

Property of  
Harpers Ferry NHP

THE ACQUISITION AND DISPOSAL OF  
PUBLIC LANDS AT THE  
U. S. ARMY <sup>OR</sup> AT HARPPERS FERRY, VIRGINIA  
~~NO~~  
1796 - 1885

Volume III

U.S. Documents relating to the  
Disposal of U.S. Armory Lands  
at Harper's Ferry, W. Va., 1867-1885

Denver Service Center  
National Capital Team  
National Park Service  
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PREFACE

Volume III of the report entitled "The Acquisition and Disposal Public Lands at the U.S. Armory at HARPER'S FERRY, West Virginia, 1796 to 1885," is comprised of U.S. documents produced by the Secretaries of War and the Treasury, the Attorney General, the Solicitor of the Treasury, the Congress of the United States, and the U.S. District Court for West Virginia, all relating to the sale of the U.S. public lands at Harper's Ferry during the period 1867 to 1885. Also included are documents associated with the U.S. Grants of rights of way across Armory lands in the period 1807 to 1842 for canals, railroads, and a bridge. These 30 items complete the documentation of the narrative history that appears in Volume I of the present study.

The following listed nine items, Nos. 11, 12, 13, 14, 15, 16, 19, 20, and 21, were collected and transcribed from documents in the National Archives, Washington, D.C., by James P. Noffsinger in 1958. They were included in his "Harpers Ferry, West Virginia-Contributions Towards a Physical History," (NPS typscript, Eastern Office of Design and Construction, Philadelphia, Pa., November 1958). The 21 ~~items~~ items making up the balance of Volume III were collected by Charles W. Snell in 1979 (or 1957-60).

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December 5, 1867

49TH CONGRESS, } HOUSE OF REPRESENTATIVES. { Ex. Doc.  
2d Session. } { No. 17.

PROPERTY AT HARPER'S FERRY.

LETTER

FROM

THE ATTORNEY GENERAL,

IN ANSWER TO

*Resolution of the House of 26th March last, relative to the title to property at Harper's Ferry.*

DECEMBER 5, 1867.—Referred to the Committee on the Judiciary and ordered to be printed.

ATTORNEY GENERAL'S OFFICE, *December 5, 1867.*

SIR: By a resolution of the House of Representatives, passed March 26, 1867, the Attorney General is directed to examine the title papers concerning the public property at Harper's Ferry, West Virginia, used previous to the rebellion for an armory, and report his opinion as to the title of the United States to the same, "whether it is in fee-simple or merely held in trust by the President for a specific use, and no other."

In conformity with this resolution, I have the honor to submit a carefully prepared abstract of the title of the United States to the property at Harper's Ferry, and will proceed to give my opinion on the title, especially upon this specific point, whether it is held in fee-simple or held for a single designated use, and no other.

First, as to the question touching the use. This question has no doubt arisen under the deeds of June 15, 1796, and February 20, 1797, numbered respectively "two" and "three" in the abstract. In the earlier years of the government, the form of conveyance adopted for real estate acquired by the United States was to convey the land to a public officer and his successors, to hold to the use of the United States. Following this usage, I find in both these conveyances that the grant was made to "George Washington, President of the United States, and his successors forever," to hold the same "to and for the use and behoof of the said United States forever, and to and for no other use or behoof whatsoever." Being founded on a money consideration recited in each of these deeds, they operate as deeds of bargain and sale, and under the Virginia statute of uses in force at that date vested the legal estate in the President and his successors in fee, subject to a trust in favor of the United States of the entire beneficial interest. If no use had been declared this trust would nevertheless have resulted to the United States, for the purchase money, as recited

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in the deeds, was paid on account of and for and in behalf of the United States, and, moreover, the grantee takes in his official, and not in his individual capacity (*Tucker's Commentaries on the Laws of Virginia, vol. 1, p. 264-65.*)

The trust or use declared in favor of the United States is not limited to any specific purpose or object. It imports that the conveyance was to be for the benefit of the United States exclusively. The *habendum* in each of the instruments has precisely the same force and effect as if it had been to the use of the United States forever. I think this stands clearly enough upon acknowledged principles. I find it, however, expressly recognized in the case of *Van Ness vs. The City of Washington and the United States*. (4 *Peters's R.*, p. 284.) I see nothing in this limitation of uses in the nature of a condition subsequent or a use determinable upon a future event. The use is, not merely to possess the property, but carries as well the *ius disponendi* and the right to take the proceeds upon sale.

It is not necessary to inquire here what would have been the effect if the use had been limited to the United States for the purposes of an armory, or if the United States, under the eminent domain power, had condemned the property for the purpose of erecting an armory. Whatever effect would follow by a conveyance of the legal title to the United States for such a purpose, or from its acquisition by appropriation for such a purpose, would also attach to a conveyance of the legal title to a public officer with a limitation of the uses to the United States; for the limitations of trusts are to be construed precisely as those of legal estates. Taking the use as it is declared in these conveyances, I entertain no doubt that it is absolute and unconditional. (See *Van der Volgen v. Yates*, 5 *Selden's R.*, p. 219.)

The conveyance marked "No. 1" purports, so far as John Wager, sr., one of the grantors, is concerned, to be made in execution of the power created by the will of Robert Harper, patentee. I find by the will a life estate devised to Sarah Harper and her husband, with power to either of them "to leave and bequeath the said ferry and lands to them devised as above to either of their sons whom they shall judge most deserving thereof, and in case of failure of male issue to leave and give the premises aforesaid to either of their daughters as may appear to them the most suitable." The will contains no residuary clause, nor is there any devise over in default of appointment under the power given by the will.

At the date of the will and the death of the testator, Sarah Harper was intermarried with John Wager, senior, and they had three children then living, namely, John Wager, junior, Margaret Wager, and Mary Wager. John Wager, senior, survived his wife, and joined with his three children in the conveyance of June 15, 1796. In that conveyance John Wager, senior, declares, covenants and agrees, to and with "the said George Washington, President of the United States, and his successors forever, that he, the said John Wager, senior, in pursuance of the intent of the last will of Robert Harper, hath elected and appointed his son, the said John Wager, junior, to take and to have and hold the said part of land devised by the last will aforesaid unto the said Sarah Harper, his late wife, who has departed this life without making any devise or appointment thereof, and that he, the said John Wager, senior, will not make any other appointment or any bequest whatsoever thereof." This deed also contains covenants of general warranty.

A question might be raised as to whether the power created by the will was merely a naked power, or coupled with a trust, and, if merely a naked power, whether it was well executed by the deed, or, if not well executed, whether it was such a partial execution as might be enforced in equity in favor of the purchaser. If these questions had been raised in time they would have been found to be of a very serious character, but I look upon them as having no significance at the present time. The United States have been in the undisturbed

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adverse possession of all this property, claiming the absolute ownership for more than seventy years. Upon examination of the statutes of Virginia, I entertain no doubt that that possession has long since ripened into a perfect title.

I am accordingly of opinion that the United States now hold a valid title in fee-simple of all their property at Harper's Ferry.

I have the honor to be, with great respect,

HENRY STANBERY,  
*Attorney General.*

Hon. SCHUYLER COLFAX,  
*Speaker of the House of Representatives.*

ABSTRACT OF TITLE RELATING TO THE PUBLIC PROPERTY AT HARPER'S FERRY,  
WEST VIRGINIA.

The title papers respecting this property, as obtained from the files of the War Department, show that nearly all the real estate now in the possession of the United States at Harper's Ferry was originally held by Robert Harper, under two patents to him from Lord Fairfax, proprietor of the "northern neck" of Virginia, dated respectively April 5, 1751, and April 19, 1762, and also a patent from the State of Maryland, issued in 1763, covering part of an island in the Potomac river, hereinafter mentioned. These patents, though not found with or set out in said papers, are referred to therein as the source of his title.

Harper died seized of the lands covered by the above-mentioned patents in the year 1782, leaving a will, whereby he disposed of his estate as follows: (See note at foot of this abstract.)

1. *Extract from will of Robert Harper.*—"Imprimis. I give, leave, and bequeath to my nephew, Robert Griffith, one moiety or half of my ferry survey." (Here follow the lines or boundaries of the tract devised, and also a bequest of all his movable estate except his negro wench Beck.)

"Secondly. I give, leave, and bequeath unto my niece, Sarah Harper, daughter of my brother Joseph Harper, joiner and cabinet-maker, late of Philadelphia, or her heirs, my ferry and ferry-house on Potomac river, and all the remainder of my ferry survey not before devised to Robert Griffith, together with all my estate, right, and title to the Maryland shore of the said ferry, and also all my estate, right, and title to and for ten acres upon what is called the Big island, up Potomac river, adjoining the ferry aforesaid. But it is my will that neither my said niece Sarah, or her husband, if alive, shall enjoy the said ferry and lands hereby devised and bequeathed longer than their natural life or lives, and it is likewise my will that my said niece Sarah, or her husband, shall and may have full power and authority to leave and bequeath the said ferry and lands to them devised as above, to either of their sons whom they shall judge most deserving thereof, and in case of failure of male issue to leave and give the premises aforesaid to either of their daughters as may appear to them the most suitable." (Here follows a direction that all his debts shall be paid out of the receipts from his ferry, which his executors are charged to retain until the former are discharged.)

Other specific bequests are made by him, but the will contains no residuary clause.

Sarah Harper (who intermarried with John Wager) afterwards died, leaving her husband and one son, John Wager, jr., surviving, who, with the husband of said Sarah, and their two daughters, joined in the conveyance hereinafter mentioned. (See No. 2)

Robert Griffith died, and his heir at law conveyed to Thomas Rutherford et

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*al.*, executors, &c., of Thomas Rutherford, jr., deceased, who conveyed as below stated. (See No. 3.)

2. *June 15, 1796.*—By deed of this date, John Wager, sr., John Wager, jr., Margaret Wager, and Mary Wager, in consideration of \$7,016 66 to them paid “on account of the United States by George Washington, President of the United States,” and of certain covenants therein set forth, convey to “the said George Washington, President of the United States, and his successors forever,” to hold “to and for the use and behoof of the said United States forever, and to and for no other use or behoof whatsoever,” a certain island in the Potomac river, and also all the land commonly known as the Harper's Ferry tract, which was devised as aforesaid by Robert Harper to his niece Sarah Harper; *excepting* six acres described in the deed, and likewise a small parcel for the ferry-landing at or near the junction of the Potomac with the Shenandoah. The covenants referred to as entering into the consideration of this conveyance relate to certain ferry privileges, &c., which no longer possess any importance, the ferry itself, in consequence of the erection of a bridge at the point indicated, having long since been abandoned. But the deed also contains this clause: “And the said John Wager, senior, for himself and his heirs, executors, and administrators, doth declare, covenant, and agree to and with the said George Washington, President of the United States, and his successors forever, that he, the said John Wager, senior, in pursuance of the intent of the last will of Robert Harper, hath elected and appointed his son, the said John Wager, junior, to take and to have and hold the said parcel of land devised by the last will aforesaid unto the said Sarah Harper, his late wife, who has departed this life without making any devise or appointment thereof, and that he, the said John Wager, senior, will not make any other appointment or any bequest whatever thereof.” Deed contains also a covenant of warranty.

3. *February 20, 1797.*—By deed of this date, Thomas Rutherford, William Dark, Van Rutherford, and Mary Rutherford, executors and executrix of Thomas Rutherford, jr., deceased, in consideration of \$10,000 to them paid by “George Washington, President of the United States, for and in behalf of the United States,” convey to the said “George Washington, President of the United States, and his successors forever,” to hold “for the use of the said United States forever, to and for the use and behoof of the said United States, and to and for no other use or behoof whatsoever,” all the land devised by Robert Harper to Robert Griffith as aforesaid, and which was subsequently conveyed to the grantors by the heir at law of said Griffith. Contains covenant of warranty.

[NOTE.—Though apt words of perpetuity appear to be employed in both the above deeds, it is thought proper to mention that by a Virginia statute passed in 1785, every estate in lands thereafter granted, conveyed, or devised to one, although words theretofore necessary to transfer an estate of inheritance be not added, is to be deemed a fee-simple, if a less estate be not limited by express words, or do not appear to have been granted, conveyed, or devised by construction or operation of law.]

The United States have been in the uninterrupted possession and enjoyment of the property conveyed as above for over seventy years, except such lots or parcels thereof as have been alienated by them.

4. By reference to the aforesaid deed of June 15, 1796, it will be seen that a tract of six acres, mentioned above, was excepted out of the grant from the Wagers to George Washington, President, &c. This tract, it would seem, remained in the possession of John Wager, jr., and his heirs, claiming under the said devise of Robert Harper, down to the year 1835, when a plat thereof was made on partition of the lands of the said John Wager, pursuant to a decree rendered by the superior court of law and chancery for Jefferson county, Virginia, in a cause then depending therein between Gibson and Russell, com-

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plaintants, and James B. Wager and others, defendants, which plat was recorded in the land records of said county, the lots designated thereon having been allotted and distributed in the proceedings in said cause among the parties thereto. In the years 1847, 1848, 1849, 1853, 1855, and 1856, the United States acquired by purchase from the parties to whom they had been allotted as aforesaid, and those holding under them, the following lots and parts of lots, known and distinguished on said plat as lots 11, 12, 13, 15, 16 (part of), 17, 18, 19, 20, 21, 22, 23, 24 (part of), 26, 27, 28 (part of), 29 (part of), 33, and 34. An absolute and unconditional fee-simple in each of these lots and parts of lots is conveyed *directly* to the United States, for a money consideration, by deeds duly executed and acknowledged.

The foregoing completes the history of the title of the United States to so much of the public property at Harper's Ferry as was originally held by Robert Harper, the patentee thereof, and devised by him as aforesaid. There is other property at and in the vicinity of that point, the title to which is derived by the United States from other sources, and which will now be noted.

5. In 1815 or 1816 a certain Patrick Byrne obtained a patent from the State of Maryland covering the whole of the island included in the grant from the Wagers of June 15, 1796, hereinbefore referred to. This island, as before stated, was patented by that State to Robert Harper in the year 1763, but the survey of his patent called for only some ten acres of land. The Wagers held the island under the aforesaid devise of Harper, and in their deed it is stated to contain twenty acres, more or less. In an ejectment suit, tried and determined in a court holden in Washington county, Maryland, in 1818, Byrne succeeded in establishing title to the whole island, (except the ten acres patented to Harper,) then estimated to contain some thirty acres over and above the said ten acres. However, by a deed dated February 7, 1848, Byrne and wife, in consideration of the sum of \$1,500, sold and conveyed directly to the United States in fee the whole of this island, then and now known as "Byrne's island," exclusive of the ten acres already claimed by the government under the Wager grant, and excepting a small parcel conveyed by Byrne and wife to the Baltimore and Ohio Railroad Company in September, 1841. Thus, with the exception of the parcel last mentioned, the United States now hold the entire island.

6. *October 27, 1818.*—By a deed of this date, Ferdinand Fairfax, in consideration of a payment to him of \$5,000, conveys to James Monroe, to hold unto him, the said James Monroe, President of the United States, and his successors in that office, his and their heirs forever, for the use and benefit of the people of the United States forever, "a certain tract of land lying at the mouth of the Shenandoah, in Jefferson county, Virginia, (now West Virginia,) containing sixty-eight acres and eighty square perches, more or less, *excepting* and reserving to the said Fairfax, his heirs and assigns, all mines, &c., he or they making reasonable compensation for actual damage occasioned to the premises by digging, &c., the same.

This tract lies on the south side of the Shenandoah, directly opposite the town of Harper's Ferry, and with it is also conveyed the ferry across that river, which is located a short distance above its mouth, and over which the government still exercises ownership.

7. *June 27, 1833.*—By a deed of this date, John Strider and wife, in consideration of \$2,600 to them paid, convey directly to the United States in fee certain rights and privileges to the use of the waters of the Shenandoah river between the mills of the said Strider, called the "Gulf Mills," and the mills of the United States on that river below, together with other privileges relating to the construction and completion of certain dams, &c., connected with the use of said waters. These water privileges are now appurtenant to a portion of the land acquired by the United States under the before-mentioned deed of February 29, 1797, and adjoin the same on the Shenandoah on the west.

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8. August 20, 1813.—By a deed of this date, Ferdinand Fairfax *et al.*, in consideration of \$20,860 62 paid to the said Fairfax, by John Armstrong, Secretary of War, "out of the public moneys appropriated for the purpose," convey unto the said John Armstrong, Secretary of War as aforesaid, to hold unto the said John Armstrong, Secretary of War as aforesaid, to his successors in office and to his and their assigns forever, for and in behalf of the United States, and to and for their only proper use and behoof in perpetuity, all and singular the trees, timber, woods, and underwoods of every sort and denomination, and the absolute, exclusive, and perpetual vesture of the same, being or to be growing, or to grow, planted or to be planted, in and upon all that tract and parcel of land containing 1,395 acres, two roods and twenty perches, situated partly in Jefferson and partly in Loudon counties, known as the Shannondale tract. The deed contains a proviso for ascertaining the amount of any damage which may ensue prospectively to the United States, in certain cases, from the exercise on the part of said Fairfax, his heirs or assigns, of any specific right, authority, &c., appertaining to the proprietorship of the soil, after which, and upon payment of the amount so ascertained, a license to proceed with the exercise of such specific right, &c., is to be granted on the part of the government.

The tract of land described in this conveyance lies on the south side of the Shenandoah, adjacent to that which was subsequently acquired by the United States from said Fairfax, by his deed of October 27, 1818.

(See No. 6. above.)

The object of the last mentioned purchase was the supply of the public work-shops, offices, quarters, &c., at Harper's Ferry, with wood for fuel and other purposes. For a similar object, viz, the supply of the armory at that point with iron to be used in the manufacture of arms, &c., a purchase was made by the government in 1800, of certain iron ore in lands situated in the vicinity of Harper's Ferry. The following transfers took place on the latter purchase:

9. May 8, 1800.—By a deed of this date, Henry Lee and wife, in consideration of a payment to them of \$24,000, convey directly to the United States, to hold unto the said United States forever, to their only use and behoof, all the iron ore, with all the rights, &c., necessary for digging, raising and removing the same, in a certain tract of land in Berkeley county, Virginia, (now in Jefferson county, West Virginia, which at the date of this deed formed a part of Berkeley,) adjoining the Potomac, containing about 1,600 acres, in which is a bank of iron ore known as "Friends' ore bank;" *excepting* so much thereof as has been conveyed by said Lee to John Potts and others. They also convey with the above, "one-half acre of land adjoining the said river, to be selected for the United States aforesaid by their agent, duly authorized by the Secretary of War," &c.

June 20, 1800.—By a deed of this date, the said John Potts, with others, for a money consideration to them paid on behalf of the United States, sold and conveyed to "John Adams, President, &c., his successor and successors in office, for the use and on behalf of the United States," to hold unto the said John Adams, his successor and successors in office, for the only proper use and behoof of the said United States, forever, the right of digging ore from "Friends' ore bank" held under said Henry Lee, &c. (There is also conveyed under this instrument a tract of land near "Keep Tryste furnace," which, however, has since been sold by the government under the authority of an act of Congress, approved March 3, 1819, 3 Stat., 521.)

By this last conveyance, the United States acquired title to all that was excepted out of the grant of Lee and wife of May 8, 1800, and thus became vested with the sole ownership of all the iron ore described in the two deeds last mentioned, and also one-half acre of land. It is understood that for a very long period the government has not worked or made any use or disposition of the

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bed, but the right thereto nevertheless appears to subsist and remain in the United States as fully as it formerly existed in the said Henry Lee. The foregoing covers all the public property held and used, previous to the rebellion, in connection with the armory at Harper's Ferry, West Virginia, which the records of the War Department afford any information.

STATUTES OF LIMITATION.

By the Virginia acts of 1792, 1819, and 1820, (see Tate's Digest of the Laws of Virginia, published in 1823,) the limitation of actions upon writs of *formedon*, *descender*, *remainder*, and *reverter*, and rights of entry, was *twenty years*; with a proviso that "if any person or persons entitled to such writ or writs, or such right or title of entry, as aforesaid, shall be, or were, under the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or not within the commonwealth, at the time of such right or title, accrued or coming to them, any such person, and his or her heirs, shall and may, notwithstanding the said twenty years are or shall be expired, bring and maintain his action, or make his entry, within ten years next after such disabilities removed, or the death of the person so disabled, and not afterwards." The limitation of *writs of right* upon possession or seizure of an ancestor or predecessor was *fifty years*, and of any other possessory action upon such possession or seizin *forty years*, next before the *teste* of the writ; but no person could maintain a real action upon his own possession or seizin, except within *thirty years* next before the *teste* of the writ. But by more recent laws of the same State, (1830-'31 and 1836-'37—see Code of Virginia, edition of 1849, page 590; also edition of 1860, page 636,) entry can be made on, or action brought to recover, any land, except within *ten years* next after the right of entry or action accrued; with a saving, however, in favor of infants, married women, and insane persons, allowing ten years after disability ceases, provided that the whole period does not exceed *any years* from the time the action first accrued.

NOTE.—Robert Harper's will is dated September 26, 1772, but by a codicil was republished October 1, 1772, and it was probated October 15, 1772; so that his death must have occurred between the 1st and 15th of October, 1772.

Oct. 24, 1871

REPORT OF THE CHIEF OF ORDNANCE.

WAR DEPARTMENT, Ordnance Office, October 24, 1871.

I have the honor to submit the following report of the principal operations of the Ordnance Department during the fiscal year ended June 30, 1871, with such remarks and recommendations as the interests of that branch of the military service seem to require. The fiscal resources and disbursements of the Department during the year were as follows, viz:

Table with 2 columns: Description and Amount. Rows include appropriations in Treasury, deposits in Government depositories, and expenditures since June 30, 1870. Total amounts are \$14,400,773 70 and \$25,700,710 55.

During the last fiscal year there existed a great demand in Europe for arms and other ordnance stores, and this Department took advantage of it and sold, at fair prices, about ten millions of dollars' worth of arms and other ordnance stores, under authority given by Congress on July, 1868. The proceeds of the sales, except a small sum which was needed to meet expenses incurred in preparing other stores for sale, were passed from the control of this Department and into the Treasury.

The sum over \$340,000 is for arms and ammunition made for the Navy Department, \$31,610 60 for settlement of war claims. The sum only \$293,534 59 (under the appropriation for arming and equipping) is now available, the balance having, under the act of July 12, 1870, passed from the control of this Department for current expenditures.



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## REPORT OF THE SECRETARY OF WAR.

in having arms made at Springfield Armory under the orders of the Secretary of War, and the Government has at the same time been compelled to submit to an expensive lawsuit brought to restrain it from making the arms. Such a state of things ought not to exist.

A small number of revolvers (pistols) which use the primed metal cartridge, have been made and issued to troops, and the few reports upon them which have been received at this Bureau show that they are greatly superior to the revolvers which use the paper cartridges. They must supersede them in the service. As soon as a proper model can be selected it should be adopted, and steps should be taken to make the National Armory all of them which the Government may require. It will be more economical for the Government to pay a fair royalty to manufacture the revolvers, than to purchase them from the manufacturer, who will charge both royalty and manufacturer's profit.

Benicia Arsenal has been for some years the principal and almost only arsenal on the Pacific coast. A recent inspection has shown that it should be made capable of doing all the necessary repairs on ordnance stores for the Pacific coast. The cost of transferring stores from the Pacific coast to arsenals on the Atlantic is so great that no stores should be sent east for repairs. My estimates for Benicia Arsenal have been made with a view to making it of sufficient capacity to do all the repairs of stores for the Pacific coast.

Since the date of my last report St. Louis Arsenal has been turned over to the Quartermaster's Department and converted into a cavalry recruiting depot; and Jefferson Barracks has, under your orders, been occupied as an arsenal. The transfer of the ordnance and ordnance stores from the arsenal to the barracks has been nearly completed. Jefferson Barracks is an excellent site for an arsenal, and its storehouses are capacious and in good order. Baton Rouge Arsenal has also, in pursuance of orders, been turned over to the Quartermaster's Department for garrison purposes, and was finally closed as an arsenal on the 15th of June last.

I respectfully renew my recommendation that the captured lands and buildings at Shreveport, Louisiana, and in Walker, Jefferson, Davis and Marion counties, Texas, which were turned over to this Department at the close of the war, be disposed of. They are of no use to the Department.

I also renew my recommendation that the following arsenals, which are no longer needed by this Department, be sold, viz: Rome, at Rome, New York; North Carolina, at Fayetteville, North Carolina; and Clarendon, at Vergennes, Vermont. As the Mount Vernon Arsenal, in Alabama, has been ordered to be transferred to the Quartermaster's Department for Army purposes since the date of my last report, my recommendation for its sale is withdrawn.

I recommend that Congress be requested to authorize the sale of the magazine tract of land near Augusta Arsenal, Georgia. Extensive powder works were built upon it by the confederate government during the war, which are not wanted by this Department. The buildings and machinery are deteriorating, and their care is an expense to the Department.

No payment, except for a few lots, has yet been made on the Harry Ferry property which was sold, in 1869, in accordance with the terms of the law directing the sale. The first payment should have been made on the 1st of next December, and the second and last payment should be made on the 1st of next December. The title to the property has not been transferred.

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ferred by the United States, except for the few lots above referred to, and for those donated by the act authorizing the sale. Unless full payment for the property shall be made next December, it is my intention to report the fact to you and ask for instructions in the matter.

I still think that a large Arsenal of Construction, and a Powder and Niter Depot, should be established at some suitable points on the Atlantic coast, and I renew the recommendation made in my last report that Congress be requested to authorize and empower the Secretary of War to sell such of the arsenals as in his opinion have ceased to be required, and to apply the proceeds of their sales to the purchase of sites and the erection thereon of buildings for the arsenal and the depot. I respectfully invite attention to the remarks on this subject which are in my last report.

January 27, 1873

42D CONGRESS, } HOUSE OF REPRESENTATIVES. { Mis. Doc.  
3d Session. } { No. 69.

WATER PRIVILEGES AT HARPER'S FERRY.

JOINT RESOLUTION

OF

THE LEGISLATURE OF WEST VIRGINIA.

IN FAVOR OF

*The passage of a bill to resell the water privileges at Harper's Ferry.*

JANUARY 27, 1873.—Referred to the Committee on the Judiciary and ordered to be printed.

Whereas at a public sale, under an act of Congress, held in the town of Harper's Ferry, county of Jefferson, West Virginia, in the latter part of November, 1869, of the water privileges at the said town, owned by the United States, the said water privileges were bid in by a Mr. T. C. Adams, giving bonds and security, at one and two years respectively, to secure payments: and whereas the said bonds having matured, and the said T. C. Adams having failed to comply with the agreement named: Therefore,

*Be it resolved by the legislature of West Virginia.* 1st. That as a means of affording relief to the citizens of said town and surrounding country, as well as to advance the interest of the State, our Senators in Congress be instructed, and our Representatives be requested, to favor the passage of a bill authorizing the Secretary of War to resell the same.

2d. That a copy of the foregoing preamble and resolution be transmitted by his excellency the governor of the State to the President of the Senate of the United States, to the Speaker of the House of Representatives, and to our Senators and Representatives in Congress.

Adopted January 17, 1873.

January 11, 1873

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42<sup>d</sup> CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT  
3<sup>d</sup> Session. } { No. 21.

PURCHASERS OF PROPERTY AT HARPERS FERRY.

JANUARY 11, 1873.—Laid on the table and ordered to be printed.

Mr. COBURN, from the Committee on Military Affairs, made the following

REPORT:

[To accompany bill S. 67.]

*The Committee on Military Affairs, to whom was referred Senate bill No. 67, for the relief of the purchasers of property at Harper's Ferry, having had the same under consideration, have directed me to make the following report:*

This is a bill for the relief of the purchasers of the real estate formerly belonging to the United States, and used for and in connection with an arsenal at Harper's Ferry, in the State of West Virginia.

The bill contains two provisions. One is a postponement of the collection of the purchase-money, due or to become due, from purchasers of real estate not embracing water privileges, for a time not exceeding three years, at the discretion of the Secretary of War. The other is a provision for the rescission of the sales of all the property at that place, at the option of the purchasers, and for another sale.

