*Mayor, etc. of New York *v.* George Miln.

George Briscoe and others *v.* The Commonwealth Bank of the State of Kentucky.

Practice.

The court refused to take up cases involving constitutional questions, when the court was not full.

Mayor, etc., of New York *v.* George Miln.

Error to the Circuit Court for the Eastern District of New York.

George Briscoe and others *v.* Commonwealth Bank of the State of Kentucky.

Error to the Circuit Court of Kentucky.

Ogden, for the Mayor, &c., of New York; and *Wilde*, for George Briscoe and others, inquired, if the court had come to a final decision as to the argument of the cases involving constitutional questions at the present term.

Marshall, C. J.—The court cannot know whether there will be a full court during the term; but as the court is now composed, the constitutional cases will not be taken up.(a)

12th February 1835.

---

*William Caldwell, Isaac Caldwell and Samuel Brents, Appellants, *v.* Sarah and George Carrington's Heirs. [*86

Statute of frauds.—State judgments.

A bill was filed in the circuit court of the United States for the district of Kentucky, claiming certain lands in Kentucky, under an agreement by parol, by Carrington with Williams, for an exchange of lands, and in which exchange, C., the husband and devisor of the claimant, agreed to give certain lands, then owned by him, in Virginia, to W., and of which W. took possession, and part of which he sold, and for which W. was to convey certain military lands in Kentucky to C. The bill prayed that the heir of W. should be decreed to convey the lands; and that certain persons who, knowing of the agreement between C. and W., had purchased from the heir of W., and who had obtained from the heirs of W., the legal title to a part of the same lands, should be decreed to convey the same to the complainant.

The court held, that although the statute of frauds avoids parol contracts for lands, yet the complete execution of the contract in this case, by Carrington, by conveying to Williams the land he agreed to give to Williams in exchange, prevented the operation of the statute, in this case.

This was, undoubtedly, supposed in Virginia to be the sound construction of the statute, when this contract was made; and as the lands then lay in Virginia, Kentucky being then a part of that state, this construction forms the law of contract.

The evidence in the cause showed, that the persons who had purchased part of the lands to which, by the agreement with Williams, Carrington was entitled, had notice of that agreement; they could derive no title from such a purchase, againt those who held under C.

According to the constitution and laws of the United States, and the decisions of this court, the

---

(a) The court was, at the time this motion was made, and during the whole term, composed of six justices; the vacancy occasioned by the resignation of Mr. Justice Duvall, not having been filled.

Caldwell v. Carrington.

regular proceedings and decrees of a county court of Virginia, are allowed the same full faith and credit in Kentucky, that they would receive in Virginia; if such a decree would be enforced in Virginia, or if such a decree pronounced in Kentucky, would be enforced in Kentucky, the decree of the circuit court of the United States, sitting in Kentucky, enforcing it was correct.[1]

Carrington *v.* Brents, 1 McLean 167, affirmed.

Appeal from the Circuit Court of Kentucky. In January 1821, Sarah Carrington, a citizen of Virginia, widow and devisee of George Carrington, filed a bill in the circuit court of the district of Kentucky, stating, that at October term 1817, of the county court of Halifax county, in the state of Virginia, she, as the devisee, obtained a final decree on the chancery side of the court, against a certain John R. Williams, heir-at-law of John Williams, deceased, that he convey *to her his claims, as heir to the said John Williams, to all the military lands to which the said John Williams had title or claim in the state of Kentucky. The land so claimed by the complainant, consisted of one survey of 1000 acres of military land, in the county of Adair, and near to the town of Columbia, No. 158; of one other survey on military-warrant of 350 acres, situated on Beaver creek, in the county of Barren, No. 155; of another military survey of 500 acres, situated on Beaver creek aforesaid, and in the county of Barren aforesaid, No. 227; of a location for 1000 acres of land, south of the Tennessee river, and adjoining the land, or a tract, at the Iron Banks, founded on a military-warrant, No. 155; of another entry or location of 1000 acres, on said warrant, adjoining the lands of Girault. She stated, that her testator had, in his lifetime, to wit, at May term 1803, of said county court of Halifax, obtained a decree against the said John R. Williams, that he should, by his guardian *ad litem*, John B. Scott, assign and transfer the said surveys and locations to the said George, the testator. That the said John B. Scott, in pursuance of such decree, did assign said papers to the said testator, as appeared by his several indorsements on said papers. That in pursuance of the decree pronounced in her favor, as devisee aforesaid, the said John R. Williams did, afterwards, to wit, on the 18th day of March 1820, by his deeds, duly acknowledged and proved according to the law of Virginia, convey and assign to her the several tracts of land aforesaid, as fully appeared by his deeds, filed and made a part of the bill. That the said John R. Williams, after his arrival at mature age, prosecuted an appeal from the decree of the county court of Halifax aforesaid, to the superior court of chancery for the Lynchburg district; where and when, upon a final decree of the latter court, the decree of the county court aforesaid, was affirmed in all its parts. She averred, that the said county court of Halifax had full power, authority and jurisdiction, to hear and determine, and to decree in the said cause, and to pronounce and to make all orders, judgments and decrees which they have so made, touching the premises; and she further stated and averred, that the said superior court of chancery for the Lynchburg district, had full power, authority and jurisdiction to hear, determine *and to affirm the decrees, orders and judgments of the county court of Hali-

