforesaid, that such notes should be returned to the makers, on their transferring to him an equivalent amount in lands of the scrip or certificates of the New England company; such certificates were accordingly transferred to him, for the number of acres just mentioned, whereupon, notes equal in value, computing the land at ten cents per acre, were delivered up by Jackson. For this number of acres, an indemnity was reserved by the first decree of the commissioners, out of the whole indemnity claimed by the New England company, no part of which appears ever to have been received by Jackson, as a person entitled to any portion of the indemnity, as such an indemnity was also reserved for the certificates in the New England company, issued to such purchasers as appeared not to have paid the purchase-money to the Georgia company. The deduction on this account from the



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indemnity awarded to the New England company, amounted to \$130,425.12, and was made, because the commissioners were of opinion, that such certificates were void, and that the parties claiming under them should lose their indemnity; or, in other words, that the Georgia company had a lien to that extent on the lands which had been sold to the New England company.

It appears further, that neither Jackson, nor any one for him, ever did receive certificates for the said sum of \$130,422.12, nor for any part thereof, on behalf of the said Georgia company, \*or any of them, or for [239 himself, he not being then a member thereof; and that he never did, at any time whatever, receive any part or portion of the indemnity provided by congress, nor certificates for any portion thereof, save for the amount due to him on the balance of his account as agent for the Georgia company, which was settled by the commissioners at \$24,831.90; that for the amount allowed to the Georgia company, as an equivalent for the unpaid notes aforesaid, and also for the scrip taken back by Jackson, as agent as aforesaid, in payment of other notes, the members of that company who were entitled to the sums so deducted, did separately apply to, and did receive from, the commissioners, certificates entitling them to their respective proportions of the indemnity so awarded in their favor; and that the notes before mentioned, and the scrip received in lieu of those which were given up, were, by the commissioners' orders, delivered by Jackson into their hands.

This suit appears to have been suggested by the judgment of this court in the case of *Brown v. Gilman*; and a belief on the part of the plaintiffs, that Jackson had received the whole sum of \$130,425.12, awarded to the Georgia Mississippi Land company, on account of the notes which had been given to them, by the members of the New England Land company, and which remained unpaid by them, and also the indemnity for the 691,677 acres aforesaid. Although there be no specific prayer in the bill to have these sums decreed to the complainants, it is difficult to perceive any \*other adequate objects of litigation between these parties. As these [240 grounds of relief were not much insisted on at the bar, the court might be justified in considering them as abandoned, and pass at once to an examination of the appellants' title to the whole or any part of the sum which was awarded to the respondent, and received by him as agent of the Georgia Mississippi company. But as all the facts which exist in the case are probably before us, and as the appellants may expect an opinion on the whole of their bill, which may also prevent future litigation, not only between the parties now here, but between the appellants and the Georgia company, and the individual members of these two companies, it may be useful to inquire, whether the appellants have any remedy either against Jackson, or the members of the Georgia company, collectively or individually, in consequence of any alleged mistake in distribution or apportionment of the sum allowed by government, for the indemnification of claimants of public land in the Mississippi territory. A proper decision of this question will depend, not so much on an examination of the correctness of the several acts and doings of the commissioners, as of the powers conferred on them by law: for as no appeal is given by any of the acts of congress on this subject, to any other tribunal, and as all the parties concerned have submitted to their jurisdiction, this court claims no right to review or disturb any judgment or decision, in any of the cases in which they have acted, within

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the authority delegated to them. Considering, indeed, the very great inconveniences \*which would result from a different course, and the fruitful source of litigation which would be opened between the parties whose rights have been settled by them, if their decision were not conclusive, the court would feel reluctant, unless in a very clear case, to say that they had transcended the limits prescribed them by the legislature.

The first law on this subject is that of the 31st of March 1814. By this act, it is declared, that every person or persons, claiming public lands under the act of the state of Georgia, passed 7th of January 1795, who have exhibited the evidence of their claims, to the secretary of state, conformable to a preceding act of congress, shall be allowed until the first Monday of January then next, to deposit in his office a sufficient legal release of all such claim or claims to the United States, and the secretary of state, the secretary of the treasury, and the attorney-general of the United States, for the time being, were thereby constituted a board of commissioners to adjudge and determine upon the sufficiency of such releases, and also to adjudge and finally determine upon all controversies arising from such claims so released, which might be found to conflict with, and to be adverse to, each other. On the 23d of January 1815, a supplemental act was passed, by which the president of the United States was authorized, by and with the advice and consent of the senate, to appoint three persons to act as commissioners under the former law, in place of the two secretaries and the attorney-general, who were to execute all the powers granted to, and \*242] to \*perform all the duties enjoined upon, the original board of commissioners. The persons thus appointed were, from time to time, to certify and report to the president of the United States, as to the sufficiency of the releases which should be made, and the claims which they should finally adjudge and allow. By a third act, passed the 3d of March 1815, the commissioners are authorized to admit, and finally settle, all such claims as have been, or may be, within the time limited, duly released, assigned and transferred to the United States. And the president is authorized, from time to time, to cause to be issued such certificates of stock as are specified in the first act, and the supplement thereto, to such claimant or claimants, whose claim may be decided and reported by the commissioners, on receiving such report, in relation to such claim, from the commissioners.

