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supposed to have been run in 1798. A line from this point to the river, so as to divide the tract equally, passes through James Dunlap's orchard, and leaves rather more of it on the side of John, than would be left by the line which James Dunlap had admitted. This line is established by the decree of the court. The testimony is, we think, in its favor, and that there is no error in the decree. It is affirmed, with costs.

Decree affirmed.

*582] *McCONNELL v. Trustees of the TOWN OF LEXINGTON.

Reservation.

A question in equity as to the title to a lot of land in the town of Lexington, Kentucky, reserved as public property, and claimed as having been appropriated by the plaintiff's ancestor. Bill dismissed, under the circumstances of the case.

APPEAL from the Circuit Court of Kentucky.

February 12th, 1827. This cause was argued by *Rowan*, for the plaintiff; and by *Talbot* for the defendant.

February 22d. MARSHALL, Ch. J., delivered the opinion of the court.—This suit was brought in the court of the United States for the seventh circuit and district of Kentucky, against the trustees of the town of Lexington, and others, to obtain a conveyance of in and out lots, No. 43, in that town, or of such other lots in lieu of them, as might still remain to be conveyed, by the trustees. The whole of out-lot No. 43, and a part of the in-lot, had been conveyed to other persons, who had been in possession for such a length of time as to bar the plaintiff's action. The bill was, therefore, dismissed by the plaintiff, as against those defendants, and continued against the trustees.

The commonwealth of Virginia had, in 1773, by an act commonly called "the land law," reserved 640 acres of land, for the benefit of those who had settled in a village or station, that it might be afterwards laid out into lots for a town, and divided among such settlers. The inhabitants of Lexington purchased 70 acres adjoining the reserve of 640 acres, and after laying the whole off in lots and streets, petitioned the assembly to establish a town. The legislature, in May 1782, passed an act, vesting the whole 710 acres in trustees, who were empowered to make conveyances to those persons who had already settled on the said lots, as also to the purchasers of lots thereto-
*583] fore sold; and to lay off *such other parts of the said land as was not then laid off and settled, into lots and streets, and to sell, or otherwise dispose of the same, for the benefit of the inhabitants.

James McConnell was one of the settlers in Lexington, and was killed by the Indians in 1782. His brother and heir-at-law, Alexander McConnell, filed this bill in 1815, and founds his claim on proof that he had, in his lifetime, erected a tannery on in-lot No. 43, on which was a large spring; and on the following order of the board of trustees: "At a meeting of the board of trustees for the town of Lexington, September 30th, 1782, No. 43, in and out lot, granted to James McConnell, to be appraised, and the valuation thereof redound to the heirs of said McConnell, deceased."

The trustees, in their answer, insist, that in-lot No. 43 never was granted

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to James McConnell, but a part of it has always been considered as reserved, on account of a spring upon it, for the use of the inhabitants. They are informed by the old settlers, that the privilege of establishing a tannery on that lot was, in the year 1781, granted to James McConnell, who did establish one, and that the order of appraisement was intended to cause a valuation of the improvements, and of the leather in the tannery, not of the lot itself; and that so much of the entry as applies to the lot itself, is a mistake of the clerk. They say, that other lots, not these, were granted to McConnell. They also insist on the length of time which has elapsed, and on the statute of limitations.

Several certificates from the clerk, and extracts from the record-books of the trustees, are filed as exhibits in the cause. From one of these certificates, it appears, that, on the 20th of December 1781, at the first arrangement of in and out lots of the town of Lexington, among the settlers, in-lot No. 18, and out-lot No. 37, were granted to James McConnell as his donation lots. The out-lot appears to have been transferred by John Clarke, whose connection with McConnell is not stated, to Robert Parker, to whose assignee a conveyance was made by the trustees, in August 1785. An assignment by Alexander McConnell, as heir-at-law of James, of his title to an out-lot in the town of Lexington, made in May 1795, is produced; but this assignment neither *mentions the number of the lot, nor the name of the [584 assignee.

Another certificate from the clerk states, that in-lot No. 18 was granted, on the 26th of March 1781, to William Stule, and afterwards, on the 20th of December 1781, to Benjamin Hayden. It was afterwards, on the 1st of July 1783, awarded to James McConnell, and afterwards, on the 8th of March 1785, was forfeited. The cause of forfeiture is not mentioned. The presumption is, that it must have been on account of the non-performance of some condition on which the allotment was made.

The entries of the orders made by the trustees seem to be in great confusion. This may be well accounted for by the then situation of that country. Some time in the year 1784 or 1785, Robert Parker, then clerk of the board of trustees, was ordered to transcribe their old books. Many of their entries were made on small scraps of paper, and on backs of old letters. The book then made out is said to be lost. There is, however, a book of records. The imperfect and confused state of the books has made it necessary to resort to the testimony of witnesses, to supply facts which the books do not disclose.

