42D CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { MIS. DOC. No. 14.

HEIRS OF BENJAMIN W. LADD.

PETITION, PAPERS, AND STATEMENT OF FACTS,

IN THE CASE OF

THE HEIRS OF BENJAMIN W. LADD.

MARCH 17, 1871.—Referred to the Committee on Public Lands and ordered to be printed.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled:

Your petitioners, loyal citizens of the United States, and residents of the State of Iowa, the State of Illinois, the State of Maryland, and city of New York, respectfully represent to your honorable bodies that they are the children and legal representatives of Benjamin W. Ladd, deceased, who, at the time of his death, was a citizen of the State of Ohio and a resident of Jefferson County; that on or about the 31st of October, 1810, the said Benjamin W. Ladd, acting for himself, and for Joseph Ladd and Thomas Norville, entered into a contract with Duncan McArthur, of the State of Ohio, to locate and survey for them certain Virginia military land warrants, amounting to 15,760⅔ acres, (see copies of surveys herewith, Exhibit A,) in the Virginia military district, in the State of Ohio, the reservation set apart by the State of Virginia, for the satisfaction of the Virginia military warrants, issued by that State, on account of the military services of her officers and soldiers, serving on continental establishment during the revolutionary war, and which reservation was recognized by the Government of the United States, for the exclusive purpose for which the reservation was made, when the Northwest Territory was ceded by the State of Virginia to the United States, as per act of June 9, 1794.

The land reserved for the purposes stated was that situated between the Little Miami and Scioto Rivers, northwest of the river Ohio, and south of the Greenville treaty line, as per map herewith presented, (Exhibit B,) and the right to all the land embraced therein was regarded by virtue of the cession to the United States on the 20th day of October, 1783, and, by the acceptance of the conditions imposed by the State of Virginia, as subject alone to the location of Virginia military warrants.

The United States, a short time after the cession, and for the purpose of having the limits of the Virginia military district clearly defined, passed an act for the appointment of commissioners, on the part of the United States and the State of Virginia, to make the requisite survey of the western boundary, following the Scioto River from its mouth to its head, and from thence, by proper lines, to the termination of the northern limits of the district to its intersection with the Greenville treaty line. (See map Exhibit B herewith.)

The commissioners so authorized commenced the survey under the direction of a Mr. Ludlow, surveyor, but before the completion of the survey they were compelled to abandon their work on account of the incursions of the Indians, and no further action was taken to complete the same.

The commissioners from the State of Virginia, owing to the fact that the commissioners on the part of the United States proposed running an imaginary line from the point where they discontinued the work, so as to intersect the Greenville treaty line on the north, making such line the western limit of the Virginia military district, protested against such act, as being in conflict with the rights of the commonwealth and the terms of the cession, and refused to recognize such line designated as "Ludlow's," contending that it should have run further west, and which action on their part was approved by the commonwealth of Virginia. Consequently the true western limit was never determined until 1812, when commissioners were again appointed, and a true line run under the supervision of Mr. Roberts, (see Exhibit B,) and which was recognized and adopted by the United States and the State of Virginia as the western limit of said reservation, and the legal right of Virginia and those claiming under her by virtue of the military warrants issued to her officers and soldiers, to appropriate by location every acre of land lying between Ludlow's and Roberts's lines, was fully recognized by the Supreme Court of the States in the case of Reynolds *vs.* McArthur, January term, 1829. (2 Peters, 417.)

The father of your petitioners having a legal right to locate his warrants west of the said Ludlow's line, contracted as stated with the said Duncan McArthur to make the requisite locations and surveys, stipulating to pay him one-fifth of the land so located.

After the surveys were made conformably to law, application was made for the issue of patents, but upon the question being raised as to the right of your petitioners' father to locate his said warrants west of the line run by Ludlow, the General Land Office, without authority of law, although having previously recognized and patented corresponding surveys, refused to recognize them, although the legal title in and to the land embraced therein absolutely vested in the State of Virginia, and was subject alone to appropriation by such warrants, agreeably to the cession and its acceptance by the United States.

The father of your petitioners being thus denied the patents to which he was legally entitled, and conscious of the injustice done him, as the Government by solemn enactment recognized the fact that the land embraced in said district was simply held in trust for the benefit of the officers and soldiers of Virginia, or their legal representatives, and therefore had no other control or authority over the same, save that expressed in the cession from the State of Virginia, applied to Congress asking relief by the recognition of his surveys. No final action was taken, and after repeated attempts both before Congress and the Department, covering a period of more than seven years, in striving to obtain a recognition of his legal rights, he was compelled by the action of the Government to withdraw his locations and sell the warrants at a great sacrifice, realizing but $1 per acre instead of $6 per acre, had the land as surveyed for him by Duncan McArthur been carried into patent.

The father of your petitioners was forced, by circumstances induced by the arbitrary act of the Government in denying to him the possession of the lands, to pursue the course he did, after petitioning and patiently awaiting the action of the Government for more than seven years, to withdraw his surveys and sell the warrants.

He never voluntarily relinquished his right acquired by virtue of his surveys, but the Government refusing to recognize his right and having sold a portion of the land embraced therein as Government land, and as the parties who were in possession were poor men and having made valuable improvements on the same, and he, in preference to invoking the aid of the courts, which would have maintained the validity of the locations in question, bowed in submission to the injustice done him and suffered the sacrifice.

Belonging to the sect of Quakers, he conscientiously believed that it was better to bear suffering than to inflict it upon others, and therefore shunned litigation which would have resulted to his own pecuniary advantage, but to the detriment of the Government and the parties in possession of the land which had been illegally sold to them by the United States, as the Government would have been liable to the occupants for the increased value of their lands and improvements, and they would have been forced to abandon their improved farms and seek other and new locations.

Such were the motives actuating the father of your petitioners in relinquishing the land, which absolutely vested in him pursuant to law, for at the date of these locations by virtue of the right acquired from the Commonwealth of Virginia, and which was recognized by the Government in the acceptance of the cession of the Northwest Territory with all the conditions imposed, all the lands embraced in the reservation between the Little Miami and Scioto Rivers were to be set apart and applied exclusively to the location of Virginia military warrants.

The legality of "Roberts's" line, as the western boundary of this reservation, and the consequent illegality of the United States in disposing of any portion of the same as Government land, was fully recognized by Congress in the passage of an act fixing that line as the western boundary on the 24th of May, 1824, and in making provision for the valuation of the land sold by the Government, between Ludlow's and Roberts's lines, and upon which Virginia military warrants had been located, looking to the purchase of such locations and surveys so as to quiet the title of the parties in possession claiming under title from the United States.

Commissioners were appointed who made the valuation, fixing the average at $6 per acre, and, upon that basis, Duncan McArthur *et al.*, whose surveys were west of Ludlow's line, and which corresponded to those made by the father of your petitioners, although junior in date, were paid by the United States, (see Exhibit C, for copy of report of Congress, report of commissioners, correspondence of the Commissioner of the General Land Office upon the subject, and the decision of the Supreme Court of "Reynolds *vs.* Duncan McArthur,") in which the validity of every location made between Ludlow's and Roberts's lines is fully recognized as binding upon the United States.

The petitioners therefore claim that, as the Government of the United States has fully admitted the illegality of its acts in denying to their father the enjoyment of the legal right vesting in him, and paying to others the value of lands corresponding to those located by him, good faith and equity demand that indemnity should be made his representatives for the injury so arbitrarily inflicted upon him through the action of the Government, for, in addition to the loss of his lands by such illegal act, he was compelled to pay to Duncan McArthur, who located his warrants and surveyed the land, the sum of $19,824 16, which, with the costs, amounted to upward of $22,000, being the judgment obtained against their father by the said McArthur in a suit instituted by him on

the 4th of June, 1827, in the court of common pleas of Jefferson County, Ohio, and decided in his favor at the October term, 1835, of the superior court of Jefferson County, Ohio, which suit was for the purpose of recovering from their father the one-fifth value of the lands so located and surveyed by him on or about the —— of ———, 1810, and which claim was asserted after the decision of the supreme court referred to, recognizing the legality of all surveys made west of Ludlow's and east of Roberts's lines, he alleging that the locations and surveys, as made by him for their father, were regular and valid, and that, as he performed the service agreeably to the terms of the contract, he was legally entitled to one-fifth of the valuation of such lands; that, as the surveys should have been patented by the Government, he was therefore entitled to one-fifth of the same, as specified in the contract entered into between them; but, as he could not recover the land, he sued for its value, and judgment was rendered accordingly. (See Exhibit D herewith, being a certified copy of the proceedings and judgment of the said court.)

The payment of this large sum, resulting from the injustice and illegal act of the Government in persistently refusing to recognize his surveys, and for which he should not have been held responsible, resulted in most serious embarrassment to their father, subjecting him to heavy losses in making the payment, and from which he never entirely recovered, he never receiving from any source one cent of the sum he was thus compelled to pay. As this injury and suffering was inflicted upon their father, entirely through the acts of the Government, and which he could not avoid, they therefore pray that your honorable bodies will extend to them such relief as good faith and equity demand.

In further support of their petition they submit for the consideration of your honorable bodies a statement of facts, together with other papers, marked Exhibit E, which presents more or less a full history of the subject-matter herein referred to.

Trusting that the relief which they believe they are so justly entitled to will be extended to them, your petitioners, in duty bound, will ever pray.

JOSEPH JONES.
ELIZABETH LADD.
LYDIA L. GIFFORD.
JAMES D. COOK.
WM. H. LADD.
JAMES D. LADD.
ISABELLA L. JONES.
ELIZABETH L. KENLY.
WM. A. COOK.
THOMAS W. LADD.
BENJAMIN LADD.
HANNAH LADD.
BENJAMIN L. COOK.
GEORGE D. COOK.
By P. F. WILSON,
Attorney for the heirs of Benjamin W. Ladd.

EXHIBIT A.

SURVEYS.

Surveyed for Abraham Bowman 600 acres of land, on part of a military warrant No. 5,867, on Stony Creek or McKee's Creek, beginning at a lying-down black oak and a

hickory stump, southwesterly corner to Byrd Prewett's survey, No. 5,045, for one hundred acres running S. 20 E. 50 poles; crossing a spring branch at two poles, to three white oaks, northeast corner to said Bowman's survey, No. 6,928; thence S. 70 W. 260 poles, with the line of said survey, crossing the creek at 80 poles, Gunn's spring branch at 159 poles, to three white oaks, on the southeast side of a small prairie; thence N. 20 W. 370 poles to three white oaks, about 15 poles east of a wet prairie; thence N. 70 E. 260 poles, crossing a small pond at 24, and one at 256 poles, to a hickory, white oak, red oak, and small black walnut; thence south 20 E. 320 poles, crossing the creek at 244 poles, to the beginning.

DUNCAN M'AUTHUR, D. S.
November 21, 1810, *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, JR.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey, No. 6,929, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph Hite, Joseph and Benjamin W. Ladd, and Thomas Norvell, assignees, 6,666⅔ acres of land, on a military warrant, viz: Hite, No. 5,805, for 2,666⅔ acres; Ladd and Norvell, 4,000 acres, on part of warrant 5,880, on the waters of Bohongelin's Creek and Cherokeeman's Run, eastern branch of the Big Miami; beginning at a hickory and four sugar trees, near a branch, northeasterly corner to Abraham Bowman's and Joseph and Benjamin W. Ladd and Thomas Norvell's survey, Nos. 6,930 and 6,931, running S. 70 W. 840 poles, crossing a small branch at 167, one at 310, passing the northwesterly corner of said Ladd's survey, 6,930 and 6,931, at 368, and crossing a wet prairie to two honey-locusts, an elm, and hickory; thence N. 15 W. 1,460 poles, crossing several branches to a stake in the Indian boundary line; thence with said line N. 80 E. 725 poles, crossing several branches to an elm marked N. 20 W. 41¼; thence S. 20 E. 1,320 poles, crossing several branches, to the beginning.

DUNCAN McAUTHUR, D. S.
November 20, 1810; *November* 22, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the foregoing survey, No. 6,932 and 6,933, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, 740 acres, on four military warrants, Nos. 5,723, 5,725, 5,620, 5,623, and 40 acres on part No. 5,633, on the waters of Mad River, beginning at a large white oak, northeasterly corner to Richard Osborn, survey No. 4,519, and northeasterly corner to said Ladd and Norvell's survey, No. 6,917, running with the line of the last-mentioned survey S. 70 W. 227 poles to a stake, northwest corner to said survey; thence N. 23 W. 505 poles, crossing several branches, to three white oaks, two from one root; thence N. 70 E. 258 poles, crossing a branch at 168 poles, to two red oaks and two bush oaks on the west side of a hill; thence S. 20 E. 500 poles, crossing several branches, to the beginning.

DUNCAN McAUTHUR, D. S.
November 20, 1810; *November* 22, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvells, assignee, 460 acres of land on part of military warrant No. 5,633, on Hendrick's Fork, on east branch of Buck Creek, which is a branch of Mad River; beginning at a white oak and two red oaks, southwesterly corner, to Richard Osborn's survey, No. 4,519, running with the line of said survey N. 20 W. 340 poles, crossing the fork to a large white oak $\frac{M}{11}$, northwesterly corner to Osborn's survey, S. 70 W. 227 poles, to a stake; thence S. 24 E. 342 poles, crossing the fork to three hickories, northwesterly corner, to said Ladd and Norvell's survey, 6,916; thence with the line N. 70 E. 205 poles, to the beginning.

DUNCAN MCAUTHUR, D. S.
November 20, 1810; *November* 22, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey, No. 6,917, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, 666⅔ acres of land on a part of military warrant 5,880, on the waters of Stony Creek and Mad River; beginning at a red oak, hickory, and elm, southwesterly corner to Abraham Bowman's survey, No. 6,928, running with his line S. 70 W. 310 poles, crossing a small branch at 150 to four black oaks, two from one root, at the top of a ridge, corner to said Bowman's survey; thence with another of his lines, passing the corner thereof S. 20 W. 345 poles, to a stake; thence N. 70 E. 310 poles, crossing a small branch to a black oak; thence N. 20 W. 345 poles, to the beginning.

DUNCAN MCAUTHUR, D. S.
November 20, 1810; *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Abraham Bowman and Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, 1,056 acres of land on part of two military warrants, viz: Bowman, 596 acres, on No. 587, and Ladd's and Norvell's, 460 acres, on No. 5,877, on the waters Bohongelin's Creek, on east branch of the Big Miami; beginning at a hickory, white oak, red oak, and a small black walnut, northeasterly corner to said Bowman survey, 6,929; thence N. 20 W. 550 poles, crossing several branches to a hickory and four sugar trees, near a branch; thence S. 70 W. 368 poles, crossing a small branch at 67 and one

at 310 poles to five white oaks; thence S. 32 E. 558 poles, crossing a small pond at 24 and one at 156 poles, to the beginning.

D. McAUTHUR, D. S.
November 20, 1810; *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey, Nos. 6,930 and 6,931, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, 3,405⅝ acres of land on three military warrants, Nos. 5,825, 5,621, 5,626, 250 acres on part of 5,722, and 89 acres on part 5,638, on the waters of Buck Creek and Mad River; beginning at a white oak marked IK, and three burr oaks, northwest corner to John Campbell's survey, No. 2,574, and southwesterly corner to John Kean's survey, No. 3,450, for 300 acres, running N. 20 W. 1,268 poles to four black oaks and a hickory, one of the black oaks marked $\frac{M}{2}$; thence S. 70 W. 488 poles to a willow in a prairie; thence S. 58½ E. 1,272 poles, crossing several branches and prairies, to two small white oaks or burr oaks in a barren; thence N. 70 E. 368 poles, crossing a pond in a prairie at 70 poles, to the beginning.

DUNCAN McAUTHUR, D. S.
November 20, 1810; *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey, No. 6,920, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvell, 355 acres of land on part of military warrant No. 5,538 on the waters of Mad River, beginning at an elm, red oak, and black walnut, northwesterly corner to Thomas M. Bailey's survey, No. 5,733, and northeasterly corner to John and Mathew Hobson's survey, No. 6,915, running N. 20, W. 310, to a white oak and two red oaks—one of the red oaks marked E L; northwesterly corner to Thomas Smith's survey, No. 4,259, and southwesterly corner to Richard Osborn's survey, 4,519; thence S. 70, W. 205 poles, to three hickories; thence S. 28, E. 315 poles, to two white oaks from one root, a black oak, and a hickory; northwesterly corner to said Hobson's survey; thence with the line of the same N. 70, E. 166 poles, crossing a small branch, to the beginning.

DUNCAN McAUTHUR, D. S.
November 20, 1810; *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey No. 6,916, is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

Surveyed for Joseph and Benjamin W. Ladd and Thomas Norvell, 4,266¾ acres of land on two military Nos. 5,870 and 5,828, and 300 acres on 5,721, 300 acres on part 5,631, on King's Creek, on east branch of Mad River, beginning at four black oaks and a hickory; northeasterly corner to said Ladd and Norvell's survey 6,920; thence N. 20, W. 1,280 poles, crossing King's Creek to three burr oaks, one marked $\frac{M}{25}$ in the line of Jess. Davis's survey, No. 4,538, S. 20, E. 68 poles from the west corner thereof; thence S. 70, W. 585 poles, crossing the north fork of King's Creek, at 138 poles, to a small hickory and black oak bush, in a large plain; thence S. 24, E. 1,288 poles, crossing the creek, to a willow in a prairie northwest corner, to said Ladd and Norvell's survey; thence with their line N. 70, E. 488 poles, to the beginning.

DUNCAN McAUTHUR, D. S.
November 20, 1810; *November* 23, 1810.

CHRISTOPHER POPEJOY,
JAMES MANARY, Jr.,
Chain-carrier and Marker.

SURVEYOR'S OFFICE FOR THE VIRGINIA MILITARY DISTRICT,
Within the State of Ohio:

I, Allen Latham, surveyor of said military district, do certify that the above survey is correctly transcribed from the records of this office.

Given under my hand and seal of office at Chillicothe this 2d day of October, 1835, and the sixtieth year of the independence of the United States.

[SEAL.] ALLEN LATHAM.

[For drawing see original.]

EXHIBIT B.

[Map.—See original.]

EXHIBIT C.

FEBRUARY 18, 1829.—Mr. BUCKNER, from the Committee on Private Land Claims, to which the subject had been referred, made the following report:

The Committee on Private Land Claims, to which was referred the resolution of the 6th instant, directing an inquiry into the expediency of carrying into effect the provisions of the act entitled "An act to authorize the President of the United States to enter into certain negotiations relative to lands located under Virginia military land warrants, lying between Ludlow and Roberts's lines, in the State of Ohio," have had the same under consideration, and beg leave to report:

That, on looking into the subject of the reference, they find that three several bills have heretofore passed the House of Representatives to quiet the title to certain persons, who purchased lands of the Government between Ludlow and Roberts's lines, which lands are claimed by persons holding under Virginia military land warrants. Those bills, in each instance, did not pass through the House till the session was too far advanced to give to the Senate time to act upon them.

The committee concur in the report heretofore made on this subject, and beg leave to adopt it as a part of their present report. They would remark, in addition to the facts stated in that report, that the Supreme Court of the United States, during its present term, has made a decision in a cause between a military claimant and a purchaser of the United States, whose title was defended by the Government, which completely and finally establishes the validity of military titles acquired between Ludlow and Roberts's lines previous to the year 1812. It now only remains for the United States to quiet the title of those who have purchased of the Government, and made valuable improvements on these lands, by purchasing in the title of the Virginia military claimants; or, on the other hand, to leave them to be evicted, and thus subject the Government to the much larger, and more importunate, claims of the present occupants. The committee have not hesitated to adopt the former course, and, in so doing, have imitated the example of the committees which have heretofore examined this subject, and whose recommendations have successively received the sanction of the House. They therefore report a bill.

No. 1.

MARCH 28, 1825.

