

**Galloway Vs. Finley**

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**Court :** US Supreme Court

**Decided On :** 1838

**Appeal No. :** 37 U.S. 264

**Appellant :** Galloway

**Respondent :** Finley

**Judgement :**

Galloway v. Finley - 37 U.S. 264 (1838)

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**Galloway v. Finley**

**37 U.S. (12 Pet.) 264**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR*

*THE WESTERN DISTRICT OF PENNSYLVANIA IN THE THIRD CIRCUIT*

## **SYLLABUS**

C.B., a man resident in Ohio as an officer in the Virginia line during the revolutionary war, was entitled to a quantity of military land in the State of Ohio. Warrants for the land were issued to him and were surveyed, located, and

patented. In 1835, the heirs of C.B. sold part of these lands to G., who went into possession of them. He soon afterwards discovered that the patent for these lands issued after the decease of C.B., and was consequently void. The land had been recognized for forty years as the property of C.B. and his heirs, and the title in them deemed valid. G., on making a discovery of the defects in the patent, entered and located the land for himself. *Held* that G. could not be permitted to avail himself of this defect in the title while standing in the relation of a purchaser to defeat the agreement to purchase made with the heirs of C.B. Under the most favorable circumstances, he could only have it reformed and the amount advanced to perfect the title deducted from the unpaid purchase money. Where the purchaser, instead of claiming from his vendors the cost of entering and surveying the lands, the defect in the title to which had become known to him through his purchase, claims to hold the land as his own under the title acquired by his entry or survey, and asks a court of equity to rescind the contract of purchase, a court of equity will decline giving him its aid to obtain the expenses of the warrants and surveys taken out by him for the land and set up against the rights of his vendors.

It is an established rule in equity that when the vendor of land has not the power to make a title, the vendee may, before the time of performance, enjoin the payment of the purchase money until the ability to comply with the agreement is shown, but then the court will give a reasonable time to procure the title if it appears probable that it may be procured.

In reforming a contract for the sale of lands, equity treats the purchaser as a trustee for the vendor because he holds under the vendor, and acts done to benefit the title by the vendor, when in possession of the lands, enure to the benefit of him under whom the possession was obtained, and through whom the knowledge that a defect in the title existed was derived. The vendor and vendee shared in the relation of landlord and tenant; the vendee cannot disavow the vendor's title.

A patent for lands issued after the decease of the patentee passes no title to the lands; there must be a grantee before the grant can take effect.

The acts of Congress of 1807 and the subsequent acts relative to the titles to military lands were intended to remedy any defects in the patenting the lands in the name of the warrantee, who might have been deceased at the time of the emanation of the patent, and to secure the title to the lands to the heirs of the patentee. The statute is general, including by name all grants, not distinguishing between void and valid, and the plainest rules of propriety and justice require that the courts should not introduce an exception, the legislature having made none.

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The appellant filed his bill on 19 October, 1835, stating, that on 11 March, 1835, he entered into an article of agreement with David Barr acting as attorney for his wife, Elizabeth Julia Ann, who thereby became a party to the same. The agreement stated that Charles Bradford, late of Pennsylvania, obtained for his services as an officer in the Virginia Continental Line a land warrant, No. 4467, for 2,666 acres of land, which was entered, surveyed, and patented in three surveys in the Virginia Military District in Green and Brown Counties in the State of Ohio. That Charles Bradford died intestate leaving four children, two of whom died without issue, and intestate, leaving Henry R. Finley, and Elizabeth Julia Ann, his only surviving heirs. Elizabeth Julia Ann married John Finley, and died, leaving two children, Henry and Elizabeth Julia Ann, who are the only heirs of their mother and are entitled to one undivided half of the said military land. That Henry R. Finley, and Elizabeth Julia Ann, the wife of David Barr sold to the complainant an undivided moiety of the two surveys in Green County, in consideration of an agreement to pay eight thousand dollars, of which one thousand dollars was paid, and notes given to Henry R. Finley and to the wife of David Barr for the residue due, payable in equal installments in one, two, and three years, *viz.*, on the first of January, 1837, 1838, 1839. The defendants, and the wife of Barr covenanted that they were the persons they represented themselves to be and that they were seized and possessed of a good legal title to the lands they sold to the complainant, and bound themselves, their heirs, &c.;, to make him, his heirs, &c.;, a good title in fee simple as soon as he should pay the purchase money. That defendants asserted they had in possession the evidences of the title of