*87] *88]

[1] Whitaker *v.* Bramson, 2 Paine 209; Warren Manufacturing Co. *v.* Etna Ins. Co., Id. 502; Green *v.* Sarmiento, Pet. C. C. 74; Field *v.* Gibbs, Id. 155; Lincoln *v.* Tower, 2 McLean 473; Westervelt *v.* Lewis, Id. 511; The General Isaac Davis, Crabbe 185.

fax. She further stated, that the said judgments, decrees and orders, as before stated, stood, remained and were in full force, and unreversed, as would appear from a full, true and perfect transcript of the records and proceedings, filed and made a part of her bill.

That having so obtained the decree, and obtained the possession of the assignments of the plats and entries aforesaid, and also the deed aforesaid, she had well hoped to have obtained and enjoyed the lands aforesaid; but she stated, that she was deprived of the benefit of her said decree and transfers, by a fraudulent combination between the said John R. Williams, who resided without the jurisdiction of the court, and a certain Samuel Brents, William Caldwell and Isaac Caldwell, citizens of the state of Kentucky, and who were made defendants to the bill. She stated, that the said defendants, with a full and perfect knowledge of her claim, and that of her testator, on or about the 6th day of January 1818, entered into a contract to purchase, for a price very inadequate, and no part of which have they paid, the 2000 acres of land, south of the Tennessee river, as fully appeared by certain articles, signed by the said defendants and the said John R. Williams, of that date, filed and made a part of the bill. That the said defendant, William Caldwell, for a consideration wholly inadequate, a very small portion of which, if any, had been paid to the said Williams, about the 30th day of August 1815, pretended to buy of said Williams, the aforesaid 1000 acres, near the town of Columbia; as appeared by certain articles of agreement between them, of that date, filed and made a part of the bill; and that the said defendant, Isaac, was fully apprised of the fraudulent combination to cheat and defraud her, and aiding and advising thereunto. She further stated, that the defendant, Samuel, with a full knowledge of her claim, and with a like intent to cheat and defraud her, about the 31st day of August 1815, entered into a contract with said John R. Williams for a part of said lands, as appeared by certain articles between them, of that date, filed and made a part of the bill; and that, notwithstanding that she was in possession of the original plats and certificates of survey, with the indorsements thereon, of which the defendants were well advised, they had artfully *contrived to obtain patents, in the name of the said John R. Williams, for the military surveys aforesaid; and had, as she was informed and believed, obtained to themselves, in some way, deeds for the whole of said surveys, and had also obtained assignments or transfers of the entries south of the Tennessee; and would, on such fraudulent assignments, obtain, or attempt to obtain, grants from the commonwealth, unless they were restrained by the interposition of the court. [*89

The bill prayed an injunction, enjoining and restraining the said defendants, and each of them, from taking or receiving from the said John R. Williams any letter of attorney, deed or writing, touching the land in controversy, until the matter could be fairly tried in equity; and also an order enjoining and restraining the said defendants, and each of them, from surveying, or attempting to survey, said entries south of the Tennessee river, or in any wise interrupting or hindering the complainant in surveying the same, or procuring a survey therefor; and also, that the defendants convey and release all and any title they had acquired in virtue of any contract made with John R. Williams, or otherwise, and render up possession of the lands conveyed; and for other and further relief.