The Committee on the Public Lands, to which were referred certain papers relative to the claims of certain purchasers under the United States, and holders of Virginia military warrants, between Ludlow and Roberts's lines, in the State of Ohio, have had the same under consideration, and submit the following report:

That, from evidence adduced before the committee, it appears that the United States have sold and conveyed to various purchasers the greater part of the lands lying south of the Greenville treaty line, and between what are known by the names of Roberts and Ludlow's lines, both of which were run to ascertain the western boundary line of the Virginia military reservation in the State of Ohio. In the year, A. D. 1810, about 14,000 acres of the land so sold by the United States were located upon by holders of Virginia military land warrants, as land within that reservation. Upon a part of these locations patents have issued, and the entries upon the residue have never been withdrawn. In this way, the claims of the purchasers under the United States, and the Virginia military locations, are brought in direct conflict. In this controversy the United States is interested as the original vendor, and, as such, in duty bound to protect, and, in case of loss of title, to indemnify the Government purchaser. From an attentive examination of the facts in this case, and previous legislation upon the subject, the committee are of opinion that Congress ought to quiet the title of the Government purchasers, by paying to the Virginia military claimants the value of the land claimed by them. To put the House in possession of the reasons upon which this opinion is founded, it will be necessary to give some account of the origin of the title to the lands in controversy, and of the legislative and judicial proceedings that have been had concerning them.

This reservation had its origin in the cession of the country northwest of the river Ohio, by the Commonwealth of Virginia, to the United States. In the deed of cession there is a stipulation that, in case the quantity of good land on the southeast side of the Ohio, in the now State of Kentucky, which had been reserved by law for the Virginia troops upon the continental establishment, should prove insufficient for their legal bounties, the deficiency should be made up to said troops in good land, to be laid off *between the rivers Scioto and Little Miami*, on the northwest side of the river Ohio, in such proportions as had been engaged to them by the laws of Virginia. Not many years afterward a deficiency of good land was found to exist in Kentucky, and locations were permitted in Ohio. In the year A. D. 1802, Israel Ludlow was directed by the then surveyor general of the United States to run the western boundary line of the military reservations from the source of the Little Miami to the Scioto River; and he accordingly, after exploring the head-waters of the former river, run a line from its source towards what he supposed to be the head-waters of the Scioto, as far as the Greenville treaty line, where he was prevented by the Indians from the further prosecution of his survey. From that line to the head of the Scioto the country was then Indian territory, and the committee can find no evidence that he made an actual exploration of the head-waters of the Scioto, and presume none was made at that time. In 1804 Congress passed an act declaring that Ludlow's line extended to the Scioto should be the western boundary line of the reservation, in case Virginia should within two years assent to it. Virginia omitted to give her assent, and, accordingly, the act of Congress never took effect. From this time until the year 1812, no effort was made to establish the boundary. In the mean time the locations above mentioned were made by the holders of military warrants. In the year 1812 the President was authorized, by act of Congress, to appoint three commissioners, to meet commissioners to be appointed by Virginia, who were invested with full power and authority to ascertain, survey, and mark the western boundary line of the military reservation between the Scioto and Little Miami Rivers, according to the true intent and meaning of the deed of cession, and providing that Ludlow's line should be the boundary until a line should be established. Commissioners accordingly met in the fall of that year; and after having explored the head-waters of both those rivers, directed Charles Roberts, their surveyor, to run a line from the point ascertained by them to be the source of the Little Miami to that of the Scioto, which was done by him, the line so run being known by the name of Roberts's line. After these explorations had been made, and it having been ascertained that the head-waters of the Scioto were west of those of the Little Miami, the commissioners on the part of the Commonwealth of Virginia set up a claim to run from the source of the Scioto to the mouth of the Little Miami, at its confluence with the Ohio, thus embracing a large extent of country west of the Little Miami, upon which the negotiation between the commissioners was broken off.

No effort on the part of either Government has since been made to establish this boundary. In the case of Doddridge, lessee, *vs.* Thompson and Wright, lately decided in the Supreme Court of the United States, the plaintiff derived title from a location

made between Ludlow's and Roberts's line, south of the Greenville treaty line, in the year 1810; this location having been made the same year, and under precisely the same circumstances with all the other locations between those lines. The defendant, Thompson, derived his title from the United States as a purchaser under the Government. In that case it was agreed that Roberts's was the true line; and under this agreement the question to be decided by the court was, "whether a location made prior to the act of 1812, west of Ludlow's line and between it and Roberts's line, was valid and ought to prevail over the title made by the Government to the defendant, Thompson." The court decided this question in the affirmative, and a recovery was had for the plaintiff. This decision seems firmly to establish the title of the Virginia claimants, and they must prevail against the purchaser under the United States, unless the admission of Roberts's being the true line from the sources of those rivers was erroneously made. The committee are satisfied that the admission was correctly made, and that Roberts's, and not Ludlow's, is the true line between the heads of those rivers. 1st. From the fact that Ludlow did not run his line to the Scioto, having been arrested in his progress at the Greenville treaty line, about three-fourths of the way to the Scioto, the source of which river the committee are not informed was ever examined by him; but the head-waters of that river were examined by the joint commissioners, who directed Roberts's line to be run, both parties—the United States and the State of Virginia—being represented at the time; while, on the other hand, the examination of it by Ludlow, if ever made, was ex parte, Virginia having no agency in the matter. The head-waters of the Scioto must therefore be presumed to be at the point of the termination of Roberts's survey. Both Ludlow's and Roberts's lines commence at, or very near, the same point, on the same branch of the Little Miami. The Indian title to this part of the country having been extinguished before Ludlow's survey, the sources of the river, from which he began to run, were without doubt examined by him, and were afterward examined by the commissioners as above stated. Nor do the committee see anything in the documents to them referred to change their opinion as to the correctness of the line established by the said commissioners. There is therefore no just ground of dispute about the source of this river. But, if the correctness of Roberts's line were even doubtful, a question would still arise, whether Congress has not gone too far, by its legislation in giving a sanction to that line, now to recede. Congress, by a law passed in 1818, declared that Ludlow's line, until otherwise directed, as far as the Greenville treaty line, and from the Greenville treaty line to the source of the Scioto, Roberts's line, should be unconditionally the western boundary of the Virginia reservation. Since the passing of that act, it is quite certain Congress could not affect entries made between Ludlow's and Roberts's line, above the Greenville treaty line, and so much of Roberts's line is at least binding upon the United States. A direct acquiescence in the correctness of Roberts's line is, in the opinion of the committee, to be found in the act of the 26th of May, 1824, passed immediately after the above-mentioned decision of the Supreme Court, in the case of Doddridge, lessee, *vs.* Thompson and Wright. That act "directs the President of the United States to ascertain the number of acres, and, by appraisement or otherwise, the value thereof, exclusive of improvements, of all such lands lying between Ludlow's and Roberts's lines, in the State of Ohio, as may, agreeably to the principles of a decision of the Supreme Court of the United States in the case of Doddridge, lessee, *vs.* Thompson and Wright, be held by persons under Virginia military warrants, and on what terms the holders will relinquish the same to the United States, and that he report the facts to the next session of Congress." As was remarked above, all the locations made between these lines mentioned in this act rest upon the same principle, and were made under the same circumstances, as that decided upon by the court. The committee regard this act as admitting the validity of all such claims and as further indicating the intention of Congress to quiet the purchasers under the United States by obtaining a relinquishment of title from the Virginia military claimants. The lands so claimed were valued at $62,515 25, and application was made to the claimants to ascertain on what terms they would relinquish their titles. A relinquishment in all cases, by paying the appraised value of the land, was offered, except in the case of the tract of about 700 acres, recovered by Doddridge, which he proposed to relinquish on paying to him the sum received by the United States from the sale of it, and interest from that date.

The committee, from a view of all the facts in the case, think it an act of justice to the purchasers under the United States, against some of whom suits are now pending, to quiet them in their titles to their lands, upon most of which, it is understood, they have made great and very valuable improvements; and in pursuance of what they deem to be the intention of the act of 1824, have reported a bill for their relief.

No. 2.

We, the undersigned, appointed by the President of the United States, pursuant to an act of Congress passed the 26th day of May, 1824, to appraise and ascertain the value of the lands, exclusive of the improvements thereon, lying between Ludlow's and Roberts's lines, in the State of Ohio, which have been sold by the United States, and which are claimed by persons under Virginia military warrants, have attended to the duties assigned us by said act, and your instructions bearing date the 18th day of June, 1824; and they now submit for the consideration of the President the following report:

We, the undersigned, met on the business of our appointment in the town of Springfield, Clarke County, Ohio, on the 24th of August last past, and thence proceeded to make an actual examination of the land above referred to; that is to say, the land contained in survey No. 6,912, entered in the name of Duncan M'Arthur, we estimated at $4 50 per acre; the land contained in survey No. 6,913, entered in the name of John and Matthew Hobson, we estimated at $2 25 per acre; in survey No. 6,614, entered in the name of John and Matthew Hobson, we estimated at $4 per acre; in survey No. 6,915, entered in the name of John and Matthew Hobson, we estimated at $2 50 per acre; in survey No. 6,919, entered in the name of Duncan M'Arthur, we estimated at $4 50 per acre; in survey No. 6,927, entered in the name of Abraham Bowman, we estimated at $5 per acre; in survey No. 6,922, entered in the name of John and Matthew Hobson, we estimated at $6 per acre; in survey Nos. 6,923 and 6,926, entered in the name of John and Matthew Hobson, we estimated at $2 per acre; in survey No. 6,928, entered in the name of Abraham Bowman, we estimated at $2 25 per acre; in survey No. 6,929, entered in the name of Abraham Bowman, we estimated at $3 50 per acre.

And also, upon examination and actual survey, we find that survey No. 6,928 does not interfere with section 36, township 5, and range 13; and we further ascertained that the southeast corner of section 36, township 5, range 13, lies thirty poles north of the north boundary of survey No. 6,923.

We further state that Aaron L. Hunt, whose account is herewith inclosed, was by us employed to perform the necessary surveying required in examining the aforesaid lands; which is respectfully submitted.

JONAH BALDWIN,
DAVID HUSTON,
WILLIAM WARD,
Commissioners.

Pursuant to instructions from the General Land Office, bearing date August 31, 1824, we beg leave to submit the following report:

That, upon actual view and examination of the lands covered by entry No. 7,619, mentioned in said instructions, we estimated the value of the same at $3 per acre; which is respectfully submitted.

JONAH BALDWIN,
DAVID HUSTON,
WILLIAM WARD,
Commissioners.

OCTOBER 20, 1824.

GEORGE GRAHAM,
Commissioner of the General Land Office of the United States.

No. 3.

No. of surveys.	Acres in survey.	In whose name entered.	To whom patented.	Date of patents.	Price per acre at the valuation.	Amount of the valuation.	Quantity sold at $4.	Quantity sold at $2.	Quantity remaining unsold.	Amount of moneys paid on lands interfered with.	Amount of purchase money of quantity sold.	Valuation of quantity unsold.
				1812.			*Acres.*	*Acres.*	*Acres.*			
6912	235	Duncan M'Arthur.....	D. M'Arthur.	Apr. 20	$4 50	$1,057 50	.....	228.71	6.29	$457	$457 42	$28 30½
6913	255	J. and Matthew Hobson.	.....	.....	2 25	573 75	.....	228.00	27.00	484	456 00	60 75
6914	312	J. and Matthew Hobson.	.....	.....	4 00	1,248 00	.....	312.00	.....	649	624 00	.....
6915	270	J. and Matthew Hobson.	.....	.....	2 50	675 00	.....	174.00	96.00	354	348 00	240 00
6919	1,240	Duncan M'Arthur.....	D. M'Arthur.	Oct. 12	4 50	5,580 00	57.75	1,182.25	.....	2,181	2,595 50	.....
6927	1,300	Abraham Bowman	D. M'Arthur.	Oct. 16	5 00	6,500 00	546.72	753.28	.....	3,857	3,693 44	.....
6922	6,220	J. and Matthew Hobson.	.....	.....	6 00	37,320 00	330.91	5,788.98	100.11	12,661	12,901 60	600 66
6923 } 6926 }	2,943	J. and Matthew Hobson.	.....	.....	2 00	5,886 00	316.00	2,258.40	368 60	4,600	5,780 80	737 20
6928	700	Abraham Bowman	D. M'Arthur.	Dec. 4	2 25	1,575 00	262.91	437.09	.....	1,530	1,925 82	.....
6929	600	Abraham Bowman	D. M'Arthur.	Dec. 4	3 50	2,100 00	348.39	251.61	.....	1,903	1,896 78	.....
	14,075					62,515 25	1,862.68	11,614.32	598 00	28,676	30,679 36	1,666 91½
7619	250	S. Johnson and J. Moore.	.....	.....	3 00	750 00						
	14,325					63,265 25						

No. 4.

GENERAL LAND OFFICE, *December* 3, 1824.

SIR: I inclose you a copy of the report made by the commissioners appointed in pursuance of an act of the last session of Congress to value those lands lying between Ludlow's and Roberts's lines, which were claimed under titles derived from Virginia military warrants, and which had been sold by the United States.

I also inclose a statement showing the valuation of the lands contained in each military survey, as reported by the commissioners, and the prices at which these lands respectively have been sold, so far as the quantities could be calculated from the plats in this office. From this statement it will appear that of the 14,075 acres of land, valued by the commissioners to be worth $62,515 35 at present, 1,864.68 acres sold at $4 per acre, 11,614.32 sold at $2 per acre, and 598 acres remain unsold. The unsold lands have been valued by the commissioners to be worth $1,666 91, and the purchase money of the lands sold amounts to $30,679 36, of which sum it is estimated that $28,676 have been paid. These lands were sold in small quantities, at different periods from the year 1804 to 1817, and no satisfactory calculation can be made of the interest which would accrue on the different payments without an accurate resurvey, showing the precise interference of the public surveys with each of the military surveys.

From a general view of the subject I should presume that the gross amount of interest which would be demandable by the individual purchasers in the event of the loss of their lands might be estimated to be equal to twelve years' interest on the amount of the purchase money. Assuming this data, the following results will be exhibited:

The amount of purchase money	$30,679 36
Twelve years' interest on that amount	22,089 14
598 acres unsold, valued at	1,666 91
Total	54,435 41
14,075 acres, valued by the commissioners at	62,515 25
Difference	8,079 84

To enable the President to make to Congress the report required by the act of the last session, I have to request that you will, as soon as practicable, inform me what portion of the lands valued by the commissioners you claim, and upon what terms you will relinquish to the United States such claim.

I am, &c.,

GEORGE GRAHAM.

P. S.—Mr. Doddridge has proposed to relinquish his claim for the original purchase money with interest.

The Hon. DUNCAN MCARTHUR,
House of Representatives.

No. 5.

WELLSBURG, BROOK COURT-HOUSE, VIRGINIA,
November 15, 1824.

DEAR SIR: Although the persons appointed by the President to report the value of the lands recovered by me in the suit of Doddridge's lessee *vs.* Thompson and Wright, and other lands similarly situated, have, as I suppose, long since discharged that duty, I am ignorant how they have reported. The President is also directed to report on what terms we will release our claims. I am only interested in the 700 acres I recovered, which I am led to believe contains a considerable surplus quantity of acres. The officers of the United States entered on these lands many years since, and surveyed and sold them as public lands. I believe mine was all sold, part at four dollars and part at two dollars per acre. I know not the respective quantities sold at the above prices. I am not desirous to take benefit by the labor of others, and propose to relinquish my claim upon receiving from the Government what the purchasers paid to it, with interest from the payment to the Government until I am paid. This will place the purchasers in security, and will leave the Government where it would have been in relation to this business if its officers had not fallen into the error they did fall into. The act of the Government's officers in surveying these lands and selling them as public property, together with the refusal of the former Commissioner to grant the other patents on a regular application made by General McArthur, threw such doubts on the title as to place these lands completely out of the market at a time when the minimum price

of public lands, good and bad, was two dollars. The subsequent reduction ought not to affect us, because it was not our fault but the act of Government, which prevented a sale when the price of good land in that country was at least three-fold what it now is.

If it be not improper or too much trouble, would you inform me what my land has been valued at?

Be good enough to lay this before the President.

P. DODDRIDGE.

The COMMISSIONER *of the General Land Office.*

No. 6.

WASHINGTON CITY, *December* 6, 1824.

SIR: I have the honor to acknowledge the receipt of your favor of the 3d instant, with the copy of the report of the commissioners appointed in pursuance of an act of the last session of Congress to value the lands lying between the lines of Ludlow and Roberts, claimed by virtue of locations made upon Virginia military land warrants, and sold by the United States, and your statement showing the valuation of each military survey, as reported by the said commissioners.

In answer to that part of your letter which asks information as to the portion of these lands which I claim, and upon what terms I will relinquish them to the United States, I can state that I claim the whole of the land embraced in the first report of the commissioners aforesaid, with the exception of survey No. 6,927, of 700 acres, sold and conveyed by me to Philip Doddridge; which is 13,375 acres, valued at $50,940 25. My title papers will be exhibited at the General Land Office whenever required.

I am willing to transfer or relinquish these lands to the United States for the amount at which they were valued by the commissioners.

DUNCAN McARTHUR.

GEORGE GRAHAM, Esq.

No. 7.

REYNOLDS, Plaintiff in Error,
vs.
McARTHUR, Deft. in Error. } Opinion of Sup. Court.

This is a writ of error to a judgment rendered by the supreme court of Ohio for the county of Champaign, in an ejectment, in which the lessee of Duncan McArthur was plaintiff, and John Reynolds was defendant. The plaintiff claimed the land in controversy under a patent, issued on the 12th day of October, 1812, founded on an entry, made in the year 1810, on a military land warrant, granted by the State of Virginia, for services during the war of the Revolution, in the Virginia line on continental establishment.

The title of the defendant is thus stated: The land was sold by the United States at their land office in Cincinnati, in the year 1805, to Henry Vanmeter. It reverted to the United States in the year 1813, on account of the non-payment of the purchase money, and was again sold during the same year, at the same office, to Henry Vanmeter, to whom a certificate of sale was issued, which he afterward transferred to the defendant, John Reynolds.

The verdict and judgment were in favor of the plaintiff in the State court. At the trial the counsel for the defendant moved the court to instruct the jury on several points made in the cause, and excepted to the refusal of the court to give these instructions. The judgment of the State court, having been against a title set up under several acts of Congress, is brought before this court by writ of error, that the construction put on those acts by that court may be reëxamined. The inquiry will be whether the court ought to have given any one of the instructions which were required.

The several prayers for this purpose will be considered in the order in which they were made.

1st. The first instruction asked is, "That the lands west of Ludlow's line, east of Roberts's line, and south of the Indian boundary line, had been withdrawn from appropriation under and by virtue of military land warrants prior to the year 1810; and that, as the same had, pursuant to the acts of Congress in such case made and provided, been directed to be surveyed and sold, and had accordingly been surveyed and sold to the defendant prior to the year 1810, the plaintiff's patent is void, and their verdict ought to be for the defendant."

This motion does not question the bounds of the lands reserved by Virginia for military bounties; but, supposing the tract of country west of Ludlow's line, east of

Roberts's line, and south of the Indian boundary line, to be within that reserve, asks the court to say that Congress had, prior to the year 1810, when Mr. McArthur's entry was made, withdrawn it from appropriation under and by virtue of military land warrants.

Before deciding on the propriety of refusing or granting this prayer, it will be necessary to review the legislation of Congress on this subject.

The act of the 9th of June, 1794,* taken in connection with the reservation in favor of their officers and soldiers, contained in the deed of cession made by Virginia, unquestionably subjected the whole of the military reserve to the satisfaction of those warrants for which the reserve was made. Had Congress, previous to the year 1810, withdrawn that portion of this reserve which lies between the line run by Dudley Ludlow and that run by Roberts, from its liability to be so appropriated?