It appears that the United States owned the site of an arsenal and adjoining grounds, with dams across the Potomac and Shenandoah Rivers, at Harper's Ferry, Virginia. That the arsenal has been removed from that place, and the Government on the 30th day of November and the 1st and 2d days of December, 1869, sold at public auction the entire property at Harper's Ferry to various purchasers for the sum in the aggregate of \$297,803.50.

The water-power, dams, and adjoining lots, &c., and buildings on the Potomac, sold for \$175,000. The water-power, dams, and adjoining lots and buildings on the Shenandoah sold for \$30,000. The other subdivisions of the lands sold for much smaller sums to a large number of persons. The sales were made entirely upon credit, one-half of the purchase-money being payable in one, and one-half payable in two years from date of sale.

But a small portion of the purchase-money has been paid, viz, \$5,686.

The purchasers of a portion of this property, without paying for the same, are deriving profits from the same and the uses thereof. For instance, a tract of land was sold upon which there were large deposits of iron ore. The ore is being dug and sold by the persons who ask a postponement of collection of the purchase-money. The same demand is made by those purchasers who have bought a ferry, and lots with buildings upon them. The purchasers of the water-power and dams upon the Potomac, soon after the sale to them, gave notice to the Baltimore and Ohio Railroad Company that—(See Exhibit C.) And threatened to seize, hold, and destroy the road and works of said company and interrupt the use of said railroad. Thereupon an action was brought for an injunction to prevent the purchasers from doing these acts.

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2 PURCHASES OF PROPERTY AT HARPER'S FERRY.

The committee is informed that the injunction has been granted, the purchasers having suffered a default. The purchasers have had three years within which to improve or make sale of their property without paying a cent for it, some of them deriving profits therefrom. They seem to have bought it on a speculation, and now that it has not proven to be such, they seek to get rid of what may not prove to be profitable. The committee are of opinion that the purchase-money should be collected promptly. The committee recommend that the bill do lie upon the table.

February 13, 1873

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House of Representative  
Executive Documents, Vol 11,  
1872-1873. Serial 1569

42D CONGRESS, } HOUSE OF REPRESENTATIVES. { Ex. Doc.  
3d Session. } { No. 214.

PURCHASERS OF PROPERTY AT HARPER'S FERRY.

LETTER

FROM

THE SECRETARY OF WAR.

RELATIVE TO

*A bill to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry.*

FEBRUARY 19, 1873.—[Referred to the Committee on the Judiciary and ordered to be printed, to accompany bill H. R. 3594.]

WAR DEPARTMENT,  
February 13, 1873.

The Secretary of War has the honor to return to the House of Representatives the bill (H. R. 3594) to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, and to report to the House, for the information of the Committee on the Judiciary, in reply to letter of said committee of the 7th instant, that the only case now in the hands of the Department of Justice arising out of the sales of lands, buildings, &c., at Harper's Ferry, is that of the purchasers of the water-power, being the largest and most important part of the whole sale.

Touching the merits of the bill, this Department knows no reason why longer time should be given them to consummate their purchases, the notes being now overdue, respectively one and two years, and that their bondsmen being amply able to consummate the sale at any time.

Suit is understood to be now pending against these parties, and there is no likelihood of disposing of the property to better advantage should this suit be abandoned, and the parties released from their obligations; nor are there equities warranting a compromise with them at the score of price.

The notes and bonds of a large number of small purchasers at the same sale are on file in the office of the Chief of Ordnance, awaiting the disposition that may be made of the case of these principal purchasers. Should they be compelled to fulfill their obligations, it is thought that no difficulty will be had in effecting a settlement with the smaller purchasers within a reasonable time.

WM. W. BELKNAP,  
Secretary of War.

43D CONGRESS, }  
1st Session. }

SENATE.

{ Ex. Doc.  
No. 6.

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LETTER

FROM THE

CHIEF CLERK OF THE WAR DEPARTMENT,

COMMUNICATING,

*In compliance with a Senate resolution of December 4, 1873, information in relation to the sale of Government property at Harper's Ferry.*

DECEMBER 15, 1873.—Ordered to lie on the table and be printed.

WAR DEPARTMENT,  
Washington City, December 12, 1873.

SIR: In response to the resolution of the United States Senate of the 4th instant, directing the Secretary of War to "transmit to the Senate all the information in his possession in relation to the Government property at Harper's Ferry, W. Va., including the sale thereof," I have the honor, in the absence of the Secretary of War, to transmit herewith a transcript from the records of the Department and copies of such papers on file as will give full information in relation to the Harper's Ferry sale and subsequent official action thereon by the War Department.

Very respectfully, your obedient servant,

H. T. CROSBY,  
Chief Clerk.

The PRESIDENT *pro tempore* of the United States Senate.

ORDNANCE OFFICE, WAR DEPARTMENT,  
Washington, December 11, 1873.

SIR: In fulfillment of the requirements of the resolution of the Senate of December 4, 1873, I inclose herewith to you transcript from the records of this office and copies of such papers on file here as will give full information in relation to the Harper's Ferry sale and subsequent official action thereon by the War Department.

The inclosures are:

1. Transcript of the account of sale, with photographic copy of the map of Harper's Ferry.
2. Copies of correspondence relating to the property disposed of at the sale.

The Senate resolution is herewith returned.

By order of the Chief of Ordnance:

Very respectfully, your obedient servant,

S. V. BENÉT,  
Major of Ordnance.

The honorable the SECRETARY OF WAR.

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Pages 2 to 11 and Brown's 1896 1869 Plat of  
Harper's Ferry 's p ublic lands, have been  
reproduced in Volume I of the Acquisition and  
Disposal of Public Lands of the U.S. Armory at  
Harper's Ferry, West Virginia, 1796-1885, pp. 36-41.



## 12 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

## CORRESPONDENCE RELATING TO THE HARPER'S FERRY PURCHASES.

HARPER'S FERRY, W. VA., November 4, 1870.

GENERAL: Inclosed please find a petition which explains its purport, addressed to the Hon. William W. Belknap, Secretary of War, by a few of the purchasers, at the sale of public lands at this place, on the 30th November and 1st December, 1869, on behalf of themselves and other purchasers. Doubtless it would have been signed by all the purchasers if time permitted, but I advised its transmission so that it might meet the honorable Secretary before he closed his annual report to the President, in which he might, if he deemed it proper, refer to the subject.

With the highest respect, your obedient servant,

A. M. KITZMILLER,  
*Counsel for the parties.*

Brig. Gen. A. B. DYER,  
*Chief of Ordnance, Washington, D. C.*

[Inclosure to A. M. Kitzmiller's letter.]

HARPER'S FERRY, JEFFERSON COUNTY, W. VA.,  
November 4, 1870.

To the Hon. WILLIAM W. BELKNAP, *Secretary of War:*

The undersigned, all citizens of Harper's Ferry, in the County of Jefferson, in the State of West Virginia, who, on the 30th November and the 1st December, 1869, did become the purchasers of lots at the public sales of the United States lands, at the said place, in pursuance of the provisions of an act of Congress for that purpose, desire, with great respect, to represent to your honor: That upon the purchase of the water-power and privileges of the Government, by private parties, the same being the first sold at auction, it was represented to the people generally that the intention and purposes of the purchaser were, without delay, to reconstruct and erect valuable factories and buildings on the lands heretofore owned by the United States and used and occupied by the Government as a national armory; the writers, with a great number of others, were induced to purchase largely, on the faith that these assurances would in like good faith be complied with on the part of the principal vendee of the Government, who bought, as the first property sold, lots Nos. 1 and 2 of the catalogue. In other words, we put faith in the widely-spread rumor and the corroborating statements of Captain Adams, the purchaser, that our purchases under these circumstances would be a very good investment for business purposes in the future, and, consequently, we did bid off our respective lots at prices largely in excess of their value under any other circumstances than those referred to.

The meaning of this is, that the undersigned have been grievously disappointed by the parties from whom it was supposed better things would be expected. However, these contingencies have not occurred, and we deplore the necessities of the times, which, doubtless, have mainly influenced subsequent action on this point by the parties most vitally interested in the prosecution of their enterprise.

But we do insist that our purchases of these lots, after the water-power and privileges were declared to be the property of Captain F. C. Adams, as the highest bidder in the interests of private capitalists, was chiefly dictated by the idea that the prosperity of the town was thereby insured as it had been before the war, by the disbursement by the Government in previous years in manufacture, and to which the same water-power had been in those days devoted.

The undersigned wish to impress upon your honor's attention the substantive fact that, after the lapse of four years of war and its accompanying desolation to our village, the contiguous country, and all the business operations of the people generally in the vicinity, this gleam of prospective prosperity was indeed cheering and well calculated to afford renewed hopes of the future, to elate the spirits of everybody, and hence the eagerness to build upon these hopes, which so far were castles, imaginarily constructed, air-built indeed.

In addition to all this, we beg to represent to your honor that many persons, carried away by this supposed prospect, in fact intoxicated with it, and probably by strong drink, mingled with the crowd of purchasers and run up the several lots on *bona fide* purchasers to excessive prices, whereby they imposed upon those really desirous of purchasing, and thus innocent bidders were compelled to pay those exorbitant values. This is manifest from the fact that these bogus bids were unclaimed and the purchases abandoned, either because the bidders were unable to comply with the terms of the sale, or they never intended to do so unless they could make a speculation on their several bids.

## SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 13

We, who have bonded for these lots, although the prices were known and acknowledged by every one to be exorbitant, far beyond their real value, have done so in good faith.

Now, however, just in view of the payment of the first installment of our several purchases, namely, on the 6th day of December next, we are overwhelmed by the most terrible calamity which could at any time be the fate of any community, namely, by the flood. This awful disaster is well known to the world, and needs no comment on our part other than to state that our business has been therefrom paralyzed, our debtors unable to meet their engagements to us, and the people without money to restore themselves to their former condition; and besides this, we who are able or have anything beforehand are daily solicited or volunteer to relieve the destitute in this extremity to the full extent of our several abilities in their urgent wants. These are our neighbors and friends, and no excuse will answer in this emergency.

Under these circumstances, fully aware of your own constitutional inability to do anything for our relief pecuniarily, we do most respectfully request of your honor (and this we think you have the perfect right to order and direct) to suspend all or any coercive action on our bonds, for the payment of our respective bonds, and all the bonds falling due 6th December next, to await the action of Congress at its next session, to which we will by petition appeal for such relief in the premises as it may deem constitutional and just to grant to us under the circumstances.

Respectfully submitted for ourselves and other purchasers,

BRIDGET BOERLY.	B. A. LEISEWRING.
JAMES DAODY.	CHARLES E. BELLER.
JOHN E. ERWIN.	C. L. HOPWOOD.
JOS. D. HOLMES.	EDW'D MURPHY.
J. CAVALIER.	JOHN W. NEER.
J. M. DECAULNE.	E. H. CHAMBERS.
DANIEL AMES.	F. GANNON.
JAMES CONWAY.	JAMES MCGRAW.
E. V. COCKELLE.	JAS. T. REED.
THOS. H. TRAH.	ARTHUR C. LEWIS.
BASIL AVIS.	J. M. C. BIRD.
TURNER FREEMAN.	MARY D. PRICE.
H. RODRICK.	

[Indorsement on the foregoing papers.]

ORDNANCE OFFICE, November 7, 1869.

Respectfully submitted to the Secretary of War for his action and instructions.

The sale of the Harper's Ferry property was made in strict accordance with the act 15th December, 1868, authorizing and directing it to be sold "in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money, and that the proceeds of such sale shall be applied by him as follows."

All the property was sold on the 30th November and 1st December, 1869, and notes and bonds were duly furnished by 104 purchasers, and several purchasers paid the entire purchase-money and received deeds for their purchases. But thirteen persons who purchased thirty-six lots—two of them with dwellings upon them—failed to comply with the terms of sale, and these lots remain the property of the United States.

I submit herewith copies of the bonds and notes in blank which were given by purchasers, all of which were prepared by the Judge-Advocate-General.

A. B. DYER,  
Chief of Ordnance.

[Copy of bond and notes referred to in indorsement of the Chief of Ordnance.]

Know all men by these presents that we, \_\_\_\_\_ of \_\_\_\_\_, as principal, and \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_, as sureties, are held and firmly bound unto the United States of America in the sum of \_\_\_\_\_ dollars, to be paid to the said United States; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_\_.

The condition of this obligation is such, that whereas by an act of Congress, approved on December 15th 1868, it was provided "That the Secretary of War be, and is hereby, authorized and directed to make sale at public auction of the lands, tenements, and water privileges, belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, except as hereinafter provided, in such parcels as shall, in

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his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money: *Provided*, That no such sale shall be made until the time, terms, and place thereof shall have been published in one of the principal newspapers in each of the cities of Washington, New York, and Cincinnati, for sixty days prior to the day of sale;" it being further provided in said act that "the said Secretary of War is hereby empowered and required, on receiving the purchase-money in full, to execute all necessary deeds therefor to the purchaser or purchasers thereof, on behalf of the United States."

And whereas, in accordance with the said act, the Secretary of War did cause to be duly published in the *Morning Chronicle*, the *New York Times*, and the *Cincinnati Gazette*, each of said newspapers being one of the principal newspapers in the cities of Washington, New York, and Cincinnati, respectively, for sixty days in each, a public notice of the time, terms, and place of the sale mentioned and directed in said act, which said notice was in the words and figures following, to wit:

## SALE OF THE UNITED STATES ARMORY AND OTHER GROUNDS AT HARPER'S FERRY, WEST VIRGINIA, AND VICINITY.

ORDNANCE OFFICE, WASHINGTON, September 25, 1869.

In pursuance of the act approved December 15, 1867, and by direction of the Secretary of War, the property of the United States at Harper's Ferry, W. Va. and vicinity, will be sold by public auction on Tuesday, the 30th day of November, 1869, commencing at 10 o'clock a. m., and continuing from day to day until all is sold.

The value of this property for manufacturing purposes is too well known to render it necessary to describe it herein; but a description of the same is being prepared, and will be sent to persons who may wish it, as soon as printed, upon their applying, by letter, to this office.

The property will be sold in lots. The first will include the musket factory, embracing a strip of land running to the western boundary on the Potomac, the armory canal, and water-power of the river. The walls of two large buildings are standing on this ground, and the foundations of several others; and the water-wheels with gearing, and the flumes, are almost in perfect order. Three of them are turbines of the most approved kind, and the others are mostly cast-iron with wooden buckets.

The second will be the site of the rifle factory, and water-power on the Shenandoah; the buildings upon which have been destroyed, but the canal is in good order.

The third will be the Shenandoah Ferry, with a tract of 68 acres of land on the south, and a lot on the Harper's Ferry shore, opposite.

The fourth will be the perpetual right to cut and remove wood from a tract of 1,335 acres, mountain land, across the Shenandoah.

The fifth will be the right to dig iron ore from a tract of about 1,400 acres of land, known as Friends' ore bank, acquired by deed from Henry Lee and others.

The remainder, consisting of houses and lots in the town, will be sold lot by lot.

The Government will convey to the purchasers, after payment shall have been made in full, all its right and title to the property, which is believed to be perfect in every case.

The terms of sale prescribed by law are a credit of one and two years; the purchasers to give bond and security for the payment of the purchase-money, and these terms must be complied with within ten days after the sale.

A map showing the metes and bounds of the Harper's Ferry property will be exhibited at the time of sale.

The Government reserves the right to withdraw any or all lots offered, if bids are not satisfactory.

A. B. DYER,

*Bvt. Maj. Gen., Chief of Ordnance.*

NOTICE TO DELINQUENTS.—Persons who purchased lots in 1852, and have not fully paid for them, are notified that if they pay what is due before the day of sale, the lots will be deeded to them. Otherwise they will be resold.

A. B. DYER,

*Bvt. Maj. Gen., Chief of Ordnance.*

And whereas, at a public sale duly held and made in accordance with the act and notice, the said \_\_\_\_\_ did, in consideration of the sum of \_\_\_\_\_ dollars \_\_\_\_\_ then and there bid, and agreed to be paid by him therefor, duly become the purchaser of a certain \_\_\_\_\_ situate and being \_\_\_\_\_ and bounded and described as follows, to wit: \_\_\_\_\_ with all the privileges and appurtenances then unto in anywise belonging; and whereas, in accordance with the act and notice, he, the said \_\_\_\_\_, ha \_\_\_\_\_ made to the said United States two several promissory notes of even date herewith, in which

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said notes, for value received promise to pay in one and two years respectively, the sum of dollars ; it being recited in each of said notes that the same is, with the other, given in consideration of the sale to the said by the said United States of the herein above particularly described; and that the vendor's lien of the said United States upon said is retained till full payment of the purchase money; now, if the said shall fully pay to the said United States each of the said notes at the maturity thereof, and shall fully admit and recognize the existence and validity on the part of the United States, of the vendor's lien on the said till the full payment of the purchase money, and shall fully yield and consent to the enforcement of the said lien by the said United States, in case it sees fit to enforce the same in the event of the non-payment of said notes, or either of them, at maturity, then this obligation shall be void, otherwise in full force and effect.

Signed and sealed in presence of—

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

of )  
County of ) ss. \*

We, and the sureties named in, and who have executed the annexed bond, do severally, on oath, declare that we are, each of us, worth the sum of dollars, over and above all debts and liabilities whatever.

Subscribed and sworn to on this day of 18 , before me.

HARPER'S FERRY, WEST VIRGINIA. 18 .

For value received, I promise to pay to the United States of America, in two years from the date hereof, the sum of dollars cents; this note, with another of even date at one year, being given in consideration of the sale to me by the said United States of certain particularly described in a bond executed by me as principal, and and as sureties, to the said United States, of even date herewith; the vendor's lien of the said United States upon said being retained till full payment of the purchase money.

HARPER'S FERRY, WEST VIRGINIA. 18 .

For value received, I promise to pay to the United States of America, in one year from the date hereof, the sum of dollars cents; this note, with another of even date at two years, being given in consideration of the sale to me by the said United States of certain particularly described in a bond executed by me as principal, and and as sureties, to the said United States, of even date herewith; the vendor's lien of the said United States upon said being retained till full payment of the purchase money.

HARPER'S FERRY, WEST VIRGINIA, May 20, 1871.

SIR: The Military Committee of the Senate of the United States, Forty-second Congress, first session, has approved senate bill 67.

This bill authorizes the secretary of War to postpone the enforced collection of the purchase money due or to become due from purchasers of lots, or houses and lots, not embracing water privileges, sold at Harper's Ferry, in the county of Jefferson, W. Va. on or about December 1, 1869, for a period not exceeding five years.

You are, therefore, most respectfully requested, in view of facts already laid before you, to take no action for the enforced collection of said moneys while that bill is pending.

In behalf of purchasers:

DANIEL AMES,  
CHARLES DAVIES,  
Committee.

Hon. W. W. BURNAP, Secretary of War.

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[First indorsement on foregoing letter.]

ORDNANCE OFFICE, *June 1, 1871.*

Respectfully returned to the Secretary of War.

On the 4th of November last, A. M. Kitzmiller, in behalf of purchasers of lots at Harper's Ferry at the sale of November 30 and December 1, 1869, transmitted a memorial asking that in view of the then recent destruction of property by the great flood in the Potomac and Shenandoah Rivers, the payment of the notes which were coming due in the early part of the next month (December, 1870,) might not be enforced, so as to allow them an opportunity to apply to Congress for temporary relief.

This memorial I submitted to you on the 7th of same month with an indorsement, a copy of which is submitted herewith.

In pursuance of the memorial which the parties made to Congress, two bills have been reported in the Senate for their relief, one 19th December, 1870, and the other 7th March, 1871, but neither of them were matured into laws. Copies of the bills are submitted herewith.

As no instructions were communicated to me in pursuance of my request of 7th November, 1870, I have taken no action toward enforcing the payment of the one-year notes due last December, and all of them remain unpaid.

It is believed that no serious damage will result to Government by letting these notes lie over until the two-year notes become due next December; and I respectfully recommend that relief to this extent be granted to these memorialists.

A. B. DYER,  
*Chief of Ordnance.*

[Second indorsement on foregoing letter.]

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,

*Washington, D. C., June 3, 1871.*

Respectfully returned.

In view of the pending and probable passage of a bill for the relief of these parties, the Secretary of War, in his discretion, may well refrain from proceeding at once to enforce the collection of the notes referred to.

But as the sureties to the bonds executed for the purpose of more effectually guaranteeing the payment of these notes have a right to insist that reasonable diligence shall be used by the Government in this behalf, they should explicitly and formally assent in writing to any suspension of proceedings against the parties which may be agreed upon, otherwise it might be claimed that the obligation of the sureties would by such an arrangement be impaired. A simple omission, however, of the Government for a limited time to take legal steps for the collection of the notes, unaccompanied by any agreement binding it to this course, would not affect the obligation of the sureties, and under such circumstances their assent to this voluntary non-action would not be required. See Story's Equity Jurisprudence, vol. 1, see 326.

J. HOLT,  
*Judge-Advocate-General.*

[Third indorsement on foregoing letter.]

Approved on the conditions stated by Judge-Advocate-General.

By order of Secretary of War.

JOHN POTTS,  
*Chief Clerk War Department.*

JUNE 7, 1871.

[Copy of indorsement of Ordnance Office, sent to the Judge-Advocate-General for an opinion.]

*Indorsement.* A. M. Kitzmiller, attorney, Harper's Ferry, incloses petition addressed to Hon. Secretary of War, by a few purchasers of property at recent sale at that place, asking relief from their obligations maturing in December next.

ORDNANCE OFFICE, *November 7, 1870.*

Respectfully submitted to the Secretary of War for his action and instructions. The sale of the Harper's Ferry property was made in strict accordance with the act of December 15, 1868, authorizing and directing it to be sold "in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money; and that the proceeds of such sale shall be applied by him as follows:"

All the property was sold on the 30th November and 1st December, 1869, and the notes and bonds were duly furnished by one hundred and four purchasers, and several

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purchasers paid the entire purchase-money and received deeds for their purchases. But thirteen persons who purchased thirty-six lots, two of them with dwellings upon them, failed to comply with the terms of sale, and these lots remain the property of the United States.

I submit herewith copies of the bonds and notes, in blank, which were given by purchasers, all of which were prepared by the Judge-Advocate-General.

A. B. DYER,  
*Chief of Ordnance.*

In answer to the foregoing.

ORDNANCE OFFICE, *Jan. 20, 1871.*

The accompanying paper is respectfully returned to the Judge-Advocate-General, with the request that he will state whether it is necessary that, in carrying out the Secretary's instructions, the many sureties on the bonds shall be called upon to give their assent to delay in payment of the notes, or whether action can be delayed until the second series of notes are due, as recommended in my indorsement of June 1, 1871.

A. B. DYER,  
*Chief of Ordnance.*

Reply to the foregoing indorsement.

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,

*Washington, D. C., Jan. 21, 1871.*

Respectfully returned.

The Secretary's indorsement is understood to be an approval of the views expressed by this Bureau on the 3d instant. This being the case, if any agreement is entered into by the Department whereby the Government binds itself to delay the collection of the notes, the sureties should formally and in writing assent to such agreement. It, however, the Department intends, in the exercise of its discretion, not to proceed to collect the notes for the present, provided it does not agree or oblige itself in any way to this course, but retains the right to proceed at any time it may deem proper to enforce the collection, then the assent of the sureties to this non-action would not be required. Under all the circumstances this would probably be the best course to pursue.

J. HOLT,  
*Judge-Advocate-General.*

HARPER'S FERRY, W. VA., *November 23, 1871.*

DEAR SIR: You are most respectfully requested to suspend for one year, until Congress can pass a bill for our relief, or until the water privileges at Harper's Ferry shall have passed into the hands of parties who will improve them, the enforced collection of all notes made by me or for which I am a bondsman, covering the purchase of lots, and of houses and lots, in amount about five thousand dollars, bought at Harper's Ferry, county of Jefferson, W. Va., in the year of 1869, for the following considerations:

I was active in obtaining the passage of the bill authorizing the sale of 1869; and I know that Congress intended it as a measure of relief to the industries of Harper's Ferry, which had been crippled by the destruction of its public works and the non-improvement of its water privileges. I know, also, that the prior sale of the water privileges was made an inducement to the purchase of business and residence property, without which such property would have found few buyers and would have brought but small prices.

That sale has come to be regarded by the people as virtually no sale, but a trap and a trap, which releases them, morally at least, from all obligations to take their purchases, and such practically it has proved to be, these water privileges having been more effectually locked up and removed from the reach of improvement than it still in the possession of the United States.

These facts have been and will continue a source of much bitterness and disaffection until the causes are removed.

As regards my own case, I have made improvements upon my purchases of 1869 to the amount of little less than five thousand dollars, \$5,000, which I most certainly should not have made had I supposed that for two years or more the water privileges were to remain idle. I have thus given the Government an additional security of nearly five thousand dollars, \$5,000, the United States still holding the titles to the property. The Government is, then, surely safe in giving me at least the extension I desire.

S. Ex. G—2

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After having placed one of the two houses, or rather ruins, bought of the United States, in perfect repair, and before it had been occupied a month, the property was damaged by the flood to the extent of twenty-five hundred dollars, (\$2,500,) compelling immediate repairs of about four hundred dollars (\$400) to prevent utter destruction.

The other house, (lot 1, block A A, on Washington and Potomac Streets,) it is claimed by the citizens, stands partly in the street, and was condemned in 1852, or thereabouts, and is now liable to be pulled down at the discretion of the township authorities.

In all other cases where houses were sold which stood wholly or in part on the streets it was so stated at the time of sale, and they were sold accordingly at reduced prices, but no such reservation was made with regard to this house. I had made extensive repairs and improvements upon this property before I learned that it was subject to any such liabilities. In this case an examination and adjustment will be required before any satisfactory settlement can be reached.

The entire property, bought by me was yielding the Government, at the time of transfer, five dollars and fifty cents (\$5.50) per month, and it has been but little more profitable to myself. Whenever the Government chooses to enforce collections it can make every dollar for which I am holden, but should it do so now it would be ruinous to one who has ever been devoted to its interests and who has saved to its revenues hundreds of thousands of dollars.

This can be said of but few. If all parties, principals and bondsmen, were sold out who did not pay voluntarily, not one-third of our indebtedness could be realized.

A vigorous effort will be made at the coming session of Congress to get a relief bill through. In the mean time I am compelled to commit my case to the justice, generosity, and mercy of the Government.

Very respectfully,

DANIEL AMES.

Gen. WILLIAM W. BELKNAP,  
Sec'y of War, Washington, D. C.

[Indorsement of the foregoing.]

ORDNANCE OFFICE, November 29, 1871.

Respectfully returned to the Secretary of War.

The real estate belonging to the Ordnance Department at Harper's Ferry was, by act of Congress, sold on the 30th November and 1st December, 1869, on a credit of one and two years. Only one of the notes which fell due in December, 1870, has been paid, and it is very doubtful whether further payment will be made voluntarily next month. It is my intention to bring the subject to the notice of the Secretary as soon as the last payment shall have become due; and I recommend that no action be taken on this letter until that time.

A. B. DYER,  
Chief of Ordnance.

[Copy of notice sent to all purchasers.]

ORDNANCE OFFICE, WAR DEPARTMENT,  
Washington, November, 1871.

This is to notify you that your note for \_\_\_\_\_ dollars, payable at two years after date, will be due on the \_\_\_\_\_ day of December, 1871, and that payment of this note, as well as of the one of same date and for same amount, payable at one year after date, must be made at this office, on or before the \_\_\_\_\_ day of December, 1871.

If more convenient the amount of the two notes may be deposited by you in any public depository to the "credit of the Treasurer of the United States on account of Ordnance appropriations," and upon the certificate of deposit being received at this office your notes will be returned to you, the bonds canceled, and deeds for the property transmitted to you.

A. B. DYER,  
Chief of Ordnance.

HARPER'S FERRY, W. VA., November 24, 1871.