The answer of Samuel Brents stated, that the lands in the complainants' bill mentioned, were entered in the name of John Williams, and so far as surveys had been made and registered, they had been in his name. He did not admit, that any valid sale of the lands had been made, such as could bind John Williams, in law or conscience. Since he had heard anything on the subject of a contract between Williams and George Carrington, he had understood it was a matter of doubt, whether a contract of any kind took place or not, and if any ever did take place, it was after the operation of the statute of frauds and perjuries; was merely verbal, very vague and uncertain, and not at any time reduced to writing, and consequently, not obligatory on the said Williams, or those claiming under him. Should any such verbal contract appear (and he verily believed there never was any), he pleaded and relied on the said statute to prevent frauds and perjuries, in bar and preclusion of the said contract, and of the claim of the complainants, or any person holding or claiming under the said contract. He was informed, *90] and believed, that the said John Williams and the *said George Carrington lived many years in Virginia, in the same neighborhood, and had many opportunities of consummating an exchange, or sale of said lands, if any existed; but that no suit was ever brought in the lifetime of said Williams; and that the respondent was informed, and believed, that the said Williams died some time about the year 1795 or 1796, and that the suit mentioned in said bill, upon which the decree (if any such existed) was founded, was contrived, after the death of the said Williams (although it was pretended that the said contract was made many years before his death), when there was no person left who was able or willing to state the true nature of the dealings between the said Williams and said George Carrington. He heard of a suit depending in some county court of Virginia, but heard and understood, that it was founded on a contract not binding in law or equity. He stated, that he was informed, and believed, the said John Williams departed this life, leaving John Robert Williams, his son and only heir-at-law, and that the lands, in the bill mentioned, descended to his said son; and that about the last of August 1815, the said John Robert Williams called on this defendant to attend to the securement of the titles to said lands. The respondent undertook said business (the patents for said lands not having then issued), and proceeded, with much care, labor and expense, and obtained patents for said lands, so far as said lands had been surveyed. Patents to a part of said lands, had not yet been obtained. Two thousand acres thereof, in two different entries, had not then been surveyed, and he did not know, whether they were yet surveyed. The latter two thousand acres lay below the Tennessee river, in that state, and in the late purchase made of the Indians; the said lands lying in the Indian boundary, this respondent presumed was the reason why said two thousand acres had not been surveyed, registered and patented. The respondent, on the 31st of August 1815, entered into a written contract with the said John Robert Williams, by which the respondent was to have five hundred acres of said lands; and that, on the 12th of November 1816, patents issued to the said John Robert Williams for two of the tracts in the bill mentioned, one of three hundred and fifty acres, on Beaver Creek, and the other of five hundred acres, adjoining the said three hundred and fifty acres; and that, in satisfaction of the contract between the said John Robert Williams

*and the respondent, the respondent took five hundred acres out of the said two tracts, including the whole of the three hundred and fifty acres, and the lower part of the said five hundred acres; and that, afterwards, to wit, on the 5th of January 1818, the respondent purchased the remainder of the five hundred acres aforesaid, and having satisfied and completed the payment of the consideration for said five hundred acres, embracing the three hundred and fifty acres, and one hundred and fifty acres of the five hundred acre tract, and having bought of the said John Robert Williams, the balance of the five hundred acres, the respondent received a deed of conveyance for said two tracts of three hundred and fifty, and five hundred acres, amounting to eight hundred and fifty acres. This deed was made, signed, sealed and delivered to the respondent, and bore date the said 5th day of January 1818. And the respondent then had the possession of said eight hundred and fifty acres of land, and hoped he would not be disturbed in the enjoyment thereof by the pretended claim of the complainants. At the time of receiving said conveyance, or at any time before, the respondent had no knowledge or information of any valid claim to said land, by any other person than the said John R. Williams, who conveyed to the respondent. The respondent did not recollect of hearing anything of the claim of the complainants, before his conveyance; but had only heard that some verbal or illegal claim was set up, in some bill filed in some county court in Virginia; and of which verbal claim, the respondent did not conceive himself bound to take notice. The respondent, on the 6th of January 1818, in conjunction with his co-defendants, William and Isaac Caldwell, purchased two thousand acres of land, lying in the Indian boundary, not then surveyed, and not yet patented, and received an assignment of the said John R. Williams of said land, being in two entries of one thousand acres each; one entry, No. 7, dated 2d August 1784, calling to adjoin the town; the other No. 384, dated 10th August 1784, calling to adjoin John Giralts, Richard Taylor and James Bradley; no other title to said lands had been obtained by this respondent. The foregoing statement of facts exhibited the extent of the respondent's interest in the said lands. He stated, that he knew nothing of the facts stated in said bill, of the guardian of said John R. *Williams, [*92] while said Williams was an infant, making assignments of the plats and certificates of said lands. If such were the fact, the respondent believed it was an unlawful act, and therefore, not binding in law or equity. He knew nothing of the conveyance alleged to have been made by the said John R. Williams, on the 18th day of March 1820. The respondent required its production, and proof of its legality, and that it conveyed to the complainants an interest in the lands previously sold and previously conveyed to the respondent. The deed of conveyance made by the said Williams to him, was of record in the county court clerk's office of Barren county, from whence a copy might be had. Copies of the patents of the said three hundred and fifty, and five hundred acre tracts of land might be obtained from the register's office. The complainants may easily obtain such copies; or, if it were at all material, the respondent would file the originals. The respondent protested against the jurisdiction of the court of Virginia, to operate on the lands in Kentucky, to compel conveyances, by any act done by the guardian of said Williams; and that, if the decree was only to operate upon the said John R. Williams, the title of the complainants could

only be considered as commencing from the date of the alleged deed to said Sarah, of the 18th of March 1820, as this respondent was not bound to take notice of a verbal sale, or the proceedings in a foreign court, not having jurisdiction of the subject-matter.

The answer of William Caldwell denied that any sale of the lands was made by John Williams to George Carrington, which was valid or binding; and if any was made, it was not reduced to writing, and was void by the statute of frauds; and he pleaded the same statute. The answer stated a proceeding by the widow of George Carrington, to compel John W. Scott, the guardian of John R. Williams, to convey the land. He stated some transactions with John W. Scott relative to the land, and information to have been received by a person appointed by him to make inquiry about the land, and to make a purchase of part of the land, and that an agreement was made for him with Scott and Paul Carrington for the land; but afterwards, when prepared to pay the purchase-money for the same, he found Scott and Carrington had no title to the land they contracted to sell to him.