defendant, Finley, and the wife of Barr to the land; and that a letter of attorney had been executed and acknowledged by Barr's wife to himself, authorizing him to sell and convey her title in the land; that they had then just discovered that they had not brought these papers with them, and to induce appellant to close the contract, promised to send him the papers as soon as they should return home, confiding in the existence of the papers and the promise to forward them to him, he concluded the agreement. The complainant says he paid down the one thousand dollars and one hundred and four dollars, the latter credited on the last note. That since the date of the contract, Barr's wife has died intestate and without issue, being a minor at her death. That defendants have not produced

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their title papers nor letter of attorney. That defendants cannot perform their contract nor make a good title to the land, because Charles Bradford died in 1789, and the lands were entered in his name on 19 April, 1793, and the tract of one thousand acres was surveyed 14 February, 1794, and the survey of the tract of twelve hundred acres was made 24 March, 1794, the entries and surveys being made about four years after his death.

The complainant, averring his readiness to perform, prays that the article of agreement may be deemed annulled and cancelled; that the money be refunded, with interest, and the notes enjoined and the collection restrained, and for general relief.

The defendants, Finley and Barr, on 19 January, 1836, answered jointly, admitting the contract as stated in the bill and that H. R. Finley, and Elizabeth Julia Ann Barr wife of David Barr were the children, and sole heirs of Elizabeth Julia Ann Finley, daughter of Charles Bradford and entitled as such to a moiety of the lands in question, and that they told the appellant they had, in Pennsylvania, evidence that defendant, Finley, and the wife of defendant, Barr were the heirs of Elizabeth Julia Ann Finley, all which they assert to be true and can prove. The defendants deny that they represented they had in possession any title papers or any evidence except that which would prove the heirship of defendants Finley, and the wife of

Barr. On the contrary, they told the complainant they had no title papers and that they had only recently been informed of the existence of the land, and that the defendant Finley and the wife of Barr had any title thereto. The complainant told defendants he had long known that the heirs of Elizabeth Julia Ann Finley were entitled to one undivided half of said lands; that he had a record of their names; had made inquiries for them; that he had been anxious to buy the interest of defendant Finley in the lands, as he, the complainant, had sold the said lands and bound himself to give good titles and he feared some other person would purchase the interest of the defendant Finley and his sister and give him trouble. The complainant stated at the time, that he knew all about the title; and that if defendant Finley and his sister, Elizabeth Julia Ann Barr, were the children of Mrs. Finley, he was satisfied as to their right to the lands. Defendants admit that they agreed to forward to appellant evidence that defendant Finley and his sister were children of Mrs. Finley, and meant to do so, but the death of

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Mrs. Barr caused it to be neglected. The defendant Finley denies representing to appellant that Mrs. Barr had executed a letter of attorney to her husband and that defendants had only then discovered that it had been left behind; he admits that he might have told appellant that Mrs. Barr was willing that her husband should sell her interest. The defendant Barr admits he represented that his wife was willing he should sell her interest and that a letter of attorney had been prepared to that effect and left behind, but he denies recollection of saying it had been executed and acknowledged and that he supposed he had the same with him, and had then only discovered he had left it behind. He admits he promised to forward the power, but the death of his wife prevented this being done.

The defendants deny intention or attempt to induce appellant to enter into contract and pay his money thereon by fraudulent representations. They admit the payment of one thousand dollars and one hundred and four dollars as stated in the bill, and that Mrs. Barr died a minor, without issue and intestate, but aver that her death did not affect their right to comply with the contract, as the interest of Mrs. Barr vested at her death in defendant Finley, who has been and is willing to fulfill it. They deny

