and that the remedy can only be resorted to when the debtor himself could maintain debt or indebitatus assumpsit; and that the only issue which can be made upon an answer of the garnishee is, indebitatus vel non. The Supreme Court of Alabama have decided, in the cases cited, that merely equitable demands or rights of action, not involving a debt or assumpsit, are not the subject of the garnishee process. But the same court has determined that money or effects in the hands of the garnishee, which are fraudulently withdrawn from the creditors of a defendant, may be reached, in an attachment or judgment, by that process. Hazard *v.* Franklin, 2 Ala., 349; Lovely *v.* Caldwell, 4 Ala., 684, and the civil code of Alabama, sec. 2,523, provides explicitly for the attachment of a demand similar to that existing in this case.

Judgment affirmed.

JOHN BELL, PLAINTIFF IN ERROR, *v.* COLUMBUS C. HEARNE, SAMUEL R. HEARNE, AND SAMUEL H. DOCKERY.

The act of Congress of 1820 and regulations of the General Land Office of 1831 direct the manner in which purchases of public land shall be authenticated by the registers and receivers of the land offices.

Where the receiver gave a receipt in the name of John Bell, and the register made two certificates of purchase, one in the name of John Bell and the other in the name of James Bell, the circumstances of the case show that the latter was an error which was properly corrected by the Commissioner of the General Land Office in the exercise of his supervisory authority; and he had a right to do this, although a patent had been issued to James Bell, which had been reclaimed from the register's office, and returned to the General Land Office to be cancelled.

The Supreme Court of Louisiana having decided against the validity of the patent issued to John Bell, this court has jurisdiction under the twenty-fifth section of the judiciary act to review that judgment; and the ground of the decision of the State court sufficiently appears upon the record.

THIS case was brought up from the Supreme Court of the State of Louisiana, by a writ of error issued under the twenty-fifth section of the judiciary act.

The facts in the case are stated in the opinion of the court.

It was argued by *Mr. Baxter* and *Mr. Johnson* for the plaintiff in error, and by *Mr. Lawrence* and *Mr. Taylor* for the defendants.

The following notice of the points for the plaintiff in error is taken from the brief of *Mr. Baxter:*

I. John Bell was the purchaser of the land from the United States, and James Bell had no right or interest in it.

The receiver's receipt and his certificate prove the purchase was made by John Bell, and vested in him all the inchoate title which could be vested by the purchase.

It was the duty of the register to issue a certificate conforming to the receiver's receipt.

On this receipt, no certificate of purchase could lawfully be given to any other person than John Bell or his assignee; and an assignment, to be acted on by the officers of the land office, must be executed before the register, or a judge, or justice of the peace; must be preserved in the register's office until certificate granted, and must then be sent to the Department. And in the certificate to the assignee the name of the original purchaser must be inserted throughout, except in the last entry, preceding the words "shall be entitled." (See Circular to Registers of July 5, 1805, Land Laws, 2d vol., 257–'8; do. May 5, 1821, 307; do. May 29, 1820, 302; May 5, 1831, sec. 19, p. 446; sec. 32, pp. 451 and 466.)

No assignment by John Bell, the purchaser, to James Bell, exists, nor is it pretended any ever was made. The insertion of the name of James Bell in the register's certificate was a mere misnomer.

The cancellation of this certificate affords stringent evidence that this was a mere error, and it is confirmed by the fact that when the patent was demanded, John Bell held the certificates, on the production of which the patent was to issue.

II. James Bell having no right or interest in this land, the attempted sale under the execution of St. John Fabre & Co. against James Bell was a nullity, and created no estate, right, or interest, in the supposed purchaser, Smith, or those claiming under him, and gave to him or them no right to demand a patent, either to James Bell, or to them as assignees of James Bell.

Code of Louisiana, article 2,427: "The sale of a thing belonging to another person is null. It may give rise to damages, when the buyer knew not the thing belonged to another."

Under an execution, the interest of the debtor, only, in the property can be sold. The right of a stranger to the record and proceeding will not pass thereby.