So early as the year 1785, Congress passed "an ordinance† for ascertaining the mode of disposing of lands in the western territory," in which, for the purpose of securing to the officers and soldiers of the Virginia line on continental establishment the bounties granted to them by that State, it is ordained "that no part of the land between the rivers called Little Miami and Scioto on the northwest side of the river Ohio be sold, or in any manner alienated, until there shall first have been laid off and appropriated for the said officers and soldiers, and persons claiming under them, the lands they are entitled to, agreeably to the said deed of cession and act of Congress accepting the same."

The scrupulous regard which this clause, in the ordinance of May, 1785, manifests to this condition made by Virginia in her deed of cession, is the more worthy of remark, because at that time no suspicion was entertained that the military warrants of Virginia would cover the whole territory; and it was even doubted, as the legislation of Congress shows, whether any part of that territory would be required for them. Even under these circumstances, Congress declared the determination not to sell or alienate any land between the Scioto and the Little Miami.

In May, 1796, Congress passed "an act providing for the sale of the lands of the United States in the territory northwest of the river Ohio, and above the mouth of Kentucky River."‡ The 2d section enacts "that the part of the said lands which has not been already conveyed, &c., or which has not been heretofore, and during the present session of Congress may not be appropriated for satisfying military land bounties, and *for other purposes*, shall be divided," &c.

This law, then, from which the whole power of the surveyor general is derived, excludes from his general authority all lands previously appropriated for military land bounties, and for other purposes; and consequently excludes from it the lands between the Scioto and the Little Miami. In May, 1800,§ Congress passed an act to amend the act of 1796, which enacts, "that, for the disposal of the lands of the United States directed to be sold by the original act, there shall be four land offices established in the said territory." The places at which these land offices shall be fixed are designated in the act, and the district of country attached to each is described. One of these is Cincinnati. The place at which the lands in controversy were sold, and the district attached to it, is that below the Little Miami. It is perfectly clear, from the language of this act, that it extends to those lands only which were comprehended in the act of May, 1796; and that no one of the districts established by it comprehends the land in controversy. Any general phrases which may be found in the law must, according to every rule of construction, be limited in their application to those lands which the original act authorized the surveyor general to lay off for the purpose of being sold. If he surveyed any lands to which that act does not extend, he exceeded his authority, and the survey is not sanctioned by law. If land thus surveyed by mistake has been sold, the sale was not authorized by the law under color of which it was made.

The counsel for the plaintiff in error has pressed earnestly on the court the grants made to John Cleves Symmes, and to the purchasers under him. We are not sure that the argument on this point has been clearly understood, and have therefore examined that transaction, in order to discover its influence, if it can have any, on the question now under consideration.

In 1787, John Cleves Symmes applied to Congress for a grant to himself and his associates, of the lands lying within the following limits, viz: "Beginning at the mouth of the Great Miami River; thence, running up the Ohio, to the mouth of the Little Miami River; up the main stream of the Little Miami River to the place where a due west line to be continued from the western termination of the northern boundary line of the grant to Messrs. Sargent, Cutler & Co. shall intersect the said Little Miami River; thence due west, continuing the said western line, to the place where said line shall intersect the main branch or stream of the Great Miami; thence down the Great Miami, to the place of beginning."

In consequence of this petition, a contract was entered into for the sale of one million of acres of land, to begin on the bank of the Ohio, twenty miles along its meanders, above the mouth of the Great Miami; thence to the mouth of the Great Miami;

*2d U. S. L., 440.
†1st U. S. L., 563, 569.
‡2d U. S. L., 533.
§3d U. S. L., 385.

thence up that river, to a place where a line drawn due east will intersect a line drawn from the place of beginning, parallel with the general course of the Great Miami, so as to include one million of acres within these lines and the said river; and from that place, upon the said Great Miami River, extending along such lines to the place of beginning; containing, as aforesaid, one million of acres.

The language of this contract does not indicate any intention on the part of Congress to encroach on the military reserve which the ordinance of May, 1785, then in full force, had exempted from sale or alienation.

In 1792* Congress, at the request of John Cleves Symmes, passed an act to alter this contract in such a manner that the land sold should extend from the mouth of the Great Miami to the mouth of the Little Miami, and be bounded by the river Ohio on the south, by the Great Miami on the west, by the Little Miami on the east, and by a parallel of latitude on the north, extending from the Great Miami to the Little Miami, so as to comprehend the proposed quantity of one million of acres. The lands then which might be granted to John Cleves Symmes in pursuance of this act of Congress, lay between the Great and Little Miamis and were to lie below the Little Miami: the Scioto is above that river; so that Congress could not have intended that this grant to Symmes should interfere with the military reserve.

On the 30th of September, in the year 1794, a deed was executed in pursuance of the act of 1792, conveying to John Cleves Symmes that tract of land beginning at the mouth of the Great Miami River, and extending from thence along the river Ohio to the mouth of the Little Miami River, bounded on the south by the river Ohio, on the west by the Great Miami, on the east by the Little Miami, and on the north by a parallel of latitude to be run from the Great Miami to the Little Miami, so as to comprehend the quantity of 311,682 acres of land. It is obvious that this patent does not interfere with the military reserve. But John Cleves Symmes had sold to several persons, who purchased in the confidence that he would comply with his contract for one million of acres, and be enabled to convey the lands sold to them.

In March, 1799, Congress passed an act declaring that any person or persons, who, before the first day of April, in the year 1797, had made any contract, in writing, with J. C. Symmes, for the purchase of lands between the Great Miami and Little Miami Rivers, which are not comprehended in his patent dated the 30th of September, 1794, shall be entitled to a preference in purchasing of the United States all the lands so contracted for, at the price of two dollars per acre.

In March, 1801, Congress passed an act extending this right of preëmption to all persons who had, previous to the 1st day of January, 1800, made any contract in writing with the said J. C. Symmes, or with any of his associates, for the purchase of lands between the Miami Rivers, within the limits of a survey made by Israel Ludlow, in conformity to an act of Congress of the 12th of April, 1792. The provisions of this act are supposed to contemplate the survey and sale of the lands which had been sold to J. C. Symmes, between the Miami Rivers, in like manner as had been prescribed for other lands lying above the mouth of the Kentucky, by the acts of 1796 and 1800. The right of preëmption was limited to lands within Israel Ludlow's survey; but that survey contained less than 600,000 acres, and the contract of Symmes was for one million of acres. Congress therefore resumed the consideration of this subject, and in May, 1802, extended this right of preëmption to all those who had purchased from J. C. Symmes lands lying between the Miami Rivers, and without the limits of Ludlow's survey. It cannot be doubted that this right of preëmption, allowed to the purchasers under J. C. Symmes, was limited to lands lying between the Miami Rivers, and lying within this contract. Congress could never have intended that this contract should interfere with the military reserve. That reserve was of lands lying above the Little Miami. The sale to Symmes was of lands lying below that river. It was made while an ordinance was in full force, declaring the resolution of Congress not to alienate any part of that reserve. Their contract was made in subordination to that ordinance, and cannot have been intended to violate it. The terms of the contract do not purport to violate it. The land sold to Symmes, and the preëmption rights allowed to the purchasers under him, are so described as to furnish no ground for the opinion that Congress could have suspected them to interfere with the military reserve. If the Scioto and the Great Miami, contrary to all probability, should take such a direction as to produce a possible interference between the lands sold to Symmes and the reserve which Congress had declared its resolution not to alienate, some difficulty might possibly arise in a case where one of the parties claimed under a military warrant, and the other under a preëmption certificate. But that is not the case. The title of the plaintiff in error is under a purchase made at a sale of the lands of the United States at Cincinnati, by Henry Vanmeter, who is not stated to have held a preëmption certificate, or to have been a purchaser under Symmes. The instructions which the court was asked to give are that the land between the lines of Ludlow and Roberts had been withdrawn from appropriation under, and by virtue of, military land warrants, previous to the year 1810. This withdrawal is not in express terms, but is supposed to be

*2d U. S. L., 270.

implied from a direction to survey the lands between the Great and Little Miamis, which had been exempted from the operation of the acts of 1796 and 1800, under the idea that they were comprehended in the contract with Symmes. Congress could not suspect that the land to be surveyed under this law could interfere with the lands lying between the Little Miami and the Scioto; and, consequently, cannot have intended by this act to vary the boundary of the military reserve.

It has been very truly observed, that all the laws on this subject should be taken together. The condition inserted in the deed of cession of Virginia, which reserves the land lying between the Little Miami and the Scioto for the purpose of satisfying the warrants granted to the officers and soldiers of that State; the ordinance of May, 1785, declaring that no part of that reserve should be alienated; the contract with Symmes for the sale of lands lying between the two Miamis; the acts relative to preëmption, and which directs the survey and sale of the lands lying between the Miamis, without any allusion to the military district, must be taken into view at the same time. It is, we think, impossible to believe that Congress supposed itself, when directing the survey and sale of lands between the Great and Little Miamis, to abridging or altering the bounds of a district which Virginia had reserved in the deed of cession by which the country northwest of the Ohio had been conveyed to the United States.

When Congress designed to act on this subject, the purpose was expressed, and overtures were made to the other party of the compact, to obtain her coöperation. In executing the act of May, 1800, the surveyor general had caused a line to be run from what he supposed to be the source of the Little Miami toward what he supposed to be the source of the Scioto, which is the line denominated Ludlow's and surveyed the lands west of that line in the manner prescribed by the act of Congress.

In March, 1804,* Congress passed an act establishing that line as the western boundary of the reserve, provided the State of Virginia should, within two years after the passage of the act, accede to it. Virginia did not accede to it.

In 1812,† Congress made another effort to establish this line. The President was authorized to appoint commissioners to meet others which should be appointed by Virginia, who were to agree on the western line of the military reserve, and cause the same to be surveyed and marked out. These commissioners met, and, after ascertaining the sources of the two rivers, employed Mr. Charles Roberts to survey and mark a line from the source of the one to the source of the other. This line is called Roberts's line. The Virginia commissioners, however, refused to accede to this line. This act provided that until an agreement shall take place between the commissioners, the line designated in the act of 1804, which is Ludlow's, should be considered and held as the proper boundary line. This enactment is provisional and prospective.

In 1818,‡ Congress passed an act declaring that, from the source of the Little Miami to the Indian boundary line, established by the treaty of Greenville, Ludlow's line should be considered as the western boundary of the military reserve, until otherwise directed by law; and that, from the said Indian boundary line to the source of the Scioto river, the line run by Charles Roberts shall be so considered. When we review the whole legislation of Congress on this subject, we think the conclusion inevitable that in the acts of 1801 and 1802 which have been cited the legislature did not consider itself as altering the boundary of the military district, or as withdrawing, before the year 1810, any part of the territory lying between the Little Miami and the Scioto, from being appropriated by the military land warrants granted by the State of Virginia.

If those acts have this effect, it is one which was not intended. Before a court can be required to declare the law which would arise between conflicting statutes of this character, the fact that they do conflict ought to be clearly established. The counsel for the plaintiff in error has argued this part of the case as if the fact was established; as if a line drawn from the source of the Little Miami to the source of the Big Miami would include the land between Ludlow's line and that of Roberts; and this court has thus far treated the question as it has been argued. But this fact is not established in this cause. It is not among the facts agreed by the parties. Nor was the State court requested to instruct the jury, that, if they should find the land west of Ludlow's, and east of Roberts's line, to lie between the Little and Big Miamis, or within Symmes's purchase, "that it had been withdrawn from appropriation, under and by virtue of said military land warrants, prior to the year 1810;" and that M'Arthur's patent was consequently void. The court was not required to state the law hypothetically, as being dependent on the fact, but to assume the fact, and to state the law positively upon that assumption. The record, we think, did not authorize the court to consider this fact as established, and to withdraw it from the jury. There is no error in refusing this instruction.

2d. The counsel for the defendant then asked the court to instruct the jury that, as the second section of the act of Congress of the 11th of April, 1818, declares, "that, from the source of the Little Miami river to the Indian boundary line established by the treaty of Greenville, in 1795, the line designated as the westerly boundary line of

*3d U. S. L., 592. †4th U.S. L., 455. ‡6th U. S. L., 282.

the Virginia tract by an act of Congress passed on the 23d day of March, 1804, entitled 'An act to ascertain the boundary of the lands reserved by the State of Virginia,' &c., &c., shall be considered and held as such until otherwise directed by law," and as the said boundary line was run by Ludlow, under the directions of the Surveyor General, pursuant to an act of Congress entitled "An act to extend and continue in force the provisions of an act entitled 'An act giving a right of preëmption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the territory northwest of the Ohio, and for other purposes,' approved May 1, 1802, and offered for sale at public auction at the land office at Cincinnati, pursuant to the act, entitled 'An act making provision for the disposal of the public lands in the Indian Territory, and for other purposes,' approved March 26, 1804, must be construed as having relation back to the time the said recited act of 23d of March, 1804, was passed, and had its effect; and as the defendant's patent is for lands west of Ludlow's line, and south of the Greenville treaty line, and is based on an entry made in 1810, on a Virginia continental land warrant, which land had been surveyed and sold to the defendant, pursuant to the acts of Congress prior to the year 1810, the plaintiff's patent is void, and their verdict ought to be for the defendant."

The prayer for this instruction is founded on the assertion that Ludlow's line was run under the directions of the Surveyor General pursuant to the act of Congress of May 1, 1802, granting preëmption rights to purchasers from John Cleves Symmes, and that the land in controversy was sold pursuant to the act of March 26, 1804, making provision for the disposal of public lands in Indiana Territory, and for other purposes. If, by the words "pursuant to an act of Congress," as used in this prayer, it is intended to say that the boundary line run by Ludlow was correctly run, as required by the act of May 1, 1802, and that the sale of the land in controversy was authorized by the act of March 26, 1804, then the court is required to decide facts not admitted by the parties, which are proper for the consideration of the jury, and then to declare the law arising upon those facts. If those words mean no more than that the line was actually run under the authority of the Surveyor General, and that the land in controversy was actually sold at the land office in Cincinnati by the officers of Government, the question fairly arises, What influence have these facts on the rights of the parties? Do they, taken in connection with the act of the 23d of March, 1804, and of the 11th of April, 1818, justify the inference which the court is asked to draw, that the act of 1818 relates back to the act of 1804, and takes effect from its date, so as to avoid a patent issued in October, 1812, on an entry and survey made in 1810?

It has already been stated that the act of the 23d of March, 1804, establishes Ludlow's line, not absolutely, but on condition that Virginia shall assent to it, and that Virginia never did assent to it. It has also been stated, that in 1812 Congress authorized the President to appoint commissioners, who should proceed, in concert with such as might be appointed by Virginia, to run a line, which should constitute the western boundary of the Virginia military reserve. These commissioners did meet, and did cause a line to be run from the source of the Little Miami to the source of the Scioto. This is called Roberts's line. The commissioners of Virginia did not assent to this line, consequently it is of no operation. The act of the 11th of April, 1818, declares that Ludlow's line shall be considered and held as the true western boundary of the Virginia military reserve, until otherwise directed by law. But from what time shall it be so considered and held? The language of the law is entirely prospective. It is a principle which has always been held sacred in the United States, that laws by which human action is to be regulated look forward, not backward, and are never to be construed retrospectively, unless the language of the act shall render such construction indispensable. No words are found in the act of 1818 which render this odious construction indispensable. The language is, that Ludlow's line *shall* be considered and held; that is, shall in future be considered and held as the true western boundary of that reserve. That this was the understanding of the legislature is rendered the more probable from the clause which relates to patents. It does not annul patents already issued, but declares that no patent shall be granted on any location and survey that has or may be made west of this line. Patents which have been granted are not affected directly by the words of this law, and must depend on the preëxisting acts of Congress.

The argument is that this act declaring that Ludlow's line shall be considered and held as the western boundary line of the reserve, until otherwise directed by law, proves that, according to the true construction of the deed of cession, this line is in reality the true boundary, and, therefore, that all titles previously acquired to lands lying west of this line are invalid.

We cannot admit the correctness of this argument. That in the state of things which existed in 1812 and 1818, Congress might establish the western boundary of the military reserve, was to affect titles thereafter to be acquired, is not questioned. Congress might fix a reasonable time within which titles should be *asserted*, and might annex conditions to the extension of this term. But to look back to titles already acquired—to declare by a law what was the meaning of the compact under which those titles were acquired, is to construe that compact, and to adjudicate in the form

of legislation; it would be the exercise of a judicial not of a legislative power. This construction can never be admitted by the court, unless it be rendered indispensable by the language of the act. We do not think that the language of this act does require it. If the language of the statute does not require this construction, neither does the fact that Ludlow's line was run by order of the Surveyer General, and that the land in controversy was sold by the regular agents of Government. These facts cannot, we think, carry back the act of 1818 to 1804, and give it a retrospective operation.

We do not inquire into the power of Congress to pass such an act. There is undoubtedly much force in the argument suggested at the bar, that the general power of legislation which Congress could exercise over the Territory northwest of the Ohio passed to the new government when the Territory was erected into a State, and that Congress retained only the power of a proprietor, with a capacity "to dispose of and make all needful rules and regulations respecting the property." But it is unnecessary to pursue this inquiry, because we are of opinion that this construction is inadmissible. The court, therefore, did right in rejecting this prayer.

3d. The third instruction asked by the defendant is in these words: "That according to the true intent and meaning of the act and deed of cession from Virginia to the United States, and the several acts of Congress relative to the sale of the public lands of the United States, the land lying between the rivers Scioto and Little Miami is bounded by a line extending from the source or point of land farthest removed from the mouths of these rivers, from which the rain, descending on the earth, runs down into their respective channels, along the top of the ridges dividing the waters of the Scioto from the waters of the Great Miami, which empty into the Ohio below the mouth of the Little Miami, as delineated on the diagram returned by the county surveyor for the defendant in this cause; and as the plaintiff's patent covers land west, or without the boundary of the district so bounded as aforesaid, as is based on an entry on a Virginia continental land warrant, which entry was made in the year 1810, and which said entry and patent cover-land which had, pursuant to the acts of Congress, been surveyed and sold to the defendant, prior to the date of the plaintiff's said entry, the plaintiff's patent is void, and their verdict ought to be for the defendant."

In the case of Doddridge *vs.* Thompson et al., this court said that the territory lying between two rivers in the whole country from their sources to their mouth, and a straight line drawn from the source of one river to the source of the other, was considered in that case as furnishing the western boundary of the lands lying between them. One or both of the rivers may pursue such a course that a straight line from the source of one to the source of the other may cross one or both of them. Such a case may form an exception to the universal application of the straight line, and may go far in showing that no general rule can be laid down which will fit every possible case. But this obvious and reasonable rule has been adopted by Congress, as well as by this court. The act of 1804 adopts the straight line. The act of 1812 obviously contemplates a straight line; and the act of 1818 adopts Ludlow's line from the source of the Little Miami to the Indian boundary line, established at the treaty of Greenville, and the line run by Roberts, from the Indian boundary to the source of the Scioto.

The counsel for the defendant in the State court abandoned the rule adopted by Congress and by this court, by taking for his commencement "that point of land which is farthest removed from the mouth of the respective rivers, and from which the rain descending on the earth runs down into their respective channels," and to draw a line from that point along the tops of the ridges dividing the waters of Scioto from the waters of the Great Miami.

We feel some difficulty in comprehending the principle which was suggested and can sustain this rule. Why should a line drawn along the top of the ridges which divide the waters of the Scioto from those of the Great Miami constitute the true boundary of the country lying between the Great and the Little Miami? Would such a line certainly lead to the source of the Scioto, or to that of the Little Miami? We can give no satisfactory answer to these inquiries. It is some objection, too, to this instruction, that the jury would be much and unnecessarily perplexed in finding the point of land farthest removed from the mouth of each river, and from which the rain descending on the earth runs down into their respective channels. If any point exists which would fit all parts of the description, and could be found by the jury, it is by no means certain that such point would be in a line which would mark the boundary of the country between the two rivers.