*93] Afterwards, John R. Williams came to *Kentucky. He consulted several of the most skilful and learned lawyers in Kentucky, all of whom advised this defendant that the said Williams would hold the land; that the claim of Carrington was null and void. This defendant did verily believe, that the said John R. Williams was the only lawful owner of said land, and that the claim of Carrington was fraudulently put up to cheat an infant; that he did accordingly purchase the said land from the said Williams, for the same price he was to have given the said Scott and Carrington, which was considered a full and fair consideration, and not a small and invaluable one, as falsely set forth in complainants' bill. He stated, that he had not been party to any suit, in Virginia or elsewhere, between any of the complainants, or their ancestors, and the said John R. Williams; and consequently, as he believed, would not be bound by any decree pronounced by the courts of Virginia in any such case. He protested against the jurisdiction of the courts of Virginia to operate on the lands in Kentucky; and if the decrees of the courts of Virginia could only operate on the person of the said John R. Williams, the title of the complainants could only be considered as commencing from the date of the alleged deed from the said John R. Williams to Sarah Carrington, 18th of March 1820, as this defendant was not bound to take notice of verbal sales, or the proceedings of foreign courts who could not entertain jurisdiction of the subject-matter.

The answer of Isaac Caldwell admitted the purchase of part of the land as stated in the bill, from John R. Williams, under agreements for the purchase of the same. As to notice of the title of the complainants and of their proceedings to establish the same, the answer stated as follows: "This defendant states that, previous to his purchase of said lands west of Tennessee, he did see the record and proceedings of the Halifax county court, in Virginia, made in the suit decided in 1803, wherein George Carrington (the complainant's husband) was complainant, and said John R. Williams, by his guardian, was defendant; that his object in examining said record and proceeding, originally, was, to ascertain in whom the best right to said land vested; and at that time, this defendant was, for several considerations, desirous that the claim set up by the complainant should prevail; but

*94] upon exhibiting a full transcript of the *record of said suit to three

or four counsellors in this state, reputed the most learned in the law, he was advised by each of them, that John R. Williams would eventually succeed, under the land-laws of the country, against the claim under which the complainant alleges title ; and that the evidences of the purchase, charged by the complainant to have been made by George Carrington of said John Williams, were not sufficient to authorize and support a recovery against John R. Williams, the heir-at-law. Under this intelligence, this defendant, believing that he was purchasing the only right by which said land could be held, entered into the contract aforesaid with said John R. Williams. This defendant calls upon said complainant to produce and file complete transcripts of the several records and proceedings of the courts in Virginia, referred to in her bill. He denies that a knowledge of the record and proceedings, in the suit decided in 1803, would amount to notice of a superior equity in the complainant, or her ancestor or devisor, or that such notice would be obtained from the bill, answer and depositions in the latter suit, which were all the evidences upon that subject which this defendant had, at the time of his purchase aforesaid, from said John R. Williams ; for these documents, instead of presenting to the mind evidence of an equitable claim, go to repeal the very idea of its existence, as by the complainant's own showing, in the bills and depositions, the contract under which she attempts to obtain said lands, is uncertain, illegal and void. This defendant believes that the complainant was satisfied of the vagueness and insufficiency of the decree of 1803, as she seems, about the year 1816, to have instituted another suit, founded upon the same contract, and to have abandoned the decree formerly pronounced. This defendant submits to the court, whether his rights to lands within this commonwealth are to be thus bound by the decree of a court of another state, in a suit to which he was not party ; and which decree, upon the face of the record, was predicated upon facts entirely insufficient to sustain it, under the laws of this state, whatever may be the laws or rules of decisions with the courts of such other state ; and if the court should be of opinion, that this defendant is not bound by a decree pronounced in the state of Virginia, *subsequent [*95 to his purchase, or, at any rate, of which he had no knowledge until subsequent to his purchase, he then hopes that the complainant may be put upon the proof of the purchase, if any, as is alleged by her to have been made by her devisor from said John Williams. He conceives, that the transfer and assignment made by said John R. Williams to said Sarah Carrington in 1820, can have no relation to, or sanctity attached to it, on account of the decree pronounced between those parties in Virginia, as that decree could only operate and be executed upon the person of said John R. Williams—the thing which was the subject-matter of the decree, being without the control of the chancellor, and not subject to the laws of this state, or to be affected or operated upon by the process of this court ; and that, therefore, the assignment obtained by this defendant and his copartners, being prior in time, should prevail against the pretended equity of said complainant. The defendant is persuaded, that the assignment executed by said John R. Williams to the complainant was not obtained by process under the decree aforesaid, but that said complainant, being aware of the inefficacy and illegality of said decree, has confederated with said Williams, for the purpose of defeating the prior and better claim of the defendants, and

for that purpose has induced said Williams to execute the assignment dated in 1820. The respondent insists, that if any sale was ever made of the lands in question, by said John Williams to said George Carrington, that such sale was verbal, and not evidenced by any agreement or memorandum in writing; and therefore, was void, under the statute to prevent frauds and perjuries, upon which he relies."