III. James Bell having no title or interest in this land, and the pretended purchasers under the execution not having acquired any right or interest therein, John Bell was the only person who could be recognised by the United States as entitled to a patent, and the act of making a patent in the name of James Bell was an accident, which, if uncorrected, would defeat the contract of sale; but which, by the practice of the land office and the law of the land, might be corrected as long

as the patent was in the power of the land office. And if such erroneous patent had been delivered, it might be returned and cancelled; and if the holder refuses to deliver it up to be cancelled, the United States may institute proceedings to cancel it, or may authorize the party injured to institute such proceedings in the name of the United States. (See Putnam's Case, and Opinion of Mr. Wirt, 2 Land Laws, 27–'8; Opinion of Mr. Wirt, p. 24; Master's Case, pp. 32, 34; Opinion of Mr. Butler, 86–'7; Regulations, May 4 and 6, 1836, pp. 92–'3; Opinion of Mr. Butler, pp. 123–'4.)

For the common-law doctrines, reference is made to the 17th vol. Viner, p. 78, title Prerogative, letter (G *b* 2.)

The King's grant is void in five cases: 1st. When he is misinformed. 2d. Misrecital shall avoid it. 3d. If the King be deceived in matter of fact or matter of law. 4th. Want of form. 5th. When the thing granted is in the King, or comes to him in another manner than he supposes.

In Barwick's case, (5 Coke, 94,) it is said: "And it is a maxim, that if the consideration which is for the benefit of the Queen, be it executed or be it executory, or be it on record or not on record, be not true or be not duly performed, or if prejudice may accrue to the Queen, by reason of the non-performance of it, the letters-patent are void."

In the case of the Alton Woods, (1 Coke Rep., 51 *a*,) it held, if the King's grant cannot take effect, according to his intent, it is void.

2 Williams Saunders's Rep., p. 72 *q*, note 4 to Underhill *v.* Devereux, where a patent is granted to the prejudice of another's right, he may have a *scire facias* to repeal it at the King's suit, and the King is of right to permit the person prejudiced to use his name. (Dyer, 276 *b*; 3 Lev., 220; Sir Oliver Butler's Case, 2 Vent., 344.)

Bill in equity will lie to decree a patent to be delivered up and cancelled in a case of fraud, surprise, or gross irregularity in issuing it. (Attorney General *v.* Vernon, 1 Vernon's Rep., 277, 280, 281; Sawyer, Attorney General, *v.* Vernon, 1 Vernon's Rep., 370, 386 to 392.)

In this country, the proper proceeding is probably by bill in equity; but whether by *scire facias* or bill in equity, is only a question of form. In either case, the same results may be attained.

But the law forces no man to make a defence against conscience. A party who has wrongfully obtained a patent may surrender it to be cancelled. (Comyn's Digest, vol. 5, title Pat., letter [G,] p. 388.) "So, if a man surrenders his patent, and it be cancelled, and a note of it endorsed, and afterwards

the surrender enrolled, it shall be vacated by it." (Dy., 167 *a*; R. Dy., 179 *b*.)

In Grant *v.* Raymond, (6 Peters, 218,) this court held, that a patent for a useful invention might be surrendered, and a new patent issue. (See C. J. Marshall's Opinion, from page 240 to 244.)

In Shaw *v.* Cooper, (7 Peters, 292,) the same doctrine was held. Both cases were before the act of 1836.

In the case at bar, John Bell had, by his contract of purchase, the only rights which the United States could lawfully recognise and carry into patent. He applied for his patent. A patent in the name of James Bell was tendered to him. He returned it to the Land Office. According to the regulations of the Land Office and the common law, the Commissioner held the patent in the name of James Bell void, cancelled it, and issued a corrected patent in conformity with the contract of sale to John Bell.

The Supreme Court of Louisiana has adjudged this cancelled patent valid, and superior to the corrected patent; and the inquiry is, shall this judgment be reversed?

IV. The judgment of the Supreme Court of Louisiana in the case at bar adopts the decision of that court in Lott *v.* Prudhomme, (3 Rob., 294–'5–'6,) and applies it to this case, and carries it to the extent of declaring that the Commissioner of the Land Office has no right to cancel a patent which has passed the seal of the office; intimating the naked act of cancellation is a fraud, and holding that the jurisdiction of the Government of the United States over the subject is ended when the patent is sealed, and setting up the cancelled patent as superior to the corrected patent issued to pass the title of the United States.