The court will now proceed to examine those proceedings of the commissioners, which are complained of by the appellants, which, it is believed, will be found to be not only within the spirit, but within the letter of the powers expressly delegated to them. One ground of complaint is, that there was deducted from the indemnity allowed to the New England company, a sum equal in value to 691,677 acres, on account of scrip of this company, then in the hands of the respondent, and which had been delivered to him in payment of notes which had been dishonored, or the parties to which had become insolvent. It cannot be a question, that the holders of \*this \*243] scrip, whether Amasa Jackson, the Georgia company, or any other person, had as just and valid a claim for the quantity of land therein mentioned, upon the indemnity set apart by congress, as the New England company would have had for the same scrip, if they had not been assigned to Jackson. Their returning to the hands of the original vendors, or their agent, could make no difference. The holder or holders, whoever they



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might be, could not but be regarded, within the obvious and plain meaning of the act of the 31st of March 1814, as a person or persons having a claim on the lands in question; and the commissioners could not, without a violation of duty, have refused to take cognisance of it. It might have been a question, whether the stock which was the portion of the indemnity intended for the Georgia company, as the holder of these certificates, should not have been transferred, for their use, to the directors of the New England company; that, however, was a subject on which the commissioners were competent to decide, as well as on the validity of the claim itself. There is nothing in the conduct of the commissioners, in this particular, inconsistent with the act under which they were sitting: on the contrary, the act appears to contemplate a settlement by them of an individual, as well as of a company or joint claim; for the president is to issue certificates to such claimant or claimants, whose claim may be decided and reported by the commissioners. All the commissioners had to do was, to decide on the validity of the claims, however subdivided, and to determine on the sufficiency of the release made by such \*claimant to the United States. The court is, therefore, of [\*244 opinion, that this claim was clearly within the jurisdiction of the commissioners, and that their award on the subject is final and conclusive.

The next subject or complaint in the appellants' bill, is the award of the commissioners, that the indemnity upon 957,600 acres, amounting to \$130,425.12, should be deducted from the amount claimed by the New England company, on account of certificates issued by that company to purchasers who had not paid their notes to the Georgia Mississippi company. This scrip the commissioners determined to be void, and that the parties claiming under them should lose their indemnity. The Georgia company, thinking they had a lien on the lands sold by them to the New England company, to the extent of the same thus unpaid, appear, as well as the New England company, as claimants before the commissioners, who, being of opinion, that the former were entitled to the indemnity, *pro tanto*, decreed accordingly. A decision of this question was also clearly within the power of the commissioners. The act made no distinction between an equitable or a legal claimant. To satisfy the words of the act, it was sufficient, that both parties were claimants, and if these claims were found to conflict with, and to be adverse to each other, as was the case here, the commissioners were to adjudge, and finally to determine on them. On this point also, the court is of opinion, that the decision of the commissioners, as between the New England and Georgia company must be regarded as conclusive.

Nor does this opinion in any degree conflict, as has been supposed, with our decision in \*the case of *Brown v. Gilman*. It is true, that the [\*245 court, in that case, did say, that the lands which had been granted to the New England company were exempt from any lien of the Georgia company, notwithstanding the non-payment of these notes, to which opinion it still adheres; it was not, however, on that ground, nor with any view of disturbing the decision of the commissioners, that it decreed in favor of Mrs. Gilman. This decision proceeded on the ground, not of an error in the commissioners, but of a wrong done to Mrs. Gilman by the New England company, in the distribution which they made of the indemnity awarded to them. This court thought that the sum deducted by the commissioners from the indemnity claimed by the New England company, was chargeable

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on the fund generally, and not individually on the share of Mrs. Gilman. Her share was exempted bearing the whole of the loss, because, according to the laws of the association of the New England company, she had received a certificate which, on its very face, purported to be, and was regarded as complete evidence of title, whether the person from whom she had purchased had paid his note or not. After issuing to her a certificate in the form which had been devised, in order to render them more valuable, and to enable the holders the more easily to dispose of their interest, the court thought that whatever the commissioners might think proper to do, as between the two companies, the New England company was bound to let Mrs. Gil-

\*246] man in for a proportion of the indemnity awarded to them, notwithstanding \*a failure of payment by any person under whom she claimed-