Witnesses were examined in support of the allegations in the bill, whose testimony is stated in the opinion of the court. No counter-evidence was offered by the respondents.

On the 21st day of May 1832, the circuit court, by a final decree, ordered that the defendants do, by their joint or several deeds, on or before the 1st day of July next, by a sufficient deed, or by sufficient deeds, release and convey to the complainants all right and title which they have, either jointly or severally, in the several tracts of and referred to in the bill, and included in the deeds of John R. Williams to George Carrington, and also his deed *96] to Sarah Carrington, with *special warranty against themselves and all persons claiming under them; and also, that they do, on or before the said day, severally or jointly, surrender to the complainants, their agent or attorney, possession of said tracts of land; and to enable the complainants to take the possession, the court do direct and order that the clerk do, on the request of the complainants, at any time after the said 1st day of July, issue to them a writ or writs of *habere facias possessionem*, directed to the marshal of the district, whose duty it shall be to execute the same. The defendants prosecuted this appeal.

The case was argued by *Bibb* and *Hardin*, with whom was *Loughborough*, for the appellants; and by *Jones*, with whom was *Coxe*, for the appellees.

For the *appellants*, it was insisted:—1. That the verbal contract of 1787 or 1788, alleged, was against the statute of frauds, and not such as courts of equity ought to enforce specifically. 2. That the proceedings and decree of Halifax, in 1803, did not constitute an equity; that those proceedings were inoperative and void. 3. That notice, in 1815, of those proceedings, did not convert them into an equity, but was notice of an illegal, insufficient claim; dead in fact and in law; proscribed by the statute of frauds, and extinguished by lapse of time. 4. That the proceedings and decree of 1817, and subsequently, in the courts of Virginia, did not bind the appellants, citizens of Kentucky, because they were not parties. 5. That notice of those proceedings, had in May and November 1818, cannot overreach the equities acquired by the appellants before such notice; nor make them parties to those proceedings and decrees. 6. That the appellees have not made out any equity prior or superior to the equities of the appellants; that the deeds of 1820, executed by John R. Williams, by force of the decree and attachment, are not evidence of a prior and superior equity on the part of the appellees, but posterior and inferior to the equities of the appellants. 7. *97] That the appellants were in a predicament to re-examine *the decrees of the courts of Virginia against John R. Williams, the appellants not being parties, nor concluded by those decrees. 8. That this court ought not to decree against these appellants barely upon the foot of the decrees against John R. Williams, but will examine the grounds of those

decrees, before they make a new one. 9. That there is no basis for divesting the appellants of their legal titles and possession, nor for calling into activity the extraordinary powers of a court of equity ; but abundant reasons for refusing to interfere against the interest of the appellants.

The decree of the circuit court is erroneous : 1. In divesting the title and possession of William Caldwell, acquired under his contract of 30th of August 1815, and his patent of 12th of November 1816. 2. In divesting Samuel Brents of his equity under his contract of 31st of August 1815 ; and also in divesting his title and possession to 850 acres, acquired thereunder by his deed of 1818. 3. In divesting the defendants, William Caldwell, Isaac Caldwell and Samuel Brents, of their equities and legal advantages under their joint contract of 6th of January 1818. 4. In divesting Brents of his legal title acquired under his deed for 850 acres, and his other interests, without any allowance for services and expenses in surveying and obtaining the grants. 5. In sustaining the bill and making a decree, when the court should have refused to interfere, but leave the complainants to their remedy upon the deeds of John R. Williams.

Upon the effect of the proceedings and decree of the court of Halifax county, Virginia, upon the rights and interests of John R. Williams, the appellants' counsel cited, *Bond* v. *Hendricks*, 1 A. K. Marsh. 398, 471, 592 ; *Delano* v. *Jopling*, 1 Litt. 417 ; *Estill's Heirs* v. *Clay*, 2 A. K. Marsh. 200; *Moore* v. *Farrow*, 1 Ibid. 41 ; 3 Bibb 528, 525 ; 4 Ibid. 11, 96 ; 1 Call 1, 4; 1 T. B. Monr. 72, 109 ; 5 Litt. 80 ; 3 Bibb 525, 528 ; 2 Atk. 531 ; 1 P. Wms. 504 ; 2 Ibid. 403. As to the effect of the statute of frauds on a contract by parol for the sale of lands, the appellants' counsel cited, *1 Munf. 510, 518 ; 1 Bibb 203, 207, 209 ; 3 A. K. Marsh. 445 ; [*98] 1 Hen. & Munf. 92, 110; 5 Munf. 308 ; 3 A. K. Marsh. 555; 3 T. B. Monr. 41 ; *Miller* v. *McIntire*, 6 Pet. 67 ; 3 Litt. 264 ; 3 A. K. Marsh. 445.