1. We insist the Supreme Court of Louisiana erred in the proposition "that the question whether a patent which has issued from the Land Office of the United States may be annulled for mistake or fraud, is, so far as it concerns a citizen of Louisiana, to be solved by the laws of Louisiana."

a. The State of Louisiana has no laws which regulate the grant of the lands of the United States, and no officers who can grant these lands. Lands of the United States are granted by the officers of the United States, acting under the laws of the United States. All questions of the authority of those officers, and of the conformity of their proceedings to law, must be solved by the laws of the United States.

b. The United States has an interest in the sale of these lands as vendor, and may incur, by the misconduct of her officers, the responsibility of a defaulting vendor. There must

therefore be, in her jurisdiction as a Government, a power to correct the errors of her officers to her prejudice, and to the prejudice of persons contracting with her. And she is not denuded of this jurisdiction when the question whether a patent issued to her prejudice is to be solved.

c. In Wilcox *v.* Jackson, the court says, the question, whether the property has passed, is to be resolved by the laws of the United States.

But fraud, *laches*, accident, and mistake, may so defeat the intended contract of sale, that the patent may be void, and the title not pass by it. (Alton Wood's Case, 1 Coke, 44 *a*, *b*; Magdalen College Case, 11 Coke, 72.)

2. We insist, the proposition of the Supreme Court of Louisiana, that "the moment a patent has passed the great seal, it is beyond the power of the officers of the General Government," is erroneous.

a. This proposition seems to assume that the seal of the Land Office is analogous to the great seal of England.

In England, the King is the fountain of justice, of honor, of office, and of privilege; and the great seal is the emblem of his royal authority and dignity. The powers of the court of chancery flow from the great seal. (1 Strange, 157, 158.) And all grants of land, held by the King in right of his crown, are to be under the great seal. (Lane's Case, 2 Coke's Rep., 16.)

In the Land Office of the United States there is no seal analogous to the great seal. The public lands are not held *jure coronæ*, to be disposed of as matter of royal bounty, but are held in trust for the States; (Pollard *v.* Hagan, 3 Howard, 212;) and are to be disposed of to purchasers, by contracts of sale, under the laws of the United States.

In England there are many seals. (17 Viner, pp. 67 to 77.) If an analogy to some of the seals in England must be found, it will be best found in the case of Attorney General *v.* Vernon, (1 Vernon, 391.)

b. The effect of a patent sealed by the recorder, and the power of the Commissioner over it, must be ascertained from our Constitution and laws.

The Constitution makes it the duty of the President to take care that the laws are faithfully executed.

The act re-organizing the Land Office (1 L. Laws, 553) confers on the Commissioner, under the direction of the President, the executive powers and duties prescribed by law, and appertaining to the sale and survey of the public lands, and the issuing of all patents for grants. Section 1, sect. 4, makes it the duty of the recorder, in pursuance of instructions from the

Commissioner, to affix and certify the seal of the Land Office, to attend to the correct engrossing and transmission of patents.

The act of the recorder is a ministerial act. The system of disposing of our public lands is a system of bargain and sale. The contract is made by the purchase from the receiver; and all the steps subsequently taken in the Land Office are merely to insure to the purchaser a title to the land for which he has paid.

These proceedings are all to be taken under the executive discretion of the Commissioner, acting under the direction of the President; and there must be such enlarged discretion as will protect the purchaser from accident or errors occurring in the office.

The purchaser, standing in the relation of vendee, has the right to see that the title made out for him conveys the thing purchased. He cannot be compelled to accept a patent which does not give him the land which he has bought and paid for.

From these relations of contracting parties it follows that the title is consummated by the delivery and acceptance of the patent. (Bagnell *v.* Broderick, 13 Peters, 450.)

There cannot be, by any fancied analogies of the English law, a magic in the errors or even misconduct of any clerk or ministerial officer through whose hands the title may pass, which will defeat the rights of the purchaser, or prevent the President from exercising his duty of seeing that the laws are faithfully executed.

We contend, then, that the practice of receiving back and cancelling patents which fail, from accident or mistake, to effect the designed sale, is legal; and the act of cancellation by the Commissioner in this case was a lawful act.

The judgment of the Supreme Court of Louisiana, setting up the cancelled patent, is erroneous, and should be reversed.

Mr. Lawrence for defendants in error.