If the court be correct thus far, there is an end of every demand by the appellants on the respondent : for if the commissioners had a right to make the deductions which they did from the indemnity claimed by the New England company, it can be of no importance to them, how the stock, which has thus been deducted, has been disposed of. But even if the commissioners had exceeded their authority, and improperly awarded the sums which they did to the Georgia company, it would be difficult to afford the appellants any relief against the respondent. He has received nothing more than the sum awarded to him for his services, as agent of the Georgia company. Whether this sum was too small or too large, is a matter between him and that company ; but it cannot here be a proper inquiry, out of what fund it was paid. If any persons could be liable to the appellants for a mistake of the commissioners, it ought to be shown in whose favor the deduction from the indemnity claimed by the New England company was made, and not those to whom the stock awarded to them may have been transferred, in satisfaction of the debt of the company. This would be giving, what the court would not be disposed to do, even if the proceedings of the commissioners were not conclusive on the New England company, a lien on the stock awarded to the Georgia company, into whosoever hands it may be passed.

It is also stated in the bill, that 107,600 acres have been allowed to Jackson, which, even upon the principles \*established by the commissioners, were too much, and that this sum amounted to \$14,655.12, and this sum, it is alleged, ought to be decreed to the appellant. It is a sufficient answer to the allegation, to say, that there is no proof of such allowance being made to the respondent, and that his answer, which is uncontradicted, denies that he ever received it. As to the allegation of his being liable for \$1163.90, for his portion of expenses chargeable on his stock in the New England Mississippi Land company, and for the sum received as indemnity on Seth Wetmore's purchase, beyond the amount of his notes, the same answer may be given. It does not appear, that he ever was a member of the New England company ; and by his answer, which stands uncontradicted, the court is informed, that he never received out of the indemnity any other sum than the \$24,831.90, which was awarded to him, not as a member of either company, but for his services as agent of the Georgia Mississippi Land company.

The court, however, does not mean to be understood as saying, that the appellants, or those who represent the New England Mississippi Land com-



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pany, may not have a remedy against the Georgia Mississippi Land company for a contribution towards the loss which the former has sustained by the decree in favor of Mrs. Gilman, or for other losses of a similar nature. In this respect, as far as the indemnity extended, which the latter received for the scrip which they held, by their agent, Jackson, they must be considered as coming in under the New England \*company, and contribute with [248 the other members thereof, in making good what they may lose, in consequence of the demands of individuals, who stand in the predicament of Mrs. Gilman, for their proportion of the indemnity actually awarded to those whose certificates of land on the New England company were adjudged to be valid.

An objection was made by the respondent to the want of parties; but the conclusion to which the court has come renders it unnecessary to give any opinion on this point. The court, however, would have hesitated in making any decree against Mr. Jackson, in the absence of his principals, in whose favor the award was made, and who ought, if its merits were examinable, to have been afforded an opportunity of vindicating the grounds on which it was made.

It is the judgment of this court, that the decree of the circuit court, dismissing the appellant's bill, be affirmed, with costs.

Decree affirmed, with cost

BLUNT'S Lessee v. SMITH and others.

*Land-law of Tennessee.*

The decision of the court below, granting or refusing a motion for a new trial, is not matter for which a writ of error lies to this court.<sup>1</sup>

In Kentucky and Virginia, the rule is, that a court of common law cannot look beyond the patent; but in Tennessee, the courts of law, under their construction of the land laws of North Carolina, permit the parties in an ejectment to go back to the original entry, and connect the patent with it.<sup>2</sup>

\*This construction is not limited to a comparison of the dates of the entries, but admits of [249 an inquiry into their legal effect, as they stand in relation to each other.

The statutes of North Carolina, which have been construed to justify a court of law in considering the entry as the commencement of title, are applicable to military warrants as well as other titles.

By the decisions of the courts of Tennessee, the validity of surveys does not depend on the will or directions of claimants; and though the mistakes of surveyors may be corrected, they cannot be corrected so as to injure a subsequent adjoining enterer.

The laws of North Carolina do not require that an entry should express the water-courses and remarkable places, which are remote, but only those which are contiguous, and which may assist in designating the land intended to be acquired.

Notoriety is not essential to the validity of an entry in Tennessee, as it is in Kentucky. The statute of Virginia, which is the land-law of Kentucky, requires, that entries shall be so special and certain that any subsequent locator may know how to appropriate the adjacent residuum; but the land law of North Carolina contains no such provision, and the doctrine which requires notoriety as well as identity, has never been received in Tennessee.

ERROR to the Circuit Court of West Tennessee. This was an action of ejectment, brought by the plaintiff in error, in the circuit court, against

<sup>1</sup> Doswell v. De la Lanza, 20 How. 29; 565; Marshall v. Keenan, 18 Id. 342.

Warner v. Norton, Id. 448; Schuchardt v. <sup>2</sup> Bagwell v. Broderick, 13 Pet. 436.

Allen, 1 Wall. 371; Lader v. Cooper, 7 Id.