Marshall, Ch. J., delivered the opinion of the court.—This is an appeal from a decree pronounced in the court of the United States for the district of Kentucky, directing the appellants to release and convey to the appellees all the right and title which they hold, jointly or severally, in the tracts of land in the bill mentioned, with special warranty against themselves.

The bill, filed in January 1824, by Sarah Carrington, widow and devisee of George Carrington, deceased, claims from the defendants, as purchasers from John R. Williams, heir-at-law of John Williams, deceased, who is not an inhabitant of Kentucky, and therefore, not a party to the suit, all the military lands of the said John Williams, lying in the district of Kentucky, amounting to 4000 acres, which land was sold, as is alleged, by John Williams, in his lifetime, to George Carrington, the testator of the plaintiff in the circuit court. This claim is founded on a decree pronounced by the county court of Halifax, in the state of Virginia, sitting in chancery, in November 1817, on a bill filed in November 1815, by the said Sarah Carrington against the said John R. Williams, and on a deed of conveyance made, on the 18th day of March 1820, by the said John R. Williams to the said Sarah Carrington, in pursuance thereof ; this decree was affirmed on appeal. The bill also refers to a suit brought by George Carrington, in his lifetime, against the guardians of the said John R. Williams, while an infant, in which a decree was obtained, directing the guardian of the said John R.

Williams to convey and assign the entries and surveys of the said military lands to the said George Carrington. The plaintiff prays that these decrees, with the proceedings on which they were founded, and the conveyances made in pursuance of them, should be taken as a part of his bill.

The bill filed in the county court of Halifax, in November 1815, charges that George Carrington, in his lifetime, exchanged certain lands, lying in the said county, with John *Williams, deceased, for a military claim *99] of 4000 acres to which the said Williams was entitled. That the said George, by the direction of the said Williams, caused his land in Halifax to be conveyed to a certain John Camp, who was put in possession thereof; but the patents for the military lands not having been issued, no conveyance was made of the legal title to them. Some time after the death of the said Williams, the said Carrington instituted a suit in the court of Halifax, against John Robert Williams, then an infant, the only child of the said John Williams, to obtain an assignment of the entries and surveys for the said four thousand acres of military land. As the bill filed in that suit contains a full statement of the contract, with a description of the land it claims, the plaintiff prays that it may be taken as a part of the present bill, as fully as if literally inserted. On the 23d of May 1803, a decree was pronounced in the said suit, which, among other things, directed a certain John B. Scott, the then guardian of the said John R. Williams, to assign the entries and surveys of the said military lands to the said George Carrington, so as to enable him to obtain patents therefor in his own name ; and did further order that the said John R. Williams should, on attaining his age of twenty-one-years, release all his right to the said George Carrington. The plaintiff prays that this decree and all the proceedings in the suit may be taken as a part of his bill. The assignments directed by the decree were made by the said John B. Scott, but George Carrington departed this life soon afterwards, not having obtained the patents. By his last will, he devised these lands to the plaintiff, who has applied for patents, but is informed at the land-office, that the assignment of the said Scott does not authorize the register of the land-office in Kentucky to issue them. The said John R. Williams having attained his full age, not only refuses to release his claim and to assign the said entries and surveys, but has gone to Kentucky with a view of selling the said lands. The bill prays for an assignment of the entries and surveys, and a release of the right of the said John R. Williams, and that he may be enjoined from performing any act which may disable him from making a complete title to the plaintiff.

The defendant in his answer denies the contract, and adds, *that *100] if such a contract did exist, it was verbal, that no note or memorandum thereof was signed by either of the parties, and that it is void by the statute of frauds which he pleads. A general replication was filed, and depositions were taken, after which the following entry was made : "And now, at this day, to wit, at a court holden for the said county at the court-house thereof, on the 27th day of October 1817, came the parties, by their counsel, by whose consent this case was this day heard upon the bill, answer, examinations of witnesses, *the bill, answer, examinations of witnesses*, in a cause formerly depending in this court between George Carrington, plaintiff, and the defendant, by his guardian, defendant, and was argued by counsel ; on consideration whereof, it is decreed and ordered, that the defendant do forth-

with assign to the plaintiff, in a proper and legal manner, the surveys and other title papers in the original bill mentioned. The defendant having appealed from this decree, it was affirmed at a superior court of chancery, held at the town of Lynchburg, on the 19th day of May 1818."

In pursuance of these decrees, the said John R. Williams did, on the 18th day of March, in the year 1820, by his indenture of that date, convey to the plaintiff the military lands in the bill mentioned, consisting of one tract of 500 acres, lying on Beaver creek; also of one tract of 350 acres, likewise lying on Beaver creek; also of one other tract of 1000 acres, lying on Russel's creek; also of one other tract of 150 acres, lying on the first creek emptying into Little Barren; also of one other tract of 1000 acres, lying in the county of ———, being the tract of land entered by John Williams on the 2d of August 1784; and also of one other tract of land, containing 1000 acres, lying in the county of ———, entered on the 10th of August 1784.