It appears from the record, that on the 3d of July, 1839, a certificate of purchase was issued by the register of the land office at Natchitoches, in the name of James Bell, the brother of the plaintiff in error, which certificate was transmitted by the register to the General Land Office at Washington, and upon this certificate a patent was issued to James Bell on the 10th of July, 1844, and was transmitted to the register at Natchitoches for delivery, where it remained until 1849, when it was delivered to the agent of Mr. John Bell, and by the latter was filed in the General Land Office in 1850, to be cancelled; and a patent issued in *his* name, upon a duplicate certificate and receiver's receipt, in his possession and in his name.

In the mean time, the land had been sold under execution, as the land of James Bell, and had come by *mesne* conveyances to the defendants in error.

I maintain that the Commissioner had no right to cancel a patent which had passed the seal, and been transmitted for delivery. It is not pretended that there is any statutory authority giving him this power. On the contrary, like all other officers of the General Government, having only so much power as is expressly conferred, and this power of cancelling being neither expressed nor necessarily implied, he could not be invested with this authority, unless, upon general principles of law, it would be incident to his office.

But we find that, upon the principles of the common law, both in this country and in England, it has been constantly held that a patent which has passed the great seal can only be vacated by a *scire facias*, or bill in equity. In England, where letters patent are of record in the chancery, a *scire facias* would be proper, but here we should resort to a bill in equity. In the case of Jackson *v.* Lawton, (10 Johns., 24,) Chief Justice Kent, after a most elaborate examination of the authorities, both in England and this country, held, that a patent issued by mistake could not be avoided, except by *scire facias*, or bill in equity, or some equivalent proceeding. And this case has ever since been the leading authority on the subject. In Maryland, it was held that so long as a grant remained *unrepealed by chancery*, it must prevail at law against a younger grant. (2 H. and M., 141.)

Now, the practice of the Department has been in accordance with these principles, and this case of Jackson *v.* Lawton has been acted on again and again. The Department has even refused to issue a second patent when another patent, issued by mistake, has been unrepealed. (See the opinions of Attorneys General Berrien and Legaré.) I conclude, then, that there is no statutory provision giving the power to the Commissioner; that the decisions at common law and the practice of the Department are against it.

But even if the Commissioner had the naked power to cancel a patent issued by mistake, he could not do it to the injury of those who had purchased for valuable consideration, without notice. And the very possibility that there might be purchasers *bona fide*, without any notice of the mistake, illustrates the propriety of a bill in equity for the vacating of the patent. And no court of equity would vacate a patent, as against innocent purchasers, although it should be made manifest that it had issued by mistake. Yet this monstrous power is claimed for the Commissioner of the Land Office, that by the mere sweep

of his pen, upon *ex parte* testimony, without any notice to others in interest, and without any record of his reasons, he may cut off, without a hearing and without a remedy, persons who have bought and paid for lands standing upon the records of his own office in the name of him whose title they have purchased. This very case illustrates the enormity of this pretension. Here were parties in possession of land which had been conveyed through several persons to them, and which was originally sold as the property of James Bell, (who had, by the way, pointed it out as his,) and in whose name it stood upon the records of the Land Office. Now, if the Commissioner, in the retired apartment of his office, could, without any notice to these parties, cancel this patent, *as to them*, so that they could not prove its former existence as a legal title under which they had innocently purchased and gone into possession, but should be met with the suggestion that such patent had been cancelled, and was *therefore* of no legal effect, why, then, without any fault of their own, they could, without a hearing, be deprived of what they had *bona fide* bought, and were in the actual possession of, by the mere *sic jubet* of the Commissioner.

Mr. Justice CAMPBELL delivered the opinion of the court.

This is a writ of error to the Supreme Court of Louisiana, under the 25th section of the judiciary act of September, 1789.

The plaintiff commenced a petitory action in the District Court of Caddo parish, Louisiana, for a parcel of land in the possession of the defendants. He claims the land by a purchase from the United States, and exhibits their patent for it, bearing date in June, 1850, with his petition. The defendant (Hearne) appeared to the action, and answered that the United States had sold the land to James Bell, and as the property of James Bell it had been legally sold by the sheriff of Caddo, under a valid judgment and execution against him, and that a person under whom he (Hearne) derives his title was the purchaser at the sheriff's sale. A number of parties were cited in warranty, and answered to the same effect. A judgment was given for the defendants in the District and Supreme Courts; and upon the judgment in the last, the plaintiff prosecutes this writ of error.