DEAR SIR: I have an idea that this water-power company are sick of their speculation, and would be glad to get out of it provided a door was opened sufficiently wide to allow them to do so; but if collections are attempted to be enforced they will stave off a legal decision for an indefinite period. In the mean time our interests, and the interests of the Government, are suffering, while the people are clamoring and complaining, and capital is being created to be used against the Government in the coming

## SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 19

presidential canvass. Some measures must be taken at once to get these water privileges into the hands of those who mean improvement.

If F. C. Adams & Co. can be induced, under cover of such a bill as I inclose to you, to surrender the property purchased for resale, I think we can get such a bill through at the coming session of Congress. Please sound Adams & Co. on this matter, and suggest any changes in the bill which may be desirable or which may help to secure its passage.

The bill now before the Senate can be referred back to the Military Committee, and amended by the substitution of this bill or its equivalent. If F. C. Adams & Co. can be induced to relinquish their purchases we can secure the co-operation of all parties in favor of the passage of our bill.

If we can accomplish this thing it will take a troublesome matter off the hands of the War Department.

Please let me hear from you as soon as practicable. Believing that we have your trusty good-will, and that you will co-operate with us in any just and lawful measures for the solution of our difficulties, I am your friend.

Very respectfully,

DANIEL AMES.

J. P. KELLER, Esq.,  
Chief Clerk Ordnance Office, Washington, D. C.

[Inclosure to the foregoing.]

A bill for the relief of purchasers of lots and houses and lots, sold by virtue of an act of Congress entitled "An act providing for the sale of lands, tenements, and water privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, approved December 15, 1868.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all persons having purchased property of any description sold by virtue of an act entitled "An act providing for the sale of lands, tenements, and water privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia," approved December 15, 1868, not having paid for such property, and not being able to pay for the same, be allowed and required to surrender said property to the United States for resale.

*SEC. 2. Be it also enacted,* That where improvements have been made upon any of the aforesaid property an appraisalment shall be taken of the value of such improvements, and two-thirds of such value shall be allowed to the owners by the United States in the resale of said property; and where an income shall have been derived from any property since its purchase as aforesaid, that income shall accrue to the United States: *Provided, always,* That the rentable value of the property at the time of transfer to said purchaser shall be made the basis of adjustment.

*SEC. 3. Be it further enacted,* That all lands, tenements, and water privileges still in possession of the United States at or near Harper's Ferry, in the county of Jefferson, West Virginia, or which shall remain unpaid for after the passage of this act, shall be resold at an early day, and that the terms of sale shall be one-third cash, the balance in one and two years.

*SEC. 4. Be it further enacted,* That where the above-named conditions are complied with, all notes and bonds given to secure the payment of said purchases, and held by the United States, be restored to persons giving them, and that the sale of the property covered by such notes and bonds be declared null and void.

*SEC. 5. Be it also enacted,* That the Secretary of War be authorized to appoint three disinterested persons to make appraisements in accordance with the provisions of this act, and that he allow a reasonable compensation for such service, and also that he see that all of its provisions are enforced.

ORDNANCE OFFICE, December 5, 1871.

Sir: On November 30 and December 1, 1869, the lands, tenements, and water privileges at Harper's Ferry, W. Va., belonging to this Department, were sold at auction, under the authority of the act of Congress of December 15, 1868. The sale was made, as directed by law, upon a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money.

Promissory notes, running respectively one and two years, and secured by bonds and sureties, were taken from purchasers at time of sale to secure payment of the purchase-money. The notes which fell due a year since remain, almost without exception, unpaid at the present time; and so with those which matured at the beginning of this month.



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As the collection and disbursement of the proceeds of this sale seem placed by the law under the exclusive control of the Secretary of War, I deem it proper at this time to invite your attention to the matter and to ask your instructions.

If it is thought that suits should be entered upon these notes and bonds, they can be readily prepared for reference to the Department of Justice for that purpose.

Respectfully, your obedient servant,

A. B. DYER,  
Chief of Ordnance, U. S. A.

The SECRETARY OF WAR.

[Indorsement on the foregoing.]

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,  
Washington, December 6, 1-71.

Respectfully submitted,

The question raised by this reference is not one of law, but of administrative policy, and its determination would seem to belong exclusively to the Secretary of War. As it is to be inferred from the within communication that the collection of the claims mentioned can be enforced only by legal process, this Bureau, were its opinion desired on the subject, would not hesitate, in the absence of controlling reasons to the contrary, to recommend the prompt institution of suits on all the bonds and notes now due and unpaid.

J. HOLT,  
Judge-Advocate-General.

[Amendment submitted to the Secretary of War by Daniel Ames.]

SEC. 2. *Be it further enacted*, That the Secretary of War is hereby authorized, in such cases as he shall think advisable, to accept of the surrender of property bought as aforesaid, and that he make such allowance for improvements thereon in the resale of said property as he shall deem just and equitable under the circumstances, and that he sell, at an early day, as provided in the aforesaid act, all such property, and all other property still owned by the United States, at and near Harper's Ferry, in the county of Jefferson, West Virginia, and that the terms of sale or of resale of the aforesaid property be one-third cash, the balance in one and two years: *Provided*, That nothing in any former act be so construed as to invalidate any of the provisions of this act.

[Indorsement on the foregoing.]

DECEMBER 11, 1-71.

GENERAL DYER, Chief of Ordnance:

Please give Mr. Ames an interview on this subject.

W. W. BELKNAP.

SENATE CHAMBER, December 29, 1-71.

DEAR SIR: I forward to you the petition of the Messrs. Ahls, purchasers of the ore royalty in lands near Harper's Ferry, W. Va., for an extension of the time of payment therefor.

They state their reasons for such application. They ask no deduction of price, nor any change of contract, but for some delay in payment, and such delay as in your judgment may be deemed reasonable or proper under the circumstances. If you have any power to accede to this and thus favor them, it will be a great matter to these gentlemen.

I know these gentlemen well, and feel interested in furthering their wishes.

If you can do anything for them in this respect, be pleased to advise me so that they may know what is required.

Yours, truly,

WILLIAM T. HAMILTON.

Hon. W. W. BELKNAP.

WAR DEPARTMENT, January 23, 1-72.

SIR: In reference to the petition of John S. Ahl & Co. for extension of time to pay claims due the United States for the purchase of Government property at Harper's Ferry, Va., I have the honor to inform you that the cases of others who are situated similarly to Mr. Ahl having been brought to the attention of the Department, Con-

## SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 21

gress has been recommended to allow all persons who purchased property at the auction sale at Harper's Ferry, under the act of December 15, 1868, to surrender the same within sixty days, and to authorize the Secretary of War to sell the property in such manner and at such times as he may elect; and until some action is taken upon this recommendation the Department would rather not consider any individual case.

Very respectfully, &c.,

W. W. BELKNAP,  
*Secretary of War.*

Hon. WM. T. HAMILTON, *United States Senator.*

SENATE CHAMBER, *December 23, 1871.*

SIR: I inclose Senate bill No. 67 for your consideration, and for an expression of the opinion of the Department as to the expediency of its being enacted, and with the proposed amendment attached to it.

Please return both with reply, and oblige.

Yours, respectfully,

H. WILSON.

Hon. W. W. BELKNAP, *Secretary of War.*

[Indorsement of Chief of Ordnance on the foregoing.]

ORDNANCE OFFICE, *January 2, 1872.*

Respectfully returned to the Secretary of War.

A bill granting authority to the Secretary of War to postpone, during such time as he may deem reasonable and proper, (not exceeding two years,) the enforced collection of the purchase-money due, or to become due, from the purchasers of the lots, houses, and water privileges, sold by virtue of the act approved December 15, 1868, does not seem to me to be objectionable.

Any act granting compensation to parties who made purchases at the auction sale of property made at Harper's Ferry on account of improvements, and allowing them to surrender the property purchased by them, would, in my opinion, be decidedly objectionable.

An act allowing all persons who purchased property at the auction sale at Harper's Ferry, under the act of December 15, 1868, to surrender the same within sixty days, and authorizing the Secretary of War to sell the property in such manner and at such times as he may elect, would, in my opinion, meet the necessities of the case.

A. B. DYER,  
*Chief of Ordnance.*

WAR DEPARTMENT, *January 4, 1872.*

The Secretary of War has the honor to return to the Committee on Military Affairs of the United States Senate the proposed bill (S. No. 67) for the relief of the purchasers of lots, and houses and lots, at Harper's Ferry, sold by the United States, and to invite attention to the accompanying copy of a report of the Chief of Ordnance thereon, whose views are approved.

W. W. BELKNAP,  
*Secretary of War.*

NEWVILLE, *December 6, 1871.*

We, the petitioners to this, would most respectfully ask for an extension of time on the claim due the Government for the purchase made at Harper's Ferry Government-sale, November 30, 1869.

We purchased the ore royalty on lands in Jefferson County, Va., with the expectation that Harper's Ferry would be largely benefited by the change, and owing to the extraordinary flood in 1870, destroyed all prospects for at least two blast furnaces and other machinery, which we expected to realize a large sale of our iron ores. To that point we therefore ask you to grant us an extension of time so as to enable Congress to make the extension of time, and we will ever pray.

JOHN A. AHL,  
D. V. AHL,  
*Of the Firm of John S. Ahl & Co.*

Hon. W. W. BELKNAP,  
*Secretary of War, Washington, D. C.*

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HAGERSTOWN, December 28, 1871.

DEAR SIR: I transmitted you some days ago the petition of Mr. Ahl, asking that he may have some further time given to him for the payment of the royalty of ore bank near Harper's Ferry, sold to the Mr. Ahls by the Government.

I did not receive a reply; neither did Mr. Ahl. As they are extremely anxious about it, would you be pleased to give it your attention, and you will much oblige,

Yours truly,

WILLIAM T. HAMILTON.

Hon. W. W. BELKNAP.

[Indorsement on the foregoing.]

ORDNANCE OFFICE, January 16, 1872.

Respectfully returned to the Secretary of War, and attention respectfully invited to a letter from this office dated December 5, 1871, and to indorsement dated January 2, 1872, on Senate bill 67. In the latter it is suggested that "an act allowing all persons who purchased property at the auction sale at Harper's Ferry under the act of December 15, 1868, to surrender the same within sixty days, and authorizing the Secretary of War to sell the property in such manner and at such times as he may elect, would, in my opinion, meet the necessities of the case."

Letter of December 22, 1871, herewith returned.

S. V. BENÉT,

Major of Ordnance, in charge.

UNITED STATES SENATE CHAMBER,

Washington, March 22, 1872.

DEAR SIR: In 1868 or 1869 the Government sold water-power, &c., at Harper's Ferry, W. Va. Many citizens bought houses and lots at large prices, believing that the water-power was to be at once improved; and to this time, I am told, no move toward improvement has been made, nor do part of the purchase-money paid. Our people think something should be done—property paid for or given up. The citizens who bought houses and lots think they ought to be allowed longer time to pay up, and that the parties who bought water-power should pay or give up.

Please give me your opinion; also, what has or will be done.

Very respectfully,

H. G. DAVIS.

Hon. W. W. BELKNAP, Secretary of War.

[Indorsement of Chief of Ordnance on foregoing.]

Respectfully returned to the Secretary of War, and his attention invited to a letter from this office, dated December 5, 1871, and to indorsement of January 2, 1872, on Senate bill 67, which gives a full history of the transaction, with the recommendation of this office.

The views therein expressed are still entertained by this Bureau.

By order of the Chief of Ordnance,

S. V. BENÉT,

Major of Ordnance.

ORDNANCE OFFICE, March 28, 1872.

WAR DEPARTMENT, April 3, 1872.

SIR: I am in receipt of your letter of the 22d ultimo in relation to the sale of certain Government property at Harper's Ferry, and inquiring in regard to the same. In reply I send you herewith copies of reports of the Ordnance Bureau, and also a copy of a letter from this Department to the Committee on Military Affairs of the Senate, which papers show the action thus far taken and the views of the Department on this subject.

Very respectfully, your obedient servant,

WM. W. BELKNAP,

Secretary of War.

Hon. H. G. DAVIS, U. S. Senator.

HOUSE OF REPRESENTATIVES, COMMITTEE ON MILITARY AFFAIRS,

Washington, D. C., April 24, 1872.

SIR: I have the honor to request that you will furnish this committee with full information respecting the recent sale of property belonging to the United States at Harper's Ferry, W. Va. A description of the property is desired, and also a statement

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of the price and terms on which it was sold. This information is required in order to enable the committee to act intelligently upon a bill which has lately passed the Senate authorizing an extension of the time of payment for property sold, other than the water-power, and also authorizing the canceling of the contracts of purchasers who do not desire to fulfill the same.

Very respectfully, your obedient servant.

JOHN COBURN, *Chairman.*

Hon. W. W. BELKNAP, *Secretary of War.*

[Indorsement on the foregoing].

ORDNANCE OFFICE, *May 2, 1872.*

Respectfully returned to the Secretary of War, with the following papers, which are thought to give all necessary information respecting the sale of property at Harper's Ferry, W. Va., in 1869.

1. Copy of the abstract of sale, giving descriptions of property, names of purchasers, and amounts of purchase-money in each case, whether paid or still outstanding.
  2. Copy of the bond and promissory notes given by purchasers under the law for deferred payments.
  3. Copy of deed given upon payment of purchase-money in each case.
  4. Photographic copy of map of Harper's Ferry, showing metes and bounds of lots.
- By order of the Chief of Ordnance.

S. V. BENÉT,  
*Major of Ordnance.*

The Secretary of War has the honor to submit to the House of Representatives, in compliance with a request of the Committee on Military Affairs, such information relating to the Government property at Harper's Ferry as has a bearing upon the recent sale thereof.

W. W. BELKNAP,  
*Secretary of War.*

WAR DEPARTMENT, *May 2, 1872.*

HARPER'S FERRY, W. VA., *June 15, 1872.*

SIR: Allow me, if you please, with great respect to call your attention to the following case:

I have been employed by the "Harper's Ferry Water Manufacturing Company," purchasers of the United States Government privileges, in November, 1869, at the public sale thereof then made, as the custodian and keeper of the property of the said company, as day and night watchman of the premises, from the 1st of January, 1870, until the present time.

The company paid me for my services for five months thereafter at \$45 per month, which I duly received. Since then I have done the same work at \$40 per month, making two years up to the 1st June, 1872, for which I have received pay up to the 1st September, 1872; and there is now due me on the 1st June, inst., \$300, less \$136 since paid to me—\$224. The \$136 I have received was collected at an expense to me of \$29 for transportation and traveling expenses to Washington to obtain it. So that they owed me, in all equity, \$224 on the 1st June inst.

I address this note to you now in the hope and trust that you will so order it by communication with the purchasers and the company that my services will be promptly paid for, to me.

The attachment of the interest of the company in this purchase will afford me ample security for the ultimate payment of my debt against it; but I am disinclined, from many reasons, to a litigation, although the company has regarded my claim, so persistently in refusing to pay it, an acknowledged debt; and, therefore, I have great cause of complaint against it outside of my just demand.

Will you now, my dear sir, communicate with this company, who you doubtless know, and represent my wants in this respect, and do me the kindness to answer my appeal to you therefor, at your earliest convenience?

Until then I will forbear to sue out my attachment at law to enforce my claim against the interests of the company in this real estate, whatever it may prove to be.

With great respect, your obedient servant,

JOHN A. LASHORN.

Hon. W. W. BELKNAP,  
*Secretary of War, Washington City, D. C.*

## 24 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

HARPER'S FERRY, W. VA., July 5, 1872.

We, the corporate authorities of Harper's Ferry, W. Va., do most respectfully and earnestly pray you to place at the disposal of the town lot 2, block B, together with the brick house located thereon, to be used by said town for a town-house, school-house, jail, station-house, or otherwise, as may best serve their purposes.

In support of this request we urge the following considerations, to wit: We have now not a single school-house standing within the limits of the corporation for the use of white children.

Two of our school-houses were pulled down during the war by the United States soldiers, and the bricks after being used in the camps were sold by the United States ordnance officer here, and the proceeds put into the United States Treasury; while the third and only remaining one, after having been used almost constantly for a hospital and greatly damaged, was repaired at the expense of the town only to be entirely demolished by the great flood of October 1, 1870.

We have neither town-house nor jail, the jail also having been destroyed during the war.

No compensation whatever has ever been obtained by the town for the use, damage, or destruction of its public buildings, while, thus far, three of its churches have been aided in making repairs of their houses.

A house and lot had been assigned to the use of the town prior to the sale in 1869, but at that time it was taken and sold with other property, while four of the best buildings, with ample lots, were donated by the United States to the Stoyer College, for the benefit of colored people.

The building and grounds for the use of which your petitioners ask have not yet passed out of the possession of the United States Government, they having been bid off, but not taken, at the sale in 1869; and, under all of the circumstances, are of but little if any value to the United States, the rent being absorbed by repairs and in the care of the building.

The stagnation of business, caused by the continued withholding of all the property formerly owned by the United States, and of which it still holds the titles, alike from taxation and improvement, by discouraging enterprise and depreciating values, is making it more and more difficult to supply these public necessities.

In view of these facts your petitioners are confident that you will not hesitate to grant their request and order this property turned over to them.

In behalf of the town of Harper's Ferry,

DANIEL AMES, *Mayor*,  
JOHN L. SCHELLING, *Recorder*,  
BASIL AVIS,  
WILLIAM EXNER,  
J. J. KERN,  
JOHN A. MCCREIGHT,  
T. W. POTTERFIELD.

Hon. W. W. BELKNAP,  
*Secretary of War, Washington, D. C.*

[First indorsement on the foregoing.]

The Secretary of War has no authority to lease this property. Refer this to the Chief of Ordnance for his opinion as to this property, as the town authorities will probably appeal to Congress.

W. W. BELKNAP.

JULY 12, 1872.

[Indorsement of Chief of Ordnance on the foregoing.]

ORDNANCE OFFICE, July 13, 1872.

Respectfully returned to the Secretary of War. There is no authority of law known to this Bureau for renting such property; but under the last Army Regulations, approved by Congress, and the practice of this Department for fully a half a century, based upon the necessities of the case, buildings at the Harper's Ferry Armory have been rented.

There are now but two buildings at that place in the possession of this Bureau, and they are both rented. The one within applied for is occupied by three parties, one of which—Koonce—owes for fourteen months' rent, amounting to \$56.

This Bureau recommends that the portion of the building occupied by Koonce, and the unoccupied rooms be loaned to the corporate authorities of Harper's Ferry on con-

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dition that they keep them in repair and turn them over to this Department at once on application.

By order of the Chief of Ordnance,

S. V. BENÉT,  
Major of Ordnance.

Approved by the Secretary of War, provided the corporate authorities sign an agreement as recommended in the last paragraph of foregoing report of the Chief of Ordnance.

H. T. CROSBY,  
Acting Chief Clerk.

JULY 15, 1872.

ORDNANCE OFFICE, WAR DEPARTMENT, July 16, 1872.

SIR: By direction of the Secretary of War you are authorized to loan to the corporate authorities of Harper's Ferry that portion of the building occupied by Keonce, and the unoccupied rooms, if any, in the same building, provided they sign an agreement binding themselves to keep the property in repair, and to turn it over to the Department at once on application.

By order of Chief of Ordnance,

Respectfully, your obedient servant,

S. V. BENÉT,  
Major of Ordnance.

Mr. ZADOK BUTT, Ordnance Agent, Harper's Ferry, W. Va.,

HARPER'S FERRY, W. VA., July 17, 1872.

DEAR SIR: The paper intrusted to my care ordering Mr. Butts to turn over to the corporate authorities of Harper's Ferry the room occupied by Mr. John Keonce, and also any unoccupied room in the brick house located on lot 2 in block B, was placed in the hands of Mr. Butts this morning.

Believing it to be the desire of the Ordnance Office to place at our disposal any room in said house not now under rent, we beg leave to inform you that Mr. Butts objects to letting us have the back room on the lower floor, now occupied free of rent by Mr. Kitzmiller, on the plea that he has reserved it for the use of the Government whenever it sees fit to send its officers here. Mr. Butts also claims that he wants it for an office.

As this is the only room on the first floor that is not rented, and as the room on the first floor is quite desirable for the use of the council, we would suggest that any use which Mr. Butts might wish to make of the room would not be likely to interfere with our occupancy, and that whenever the Government may need any or all of the room which may be occupied by the corporate authorities it will be immediately placed at its disposal. Hoping that you will be able to give us one room at least on the first floor of said building,

I am, very respectfully,

DANIEL AMES,  
Mayor of Harper's Ferry.

Col. S. V. BENÉT, Acting Chief of Ordnance.

HARPER'S FERRY, W. VA., July 17, 1872.

MAJOR: I am to acknowledge the receipt of your letter of the 16th inst., by Mr. Ames, instructing me as to the rooms in house No. 1, occupied by Mr. John Keonce, and authorizing me to loan them to the corporate authorities at Harper's Ferry, under certain conditions, as well, also, the unoccupied rooms, if any.

I had given Mr. Keonce written notice to surrender possession of his part of the house on the 1st of August prox., and to pay the rent in arrear—15 months from 1st May, 1871, to that date, at \$4 p. mo., \$60.00.

Since receiving your letter of the 16th inst. I have had an interview with him, and read to him my instructions therein. He says he will vacate the rooms as required.

There are no other unoccupied rooms in the building. I declined to rent the back corner room on the first floor, preferring to reserve it for a place of business, where I could do the writing of my agency and receive any officers of the Government who might come to the place on business with me or for the Government. This room is now occupied by myself and papers, and A. M. Kitzmiller, a lawyer once connected with the armory here, whose assistance to me in ordinary matters and his daily watch-

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ful care of the property I hold equivalent to and in full satisfaction for his personal occupation of the room. I will not like to give up this room for any other public purpose.

I am not very well informed whether or not it is designed by the corporate authorities to use this or any other portion of the building, which consists of five (5) rooms and cellar, now occupied by Koouze for a corporation prison as well as for council chambers.

With great respect, your obedient servant,

ZADOK BUTT, *Agent.*

Maj. S. V. BENÉT, *Chief of Ordnance, Washington, D. C.*

ORDNANCE OFFICE, July 14, 1872.

SIR: In reply to your letter of the 17th instant I have to state that the orders of the Secretary of War included all the rooms of the building not occupied by tenants paying rent therefor to the Government; and under this construction the room referred to must necessarily be turned over to the city authorities. The duties devolving on you as agent of the Department would not warrant this office in asking that a room be set aside for your use as an office.

By order of the Chief of Ordnance.

Respectfully, your obedient servant,

S. V. BENÉT,  
*Major of Ordnance.*

Mr. ZADOK BUTT, *Ordnance Agent, Harper's Ferry, W. Va.*

ORDNANCE OFFICE, July 15, 1872.

SIR: Referring to the letter of this Bureau of December 5, 1871, relating to the sale of the lands, tenements, and water privileges at Harper's Ferry in 1863, herewith inclosed, and to the indorsement of the Judge-Advocate-General of the Army, of December 6, 1871, on the subject, I have the honor to submit the following remarks and recommendations:

The principal purchase at the sale at Harper's Ferry, W. Va., in 1863, was the water powers on the Shenandoah and Potomac Rivers, bought by F. C. Adams, for \$206,000.

Besides this, there were some eighty or more purchases of small lots in the town of Harper's Ferry, amounting to about \$30,000. The notes and bonds given under the law for these purchases remain, with a few exceptions, unliquidated at this time, notwithstanding the limitation of credit expired by law in December last.

It is known to this Bureau that the apathy of the small purchasers is induced in a great measure by the failure of the principal buyer to complete his purchase of the water powers. A settlement for these water powers, it is believed, would result in a speedy settlement of all the minor sales.

I have, therefore, inclosed herewith the original notes and bonds of the purchaser, F. C. Adams, (together with a copy of the notification sent him and his sureties, in November last, from this office,) and would recommend that they be referred to the Department of Justice, with the request that suit be immediately commenced on the same.

By order of the Chief of Ordnance.

Very respectfully, your obedient servant,

S. V. BENÉT,  
*Major of Ordnance.*

HON. SECRETARY OF WAR.

WAR DEPARTMENT, July 20, 1872.

SIR: I have the honor to transmit to you herewith the original notes and the bonds executed by F. C. Adams to secure to the United States the sum of two hundred and six thousand dollars, purchase-money for the water powers on the Shenandoah and Potomac Rivers, sold to him by the Government in 1863, together with a copy of the notifications sent him, and his sureties, to pay the notes, which would become due in December last, without satisfactory result.

Mr. Adams has, up to this date, failed to complete his purchase of the water powers; and it is believed that the neglect of many smaller purchasers of public property at the same sale to fulfill their obligations is due to his example.

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I have therefore the honor to request that suit be immediately commenced on the notes and bonds referred to.

Very respectfully, your obedient servant,

WM. W. BELKNAP,  
*Secretary of War.*

To the honorable the ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE, *Washington, July 23, 1872.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, and the accompanying notes and bonds, executed by F. C. Adams, to secure to the United States the sum of \$206,000, purchase-money for the water powers on the Shenandoah and Potomac Rivers, sold to him by the Government in 1869.

In compliance with your request, I have transmitted a copy of your letter, and the papers referred to, to the United States Attorney for this district, with instructions to at once institute proceedings against said Adams and his sureties for the recovery of the amount due to the Government for the purchase of said property.

I have the honor to be, your obedient servant,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. W. W. BELKNAP, *Secretary of War:*

WASHINGTON, *August 2, 1873.*

MY DEAR GENERAL: I must apologize for trespassing upon your holiday with a matter of business, but as it concerns me somewhat personally hope you will excuse me. I have been notified that the Harper's Ferry bonds have been ordered to be put in suit at once, and the district attorney is now engaged preparing for the proceeding. I have seen the Secretary, who declines to delay matters, unless, indeed, you will advise that course. At the Ordnance Bureau they tell me that you carefully considered the matter before advising suit, and that such action will have to go on. I inclose you a copy of a bill passed the Senate and now pending in the House, because I am in hopes that you never saw it in this shape and will agree to give us next session to urge our application for relief. You will see that the second section, which was put on in the Senate, provides that we may, under certain circumstances, surrender the property, &c., and force resale. It seems to me under such circumstances it would be doing no harm to any one to give us the time we ask. I hope you may see it in the same light, for I don't want to be sued if I can help it. Please return me the inclosed.

With kindest regards, yours truly,

W. B. WEBB.

NARRAGANSETT PIER, *August 5, 1872.*

DEAR SIR: Your letter of 2d inst., and copy of Senate bill 67, Forty-second Congress, first session, has been received.

The bill is "for the relief of the purchasers of lots, and houses and lots, sold," &c., and not for the relief of the "water privileges," which are excepted in terms by the first section. The second section seems to be general in its provisions, and, in the discretion of the Secretary of War, (not mandatory,) permits the "surrender" of the property, &c.

As this bill passed the Senate March 27, and Congress continued in session several months thereafter without action on the part of the House, it is hardly to be expected that during the next *short* session the bill will become a law.

Payments on the purchases should have been made last December by the terms of the law under which the sale was effected. As an act of grace toward the purchasers, especially the citizens of Harper's Ferry, who had invested liberally on the supposition and belief that the water power would be developed and the prosperity of the town increased so as to enable them more readily to meet their payments, the Ordnance Bureau deferred action in the matter, although two years had elapsed since the date of sale, that Congress might afford such relief as the case required. Congress having taken no action in their behalf, the course to be pursued by the Bureau under the law was plain, and that was, to place the whole matter in the hands of the Department of Justice for legal action.

Being entirely satisfied in my own mind that the Ordnance Bureau could not proceed otherwise than it has done under the law, I regret exceedingly that, in justice to the



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interests of the United States, I cannot recommend any change in the views expressed by the Bureau. The copy of bill is herewith returned.  
Yours, very truly,

S. V. BENÉT,  
Major of Ordnance.

Mr. WM. B. WEBB, Washington, D. C.

Whereas the United States of America has agreed with the corporate authorities of the town of Harper's Ferry, in the County of Jefferson, in the State of West Virginia, "To loan to the said corporate authorities that portion of the building occupied by John Koonce, and the unoccupied rooms, if any, in the same building, provided they sign an agreement binding themselves to keep the property in repair and to turn it over to the Department of Ordnance at once, on application;

Now, be it remembered that we, Daniel Ames, mayor, and John A. Schilling, recorder, duly elected and qualified as such, and empowered to enter into such an agreement as above named in our corporate capacity, for ourselves, and our successors in office, do, by our signatures hereto, consent to the terms above named, and which are the same contained in an official letter from Major S. V. Benet, Chief of Ordnance, to Zadok Butt, ordnance agent, Harper's Ferry, W. Va., dated July 16, 1872, which have been duly accepted by the town council of said corporation.