all fraud and combination and aver and will prove that they made the contract in perfect good faith, believing that defendant Finley and Mrs. Barr had a legal right to a moiety of the land; the knowledge of their right chiefly came from appellant. But they deny that at the time of making the contract, they had any knowledge of the date of the entry or survey or of the date of C. Bradford's death; they allege the first intimation they had that the land was entered and surveyed after his death was derived from the bill. They admit, from information, &c.;, since the bill was filed, that they believe the said lands were entered and surveyed at the times mentioned in the bill, and since the death of Bradford, who died about the time mentioned in the bill. The defendant Finley avers that as soon as he was apprised of the facts mentioned in the bill as to the date of entry and survey, he made inquiries as to the facts, and being satisfied that they were true as alleged in the bill, he proceeded without delay to the surveyor's office in Chillicothe to get information to take steps to procure an entry of said lands, that he might fulfill said contract; which he is ready and anxious to comply with. But he was surprised when he ascertained that the appellant, a few days before, on 26 September, 1835, fraudulently, and as defendant alleges, for the purpose of putting it out of

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the power of defendants to comply with their contract, and to defraud the defendant Finley out of his lands, had entered the same lands under surveys No. 2277 and No. 2278, mentioned in the agreement, as certified copies of the entries made by appellant and made part of the answer will prove.

The defendants aver that the complainant, having made these entries to further his designs, immediately filed this bill without intimating objections to their title, although defendant Finley had met and conversed with him at Pittsburgh after the entries were made, and before the bill was filed. The defendants allege and will prove that the lands were duly entered, surveyed, and patented in the name of Charles Bradford, by virtue of which the defendant, Finley, and his said sister, at the date of contract were, as the heirs of Mrs. Finley, deceased, daughter of Charles Bradford, deceased, entitled equitably and justly to the undivided half of said lands, and had good right to sell and convey. By the death of Mrs. Barr a

minor without issue, her right vested in the defendant Finley as sole surviving heir of Mrs. Finley, and being so entitled, he avers his power, readiness, and willingness to make a perfect title to the appellant for an undivided moiety of the lands on the fulfillment of the contract by him. The defendants aver that any title which the appellant may have acquired by his entry of September 26, 1835, shall be taken to enure to the benefit of them, for whom he holds the lands in trust for fulfillment of the agreement, and they pray that the bill may be dismissed, &c.;

In February 13, 1837, the appellant filed his amended bill, stating that besides the money he had paid defendants on account of the contract, he released to them his interest to an undivided half of survey No. 4456 for 466  $\frac{2}{3}$  acres, for the consideration of five hundred dollars. That when he made the contract with the defendants, he believed that they had a perfect title to the lands they sold him; was ignorant that the entries, &c., had been made in the name of a man not in being, and that it was not for a considerable time afterwards he came to a knowledge that the land was vacant, and that the defendants had no power to make him a title, and that the lands were subject to entry by a holder of a Virginia military warrant. He had previously purchased an undivided half of the same lands, and paid a large consideration. Deeming it right to protect his interest in premises, on 26 September, 1835, he caused entries No. 13,696 for 1208 acres, and No. 13,697 for 1000 acres, to be made, and on the same day caused surveys to be made and returned, which were

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recorded 28th September, 1835. He refers to attested copies filed with the answer. The appellant charges the fact that the lands being wholly vacant and unappropriated, he has invested himself with the best title to the same.

He prays that the defendants may answer, and also as in his original bill, or if it shall be found that defendants, or either of them, had a good title to the land, and still have a right to the same, and have authority to make a valid conveyance, then the appellant is ready, and tenders the full and perfect completion of the contract on his part. And he prays for general relief.

A separate answer was made to the amended bill by David Barr and filed February 25, 1837.