The rule which the court was asked to lay down appears to us to be entirely arbitrary; and this prayer was properly rejected.

4th. The fourth instruction has been abandoned by the plaintiff in error.

5th. The proposition on which the fifth prayer depends is, that the sources of the two rivers must be "at that point in their respective channels, at which, from the union of several streams, sufficient water flows at an ordinary stage on which to navigate small vessels loaded." This rule for ascertaining the source of a river is entirely new in this country. A stream may acquire the name of a river which is not navigable in any part. A river which is navigable may retain that name above the highest nav-

igable point. The meaning of words, as commonly used, must be changed before the source of a river can be confounded with its highest navigable point. The court did not err in rejecting this prayer.

6th. The proposition on which the sixth prayer depends is, "That the sources of the two rivers must be considered as commencing at that point" in their respective channels from which the water flows at all seasons of the year.

Is this proposition so invariably true as to become a principle of law? We think it is not. A stream may acquire the name of a river, in the channel of which, at some seasons of extreme drought, no water flows. For a great portion of the year, parts of a stream may flow in great abundance, in which, during a very dry season, we may find only standing pools. It would be against all usage to say that the general source of the river was at that point in its channel from which the water always flows. This prayer, we think, ought not to have been granted.

7th. The seventh prayer depends on the proposition that the sources of the two rivers must be fixed at that point in their respective channels farthest removed from their respective mouths, at which water is found at all seasons of the year."

If the terms of this proposition be taken according to their most obvious import, it would seem to vary from the sixth only in this—that the sixth fixes the source of a river at the point in the channel from which water flows at all seasons in the year, while the seventh fixes it at that point which is farthest removed from its mouth, at which water is found at all seasons. Understanding it in this sense, the proposition would not raise the question, which of several was the main branch, but at what point the source of that main branch was to be found. The remarks made on the sixth prayer would apply with equal propriety to this, and the court would come to the same conclusion on both. But we understand from the argument, that the counsel for the plaintiff in error intended by this prayer to furnish a rule by which the main branch might be designated. That rule is, that the branch in whose channel water might be found farthest removed from the mouth of the river is its main branch.

Is this proposition universally true? That branch of a river which is entitled to the appellation given to the main river, is a conclusion of fact, to be drawn from the evidence in the cause. Consequently, no general rule can be laid down which will, in all cases, guide us to a correct conclusion. One of the forks may have retained the name of the main river, in exclusion of the others. The Scioto and Miami are both Indian names; and if any one branch of either had received from the natives, and retained exclusively, the name given the main river, that would have been the stream referred to in the reserve contained in the deed of cession, although water might have been found in a dry season of the year in the channel of some other, at a greater distance from the mouth of the river; or the white men who explored the country before the deed of cession was executed, may have fixed the name on some one of the branches of the respective rivers.

When France ceded to Great Britain all her pretensions to the country lying east of the Mississippi, "from its source to the river Iberville," no man could have been so extravagant as to assert that the source of the Mississippi was to be looked for through all its branches, and fixed at that point in the channel of either in which water might be found farthest removed from the mouth of the river. The size of the rivers, and the notoriety of the names by which they were designated, place the unreasonableness of such a pretension in so strong a point of view, that we can scarcely bring ourselves to suppose that there is any resemblance between the case put by way of illustration and that under consideration. And yet, what is the real difference in principle? If one branch of a small river has, by consent, retained the name of the main river, in exclusion of the others, that branch must be considered, in the absence of other circumstances, as the true boundary intended by the parties in a deed which calls for the stream by its name. The fact may be less certain and less notorious, but, if it exists, it must be followed by the same consequences.

If neither branch had notoriously retained the name of the river, the main branch is entitled to it. But the main branch is not necessarily that in whose channel water might be found at all seasons of the year at the point farthest removed from its mouth. The largest volume of water is certainly one indication of the main stream, which does not necessarily accompany that which the counsel for the plaintiff in error has selected as the sole criterion by which it is to be determined. The length of the stream is another. It is obvious that two branches may pursue such a course that the source of the longest may be nearer the mouth of the river than that of the shortest.

We think the rule proposed in this prayer does not furnish a certain guide to conduct us to the source of the river; and therefore the instruction ought not to have been given.

8th. The eighth prayer requires the court to instruct the jury that the source of each river is at that point farthest removed from its mouth, from which the rain runs down into its channel.

We cannot perceive in the rule which this instruction proposes any principle which will conduct us to the source of the main stream. Every objection to granting the

seventh prayer applies with equal force to this. They need not be repeated. The court did not err in rejecting it.

The instructions to the jury for which the plaintiff applied to the State court are some of them mixed questions, involving fact with law, and requiring the court to decide the fact, and then to declare the law upon that fact. Others propose a rule as of universal application, to ascertain the main branch of a river and the source of that main branch, which would, unquestionably, in many cases mislead us. They propose one single circumstance, in exclusion of all others, as being the infallible evidence of a complex fact depending on a number of varying circumstances. The court very properly refused to give any of these instructions.

This Court is of opinion that there is no error in the judgment of the State court, and that it ought to be affirmed with costs.

EXHIBIT D.

Supreme Court, October term, A. D. 1835.

DUNCAN MCARTHUR } Action of debt.
vs.
BENJAMIN W. LADD. }

STATE OF OHIO, *Jefferson County, ss:*

Be it remembered that heretofore, to wit, on the nineteenth day of September, in the year of our Lord one thousand eight hundred and twenty-nine, came Humphrey H. Leavitt, clerk of the court of common pleas for said county of Jefferson, and filed in the office of the clerk of this court the original papers which were of files in this case, together with a certified copy of the docket and journal entries in said court of common pleas, whereby it appears that on the fourth day of June, A. D. 1827, the said McArthur sued out of said court the following writ of summons against the said Ladd, to wit:

"STATE OF OHIO, *Jefferson County, ss:*

"The State of Ohio to the sheriff of our county of Jefferson, greeting:

"We command you to summon Benjamin W. Ladd, if he be found in your county, to appear forthwith before our judges of our court of common pleas, now sitting at Steubenville, within and for the county of Jefferson, then in our said court to answer unto Duncan McArthur of a plea of debt fifty thousand dollars, to the damage of the said Duncan McArthur of one thousand dollars, as he saith. Hereof fail not, but of this writ and your service make due return.

"Witness the Honorable Jeremiah H. Hallock, president of our said court at Steubenville, this 4th day of June, A. D. 1827.

[SEAL.] "JOHN PATTERSON, *Clerk.*"

Indorsed on said writ are the words and figures following, to wit:

"This suit brought to recover the penalty contained in an article of agreement dated 30th October, 1810.

"BENJAMIN TAPPAN,
"*Security for costs.*"

And afterward, to wit, at the same term, came Henry Swearingen, sheriff of said county, and made return of said writ with the following indorsement of his service, to wit:

"JUNE 5, 1827. Summoned by reading.

"HENRY SWEARINGEN, *Sheriff.*"

And thereupon the parties appear, and this cause is continued to the next term.

And afterward, to wit, at the October term of said court, in the year last aforesaid, the parties appear by their attorneys and this cause is continued to the next term.

And afterward, to wit, at the April term, A. D. 1828, the parties appear by their attorneys and this cause is continued to the next term.

JUNE 2, 1828.—Defendant signs office judgment in want of a declaration.

AUGUST TERM, 1828.—The parties appear and on motion the office judgment, signed in this case in default of a declaration, is set aside, and thereupon the plaintiff, by Benjamin Tappan, his attorney, files his declaration in this cause in the words and figures following, to wit:

Benjamin W. Ladd was summoned to answer unto Duncan McArthur of a plea that he render to him the sum of fifty thousand dollars which he owes to and unjustly

detains from him; and thereupon the said Duncan McArthur, by Benjamin Tappan, his attorney, complains for that whereas the said Benjamin W. Ladd heretofore, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ten, at Chillicothe, to wit, at Steubenville, in said county, by his certain writing obligatory, sealed with his seal, and now shown to the court here, the date whereof is on the day and year aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan in the said sum of fifty thousand dollars above demanded to be paid to the said Duncan, which said writing obligatory was and is subject to a certain condition thereunto within, whereby after reciting to the effect following, to wit:

Memorandum of an agreement made and entered into this 31st day of October, in the year of our Lord one thousand eight hundred and ten, between Duncan McArthur, of Ross County, Ohio, of the one part, and Benjamin W. Ladd, acting for himself and partner, Joseph Ladd, and as agent of Thomas Howell, of the State of Virginia, witnesseth, that the before-named Duncan McArthur received from the said Ladds and Howell Virginia continental militia land-warrants and assignments of warrants to the quantity of ten thousand acres, which he, the said McArthur, was to locate and survey immediately for the said Joseph and Benjamin W. Ladd and Thomas Howell upon the following terms and conditions, to wit: the entries and survey were all to be made on the west side of the line run by Ludlow from the head spring of the Little Miami River, to intersect Ludlow's north boundary line; which line, when produced, was intended to strike the source of the Scioto River, and to be the dividing line between the Virginia military and Congress lands. All office fees, chain carriers, &c., were to be paid by Joseph and Benjamin W. Ladd and Thomas Howell. Duncan McArthur should be entitled to one-fifth part of the land so located, having respect in the division to quality, quantity, and situation, but it was to be understood that if from any cause whatever the locations made under this contract by the said McArthur for said Ladds and Howell should not hold the land, then and in that case the said McArthur should not have any interest in or part of said warrants, but they should be exclusively and entirely at the disposal of said Ladds and Howell, provided, nevertheless, that in case Congress should give other lands or money in lieu of the land which should be located by said McArthur, it was to be understood that the said McArthur should have his one-fifth part of all such lands or money; it was also expressly understood and agreed upon between the parties thereto that each, in proportion to the interest that he or they should have in the land, should pay his or their proportionable part of all expenses which might be incurred in trying the validity of the locations to be made by virtue of this agreement, whether in any court of law or before Congress, &c.; and the said McArthur in fact saith that after the making of the said writing obligatory, to wit, on the nineteenth day of November, in the year eighteen hundred and ten, at Steubenville aforesaid, he, the said McArthur, had received of the said Benjamin W. divers, to wit, nine Virginia military land-warrants, to locate and survey upon the terms, conditions, and covenants in said writing obligatory mentioned, three of which warrants, to wit, warrant six thousand nine hundred and sixteen, calling for three hundred and fifty acres; warrant six thousand nine hundred, calling for four hundred and sixty acres; and warrant six thousand nine hundred and eighteen, calling for seven hundred and forty acres, were by the said Duncan, on the day and year last aforesaid, located and surveyed for the said Benjamin W. upon the lands lying west of the line run by Ludlow, situate and being in the county of Clark, in the State of Ohio; and, also, two of which said warrants, to wit, warrant six thousand nine hundred and twenty, calling for three thousand four hundred and five acres and two-thirds of an acre, and warrant six thousand nine hundred and twenty-one, calling for four thousand two hundred and sixty-six acres and two-thirds of an acre, were by the said Duncan, on the day and year last aforesaid, located and surveyed for the said Benjamin W. upon the lands lying west of the line run by Ludlow, situate, lying, and being in the county of Champaign, in said State; and four of which said warrants, to wit, warrant number six thousand nine hundred and thirty-one, for four hundred and sixty acres; warrant number six thousand nine hundred and thirty-three, for four thousand acres; warrant number six thousand nine hundred and thirty-four, for six hundred and sixty-six acres and two-thirds of an acre; and warrant number six thousand nine hundred and thirty-five, for fourteen hundred and six acres and two-thirds of an acre, were by the said Duncan, on the 20th of November in the year last aforesaid, located and surveyed for the said Benjamin W. upon the lands lying west of the line run by Ludlow, situate and being in the county of Logan, in said State, all of which said warrants and locations of lands so made as aforesaid amounted to the quantity of fifteen thousand seven hundred and sixty acres and two-thirds of an acre of land, of which said quantity the said Duncan became and was entitled, according to the tenor and effect of the said writing obligatory, to have three thousand one hundred and fifty-two acres of said lands of great value, to wit, of the value of fifty thousand dollars. And the said Duncan further in fact saith that in making the location aforesaid he, the said Duncan, did necessarily expend and lay out for office fees, chain carriers, and other expenses in and about locating the said warrants, a large sum of money, to wit, the sum of ten

thousand dollars of his own proper moneys, and has also laid out and expended other large sums of money in trying the validity of the location so made as aforesaid, by virtue of the agreement as aforesaid, to wit, the further sum of twenty thousand dollars; and the said Duncan further in fact saith that he hath well and truly performed and kept all and singular the covenants in said writing obligatory on his part and behalf to be performed, and kept according to the tenor, effect, true intent, and meaning of said writing obligatory. Nevertheless, although the said locations so made by the said Duncan, as aforesaid, were good and valid locations, and well entitled the said Ladds and Howell to hold and the said lands by a good and indisputable title, yet the said Duncan in fact saith that the said Ladds and Howell did not nor would, although often requested, pay the said expenses of locating the said warrants; and did not nor would, although often requested, pay any part of the said expenses of trying the validity of said locations; and the said Ladds and Howell did not nor would, although often requested, convey to the said Duncan the one-fifth or any part of the lands so as aforesaid by him located, but, on the contrary thereof, the said Benjamin W., intending to deprive the said Duncan of his just right and interest in said lands, afterward, to wit, on the day of , in the year eighteen hundred and eighteen, against the will and consent of the said Duncan, did withdraw the said warrants, and all and each of them so aforesaid located; but to pay the said sum of money, or any part thereof, and to convey the said one-fifth part of said lands to the said Duncan, the said Ladds and Howell, and the said Benjamin W., have hitherto wholly neglected and refused, and still doth neglect and refuse, to wit, at Jefferson aforesaid, to the damage of the said Duncan of fifty thousand dollars, whereby an action hath accrued to demand and have of and from the said Benjamin W. the said sum of fifty thousand dollars above demanded. Yet the said Benjamin W. hath not, although often requested so to do, as yet paid the said sum of fifty thousand dollars above demanded, or any part thereof, to the said Duncan, but hath hitherto wholly neglected and refused, and still neglects and refuses, to pay the same or any part thereof to the said Duncan, to the damage of the said Duncan of one thousand dollars, and therefore he brings his suit, &c.

BENJ. TAPPAN, *pro quer.*

And thereupon the said Ladd, by J. & D. L. Collier, his attorneys, files his plea and demurrer to said declaration, in the words and figures following, to wit:

And the said Benjamin W. Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury when, &c., and says that the said supposed writing obligatory in said declaration mentioned is not his act and deed, and of this he puts himself upon the country, &c.

J. & D. L. COLLIER,
Attorneys for defendant.

And the said Benjamin W., by J. and D. L. Collier, his attorneys, comes and defends the wrong and injury when, &c., and says that the said declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law for the said Duncan to have or maintain his aforesaid action thereof against him the said Benjamin W., and that he, the said Benjamin W., is not bound by the law of the land to answer the same, and this he is ready to verify; wherefore, for want of a sufficient declaration in this behalf, the said Benjamin W. prays judgment, and that the said Duncan may be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER.

And afterward, to wit, at the same term, the parties are at issue to the court, on a demurrer to the declaration, and the court having heard the arguments of counsel are of opinion that the declaration is insufficient, the demurrer, therefore, is sustained, and judgment is rendered for the defendant for costs. The plaintiff, by his attorney, gives notice of his intention to appeal to the supreme court, and perfects his appeal by filing his bond, according to law, on the 9th day of October, A. D. 1828.

And afterward, to wit, at October term, A. D. 1829, of this court, the parties appear and this cause is continued to the next term of this court.

And afterward, to wit, at the May term, A. D. 1830, of this court, the parties appear by their attorneys, and are at issue to the court upon a demurrer to the plaintiff's declaration.

Whereupon the arguments of counsel being heard, on motion, leave is given to the plaintiff to amend his declaration within six months, on payment of all the costs since filing the same; costs to be paid within six months, and this cause is continued till the next term.

And afterward, to wit, at the October term of this court, A. D. 1831, the parties appear, and the plaintiff, by his attorneys, files his amended declaration in the words and figures following, to wit:

Benjamin W. Ladd was summoned to answer Duncan McArthur of a plea that he

render unto him the sum of fifty thousand dollars which he owes to and unjustly detains from him, and thereupon the said Duncan, by Tappan & Vinton, his attorneys, complains for that, whereas heretofore, to wit, on the 31st day of October, 1810, at Chillicothe, to wit, at Steubenville, in said county of Jefferson, by his certain writing obligatory, sealed with his seal, and now shown to the court here, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan in the said sum of fifty thousand dollars, above demanded to be paid to the said Duncan, which said writing obligatory was and is subject to a certain condition in writing, being part and parcel thereof, to the effect following—that is to say, that by an agreement entered into on the said 31st day of October, A. D. 1810, between the said Duncan McArthur, of the one part, and the said Benjamin W. Ladd, acting for himself and partner, Joseph Ladd, and agent for Thomas Norvell, of the State of Virginia, of the other part, he, the said Duncan, did there receive from the said Ladds and Norvell continental military land warrants and assignments of warrants, to the quantity of ten thousand acres, which the said Duncan was to locate and survey immediately for the said Joseph and Benjamin W. Ladd and Thomas Norvell, upon the following terms and conditions, to wit, the entries and surveys were all to be made on the west side of the line run by Ludlow, from the head spring of the Little Miami River to intersect Ludlow's north boundary line, which line, when produced, was intended to strike the source of the Scioto River, and to be the dividing line between the Virginia military and Congress lands; all office fees, chain-carriers, &c., were to be paid by the said Ladds and Norvell, the said Duncan to be entitled to the one-fifth part of the land so located, having respect, in the division thereof, to quality, quantity, and situation. But it was agreed that if, from any cause whatever, the locations made under said contract by said Duncan for said Ladds and Norvell should not hold the land, then and in that case the said McArthur should not have any interest in or part of said warrants, but said warrants should be exclusively and entirely at the disposal of said Ladds and Norvell, provided that in case Congress should give other lands or money in lieu of the land which was to be so as aforesaid located by said McArthur, then and in that case it was agreed that said McArthur should have his one-fifth part of all such lands or money. It was also agreed between the parties aforesaid, that each, in proportion to the interest that he or they might or should have in said lands, should pay his or their proportionable part of all expense which might be incurred in trying the validity of the locations to be made by virtue of said agreement, whether in any court of law or before Congress; and it was also agreed before the parties aforesaid, that whatever warrants or assignments of warrants the said Benjamin W. Ladd should send on to the said McArthur, in addition to the quantity of ten thousand acres mentioned above, and one thousand acres more also at the time of executing said writing obligatory handed to him, the said McArthur, he, the said McArthur, was to locate on the same terms and conditions herein above expressed.