For further particulars, it is herein stated that the building referred to is No. 1 of the unsold houses at Harper's Ferry, and that for the above-named loan, no rent or assessment is to be charged against said corporation, other than the covenant above named, to keep it in repair.

Witness our hands and seals this 17th day of August, 1872.

DANIEL AMES, Mayor. [L. S.]  
JOHN L. SCHILLING, Recorder. [L. S.]

Approved by order,

ZADOK BUTT,  
Ordnance Agent.

UNITED STATES SENATE CHAMBER,  
Washington, December 10, 1872.

DEAR SIR: Please inform me the amount the Government property at Harper's Ferry was sold for at sale, separating the water-power, &c., from the houses and lots. How much if any has been paid?

Yours, with great respect,

H. G. DAVIS.

Hon. W. W. BELKNAP, Secretary of War.

(Indorsement of Chief of Ordnance.)

ORDNANCE OFFICE, December 20, 1872.

Respectfully returned to the Secretary of War with the following memorandum of sale of Harper's Ferry property, viz:

Water-power on Potomac sold for.....	\$170,000 00
Water-power on Shenandoah sold for.....	30,000 00
Shenandoah Ferry sold for.....	1,700 00
Wood tract sold for.....	3,000 00
Ore bed sold for.....	13,100 00
Dwellings, lots, &c., sold for.....	73,903 50
	267,703 50

The sum of \$4,048.50 has been received in payment for dwellings and lots sold.  
By order of the Chief of Ordnance.

S. V. BENÉT,  
Major of Ordnance.

WAR DEPARTMENT, December 23, 1872.

SIR: In answer to your inquiry of the 16th instant, how much was realized from the

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sale of Government property at Harper's Ferry, W. Va., and how much, if any, money has been paid. I have the honor to state that the

Water-power on the Potomac sold for.....	\$170,000 00
Water-power on the Shenandoah sold for.....	30,000 00
Shenandoah Ferry sold for.....	1,700 00
Wood tract sold for.....	3,000 00
Orchard sold for.....	13,100 00
Dwellings, lots, &c. sold for.....	73,200 50
	257,700 50

The sum of \$494,50 has been received in payment for dwellings and lots.  
Very respectfully, your obedient servant.

WM. W. BELKNAP,  
*Secretary of War.*

H. H. G. DAVIS, *U. S. Senator.*

1410 G STREET, WASHINGTON, D. C., December 19, 1872.

SIR: I have the honor to inform you that the rooms occupied by Mrs. Markwood in the Government house located on lot 2, block B, Shenandoah street, Harper's Ferry, W. Va., embracing all of the balance of the house not occupied by the corporate authorities of said town, except one room heretofore rented by Dr. Kessler, have been vacated by Mrs. Markwood. You are therefore respectfully requested, in accordance with a previous order issued by you to direct Mr. Z. Butt, your agent in said town, to turn over the said rooms to the corporate authorities of Harper's Ferry, W. Va.

In behalf of said authorities,

DANIEL AMES, *Mayor.*

CHIEF OF ORDNANCE, WASHINGTON, D. C.

ORDNANCE OFFICE, WAR DEPARTMENT.

Washington, December 19, 1872.

SIR: You are authorized and directed to turn over to the corporate authorities of Harper's Ferry, on the conditions stated in my letter of July 16, 1872, the rooms lately occupied by Mrs. Markwood, in the building on lot 2, block B, Shenandoah street.

By order of the Chief of Ordnance,  
Respectfully, &c.

S. V. BENÉT,  
*Major of Ordnance.*

MR. ZAIROK BUTT,  
*Ordnance Agent, Harper's Ferry, W. Va.*

HARPER'S FERRY, W. VA., December 23, 1872.

DEAR SIR: I received your letter of the 19th, instructing me to turn over the rooms in house No. 1, occupied by Mrs. Margnett, to the corporation of Harper's Ferry. In reply permit me to explain how the matter stands, and ask further instructions on the subject.

About September, 1870, I rented to Dr. A. M. Kessler the room that had been occupied by Capt. Young as an office. He was then a single man; but some eight months ago he got married. Having but the one room, Mrs. Margnett let him have one or two of her rooms, she having a small family. Some two weeks ago she sent for me and told me that she had concluded to board with her sister this winter, for the reasons that her two sons were employed in the night telegraph office, and owing to noise from the school they could not get any sleep in the day. She requested that she be permitted to put a part of her property in one of the rooms till spring; and as Dr. Kessler already occupied a part of her house, I rented the whole of her part of the house to him, and with the understanding that he was to vacate the room which he rented from me on the 1st of January. That room I can turn over at that time, and if the Department desires that the whole of the house be turned over, you will please inform me, and I will notify the tenant to vacate the house at once, as those houses have been rented with the understanding that they are to be surrendered when the Government requires them, by giving the tenant a reasonable notice, and the rent to be paid at the end of each month, or leave the house at once. So if the house is required, one or two months

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notice, I presume, would be sufficient time to suit themselves in getting a house; but I believe where a tenant pays his rent it might perhaps require three months in law. So if you have been informed that the house had been vacated it is certainly a mistake; but I was informed to-day that Ames called on Mrs. Margnett before he left for Washington, and requested her to rent his house; also offered the doctor a part of the same house. So the whole subject is before you, and I shall act as you may direct; but, as I stated before, one room will be vacant the 1st of January and will be turned over.

Respectfully, &c.,

ZADOK BUTT, *Agent.*

Maj. S. V. BENÉT,  
*Chief of Ordnance, Washington City, D. C.*

ORDNANCE OFFICE, WAR DEPARTMENT,  
*Washington, January 3, 1873.*

SIR: In reply to your letter of the 23d ultimo I have to inform you that it is not the intention of this Department to re-let, as they become vacant, any of the rooms in the building referred to. You will therefore be pleased to comply with the instructions from this office of the 19th ultimo, and turn over the rooms lately occupied by Mrs. Margnast to the corporate authorities of Harper's Ferry. You will also turn over, when vacated, any other rooms in the same building.

By order of the Chief of Ordnance,  
Respectfully, &c.,

S. V. BENÉT,  
*Major of Ordnance.*

ZADOK BUTT,  
*Ordnance Agent, Harper's Ferry, W. Va.*

HARPER'S FERRY, W. VA., *March 24, 1873.*

SIR: I beg to inform you that I am in charge of the late armory property at this place. Before the property was sold to the Harper's Ferry Water-Power Company I was employed to protect and guard the property by Captain D. J. Young, O. S. K., United States Army, and when the property went into the hands of the company they retained me on the same terms which I had served the Government under Captain Young. They paid me for my services up to the 1st of January, 1873, at which time they wrote to me in the following words:

"The Government has sued us, and, as we have no title to the property, I don't think we need trouble ourselves about it any further. From appearances I don't see how you are going to get your pay, unless the Government takes charge and pays you."

When I received the letter containing the above words, I concluded to relinquish my charge of the property. I did so, and in less than five days thereafter the armory yard was entered by boys and a very valuable iron pipe, about one hundred and fifty feet in length, was broken up and the lead taken from around the joints. I was informed of the fact, and I immediately resumed charge, believing then, as I do now, that the Government would reward me for my services in protecting their interest in this property. The Government holding a vendor's lien on the property, of course has equally the same interest which it held before the sale. The property being in litigation, I considered that I would be sustained by your Department in protecting the same, as I had served the Government three years in the same capacity under Captain Young. I can assure you that had I abandoned the property that by this time irreparable injury would have been done to it, as it is an easy matter to break the large water-wheels to get the lead and brass from around the journals.

Since the 1st of January I have rendered the Government valuable service, and have received no pay; and as you have control of the matter, if you will consent to indorse my services for payment, (unofficially,) I will continue in charge until the matter is finally settled.

I wrote the honorable Attorney-General on the subject, and inclose for your perusal the reply which he sent me. As I have a family dependent on me for support, unless I receive some encouragement I will be compelled to look elsewhere for employment.

Be pleased to inform me what I am authorized to do in the matter, and oblige,

Your obedient servant,

JOHN A. LASHORN.

Hon. WM. W. BELKNAP,  
*Secretary of War, Washington, D. C.*

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 31

[Inclosure to foregoing letter.]

DEPARTMENT OF JUSTICE,  
Washington, March 20, 1873.

SIR: I have received your letter of the 15th instant, and in reply have to inform you that there is no fund under my control out of which I can pay you for your services in guarding the property at Harper's Ferry.

I will suggest that you correspond with the Secretary of War upon the subject.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

JOHN A. LASHORS, Esq., *Harper's Ferry, W. Va.*

HAGERSTOWN, April 5, 1873.

DEAR SIR: The House at the last session failed to pass the bill passed by the Senate in relation to the purchasing of property at Harper's Ferry.

The Messrs. Ahl are interested as purchasers of some of it, and of course feel anxious as to what course the Department will now pursue: whether it will now demand payment or wait until the next session of Congress for whatever legislation may be proper and necessary.

The Messrs. Ahl do not desire to be in any jeopardy about their contract, and are willing at any time to comply if required by the payment of the money; but, if the whole subject is to be laid over for legislation, they are willing that it should be only so that they are not injured by the impairment of the contract heretofore made. Be pleased to let me know what the Department intends to do in the premises.

Yours, sincerely,

Hon. WM. W. BELKNAP, *Secretary of War.*

WILLIAM T. HAMILTON.

WAR DEPARTMENT,  
Washington City, May 5, 1873.

SIR: In reply to your letter of the 5th instant, inquiring as to the intention of the Department relative to the purchasers of the Harper's Ferry property, I have the honor to inform you that, as Congress failed to perfect any legislation authorizing further delay in settling for this property, it is presumed the Department of Justice will push the suit now pending against the purchasers to a speedy termination. It is the intention of this Department to press all purchasers to a speedy settlement.

The Messrs. Ahl can avoid the contingency of a suit by paying up at once.

Very respectfully, your obedient servant,

GEO. M. ROBESON,  
*Acting Secretary of War.*

Hon. W. T. HAMILTON, *U. S. S., Hagerstown, Md.*

HAGERSTOWN, May 13, 1873.

DEAR SIR: Your favor I received. The Messrs. Ahl ask that you be pleased to allow them this month to pay the claim against them. Would you be pleased to make out the amount due the Government by John S. Ahl & Co., and send it to them at Newville, Cumberland County, Penn., or to me?

Yours, sincerely,

Hon. W. W. BELKNAP, *Secretary of War.*

WILLIAM T. HAMILTON.

WAR DEPARTMENT, Washington, May 23, 1873.

SIR: I have the honor, to say, in reply to your note of the 13th instant, relative to the indebtedness of John S. Ahl & Co. for property purchased from the Government at Harper's Ferry, that the Department holds two notes of the Messrs. Ahl, dated December 6, 1869, and running for one and two years, respectively, each for \$6,550. When these notes matured the Messrs. Ahl were duly notified of the fact.

## 32 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

The amount of the notes, with interest at 6 per cent. from day of maturity to day of deposit, may be deposited with the nearest assistant treasurer or designated depository, to the credit of the Treasurer of the United States, and the original certificate of deposit forwarded to this Department, when proper credit will be given, and a deed of the property purchased be furnished in accordance with the provisions of the law.

Very respectfully, your obedient servant.

WM. W. BELKNAP,  
*Secretary of War.*

Hon. W. T. HAMILTON, *U. S. S., Hagerstown, Md.*

HARPER'S FERRY, W. VA., May 1, 1873.

SIR: During the latter part of the month of March I addressed a letter to the honorable Secretary of War, with an inclosure from the honorable Attorney-General, in reference to my "pay" for services rendered the Government in the care and protection of the late "Armory property" at this place. I am anxious to have the matter settled, and to know from the Secretary of War whether I must abandon the property to the mercy of such trespassers who choose to commit depredations thereon, or whether I am warranted in continuing in charge of the property. Will you please inform me whether my letter was referred to the Secretary, or what disposition was made of the same? If you have not presented it for his consideration, please do so as soon as he returns, and inform me of the result. This is a matter of interest to both the War Department and myself.

Hoping that you may give the matter your early attention, I remain, &c.,

JOHN A. LASHORN.

Hon. H. T. CROSBY,

*Chief Clerk, War Department, Washington, D. C.*

HARPER'S FERRY, W. VA., May 23, 1873.

DEAR SIR: In the month of March I wrote you in reference to the condition of the "Armory property" at this place, and informed you that I had protected the same, and asking your advice as to whether I should continue to protect the property. I also sent you a letter which I had received from the Attorney-General on the subject.

Will you please take up those letters and write me your views? By so doing you will oblige, truly, &c.,

JOHN A. LASHORN.

Hon. WM. W. BELKNAP, *Secretary of War.*

HARPER'S FERRY, W. VA., July 15, 1873.

MAJOR: I beg to inform you that since the 1st of January last I have been guarding and protecting the late "Armory property" at this place. I have rendered this service solely on my own responsibility, believing then, as I now believe, that the War Department will indorse my action and pay me for my services when the questions concerning the property are settled. I am now compelled to look elsewhere for employment, and as I have secured employment at the Springfield Armory, I must relinquish my charge of the property at this place. I take this means of notifying you in order that you may take such steps as you think best in the matter which may lead to its protection in the future, for I can assure you that unless something is done to protect this property the Government must lose heavily thereby, as parties will enter and destroy the wheels for the purpose of getting lead and brass from around them. When this matter is settled I shall ask for compensation for my services, as I am fully prepared to prove that my action in taking charge of this property has been of great service to the Government.

Very respectfully, yours,

JOHN A. LASHORN.

Maj. S. V. BENNET,

*Chief of Ordnance, Washington, D. C.*

43D CONGRESS, }  
1st Session. }

SENATE.

{ Ex. Doc.  
{ No. 48.

LETTER  
OF  
THE ATTORNEY-GENERAL

TRANSMITTING,

*In compliance with a Senate resolution of January 21, 1874, information relative to the sale of Government property at Harper's Ferry.*

MAY 7, 1874.—Referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF JUSTICE.

Washington, May 6, 1874.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate bearing date the 21st of January last, as follows:

*Resolved,* That the Attorney-General of the United States be directed to furnish the Senate, at as early a day as practicable, a statement of all the information in his office relative to the sale of the Government property at Harper's Ferry, W. Va., and all suits in relation to said property, whether for purchase-money or otherwise.

In compliance therewith I transmit copies of all the correspondence upon the files and records of this Department in relation to the sale of the Government property at Harper's Ferry.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. M. H. CARPENTER,  
*President pro tem. United States Senate.*

SENATE OF THE UNITED STATES.

COMMITTEE ON THE JUDICIARY.

Washington, January 19, 1874.

SIR: I have the honor to inclose herewith copy of a resolution in relation to the sale of Government property at Harper's Ferry, which was introduced in the Senate by the Hon. Mr. Davis, of West Virginia, and on my motion referred to the Committee on the Judiciary, on the 10th instant.

I will thank you to send to the committee at as early a day as practicable such information or suggestions as you may think proper as to the propriety of your Department making answer to the resolution.

Very respectfully,

GEORGE F. EDMUNDS,  
*Chairman.*

Hon. GEORGE H. WILLIAMS,  
*Attorney-General.*

## 2 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

IN THE SENATE OF THE UNITED STATES,  
January 21, 1874.

*Resolved*, That the Attorney-General of the United States be directed to furnish the Senate, at as early a day as practicable, a statement of all the information in his office relative to the sale of the Government property at Harper's Ferry, W. Va., and all suits in relation to said property, whether for purchase-money or otherwise.

Answer:

GEORGE C. GORHAM,  
*Secretary.*

DEPARTMENT OF JUSTICE,  
Washington, January 20, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, in reference to a Senate resolution, asking me to furnish the Senate, at as early a day as practicable, a detailed statement of all the information in this office relative to the sale of the Government property at Harper's Ferry, and all suits in relation to said property, whether for purchase-money or otherwise.

Application of a like nature was made to me some time ago by Senator Davis, and I called upon the district attorney of this District to furnish me with such information as he had upon the subject, as the papers were placed in his hands for the purpose of taking the necessary steps to collect what was claimed by the United States on account of the sale of such property. When the bonds given by the purchasers were placed in the hands of the district attorney it appears that they were disposed to defend on the ground that a part of the property purchased belonged to the Baltimore and Ohio Railroad Company, and I was also advised by the district attorney that the persons upon the bond, in case judgment should be obtained, were not responsible for more than an inconsiderable part of the amount claimed. According to the arrangement made at the time of the sale, a vendor's lien upon the property was preserved, and it occurred to me that the best course to be taken for the United States was to file a bill to enforce that lien upon the property, bringing the Baltimore and Ohio Railroad Company into court, so that the exact rights of the United States could be ascertained, and after the property was sold under that decree to hold the purchasers responsible for any loss sustained by the United States in consequence of their failure to pay the purchase-money if it should appear that any such loss is sustained. District Attorney Fisher's letter gives a more particular statement of what has been done in respect to those matters.

I know of nothing in the proceedings rendering it improper for me to answer the resolution of the Senate, and if any copies of papers or other information not contained in Mr. Fisher's letter are desired, please advise me.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. GEORGE F. EDMUNDS,  
*Chairman Judiciary Committee, United States Senate.*

UNITED STATES SENATE-CHAMBER,  
Washington, December 17, 1872.

DEAR SIR: The War Department informs me that the papers and claim of Government against Adams and others for property bought at

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 3

the Harper's Ferry, W. Va., Government sale, has been referred to your office, with a view to force collection of purchase-money.

Please inform me what has been done; how long it will probably take to force the collection; who are the principals and who bondsmen; what is the amount, &c.

I am informed that the part of the property, such as iron pipes, castings, &c., are now being sold by the person in charge.

The people of Harper's Ferry are deeply interested, and are inquiring of me, as one of their Senators, what is likely to be done.

Yours, respectfully,

H. G. DAVIS,  
*West Virginia.*

Hon. G. H. WILLIAMS,  
*Attorney-General.*

DEPARTMENT OF JUSTICE,  
*Washington, December 19, 1872.*

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant relative to the claim of the Government against F. C. Adams and others for the amount due by them for the purchase of the property at Harper's Ferry.

In reply I have to inform you that, at the request of the Secretary of War, on the 23d of July last, I transmitted all the papers in the case to the United States attorney for this District, with instructions to bring suit against said Adams and his sureties. I have this day directed the district attorney to report to me the progress of this suit; and, as soon as I shall hear from him, I will advise you.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. H. G. DAVIS,  
*United States Senate.*

WAR DEPARTMENT,  
*Washington City, January 6, 1873.*

SIR: I have the honor to refer herewith for your consideration a communication from S. V. Yantis, reporting the removal of iron, &c., from the armory property at Harper's Ferry by certain parties, and a report from the ordnance agent in charge of the armory in relation thereto; in view of which it is requested that such measures be instituted by the Department of Justice as may be necessary to protect this public property from further removal.

Very respectfully, your obedient servant,

WM. W. BELKNAP,  
*Secretary of War.*

The Hon. ATTORNEY-GENERAL.

HARPER'S FERRY, *December 14, 1872.*

DEAR SIR: The party in charge of what is left of the armory property at this place is engaged in tearing out window-frames of buildings



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and digging up iron pipe and breaking them up for the purpose of selling it. He says he is doing it by the orders of the gentlemen who composed the company who purchased the property from the Government. My object in writing is, if possible, to put a stop to the future destruction of this property, and by parties who, from what I learn, have not paid one cent of the purchase-money.

From what the parties say who are engaged in this work, it is intended to make a clean sweep of everything salable. Give this matter your prompt attention for the sake of our much-abused town.

I am yours, respectfully,

S. V. YANTIS.

Hon. H. G. DAVIS,  
*Washington.*

[Indorsements.]

DECEMBER 16, 1872.

Respectfully referred to the Secretary of War.  
With great respect,

H. G. DAVIS.

War Department. Received December 17, 1872.

Hon. H. G. Davis refers letter from S. V. Yantis, Harper's Ferry, stating that parties are removing iron, &c., from the armory property at that place.

December 20, 1872. Received Ordnance Department.

[Second indorsement.]

ORDNANCE OFFICE, *December 20, 1872.*

Respectfully referred to Zadock Butt, Ordnance agent, Harper's Ferry, W. Va., for immediate report. This paper to be reported to this office.

By order of the Chief of Ordnance :

S. V. BENÉT,  
*Major of Ordnance.*

[Third indorsement.]

ORDNANCE OFFICE, *December 17, 1872.*

Respectfully returned to the Secretary of War, and attention invited to the accompanying report of the agent of this Bureau at Harper's Ferry. Since the 15th July, 1872, when this Bureau requested suit to be instituted by the Department of Justice against the principal purchasers at Harper's Ferry, and their sureties, no instructions have been given the agent at that place regarding this property.

As it is not known what, if any, steps have been taken by the Department of Justice to guard the interests of the United States, it is respectfully recommended that the report of the Ordnance agent be referred to that Bureau for its information.

By order of the Chief of Ordnance :

N. C. LYFORD,  
*Captain of Ordnance, Principal Assistant.*

Ordnance officer's report. Received December 27, 1872.

## SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 5

WASHINGTON, D. C., *December 5, 1872.*

DEAR SIR: I am willing to approve any arrangement you might make with Mr. Lashorn.

GEORGE H. PLANT.

Mr. WILLIAM B. WEBB.

I am willing that Mr. Lashorn may sell the old material at the Ferry to pay moneys due him and such members of the company as have made advancements.

W. B. WEBB.

I certify that the above is a true copy of the authority given Mr. John A. Lashorn by George H. Plant, president, and W. B. Webb, a member of the Harper's Ferry Water-Power Company, to remove materials from the armory property at Harper's Ferry, W. Va.

ZADOCK BUTT,  
*Ordnance Agent.*

DECEMBER 23, 1872.

HARPER'S FERRY, W. VA.,  
*December 23, 1872.*

MAJOR: I have the honor to acknowledge the receipt of your communication of the 20th instant, requesting a report as to the facts contained in the communication of Mr. S. V. Yantis, of this place, to Hon. H. G. Davis, United States Senator, and by him referred to the Hon. Secretary of War. In conformity thereto I beg to submit the following: While the Government property at this place was under the charge and control of Capt. D. J. Tomy, ordnance store-keeper, he kept employed a night and day watchman to guard the property, but when the property was sold to the Harper's Ferry Water-Power Manufacturing Company they discharged the night watchman, and retained Mr. James H. Lashorn to look after the property during the day. More than a year ago the company began to fall off in paying Mr. Lashorn his monthly salary, and thus continued until the 1st of the present month, (December, 1872,) when he found the company to be in arrears to him to the amount of nearly \$400.

On the 2d instant Mr. Lashorn went to Washington to consult the members of the company with a view to a final settlement, and, finding it impossible to effect that, he proposed to them to permit him to sell the old material connected with the property to secure his salary as watchman, which authority they gave him in writing, a copy of which I obtained from Mr. Lashorn, and inclose for your inspection. You will observe from the verbiage of the order that it not only empowers him to sell materials for the purpose of securing his own money, but authorizes him to continue until he has sold sufficient to pay back moneys advanced by certain members of the company. Acting under that authority Mr. Lashorn has removed and sold a portion of the cast-iron blast-pipe underlying the old blacksmith-shop at the musket-factory: also the iron window-frames of the same shop, most of which were either entirely broken or warped from the effects of the fire when the building was burned during the late war, together with a portion of a temporary plank roof covering the same, which was placed on the building by a United States quartermaster during the war: in all amounting to over \$300. These are the facts reported to me by Mr. Lashorn. At my sug-

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gestion, upon private advice given that gentleman, he has ceased to make any further removals, as I felt no authority to advise him officially in the matter. Mr. Lashorn informs me that he does not intend interfering in any manner with the property against the wishes of the Department, and is acting under orders from the company presumed to have authority in the matter.

I would call the attention of the Department to the fact that Mr. Lashorn's duties as watchman of the property has ceased, and the property lies there unprotected and at the mercy of intruders, who may enter thereon and commit depredations. It is well known that there is a great quantity of valuable materials connected with the pipes, wheels, and other fixtures in the armory yard, such as lead, block-tin, and brass, which can be easily removed, and from the effects of the flood in the Shenandoah River in October, 1870, almost the entire iron materials at the Hall Rifle Works are exposed, and will undoubtedly be broken up, and sold if the property is left unguarded. Illustrative of the condition of the interests of the Government at this place, I beg to state the case of the Government stable, a large brick stable, sold at the sale in 1869 to a John Wilson for \$1,800, and when the flood came it washed down the stable, but left the bricks on the ground; and since that time more than one-half of them have been carried away, Mr. Wilson not having exercised any ownership over the property. I spoke to him about the matter, and he informed me he did not intend paying for the property, and I can assure you that his surety is questionable.

In conclusion, I would beg to suggest the immediate action of the Department in protecting this property, as, if it is permitted to remain unprotected even for a short time, the consequences will be a very great loss to the Government.

Respectfully, I am, your obedient servant.

ZADOCK BUTT,

*Ordnance Agent.*

Maj. S. V. BENÉT,

*Acting Chief of Ordnance U. S. A., Washington, D. C.*

DEPARTMENT OF JUSTICE,

*Washington, January 10, 1873.*

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, referring for my consideration a communication from S. V. Yantes, reporting the removal of iron, &c., from the armory property of Harper's Ferry by certain persons; also a report from the ordnance agent in charge of the armory in relation thereto. You ask that such measures be instituted by the Department as may be necessary to protect this public property from further injury.

I am informed that this property has been sold by the Government, and purchased by private parties, who have given bond for the payment of the purchase-money. I do not see, therefore, how the Department can take any action in the matter, unless there are other facts with which it is not acquainted whereby the Government would have the right to interpose its authority.

Very respectfully,

GEO. H. WILLIAMS,

*Attorney-General.*

Hon. WILLIAM W. BELKNAP, *Secretary of War.*

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UNITED STATES SENATE CHAMBER,  
Washington, January 16, 1873.

DEAR SIR: On 19th ultimo you wrote me that you had directed the district attorney (of this District) to report to you what progress in suit against Adams and others for payment of property at Harper's Ferry. I will thank you to give me his reply.

Yours, with great respect,

H. G. DAVIS.

Hon. G. H. WILLIAMS, *Attorney-General.*

OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,  
Washington, D. C., January 14, 1873.

SIR: Referring to your letter of inquiry, and our conversation subsequently, concerning the claim of the United States against F. C. Adams and his sureties upon three bonds given by them, amounting in the aggregate to the sum of \$209,705, the purchase-money of certain lots and water-power at Harper's Ferry, I have the honor to state that I am preparing the declaration against Adams and his sureties, and will file them as soon as prepared, and endeavor to speed the cause as rapidly as possible. As, however, I said to you in our conversation, I am satisfied, after consulting with Mr. Phillips, the deputy marshal of this District, that the sureties have not enough property in this District or elsewhere, to my knowledge, to respond to more than one-fourth of the amount of said purchase-money; and I will repeat what I said to you, that it would be, as I think, better if the Government should take the necessary steps to take back the property and resell the same, holding the sureties for the difference between what it may bring at the second sale and that which Adams was to pay.

The sureties on the bond given for \$3,705 are Clinton Lloyd, the chief clerk of the Clerk of the House of Representatives; William B. Webb, a member of the bar of this District; and Francis A. McCartney, now deceased, formerly the disbursing clerk of the Post-Office Department. Some two years ago McCartney defaulted, became an inmate of the lunatic asylum, and died about eighteen months ago utterly insolvent. Webb has property in this District assessed at \$9,199, against which, I believe, there are no liens; and Lloyd has an assessment of \$10,244, subject to a lien for a large portion of that amount, say about one-half. The same parties and no others are sureties in the second bond, for \$30,000. Adams has no property in this District, so far as I can learn. The sureties on the third bond, for \$176,000, are the same, with the addition of Samuel P. Brown, J. W. Fitzhugh, Nathaniel Wilson, and George H. Plaut. The latter gentleman has an assessment of some \$115,000, but it is so involved and encumbered that Mr. Phillips tells me that it is very difficult for him to make the money on executions already out against him. Wilson is assessed at \$14,577; Fitzhugh at \$1,000; and as to Brown, it is sufficient for me to say that the Government is already driven to withholding his salary as commissioner of the board of public works in order to make good his own default as navy-agent during the war. His deficit, as such, is over \$40,000. To recover one-third of the whole amount of these bonds here is, I think, impossible; so does Phillips; and it is for this reason that I advise some

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proceeding to recover the property sold to Mr. Adams, as well as to proceed here.