He admits the deed of release of the appellant's interest in survey No. 4456, and that the consideration named in the deed was five hundred dollars, but denies that that sum was the true consideration, averring that one hundred and four dollars and thirteen cents, credited on one of the notes as mentioned in the original bill, was the true consideration. The defendant avers that at the time of making the contract, both defendants denied Galloway's claim to this survey and set up the entire right to the same to be in Finley and his sister, then living, and that it was not considered nor formed any part of the contract, but after the contract was executed, Galloway urged a claim, at least for the taxes he had paid on the survey. This defendant agreed, in consideration of the release, to refund the taxes paid by crediting the amount on the note. The sum of five hundred dollars was inserted at the instance of Galloway to induce his wife, as he said, to sign the deed. The defendant Finley had nothing to do with this transaction. As to appellant's belief that Finley and his sister had a good title, the defendant says that the complainant represented to them that he knew all about their title. The defendant supposes that the appellant became acquainted with the facts that the entries and surveys had been made in the name of a dead man after the date of the will of Bradford had been communicated to him. He cannot admit that the appellant has by the entries, &c., in his own name, invested himself with the best and only title to the lands. The defendant denies that the lands were vacant and unappropriated at the time appellant entered them, but they had before been appropriated under warrants of Bradford, under whose entry, &c.; Finley and his sister had acquired a good title, and had good right to sell and convey the same. He prays that the bill may be dismissed.

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The cause was tried on 26 May, 1837, and the court decreed that the bill of the complainant should be dismissed.

The complainant prosecuted an appeal to this Court.

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MR. JUSTICE CATRON delivered the opinion of the Court.

The bill alleges that complainant, on 11 March, 1835, purchased from Henry R. Finley, and David Barr who acted for himself and wife, the sister of defendant, Finley, the moiety of two tracts of land lying in the State of Ohio, one for one thousand two hundred, and the other for one thousand acres, founded on a warrant for two thousand six hundred and sixty-six and one-third acres, obtained by Charles Bradford, as an officer in the Revolutionary War in the Virginia Continental Line. That Finley, and the wife of Barr were the heirs of their mother, who derived by descent a moiety of the lands from her father, Charles Bradford.

Galloway agreed to pay eight thousand dollars for the moiety of the two tracts, part in hand, and the balance by installments, the last of which was to fall due on the first of January, 1839. And Finley and Barr covenanted with complainant to convey the moiety of the lands contracted for in fee so soon as he paid the purchase money.

It is also alleged Finley and Barr promised, at the time the agreement was made, to forward from Pennsylvania, where they resided, to Galloway, who resided in Ohio, the title papers, and the power of attorney, authorizing Barr to contract for his wife.

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That after the date of the contract, the wife of Barr died, a minor, intestate, of course, and without issue.

As grounds of relief it is averred that the title papers were not forwarded nor the power produced. But principally that after making the contract, the complainant discovered Charles Bradford, the grantee, had died in 1789, and that the lands

were entered, surveyed, and granted in his name in 1793 and 1794.

Finley and Barr, by their answer, admit the contract to have been made as stated, deny that title papers were to be furnished by them, admit they promised to forward the power and the death of Mrs. Barr, but allege respondent Finley was her sole heir, admit Charles Bradford died in 1789 and that the lands were entered and surveyed in 1793-1794, and afterwards patented in his name.

The respondents, however, mainly rely for their defense on the fact that on 26 September, 1835, the complainant, Galloway, entered the two tracts of land, the moiety of which was agreed to be conveyed, in his own name, and, as they allege, without their knowledge, and with the fraudulent intent of depriving the heirs of Bradford of it, and thereby to render it impossible for them to comply with their contract. And the defendant, Finley, for himself, and as heir of his sister, offers to comply with the agreement.

It is urged the entries, surveys, and grants in the name of Charles Bradford after his death were void. Suppose the fact to have been so when the agreement of March, 1835, was made, and that the lands were subject to appropriation when Galloway entered them in September, 1835, then the rule applies

"That if a vendee buys up a better title than that of the vendor, and the vendor was guilty of no fraud, he can only be compelled to refund to the vendee the amount of money paid for the better title."