And the said Duncan McArthur in fact saith that after making the said writing obligatory and in pursuance thereof, that is to say, on the same day and year last aforesaid, the said Benjamin W. Ladd, at Chillicothe, to wit, at Steubenville, in said county of Jefferson, put into the hand of the said McArthur, so as aforesaid to be located and surveyed, a large amount of warrants and assignments of warrants, in addition to the said quantity of ten thousand acres and one thousand acres in said writing obligatory mentioned, to have been received by him, the said McArthur, to wit: the quantity of four thousand seven hundred and sixty acres and two-third parts of an acre, amounting in all to the sum of fifteen thousand seven hundred sixty acres and two-third parts of an acre, and which said additional quantity of 4,760⅔ of warrants were then and there received and accepted by said McArthur on the terms and conditions, and for the purposes above stated; and the said Duncan McArthur in fact saith that, immediately after the entering into said writing obligatory, and the delivering to him the said warrants and assignments of warrants, he, the said Duncan, proceeded with all reasonable diligence to the office of Richard C. Anderson, the principal surveyor of the lands lying within the said Virginia military district, and did, on the nineteenth and thirtieth days of the same month of November, A. D. 1810, make entries of said warrants and assignments of warrants in said office for and in the name of the said Joseph and Benjamin W. Ladd and Thomas Norvell, of and on lands within the said Virginia military district, and west of said line run by said Ludlow, in said writing obligatory mentioned, and in conformity to the terms and conditions thereof; which said entries and locations amounted to the said quantity of 15,760⅔ acres of land, and were as follows, to wit: No. 6,916, Joseph and Benjamin W. Ladd, and Thomas Norvell, assignees, entries 355 acres of land on part of a military warrant, No. 5,638, on the waters of Mad River, beginning at the northwesterly corner of Thoms M. Bayley's survey, No. 5,733, running N. 20 W. to the northwesterly corner of Thomas Turk's survey, No. 4,259, and southwesterly corner to Richard Osborne's survey, No. 4,519; thence south 70° W., 205 poles, and from the beginning S. 70 W., per quantity. No. 6,917, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 460 acres of land on part of military warrant No. 5,633, on Hendrick's fork on east branch of Brush Creek, which is a branch of Mad River, be-

ginning at the southwest corner of Richard Osborne's survey, No. 4,519, running with the line of said survey N. 20 W., crossing said fork to the northwest corner of Osborne's said survey; thence and from the beginning S. 70 W., so far that a line N. 24 W. will include the quantity. No. 6,918, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 740 acres of land on warrants Nos. 5,723, 5,725, 5,620, 5,625, and forty acres, part of No. 5,633, on the waters of Mad River, beginning at the northwesterly corner of Richard Osborne's survey, No. 4,519, and northeasterly corner of said Ladd's and Norvell's entry, No. 6,917, running with the line of said entry S. 70 W., 227 poles; thence N. 23 W., and from the beginning N. 20 W. so far that a line S. 70 W. will include the quantity. No. 6,920, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 3,045¾ acres of land on warrants Nos. 5,825, 5,621, 5,626, and 250 acres, part of 5,722, and 89 acres, part of 5,638, on the waters of Beech Creek and Mad River, beginning at the northwesterly corner of John Cambell's survey, No. 2,574, of 1,876 acres, and southwesterly corner of John Kean's survey, No. 3,450, of 300 acres, running N. 20 W. 1,268 poles; thence and from the beginning S. 70 W. so far that a line N. 25¾ W. will include the quantity. No. 6,921, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 4,266¾ acres of land, two military warrants, Nos. 5,870, and 5,828, 300 acres on 5,721, and 300 acres on 5,631, on King's Creek, on east branch of Mad River, beginning at the northeasterly corner of said Ladd's and Norvell's entry, No. 6,920, running N. 20 W. 1,280 poles; thence and from the beginning S. 70 W. so far that a line N. 24 W. will include the quantity. No. 6,931, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 460 acres of land on part of a military warrant, No. 5 877, on the waters of Buckingelee's Creek, on east branch of the Big Miami, beginning at the southwesterly corner of Abraham Bowman's entry, No. 6,930, thence with the line of said entry N. 20 W. to the northwest corner thereof, thence and from the beginning off at right angles S. 70 W. so far that the line N. 32 W. will include the quantity. No. 6,933, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 4,000 acres of land on part of military warrant, No. 5,880, on the waters of Buckingelee's Creek and Cherokeeman's Run, easterly branches of the Big Miami, beginning at the northwesterly corner of Joseph Hite's entry, No. 6,932, running with the line of Hite's entry N. 20 W. to the northwest corner thereof, thence S. 80 W., and from the beginning S. 70 W. so far that a line N. 15 W. will include the quantity. No. 6,934, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 666¾ acres of land on part of a military warrant, No. 5,880, on the waters of Stony Creek and Mad River, beginning at the southeasterly corner of Abraham Bowman's entry, No. 6,928, running with his line S. 70 W. 310 poles, thence and from the beginning off at right angles S. 20 E. per quantity. No. 6,935, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 1,406¾ acres of land on two military warrants, Nos. 5,798, 5,756, 206¾ acres on a part of 5,877, and 100 acres, part of 5,719, on Bohneglar Creek, beginning at the southeasterly corner of said Ladd's and Norvell's entry, No. 6,931, and northwesterly corner to Abraham Bowman's entry, No. 6,929, running with the line of their said entry, N. 32 W. to the westerly corner thereof, thence S. 70 W. 470 poles, thence S. 24 E. so far that a line to the beginning will include the quantity. And the said McArthur saith that the above recited entries, Nos. 6,916, 6,917, 6,918, 6,920, and 6,921, were made in the office as aforesaid, on the 10th day of November, in the year aforesaid, and numbers 6,931, 6,933, 6,934, and 6,935 were made as aforesaid on the 20th day of the same month of November; and the said Duncan in fact saith that the said entries were valid entries of said lands, and made in all respects in conformity to law, and were situate and lay in that part of the said Virginia military district within which they were required by said writing obligatory to be located; and, by virtue thereof, the said lands, in said entries respectively intended, became and were appropriated in law to and for the said Joseph and Benjamin W. Ladd and Thomas Norvell, as good and valid locations, locations thereof according to the terms and conditions of said writing obligatory. And the said Duncan further in fact saith that immediately after making said entries, to wit, on the same 20th day of November, A. D. 1810, he, the said Duncan, went on to the lands in said entries mentioned, and then and there proceeded to survey the said several entries, with all due diligence, until the same were afterwards, to wit, on or before the 20th day of December, A. D. 1810, completed and finished in due form of law and according to the stipulations and terms of said writing obligatory. And the said Duncan avers that in making the entries, locations, and surveys aforesaid, he, the said Duncan, did necessarily expend and pay out for office fees, chain-carriers, axe-men, and other expenses, and about the locating of said warrants as aforesaid, large sums of money, to wit, the sum of ten thousand dollars, and has also paid out and expended other large sums of money to and for the use of the said Benjamin W. Ladd and the said Ladd and Norvell in defending the validity of said entries and locations, so as aforesaid made, before the Congress of the United States and the judicial tribunals of the United States and the State of Ohio, amounting, in the whole, to a large sum of money, to wit, the sum of twenty thousand dollars, four-fifths of which sum, to wit, $16,000, the said B. W. Ladd hath to pay, of all which the said Benjamin W. Ladd afterward had notice, to wit, the day and year last afore-

said, at Steubenville aforesaid. And the said Duncan in fact saith that by reason of the entries and surveys so aforesaid made by him, the said Duncan then and there and thereby became and was entitled to have and possess one-fifth part of all the lands in said entries and surveys included and contained, having respect to the quantity, quality, and situation of said lands; that is to say, he, the said Duncan, became and was entitled to a fifth part of said lands that should be equal to one-fifth part, in value, of the whole. And the said Duncan further in fact saith that from the time of making said writing obligatory until now he hath well and truly kept and performed all and singular the covenants and agreements therein contained, on his part and behalf to be performed and kept, according to the tenor and effect, true intent, and meaning of said writing obligatory. Nevertheless, the said Benjamin W., nor the said Ladds and Norvell, or either of them, although often requested so to do, would not in any way convey, assign, transfer, set apart, and apportion to the said Duncan his said one-fifth part of said lands, so as aforesaid by him located, or any part thereof; and did not, nor would not, although often requested, pay to him, the said Duncan, any part of the said moneys so as aforesaid paid, laid out, and expended by the said Duncan, to and for the use of the said Ladds and Norvell, for office fees, chain-carriers, axe-men, and other expenses in and about locating said warrants as aforesaid, and in defending the validity of said entries as aforesaid. But, on the contrary thereof, the said Benjamin W. Ladd, intending to defraud the said Duncan and deprive him of his said just right and interest in said lands, afterward, to wit, on the first day of January, one thousand eight hundred and seventeen, at Steubenville aforesaid, against the will and consent of the said Duncan, did assign and transfer to divers persons all the said warrant upon which the said entries and surveys were made and founded, without any reservation of the interest or share of the said Duncan therein, so that the said Ladd or Ladds and Norvell could not thenceforth convey, and cannot now convey, any part of said lands to the said Duncan, as by said writing obligatory said Benjamin W. was bound to do; and the assignees of said warrants afterward, to wit, on the same day and year last aforesaid, proceeded to withdraw, and did withdraw, said warrants from said entries, and removed them to other lands in said military district, by means whereof the said entries and surveys so as aforesaid made by the said Duncan became and were wholly vacated and annulled in law, and still continue to be and remain vacated, annulled, and of no force or effect in law, so that the said Benjamin W. Ladd and the said Ladds and Norvell, or any or either of them, from thence hitherto have not, and now have not, the power, authority, right, or ability to convey to the said Duncan the one-fifth, or any part, of said lands so as aforesaid by him entered, located, and surveyed. And the said Duncan further avers that the one-fifth part of said lands included in said entry, which of right belonged to him, was, at the time of making said entries and surveys, and continued to be up to the time when said warrants were so as aforesaid assigned away by the said Benjamin, and the same removed as aforesaid to other lands, so as to annul, vacate, and render of no effect said entries and survey, of great value, to wit, of the value of fifty thousand dollars; whereby, and by reason of the matters hereinbefore averred, an action hath accrued to demand and have of and from the said Benjamin W. Ladd the said sum of fifty thousand dollars above demanded.

Second count. And also for that whereas the said Benjamin W. Ladd, afterward, viz, on the 31st day of October, A. D. 1810, at Chillicothe, viz, at Steubenville, in said county of Jefferson, by his certain other writing obligatory, sealed with his seal, and to the court here now shown, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan in the said sum of fifty thousand dollars, above demanded to be paid to the said Duncan, which said writing obligatory last aforesaid was and is subject to a condition in writing, being part and parcel thereof to the effect following, that is to say: that by an agreement entered into on the said 31st day of October, A. D. 1810, between the said Duncan McArthur, of the one part, and the said Benjamin W. Ladd, acting for himself and partner, Joseph Ladd, and as agent for Thomas Norvell, of the State of Virginia, of the other part, he, the said Duncan did then receive, from the said Ladds and Norvell, Virginia continental military land warrants and assignments of warrants, to the quantity of ten thousand acres, which he, the said Duncan, was to locate and survey immediately for the said Joseph and Benjamin W. Ladds and Thomas Norvell, upon the following terms and conditions, to wit, the entries and surveys were all to be made on the west side of the line run by Ludlow, from the head spring of the Little Miami River to intersect Ludlow's north boundary line, which line, when produced, was intended to strike the source of the Scioto River, and be the dividing line between the Virginia military and Congress lands. All office fees, chain-carriers, &c., were to be paid by the said Ladds and Norvell, the said Duncan to be entitled to the one-fifth part of the land so located, having respect in the division thereof to quality, quantity, and situation. But it was agreed that if, from any cause whatever, the locations made under said contract by said Duncan for said Ladds and Norvell should not hold the land, then, and in that case, the said McArthur should not have any interest in or part of said warrants, but said warrants should be exclusively and entirely at the disposal of said Ladds and Nor-

vell, provided that in case Congress should give other lands or money in lieu of the land which should be so as aforesaid located by said McArthur, then, and in that case, it was agreed that the said McArthur should have his one-fifth part of such lands or money. It was also agreed between the parties aforesaid, that each, in proportion to the interest that he or they might or should have in said lands, should pay his or their proportionable part of all expenses which might be incurred in trying the validity of the locations to be made by virtue of said agreement, whether in any court of law or before Congress, &c. And it was also agreed between the parties aforesaid, that whatever warrants, or assignments of warrants, the said Benjamin W. Ladd should send on to said McArthur, in addition to the quantity of ten thousand acres mentioned above, and one thousand acres more also at the time of executing said writing obligatory handed to him, the said McArthur, he, the said McArthur, was to locate on the same terms and conditions herein above expressed. And the said Duncan McArthur in fact saith that after making the said writing obligatory, and in pursuance thereof, that is to say on the same day and year last aforesaid, to wit, at Steubenville, in said county of Jefferson, he the said Benjamin W. Ladd, at Chillicothe, to wit, at Steubenville, in the said county of Jefferson, put into the hands of said McArthur, so as aforesaid to be located and surveyed, a large amount of warrants and assignments of warrants, in addition to the said quantities of ten thousand acres and one thousand acres in said writing obligatory mentioned to have been received by him, the said McArthur, to wit, the quantity of four thousand seven hundred and sixty acres and two-third parts of an acre, amounting in all to the sum of fifteen thousand seven hundred and sixty acres and two-third parts of an acre, and which said additional quantity of 4,760⅔ acres of warrants were then and there received and accepted by said McArthur, on the terms and conditions and for the purpose above stated. And the said Duncan further in fact saith that immediately after entering into said writing obligatory, and the delivering to him said warrants and assignments of warrants, he, said Duncan, proceeded with all reasonable diligence to the office of Richard C. Anderson, the principal surveyor of the lands lying within said Virginia military district, and did on the 19th and 20th days of the same month of November, A. D. 1810, make entries of said warrants and assignments of warrants in said office, for and in the names of Joseph and Benjamin W. Ladd and Thomas Norvell, of and on lands within the said Virginia military district, and west of said line run by Ludlow, in said writing obligatory mentioned, and in conformity to the terms and conditions thereof, which said entries or locations amounted to the said quantity of fifteen thousand seven hundred and sixty and two-thirds acres of land, and were as follows, to wit: No. 6,916, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 355 acres of land on part of a military warrant No. 5,638, on the waters of Mad River, beginning at the northwesterly corner of Thomas M. Bayley's survey, No. 5,733, running N. 20 W. to the northwesterly corner of Thomas Turk's survey, No. 4,259, and southwesterly corner to Richard Osborne's survey, No. 4,519; thence south 70 W. 205 poles and from the beginning S. 70 W. per quantity. No. 6,917. Joseph and Benjamin W. Ladd and Thomas Norvell assignees, enter 460 acres of land on part of military warrant No. 5,633, on Hendrick's Fork on the east branch of Bush Creek, which is a branch of Mad River, beginning at the southwest corner of Osborne's survey, No. 4,519, running with the line of said survey N. 20 W., crossing said fork to northwest corner of Osborne's said survey; thence and from the beginning S. 70 W., so far that a line N. 24 west will include the quantity. No. 6,918, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 740 acres of land on warrants Nos. 5,723, 5,725, 5,620, 5,623, and forty acres part of No. 5,633 on the waters of Mad River, beginning at the northwesterly corner of Richard Osborne's survey, No. 4,519, and northeasterly corner of said Ladds' and Norvell's entry No. 6,917, running with the line of said entry S. 70 W. 227 poles, thence N. 23 W., and from the beginning N. 20 W. so far that a line S. 70 W. will include the quantity. No. 6,920, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 3,405⅔ acres of land on warrants Nos. 5,825, 5,621, 5,626, and 250 acres, part of 5,722, and 89 acres, part of 5,638, on the waters of Buck Creek and Mad River, beginning at the northwesterly corner of John Cambell's survey, No. 2,574, of 1,876 acres, and southwesterly corner of John Kean's survey, No. 3,450, of 300 acres, running N. 20 W. 1,268 poles, thence and from the beginning S. 70 W. so far that a line N. 25½ W. will include the quantity. No. 6,921, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 4,266⅔ acres of land on two military warrants, Nos. 5,870 and 5,828, 300 acres on 5,721, and 300 acres on 5,631, on King's Creek, an east branch of Mad River, beginning at the northeasterly corner of said Ladds' and Norvell's entry, No. 6,920, running N. 20 W. 1,280 poles, thence and from the beginning S. 70 W. so far that a line N. 24 W. will include the quantity. No. 6,901, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 460 acres of land on a part of military warrant No. 5,877, on the waters of Buckinglee's Creek, an east branch of the Big Miami, beginning at southwesterly corner of Abraham Bowman's entry, No. 6,930, thence with the line of said entry N. 20 W. to the northwest corner thereof; thence, and from the beginning, off at right angles S. 70 W. so far that a line N. 32 W. will include the quantity. No. 6,933, Joseph and Benjamin W. Ladd

and Thomas Norvell, assignees, enter 4,000 acres of land on part of military warrant No. 5,880, on the waters of Buckinglee's Creek, Cherokeeman's Run, easterly branches of the Big Miami, beginning at the southwesterly corner of Joseph Hite's entry, No. 6,932, running with the line of Hite's entry N. 20 W. to the northwest corner thereof, thence S. 80 W., and from the beginning S. 70 W. so far that a line N. 15 W. will include the quantity. No. 6,934, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 666⅔ acres of land on part of a military warrant No. 5,880, on the waters of Stony Creek and Mad River, beginning at the southeasterly corner of Abraham Bowman's entry, No. 6,928, running with this line S. 70 W. 310 poles, thence and from the beginning off at right angles S. 20 E., per quantity. No. 6,935, Joseph and Benjamin W. Ladd and Thomas Norvell, assignees, enter 1,406⅔ acres of land on two military warrants, Nos. 5,798, 5,756, 206⅔ acres on part of military warrant No. 5,877, and 100 acres, part of 5,719, on Bohongelue Creek, beginning at the southeasterly corner of said Ladds' and Norvell's entry, No. 6,931, and northwesterly corner of Abraham Bowman's entry, No. 6,929, running with the line of their said entry N. 32 W. to the westerly corner thereof, thence S. 70 W. 470 poles, thence S. 24 E. so far that a line to the beginning will include the quantity. And the said McArthur saith that the above-recited entries, Nos. 6,916, 6,917, 6,918, 6,919, 6,920, and 6,921, were made in the office as aforesaid on the 19th day of November, A. D. 1810, and Nos. 6,931, 6,933, 6,934, and 6,935, were made as aforesaid on the 20th day of the same month, November. And the said Duncan in fact saith that the said entries were valid entries of said land, and made in all respects in conformity to law, and were situate and lay in that part of the said Virginia military district within which they were required by said writing obligatory to be located, and by virtue thereof the said lands in said entries respectively included became and were appropriated in law to and for the said Joseph and Benjamin W. Ladd and Thomas Norvell as good and valid location thereof, according to the terms and conditions of said writing obligatory. And the said Duncan further in fact saith that immediately after making said entries, to wit, on the same 20th day of November, A. D. 1810, he, the said Duncan, repaired and went to the said lands in said entries mentioned with all reasonable diligence, and then and there proceeded with like diligence to prosecute the survey of said several entries until the same was afterward, to wit, on or before the 20th day of December, A. D. 1810, completed and finished in due form of law, and in pursuance to the stipulations of said writing obligatory; of all which the said Benjamin Ladd afterward had notice, to wit, the day and year last aforesaid, at Steubenville aforesaid. And the said Duncan in fact saith that by reason of the entries and surveys so, as aforesaid, made by him, he, the said Duncan, then and there and thereby became and was entitled to have and possess one-fifth part of all the lands in said entries and surveys included and contained, having respect to the quantity, quality, and situation of said lands; that is to say, he, the said Duncan, became and was entitled to a fifth part of said land that should be equal in value to one-fifth part of the value of all said lands. And the said Duncan further, in fact, saith that from the time of making said writing obligatory, until now, he hath well and truly kept and performed all and singular the covenants and agreements therein contained, on his part and behalf to be performed and kept according to the tenor and effect, true intent, and meaning of said writing obligatory. Nevertheless the said Benjamin W., nor the said Ladds and Norvell, or either of them, although often requested so to do, would not in any way convey, assign, transfer, or set apart and apportion to the said Duncan his said one-fifth part of said lands, so as aforesaid by him located, or any part thereof; but on the contrary thereof the said Benjamin W., intending to defraud the said Duncan and deprive him of his just rights and interest in said lands, afterward, to wit, on the 1st day of January, 1817, at Steubenville aforesaid, against the will and consent of the said Duncan, did assign and transfer to divers persons all the said warrants upon which the said entries and surveys were made and founded, without any reservation of the interest or share of the said Duncan therein, so that the said Ladd, or Ladds and Norvell, could not thenceforth convey any parts of said lands to said Duncan as by said writing obligatory said Benjamin W. was bound to do. And the said assignees afterward, to wit, the same day and year last aforesaid, proceeded to withdraw said warrants from said entries, and removed them to other lands in said military district, by means whereof the said entries and surveys so as aforesaid made by said Duncan became and were wholly vacated and annulled in law, and still continue to be and remain vacated, annulled, and of no force or effect in law; and the said Duncan further avers that the fifth part of the land included in said entries, which of right belonged to him, was at the time of making said entries, and continued to be up to the time when the said warrants were assigned away as aforesaid by said Benjamin, and the same removed as aforesaid to other lands, so as to annul and vacate said entries and surveys of great value, to wit, of the value of twenty thousand dollars, whereby and by reason of the matters in this count stated an action hath accrued to demand and have of and from the said Benjamin W. Ladd the said sum of fifty thousand dollars above demanded.