Yours, very respectfully,

GEO. P. FISHER,  
*United States Attorney, D. C.*

Hon: GEORGE H. WILLIAMS,  
*Attorney-General, &c.*

WAR DEPARTMENT,  
*Washington City, January 18, 1873.*

SIR: I have the honor to submit herewith, for your consideration and such action as you may deem it advisable to take, a request of the mayor of Harper's Ferry, W. Va., that the vendor's lien against the water privileges at that place be pressed in the United States district court of West Virginia, as rapidly as possible, in order that the sale of said water privileges may be had at an early day, and further to invite your attention to the indorsement of the Chief of Ordnance thereon.

Very respectfully, your obedient servant,

WM. W. BELKNAP,  
*Secretary of War.*

The Hon. ATTORNEY-GENERAL.

WASHINGTON, D. C., *January 13, 1873.*

SIR: As the only speedy and effectual mode of relief from the stagnation and ruin which has so long oppressed us, we do respectfully but earnestly pray you to order that the vendor's lien against the water privileges at Harper's Ferry, W. Va., may be pressed in the second United States district court of West Virginia as rapidly as possible, so that a resale of said water privileges may be had at an early day.

In behalf of the corporate authorities and of the citizens of Harper's Ferry and vicinity.

I am, very respectfully,

DANIEL AMES, *Mayor.*

CHIEF OF ORDNANCE,  
*Washington, D. C.*

[Indorsement.]

ORDNANCE OFFICE, *January 13, 1873.*

Respectfully submitted to the Secretary of War. Should this prove to be the most effectual and speedy mode of reaching a settlement of the case, it is desirable, in the interests of the United States and the people of Harper's Ferry, that it be followed.

It is respectfully recommended that this paper be referred to the Department of Justice for its consideration and action.

By order of the Chief of Ordnance:

S. V. BENÉT,  
*Major of Ordnance.*

JUDICIARY COMMITTEE, HOUSE OF REPRESENTATIVES,  
*February 7, 1873.*

I have the honor to inclose a bill referred to this committee, H. R. 3591, to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, with request for such information as you may be pleased to communicate as to the

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merits of the bill and the propriety of recommending its passage by the House.

Respectfully, your obedient servant,

JOHN A. BINGHAM,  
*Chairman.*

HON. GEORGE H. WILLIAMS,  
*Attorney-General.*

DEPARTMENT OF JUSTICE,  
*Washington, February 8, 1873.*

SIR: I have the honor to acknowledge the receipt of your letter of yesterday inclosing H. B. No. 3594, entitled "An act to authorize the Attorney-General to adjust the claim of the Government from the purchasers of property at Harper's Ferry," and requesting me to communicate to you any information I might have as to the merits of the bill, and as to the propriety of recommending its passage to the House.

I understand that the property in question was sold, and that no conveyance was ever executed by the United States to the purchaser, and that he holds no other evidence of title than a certificate of purchase. He executed bonds to the United States for the purchase-money, with certain persons as securities, the bonds providing that the United States should retain a vendor's lien upon the property. The purchaser has failed to pay according to the stipulations of the bonds, and suit has been commenced upon them against him and his sureties. But I am advised that, if judgment is recovered, not more than \$30,000 or \$40,000 of the \$170,000 or \$180,000 for which the property was sold can be collected.

I had a conference with two of the sureties this morning, and I suggested as a possible way of reaching some result that the United States should file a bill in the United States district court for the western district of Virginia to enforce the vendor's lien upon the property, and that the purchaser should allow a decree to go in favor of the United States providing for the sale of the property to pay the purchase-money, and at the same time reserving to the United States all its rights to recover from the purchaser and his sureties all losses which have resulted or may result from his failure to pay the purchase-money according to contract. I do not know whether or not this arrangement can be effected. I presume, under the circumstances, that the property cannot be sold for the amount for which it formerly sold: that in any event the Government will lose in the transaction, unless the purchaser and his sureties can be made responsible for any difference between the amount for which the property may sell upon a decree to enforce the vendor's lien and the amount it was sold to the late purchaser.

I do not know that the bill, a copy of which you inclose, will be necessary, and I should prefer to have the matter adjusted through the proceedings in the court. I would suggest, however, that perhaps a bill could be passed authorizing the Secretary of War to resell the property, as the title remains in the United States, and providing also that the liability of the late purchaser and his sureties to pay for any losses resulting from the non-performance of their contract of purchase shall not be effected thereby.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

HON. JOHN A. BINGHAM,  
*Chairman Judiciary Committee, House of Representatives.*

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OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,  
Washington, D. C., March 7, 1873.

SIR: Referring to the conversation I had with yourself and Mr. Ames, the mayor of Harper's Ferry, on Monday, respecting the Government property there, I have to say that since then, I have seen Nathaniel Wilson, esq., who informs me that Adams and his sureties intend writing you, requesting that you, in behalf of the Government, shall resell the property. Should they do so, I would respectfully suggest whether, if you should accede to their proposition, it would not be well to say to them that it shall be upon the express condition that, by doing so, none of the rights of the Government in respect to the suits now pending in this District against them shall be in any wise prejudiced by your acceptance and resale of the property, but that they shall be held liable therein to all intents and purposes as if no acceptance and resale had been had, so far as relates to the difference between the former and the future sale.

Yours, very respectfully,

GEO. P. FISHER,  
United States Attorney, D. C.

Hon. GEO. H. WILLIAMS,  
Attorney-General United States, Washington, D. C.

HARPER'S FERRY, W. VA., March 18, 1873.

SIR: I am in charge of the late armory property at this place. I was first employed as watchman of the property by Capt. D. J. Young, of the Ordnance Corps, United States Army, when he was stationed here. When the property was sold to the Harper's Ferry Water-Power Company, I was retained by that company on the same terms which I had served the Government under Captain Young. The company continued to pay me until the 1st of January, 1873, when I was notified by the company that they would exercise no further control of the property, in the following language: "The Government has sued us, and as we have never had any title to the property, I don't think we need trouble ourselves about it any further. From appearances I don't see how you are going to get any more pay unless the Government takes charge and pays you." When I received their letter I did not feel authorized to continue in charge of the property, not knowing where to look for my pay, relinquished my charge, and no sooner had I done so than some parties entered the armory yard, and commenced to commit depredations by breaking the iron water-piping, and taking the lead and brass from around the journals. They broke up a very valuable water-pipe about one hundred and fifty feet in length, and would have carried it away had I not stopped them. In consequence of these depredations I resumed charge of the property, and have continued protecting the same as before. Zadock Butt, esq., the ordnance agent at this place, can certify that my services have been valuable to the Government in protecting their interests. And knowing that the Government hold a vendor's lien on the property, I believed then, as I believe now, that the Government would reward my services.

In view of the facts stated I write you to know whether I may expect any reward from the Government for my services, and whether I am justifiable in continuing in charge of the property. If I abandon the property before thirty days very material damage will be done the piping now lying exposed in the yard. The depredations are committed

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SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 11

by boys, who break the piping for the purpose of securing the lead which is around the joints.

If you will indorse my services to the War Department, I will continue in charge; otherwise I will be compelled to look elsewhere for employment, as I have a family to support. As this matter is now before your office, I will be obliged to you if you will inform me whether I must continue, and whether I can hope for the Government to pay me for my services.

Hoping to receive your views on the subject, I am your obedient servant,

JOHN A. LASHORN.

Hon. GEORGE H. WILLIAMS,  
*Attorney-General, Washington, D. C.*

P. S.—I requested the company to inform me what disposition to make of the "keys" of the property, and they pay no attention to my requests, so I would like to know who I am to look to as controlling the property.

J. A. S.

DISTRICT OF WEST VIRGINIA,  
UNITED STATES ATTORNEY'S OFFICE,  
*Clarksburgh, June 2, 1873.*

SIR: Yours 29th ultimo, relative to institution of proceedings for the sale of the Harper's Ferry property for non-payment of purchase-money, to hand.

The proceedings to which you refer as having taken place between the Baltimore and Ohio Railroad Company and the purchasers were had in the circuit court of the county of Jefferson, West Virginia, and as soon as I can obtain a copy of the record of said proceedings (which I understand is quite voluminous) I will proceed to Washington to confer with you upon the subject as requested by you.

Most respectfully, your obedient servant,

N. GOFF, JR.,  
*United States Attorney.*

Hon. GEO. H. WILLIAMS,  
*Attorney-General.*

DEPARTMENT OF JUSTICE,  
*Washington, June 12, 1873.*

SIR: I desire to obtain copies of all papers on file in your Department, duly certified for use in the courts, relative to the sale and the present condition of the Harper's Ferry property. Please give this matter early attention.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. WM. W. BELKNAP,  
*Secretary of War.*

DEPARTMENT OF JUSTICE,  
*Washington, June 12, 1873.*

SIR: I desire to obtain copies of the bonds and other papers on file in your Department, duly certified for use in the courts, relative to the



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sale of the Harper's Ferry property. Please give the matter early attention.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. WM. A. RICHARDSON,  
*Secretary of the Treasury.*

OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,  
*Washington, D. C., July 1, 1873.*

SIR: After leaving your office to-day, Mr. Goff and myself had an interview with Messrs. Webb and Wilson, two of the sureties of F. C. Adams, the purchaser of the Harper's Ferry property under the sale of December, 1869, and also with Mr. Oliver, the counsel of Mr. Adams. As we all supposed, they balked at that part of our bill asking a decree for the entire purchase-money; but said that if it could be understood that the Government would not proceed to a sale under the decree to enforce the vendor's lien, until after the determination of the claim of the Baltimore and Ohio Railroad Company, they would acknowledge service of the process as we desired, and thus expedite the resale. We told them that upon consultation with you this morning we had come to the conclusion to hurry forward the decree for the enforcement of the lien as fast as possible, and immediately upon obtaining it to institute proceedings to quiet our title to the premises against the Baltimore and Ohio Railroad Company, and not to make sale until after the decision of the issue between the Government and the railroad company, so that the best price might be had for the property. They then informed us that if such were your instructions to us they would do all in their power to hasten the case to a conclusion. Shall we assure them as from you that it is not the intention of the Government to sell under the vendor's lien, until we shall have tested the claim of the Baltimore and Ohio Railroad Company?

Please give me a reply to-morrow morning, as we are to have another conference in the afternoon.

Very respectfully,

GEO. P. FISHER,  
*United States Attorney, District of Columbia.*

Hon. GEORGE H. WILLIAMS,  
*Attorney-General, &c.*

UNITED STATES SENATE-CHAMBER,  
*Washington, January 7, 1874.*

SIR: I desire to secure all the information in your possession relative to the sale of the Government property at Harper's Ferry, W. Va., and to the collection of the bonds given by the purchasers therefor. By giving this your early attention you will much oblige

Yours, respectfully,

H. G. DAVIS,  
*Of West Virginia, per M.*

Hon. GEORGE H. WILLIAMS,  
*Attorney-General.*

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 13

UNITED STATES SENATE CHAMBER,  
Washington, January 13, 1874.

DEAR SIR: Some days since I addressed you a letter asking for a statement in detail of all the facts in your possession relative to the sale of the Government property at Harper's Ferry, W. Va.

Please indicate when I shall be likely to receive the information. If preferred by you I will have a resolution on the subject adopted by the Senate.

Respectfully,

H. G. DAVIS,  
*Per M.*

Hon. G. H. WILLIAMS.

DEPARTMENT OF JUSTICE,  
Washington, January 15, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant, asking for all the information in the possession of this Department relative to the sale of Government property at Harper's Ferry, and to the collection of the bonds given by the purchasers thereof.

In reply I inclose herewith a copy of a letter addressed to this Department under date of the 13th instant by the United States attorney for this District, which contains the information you desire in relation to this matter.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. H. G. DAVIS,  
*United States Senate.*

OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA.  
Washington, D. C., January 13, 1874.

SIR: Your letter of the 8th instant, inclosing one received by you from Senator Davis, was received on Saturday morning.

In reply to the inquiries made by Senator Davis, I have the honor to state that on the 3d of February, A. D. 1873, in obedience to your instructions, I instituted suits severally against Francis C. Adams, the original purchaser of the Harper's Ferry property, and his sureties on three several bonds, the real debt of which aggregates the sum of \$206,000.

The bonds upon which these suits were brought contained in their conditions, among other things, a provision for the enforcement of the vendor's lien. Upon consultation had between yourself, Mr. Goff, the United States attorney for West Virginia, and myself, it was agreed, you will remember, that bills in equity should be filed by the United States against Mr. Adams and his sureties in the district of West Virginia, for the purpose of enforcing the vendor's lien, which bills were filed some time in July or August last, and a decree obtained either in September or October for the sale of the property in such case. The sale to be made by Mr. Goff, as trustee, at a time to be fixed by a future order of the court.

When the suits were brought here to recover the purchase-money

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upon the bonds, there was a bill pending in Congress, which, I think, had passed one branch of it, authorizing a rescission of the sale and the release of Adams and his sureties from the payment of the sums stipulated in the bonds. In the mean time, or before any proceedings were instituted against Adams and his sureties, suit had been brought by the Baltimore and Ohio Railroad Company in the court of chancery of West Virginia, and a decree made in favor of said company for quite a large portion of Adams's purchase, being that part of the said purchase lying on the Potomac River shore upon which said company had constructed their road some thirty-five years ago, as it was supposed, under and by virtue of an article of agreement made between Joel R. Poinsett, then Secretary of War, and Louis McLane, then president of said company.

If I have been rightly informed, the decree of the West Virginia court of chancery was grounded not only upon said article of agreement, but upon a deed in fee executed by one Byrnes to said company for that portion of the Adams purchase on which the road of said company is located, and that the evidence in the cause between said Baltimore and Ohio Railroad Company and said Adams and others showed that some sixty or seventy years ago, the land in controversy lay below the ordinary flow of water in the Potomac River; that the State of Maryland was then entitled to exercise jurisdiction and proprietorship to said ordinary flow of water, and had granted by patent to said Byrnes some islands in the Potomac, as well as the land covered with water lying between said islands and the ordinary flow on the right bank of said river, and that that portion of the land in controversy was then covered with water and included in Byrnes's patent.

About the time of the filing of the bills in equity against Adams and his sureties, Mr. Goff and myself had conferences with you, and also with Adams and his sureties, the conclusion of which was that they should not controvert but expedite the proceedings about to be entered against them to enforce the vendor's lien, and that the sale to be made under the decree for the enforcement of said lien should not be made until all the outstanding claims against the property should be adjusted, and particularly not until it should have been judicially determined what, if any, right or claim the Baltimore and Ohio Railroad Company have to the property, or any part of it. With this understanding the decree for the enforcement of the lien was had in August or September last, a much earlier time than it could have been obtained had the proceedings been adversary.

After these decrees had been obtained, a bill in equity was proposed by Mr. Goff and myself at the suit of the United States and Adams and his sureties, complainants, against the Baltimore and Ohio Railroad Company, and filed in the district court for the district of West Virginia, for the purpose of quieting the title of the plaintiffs, and removing the cloud impending over it by reason of the claim of said company and its decree, against Mr. Adams, the purchaser from the United States. To that bill I presume no answer has yet been filed, or, if it has, I have had no notice thereof from Mr. Goff.

It is my duty, perhaps, to repeat to you in writing what I have heretofore said to you orally, that if judgments shall be obtained in this District in the suits brought upon the bonds given by Mr. Adams and his sureties, such judgments will be liens upon property scarcely equal in value to one-fourth of the purchase-money.

Having furnished you with this history of the matter, I have only to add that it will afford me great pleasure to meet Senator Davis either

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alone or with you, and furnish him or you with further and more detailed information.

Very respectfully, &c.,

GEO. P. FISHER,

*United States Attorney, District of Columbia.*

Hon. GEORGE H. WILLIAMS,

*Attorney-General United States.*

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UNITED STATES SENATE CHAMBER,

*Washington, January 29, 1874.*

SIR: I inclose a copy of H. R. 3594, in reference to the Harper's Ferry property, introduced by Mr. McGrew in the House last session. The bill passed the House, but failed in the Senate for want of time. I desire to introduce the bill again this session, but before doing so would like to know if you have any suggestions or amendments to propose. An early attention to this matter will much oblige

Yours, respectfully,

H. G. DAVIS, *Per M.*

Hon. GEORGE H. WILLIAMS,

*Attorney-General.*

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DEPARTMENT OF JUSTICE,

*Washington, February 3, 1874.*

SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, inclosing a copy of House bill 3594, in reference to the Harper's Ferry property. You state that you desire to introduce the bill again this session, but before doing so would like to know if I have any suggestions to make or amendments to propose.

In reply, I have to inform you that I have no suggestions or amendments to make in regard to the matter further than to say that I would prefer that the Secretary of War in place of the Attorney-General be authorized to adjust the claims of the Government upon this property, as it belonged to the military branch of the service.

Owing to my absence from the city, your letter has remained unanswered until to-day. The bill is herewith returned.

Very respectfully,

GEO. H. WILLIAMS,

*Attorney-General.*

Hon. H. G. DAVIS,

*United States Senate.*

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UNITED STATES SENATE-CHAMBER,

*Washington, April 22, 1874.*

DEAR SIR: A bill is pending before the Judiciary Committee seeking a resale of the property belonging to the United States at Harper's Ferry. It appears that this property was publicly sold in 1863, and bonds taken from the purchasers. The committee desire to have copies

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of all these notes of the purchasers for the purchase-money, with sureties, with date and amount. How many of these notes have been collected? What steps have been taken for the collection of said notes? Have said purchasers, or any of them, sought to avoid said purchases, and the evidence of the same.

Be kind enough to give reasons to the committee of what their action should be in the premises.

With great respect, I have the honor to be your obedient servant,  
J. W. STEVENSON.

Hon. GEORGE H. WILLIAMS,  
*Attorney-General.*

DEPARTMENT OF JUSTICE,  
*Washington, April 22, 1874.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, stating that there is a bill pending before the Judiciary Committee of the Senate seeking a resale of the property at Harper's Ferry, and you ask for information upon the subject.

In reply I have to inform you that this matter was placed some time since in the hands of the United States attorneys for this District and the district of West Virginia, who have since had entire charge of it. I have this day addressed both these gentlemen, directing them to report to me at once what proceedings have been taken in the case. As soon as I shall have heard from them I will communicate further with you.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. J. W. STEVENSON,  
*United States Senate.*

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43D CONGRESS, }  
1st Session. }

SENATE.

{ Ex. Doc. 3,  
Part 2. }

LETTER

FROM

THE ATTORNEY-GENERAL,

COMMUNICATING

*A copy of a communication of the United States attorney for the district of West Virginia, in relation to the sale of Government property at Harper's Ferry.*

MAY 15, 1874.—Referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF JUSTICE,  
Washington, May 14, 1874.

SIR: On the 6th instant, in answer to a resolution of the Senate dated the 21st of January last, I had the honor to transmit to that body copies of all the correspondence upon the files and records of this Department in relation to the sale of the Government property at Harper's Ferry, and I now inclose a copy of a letter upon the same subject this day received from the United States attorney for the district of West Virginia.

Very respectfully,

GEO. H. WILLIAMS,  
*Attorney-General.*

Hon. M. H. CARPENTER,  
*President pro tem. United States Senate.*

DISTRICT OF WEST VIRGINIA,  
UNITED STATES ATTORNEY'S OFFICE,  
Clarksburgh, May 11, 1874.

SIR: Your communication 22d ult., relative to the Harper's Ferry property, from some cause, has but just reached me.

The bond and notes executed by the purchaser at the public sale in 1868 are now on file in the Treasury Department; a certified copy of them, procured by me from the Secretary of the Treasury, is now on file as exhibit in the chancery suit, pending at Wheeling, to subject such property to sale, for the purpose of paying the purchase-money.

I instituted suit in July, 1873, in the district court for this district, at Wheeling, to recover the amount of purchase-money due on said property, as shown by said bond and notes, and at September term, 1873, of said court, obtained a decree in favor of the United States for the full amount claimed, not one cent having ever been paid on said purchase.

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Serial No. 1561.

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This decree was against Francis C. Adams, the purchaser, and his sureties, and in case of their failure to discharge the same, it was ordered that the property be resold for that purpose.

The property has not yet been offered for sale under said decree, as a suit was subsequently instituted *v.* The Baltimore and Ohio Railroad Company, to remove a cloud on title to said property, occasioned by a claim to a portion of the same set up by said company, which latter suit is still pending and undetermined.

Said purchaser has declined to pay said notes and comply with the terms of his purchase, on account of the claim of said Baltimore and Ohio Railroad Company to a part of said property.

Some proceedings were instituted in the District of Columbia, by District Attorney Fisher, against Adams and his sureties, with what result I am not advised.

Please inform me if there is any additional information on this subject I can furnish you.

Most respectfully, your obedient servant,

N. GOFF, JR.,  
*United States Attorney.*

Hon. GEO. H. WILLIAMS,  
*Attorney-General, Washington, D. C.*

May 27, 1874

Serial 1626.

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13rd Congress, 1st session.

House of Representatives  
Reports, of Committee, Vol 4,  
1873-74

CONGRESS, } HOUSE OF REPRESENTATIVES. } REPORT  
1st Session. } } No. 616.

PROPERTY AT HARPER'S FERRY.

May 27, 1874.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. FRYE, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill H. R. 549.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 549) to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, having had the same under consideration, make the following report:

The buildings formerly used by the United States as an arsenal, and for the manufacturing of arms, &c., at Harper's Ferry, having all been destroyed during the late war of the rebellion, and the Government having determined to abandon the use of the property for the purposes aforesaid, the House of Representatives passed a resolution March 26, 1867, requesting the Attorney-General to examine the title-papers to said property, and report his opinion as to the title of the United States to the same: "Whether it is in fee-simple or merely held in trust by the President for a specific use and no other." and in response thereto the Attorney-General, December 5, 1867, made a report reviewing the title-papers, and affirmed that "the United States held a title in fee-simple to all of their property at Harper's Ferry." By an act of Congress approved December 15, 1868, the Secretary of War was directed to make sale at public auction of the lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in such parcels as in his opinion should be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchasers for the payment of the purchase-money, and empowering the Secretary of War, on receipt of the purchase-money in full, to execute all necessary deeds to the purchasers on behalf of the United States, and directing him to apply the proceeds—

- First. In defraying the expenses of the sale.
- Second. In refunding to the United States the principal sum of purchase-money paid for said lands, tenements, and water-privileges by the United States, and for the erection of buildings thereon.
- Third. To pay the surplus, if any, to the State of West Virginia, for the benefit of the school-fund of said State.

In pursuance of said authority, the Secretary of War, on the 30th November and the 1st and 2d days of December, 1869, sold at public sale the said property, consisting of—

House Journal  
1867-68, p. 115  
Dec. 5, 1867.

EX. D. C. No. 17.  
2d. 305, 400, 500  
Cases, Dec. No. 1.  
Case 3.

Sec. of War,  
1868-69, p. 296.  
House Rep. No. 1,  
Dec. No. 2.



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PROPERTY AT HARPER'S FERRY.

1. The water-power and grounds upon which the arsenal, arms and factories formerly stood.
2. An iron-ore bank.
3. A ferry-privilege.
4. A large number of lots.

The total amount bid for all of said property was \$297,803.50, of which amount there was bid for the water-power and property immediately connected therewith, the sum of \$206,000.

\$ 297,803.50.

At the time of said sale the Baltimore and Ohio Railroad Company were in possession of a portion of said property for a right of way for their railroad, under a license of the War Department dated the 5th of November, 1838, and of which the purchaser of the water-power was advised, and which clearly defined the limits of the privileges granted therein to said railroad company.

It is alleged on the part of the purchaser of said water-power, that after his purchase thereof he began to take measures to utilize the property, and make it available for manufacturing purposes, but the said railroad company claiming extensive privileges, and exercising rights outside the limits prescribed in the license of the War Department, and entirely inconsistent with the proper use of the property for the purposes for which he purchased the same. And that said company had, among other things, in rebuilding a bridge across the race-course, constructed their abutments as to seriously interfere with the use of the water-power, and were committing other acts to the detriment of the property, for which no authority whatever was shown.

As he alleges, while he was proceeding to make the said property available, for the purposes of establishing manufactories, the said railroad company filed an application in the courts of West Virginia for an injunction to restrain him from any interference with the property.

In a bill claimed by them, in which bill the said company claimed that they were the only authority, the license of the War Department aforesaid.

To this bill the purchaser made answer substantially as follows:

- (1) That the War Department had no authority to grant such license.
- (2) That the said company were claiming and exercising rights outside of the limits prescribed by said license.

When the said cause came on to be heard in court upon said bill in answer, the said company asked leave to file an amended bill, which leave was granted, and in said amended bill the said company put in a claim to the occupancy of said property in the original bill, under the authority of the Government, but adverse and hostile thereto, derived by deed dated September 14th from one Patrick Byrne, who claimed to hold the same under a deed from the State of Maryland, dated January 8, 1822, by which deed said Byrne conveyed to the railroad company all the ground occupied by them with their tracks. And the bill further alleged that what is true, that the said Byrne subsequently, to a deed dated 7th February, 1848, conveyed to the United States all the land covered by his patent, excepting and reserving therein a portion previously conveyed to the railroad company.

The said amended bill further alleges that the land claimed by the Byrne patent was formed by accretions in the bed of the river and was within the limits of the State of Maryland, and formed a part of the original purchase by the United States, which was wholly within the State of Virginia.

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It will thus be seen that the controversy in regard to the property raises, among other things, the important question of the true division-line between the States of Virginia and Maryland, and has involved the purchaser of the water-power, &c., in expensive and vexatious litigation, the final result of which is quite uncertain, while the fact that the United States Government thought fit to purchase the title of Byrne gives some color to the validity of his claim.

The purchaser of the water-power has also exhibited evidence to show that he was negotiating for the sale of said property, and was prevented from consummating the same by the fact of the pending litigation with the railroad company. And further shows that the said company, as lately as 1872, have been extending still further the exercise of rights over said property. And also shows that the Attorney-General of the United States was duly advised of the litigation in regard to the property. The purchaser claims that, having purchased such property in reliance upon the opinion of the Attorney-General that the United States had a valid title thereto, it would be unconscionable to hold him and his sureties to the payment of the purchase-money, as he has been prevented from utilizing the said property, or making any disposition thereof, in consequence of the controversy in regard to the title, and that, having lost his opportunity to make the same available, he should be relieved from his obligation without regard to the final determination of said suit.

The purchasers of other property at said sale claim to be relieved on the ground that they purchased the same in the expectation that the purchasers of the water-power would utilize the property speedily for manufacturing purposes, and, this having failed, they find themselves without any business, and unable to comply with the terms of their purchase.

The State of West Virginia, the residuary beneficiary of the fund derived from said sale, and also greatly interested in the utilizing of said property in the development of her industrial interests, has, by joint resolution of her legislature adopted January 11, 1873, requested Congress to rescind said sales and resell the property, and bills for that purpose similar in terms to that referred to your committee have heretofore passed both Houses of Congress at different sessions.

Your committee are of opinion that, under the circumstances, the purchasers are entitled to relief, and no title having ever passed to the purchasers, and no damages being claimed by them, and, moreover, it having been rendered quite uncertain, in consequence of the death and insolvency of several of the sureties on the bonds of the purchasers which have occurred since said sales, whether the Government can recover any considerable portion of the purchase-money for said property, your committee are of the opinion that it will be for the interest of the Government to rescind said sales, and they accordingly recommend the passage of the accompanying bill.