*Learey v. Kirkpatrick*, Cooke 211; *Mitchell v. Barry*, 4 Hayne 136. In reforming the contract, equity treats the purchaser as a trustee for the vendor because he holds under the latter, and acts done to perfect the title by the former when in possession of the land enure to the benefit of him under whom the possession was obtained, and through whom the knowledge that a defect in the title existed was derived. The vendor and vendee stand in the relation of landlord and tenant; the vendee cannot disavow the vendor's title. [28 U. S. 3](#) Pet. 48; 2 Marshall 242; 5 Yerger 398. This case furnishes a fair illustration of the propriety of the principle. Charles Bradford was a nonresident; that he had died before the

lands were entered and granted was unknown to Galloway until he obtained the information through the heirs of the grantor after the sale; for forty years the title had been deemed valid, and the defect was exposed by the production of his will and the endorsements of its probate in 1789. The fact thus ascertained was confidential in its character as between the parties to the contract, and Galloway could not be permitted to avail himself of it whilst standing in the relation of a purchaser, to defeat the agreement; under the most favorable circumstances, he could only have it reformed and the amount advanced to perfect the title deducted from the unpaid purchase money. But this is not the attitude the complainant assumes by the bill first filed. He claims an entire rescission.

On 20 May, 1836, pending the suit, Congress passed an Act, 4 Story's Ed. 24, 36, to give effect to patents issued to deceased persons, which provides

"That grants issued to persons who had previously died should enure to and become vested in the heirs of such deceased patentee as if the same had issued to the deceased person during his life, and that the provisions of the act should be construed to extend to patents for lands within the Virginia Military District in the State of Ohio."

That the legal title to the lands patented in the name of Charles Bradford, vested in his heirs by force of the act, cannot be denied. [13 U. S. 9](#) Cranch 43, [15 U. S. 2](#) Wheat. 196. Grant, then, all that is claimed for the complainant; still his entries of September 1835 conferred a mere equity, and the defendant, Finley, holds the fee, and the complainant, by raising the warrants from his entries, will have sustained damage only to the amount of the officer's fees, or, take it the other way and compel Finley and Barr to compensate for the warrants, then of course they would be entitled to them, and the effect be the same. Had Galloway's entries been valid, and had he acted in good faith as regards the defendants, by giving notice of the means used to perfect the titles, and had he sought by the bill, what in equity and conscience he was entitled to as compensation, a court of chancery could not have refused relief; but he invokes aid to defeat the entire contract, and

nothing less, in sanction of acts intended, from his own showing, to deprive the complainants of their money and lands, thus assuming an attitude before the court and asking its active aid under circumstances that, were he a defendant, and set up like claims, it would be difficult to say he could be compensated; as a complainant, he surely cannot be heard.

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Then as to the loss of the warrants and fees: it having been the clear duty of the appellant to enter the lands for the benefit of his vendors, and only to have demanded compensation for expense and trouble, and he having entered for himself, a court of equity must decline to assist him, in the language of MR. JUSTICE STORY, 2 Story's Eq. 8, to escape from the toils which he has studiously prepared to entangle others; it must be left to him to get rid of his entries and secure the benefit of his warrants. The act of Congress having conferred on the defendant Finley, the legal title, equity will not take from him his legal advantage. [14 U. S. 1](#) Wheat. 196; 2 Story's Eq. 88; Sugden on Vendors, 365, 375, 7th ed. If Finley has the title and can perform the contract on 1 January, 1839, when the last payment falls due, this is all the law can require of him. Yet it is an established rule in equity that where the vendor has not the power to make title, the vendee may, before the time of performance, enjoin the payment of the purchase money until the ability to comply with the agreement for title is shown; *Royer v. Patton*, 1 Ten. 258; *Ralston v. Miller*, 3 Randolph 44, but then the court will give a reasonable time to procure the title, if it appears probable, on reference, that it may be procured. *Frost v. Bronson*, 6 Yerger 36, 40.

By an amendment to his bill in October, 1836, the complainant sets forth his entries of 1835 and the surveys thereof, and again prays a rescission of the contract of March, 1835,

"or that if the defendants at the date of the contract had a good and perfect title to the premises they contracted to convey and authority to perfect their agreement, then the complainant is ready, and tenders a completion of the contract."

The only allegation in the amended bill varying the case is that at the time the agreement was entered into, complainant was ignorant that the patents for the lands had been made in the name of a person that was dead. The respondents admit the fact, but state that complainant derived his first knowledge of its existence from a sight of Charles Bradford's will after he made the agreement. It seems respondents were at that time equally ignorant, not knowing or having overlooked the dates of the entries and patents. If complainant had not entered the lands, then he would have been entitled to a rescission of the contract, had no title been acquired by the defendants, through the medium of Congress.