Third count. And also, for that whereas the said Benjamin W. Ladd afterward,

to wit, on the said 31st day of October, A. D. 1810, at Chillicothe, to wit, at Steubenville, in said county of Jefferson, by his certain other writing obligatory sealed with his seal, and to the court here now shown, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan McArthur in the said sum of fifty thousand dollars above demanded to be paid to him, the said Duncan, which said writing obligatory last aforesaid was and is subject to a certain condition in writing, the same condition being part and parcel of said writing obligatory, to the effect following, to wit: It is in said condition recited that by an agreement entered into on the said 31st day of October, A. D. 1810, between the said Duncan McArthur on the one part, and the said Benjamin W. Ladd, for himself and partner, Joseph Ladd, and as agent Thomas Norvell, of the State of Virginia, of the other part, he, the said Duncan, did there receive from the said Ladds and Norvell Virginia continental military land warrants and assignments of warrants to the quantity of ten thousand acres, which he, the said Duncan, was to locate and survey immediately for the said Joseph and Benjamin W. Ladd, and Thomas Norvell, upon the following terms and conditions, to wit: The entries and surveys were all to be made on the west side of the line run by Ludlow from the head spring of the Little Miami River to intersect Ludlow's north boundary line, which line, when produced, was intended to strike the source of the Scioto River, and be the dividing line between the Virginia military and Congress lands. All office fees, chain carriers, &c., were to be paid by the said Joseph and Benjamin W. Ladd and Thomas Norvell; the said Duncan McArthur to be entitled to one-fifth part of the lands so located, having respect in the division thereof to quality, quantity, and situation. It was further recited and agreed that if from any cause whatever the locations made under that contract by the said McArthur for the said Ladds and Norvell should not hold the land, then and in that case the said McArthur was to have no interest in or part of said warrants, but the said warrants were in that event to be exclusively and entirely at the disposal of said Ladds and Norvell: Provided, nevertheless, that in case Congress should give other lands or money in lieu of the lands which might be so located by said McArthur, he, the said McArthur, should have his one-fifth part of all such lands or money. It was also agreed by the parties thereto that each, in proportion to the interest that he or they might have in the land, should pay his or their proportionable part of all expenses which might be incurred in trying the validity of the locations made by virtue of that agreement, whether in any court of law or before Congress, &c. And it was also further agreed by the parties thereto, in addition to the covenants and agreements hereinabove recited, that whatever warrants or assignments of warrants said B. W. Ladd should send on to said Duncan McArthur in addition to the quantity ten thousand acres thereinbefore mentioned, and one thousand acres then handed to said McArthur in addition to the said ten thousand acres thereinbefore mentioned, (making in all eleven thousand acres of warrants handed to said McArthur at the time of executing said writing obligatory,) should be located by said McArthur on the same terms and conditions thereinbefore expressed. And the said McArthur in fact saith the said Benjamin W. Ladd, after the making of the said writing obligatory, to wit, on the same day and year last aforesaid, at Chillicothe aforesaid, to wit, at Steubenville, in said county of Jefferson, did send and deliver to said McArthur so as aforesaid to be located and surveyed a large quantity of warrants and assignments of warrants in addition to the eleven thousand acres in said writing obligatory mentioned to have been delivered to said Duncan at the time of the making thereof, to wit: The quantity of four thousand seven hundred and sixty acres and two-third parts of an acre, which said additional quantity of 4,760⅔ acres of warrants the said Duncan then and there received and accepted in pursuance of the terms and conditions of said writing obligatory, and for the purposes therein expressed, making in all the quantity of fifteen thousand seven hundred and sixty acres and two-third parts of an acre by the said Duncan received, to be by him so as aforesaid located and surveyed. And the said Duncan further in fact saith, that immediately after receiving said warrants and assignments of warrants, he, the said Duncan, proceeded with all reasonable diligence to the office of Richard C. Anderson, the principal surveyor of the lands lying within the Virginia military district in the State of Ohio, and did on the 19th and 20th days of November, A. D. 1810, make entries of said warrants and assignments of warrants in said office, for and in the names of the said Joseph and Benjamin W. Ladd and Thomas Norvell, of and on the lands within the said Virginia military district, and west of said line run by Ludlow, in conformity to the said terms and conditions of said writing obligatory, which said entries or locations amounted to the said quantity of fifteen thousand seven hundred and sixty acres and two-third parts of an acre. And the said Duncan in fact saith that the said last-named entries were made in due form of law, and as such were valid locations of the lands therein specified, and did in law appropriate and vest the interest therein in the said Joseph and Benjamin W. Ladd and Thomas Norvell, according to the terms and conditions of said writing obligatory. And the said Duncan further in fact saith that he so as aforesaid having completed said entries, did immediately thereafter, to wit, on the said 20th day of November, A. D. 1810, proceed

from the said surveyor's office to the lands appropriated by said entries, and did then and there proceed with all reasonable diligence in the survey thereof, till the same was completed, to wit, on the 20th day of December, A. D. 1810, which said survey of said entries was made in all respects in conformity to law, and to the terms and conditions of said writing obligatory, of all which the said Benjamin W. Ladd afterward, to wit, on the same day and year last aforesaid, at Steubenville aforesaid, had notice, by means of which entries and surveys the said Duncan then and there became and was entitled to one-fifth part of said fifteen thousand seven hundred and sixty acres and two-third parts of an acre of land, having respect to quantity, quality, and situation thereof. And the said Duncan in fact saith that the one-fifth part of said land which of right belonged to him at the time of making said entries and surveys, of great value, to wit, of the value of twenty thousand dollars, and has ever since continued to be of the value aforesaid. And the said Duncan further in fact saith that from the time of making said writing obligatory until now, he hath well and truly performed and kept all and singular the covenants and agreements in said writing obligatory contained on his part and behalf to be performed and kept, according to the true intent and meaning, tenor and effect of said writing obligatory. Nevertheless the said Benjamin W. nor the said Ladds and Norvell, nor either of them, although requested, to wit, on the said 20th day of December and often afterwards at Chillicothe, to wit, at Steubenville aforesaid, would not in any way convey, assign, transfer, or apportion, by a division thereof, to the said Duncan his said part of said land last aforesaid, as he and they ought to have done; but to convey, assign, transfer, or apportion to said McArthur his said share of said land or any part thereof he the said Benjamin W. and the said Ladds and Norvell did then and there refuse and have ever since refused so to do; but did on the contrary thereof afterward, to wit, on the 1st day of January, A.D. 1813, at Steubenville aforesaid, appropriate said warrants so as last aforesaid located, to his and their own exclusive use, whereby he the said McArthur is and has been wholly deprived of his interest therein; by reason whereof an action hath accrued to said Duncan to demand and have of and from the said Benjamin W. Ladd the said sum of fifty thousand dollars above demanded.

Fourth count. And also for that whereas the said Benjamin W. Ladd heretofore, to wit, on the 31st day of October, A.D. 1810, at Chillicothe, to wit, at Steubenville in said county of Jefferson, by his certain other writing obligatory sealed with his seal and now to the court here shown, the date whereof is the day and year last aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan McArthur in the said sum of fifty thousand dollars above demanded to be paid to him the said Duncan McArthur, which said writing obligatory was and is subject to a certain condition and agreement written over the said writing obligatory, for the faithful performance of which the said writing obligatory was meant and intended to enforce and bring to the substance and effect following, to wit, that by said agreement entered into on the 31st day of October, A. D. 1810, between the said Duncan McArthur of the one part and the said Benjamin W. Ladd, acting for himself and partner Joseph Ladd, and Thomas Norvell of the State of Virginia of the other part, he the said Duncan McArthur did then and there receive from the said Ladd and Norvell Virginia continental and military land-warrants and assignments of warrants to the quantity of ten thousand acres, which he the said Duncan was to locate and survey immediately for the said Joseph and Benjamin W. Ladd and Thomas Norvell, upon the following terms and conditions, to wit: The entries and surveys were all to be made on the west side of the line run by Ludlow from the head spring of the Little Miami River, to intersect Ludlow's north boundary line, which line, when produced, was intended to strike the source of the Scioto River and be the dividing line between the Virginia military and Congress lands; all office fees, chain carriers, &c., were to be paid by the said Ladds and Norvell; the said Duncan McArthur to be entitled to one-fifth part of the lands so located, having respect in the division thereof to quality, quantity, and situation. But it was agreed that if from any cause whatever the locations made under said contract by said McArthur for said Ladds and Norvell should not hold the land, then and in that case the said McArthur should not have any interest in or part of said warrants, but said warrants should be exclusively and entirely at the disposal of said Ladds and Norvell: Provided, nevertheless, that if Congress gave other lands or money in lieu of the land which should be so as aforesaid located by said McArthur, then and in that case it was agreed that the said McArthur should have his one-fifth part of all such lands or money. It was also agreed between the parties aforesaid, that each in proportion to the interest that he or they might or should have in said land should pay his or their proportionable part of all expense which might be incurred in trying the validity of the locations to be made by virtue of said agreement, whether in any court of law or before Congress, &c. And the said Duncan in fact saith that immediately after the making of the said writing obligatory, he proceeded without any unreasonable or unnecessary delay to the office of the principal surveyor of the lands lying within the Virginia military district, and did on the 19th and 20th days of November, A. D. 1810, make due and legal entries in said office of said warrants and assignments of warrants

in this count mentioned to and for and in the names of the said Joseph and Benjamin W. Ladds and Thomas Norvell, of and on lands within the said Virginia military district and west of the said line run by Ludlow in pursuance of the terms and requirements of said writing obligatory, which said entries and locations called for and included a large quantity of land, to wit, the quantity of ten thousand acres. And the said Duncan McArthur in fact saith that the said entries were made in all respects in conformity to law, and by virtue thereof the lands included in said entries became and were legally appropriated and held to and for the use of the said Joseph and Benjamin W. Ladd and Thomas Norvell, according to the true intent and meaning of the said writing obligatory. And the said Duncan further in fact saith that so soon as the making of said last-mentioned entries was completed as aforesaid, he in like manner immediately proceeded from said surveyor's office to and upon the lands called for and included in said entries, and without any unreasonable delay entered with all reasonable diligence upon the surveying of said entries, and continued with all reasonable diligence to prosecute the survey thereof until the same was fully completed, to wit, on the 20th day of December, A. D. 1810, of all which the said Benjamin W. Ladd afterward, to wit, the same day and year last aforesaid at Chillicothe, to wit, at Steubenville aforesaid, had notice. And the said Duncan McArthur in fact saith that by virtue of the entries and surveys so as aforesaid made, he, the said Duncan, became and was entitled in his own right to have and possess one-fifth part of said lands last named, having respect to quality, quantity and situation, which one-fifth part was at the time of making said entries and ever since has continued to be of great value, to wit, of the value of twenty thousand dollars; and being so as aforesaid entitled, he, the said Duncan, afterward, to wit, on the said 20th day of December, A. D. 1810, and often afterward, requested the said Benjamin W. Ladd to convey, assign, or transfer his said share to him, the said Duncan, according to the true intent and meaning of said writing obligatory, to wit, at Steubenville, aforesaid; but the said Benjamin, for himself or his partner, nor as agent for said Thomas Norvell, would, nor would they or either of them convey, assign or transfer to said McArthur, his said share of land or any part thereof as by the said writing obligatory he or they ought to have done; but the same to the said McArthur in any way to convey, assign, or transfer, he the said Benjamin W. for them and each of them hath refused and still doth refuse; but on the contrary thereof did afterwards, to wit, on the first day of January, A. D. 1813, appropriate said warrants without any good cause to his and their own exclusive use and advantage, by reason whereof an action hath accrued to the said Duncan to demand and have of and from the said Benjamin W. Ladd the said sum of fifty thousand dollars above demanded. And also for that whereas the said Benjamin W. Ladd heretofore, to wit, on the 31st day of October, A. D. 1810, by his certain other writing obligatory sealed with his seal, and to the court here now shown, the date whereof is on the day and year last aforesaid, acknowledged himself to be held and firmly bound unto the said Duncan McArthur in the said sum of fifty thousand dollars above demanded to be paid to the said Duncan when he the said Benjamin should be thereto afterwards requested. Nevertheless the said Benjamin W. Ladd, although often requested so to do, hath not paid to the said Duncan the said sum of fifty thousand dollars mentioned in each of the foregoing counts and above demanded, but the same or any part thereof to pay, he, the said Benjamin W. Ladd, hath hitherto wholly refused and still doth refuse so to do, to the damage of the said Duncan in the sum of one thousand dollars, and therefore he brings his suit, &c.

TAPPAN & VINTON, *pro quer.*

And afterward, to wit, at the same term, it was ordered by the court that the defendant plead to the amended declaration within six months, and that every sixtieth day thereafter be a rule day, until this case is brought to issue, and this cause is continued till the next term.

And afterward, to wit, at the October term, A. D. 1832, of this court, the parties appear by their attorneys and this cause is continued till the next term.

And afterward, to wit, on the 20th day of September, A. D. 1833, came the defendant by Colliers, his attorneys, and files the following pleas, to wit:

And the said Benjamin W. Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c. And as to said first, second, and third counts of said declaration says, that the said several writings obligatory in said declaration mentioned are not his deed. Of this he puts himself upon the country, &c.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and says that he ought not to be charged with the said debt by virtue of said supposed writing obligatory, because he says that the several supposed causes of action in said declaration mentioned did not, nor did any or either of them accrue to the said McArthur at any time within fifteen years next before the commencement of this suit, in manner and form as the said Mc-

Arthur hath above thereof complained against him the said Ladd, and this he is ready to verify; wherefore he prays judgment, and that the said McArthur may be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER,
Attorneys for Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the said first, second, and third counts in said declaration says that he ought not to be charged with said debt by virtue of said writing obligatory in said declaration mentioned, because, he says, that at the time of the execution and delivery of said several writings obligatory in said declaration mentioned, to wit, on the thirty-first day of October, in year of our Lord one thousand eight hundred and ten, at Chillicothe, to wit, at said county of Jefferson, he, the said McArthur, made his certain memorandum or agreement in writing, which by time or accident has been mislaid or lost, and then and there delivered the said written memorandum or agreement to the said Ladd, by which said agreement, he, the said McArthur, promised and become bound to locate and survey immediately thereafter for the said Joseph and Benjamin W. Ladd and Thomas Norvell, all the continental military land warrants and assignments of warrants received by him, the said McArthur, from the said Ladds and Norvell, under and by virtue of said several writings obligatory upon lands on the west side of the line run by Ludlow from the head spring of the Little Miami to intersect Ludlow's north boundary line, and upon certain streams as distinguished in said instrument of writing which was a part and parcel of the original agreement of the parties aforesaid, to wit, on Mad River, Machackack, King's Creek, Buck Creek, and McKee's Creek, and although he, the said McArthur, afterwards, to wit, on the day and year last aforesaid, did receive from the said Benjamin W. Ladd continental military land warrants and assignment of warrants to locate and survey upon the terms and stipulations aforesaid for the said Ladds and Norvell, convey to the quantity of 15,760⅔ acres; yet the said Ladd avers that the said McArthur did not nor would not locate and survey for the said Ladds and Norvell the said warrants upon the said streams, but, on the contrary thereof, wholly neglected and refused so to do, and this the said Ladd is ready to verify. Wherefore he prays judgment and that the said McArthur may be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER,
Attorneys for Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to said first, second, and third counts of said declaration, says that he ought not to be charged with the said debt by virtue of the said supposed writings obligatory, because he says that at the time of the execution and delivery of the said writings obligatory, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ten, at Chillicothe, to wit, at Jefferson aforesaid, he, the said McArthur, made his certain memorandum or agreement in writing to the said Ladd, which was taken and received by the said McArthur and Ladd as a part and parcel of said writing obligatory above declared upon as aforesaid, and then and there delivered the said agreement to him the said Ladd, (which by time and accident has been mislaid and lost,) by which memorandum or agreement in writing it was stipulated and agreed on the part of said McArthur, and the said McArthur then and there became bound to locate and survey for the said Benjamin and Joseph Ladd and Thomas Norvell, the said continental military land warrants and assignments of warrants, received by the said McArthur from the said Ladds and Norvell, under and by virtue of the said writing obligatory, and described in said declaration, upon lands situated on certain streams particularly specified in said memorandum or instrument of writing, part and parcel of the said writing obligatory set forth in said declaration, to wit, on Mad River, Machackack, King's Creek, Buck Creek, and McKee's Creek, on the west side of the line run by Ludlow from the head spring of the Little Miami to intersect Ludlow's north boundary line; and although the said McArthur did afterwards, to wit, on the day and year aforesaid, at the place aforesaid, receive from the said Ladd the said military land warrants, as described in said declaration, to locate and survey for said Ladds and Norvell, agreeably to the terms and stipulations of said writing obligatory, and the said instrument of writing, part of said original agreement as aforesaid; yet the said Ladd avers that the said McArthur did not, nor would not, locate and survey the said warrants upon said streams, but, on the contrary, wholly refused so to do, and thereupon proceeded to make the said surveys upon lands of an inferior quality, lying without the limits specified in said instrument of writing, part of said original agreement of the parties aforesaid, in direct violation of said agreement; and this the said Ladd is ready to verify. Wherefore he prays judgment, and that the said McArthur may be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER,
Attorneys for Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the first, second, and third counts of said declaration, says that he ought not to be charged with said debt by virtue of said supposed writings obligatory, because, he says, that at the time of executing said writings obligatory, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ten, to wit, at Jefferson aforesaid, he, the said McArthur, made his certain memorandum or agreement in writing with the said Ladd, which was taken and received by the said McArthur and Ladd as a part of said writing obligatory above declared upon, as aforesaid, and then and there delivered the said agreement to him, the said Ladd, (which by time or accident has been mislaid and lost,) by which it was stipulated and agreed on the part of said McArthur, and the said McArthur then and there became bound to locate and survey for the said Benjamin W. Ladd, Joseph Ladd, and Thomas Norvell, the said continental military land warrants and assignments of warrants received by the said McArthur from the said Ladds and Norvell, under and by virtue of said writing obligatory, upon land situated upon certain streams, to wit, on Mad River, Machackack, King's Creek, Buck Creek, and McKee's Creek, on the west side of the line run by Ludlow from the head spring of the Little Miami, to intersect Ludlow's north boundary line; and although the said McArthur did afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, receive from the said Ladd the said military land warrants, as described in said declaration, to locate and survey for the said Ladds and Norvell on said Mad River, Machackack, King's Creek, Buck Creek, and McKee's Creek, agreeable to the terms and conditions of said writing obligatory and said memorandum or instrument of writing, part of said original agreement as aforesaid; yet the said Ladd avers that the said McArthur afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, procured and purchased a large quantity, to wit, continental military land warrants and assignments of warrants covering a large quantity, to wit, ten thousand acres, to locate and survey on his, the said McArthur's own account, which the said McArthur afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, fraudulently did proceed to locate and survey for his own benefit, upon the same identical lands which he, the said McArthur, had agreed to locate and survey for the said Ladds and Norvell under and by virtue of said writing obligatory and said instrument of writing, part of said agreement aforesaid, in express violation of said agreement and to the great injury of said Ladd, and thereupon the said McArthur wholly neglected and refused to locate and survey for said Ladds and Norvell the said military land warrants so by him received as aforesaid, agreeably to the terms and stipulations of said writing obligatory and said instrument of writing, part of said writing obligatory, as aforesaid; and this the said Ladd is ready to verify. Wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writings obligatory.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury when, &c., and as to the said second and third counts of said declaration, says that he ought not to be charged with the said debt by virtue of said supposed writing obligatory, because, he says, that after the execution of said supposed writings obligatory, and after the delivery of said warrants to McArthur, and subsequent to the time of the survey and locations of said warrants, as described in said declaration, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and twelve, at Washington City, to wit, at said county, the said Benjamin and Joseph Ladd and Thomas Norvell, and the said Duncan McArthur, united in a petition to Congress setting forth that the said Ladds and Norvell were then the proprietors of certain land warrants for fifteen thousand seven hundred and sixty acres, granted by the State of Virginia to officers and soldiers of the Virginia line on continental establishment, and had contracted with said McArthur to locate said warrants on good lands lying within the limits of the tract reserved by the State of Virginia out of the territory ceded by the said State to the United States by a legislative act passed on the twentieth day of October, in the year of our Lord 1783, and carried into effect on the first day of March, 1784, and that said McArthur did locate said warrants within the limits of the reservation, and caused surveys of said location to be effected, and praying that said lands might be valued by persons appointed by the Government and said petitioners, and that the amount of such valuation be paid to them, the petitioners, in cash, or that such amount, being considered as a cash payment in advance for land, and entitling them to the usual deductions, they, the said petitioners, be allowed to make entries for land in any of the land offices of the United States, and that a law to that effect might be passed, &c. And the said Ladd avers that the said petition refers to the same identical lands, warrants, surveys, and locations, and to the same contract as set forth and particularly described in said declaration, and that said petition was afterwards, to wit, at the session of Congress for the United States for the year of our Lord 1812–'13, duly presented to said Congress in be-