January 26, 1875:

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77th CONGRESS,  
2d Session.

SENATE.

REPORT  
No. 556.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. STEVENSON submitted the following

REPORT:

[To accompany bill S. 454.]

*The committee to whom was referred the bill (S. 454) to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, have had the same under consideration and beg leave to report:*

By an act of Congress, approved December 15, 1868, the Secretary of War was directed to make sale, at public auction, of the lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money, after advertising the time, terms, and place of sale in one of the principal newspapers in each of the cities of Washington, New York, and Cincinnati for sixty days prior to the day of sale.

There was exempted from said sale, by the terms of the act, the buildings, with the lots on which they stand, numbered 30, 31, and 32, and also building numbered 25, with enough of the lot on which it stands to give a breadth of ten rods on High street, otherwise known as Washington street, being the same which have heretofore been assigned by the War Department to the Bureau of Refugees, Freedmen and Abandoned Lands for educational purposes, which said last-mentioned lots and buildings the Secretary of War was directed and authorized to convey to Stover College, an institution of learning chartered by the State of West Virginia. The said act further empowered and directed the Secretary of War to convey to the respective purchasers of the property therein directed to be sold upon the payment of the purchase-money.

The proceeds of sale arising from said property were, by the terms of said act, to be applied as follows:

- First. In defraying the expenses of making said sale.
- Second. In refunding to the United States the principal sum of purchase-money paid for said lands, tenements, and water-privileges by the United States, and for the erecting of buildings thereon, amounting by estimate to more than five hundred thousand dollars.
- Third. If any surplus remain, the Secretary of War was directed to deliver the same to such agent as the legislature of West Virginia shall appoint to receive the same: but upon condition that such surplus shall

January 26, 1875:

Senate Reports of  
Committees, 43rd Congress, 2nd  
Session, 1874-75, Vol. 1, Document  
No. 556- Serial No. 1632.

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. 2 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

be received by the State of West Virginia to be set apart, held, invested, and applied as a part of the school-fund of that State, under and by virtue of, and in manner and form as provided in, section first of tenth article of the constitution of West Virginia, and for no other purpose. (United States Statutes at Large, pages 265 and 266.)

From a report dated 7th November, 1870, made by A. B. Dyer, of Ordnance Bureau, who was charged by the Secretary of War with the duty of making said sale, it appears that the property was sold on the 30th November and 1st December, 1869, in strict accordance with the act of 15th December, 1868; that it was sold in parcels, that one hundred and four purchasers executed bonds and notes of security, payable in one and two years. Several purchasers paid entire purchase-money and took deeds for their purchases, while others have failed to comply with the terms of sale.

Copies of this report, advertisement of said sale, topographical map and plat of the property, prepared by J. Howell Brown, approved by the Secretary of War, will be found in Senate Executive Document No. 6, Forty-third Congress, first session, filed with this report and made part hereof.

The proceeds of this sale amounted to \$297,793.50.

It will be perceived from the advertisement of this property by the Chief of Ordnance, that the United States only proposed to sell and sell the right and title of the Government to the water-power on the Potomac and to the water-power on the Shenandoah, and certain described lots adjacent thereto. One F. C. Adams bought the entire water-power on the Potomac and Shenandoah Rivers as held and claimed by the United States, embracing site of old armory-buildings, a manufactory, Byrne's Island, and all that slip of ground and bluff bordering on the Potomac River lying between said river and the streets and as laid down on the map of J. Howell Brown, dated 20th April, 1869, and already referred to.

The Secretary of War, actuated by humane considerations, and in the sequence of a very destructive flood in the Potomac and Shenandoah Rivers, in 1869, acceded to the request of many of the purchasers to postpone suit on the bonds then due, for the purchase-money of the property sold by the United States at Harper's Ferry until all the bonds of the same should mature.

At a later period relief was sought in Congress by some of these purchasers seeking to be released from their purchase by a total surrender of the same to the Government, and a cancelment of their bonds. Several bills looking to such relief were introduced into Congress in the years 1872 and 1873, but all of them failed of their object.

Upon the 20th of July, 1872, the Secretary of War inclosed to the Attorney-General the original bonds of F. C. Adams, and his sureties, to the United States for the sum of \$206,000 for his purchase at said sale, requesting prompt action to be taken for the collection of said bonds. The Attorney-General transmitted said bonds to Hon. George P. Fisher, district attorney of the United States for this District, (on what day is not stated, but probably in August or September, 1872,) with instructions to institute promptly all necessary legal proceedings against F. C. Adams and his sureties for the amount of said bonds and for the enforcement of the vendor's lien contained in the conditions thereof.

Why said bonds were not sent to the district attorney of the United States for West Virginia, instead of to the Hon. G. P. Fisher, United States attorney for this District, does not appear, and why all de-

[Correct date of  
flood-October 1,  
1870].

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SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 3.

title to the property sold to Adams, and the outstanding equities of Baltimore and Ohio Railroad, and all others, could not have been fully and promptly settled in one equity suit for the enforcement of the vendor's lien in United States court in West Virginia, your committee are unable to perceive.

Suit was brought by the district attorney of the United States for this District on 3d of February, 1873, against Francis C. Adams and his sureties, on his three several bonds given to the United States for his said purchase of property at Harper's Ferry. Subsequent to the bringing of this suit in this District, a conference was held, at the Attorney-General's request, in this city, between himself, the district attorney of the United States for West Virginia, N. Goff, and the district attorney for this District, G. P. Fisher, and the counsel for the sureties of F. C. Adams. The latter objected to a decree, but agreed that if the Government of the United States would not proceed to a sale under a decree to enforce the vendor's lien for the entire purchase-money until the determination of a claim made by the Baltimore and Ohio Railroad Company, they would acknowledge service of process and thus expedite the suit. The sureties of Adams were informed that the Government had decided to press for a decree for the enforcement of the lien, and immediately after obtaining it, to institute proceedings to quiet title to the premises against the Baltimore and Ohio Railroad Company, and not to make sale until after the decision of the issue between the Government and the said Baltimore and Ohio Railroad Company, so that the best price could be had for the property. Counsel then agreed to do all in their power to hasten the issue.

It was further agreed between the Attorney-General, the United States district attorney for West Virginia, Mr. N. Goff, and district attorney for this District, G. P. Fisher, that suits in equity should be filed by the United States against Adams and his sureties in the district of West Virginia, for the purpose of enforcing the vendor's lien.

These bills were filed in July, 1873, and a decree had in September or October, 1873, for the sale of the property in each case, the sale to be made by Mr. N. Goff, as trustee, at a time to be fixed by the future order of the court.

Suit was brought by the Baltimore and Ohio Railroad Company, in a State court in West Virginia, to quiet its title to certain property alleged to have been sold by the United States to F. C. Adams, before the institution of the suit by George P. Fisher against Adams and his sureties in this District, which suit your committee are informed by a letter of the Attorney-General to Hon. Henry G. Davis, dated 14th December, 1874, has been determined in favor of said Baltimore and Ohio Railroad. No copy of the record of that suit has been transmitted by the Attorney-General to the committee. What defense, if any, was made to said suit by any of the counsel of the United States does not appear. Your committee are wholly uninformed as to how the judgments of the United States against Adams and his sureties are affected by this suit and recovery of the Baltimore and Ohio Railroad Company in said State court.

It appears that no sale has been attempted under the decree obtained in favor of the United States against F. C. Adams and his sureties in the United States district court for West Virginia.

It does not appear what effort, if any, has been made to collect the money under the suit instituted by the district attorney of this District against F. C. Adams and his sureties brought on 10th February, 1873.

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## 4 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

In January, 1874, after a consultation with the district attorney at the Attorney-General of the United States, the district attorney at West Virginia, by their advice and consent instituted a suit in equity in the United States court at Wheeling, W. Va., in the name of the United States and F. C. Adams and his sureties, against the Baltimore and Ohio Railroad, to remove a cloud from the title of the property sold by the United States to F. C. Adams, which will appear by a letter from the Attorney-General of the United States to H. G. Davis, dated 11th December, 1874, and also by letter of Attorney-General to Hon. M. Carpenter, president *pro tem.* of the United States Senate, dated 2d May, 1874, in reply to a Senate resolution of 21st of January, 1874, for information relative to the sale of Government property at Harper's Ferry, with the accompanying documents, which are asked to be made parts hereof.

Your committee can but express some surprise at the institution of this last suit at Wheeling, W. Va., in the joint names of the United States and F. C. Adams and his sureties against the Baltimore and Ohio Railroad.

Why the suit brought by the Baltimore and Ohio Railroad in the State court in West Virginia, to quiet its title against the United States and others, was not promptly transferred on the application of the United States to the United States court, where all matters in dispute could have been settled, is wholly unexplained. Why the Baltimore and Ohio Railroad Company should have been allowed by the counsel of the United States to obtain a judgment in a State court to quiet its title to certain property sold by the United States and for the purchase-money of which sale the United States had instituted proceedings against F. C. Adams and his sureties, without a transfer of suit to a United States court, is most extraordinary. It is still more wonderful that pending such controversy in the name of the Baltimore and Ohio Railroad Company in a State court, and after judgment, that the United States should join in an independent original suit with F. C. Adams and his sureties in the United States court against the Baltimore and Ohio Railroad Company to quiet their title to the same property.

Your committee have not before them the records of these several suits, and it would be therefore improper to express any opinion in relation to them.

From the official documents and communications of the Attorney-General filed with this report, your committee must express the opinion that there has been great laches somewhere in the collection of the claim.

As far as they are advised and informed, F. C. Adams has shown himself entitled to no equity.

Had suits in equity been promptly instituted in the name of the United States in the United States court against F. C. Adams and his sureties in 1872, and the Baltimore and Ohio Railroad been made party, requiring them to set up any title to the property sold, no reason is perceived why this whole controversy could not have been promptly settled. Instead of such a procedure, several independent suits have been instituted at increased cost and delay, and little progress has been made after years to collect the purchase-money due the United States.

In the mean time the property has been going to decay, at great injury to the people of Harper's Ferry and its vicinity.

Your committee recommend the indefinite postponement of said suits and the prompt enforcement of the purchase-money.

All of which is respectfully recommended.

National Archives, Washington, D. C. RG 121 Public Buildings Service, Harpers Ferry Case No. 154. (ms) (Copy dated 30 September 1873, Washington, D. C., of an Agreement between J.P. Foinsett, Secretary of War and Louis McLane, president of the B.&O. Company dated 5 November 1838) 13 pp.

"UNITED STATES [Seal] OF AMERICA

War Department  
Washington City September 30<sup>th</sup> 1873

Pursuant to the Act of Congress of the 22<sup>nd</sup> February 1849, I H. F. Crosby Chief Clerk of the war Department in the absence of the Secretary of war, do hereby certify that the annexed document and chart have been truly copied from the originals on file in the Office of the Chief of Ordinance of

This department

[Seal of the  
Treasury  
Department  
U. S.]

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written.

[signed] H. F. Crosby  
Chief Clerk

In the absence of the Secretary of War

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Agreement:

The following agreement contains the terms and conditions upon which the Baltimore and Ohio Railroad Company shall be, and they are hereby, permitted [sic.] to construct that part of the main stem of the Baltimore and Ohio Railroad which is proposed to be constructed westward from the present viaduct at Harper's Ferry along and through the property of the United States at that place.

They have laid down two routes for the said main stem which are designated in the drawing and plan annexed hereto as a part hereof and lettered A. and B respectively, the description of which is as follows:-

The route A leaves the Railroad viaduct at or near second pier from the Virginia shore and turns to the right up the Potomac until it acquires a direction parallel or nearly so to the new

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river wall now being erected by the United States on the river side of the northern row of work shops belonging to the musket armory.

The outside of this wall is about forty feet from the river front of said workshop and its top will when finished, be about

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fourteen or fifteen feet above low water in the river the space between the wall and the shops being filled up and graded as a street. The route for the Railroad having reached the United States property at the lower or eastern end of the wall just mentioned passes up the river on the outside of that wall with a view to the construction of an additional wall in the river parallel to the United States wall and about twenty feet therefrom: this additional wall to be built by the company of such a height as may be deemed necessary to guard against danger from high water to be superstructure that may be placed upon the wall: the United States wall being also raised by the company to such a height as may be deemed necessary for the same purpose: the part so raised not extending inwards from the outer face of the wall at its top more than five feet: the space between the two walls to be left open throughout -- for the passage of the water of the river: the road to be so constructed opposite the tilt hammer shop as to leave a clear space of twenty feet between the road and the river front of the shop. Should the construction of the road be found to make the tilt hammer shop

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inconveniently dark, the railroad company shall make such changes in the manner of lighting the building as the Secretary of War may require so as to put it into as good a condition in this respect as it is in at present. The entrance of the water of the river into the space between the walls above mentioned and its exit [sic.] therefrom to be provided for by proper openings in the outer wall. The route after passing the tilt hammer shop ascends the river along the outer bank of the United States canal by a solid embankment and wall: the embankment of the railroad to be supported on the river side by a new wall to be founded on the bed of the river, the said embankment covering the present bank of the canal so as to have the benefit of it: if desired, in diminishing the quantity of earth and other materials to be supplied for the formation of the road bed. When the route reaches the head gates of the canal it crosses the canal upon an oblique line by a bridge with a wooden superstructure of two spans of about one hundred feet each, the pier of the bridge being in a line with the pier of the head gates



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and consisting of an extension of the same eastwardly, and the abutments of the bridge being so far apart as to embrace the entire present width of the canal and also a sufficient space on the southern side of the channel by which the river enters the canal just above the head gates to allow of the passage of the proposed county road under the railroad along the inner margin of the channel and near the level of the water: the elevation of the said road being made sufficient at this point to give it a clear height of at least twelve feet above the county road. The route passes along the two precipitous points of rock immediately above the head gates and subsequently, pursues the Virginia shore of the Potomac towards Elk Branch without interference with the intended location of the county road.

Route B. is identical with route A. to a point west of the tilt hammer shop, and east of the present cross wall where it diverges from the route A. into the river for the purpose of obtaining a suitable curvature to cross the United States canal at or near the said cross wall as represented in the drawing and then

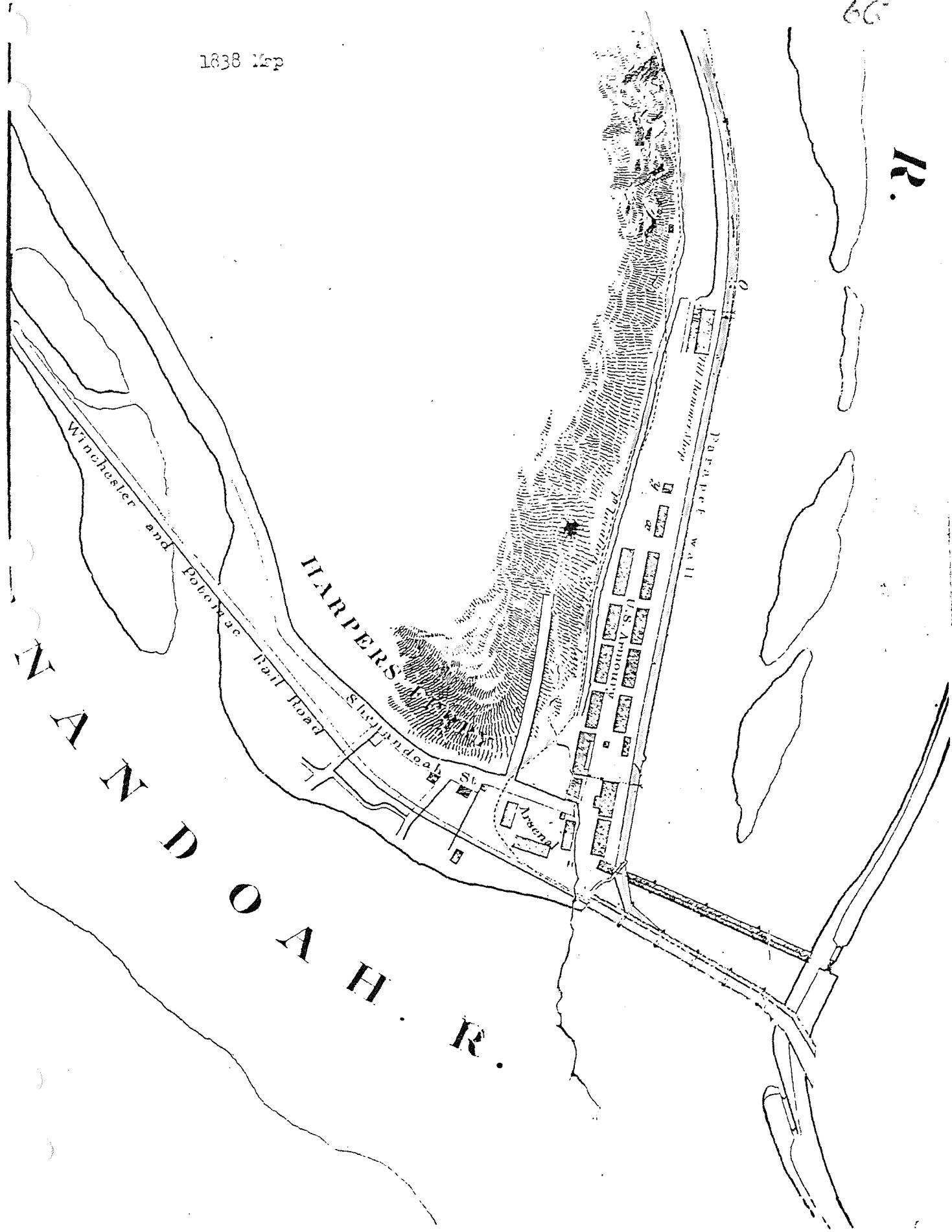
[ 6 ]

returning southwardly crosses the route A. and the said canal at or near the said cross wall to the hillside on the southern margin of the canal: the grade of the road being so elevated as to give a clear height [sic.] at least twelve feet above the present of the water in the canal and over the county road as it shall be located along the inner margin of the canal. The railroad after so crossing the canal and country road pursues the hillside upwards to the head gates and thier [sic.] falls into route A.

The superstructions for the support of the railway upon the parallel walls above described on route A. to consist of wooden tressels [sic.] or pillars of brick stone or iron, as the company may prefer: the posts or pillars to be placed at least fifteen apart from centre to centre lengthwise of the road and to be not more than eighteen inches in diameter: the supports to stand in two parallel lines one upon the Government wall raised as above mentioned and the other upon the parallel wall built by the railroad Company.

The option is given to the said

1838 Map



WINCHESTER AND  
 POTOMAC R.R.

HARPERS FERRY

POTOMAC RIVER

HARPERS WALL

U.S. ARSENAL

GENERAL

ST. F.

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company to take either of the routes above indicated, provided, however, that should the United States pay to the said company the difference between the cost of constructing the route "A", and the route "B" to be ascertained by a careful survey before commencing the construction of the road, then the said company shall take the route "A" and construct their road thereon. And in case the Secretary of War should require it the wall to be built by the said company above the tilt hammer shop shall be solid and sufficiently puddled to prevent breakage from the canal, so as to make it serve not only as the support of the said railroad but as the river wall of the embankment of said canal, the said company in this event having the privilege of using the materials of the present [sic.] wall as far as may be done without endangering the canal.

In the construction of the river wall below or east of the tilt hammer shop by the said company, there shall be left sufficient openings opposite each tail race from the water wheels of the armory

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to facilitate the discharge of the water therefrom and as auxiliary to the vent between the two parallel walls aforesaid.

The water [sic.] power privilege of the United States shall not be injured or obstructed, but a free passage shall be left for the water from the channel or the river near Striders warehouse above the public dam and at all other places and points specified and reserved between such warehouse and the falls immediately below the viaduct.

Should the said company desire to take materials from the ground belonging to the 'United States' they shall be permitted to do so free of expense at such places as may be designated [sic.] by the superintendant [sic.] of the Armory or permitted [sic.] by the Secretary of War.

The road through the United States property shall be constructed at the minimum elevation not exceeding the height [sic.] of the present viaduct as far as the tilt hammer shop, and the parapet wall designated [sic.] on the drawing shall be constructed of good mortar masonry.

The said company shall allow the

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United States to construct and keep up forever a depot with suitable tracks switches and turnabouts to be connected with the said road and the second story of a warehouse proposed to be erected by the United States.

Should the said company be required by the Secretary of War so to do, they shall remove at thier [sic.] own expense two wooden buildings marked 'x' and 'v' on the drawing from thier [sic.] present position to such place as the Secretary of War may direct.

The tressel [sic.] work of the said road shall be terminated west of the tilt hammer shop at the point marked 'g' on the drawings, and the said company shall, if required by the Secretary of War construct, opposite, the waste way, a culvert to facilitate the escape of surplus water and the drainage of the canal.

There shall be left at the cross wall aforesaid a sufficient space for the site of a saw mill in reference to the future erection of which the said company shall construct a culvert suitable for a waste way and tail race for the accommodation of said mill.

In the event of the selection of the

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line 'b' the said company shall fill up the space between that line and the canal wall from the point where the line diverges from the wall to that where it again intersects the wall so as to render the reconstruction or repairs of the wall unnecessary.

The said company shall locate and execute all the parts of thier [sic.] work in such manner as shall cause the least danger or injury to the United States property and any practicable alternation consistent with the proper and judicious location and construction of the said road, that may enhance the value of the property of the United States and that shall be required by the Secretary of War shall be made by the said company the additional expense thereof being paid by the United States.

In locating and constructing the said road particularly the walls, abutments and piers, at and near the present viaduct and the eastern boundary of the property of the United States, the said company shall locate and construct the same so as to produce the least possible diminution [sic.] in the width of the

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river consistant [sic.] with the security of the said walls,

abutments, and piers.

In the construction of those portions of the said road between the points indicated on the drawings at 'K' and 'L' the superintendent [sic.] of the Armory may exercise such supervision and control as may be necessary to prevent the filling up or obstruction of the canal bed of the river, and site for the county road.

In the use of the road authority to construct which along and over the property of the United States is hereby conceded on the terms herein set forth, it is expressly, stipulated that the cars of the said company shall not be left standing on the track in front of the work shops of the Armory so as to obstruct the light and air.

It is further stipulated that should the said company deem it their interest to use wood instead of stone coal as the fuel of thier [sic.] engines and damage should be done thereby to the property of the United States, the said company will become the insurers, and will be answerable and responsible for the same.

In testimony whereof and for the

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Purpose of granting to the said company the privileges aforesaid upon the terms aforesaid. Joel R. Poinsett, Secretary of War of the United States hath hereto set his hand and for the purpose of signifying the assent of the said company to the said terms and binding them to the fullfilment [sic.] thereof Louis McLane the president of the said company hath hereto set his hand and caused the corporate seal of the said company to be affixed hereunto.

Dated this fifth day of November in the year eighteen hundred and thirty-eight.

J. R. Poinsett

Louis McLane

[ SEAL ]

[ BALTIMORE  
AND  
Ohio R.R. ]

Witness to signature of Louis McLane  
Jno H. B. Latrobe

Witness to signature of J. R. Poinsett  
Jno. T. Cochran "

United States of America )  
 ) S. S.  
District of West Virginia )  
 )

I, Jasper G. Moore, Clerk of the District Court of the United States for the District of West Virginia, do certify that the foregoing is a true copy of the record in the case of the United States of America & others against the Baltimore & Ohio Rail Road, Company, lately depending in said Court at Wheeling in said District, Except the Evidence in said cause and the Photographic Map used at the sale of the said Harpers Ferry property.

In testimony whereof I hereto set my hand and the Seal of said District

Court at Wheeling in said District

this 3th day of May A.D. 1876

and in the 100th year of the Independance of  
the United States of America.

Jasper G. Moore, Clerk

D.C. U.S D. W.Va.

National Archives, Washington, D. C., RG 121, Public Buildings Service,  
Harpers Ferry Laminated Material, printed pamphlet, 6"x9", 9 pages  
Opinion of Judge Jackson/n.p., n.d. 71

"D I S T R I C T C O U R T O F T H E U N I T E D S T A T E S  
F O R T H E  
D I S T R I C T O F W E S T V I R G I N I A

O P I N I O N O F T H E C O U R T , N o v . 1 7 , 1 8 7 5 ,

I N T H E C A S E O F

THE UNITED STATES OF AMERICA AND OTHER )  
vs. ) In Chancery.  
THE BALTIMORE & OHIO RAILROAD COMPANY, )

The Bill filed in this cause seeks --

First -- To cancel an agreement in writing, entered into November 5th, 1838, between Joel R Poinsett, then Secretary of War of the United States, and Louis McLane, then President of the Baltimore & Ohio Railroad Company, under which agreement the Railroad Company claims title to so much of a tract of land known as the 'Harper's Ferry property', as is used and occupied for the purposes of its road.

Secondly -- To remove a cloud upon the title of the Government to the property, growing out of a claim of title derived from one Patrick Byrne to that portion of it occupied by the defendant.

It is conceded that the United States derived title to the Harper's Ferry tract through sundry conveyances, made in 1796 and afterwards, 'to George Washington, President of the United States, and his successors in office;' that by virtue of the conveyances so made, the Government of the United States became seized and possessed of this tract of land, and continued to hold possession of it (except that portion occupied by the Railroad Company) from 1796 until the 30th of November, 1869, when it was sold by the Government to Francis C. Adams.

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That shortly after the Government acquired the property, she established upon it a National armory, which was used for the manufacture of arms and munitions of war until the armory was destroyed, in the year 1861.

This being the condition of the property, in the year 1833, the Railroad Company applied, through its President, Louis McLane, to the Government of the United States for permission to occupy a portion of the tract for a right of way across it for railroad purposes, which resulted in the agreement of November 5th, 1833, between Joel R. Poinsett, then Secretary of War, on behalf of the Government of the United States, and Louis McLane, on behalf of the Railroad Company.

By the terms of that agreement, 'authority was conceded by the Government to the Railroad Company to construct their railroad along and over the property of the United States.' It is claimed by the defendant, the Railroad Company, that under and by virtue of this agreement, it has an easement in the property occupied by it so long as it is used for railroad purposes.

But if it should be mistaken in this position, the Company claims title to the land in controversy under a deed from Patrick Byrne, who claimed it under a grant from the State of Maryland, whose jurisdiction extended to the south bank of the Potomac river.

With reference to the second position of the defendant, which I propose to consider first, it is alleged that the railroad tracks, and in fact all the ground used for railroad purposes, is a 'fill', built by the Company in the river, and upon what is claimed to be its bed at the date of the agreement between the Government and the Railroad Company, within the territory of Maryland, and consequently covered by the Byrne title. However this fact may be, it is not deemed to be a matter of importance in this case, as the defendant first took possession of the property in controversy claiming it under the agreement of November 5th, 1833; and so far as the question of possession arises between the United States and the defendant, it is a matter of no moment, whether the United States had a good title, or whether the Secretary of War had authority to execute the agreement. By the express terms of the agreement, the defendant was to build a sustaining wall parallel to the then existing wall built by the Government, between it and the river in some places, and within the river at others, for the purpose of making the 'fill' upon which the railroad track was to be built. Thus it appears that the defendant, under an express

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provision in this agreement, was to build a wall and make the necessary fill, deriving its authority for so doing from the Government alone. If stronger evidence was required to establish



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the intention and understanding of the parties at the time the agreement was entered into, none could be brought. At that time no one questioned the right of the Government to the property, and being a riparian owner, she was entitled to any accretions, whether the result of the action of the water, or the result of labor and skill applied and used to confine the river to what appeared to be its natural channel, so far as it would not interrupt the flow of water or obstruct navigation. The Government had a clear right to authorize, as she did, the erection of the wall, not only for the purposes of a railroad bed, but to furnish a bank for the river so as to prevent its encroaching further upon the main land.

This view of the case explains clearly the conduct of the parties at the time, and tends to establish the fact, that the river at the date of the agreement had by its wash encroached on the main land, some distance beyond its original limits. But that fact did not alter the boundary line between the States, and hence, both parties must have regarded the property as within the jurisdiction of Virginia when the agreement was made; otherwise, it would not have been entered into with its existing terms and conditions.