The title of the plaintiff consists of the duplicate receipts of the receiver of the land office at Natchitoches, Louisiana, (No. 1,270,) dated in July, 1839, by which he acknowledges the receipt, from the plaintiff, of full payment for the lands described in the receipt and petition; a patent certificate, of the same date and number, from the register of that office, certifying

the purchase of the plaintiff, and his right to a patent; and a patent, issued in due form, for the said lands, in pursuance of the act of Congress and the patent certificate.

The case of the defendants originates in these facts: The register of the land office at Natchitoches, in making up his duplicate certificate of purchase, to be returned to the General Land Office, inserted the name of James Bell for that of John Bell. That certificate was sent to the General Land Office, with the monthly returns of the register, and in July, 1844, a patent was issued in the name of James Bell, and sent to the register at Natchitoches, who retained it in his office till 1849. In 1849, John Bell sent to the office of the register his duplicate receipts, and the patent in the name of James Bell was delivered to him. Upon a representation of the facts to the Commissioner of the General Land Office, this patent was cancelled, and a new one issued to the plaintiff.

It appears, from the proof in the case, that the plaintiff had a brother, named James Bell, who was his agent for making the entry, and that the land was sold in March, 1844, as his property, by the sheriff of Caddo, as is stated in the answers of the defendants.

The act of Congress of the 24th April, 1820, providing for the sales of the public lands of the United States, enacts, "That the purchaser at private sale shall produce to the register of the land office a receipt of the Treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase money on any tract, before he shall enter the same at the land office." At various times, since the passage of the act, the *modes* of conducting sales at the different land offices of the United States have been prescribed by the Commissioner, and the evidence to be afforded to the purchaser designated. The circular issued in 1831 contains the instructions under which the local officers were acting at the date of this entry. The instructions pertinent to this case are, that "when an individual applies to purchase a tract of land, he is required to file an application in writing therefor; on such application the register endorses his certificate, showing that the land is vacant and subject to entry, which certificate the applicant carries to the receiver, and is evidence on which the receiver permits payment to be made, and issues his receipt therefor; the duplicate of this is handed to the purchaser, as evidence of payment; and which should be surrendered when a patent, forwarded from the General Land Office, is delivered to him. The other receipt is handed to the register, who must immediately indicate the sale on his township plat, and enter the same on his tract book, and is trans-

mitted to the General Land Office with the monthly abstract of sales and certificates of purchase."

The certificates of purchase are made according to forms furnished by the General Land Office. One is issued to the purchaser, and another is retained, to be sent to the Commissioner. They should be duplicates; and the instructions to the register in regard to them are, "that the designation of the tract, in the certificates of purchases, is always to be in writing, not in figures. The certificates are to be filled up in a plain, legible hand, and great care is to be taken in spelling the names of the purchasers. The monthly return must always be accompanied by the receiver's receipts and register's certificates of purchase." From this statement of the act of Congress and the regulations of the Land Office, it will be seen that the embarrassment in which this title is involved proceeds from an error committed by the register at Natchitoches in making up the duplicates of his certificate of purchase—the duplicate intended for the General Land Office—and from which the monthly abstract was prepared.

The plaintiff was nowise responsible for this. He had paid his money into the receiver's office, and obtained the receipt prescribed by the act of Congress of 1820, before cited.

He had obtained his certificate of purchase, evincing his title to a patent certificate. At this stage of the proceeding, the register of the land office, in completing his office papers, and in making up his returns for Washington city, committed a mistake, which was not detected by the officers at Natchitoches in comparing their returns, (as they are ordered to do,) and eluded the vigilance of the officers at Washington. It was discovered at Natchitoches, when an agent of the plaintiff applied for the patent, and surrendered his duplicate receipt and certificate.

It was then discovered that the christian name of the plaintiff had been inaccurately set out in the returns at Washington and the patent. The Supreme Court of Louisiana say: "It appears, from the evidence, that the plaintiff and his brother James Bell purchased the land in dispute from the United States on the same day—3d July, 1839—and that the patent certificates were issued in their respective names by the register of the land office at Natchitoches, Louisiana, bearing the same number."