The principal ground relied on for relief being that the patents

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were void, because made after Charles Bradford's death; we will proceed to examine it. That a patent thus made passes no title is true in the nature of things; there must be a grantee before a grant can take effect, and so this Court held in [Galt v. Galloway](#), 4 Pet. 345, and [McDonald v. Smalley](#), 6 Pet. 261. Yet this is not the question presented; it is whether the appellant was permitted to enter the lands purporting to have been granted to Charles Bradford, notwithstanding his death. And this depends upon the Act of 1807, ch. 34, and others, continuing the provision up to the date of Galloway's entries. The time for locating Virginia military claims for services on the continental establishment between the Little Miami and Sciota Rivers had expired, and by the act, Congress extended the time. But on reopening the land office, the following exception was introduced:

"Provided that no locations as aforesaid within the above-mentioned tract shall, after the passing of this act, be made on tracts of lands for which patents had previously been issued or which had been previously surveyed, and any patent which may nevertheless be obtained for lands located contrary to the provisions of this section shall be considered null and void."

It is insisted for appellant that the section had reference to imperfect, and not void titles. The legislature merely affirmed a principle not open to question if this be the

true construction. Had an effective patent been issued, the government would not have had any title remaining, and a second grant would have been void of course. Something more undoubtedly was intended than the protection of defective yet valid surveys and patents; this is not denied, but the argument insists only irregularities were intended to be covered.

It is difficult to conceive how an irregular patent could exist unless it passed no title. We will not perplex the decision with supposed cases of irregular surveys, but examine the act of Congress and ascertain its effect as regards the grant in the name of Charles Bradford. It is fair upon its face, and we will not look behind it for irregularities. [20 U. S. 7](#) Wheat. 214. The death of the grantee is an extrinsic fact, not impairing the equity of the claim as against the government. His heirs had an interest in common in the military district with all similar claimants. The truth of the position is unquestionable. [Jackson v. Clarke](#), 1 Pet. 635; *Neal v. E. T. College*, 6 Yerger 79, 190. The defects, of all others most common, in the military grants of Kentucky, Tennessee, and Ohio, were, where the soldier had died, and the entry, survey and grant

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had been made in the name of the deceased. In his name the warrant almost uniformly issued; who the heirs were was usually unknown to locators and disregarded by the officers of government when perfecting titles. In Tennessee and Kentucky, provision was made at an early day that the heir should take by the grant, and why should we presume Congress did not provide for the protection of his claim to the lands purporting to have been granted when the legislation of the federal government was, of necessity, controlled in this respect by the experience of members coming from states where there were military lands? The statute is general, including by name all grants, not distinguishing between void and valid, and the plainest rules of propriety and justice require that the courts should not introduce an exception, the legislature having made none. [26 U. S. 1](#) Pet. 636, [26 U. S. 638](#) ; Martin & Yerger 361.

But it is insisted this Court did make an exception in the cause of [Lindsey v. Miller](#), 6 Pet. 666, and which should be followed. What was that case? A grantee from the government sued a defendant in ejectment, claiming, in the Military District of Ohio, by virtue of an elder entry and survey, and the question was whether the junior patent to plaintiff was void because made contrary to the act of 1807. The defendant's entry, by mistake, had been founded on a warrant for services, not in the continental line, but in the Virginia state line, a claim not subject to be satisfied in the Ohio Military District. [20 U. S. 7](#) Wheat. 1. The location and survey were therefore mere nullities, and the Court very justly held that Congress did not, by the act of 1807, contemplate such claims, and that they were not within the purview of the act. But had the claimant been entitled to the satisfaction of his warrant in the military district, in common with others, for whom the government held as trustee, the case might have been very different, even had the entry and survey been invalid. Congress had the power in 1807 to withhold from location any portion of the military lands, and having done so in regard to that previously patented in the name of Charles Bradford, the complainant Galloway had no right to enter the same. His location being void, it follows, the Act of 20 May, 1836, vested the title to a moiety in the defendant, Henry R. Finley, exempted from any influence of the entries.

The decree of the circuit court is therefore

*Affirmed and the bill ordered to be dismissed.*

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