But suppose that at the time the agreement was entered into, the title of Patrick Byrne covered the land in controversy? Would that fact alter the legal relations between the parties in this case? I think not.

The defendant did not acquire the title of Byrne until September, 1841, long after the agreement made with the United States under which they took possession of the disputed property. When the deed of Byrne was executed, it passed nothing, because he was out of possession of the property intended to be conveyed, and the possession of it was had under a claim of title adverse to him.

If, however, it passed any title to the defendant, it took it in subordination to the title of the Government. At the time of the execution of this deed, the defendant was a tenant under the United States, and was bound by every obligation, both legal and moral, to protect the title of its landlord until it should restore the possession of the property to it. True, it might disclaim the tenancy by actual notice, or by such notorious acts as would be equivalent to such notice. It is not however pretended that any such disclaimer was ever made in the case. On the contrary, the defendant, in its answer, claims right to the pos-

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session and use of the property under the agreement made with the Secretary of War, November 5th, 1833. Holding this relation

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to the United States, it cannot shelter itself behind the Byrne or any outstanding title, but must stand or fall with the title it acquired from the United States.

This brings me to consider the first ground of defence, set up by the defendant in answer to the bill of the complainants, to-wit: The validity of its title under the United States. It is not questioned, and in fact it cannot be denied, that if the claim of the United States covered the land in controversy, her title is good. That being conceded, the next question that presents itself for consideration is, has the defendant an inchoate, or perfect title from the United States?

The consideration of this question involves the authority of the Secretary of War to make the agreement he did of November 5th, 1836, which the complainants in this action very gravely question, and insist that the action of the Secretary of War is without color of authority, and consequently is absolutely void or voidable. Congress, by an Act passed and approved by the President at an early date, established a National armory upon this property at Harper's Ferry, by which it became dedicated to military purposes. From the time of its dedication to the date of the agreement between the Secretary of War and the Railroad company, it was alone used as a site for military purposes. During that period, arms and munitions of war were there manufactured, under the direction of the War Department. This property, as well as all military property belonging to the United States, is and always has been under the general management of the Secretary of War. With the knowledge of this fact Congress, by an Act passed March 3d, 1819, invested the Secretary of War with authority to make sale of 'such military sites belonging to the United States as may have been found or become useless for military purposes.'

As far back as the 6th day of May, 1836, construction was given to this Act by Mr. D. F. Butler, then Attorney General of the United States, in which opinion he held that the Secretary of War was authorized to make sale of any 'military sites' belonging to the Government at the date of the Act, which were no longer needed for military purposes. Atto Genl's Opinions, vol. 3d, page 106.

The Government seems to have adopted this construction, and its correctness does not appear to have been since questioned. In the case of the United States vs. Chicago, 7th Howard, 103, the Supreme Court of the United States refer to this Act, and concede the power of the

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Secretary of War to sell what was then known as Fort Dearborn, or any portion of that property, under it.

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It will be seen that the power claimed for the Secretary of War under this Act is sustained not only by precedent in the Department, but by judicial authority.

But it is claimed, that the Act applies only to military sites, such as public forts and dock-yards, and not to a property used for the purpose of manufacturing arms and munitions of war. It must be borne in mind however, that Congress, in establishing the public armory at Harper's Ferry, fixed its location and dedicated it to military purposes. That it was a military site used for military purposes, seems to me not to admit of a doubt. But precedent is not wanting for this position. This view of the question is sustained by Mr. Crittenden, when Attorney General of the United States, in discussing the power of the Secretary of War under this statute, in regard to the property now in question. Atto. General's Opinions, vol. 5, page 550. Under this opinion of the Attorney General, the Secretary of War laid out a large portion of the public property at Harper's Ferry, not needed for military purposes, into town lots, streets and alleys, and the lots were sold to parties who took possession under the title thus derived from the Government, and they are so held to this day. So far as it now appears, no question has been raised as to the power he exercised upon that occasion. The Government having in all its branches acquiesced in this action of the War Department, she should not be permitted to change her position with reference to this property, but her rights should be determined according to the construction heretofore given the Act, which seems to me not only to be warranted by its terms, but does no violence to the language employed to express its object.

I have thus far examined the Act of 1819, and the powers of the Secretary of War under it. The defendant, however, does not rely alone upon it for its defense, but seeks to protect itself under the Act of 1826. This Act authorizes the President to 'sell forts, arsenals, dock-yards, light-houses, or any property held by the United States for like purposes,' when no longer needed for the purposes for which they were used. Under this statute the power to sell is expressly conferred upon the President. It is claimed however, that this agreement was the act of the Secretary of War, and not of the President, and therefore not within the words of the statute; and as a consequence, is not binding on the United States. It is now well settled, that 'the President speaks and acts through the heads of the several

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departments in relation to subjects which appe-~~document damaged~~ made their respective duties.' This property belonged, as I have

before said, to the War Department, and was under the immediate control of the Secretary of War. He was in the making of this agreement but the agent of the President, and I feel justified in presuming that it was done under his direction and with his assent, and is therefore, in contemplation of law, the act of the President. Wilcox vs. Jackson, 13th Peters.

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I, therefore, conclude that by both the Act of 1819 and 1828, the Secretary of War was authorized to sell any property belonging to his Department not longer needed by the Government. It is suggested, however, that although the power be conceded, he did not exercise the right conferred by the statute, but instead of selling the property, he 'granted permission to the Railroad Company to run their road through the lands belonging to the United States.' It is sufficient to say in reply to this position, that the Secretary of War is by law invested with the power to look after and take care of all public property belonging to his department, and so to use and manage it as will be best for the public interests. Whilst he could not sell, or by any act of his, part with the legal title to any property belonging to the United States, except under authority derived from Congress, yet, as incident to the power of his office, and in the exercise of a discretion with which all heads of departments are invested, he would have the right to lease property not longer needed for public purposes, not only for the preservation of it, but if practicable, to render it productive of revenue to the Government, until it could be disposed of in pursuance of law. Being invested with authority to dispose of it by grant in fee, all minor powers over the property are necessarily implied.

This conclusion brings me to notice briefly the rights acquired by the defendant under this agreement. Under the permission granted in this agreement, the Railroad Company entered upon and took possession of the disputed property, and constructed their line of railway across it. The license granted was for an indefinite period; no time being fixed when the permission to use the lands for the purpose specified in the agreement was to terminate. Up to this time it has never been revoked, no has any notice been given by the Government of its intention, or even its desire to revoke it until the institution of this suit.

The defendant accepted this license upon the terms indicated. It built and constructed its railroad under this authority. It was the extension of a great national highway, and, as we now know, second

to none in magnitude and importance in this or any other country. It must have been apparent to both the contracting parties that an enterprise at that time so stupendous in its

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character as the construction of a railroad from Baltimore to the Ohio river, was to be permanent and lasting. A right thus acquired, under a written license not specially restricted, is commensurate with the thing of which the license is an accessory.

That it was so understood by the Secretary of War is shown by the fact that he expressly provided in his agreement with the defendant that, 'the said Company shall allow the United States to construct and keep up forever a depot, with suitable tracks, switches, and turnabouts, to be connected with said road.' Here there is a reservation of a right forever upon the part of the agent of the Government, clearly indicating that he understood that the defendant was to use and enjoy the license thus granted as long as it should see proper to do so. The inference is clear to my mind, that it was the intention of the Secretary of War to dedicate the property granted under this license to this specific use, which was a public one. It was for a great national highway. Having so donated and declared the purposes and object of the donation, it became dedicated to the specific purposes indicated. By this act upon the part of the United States, through their agent, the defendant, as well as the public through it, has acquired an easement in the property, so long as it continues to use it for the purposes granted; which is said 'to be a liberty, privilege or advantage which one may have in the lands of another, without profit.' The owner of the fee, whoever he may be, cannot revoke the license granted. The fee will remain in the original owner, or his grantees, but the right of the defendant to the use is paramount to the title of the owner of the fee, and does not require the fee for its protection. *M.E. Church vs. Hoboken*, 33 N.J., *L. Wilson vs. Saxon*, 27 Iowa 15.

And here the doctrine of equitable estoppel may be justly applied. Under the permission given, the defendant built its railroad over the land of the complainants, with their knowledge and assent, which depends for its value on remaining in its present position. Acting in good faith, it was influenced to make large expenditures both of time and money in its construction.

The plaintiffs were influenced in granting the license by the benefits to be derived from the construction of the road in furnishing them with better facilities of transportation at reduced rates. It was simply the advantage of a railroad for transportation over the old wagon roads;

which in the light of subsequent events, proved to be of incalculable benefit to the property. The benefits thus derived, whilst they may not amount to a valuable consideration,

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were the inducements that operated upon the complainants to grant the license. It was a power coupled with an interest, which was both necessary to the possession and enjoyment of the rights acquired under the permission, and is not revocable as long as the interest exists. Were it otherwise a revocation of the power would follow, and the defendants would be constrained to remove its railroad at a great loss. Such a result would work gross injustice to the defendant, and would allow the complainants to take advantage of their own wrong.

It is here that equity interposes her power to astop the complainant from disturbing the defendant in the rights acquired by it under the agreement; otherwise it would have no remedy. It is now the settled doctrine that 'equity will execute every agreement for the breach of which damages may be recovered, when an action for damages would be an inadequate remedy.' In this case no adequate compensation could be made the defendant for the damages it would sustain by the revocation of its license and the loss of rights acquired under it. The complainant having without objection permitted the defendant to construct over their lands a public railroad, 'cannot, after the road is completed, or large expenditures have been made thereon, upon the faith of their apparent acquiescence, reclaim the land or enjoin its use by the Railroad Company.' *Goodin vs. Cincinnati & Whitewater Canal Company*, 18 Ohio, St. 169; *Cumberland Valley Railroad Company vs. McLanahan*, 59 Penn. 24, 31. And this doctrine is reaffirmed in 21 Ohio 553, in which case the learned Court declare that 'it is the dictate of natural justice that he who having a right or interest, by his conduct influences another to act on the faith of its non-existence, or that it will not be asserted, shall not be allowed afterwards to maintain it to his prejudice. Out of this just principle has grown the equitable doctrine of estoppel in pais, so well stated and strongly approved by Fonblanque in his *Treatise on Equity*, vol. 1, ch. 3, sec. 4; by Chancellor Kent in *Wendell vs. Van Rensselaer*, 1 Johns, Ch. 344; by Lord Maclesfield in the leading case of *Savage vs. Foster*, 9 Modern R. 35.'

In the case under consideration, no one can question the fact that the defendant was influenced in the course it pursued by the conduct of the Government through its officer, the Secretary of War. The Company entered upon the premises under its agreement with the Government,

and remained in the peaceable possession and the quiet enjoyment of them for a period of upwards of thirty years. During all this time not the slightest intimation was ever given to it of any claim whatever upon the part of the Government to the disputed premises. I therefore conclude that, upon every principle, both legal and equitable, the complainants cannot

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and ought not to be permitted, at this late day, to disturb the defendant in the possession of the premises under the agreement of 1838.

Nor do I think a right of compensation exists in this case. No actual consideration is expressed in the agreement, and the omission to do so implies that both parties understood that none was demanded.

It is manifest that the Secretary of War required no consideration, for the reason that he looked to the additional facilities of transportation the construction of the railroad would furnish, as well as to the enhanced value of the residue of the property consequent upon its construction.

It seems to me, therefore, that every consideration of justice between the parties requires me to treat and hold the license in this case as an executed contract giving an absolute right. I am therefore of the opinion that, upon any view of the case presented by the pleadings, the bill should be dismissed for the reasons assigned.

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"STATEMENT OF FACTS  
IN THE  
HARPER'S FERRY CASE

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THE GOVERNMENT

vs.

THE BALTIMORE AND OHIO RAILROAD.

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When the line for the Baltimore and Ohio Railroad, or rather that portion of it in the vicinity of Harper's Ferry, was originally surveyed in 1822-'33, it was at first decided by the engineers that the road, after leaving the Maryland shore at a point where the abutment of the present bridge stands, should run diagonally up the river towards the Virginia shore, cutting through a part of what is called Byrnes' Island, and striking a point at the extreme north, or upper end of the Government's property. The chief reason assigned for this was that it would save the heavy expense of running over the Government property. Several years after this one Patrick Byrnes, an employee in the Government Armory, took out a land-patent in Maryland, and pretended to locate it on a portion of the Island now bearing his name, notwithstanding the Government had held possession of it more than forty years, and two houses on it were occupied by mechanics in its employ. The right set up by Byrnes, under his so-called patent, was sold to the Railroad Company for a trifle. At least so it is claimed by the Company.

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The line I have described above was not taken; and for the reason that to overcome the heavy freshets at certain seasons of the year it would be necessary to build a very high and formidable wall or causeway, not less than forty feet high and as many broad. Most of this would have to be of solid masonry, the cost of which would be very heavy. Other obstacles, not at first contemplated, began to develop themselves, among them the fact that a wall built in this manner would seriously interfere with the current of the stream. In short, it was absolutely necessary to abandon this line and look for a more feasible and less expensive one.

It was now decided to run the road directly across the river, as at present, on a bridge with stone abutments and arches, and obtain from Congress, if possible, authority



granting the right of way over the Government property on the Virginia side. The Government property here runs nearly north and south for about one and a half miles, and included all the islands in the river, as granted by an act of the Maryland Legislature. 81

As the bridge struck the Virginia shore in the very centre of the town, at the south end of the Government property, the Railroad Company had to elect whether it would run over it on the river front, which was the most valuable part of it, or take the line under and through the bluff on the west side. It elected to do the former for the reason that if it selected the upper, or west line, it would have to cut more than a mile through hard bluerock, and also widen and regrade the county road. To do this would have cost more than a million of dollars. Railroads were not popular institutions with the people at that time, nor was the Congress of that day in a humor to pass a bill giving the Company authority to run its line over and occupy so much of the Government's most valuable property. In short, I am informed that Congress flatly refused, holding that in addition to the great value of the ground the road would necessarily occupy, the Armory buildings would be in con-

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tinual danger of destruction from the sparks of the locomotives, which at that time used wood for fuel.

It now looked as if the Company would have to fall back on the line first selected, with all its cost. The Company, however, was not at a loss for expedients, even at that day; and very soon saw that, with the exercise of a little strategy in the right direction, they might succeed in gaining their point at a cheaper rate.

The Company went on building its road, leaving the question of the right of way over the Government's property at Harper's Ferry at rest for nearly two years. In 1836, Joel R. Poinsett was Secretary of War, and Louis McLane, president of the Baltimore and Ohio Railroad. In this year an agreement was entered into between these parties, by which the railroad was permitted to run a single track along the front and over the most valuable portion of the Government's property, thus saving to the Company an outlay of, at least, a million and a quarter of dollars.

Mr. Poinsett, as Secretary of War, could give the Company no legal, vested rights in the property. In short, his permission placed the Company there on sufferance. Any of his successors had the same right to cancel the permission, and order the Company to remove its tracks. It was charged at the time, but I know not with what truth, that Mr. Poinsett was personally interested in the road. The agreement stipulated

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that a width of not more than 30 feet should be set apart for the road; that an outer wall should be built, leaving a sufficient space between that and the Government wall for a free water-course, and that nothing should be done to injure the property. The Baltimore and Ohio Railroad Company, however, is famous over the country for its disregard of private rights, as well as for its encroachments on the property of others. Instead of thirty feet the Company has encroached from time to time until in some places it has reached a width of sixty feet. Indeed the Government seemed to be powerless to stop its encroach-

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ments. It very recently laid a double-track from one end to the other of the property, removed walls, and has occupied a large space of ground for workshops and timber-yards. It put up a watering station on the property on the Shenandoah; took away and used valuable property, and all without authority of law.

Things remained in this condition until 1866, when the Company applied to the then Secretary of War (Edwin M. Stanton) for authority to change its track from the river front to the west or bluff side of the Government property. The object of this was to straighten their line, and avoid the very sharp curve at the west end of the bridge. Also, to avoid crossing the Government's canal, which it had already seriously damaged by not building such a bridge as was stipulated for in the original agreement. The War Department granted the permission, stipulating that the county road should be regraded and widened, and that all damage done to property along the line should be compensated for. The great expense of cutting through solid rock for nearly if not quite a mile, as well as the fear of paying for damages to private property, deterred the Company from carrying out this design. Instead of accepting the authority granted by Mr. Stanton to adopt a new line it began strengthening and giving a permanent appearance to its old one.

To show how utterly regardless the Railroad Company was of the value of the water-power, it did, at the end of the war, put down a wooden trestle work directly in the centre of the canal. This, of course, checked the natural flow of the water and caused a heavy bank of sand to make on one side. This trestle work also created a strong backwater, which, pressing with great force against the outer wall of the canal, caused it to give way to the very serious damage of the whole property. Not content with this, the Company erected stone abutments on each side of the canal, and extending inward on one side nearly sixty

feet beyond the limits stipulated for in the original agreement. This, causing the water to turn at an acute angle, would have very soon permanently damaged the whole property. 83

The attention of the Government being called to this audacious attempt to destroy the water-power, Colonel Simpson, of the engineer corps, was sent up to make an examination and report. (See his report.) His report was a severe censure of the Railroad Company, whose encroachments he illustrated by a drawing of the work and the canal. He showed that the Company had proceeded with a reckless disregard of the value of the water-power, and with a full knowledge of the serious injury they were doing to the property. He recommended that the Company be held responsible for the damage it had done, and at once be made to remove the impediments.

The Company's officers got over this matter by offering an apology for the injury done, the suggestion that it was their intention to purchase the property when it was sold, and that the railroad had no use for water power. The devilishness of this acknowledgment is apparent on its face. They would, according to that confession, make it as near valueless as possible for the purpose of getting possession of it at a nominal price. It is impossible to conceive anything more disgraceful, not to say dishonorable, on the part of a great railroad corporation. But the Government took no action on Colonel Simpson's report, and the matter again rested for a time.

It was very clear to those who had carefully watched the conduct of this great Railroad Company that the object of its president, Mr. John W. Garrett, was to damage the property all he could, to depreciate its value to any one needing it for manufacturing purposes, and to get possession of it himself, as I have said before.

Now let the reader mark how clearly the sequel develops the motive. Congress, during the session of 1868-69,

passed an act authorizing the Secretary of War to dispose of the Government property at Harper's Ferry, at public sale. The sale was to be absolute and unreserved. The proceeds, over and above a certain amount, were to go to the State of West Virginia, for educational purposes.

#### The Sale.

As Congress did not know the Baltimore and Ohio Railroad on the property, of course the Secretary of War could not recognize its claim to any right there. The War Department

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knew very well that as soon as the property changed hands and became private property the question as to the value of that portion of it used by the Railroad Company became vested in the purchaser -- that it was a part of his purchase. Hence, in advertising the property for sale, the officers were very particular in describing the boundaries, thus:

'The entire water-power of the Potomac River, as held by the United States, embracing site of old armory buildings, or musket factory, Byrne's Island, (in the centre of the river,) and all that strip of land and bluff bordering on the Potomac River, and lying between said river and the streets and lots in said town of Harper's Ferry, as laid down on the map of 1869.'

The railroad is not so much as mentioned. About two weeks before the sale took place several of the officers of the railroad made a thorough examination of the property on both rivers. About the same time reports began to circulate that the Government could not give a good and valid title to the property. Similar reports got into two or three country papers. These reports had a very damaging effect in deterring persons disposed to purchase the property. In nearly every instance these damaging reports were set afloat by persons connected with the Railroad Company. You could not mistake the object for which these reports were put in circulation.

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The sale took place on the 30th of November, 1869, and was under the direction of John P. Keller, chief clerk of the Ordnance Office, War Department. The Baltimore and Ohio Railroad was represented by Mr. John L. Wilson, its master of transportation, who, with Mr. Randolph, its chief engineer, had been two days at the Ferry previous to the sale.

It is enough for me to say here that I bid on the property with the opinion of an ex-Attorney General before me, or rather to guide me, and with a full understanding that the road had no legal rights there, and must pay for whatever it occupied as soon as the property passed into private hands. The Railroad Company, too, was well aware of its own status on the property. The best proof of this may be found in the fact that it bid \$175,000 for property its agent, Mr. John L. Wilson, had described only the day before as not worth more than thirty or forty thousand. In addition to this, I am informed on very good authority that the Company took legal advice on the subject of their agreement with Secretary of War Poinsett, and were told that it would be void as soon as

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the property changed hands, unless the Government could be got to make a reservation. It is clear, therefore, that we both bid understandingly.

I have been thus particular in regard to the above point because it has been claimed by certain of the Railroad Company's officers that an unfair advantage was taken of them; that they were not properly informed as to the view the Government took of their position on the property. This is certainly a very novel claim for a great and powerful Company to set up -- a Company that adopts the highwayman's methods of taking whatever it wants, and setting the owner at defiance; and is also famous for having blackmailed the traveling community for more than thirty years.

Having been defeated at the sale, and the property having passed into private hands the Railroad Company began a system of annoyance which can be expressed only in the

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word 'devilish'. Let me turn first to the property on the Shenandoah, known as the 'Rifle Works,' and state what it was. The purchasers at once took measures, in connection with some wealthy paper manufacturers in New York, to organize a company for the purpose of establishing an extensive paper mill on that property. The water power there was of the finest kind, and peculiarly adapted for that purpose. As if to defeat this the Railroad Company, without any authority whatever, put up a watering station, with its engine and attendant smoke, immediately on the property. I wrote to the President of the road remonstrating against this, and twice called Mr. John L. Wilson's attention to it personally. He as often promised to have it removed; in other words, to abate the nuisance. That was all he did. Two years after the extraordinary flood at the Ferry washed it away.

The track running over these rifle-works, on the Shenandoah, belonged to what was known before the war as the 'Winchester Potomac Railroad.' This Company, as long ago as 1837, obtained from Congress authority to run over the property under certain conditions fixed by a board of Government engineers. These were that a certain grade should be maintained; that culverts leading to the river bank should be kept open, and a roadway to the river should be preserved and also kept open. A profile was made embodying these conditions, was submitted to Congress, and is referred to in the act authorizing the Company to run over the property. These engineers clearly foresaw what would be the damage from freshets if any deviation was made from the conditions fixed by them.

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It is proper to say here that so long as this road was in the hands of and worked by the 'Winchester and Potomac Company' all those conditions were strictly complied with. When, however, this road became consolidated with and under the management of the Baltimore and Ohio Company all these conditions were violated, and the act of Congress treated with contempt.

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More especially was this so after the property passed into private hands. The railroad not only changed the course of its track to accommodate itself, but it raised the grade of its track sixteen inches, filled up the culverts, and closed the roadway leading to the river bank. When the Company's attention was called to the danger of this it treated the matter with irritating indifference. In truth the property, from the Railroad's action, was transferred into a dam with a large inlet but no outlet for the water. The result was just what had been predicted by competent engineers. When the great flood in the fall of 1861 came, the water rushed in, filled up the body, forced out the walls, and completely destroyed the whole property. Not content with this the Railroad Company, to the end of repairing its own damages, went upon the property, took what material it wanted -- stone, sand and gravel -- and to this day has not paid a dollar for it.

Now let us turn to the property on the Potomac -- the Armory property -- about which the suit is now pending. The Water-power Company, with George H. Plant, of Washington, for president, was organized for the purpose of developing this property. I have no apology to offer for this company. Its fault was that it allowed Mr. John W. Garrett to frighten it out of its rights. It did, however, begin improving the property and expended considerable sums of money. It had an entire new lock built at the dam, new head-gates put in, and the wasteways repaired. The next work in order was repairing the canal, which, as I have said before, had been seriously damaged by obstructions placed in it by the Railroad Company. A formal but courteous notice was served on Mr. Garrett, president of the road requesting him to remove those obstructions so as to enable us to pursue our work. Nearly six months passed and yet no notice whatever was taken of this respectful request, and it was only when I threatened to resort to forcible means, and, if necessary, to enable us to go on with

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the work, to take up his track, that he was made to take some action in the matter. You would very naturally infer that he sent up a force to remove the obstructions and do what was right in the matter. He did nothing of the kind. But he did send up

a gang of armed roughs to take possession of and guard the property night and day. And while these roughs were thus employed, he applied to the court and got an injunction praying that certain gentlemen of the Water-power Company be restrained from interfering with the Railroad Company's property.

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The Water Power Company filed a cross-injunction. This brought up the question of title, and also developed the Railroad Company's policy. It boldly assailed and threw a cloud over the Government's title to the property. It set up, first, that a large portion of the property over which its track ran was within the boundaries of Maryland, not Virginia, as claimed by the Government. Second. That it (the Railroad Company) had a good and valid title to the property, or rather portions of the property, under and by right of the Byrnes patent. Third. That the agreement between Joel R. Poinsett, Secretary of War, and Louis McLane, President of the Company, was a pre-eminent right of way.

Surveys of the property were made at the request of the Railroad Company, and a vast amount of testimony in the way of depositions taken on both sides. It very soon became evident that the Railroad Company was seeking to gain through delay what it had failed to obtain by straightforward and prompt action. In the taking of these depositions even perjury itself was resorted to by the Railroad Company, as will be seen by the following affidavit:

A TRUE COPY.

'Affidavit of J. P. Keller, Chief Clerk of the Ordnance Department, Washington, D. C.

WASHINGTON, D. C., November 10th, 1870.

'Having seen the following testimony and declarations made by Ansel

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B. Wood, taken and made before a commissioner appointed to take depositions, in a suit pending between the Baltimore and Ohio Railroad and the Harper's Ferry Water Power and Manufacturing Company, in the city of Baltimore, Maryland, before Commissioner Dulaney, to wit:

'Ansel B. Wood, being first duly sworn, deposes and saith to questions propounded by plaintiff's counsel, as follows:

'1st. What is your name, age, residence, and occupation?

'Answer. Ansel B. Wood; 57 years; Sandy Hook Washington county, Maryland; agent for the Baltimore and Ohio Railroad Company, at Harper's Ferry.

'2d. Were you present at the sale of the Government works at Harper's Ferry? State what declarations were made by the Government agent, at the time of the sale, relating to the Baltimore and Ohio railroad? /Objected to by defendant's counsel./

'Answer. I was present; my recollections are that the agent of the Government, or whoever he was, or the man in charge of the sale, before the sale commenced, he read from a paper in his hand the conditions of the sale of the musket factory. As near as I can recollect the words, they were that the musket factory would be sold as it then was, without any guarantee of title but such as the Government possessed, which, from all examination, they believed to be genuine, with no reserve, except that of a street running on the south side, and parallel with the Government canal, named "Potomac Street," and the rights and privileges possessed or held by the Baltimore and Ohio railroad.'

Mr. Keller's Answer.

'I here declare and make oath that I am the officer or person that conducted the sale on behalf of the Government, at the time referred to, and so far as the testimony of Ansel B. Wood refers to the rights and privileges possessed or held by the Baltimore and Ohio railroad, or any reservation of the same being announced by me, it is untrue. I hereby declare and make oath that no announcement was made by me of any reservation of rights or privileges held by the Baltimore and Ohio railroad.'

('Signed)

J. P. KELLER,  
Chief Clerk, Ordnance Office.

'Sworn and subscribed before me, this tenth day of November, 1870.

SEAL.

W. CALLAN, Notary Public.

Ansel B. Wood was not the only ready witness the great Baltimore and Ohio Railroad Company had during this controversy. The court, as was anticipated, made the injunction perpetual. Of course there was nothing left for the

Water Power Company but to stop work and fall back on the Government, and ask that it make its title good; in other words, defend itself against the Railroad Company. The Government filed its bill of ejectment, and now, after a delay of nearly two years, the case is argued on its merits at Wheeling, West Virginia, before United States District Judge Jackson. The judge delivered his



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opinion November 17, 1875. After disposing of the Byrnes patent, and the claim that a portion of the property was within the boundaries of Maryland, adversely, he takes up the Poinsett and Melane agreement.

'In the case under consideration,' says the learned judge, 'no one can question the fact that the defendant,' (the Government) 'was influenced in the course it pursued by the conduct of the Government through its officer, the Secretary of War. The Company entered upon the premises under its agreement with the Government, and remained in the peaceable possession and quiet enjoyment of them for a period of upwards of thirty years. During all this time not the slightest intimation was ever given to it of any claim whatever upon the part of the Government to the disputed premises. I therefore conclude that, upon every principle, both legal and equitable, the complainants cannot and ought not to be permitted at this late day to disturb the defendant in the possession of the premises under the agreement of 1838.