The bill filed in this cause farther charges, that Samuel Brents, William Caldwell and Isaac Caldwell, citizens of the state of Kentucky, with full knowledge of the plaintiff's claims, entered into a contract, on or about the 6th day of January 1818, with the said John R. Williams, for the purchase of the two tracts of 1000 acres each, lying south of the Tennessee, for which entries had been made by the said John Williams, in his lifetime, on the 2d and 10th of August 1784; and that the said William *Caldwell, [*101] on the 30th of August 1815, with full knowledge of the right of the plaintiff, entered into a contract with the said John R. Williams, for the purchase of the tract of 1000 acres, near the town of Columbia, in the county of Adair; and that the said Samuel Brents also, with the full knowledge of the plaintiff's title, hath entered into a contract with the said John R. Williams, for the said tracts, containing 500 acres, and 350 acres, lying on Beaver creek, in the county of ———, and for the tract containing 150 acres lying on the first creek emptying into the Little Barren, in the county of ———. Under these contracts, and other papers obtained from the said John R. Williams, the said Samuel Brents, William Caldwell and Isaac Caldwell, who are made defendants, have obtained legal titles to the said military surveys, and have also obtained assignments or transfers of the entries for the two tracts of 1000 acres each, lying south of the Tennessee, for which they will obtain patents, unless restrained by order of this court. The bill prays that the defendants may be decreed to convey to the plaintiff, and for general relief.

The defendants filed separate answers, each denying the contract, insisting that if any contract existed, it was by parol, and consequently, void by the statute of frauds and claiming to be purchasers without notice of any equity in the plaintiff. The several defences are now to be examined.

The proceedings in the county court of Halifax, in the suit brought in 1815, are perfectly regular; and, according to the constitution and laws of the United States and the decisions of this court, are allowed the same full faith and credit in the courts of Kentucky, that they would receive in Virginia. If the decree pronounced by the court of Halifax in 1817, and afterwards affirmed in the superior court of chancery at Lynchburg, would have been enforced in Virginia; or if, had it been pronounced in Kentucky, it would have been enforced in Kentucky, then the decree for enforcing it

which was pronounced by the court of the United States sitting in Kentucky, is correct.

The first point to be considered is the contract itself. It is not in writing, and consequently, admits only of parol evidence. Paul Carrington, the father of George, deposes, that he owned a tract of land, in the county of Halifax, called Dry Branch, *102] *containing 596 acres, the whole of which, at the close of the revolutionary war, he gave to his son George, put him in possession, delivered the title papers, and directed him to prepare a deed. In 1787 or 1788, George requested the deponent to convey the land to John Williams, to whom he had sold it, in exchange for his military lands in Kentucky. Some little time afterwards, George requested the witness to convey the land to George Camp, to whom Williams had sold it. He conveyed to Camp. Some short time afterwards, Williams and George Carrington were both at the house of the deponent, when Williams stated, that he had purchased the land from George Carrington, and sold it to Camp for 400*l*. He has also frequently heard George Camp say, that he purchased the land from Williams for 400*l*. Has never heard Williams say he gave his military lands for the Dry Branch tract.

Clement Carrington has paid the taxes on the Kentucky military lands, on account of the estate of George Carrington, ever since they were taxed. Nathaniel Terry was acquainted with the Dry Creek tract, and has heard Williams say, he had given his western lands for it. He supposed Williams to have been in possession of the Dry Branch tract, but he never worked hands on it. Carrington did not work it, after the sale to Williams, farther than to finish his crop. James Eastham has frequently heard Colonel John Williams say, that he had given his lands in the western country to George Carrington, in exchange for the Dry Branch tract, which he afterwards sold to George Camp. William Yancy has heard John Williams say, that he purchased the Dry Branch tract from George Carrington, and had given his claims to land in the western country in payment for it. He has been frequently in company with the said John Williams, when this trade was the subject of conversation, and Williams always gave the same account of it. Williams sold the Dry Branch tract to George Camp. Thomas Roberts well recollects to have heard John Williams say, that he had exchanged his Kentucky lands with George Carrington for his Dry Branch tract. The depositions of William Yancy and Thomas Roberts were taken in the suit brought against the guardian of John R. Williams; *103] *but as they were filed with the bill of 1815, and read by consent at the hearing, they are supposed to form a part of the record in this cause. No counter-testimony was offered.