half of said Ladds, Norvell, and McArthur, and there continued from time to time during said session and several subsequent sessions of Congress of the United States, agreeably to the rules and usages of said Congress, during the whole of which said period the said Ladds and Norvell made use of every reasonable diligence to obtain the favorable action of Congress in answer to said petition, until afterwards, to wit, on the first day of June, A. D. 1817, the said Ladds and Norvell, being advised, and they themselves fully satisfied, that the prayer of said petition would not be granted, and that the parties to said petition could obtain no relief in Congress, demanded their said petition, and the said Ladds, Norvell, and McArthur were wholly unable to obtain any relief or compensation whatever for and on account of the said locations and survey of said military warrants from the Congress of the United States by virtue of their said petition or otherwise, and thereupon said Ladds and Norvell sold and disposed of said warrants and have since ceased to have any interest in said lands; and this the said Ladd is ready to verify. Wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the first, second, and third counts of said declaration, says that he ought not to be charged with said debt by virtue of said writing obligatory, because, he says, that the said McArthur did not proceed with all reasonable diligence to the office of the principal surveyor of the land lying within the said Virginia military district, or at any time after the execution of said writings obligatory, and make entries of said warrants and assignments of warrants in the names of the said Joseph and Benjamin Ladd and Thomas Norvell, and on lands in the Virginia military district, west of Ludlow's line, agreeably to the terms of said writing obligatory, and this the said Ladd is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said writings obligatory in said first three counts of said declaration mentioned.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the said first, second, and third counts of said declaration, says that he ought not to be charged with said debt by virtue of said supposed writing obligatory, because, he says, that after the execution of said writings obligatory, and after the said McArthur had received from the said Ladds and Norvell the said Virginia military land warrants and assignments of warrants to locate and survey, agreeably to the terms of said contract, to wit, on the day and the year aforesaid, at the place aforesaid, the said McArthur procured and purchased a large quantity, to wit, continental Virginia military land warrants and assignments of warrants, covering ten thousand acres, to locate and survey on his own account and for his, the said McArthur's, own benefit, and afterwards and before he, the said McArthur, would locate and survey the said warrants so received, as aforesaid, from said Ladd and said Ladds and Norvell, in pursuance of said contract, to wit, on the day and year aforesaid, at the place aforesaid, he, the said McArthur, fraudulently, and contrary to the true intent and meaning of said writing obligatory, did proceed to make entries and survey upon the most valuable lands and upon the same identical lands in his own name and that of others, and for his, the said McArthur's own benefit, which he, the said McArthur was bound to locate, enter, and survey for said Ladds and Norvell, by virtue of their said warrants, agreeably to the terms and conditions of said writings obligatory, whereby the said Ladd and Ladds and Norvell were wholly deprived of the benefits and advantages held out to them by said McArthur at the time of the execution of the said writings obligatory, and the said McArthur hath thereby wholly neglected and refused to make entries, surveys, and locations for said Ladd and Ladds and Norvell of said warrants so received, as aforesaid, by him, the said McArthur, agreeably to the terms and conditions of said writings obligatory; and this the said Ladd is ready to verify. Wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writings obligatory.

J. & D. L. COLLIER,
Attorneys for Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the first, second, and third counts of said declaration, says that he ought not to be charged with said debt by virtue of said supposed writings obligatory, because, he says, that after the execution of said writings obligatory, and after the said McArthur had received from the said Ladd and said Ladds and Norvell the said Virginia military land warrants and assignments of warrants to locate and survey agreeably to the terms of said contract, to

wit, on the day and year aforesaid, at the place aforesaid, the said McArthur procured and purchased a large quantity, to wit, continental Virginia military land warrants and assignments of warrants, covering ten thousand acres, to locate and survey on his own account and for his, the said McArthur's, own benefit, and afterwards and before the said McArthur would locate and survey the said warrants, so received as aforesaid from the said Ladd and said Ladds and Norvell, in pursuance of said contract, to wit, on the day and year aforesaid, at the place aforesaid, he, the said McArthur, fraudulently and contrary to the tenor and effect, true intent and meaning of said contract, did proceed to make entries and surveys on the most valuable lands, and upon the same identical lands, in his own name and that of others, for the said McArthur's own benefit, which the said McArthur was bound to enter, locate and survey for the said Ladd and Ladds and Norvell by virtue of their said warrants, agreeably to the terms and conditions of said writing obligatory, whereby the said Ladd and Ladds and Norvell were wholly deprived of the benefit and advantages held out to them by the said McArthur, and which formed the only inducement to the making of said contract on their part. And the said Ladd further says that, after the making of said writings obligatory, and after the purchase of said ten thousand acres of military land warrants by said McArthur, and after the said McArthur had fraudulently made his entries and surveys on the most valuable lands west of Ludlow's line on his own account and for his, the said McArthur's, own benefit, to wit, on the day and year aforesaid, at the place aforesaid, he, the said McArthur, proceeded to make entries and surveys for the said Ladd and Ladds and Norvell, by virtue of said warrants so by him, the said McArthur, received from said Ladd and Ladds and Norvell, under the said contract, upon lands west of said Ludlow's line, greatly inferior in quality, and upon other and different lands than those that were understood and agreed between the parties aforesaid should be entered and surveyed for said Ladd and Ladds and Norvell, under and by virtue of said writings obligatory, to the great injury of said Ladds and Norvell, and in violation of tenor and effect, true intent and meaning, of said contract of said McArthur as aforesaid; and thereupon the said Ladd afterwards, to wit, on the day and year aforesaid, at the place aforesaid, wholly refused to receive from the said McArthur the said surveys, made by the said McArthur for the said Ladds and Norvell by the said McArthur as aforesaid, and the said Ladd and Ladds and Norvell immediately thereupon abandoned the said contract, and gave notice to the said McArthur that the said Ladd was released from all obligations to abide by said contract, by reason of the fraud practiced upon said Ladds and Norvell by the said McArthur as aforesaid, to wit, at the place aforesaid, and this the said Ladd is ready to verify; wherefore he prays judgment, and that the said McArthur be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER,
Attorneys for Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injuries, when, &c., and as to the said first count of said declartion says that he ought not to be charged with said debt by virtue of said supposed writings obligatory, because, he says, that after the execution of said writings obligatory, and after said McArthur renewed said warrants to locate and survey, and subsequent to the time of the entries and surveys of said warrants described in said first count of said declaration, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and twelve, at Washington City, to wit, at said county, the said Benjamin and Joseph Ladd and Duncan McArthur united in a petition to Congress, setting forth that said Ladds and Norvell were then the proprietors of certain land warrants for fifteen thousand seven hundred and sixty acres granted by the State of Virginia to officers and soldiers of the Virginia line, on continental establishment, and had contracted with said Duncan McArthur to locate said warrants on good lands lying within the limits of the tract reserved by Virginia out of the territory ceded by said State to the United States by legislative enactment, passed on the twentieth day of October, A. D. 1783, and carried into effect on the first day of March, A. D. 1784, and that said McArthur did locate said warrants within the limits of the reservation and caused surveys of said locations to be effected, and praying that said lands might be valued by persons appointed by the Government and said petitioners, and that the amount of said valuations be paid to them, the said petitioners, in cash, or that such amount being considered as a cash payment in advance for land and entitling them to the usual deductions, they, the said petitioners, be allowed to make entries for land in any of the land offices of the United States, and that a law to that effect might be passed, &c.; and the said Ladd avers that the said petition refers to the same identical lands, warrants, surveys, and locations, and to the same contract as set forth and particularly described in said declaration, and that the said petition was afterwards, at the session of Congress of the United States for the year of our Lord 1812-13, duly presented to said Congress in behalf of said Ladds, Norvell and McArthur, and then continued from time to time during said session and several

subsequent sessions of said Congress, agreeably to the usages of said Congress, during the whole of which period the said Ladds and Norvell made use of very reasonable diligence to obtain the favorable action of Congress in answer to said petition; but the said Congress, during the said time and at all times thereafter, neglected and refused to answer the said petition by any act of legislation; when afterwards, to wit, on the first day of June, A. D. 1817, the said Ladds and Norvell, being satisfied that the prayer of said petition would not be granted and that the parties to said petition could obtain no relief in Congress, abandoned said petition, and the said Ladds, Norvell and McArthur were wholly unable to obtain any relief or compensation whatever for and on account of said locations and surveys of said warrants from the Congress of the United States or otherwise; and thereupon the said Ladd, after the making of said writing obligatory and before the commencement of this suit, to wit, on the day and year aforesaid, at the place aforesaid, paid to the said McArthur all and every the sums of money which had been expended by said McArthur in making the validity of said entries before Congress, the judicial tribunals of the United States and the State of Ohio, under and by virtue of said writing obligatory; and afterwards, to wit, on the day and year aforesaid, and place aforesaid, the said Ladd and Ladds and Norvell sold and disposed of said warrants, and have since ceased to have any interest in said warrants or said lands so entered and surveyed as aforesaid, and this the said Ladd is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury when, &c., and as to the said first count of the said declaration, says that he ought not to be charged with said debt by virtue of said supposed writing obligatory, because, he says, that after the execution of said writing obligatory, and after the said McArthur had received the said warrants from the said Ladd to locate and survey in pursuance of said contract, and after the said McArthur had proceeded to make entries and surveys of said warrants as described in said first count of said declaration, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirteen, at Washington City, to wit, at said county, the said Ladds, Norvell, and McArthur united in a petition to Congress, praying that said lands might be valued by persons appointed by the Government and said petitioners, and that the amount of such valuation be paid to them, the said petitioners, in cash, or that such amount being considered as a cash payment in advance for land and entitling them to the usual deduction, they, the said petitioners, be allowed to make entries for land in any of the land offices of the United States, and that a law to that effect be passed, &c.; which said petition was afterwards, to wit, at the session of Congress of the United States in the year of our Lord 1812-'13, duly presented to said Congress in behalf of the said Ladds, Norvell, and McArthur, and there continued from time to time, agreeably to the usages of said Congress, until it was fully ascertained that the prayer of said petitioners would not be granted, and that Congress would afford no relief whatever to said parties, and the said Ladd having paid to the said McArthur all and every the sums of money which had been expended by said McArthur in making said locations and surveys, and in defending the validity of said entries before Congress. The judicial tribunals of the United States and the State of Ohio, under or by virtue of said writing obligatory, afterwards, to wit, on the day and year aforesaid, at the place aforesaid, sold and disposed of the said warrants, and the said Ladds and Norvell have since ceased to have any interest in said warrants or said lands so entered and surveyed as aforesaid, and considered the said contract as at an end and without having any further force or validity, and this the said Ladd is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said writing obligatory in said first count of said declaration mentioned.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to the said first count of said declaration, he says that he ought not to be charged with said debt by virtue of said writing obligatory, because, he says, the said entries and surveys of said lands were not valid entries and surveys, or made according to law or the stipulations and terms of said contract or within that part of the military district which said article required, and therefore the said lands were not appropriated in law to and for the use of the said Joseph and Benjamin Ladd and Thomas Norvell; and the said further says that after the making of said contract, and before the commencement of this suit, to wit, on the day and year aforesaid, at the place aforesaid, he paid the said McArthur all and every expense and sums of money which had been expended by said McArthur in making said entries, survey, and locations, and in defending the validity of

said entries under or by virtue of said writing obligatory, and this he is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory.

J. & D. L. COLLIER,
Attorneys for the Defendant.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury when, &c., and as to the said second and third counts in said declaration, says that he ought not to be charged with said debt, by virtue of said writing obligatory, because, he says, that said entries and surveys of said land were not valid entries and surveys, or made according to law or the stipulations and terms of said contract, or within that part of the Virginia military land district which said article required, and therefore the said lands were not appropriated in law to said Ladds and Norvell, and this the said Ladd is ready to verify; wherefore he prays judgment if he ought to be charged with said debt, by virtue of said supposed writing obligatory.

J. & D. L. COLLIER,
Defendant's Attorneys.

And for further plea in this behalf the said Ladd, by J. & D. L. Collier, his attorneys, comes and defends the wrong and injury, when, &c., and as to first, second, and third counts of said declaration, says that he ought not to be charged with said debt by virtue of said writing obligatory, because, he says, that the said McArthur did not make said entries and surveys of said lands as described in said declaration, and this said Ladd is ready to verify; wherefore he prays judgment if he ought to be charged with said debt by virtue of said supposed writing obligatory.

J. & D. L. COLLIER,
For Defendant.

And afterwards, to wit, at the October term of this court A. D. 1833, the parties appear by their attorneys, and on motion it is ordered by the court that the plaintiff file his replications in sixty, and that every sixty days thereafter be made a rule-day until issue is joined, and this cause is continued till the next term.

And afterwards, to wit, on the 13th day of February, A. D. 1834, came the plaintiff by his attorneys aforesaid, and it was agreed that he should file his replications, which he did accordingly in the words and figures following, to wit:

And the said Duncan McArthur, by Tappan & Vinton, his attorneys, comes, and as to the plea of the said Benjamin W. Ladd by him first above pleaded, and whereof he puts himself upon the country, he, the said Duncan McArthur, doth the like.

And the said Duncan McArthur, as to the said plea of the said Benjamin W. Ladd by him secondly above pleaded, saith that he, the said Duncan McArthur, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that the several causes of action in said declaration mentioned, and each and every of them, did accrue to him, the said Duncan McArthur, within fifteen years next before the commencement of this suit by him, the said Duncan McArthur, in manner and form as he, the said Duncan McArthur, hath in said declaration complained against the said Benjamin W. Ladd, viz, at the county of Jefferson aforesaid; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the plea of the said Benjamin W. Ladd by him thirdly above pleaded, saith that he, the said Duncan McArthur, by reason of anything by him, the said Benjamin W. Ladd, in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that he, the said Duncan McArthur, did not make and deliver the said pretended memorandum or agreement in writing to him, the said Benjamin W. Ladd, as a part and parcel of said writings obligatory in that plea mentioned in manner and form as the said Benjamin W. Ladd hath in his said third plea in that behalf alleged; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the plea of the said Benjamin W. Ladd by him fourthly above pleaded, saith that he, the said Duncan McArthur, by reason of anything by the said Benjamin W. Ladd in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because he saith, that he, the said Duncan McArthur, did make and deliver to him, the said Benjamin W. Ladd, the said pretended memorandum or agreement in writing in said fourth plea mentioned as part and parcel of said writing obligatory in said plea specified in manner and form as the said Benjamin W. Ladd has in his said fourth plea in that behalf alleged; and this he, the said Duncan, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the plea of the said Benjamin W. Ladd by him

fifthly above pleaded, saith he, the said Duncan McArthur, by reason of anything by the said Benjamin W. Ladd in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that he, the said Duncan McArthur, did not make and deliver to the said Benjamin W. Ladd the said pretended memorandum or agreement in writing in said fifth plea mentioned as part and parcel of said writings obligatory in that plea specified in manner and form as the said Benjamin W. Ladd hath in his said fifth plea in that behalf alleged; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the plea of the said Benjamin W. Ladd by him seventhly above pleaded, saith that he, the said Duncan McArthur, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action against him, the said Benjamin W. Ladd, because, he saith, that he, the said Duncan McArthur, after the execution of said writing obligatory, did proceed agreeably to the terms of said writing obligatory to the office of the principal surveyor of the lands lying within said Virginia military district, and made entries of warrants and assignments of warrants in the name of the said Joseph and Benjamin W. Ladd and Thomas Norvell, and on lands within said Virginia military district, west of Ludlow's line, agreeably to the terms of the said writing obligatory; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the plea of the said Benjamin W. Ladd by him twelfthly above pleaded, saith that he, the said Duncan McArthur, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that the said entries and surveys of said land in that plea mentioned were valid entries and surveys, and made according to law and according to the terms and stipulations of said writing obligatory, and within that part of the Virginia military district which the said writing obligatory required. And the said lands were thereby appropriated in law to and for the use of said Joseph and Benjamin W. Ladd and Thomas Norvell; and the said Duncan McArthur further saith that the said Benjamin W. Ladd did not pay to the said Duncan McArthur all and every expense and sums of money which had been expended by him, the said Duncan McArthur, in making said entries, surveys, and locations, and in defending the validity of said entries as aforesaid made under and by virtue of said writing obligatory; and this he, the said McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the thirteenth plea of the said Benjamin W. Ladd by him above pleaded, saith that he, the said Duncan McArthur, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that the said entries and surveys of lands in that plea mentioned were valid entries and surveys, and made according to law and the stipulations and terms of said writing obligatory, and within that part of the Virginia military district which said writing obligatory required, and the said lands were thereby appropriated in law to the said Ladds and Norvell in said writing obligatory mentioned; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the fourteenth plea of the said Benjamin W. Ladd by him above pleaded, saith that the said Duncan McArthur, by reason of anything in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, because, he saith, that the said Duncan McArthur did make said entries and surveys of said lands as set forth and described in the said first, second, and third counts of said declaration in that plea specified and pleaded unto; and this he, the said Duncan McArthur, prays may be inquired of by the country, &c.

And the said Duncan McArthur, as to the pleas of the said Benjamin W. Ladd by him sixthly, eighthly, ninthly, tenthly, and eleventhly above pleaded, saith that the same and the matters therein contained in manner and form as the same are therein pleaded and set forth, are not sufficient in law to bar or preclude him, the said Duncan McArthur, from having or maintaining his aforesaid action thereof against him, the said Benjamin W. Ladd, and that the said Duncan McArthur is not bound by the law of the land to answer the same, and this he, the said Duncan McArthur, is ready to verify; wherefore, for want of a sufficient plea in this behalf, he, the said Duncan McArthur, prays judgment and his debt aforesaid, together with his damages by him sustained on account of the detention thereof, to be adjudged to him, &c.

TAPPAN & VINTON,
For Plaintiff.