We interpret the papers from the land office differently from the Supreme Court. There is no evidence, in our opinion, of more than one sale—that evinced by the receiver's receipt—and, in that receipt, John Bell, the plaintiff, is named as the purchaser. We think there was but one certificate of pur-

chase issued to a purchaser—that in favor of John Bell. The certificate of purchase which contains the name of James Bell is found in the General Land Office. If that was intended for a James Bell, there should have been another for John Bell. But there is only a single certificate there, and the conclusion is irresistible, that the name *James* was entered by mistake for *John*. We find no evidence in the record to show that James Bell held any evidence of a purchase.

Whatever appearance of a title he had, is owing to the mistake in the duplicate certificate returned to the General Land Office, and the patent issued in his name. But this patent was never delivered to him. The question then arises, had the Commissioner of the General Land Office authority to receive from John Bell the patent erroneously issued in the name of James Bell, and to issue one in the proper name of the purchaser? And the question, in our opinion, is exceedingly clear. The Commissioner of the General Land Office exercises a general superintendence over the subordinate officers of his department, and is clothed with liberal powers of control, to be exercised for the purposes of justice, and to prevent the consequences of inadvertence, irregularity, mistake, and fraud, in the important and extensive operations of that officer for the disposal of the public domain. The power exercised in this case is a power to correct a clerical mistake, the existence of which is shown plainly by the record, and is a necessary power in the administration of every department. Our conclusion is, that the Supreme Court of Louisiana erred in denying the validity of this title, and in conceding any effect or operation to the certificate of purchase or patent issued in the name of James Bell, as vesting a title in a person bearing that name.

It is objected that this court has no jurisdiction over this judgment of the Supreme Court of Louisiana.

The plaintiff claimed the land described in his petition, under a purchase made from the United States, and produced muniments of title issued by their authority, and this title is pronounced to be inoperative by the District and Supreme Courts of Louisiana.

Does this appear by the record before us? The record in the Supreme Court of Louisiana purports to be a true and faithful transcript of the documents filed, orders made, proceedings had, and evidence adduced, on the trial in the District Court. The Supreme Court possesses the right, and is under the obligation of examining questions of fact as well as of law, and to state the reasons of their judgment. The statement of the evidence adduced is taken as an equivalent for a state-

ment of the facts by the district judge in the practice of that court. It clearly appears that the ground upon which the judgment in the Supreme Court was given was the invalidity of the title of the plaintiff, because an older patent had been issued in favor of James Bell. We think this court has jurisdiction. (Armstrong *v.* Treasurer, &c., 16 Pet., 261; Grand Gulf R. R. and B. Co. *v.* Marshall, 12 How., 165; Almonester *v.* Kenton, 9 H., 1.)

Judgment reversed. Cause remanded.

THOMAS RICHARDSON, PLAINTIFF IN ERROR, *v.* THE CITY OF BOSTON.

In Massachusetts, a former verdict and judgment in an action on the case for a nuisance is not conclusive evidence of the plaintiff's right to recover in a subsequent action for the continuance of the same nuisance.

The plea of the general issue in actions of trespass or case does not necessarily put the title in issue.

But the former verdict, though not conclusive, is permitted to go to the jury as prima facie or persuasive evidence.

Where there is some evidence tending to establish a fact in issue, the jury must judge of its sufficiency.

It is the duty of the court to construe written documents, but the application of their provisions to external objects is the peculiar province of the jury.

[MR. JUSTICE CURTIS, HAVING BEEN OF COUNSEL, DID NOT SIT IN THIS CAUSE.]

THIS case was brought up, by writ of error, from the Circuit Court of the United States for the district of Rhode Island, to which it had been removed from the district of Massachusetts.

It was an action of trespass on the case brought by Richardson against the city of Boston, for the continuance of a nuisance which is described in the case of the city of Boston *v.* Lecraw, (17 Howard, 426.) He was the owner of two wharves between which the drain in question was erected, whereby the access to his wharves by boats or vessels was very materially interrupted. The case was tried at June term, 1855, and resulted in a judgment for the defendants. The bill of exceptions taken by the counsel of Richardson will be mentioned hereafter.

As one of the important questions in the case was, whether or not the record of a former case between the same parties could be given in evidence, it is proper to see what that record was.

At June term, 1853, a case was tried between the same parties, having also been removed from the district of Massachusetts to Rhode Island. The opinion of the district judge