We think the exchange by John Williams of his military land for the Dry Branch tract is fully established, and proceed to inquire into the validity of the contract. The statute of frauds, of which the defendants claimed the benefit, avoids parol contracts for land, and will, unquestionably, avoid that between John Williams and George Carrington, unless the transactions between the parties take the case out of the statute. The appellees maintain the affirmative of this proposition, and contend, that the complete execution of the contract on the part of George Carrington, by conveying the Dry Branch tract to the vendee of John Williams, supplies, in law, the want of a memorandum in writing. For a considerable length of time,

this principle appeared to be firmly settled in the court of chancery in England. Maddock, in his Treatise on Chancery, vol. 1, p. 301, says, "if, therefore, it be clearly shown, what the agreement was, and that it has been partly performed, that is, that an act had been done, not a mere voluntary act, or merely introductory or ancillary to the agreement, but a part execution of the substance of the agreement, and which would not have been done, unless on account of the agreement, an act, in short, unequivocally referring to, and resulting from the agreement, and such that the party would suffer an injury amounting to fraud, by the refusal to execute that agreement; in such case, the agreement will be decreed to be specially performed. 2 Bro. C. C. 140; 1 Ibid. 412; 3 Atk. 4; 2 Anstr. 424; Ambl. 586; 1 Sch. & Lef. 41; 14 Ves. 386. This principle has been lately questioned in England, and some of the judges have thought, has been carried too far; but it has not, we believe, been overruled. It was, undoubtedly, supposed, in Virginia, to be the sound construction of the statute, when this contract was made; and as the land then lay in Virginia, Kentucky being then a part of that state, this construction forms the law of the contract. In affirming the decree of the 27th of October 1817, the chancellor said, "the court being of opinion, that this is not a case *embraced by the act against frauds and perjuries, doth adjudge, [*104 &c." A change of the law afterwards made in Kentucky, cannot affect contracts previously valid.

It remains to inquire, whether the appellants are to be considered as purchasers without notice of the equity set up by the appellees. The defendants do not deny notice, in those explicit terms which courts of equity require. They deny notice of a valid claim; but no such notice as ought to put them on inquiry. They are the joint purchasers of the two tracts of 1000 acres each, lying south of Tennessee river. They purchased these tracts from Williams, on the 6th of January 1818. The articles of that date recognise the claim of Carrigton's heirs, and contain a stipulation on the part of Williams, "to use due diligence in having it extinguished and quieted." William Caldwell purchased the tract of 1000 acres in the county of Adair, on the 30th day of August 1815. The contract of that date contains this stipulation: "and the said Williams agrees that the said Caldwell shall not be bound to pay any further part of the consideration aforesaid, except what is this day paid, until he, the said Williams, shall settle the dispute between himself and the heirs and representatives of George Carrington, deceased, concerning the title to the said land." A contract was entered into between Williams and Samuel Brents, on the 31st of August 1815, by which Brents engages for a part of the land, "to attend to the securement of the titles to the said lands," "according to the laws of the state, by surveying, registering and patenting the same, or by doing such other acts as may be necessary for the purposes aforesaid." He says, in his answer, that on the 12th of November 1816, patents issued to the said John R. Williams, for two tracts on Beaver creek, the one for 350 acres, and the other for 500 acres. The defendant agreed to take the tract of 350 acres, and 150 acres, part of the 500 acre tract, for his services. Afterwards, on the 5th of January 1818, he contracted for the residue of the two tracts, for which he received a conveyance, dated on the same day. The answer proceeds, "at the time of receiving the said conveyance, or at any

time *before, this respondent had no knowledge or information of any valid claim to said land, by any other person than the said John R. Williams. This respondent does not now recollect of hearing anything of the claim of the complainants, before his conveyance ; but had only heard that some verbal or illegal claim was set up, in some bill filed in some county court of Virginia ; of which verbal claim this respondent did not think himself bound to take notice." He does not recollect, that the claimant was named Carrington, but he does recollect having heard that a suit was instituted in one of the county courts in Virginia ; but as the contract was by parol, he did not think himself bound to notice it. Now, he knew, or might have known, that the suit was instituted in the county of Halifax, that being the residence of Williams, whose agent he was, and who was the defendant in the suit. He could have received full information from Williams himself, who never attempted to conceal the claim. His conveyance of the 2000 acres of his claim, lying south of the Tennessee river, dated the day after his conveyance to Brents, contains a stipulation respecting the claim of Carrington's heirs, showing plainly that the claim was previously well known to the parties. His deed to William Caldwell shows, that it was known as early as 1815. Isaac Caldwell's claim is limited to his third part of the 2000 acres south of the Tennessee, conveyed on the 6th of January 1818. In addition to the notice contained in the deed, he states in his answer, that he had seen the proceedings in the suit brought by Carrington against Williams, in which the decree of 1803 was pronounced ; had consulted eminent counsel on it, and had been advised that the title of Williams would prevail over that set up by Carrington. Under this advice, he purchased. The record contains other evidence, to which it is thought unnecessary to refer.

In addition to these unequivocal proofs that the appellants had received notice of the contract made by Carrington with John Williams, it is worthy of observation, that, with the exception of Brents, they purchased equitable titles, and were bound to notice any prior equity. It is too clear for controversy, that the plaintiffs placed full confidence in the protection furnished by the statute of frauds ; *and believed that the contract made between *106] Carrington and Williams, being by parol, was void, notwithstanding its full execution on the part of Carrington. There is no error in the decree of the circuit court, and it is affirmed, with costs.

This cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel : On consideration whereof, it is ordered, adjudged and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed, with costs.