JOHN M. WALKER, APPELLANT, *v.* JONATHAN B. H. SMITH.

By an act of Congress, passed on the 3d of March, 1835, (4 Stat. at L., 771,) a certain quantity of land was appropriated to the satisfaction of Virginia military land warrants, with a proviso that if the land was not enough to satisfy the warrants, a distribution should be made *pro rata*, in full satisfaction of the warrants. Under it a dividend of ninety per cent. was made.

In 1852 (10 Stat. at L., 143) another act was passed, providing for the deficiency of ten per cent., and directing the Secretary of the Interior to issue land scrip in favor of the "present proprietors" of any warrant thus surrendered.

A bill in chancery for an injunction to prevent the Secretary from issuing the scrip to one of two claimants cannot be sustained. The Secretary must decide, and then it becomes a chose in action, upon which a court can act.

Moreover, in this case the complainant has not made out such a case as to entitle him to relief.

THIS was an appeal from the Circuit Court of the United States for the District of Columbia.

The facts are stated in the opinion of the court.

It was argued by *Mr. Chilton* and *Mr. Davidge* for the appellant, and by *Mr. Carlisle* for the defendant, on a brief by *Mr. Badger* and *Mr. Carlisle.*

Mr. Justice GRIER delivered the opinion of the court.

The purpose of this bill is to obtain an injunction to prevent the issuing of certain scrip to appellee by the Land Office, and to have cancelled the assignment under which the appellee had, by the officers of Government, been adjudged entitled to the scrip.

This bill was properly dismissed by the court below, as a brief statement of the case will show. The act of Congress of 3d March, 1835, made a further and apparently final appropriation of six hundred and fifty thousand acres, to be applied to the satisfaction of Virginia military land warrants. It provided that "no scrip should be issued thereon until the 1st of September following, and that warrants should be received in the General Land Office till that day; and immediately thereafter, if the amount filed exceeded six hundred and fifty thousand

acres, the Commissioner of the Land Office should apportion the said six hundred and fifty thousand among the warrants which shall then be on file, *in full satisfaction thereof.*"

This appropriation was sufficient to pay ninety per cent. of the warrants received.

William S. Scott, as attorney for the heirs of General Charles Lee, filed a warrant in their names for fifteen thousand acres; which was surrendered and satisfied by the issue of land scrip for thirteen thousand five hundred acres, being ten per cent., or one thousand five hundred acres less than the whole amount called for on the face of the warrants.

The warrants were therefore fully satisfied; and, being surrendered, were no longer evidence of any right of property. But it seems that, notwithstanding this surrender and satisfaction, there was a sort of lingering hope or expectation that some time hereafter, Congress, by continued importunity, might be prevailed upon to make some further grant of land to satisfy the shadow of equity which was supposed to remain, after the warrantees had surrendered their warrants and accepted the satisfaction tendered.

On the 30th March, 1837, Scott signed an instrument in form of a power of attorney, which, after reciting that he had sold to Walker, the complainant, the warrants, and delivered him the scrip issued in lieu thereof, stated as follows: "Now, the object of this power of attorney is to secure the said Walker the said ten per cent. of warrants unsatisfied, or any and every equivalent that may be at any time given in lieu thereof," &c.

On the 18th of January, 1838, Scott conveys by indenture, in consideration of seven hundred and fifty dollars, and with warranty, the Lee warrants, on which he alleges there is "still due one thousand five hundred acres" to defendant. At this time the records of the Land Office contained no evidence of the prior assignment (if such it can be called) to Walker; and a clerk in the office endorsed on the respondent's deed as follows: "William S. Scott, the party grantor of the within, has full authority on file to sell the warrants and appoint a substitute; and in the event Congress makes up the *ten per cent.*, the scrip to be issued will be delivered to Mr. Smith."

Thus the matter stood for fourteen years, when at length, on the 31st of August, 1852, Congress passed an act, which authorized an issue of land scrip in favor of the *present proprietors* of any outstanding military land warrants, &c. This scrip is to be issued by the Secretary of the Interior, who is to make the necessary inquiries, and "be satisfied by a revision of the proof, or by additional testimony," &c.

It seems that this act has been construed to include not only unsatisfied warrants, but the ten per cent. not given on the satisfied and surrendered warrants. It is a liberal construction of the statute, and so far as it extends to the scrip in question, it is a simple gratuity. The Secretary is made the agent for its distribution. It is his duty to ascertain the parties *entitled* to it, if any person can be said to have a title to a gift before it is received. When he issues the scrip, it then becomes a "chose in action," capable of being dealt with as property by courts of justice, but not till then. The question, as to who may be considered as the "*present proprietor*" of these surrendered and satisfied warrants, must be decided by him in the first instance by the rules, customs, and practice of the Land Office. Before the act of Congress, this right was too subtle (being no more than the remote expectation of a gift) to be dealt with by courts, and the act of Congress has not conferred on them the distribution of their bounty. Besides, if an injunction was issued to hinder the defendant from receiving the scrip which the Land Office has concluded to give him, this would confer no title on the complainant.

Whether, after the Land Office have issued the scrip to a claimant, another person alleging fraud or misrepresentation, and claiming himself to be the "proprietor" intended by the act, might not obtain the interference of the courts, to obtain a transfer of the scrip to himself, is a question not presented in this case.

But assuming that the court would undertake to decide as to the respective right of these claimants, treating their claims as tangible equities, the complainant has not made out such a case as would entitle him to relief. His power of attorney (or whatever it may be called) mentions no consideration paid.

The answer of defendants, which is responsive to the bill, (which avers a purchase at market price,) denies the payment of any consideration whatever, and none has been proved. The defendant has paid a large and valuable consideration without any notice of the plaintiff's claim, has made his proofs, has had the decision of the Land Office in his favor. He has obtained an advantage of which a court of equity will not deprive him under the circumstances.

The judgment of the court below is affirmed with cost.

HIRAM BARBER, APPELLANT, *v.* HULDAH A. BARBER, BY HER NEXT FRIEND, GEORGE CRONKHITE.

This court disclaims altogether any jurisdiction in the courts of the United States upon the subject of divorce or for the allowance of alimony, either as an original proceeding in chancery, or as an incident to a divorce *a vinculo*, or to one from bed and board.

But where a court of competent jurisdiction in New York decreed a divorce *a mensa et thoro* between man and wife, allowing alimony to the latter, and the husband removed to Wisconsin for the purpose of placing himself beyond the jurisdiction of the court which could enforce it, without having paid any part of the alimony, or leaving any estate of any kind out of which it could be paid, the wife can sue by her next friend in a court of the United States, having equity jurisdiction, to recover the amount of alimony decreed by the State court.

A divorce *a vinculo*, obtained in Wisconsin without a disclosure of the circumstances of the divorce case in New York, and upon the allegation by the husband that the wife had wilfully abandoned him, cannot release the husband there and everywhere else from his liability to the decree made against him in New York, upon that decree being carried into judgment in a court of another State of this Union or in a court of the United States, where the defendant may be found, or where he may have acquired a new domicil, differing from that which he had in New York when the decree was made there against him.

The cases in England and in the United States examined, in which a wife may sue her husband by her next friend.

A court of chancery in England will interfere to compel the payment of alimony which has been decreed to a wife by the ecclesiastical court, and the principal reason for its exercise is equally applicable to courts of equity in the United States. The parties to a cause for a divorce and for alimony are as much bound by a decree for both, which has been given by one of our State courts