And the said Ladd says that the said pleas by him sixthly, eighthly, ninthly, tenthly, and eleventhly above pleaded, and the matters therein contained in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said McArthur from having or maintaining his aforesaid action thereof against him,

the said Ladd, and that he, the said Ladd, is ready to verify and prove the same, when, where, and in such manner as the said court here shall direct and award; wherefore, inasmuch as the said McArthur hath not answered said pleas, nor hitherto in any manner denied the same, the said Ladd prays judgment, and that said McArthur may be barred from having or maintaining his aforesaid action thereof against him, &c.

J. & D. L. COLLIER,
For Defendant.

And afterward, to wit, at the October term of this court, A. D. 1834, the parties appear by their attorneys, and this cause being submitted to the court upon a general demurrer to the sixth, eighth, ninth, tenth, and eleventh pleas, and the arguments of counsel being heard, the court are of opinion that the demurrer to the sixth, ninth, tenth and eleventh pleas be sustained, and as to the eighth plea that the plaintiff have leave to withdraw his demurrer, and thereupon both the parties have leave to amend, the defendant to amend his pleas within sixty days, and every sixty days thereafter to be a rule-day until the issue is made up, and this cause is continued till the next term.

And afterwards, to wit, at the October term of this court, A. D. 1835, the parties appear by their attorneys, and are at issue to the country upon the pleas of *non est factum*, statute of limitations, &c.

And thereupon came a jury, to wit: Benjamin Rex, James W. Elliott, William B. Copeland, Robert Young, Cyrus Day, William Barcus, Joseph McGrew, John Armstrong, Jacob Smith, William Ferguson, Samuel Bell, and George Bell, who being duly impaneled, sworn, and affirmed well and truly to try said issue and a true verdict to give according to the evidence and, the evidence and arguments of counsel being heard, do find under the issue that the said writing obligatory is the deed of the said Benjamin W. Ladd; they further find that the said several causes of action of the said McArthur did accrue within fifteen years next before the commencement of this suit, as in the said second issue is alleged; as to the third, fourth, and fifth pleas, the jury find that the said McArthur did not make and deliver the said memorandum in those pleas respectively specified or either of them, in manner and form as alleged in the said third, fourth, and fifth pleas. The jury further find that, as to the seventh plea, the said Duncan McArthur did make the entries and surveys on lands within the Virginia military district, in said pleas specified, agreeably to the terms of the said writing obligatory in said plea mentioned; as to the eighth plea the jury find that the said Duncan McArthur did make the entries and surveys in that plea specified agreeably to the terms and conditions of said writings obligatory in that plea mentioned; as to the twelfth plea the jury find that the said entries and surveys of said land in that plea mentioned were valid entries and surveys, and were made agreeably to law and according to the stipulations of said writing obligatory in said plea mentioned, and within that part of the Virginia military district which the said writing obligatory required; and they further find that the said Benjamin W. Ladd did pay all and every expense and sums of money which have been expended by the said Duncan McArthur in making said entries, surveys, and locations in that plea specified; as to the thirteenth plea the jury find that the said entries and surveys of said land in that plea mentioned were valid entries and surveys, and made according to law, and the terms and stipulations of said writings obligatory in that plea specified and within that part of the Virginia military district which the said writings obligatory required; and as to the fourteenth plea, the jury find that the said Duncan McArthur did make said entries and surveys of said lands, as set forth and described in the first, second, and third counts of said declaration, in that plea mentioned and pleaded unto; and the jury do further find that the said Benjamin W. Ladd does owe to the said Duncan McArthur the said penal sum of fifty thousand dollars, in said writing obligatory specified, and they do assess the plaintiff's damages, by reason of the breach of the covenants of said writing obligatory, in the first, second and third counts of said declaration specified and set forth, at the sum of nineteen thousand eight hundred and twenty-four dollars and sixteen cents.

Therefore it is considered and adjudged by the court that the said Duncan McArthur do recover of the said Benjamin W. Ladd the said penal sum of fifty thousand dollars, to be discharged by the payment of the said sum of nineteen thousand eight hundred and twenty-four dollars and sixteen cents, together with his costs by him about his suit in that behalf expended.

STATE OF OHIO, *Jefferson County, ss:*

I, James Ross Wells, clerk of the supreme court of the State of Ohio, for said county of Jefferson, do hereby certify that the foregoing is a true copy of record in the above case, as taken from the records kept in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 8th day of March, A. D. 1839.

[SEAL.]

JAMES ROSS WELLS, *Clerk.*
H. WOODCOCK, *Deputy Clerk.*

EXHIBIT E.

Statement of facts in the case of Benjamin W. Ladd.

On the 31st day of October, A. D. 1810, Benjamin W. Ladd, acting for himself and Joseph Ladd and one Thomas Norvell, entered into a contract with General Duncan McArthur, of Ohio, to locate and survey *immediately*, certain Virginia military land warrants on continental establishment, on the "west side of the line run by Ludlow," (one of the surveyors and artists duly appointed by the United States,) "from the head spring of the Little Miami River, to intersect Ludlow's north boundary line, and which line when produced was intended to strike the source of the Scioto River, and to be the dividing line between the Virginia military and Congress lands; Duncan McArthur to have the one-fifth part of the land so located, having respect in the division to quantity, quality, and situation." The inducements or motive which influenced and moved the petitioner to agree that the location of these lands should be so made west of Ludlow's line, has always been stated, from that time to this, to be "that they were informed and believed that all the land worth having, within the limits of the reservation aforesaid, east of Ludlow's line, had at that time been already surveyed and patented by persons claiming lawfully under the State of Virginia, according to the cession of that State made to the United States by act of assembly, passed October 20, A. D. 1783. By the terms of the said contract, Duncan McArthur was to receive one-fifth part, or the usual locator's fee, given at that time for such service, after the validity of the right or title to them had been decided "in any court of law, or before Congress."

In pursuance of and a short time after the execution of this agreement, said Ladd put in the hands of said McArthur warrants to the amount of 15,760⅔ acres, to be surveyed and located. And McArthur proceeded duly and lawfully to survey and locate the same on good lands, and on the 19th and 30th of November, 1810, made proper "entries" in the office of the surveyor of the said Virginia military district, in the name of your petitioner and his partners, "of and on lands within the said Virginia military district, and west of the above-named Ludlow's line." And which said lands, so located, surveyed, and entered for him, had, before that time, been surveyed and sold by the proper officers of the United States, as lands lying and being outside of the said military district; and were settled upon, and possessed by, the said lawfully purchasers of the United States.

Under these circumstances, the legislature of Virginia having received information that the line of Ludlow, thus established by the legislature and the executive action of the United States Government, (by the survey and sale of all the land west of said line, the receipt of the purchase money, and delivery of the possession of said lands to their own purchasers,) was believed to curtail the proper amount and quantity of military lands reserved by Virginia in her deed of cession, appointed commissioners to unite with commissioners to be appointed by the United States to survey and mark a true line, from the source of the Little Miami to that of the Scioto, as specified and set forth in her deed of cession. Congress accepted and acted upon this proposition, and appointed commissioners to meet those appointed by Virginia, and these commissioners did meet with the commissioners of Virginia, at Xenia, in October, A. D. 1812, and run a line between the points above named, called "Roberts's line," and by which line the lands above mentioned, located by McArthur for the petitioner, were placed within the territory reserved, or said "Virginia military district." The commissioners made report of their proceedings to the General Land Office, and that document was laid before Congress in January, A. D. 1813. This report, together with a petition from Ladd & Norvell, was referred to the Committee on Public Lands on the 19th of January, 1813.

ACTION OF CONGRESS ON THE SUBJECT.

In the session of 1810–'11, information was received by letter from J. Findley to the Secretary of the Treasury, December 10, 1810, at the Treasury Department, and communicated to the Committee on Public Lands, of the fact that these locations and surveys were made under Virginia military land warrants on lands *lying west* of Ludlow's line, and on lands which had been surveyed and offered for sale by the United States. A resolution was moved by the chairman of the committee, on 26th December, 1810, and passed by the House, instructing the committee to inquire into the subject, and report the provision proper to be made in the case. On the 28th November, 1811, the committee report as follows:

"That provision ought to be made by law for the appointment of commissioners to ascertain the true boundary, &c.

"*Resolved*, That provision ought to be made by law to prevent the issuing of patents on surveys executed of Virginia military warrants, *west* of the boundary line designated by the act of Congress of 23d of March, 1804; and,

"*Resolved*, That if the 'existing boundary line' excludes lands belonging to the Vir-

ginia military tract, the commissioners shall ascertain the quantity and quality, and shall have power to locate other lands therefor.

"*December* 28, 1812.—The commissioners report *Roberts's line.*

"*November* 14, 1814.—Mr. Worthington presented the petition of Ladds & Norvell, praying an indemnification for lands located within the Virginia military district, from which they had withdrawn their legal locations in consequence of the location having been made on lands previously granted by the United States, although within the limits of that reservation.

"*March* 1, 1815.—The committee, on motion, was discharged from the further consideration of the memorial."

Thus it will be seen that Ladds and Norvell duly apprised Congress of all the difficulties arising under the location of their warrants, and asked their action in the premises. First, in the House. The opinion of the Committee on Public Lands in the House, as contained in their report, evidently urges Ludlow's line as the true boundary; sets up the claim of the United States both to the soil and the jurisdiction, and the register of the land office at Cincinnati (who was the first to apprise the Government of these locations) goes on to sell the lands actually from under the warrants, knowing of their appropriation; takes the money for them, and the tenants of the United States go into the possession and improvement of these lands. Nay, the resolution reported by the committee and adopted by the House, forbids the issuing of patents to the *warrant* holders, and provides for satisfying the *warrants* out of *other lands.* Under these circumstances, forbidden to procure patents by means of which alone they could possibly pursue the course suggested by their counsel to try the correctness and validity of Ludlow's line, they were left no alternative but to withdraw their warrants and suffer them to be sacrificed. They again renewed their claim by memorial presented to the Senate; but no action was had. Could Congress in any other way, more solemnly sanction the line as then run and established? They adopt the report, sell the land, keep the proceeds! Forbid the evidence to issue, which *alone* could test the rights of Ladds and Norvell! Thus, actually receiving from two different persons pay for the same lands—giving a deed to one and withholding it from the other. For it alleged that the Government contended that McArthur's patents issued improperly. They assumed exclusive legislation and jurisdiction over these lands without regard to the conditions of cession! Having thus called the attention of both branches of Congress to the subject, and committees of both having taken the same view of it, they, the petitioners, acquiesced, after three years of exertion, and withdrew their warrants. This cannot be considered as *voluntary,* for the evidence was withheld from them, upon which alone they could have tried their rights before any other *tribunal.* By obtaining this testimony (patents) without, it seems, the consent of the Government, General McArthur was enabled to *reverse* the opinion of Congress, and establish the principle in court that the "*conditions of the cession*" controlled the grant. Instead of a voluntary withdrawal of his warrants, it shows by the decision of the court and of Congress that the latter withheld from him that evidence on which alone he could contest the legality of the legislative action. And like a good citizen, having notified Congress of his rights, claimed redress, urged it for near seven years, he acquiesced! And has not the Government been much benefited by that peaceful spirit thus manifested? During this whole period the full value of these lands passed into the Treasury. Grants issued to purchasers of Congress, the lands were settled, improved, and the purchasers had vested rights, at that time of great value. Suppose the petitioners had not been actuated by this peaceful spirit, but had followed the advice of the learned counsel of General McArthur—*compelled* by mandamus the issuing of a patent; recovered against and ousted the purchasers from his lands and improvements! What a class of pressing and indisputable claims would at once have arisen against the Government, not only of and for the value of the lands, but of all improvements. By the acquiescence of the petitioner, this class of claimants was narrowed down to two or three, who were easily satisfied by a compromise for relief, of precisely the same character as that granted to Doddridge and McArthur. The perseverance and success of the latter did not end in their obtaining the land. The Government did and could not permit writs of possession to issue against its tenants under a patent; but compromised the suit, and all cases similarly situated, by payment of money to the plaintiffs. How then are these payments differently situated from what is asked for by this petitioner? There were not even all recovered; only a few cases tried to test the principle. The equity of the petitioner is of a higher kind! Yielding to the decided opinion and action of Congress that the locations were erroneously made, and the land not tenable by the warrants, they withdrew them, thus by their example endeavoring to induce their locator, and others similarly situated, to acquiesce and give up the land. But he persevered, and *reversing* the judgment and action of Congress, recovered a very large sum of money from not only the United States but from Mr. Ladd, the petitioner.

The petitioners respectfully urge Congress to make good the losses for the lands unlawfully sold after being legally entered and appropriated, (according to the law as settled by the Supreme Court,) and they only ask to have restored to them their just

rights. The Government had sold, occupied, and improved the land before the withdrawal was made. And the peaceable, honorable, and praiseworthy cause pursued by the late Benjamin W. Ladd prevented the wresting out of the hands of innocent purchasers and tenants of Congress these valuable lands, leaving them to this day in their peaceful possession, and thus, in effect, circumscribing the reservation for military grants, and increasing the value of Government lands most materially both as to quantity and quality, and also saving Congress from the unpleasant, and onerous, and indisputable claims of those purchasers. And the petitioners humbly conceive that they are entitled to occupy the ground on which such a purchaser would stand in case such purchaser and occupant had been ousted of his lands and improvements by a perseverance on the part of the petitioners in pressing their rights in a court of justice against the present occupants under Congress sales, and that the petitioners may be indemnified for the recovery had against Ladd by General McArthur in Jefferson County, Ohio, either by other lands of equal value or in money. Hoping and expecting that the pure and peaceful motives which induced their father to yield obedience to the expressed and adopted opinion of both branches of Congress, and acquiesce in their action of disposing of these lands, will be duly appreciated, and that their example of submission to constituted authority in this respect will not be alleged as a reason why he should bear a loss ruinous, while the public Treasury yet contains the full price and value of those very lands, the sale of which by Congress prevented the performance of that contract which caused this recovery against the late Benjamin W. Ladd, and the repayment of which will not take the one-twentieth part of the value of those lands, or of that which is rightfully, and which the Government long since sold and disposed of, from the Treasury. What is this settlement compared with what it would have been provided Mr. Ladd had ousted the illegal settlers from their erroneous location? That the Government clearly recognized the case of Mr. Ladd as their own the inclosed letters herewith transmitted will clearly prove, and that they instructed the Hon. John C. Wright (at that time United States district attorney) to defend this case whenever it should come up for action in the supreme court of the State of Ohio. This will show that the Government really and substantially recognized the claim of Mr. Ladd, and made themselves a partner in defending his rights.

P. F. WILSON.

Costs in the case of Duncan McArthur vs. *Benjamin W. Ladd.*

Clerk Leavitt:		
Docketing	$0 08	
Filing	20	
Continuation	10	
Appearance	16	
Docket entries	1 00	
		$1 54
Clerk Wells:		
Venire	12	
Continuation	30	
Swearing jury	10	
Copy of pleading	2 60	
Judgment	10	
Satisfaction	12	
Cost bill	35	
Part of record	8 25	
		11 94
——— Swearingen:		
Opening court	64	
Jury	50	
Calling do	10	
		1 24
Court in bank		2 00
D. fees		5 00
		$
Costs on depositions taken before—		
Chamberlin		$5 00
Walker		10 92
Patrick		9 00
R. Patterson		15 80
By Collier on Galloway's deposition		2 65

A. Latham's fees	$2 42
Do	1 50
Jury fees	6 00
	$

Copy of receipts on docket.

Received, 30th October, 1835, nineteen thousand eight hundred twenty-four dollars sixteen cents, the plaintiff's amount of damages in the case.

BENJ'N TAPPAN,
Attorney for Plaintiff.

Received of D. L. Collier $72 36, the costs in supreme court, except Ladd's depositions.

J. R. WELLS, *Clerk.*

The above is a copy of the docket entries; if you wish a certified copy of the same please write by mail.

Yours, &c.,

J. R. WELLS.
Per H. WOODCOCK.

STEUBENVILLE, *January* 5, 1835.

MY DEAR FRIEND: I have but a moment to say a word, while friend Crew is waiting. James and myself have made out a bill, which is herewith inclosed, and hope may prove satisfactory; if not entirely so, you will please say wherein, and it shall be corrected. The charges, although they may appear high, are much below the usual rates in cases of much less importance. The amount is swelled considerably by reason of the case having remained on the docket for so many years. If I am correct, there is a balance due you of $191 48, for which I will transmit a check, or pass to your credit, as you may direct. There is still an unsettled part of the costs between Tappan and myself, which I presume he must pay, although I have retained it for the present.

You have an account against us for hams, &c., which will be paid at any time.

Accept the assurances of my continued regard, &c.

Your friend,

D. L. COLLIER.

B. W. LADD,
Smithfield, Jefferson County.

[Inclosed in Collier's letter of January 5, 1835.]

B. W. LADD, To JAMES & D. L. COLLIER, DR.

For services in defending the suit of Duncan McArthur in the court of common pleas from June term, 1827, to August term, 1828, including the trials on demurrer, &c.	$150 00
For services, seven terms, in the supreme court, from 1828 to 1834, including several trials on demurrer, and extra services in vacation, at $25 per term.	175 00
For drawing bill in chancery, and services relating to the same	25 00
For services, expenses, &c., in attending the court *in banc* at Columbus, and arguing demurrer	100 00
Expenses and services in attending at Columbus to procure Governor Morrow's deposition, including the amount paid to him	75 00
Expenses and services in attending at Columbus to obtain McLean's deposition	50 00
Services in 1835, including the final trial	150 00
Postages paid on depositions, &c., including amount sent to Walter Dunn	15 00
	740 00

CONTRA, CR.

By cash, July 1827	$20 00	
June, 1828	20 00	
November, 1829	20 00	
June, 1832	40 00	
November, 1832	50 00	
June, 1834	20 00	
July, 1834	100 00	
November, 1834	100 00	
September, 1835	100 00	
		470 00
Balance		270 00

Whole amount of judgment recovered		$19,824 16
Add amount costs paid clerk		72 36
Amount in controversy as yet between Tappan and myself, but which I have no doubt he is bound to pay, as all the costs from the commencement of the suit up to the decision of the first demurrer in the supreme court were adjudged against him—retained, say		42 00
		19,938 52
Add amount of the within		270 00
		20,208 52
Amount of B. W. Ladd's check		$20,400 00
Deduct above		20,208 52
Balance due B. W. Ladd		191 48

B. W. LADD, To JAMES & D. L. COLLIER, DR.

For professional services in defending suit of Duncan McArthur in the common pleas, from June term, 1827, to August term, 1828, including sundry trials on demurrer, &c	$150 00
For services, seven terms, in the supreme court from 1828 to 1834, including several trials on demurrer and extra services in vacation, at $25 per term	175 00
For drawing bill in chancery and services relating to the same	25 00
For services, expenses, &c., in attending the court *in banc* at Columbus, and arguing demurrer	100 00
For expenses and services in attending at Columbus to procure the deposition of Governor Morrow, including the amount paid to him	75 00
Expenses and services in attending at Columbus to obtain McLean's deposition.	50 00
Services in 1835, including the final trial	150 00
Postage paid on depositions, &c., including amount sent to Walter Dunn	15 00
	740 00

Received, January 5, 1835, two hundred and seventy dollars, which, with former payments, is in full of the above account.

J. & D. L. COLLIER.

BENJAMIN W. LADD, To JOSEPH JORDAN, DR.

1833.—To twenty-three days' services (employed as agent) in taking depositions in Clarke, Champaign, and Logan Counties, in the suit of McArthur against Ladd, and in travelling to and from said counties from Jefferson County, and in attending to the taking depositions by McArthur	$23 00
To amount paid in expenses whilst employed as above, including attorney's fee, &c	52 00
1834.—To forty days' services this year in taking depositions as above, and in attending to the taking of depositions by McArthur	40 00
To cash paid Matthew Bonner, attorney, for sundry services	60 00
To traveling and other expenses attending to the above, and taking depositions in Cincinnati	108 00
To cash paid a surveyor and chain carriers	30 00
	313 00

Received payment of Benjamin W. Ladd.

JOSEPH JORDAN.