It is very well ascertained, that the large spring, below which McConnell's tan-vats were sunk, was inclosed within the stockade, and was used by the inhabitants of the fort generally. It is also in proof, that the settlers were each entitled to an in and out lot, and that the trustees frequently allowed those who were dissatisfied with the lots which they drew, to exchange them for others, not previously granted. William Stule, who was one of the original trustees, deposes, that the lot on which the tan-vats were sunk, in spring 1782, was called McConnell's lot, but he does not recollect any contract between McConnell and the trustees, or any disposition made by them of the lot, until a part of it was given to Bradford, on which to erect a printing-office. Robert Patterson was also one of the original trustees, and was friend and relation of McConnell. He deposes, that McConnell was a

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tanner; the trustees being desirous to attract tradesmen to the station, permitted McConnell to erect a tan-yard on the lot in contest, about the fall of 1781. That the deponent was authorized by the trustees, about the year *1783 or 1784, to clear out and wall up the public spring, for which *585] he was paid by them. That it was called and used as the public spring, from the first settlement of the town. He believes, McConnell was permitted to use part of the lot, as a tannery for the people of the town, because it was more convenient, and under cover of the fort. While thus used, it was called McConnell's tan-yard. He does not know, that the trustees intended to make any other grant of the lot, than to suffer its use by McConnell. They fixed a market-house on the lot, in 1790 or 1791, and then claimed it as their own property. They granted part of it, in the year 1787, to John Bradford, on condition of his establishing a printing-office on it, reserving the public spring and a considerable front on Main and Water streets, on which they erected buildings which were rented to Bradford. They reserved a number of lots for public use.

John Torrence, William Martin, Samuel Martin, Benjamin Hayden, Joseph Mitchell, Josiah Collins and Hugh Thompson, were among the early settlers of Lexington, and were examined, some of them by the appellant, and some by the trustees. They all concur in the declarations, that the spring was public, for the use of the people of the fort generally; that it was called the public spring; some, that it was called the public spring lot; that McConnell sunk vats, and constructed a tan-yard on it, after which it was called McConnell's tan-yard, and one witness is inclined to think, McConnell's lot. They all concur, however, in denying having ever heard that the lot was given to McConnell, or to any other person. Some say, though they never heard him claim the lot, they have heard him claim the tan-yard. Joseph Mitchell swears, that McConnell claimed a lot in a different square. Hugh Thompson says, that the records of the trustees, which are produced to him at the time his disposition is taken, plainly show that in-lot No. 18, and out-lot No. 38, were granted to James McConnell. John Parker and Alexander Parker came to Lexington, the one, in 1783, and the other, in 1784. They were each of them members of the board of trustees, and depose to the universal understanding, that the spring lot was reserved for public use, and had never been granted to any person, until a part of it was *586] granted to *Bradford for a printing-office. Alexander Parker says, that on looking into the record-books, while a trustee, he saw, with surprise, the entry under which Alexander McConnell claims; and on making inquiries from Col. Rob. Patterson, also a trustee, was informed, that the trustees had prevailed on James McConnell to establish a tannery, under cover of the fort, to tan buffalo hides, and had, after his death, appointed appraisers to value his property. That the entry appears in its present form, is the mistake of the clerk who made it. He adds, that the records show, that in-lot No. 18, and out-lot No. 38, were granted to James McConnell.

The entry under which the appellant claims lot No. 43, does not purport to grant him that lot, but directs a valuation, in terms which import a former grant. No trace of that former grant is, however, found, and the testimony is very strong, to prove it was never made. The reasonableness of reserving a public spring for public use; the concurrent opinion of all the settlers, that it was so reserved; the universal admission of all, that it was never under-

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stood, that the spring lot was drawn by any person ; the early appropriation of it to public purposes ; the fact that James McConnell actually claimed a different lot, added to the length of time which has been permitted to elapse, without any assertion of title to this lot, are, we think, decisive against the appellant. There was no error in dismissing the plaintiff's bill, and the decree is affirmed, with costs.

Decree affirmed.

CHOTARD and others v. POPE and another.

Private statute.

The act of May 8th, 1820, ch. 595, "for the relief of the legal representatives of Henry Willis," did not authorize them to enter lands within the tract surveyed and laid off for the town of Claiborne, in the state of Alabama.

APPEAL from the District Court of Alabama.

*February 7th, 1827. This case was argued by *E. Livingston* and *Webster*, for the plaintiffs ; and by the *Attorney-General* and [**587* *Sampson*, for the defendants, citing 2 Cranch 386 ; 1 Burr. 474 ; 1 Doug. 30 ; Loft 371, 401 ; 1 Bl. Com. 87, 91 ; 1 T. R. 728 ; 12 Co. 8 ; 11 Ibid. 61 ; 2 Inst. 200 ; Plowd. 86, 73.

February 10th. JOHNSON, Justice, delivered the opinion of the court.—The rights of the complainants in the land in litigation in this cause, depend upon the construction of the congress of May 8th, 1820, passed for the relief of the legal representatives of Henry Willis. The words of that act under which the complainants suppose themselves entitled to relief, are these : "That the legal representatives of Henry Willis be and they are hereby authorized to enter, without payment, in lieu, &c., in any land-office, &c., in the states of Mississippi or Alabama, &c., a quantity of land not exceeding thirteen hundred acres, &c." Under the operation of these words, assuming the right to appropriate any unpatented land in the two states, the complainants have asserted the privilege of entering a tract of land which covers the site surveyed and laid off for the town of Claiborne, in the state of Alabama. The proper officers have refused the issue the ordinary evidences of title, and have gone on to sell out the town-lots, according to law. This bill is filed against the register of the land-office, and the purchaser of one of the town-lots, to compel them to make titles to complainants.

On behalf of the United States, it is contended, that the literal meaning of the terms of the act is limited and restrained by the context, and by consideration arising out of the general system of land laws of the United States, into which this act is ingrafted ; and that, so construed, the right granted is limited to that description of lands which are liable to be taken up at private sale. And such is the opinion of this court. That the legislature had distinctly in view its general provisions for disposing of the unappropriated lands of the United States, is distinctly shown in every line of the act under consideration. First, the party is referred to the land-office to make his entry ; he is then confined *to the location designated by the surveys made by the United States. After which, it goes on to [**588* enact, that "the register or registers of land-offices aforesaid, shall issue the necessary certificate or certificates, on return of which to the general land-