'Nor do I think a right of compensation exists in this case. No actual consideration is expressed in the agreement, and the omission to do so implies that both parties understood that none was demanded.' This is enough for my purpose. The Government was simply kicked out of Judge Jackson's court. As a piece of special pleading, coming from an advocate in the interests of the Railroad Company, nothing could have been more artistically done. Indeed, it may be doubted whether the Company's attorneys could have made a more satisfactory performance for their client.

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I use the word performance understandingly. If there be any force at all in such reasoning, the learned judge would simply clothe the Secretary of War with the powers of a real estate agent. And here let me add that a somewhat novel, if not entirely new feature of this performance, was the fact that the senior counsel for the Railroad Company was at one time on the other side, while the Government had for assistant counsel at Wheeling one of the railroad's prominent attorneys. That may be all right as between railroad companies and lawyers, but it was to me, at least, a surprise I had not bargained for.

The large number of letters I have received from manufacturers in different parts of the country all anxious to avail themselves of the valuable water power at Harper's Ferry, is the best proof of what might have been done with this great property had not the Baltimore and Ohio Railroad Company cast a cloud upon its title. Not one of these persons could be induced to touch the property while the title was in

F. C. ADAMS."

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Washington, D.C., National Archives RG 121 Public Buildings  
Service Harpers Ferry Case No. 155 (ms), (Letter, Webster  
Elmes, Chief Clerk for the Solicitor of the Treasury,  
Department of Justice, Washington, D.C. to George F. Talbot,  
Solicitor of the Treasury, May 29, 1877) 9 pp.

"DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
WASHINGTON, D. C., May 29th, 1877.

Sir:

In pursuance of your instructions I visited Harpers  
Ferry, West Virginia, on the 12th instant, for the purpose of  
making an examination of the old armory property and water  
power at that place, the title to which by reason of certain  
judicial proceedings in the District Court for West Virginia  
has been acquired by the United States through the foreclosure  
of a lien for the purchase money of the sale of this same  
property in 1839, made by the United States to F. C. Adams  
and others.

The property as acquired and now by law under charge  
of this office, consists 1st of the water power entire of the  
Potomac River embracing this site of the old armory

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buildings or musket factory. Byrnes and the adjacent islands,  
together with the strip of land and bluff bordering the  
Potomac River on the West Virginia side of the River lying  
between the river and the streets and lots as laid down on  
the map of 1839; 2d The water power entire of the Shenandoah  
River embracing the site of the rifle factory and the  
appurtenances.

By authority of an act of Congress of December 15,  
1868, this property together with two hundred and forty-five  
additional lots were offered at sale by public auction, on the  
30th of November and the 1st of December 1869. At such sale  
the purchasers had the option to pay cash or to execute their  
notes or bonds for the purchase money at one and two years,  
reserving therein the vendors lien of the United States. One  
hundred and four of these purchasers

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representing one hundred and eighty-five lots, availed themselves of the benefit of the deferred payments, and accordingly executed their obligations with sureties.

Among these purchases on deferred payments, were the two pieces of property before mentioned embracing the valuable water power of the Potomac and Shenandoah Rivers. This property was bid in by F. C. Adams and others at the sum of two hundred and six thousand dollars. No part of this purchase money was ever paid, and the United States under direction of this office instituted proceedings in the District Court for West Virginia, June 24, 1873, by bill in chancery to foreclose the vendors lien, and obtained a decree, under which the property was offered for sale by L. #. Goff Jr. Commissioner on the 28th of September 1876.

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last. At this sale the United States through an Agent appointed by the Solicitor of the Treasury, became the purchaser; and subsequently received a deed therefor after decree of confirmation by the Court; the price bid being seventy thousand dollars.

As regards the other lots sold at the sale in the year 1869 no proceedings have been taken to collect the purchase money and all the notes and bonds with accrued interest for nearly eight years are outstanding. These obligations are on file in the War Department. By section 3750 of the Revised Statutes it is provided that, 'the Solicitor of the Treasury shall have charge of all bonds and other property which have been or may be assigned, set off, or conveyed to the United States in payment of debts, and of all trusts created for the use of the United States in

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payment of debts due them and of the sale and disposal of lands assigned or set off to the United States in payment of debts or vested in them by mortgage or other security for the payment of debts.' &c

I would in this connection, respectfully submit the question as to whether these notes or obligations creating a trust in the property for the payment of debts due the United States for the purchase money, should not be in the charge of

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this office for such proceedings as may seem expedient, for the purpose of realizing for the United States the moneys due and remaining unpaid for the long period mentioned.

The numerous lots have depreciated very much in value since the sale.

At that sale very large prices were bid, induced doubtless by the easy terms

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of payment offered and by sanguine expectations formed as to the future enhanced value of the property from the promised utilization of the water power purchased by F. C. Adams & Co at a seemingly fabulous amount.

As a sample of this depreciation in the value of the property, the recent sale in September under your own personal observation may be instanced. At that sale lot two of block A was sold at auction after extended advertisement for \$605, and lot five for \$495, one tenth in each; while at the sale in 1869 these lots were bid in and taken at \$1655, and \$2050, respectively. The present situation of this property, and the consequent confusion and unsettlement of titles as well as the accumulation of interest year by year added to the incumbrance of the principal of the

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notes and bonds, is discouraging to the holders of the several lots some of whom have made improvements thereon, while it is at the same time a blight upon the material interests of the town and the surrounding Country.

An aimless delay in the collection of the moneys due by foreclosure or otherwise or in doing something towards the settlement of matters is of no benefit to these purchasers but only adds to their difficulties, and serves to still further embarrass the Government.

In regard to the two pieces of property which the United States has recently acquired, I must say that its continued possession by the United States throws upon this office a burden of responsibility for its protection and safety, under circumstances of a very embarrassing

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and discomforting character arising from the fact that there is no appropriation out of which any money can be expended for the payment of a watchman or guardian of the property.

In the meantime there is an amount of personal property lying around subject to deterioration by the weather and to spoliation, deprecation and theft--by persons unrestrained by any law adequate to their punishment or by fear of anyone armed with adequate authority to watch over the interests of the Government.

★

The schedule accompanying this will give some idea of the amount of the property thus subject to deprecation.

It consists of water wheels, both overshot and turbine together with their flumes, shafts and machinery, also of immense quantities of iron  $\angle$ ,  $\surd$  dressed stone

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and building material. The water power connected with these premises has been considered of immense value. It has been constructed as regards the dams across the two rivers, the canals, gates  $\angle$ ,  $\surd$  forebays and machinery in the best and most durable manner and at a great outlay of money on the part of the Government. It now presents a sublime ruin. Year by year its immense capabilities are diminishing, and the question of what shall be done with it, is one not easy of solution. Yet it is one which must be met and determined at an early date.

Very Respectfully,

Webster Elmes  
Chief Clerk

Hon. George F. Talbot  
Solicitor of the Treasury."

From National Archives Record Group No. 121, Public Buildings Service, Harpers Ferry File No. 150, (ms), n.p . n. d, but apparently submitted with Chief Clerk Webster Fmes' letter of May 29, 1877, to George F. Talbot, Solicitor of the Treasury.

Harpers Ferry Property

I On Potomac side.

Fire Engine House, about 30 ft. by 25 ft. one story brick slate roof, two iron doors, Cupola.

Long Building, about 100 ft. by 25 feet, one story brick, one half demolished, but boarded up; with board roof. The brick half has slate roof. Wooden part has brick gable. Foundation, with dressed stone coping 100 feet by 25 ft. 2 feet above ground.

Foundation & Stone Coping, 2 feet above ground 100 feet by 25 feet.

Blacksmith Shop & Blast Furnace, about 250 feet by 30 feet Chimney stack about 115 feet high & 10 feet at base all of brick. Partly under rough roof, one story high, 21 iron window frames remaining, 2 iron door frames. Granite foundation dressed coping, about 2 feet above ground.

Front Wall of Government Yard, 12 panels of iron railing on granite base & brick with brick piers brown stone coping on piers. Double iron gates two in number. Heavy dressed gate posts of granite five in number.

West Enclosure Wall and part of South Enclosure 46 pannels [sic] --iron pickets between brick piers

[2]

stone coping base of masonry about six feet high.

South Enclosure in part, about 500 feet in length rock base and solid brick above about eight feet high.

Cast Iron Overshot Wheel about 15 feet in diameter set in pit of masonry faced and coped with heavy dressed granite. Forebay of iron frame and wood over the wheel about 15 feet square. 4 cog wheels 5 ft. diam. each on heavy shaft of iron. 2 small cog wheels 3 ft. Two lines of wrought iron shafting about 10 feet long each by 8 inches.

List, May 29, 1877

Line of blast pipe 150 feet long by 10 inches underground to blacksmith shop. Drum wheel in ground about 4 ft. diameter & part of shaft about 3 ft. long. Wooden buckets all destroyed.

Foundation of Machine Shop built in 1857. Laid about 4 feet deep. Coping of dressed granite--length about 100 ft. width about 25 feet. 2 iron cogs about 4 ft. in diameter & shaft about 12 ft. by 8 in.

Two Granite-faced Waste-ways. Walls about 12 feet high.

Overshot Wheel. Iron shaft wooden frame braced &

[3]

bolted with iron, journals broken & metal carried off. 6 large cogs 4 ft. diameter, 2 small do. 3 ft. Bed of masonry about 40 feet by 15 ft. 1 large cog about 6 feet, 2 small do. about 3 ft. Drum wheel 4 feet wrought shafts 12 feet by 8 in.

Foundation of Carpenter Shop 100 feet long about 30 feet wide. Part of dressed granite coping.

Foundation of Proof Shop 100 feet by 30. Granite-dressed coping above ground about 10 inches.

Undershot Wheel. Iron shaft wooden frame wood nearly destroyed. 4 large cogs 6 ft. diam. 4 small cogs 3 ft. 2 drum wheels 9 ft. Shafts 2 10 ft. by 8 in. All set in bed of dressed granite blocks. 2 lateral shafts 8 ft. by 8 in. 2 Drum wheels & shafts 10 ft. by 8 in.

Foundation of Millwright Shop. 100 ft. by 25 ft. Masonry with dressed stone coping.

Turbine Wheel in bed under ground & perpendicular shaft, 1 cog 3 ft. 1 cog 2 ft. Cast iron frame & fly wheel heavy 4 ft. drain 8 in. wide, and operating shaft. Masonry bed about 10 ft. square.

Long line of Masonry wall enclosure South

[4]

Foundation of building about 25 ft. square. No coping.

Foundation of Grinding Mill, 60 ft. by 25 ft. Heavy & long dressed stone coping, 14 in. above ground.

Iron Flume 4 ft. diameter well bolted about 35 feet long with perpendicular shaft of Turbine Wheel. Turbine Wheel probably buried [sic] under ground.

Old Machine Shop Foundation 80 ft. by 25. Masonry.

Two Cisterns

Flag Stone Walk along fronts of buildings about 1/4 mile in length.

Rolling Mill and Mill Hammer Shop. Brick one story, on dressed stone coping to foundation. 17 iron window frames. Length of building 200 feet by 40 ft. 2 door frames iron. Large quantity dressed stone inside over surface of shop. No roof.

Turbine Wheel & Flume. The latter about 30 feet length & 4 in. diameter. Iron frames & supports. Wheel & machinery buried [sic] in ground similar to the one before described.

Walls of Arched Warehouse. All of masonry 1 story 70 ft. by 50 ft.

[5]

Old Rolling Mill Shop Foundation. Stone coping dressed 200 ft. by 30 ft. Flag flooring many iron bolts.

Overshot Wheel Wood frame. 15 ft. diameter. Large revolving shafts. Forebay 15 ft. square. Large masonry waste-way about 60 ft. by 15 ft. 20 ft. deep. Dressed stone facing and coping. Boiler iron supply pipe 25 ft. by 4 ft. Iron water gate.

Iron Flume about 4 ft. diameter 20 ft. long. Iron water gate.

Coping of Canal Wall blocks of dressed stones about 6, 8, 10 ft. long 8 in. thick. Stones well squared about 500 feet in length.

Locks of Canal at Dam on Potomac & headway one open gate. One lifting gate & chains.



List, May 29, 1877

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II Shenandoah Side

Foundation of Rifle Factory had order of 2 or 3 buildings  
200 ft. by 60 - 80 ft. by 60 ft. -  
100 ft. by 60  
Lot of dressed coping.

Foundation of Stable about 50 ft. square. Dressed stone  
coping.

Immense open quarries of stone face the property.

The property in machinery described & in the great  
quantities of dressed stone and building material laying about  
around upon the land must be of very great value."

National Archives Record Group No. 121, Public Building Services, Entry No. 78- Harper's Ferry Abatement Cases under the Act of June 11, 1878, from the 1869 sale of Public Lots.

This data compiled by James P. Noffsinger in 1958, from reports prepared comp in July and August 1878 for the Solicitor of the Treasury to be used on abating prices. Improvements on these and many other lots not copied, are included. Corrections by C.W. Snell, 1979.

BLOCK	LOT	LOT
1. A Shenandoah Street	1.	Thomas J. Doerley- A large stone house was on the lot when it was purchased. Improvements from 1869-1878 include a cellar & a stable.
2. Wager Lot Six Acre Reservation	19.	Patrick Daley- A brick house was on this lot when purchased- Improvements from 1869-1878 include a porch which cost \$274, and repairs to the roofing- The walls were badly cracked inside.
3. Wager Lot No. Six Acre Reservation	20.	Mary D. Cochran- A brick house was on this lot when purchased. Improvements 1869-1878 include roofing, new porches, fencing, timbers under the house, flooring, doors, sashes, windows, spouting, plastering, painting, etc.
4. B Shenandoah Street	3.	M.T.C.A. & James C. McGraw- A brick house was on this lot when purchased. It was in poor condition- From a statement by Mr. S. V. Yates dated Dec. 2, 1879 the building had been condemned before the War of 1861- a new building was built along side of it at this time (1857, 8, or 9) which obstructed the lights-therefore the Gov't. intended tearing it down. Statement by Jesse W. Galus-Dec. 1, 1879 gives a description of the house as it would have appeared had McGraw not repaired it. Says that the Supt. of the Armory (Ltj. Byington 1841) in the house in c.1858 or 1860 and said "that he was fearful that it would fall in whatever he went in the upper part of it." Improvements 1869-1878 a long list included roofing, fencing, brick pavement, cistern, brick supports in the cellar for the house, sewer in the yard.

Improvements to lots, August 1878, Abatement Cases.

- Built an ice house and a stable.  
The house had been badly damaged by floods in 1870 and 1877- the walls of brick cracked, the floors were lifted out of place and the fences were swept off.
- |    |                          | Lot No. |  |
|----|--------------------------|---------|--|
| 5. | AA Camp Hill             | 1.      | Daniel Ames- A stone house was on the lot when it was purchased- Improvements 1869-1878 include repairs on the house, cistern, wall, and pump house.   |
| 6. | AA Camp Hill             | 2.      | Polly McArthur- A brick house was on the lot when it was purchased- house was in bad condition. From a letter signed by James D. Butt-Oct. 21, 1879 "...house had been used for a horse stable by US Troops during the War and one half the roof was gone."<br>From a statement signed by M. Spensell, Chas. H. Trail and R.A. H---?<br>"...and heard statements from citizens of good repute and who were employed by McArthur to repair the house in 1869. They all state that the house at that time was not fit to live in-That nearly all the roof was gone. The floors out, partitions gone, steps and window sills out and that the house was but a shell and that workmen were engaged nearly all the winter of 69 & 70 in putting it in good order." dated Nov. 4, 1879 |
| 7. | North of Shenandoah St.  | 1.      | Joseph D. Holmes- A large stone house (warehouse ?) was on this lot when it was purchased. Repairs 1869-1878 to roof and porch- Also a new outbuilding.  |
| 8. | Wager 6 Acre Reservation | 21.     | Mrs. Edith O'Donnell- A stone house was on the lot when it was purchased. Improvements 1869-1878 include porches, new floors, windows, sashes, doors, plastering, painting, cistern, and fencing.  |
| 9. | Wager 6 Acre Reservation | 22.     | Edward Murphy- A stone house was on this lot at date of purchase. Improvements 1869-1878 include roofing, fences, put in new tiles, glass, doors, blinds, and outbuildings.  |

August 1878 Abatement Cases.

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10. Wagar 6 Acre  
Reservation

26. James McGraw- A house was on this lot  
at date of purchase-Improvements include  
a back porch, stonework under the house,  
put in new timbers to support the house,  
built a new stable.

May 29, 1878

Senate Reports, Vol. 2

Serial No. 1790

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43<sup>rd</sup> CONGRESS, }  
2<sup>d</sup> Session. }

SENATE.

{ REPORT  
{ No. 445.

IN THE SENATE OF THE UNITED STATES.

MAY 29, 1878.—Ordered to be printed.

Mr. MORGAN, from the Committee on Claims, submitted the following

REPORT :

[To accompany bill S. 774.]

*The Committee on Claims, to whom was referred the bill (S. 774) authorizing the Solicitor of the Treasury, by and with the consent of the Secretary of War, to cancel certain contracts for the sale of lots of land made at Harper's Ferry in the year 1869, and resell the same, and sell or lease all other real estate and riparian rights now owned by the United States, at Harper's Ferry, W. Va., have had the same under consideration and report as follows :*

The subject presented in this bill has been before Congress on several occasions. On the 24th May, 1874, Mr. Frye, from the House Committee on the Judiciary, made a report which gives the history of the matter up to this time.

That report is as follows :

[H. Report No. 616, Forty-third Congress, first session.]

Mr. FRYE, from the Committee on the Judiciary, submitted the following report (to accompany bill H. R. 549).

*The Committee on the Judiciary, to whom was referred the bill (H. R. 549) to authorize the Attorney-General to adjust the claim of the government upon the purchasers of property at Harper's Ferry, having had the same under consideration, make the following report :*

The buildings formerly used by the United States as an arsenal, and for the manufacturing of arms, &c., at Harper's Ferry, having all been destroyed during the late war of the rebellion, and the government having determined to abandon the use of the property for the purposes aforesaid, the House of Representatives passed a resolution March 26, 1867, requesting the Attorney-General to examine the title-papers to said property, and report his opinion as to the title of the United States to the same: "whether it is in fee-simple or merely held in trust by the President for a specific use and no other," and in response thereto the Attorney-General, December 5, 1867, made a report reviewing the title-papers, and determined that "the United States held a title in fee-simple to all of their property at Harper's Ferry." By an act of Congress approved December 15, 1868, the Secretary of War was directed to make sale at public auction of the lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in such parcels as in his opinion should be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchasers for the payment of the purchase-money, and empowering the Secretary of War, on receipt of the purchase-money in full, to execute all necessary deeds to the purchasers on behalf of the United States, and directing him to apply the proceeds—

- 1<sup>st</sup>. In defraying the expenses of the sale.
- 2<sup>d</sup>. In refunding to the United States the principal sum of purchase-money paid for said lands, tenements, and water-privileges by the United States, and for the erection of buildings thereon.
- 3<sup>d</sup>. To pay the surplus, if any, to the State of West Virginia, for the benefit of the school-fund of said State.

House Journal, 1st sess., 40th Congress, page 113. Doc. No. 1, page 1.  
Ex. Doc. No. 17, 2d sess., 40th Congress, Doc. No. 1, page 3.  
Stat. at Large, vol. 15, page 265. Public Act No. 1. Doc. No. 2.

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PROPERTY AT HARPER'S FERRY.

In pursuance of said authority, the Secretary of War, on the 30th November and the 1st and 2d days of December, 1869, sold at public sale the said property, consisting of—

1. The water-power and grounds upon which the arsenal, armories, and factories formerly stood.
2. An iron-ore bank.
3. A ferry-privilege.
4. A large number of lots.

The total amount bid for all of said property was \$297,803.50, of which amount there was bid for the water-power, and property immediately connected therewith, the sum of \$206,000.

At the time of said sale the Baltimore and Ohio Railroad Company were in possession of a portion of said property for a right of way for their railroad, under a license of the War Department, dated the 5th day of November, 1838, and of which the purchaser of the water-power admits he was advised, and which clearly defined the limits of the privileges granted therein to said railroad company.

It is alleged on the part of the purchaser of said water-power, &c., that after his purchase thereof he began to take measures to utilize said property, and make it available for manufacturing purposes, but found the said railroad company claiming extensive privileges, and exercising rights outside the limits prescribed in the license of the War Department, and entirely inconsistent with the proper use of the property for the purposes for which he purchased the same. And that said company had, among other things, in rebuilding a bridge across the raceway, so constructed their abutments as to seriously interfere with the use of the water-power, and were committing other acts to the detriment of said property, for which no authority whatever was shown. And, as he alleges, while he was proceeding to make the said property available for the purposes of establishing manufactories, &c., the railroad company filed an application in the courts of West Virginia for an injunction to restrain him from any interference with the property claimed by them.

Doc. No. 3, page 25. In which bill the said company claimed, as their only authority, the license of the War Department aforesaid.

To this bill the purchaser made answer substantially as follows:  
(1) That the War Department had no authority to grant such license.  
(2) That the said company were claiming and exercising rights outside of the limits prescribed by said license.

When the said cause came on to be heard in court upon said bill and answer, the said company asked leave to file an amended bill, which leave was granted, and in said amended bill the said company put in a claim to the occupancy of said property, not as in the original bill, under the authority of the government, but by title adverse and hostile thereto, derived by deed dated September 14, 1841, from one Patrick Byrne, who claimed to hold the same under a patent from the State of Maryland, dated January 8, 1822, by which deed the said Byrne conveyed to the railroad company all the ground occupied by them with their tracks. And the bill further alleged, what is true, that the said Byrne subsequently, to wit, by deed dated February, 7th 1848, conveyed to the United States all of his land covered by his patent, excepting and reserving therefrom the portion previously conveyed to the railroad company. And the amended bill further alleges that the land covered by the Byrne patent was formed by accretions in the bed of the river, and was within the limits of the State of Maryland, and formed no part of the original purchase by the United States, which was wholly in the State of Virginia.

It will thus be seen that the controversy in regard to the property raises, among other things, the important question of the true division-line between the States of Virginia and Maryland, and has involved the purchaser of the water-power, &c., in expensive and vexatious litigation, the final result of which is quite uncertain, while the fact that the United States Government thought fit to purchase the title of Byrne gives no color to the validity of his claim.

The purchaser of the water-power has also exhibited evidence to show that he was negotiating for the sale of said property, and was prevented from consummating the same by the fact of the pending litigation with the railroad company.

Doc. No. 7. And further shows that the said company, as lately as 1872, have been extending still further the exercise of rights over said property.

Doc. No. 8. Also shows that the Attorney-General of the United States was duly advised of the litigation in regard to the property. The purchaser claims that, having purchased such property in reliance upon the opinion of the Attorney-General that the United States had a valid title thereto, it would be unconscionable to hold him and his sureties to the payment of the purchase-money, as he has been prevented from utilizing the said property, or making any disposition thereof, as a consequence of the controversy in regard to the title, and that, having lost his opportunity to make the same available, he should be relieved from his obligation with regard to the final determination of said suit.

Doc. No. 9.

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PROPERTY AT HARPER'S FERRY.

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The purchasers of other property at said sale claim to be relieved on the ground that they purchased the same in the expectation that the purchasers of the water-power would utilize the property speedily for manufacturing purposes, and, this having failed, they find themselves without any business, and unable to comply with the terms of their purchase.

The State of West Virginia, the residuary beneficiary of the fund derived from said sale, and also greatly interested in the utilizing of said property in the development of her industrial interests, has, by joint resolution of her legislature adopted January 17, 1873, requested Congress to rescind said sales and re- sell the property, and bills for that purpose similar in terms to that referred to your committee have heretofore passed both houses of Con- gress at different sessions.

Doc. No. 10.

Doc. No. 11 at 12

Your committee are of opinion that, under the circumstances, the purchasers are entitled to relief, and no title having ever passed to the purchasers, and no damages being claimed by them, and, moreover, it having been rendered quite uncertain, in consequence of the death and insolvency of several of the sureties on the bonds of the purchasers which have occurred since said sales, whether the government can recover any considerable portion of the purchase-money for said property, your committee are of the opinion that it will be for the interest of the government to rescind said sales, and they accordingly recommend the passage of the accompanying bill.

The litigation referred to in that report has ended in a decree of the district court of the United States for the district of West Virginia, which declares that the Government of the United States had no title to the water-power at Harper's Ferry, which was sold on the same occasion and in connection with the sale of lots that were purchased by many citizens.

The water-power and the lots adjacent to it were included in the same advertisement of sale made by the agent of the government, which was as follows:

SALE OF THE UNITED STATES ARMORY AND OTHER GROUNDS AT HARPER'S FERRY, WEST VIRGINIA, AND VICINITY.

ORDNANCE OFFICE,  
Washington, September 25, 1869.

In pursuance of the act approved December 15, 1862, and by direction of the Secretary of War, the property of the United States at Harper's Ferry, West Virginia, and vicinity, will be sold by public auction, on Tuesday, the 30th day of November, 1869, commencing at 10 o'clock a. m., and continuing from day to day until all is sold.

The value of this property for manufacturing purposes is too well known to render it necessary to describe it herein; but a description of the same is being prepared, and will be sent to persons who may wish it, as soon as printed, upon their applying by letter to this office.

The property will be sold in lots. The first will include the musket factory, embracing a strip of land running to the western boundary on the Potomac, the armory canal, and water-power of the river. The walls of two large buildings are standing on this ground, and the foundations of several others; and the water-wheels, with gearing, and the flumes are almost in perfect order. Three of them are turbines of the most approved kind, and the others are mostly cast iron with wooden buckets.

The second will be the site of the rifle factory and water-power on the Shenandoah; the buildings upon which have been destroyed, but the canal is in good order.

The third will be the Shenandoah ferry, with a tract of 6 1/2 acres of land on the south, and a lot on the Harper's Ferry shore opposite.

The fourth will be the perpetual right to cut and remove wood from a tract of 1,395 acres mountain land, across the Shenandoah.

The fifth will be the right to dig iron-ore from a tract of about 1,400 acres of land, known as Friends' Ore Bank, acquired by deed from Henry Lee and others.

The remainder, consisting of houses and lots in the town, will be sold lot by lot.

The government will convey to the purchasers, after payment shall have been made in full, all its right and title to the property, which is believed to be perfect in every case.

The terms of sale prescribed by law are a credit of one and two years: the purchasers to give bond and security for the payment of the purchase-money, and these terms must be complied with within ten days after the sale.

A map showing the metes and bounds of the Harper's Ferry property will be exhibited at the time of sale.

The government reserves the right to withdraw any or all lots offered, if the bids are not satisfactory.

A. B. DYER,  
Brevet Major-General, Chief of Ordnance.

May 29, 1878

## PROPERTY AT HARPER'S FERRY.

## NOTICE TO DELINQUENTS.

Persons who purchased lots in 1852, and have not fully paid for them, are notified that if they pay what is due before the day of sale, the lots will be deeded to them. Otherwise they will be resold.

A. B. DYER,  
Brevet Major-General, Chief of Ordnance.

October 14, 1869.

The circumstances attending the sale, which are in accordance with the sworn statements of many persons whose affidavits are in the files, clearly show that the lots of land along and near the river, which were sold by the government, were of inconsiderable value except for their convenience to such manufacturing establishments as should be, and were then expected to be, erected and put in operation by using the water-power. The prices bid for these lots were high, even with reference to such advantages, and the purchasers were mainly of the class who earn a living as mechanics and operatives in factories. There is no doubt that the purchasers of these lots were misled by the assertion of the government that it owned the water-power, which sold for \$206,000, while the lots, one hundred and forty-five in number, only sold for \$88,000. On some of these lots there were improvements, but not of any great value. The improvements enhanced the price of these property, but were not the chief inducement of the purchaser. If the government had sold these lots without reference to its alleged ownership and the sale of that great water-power, it would have obtained but few bids for them. Most likely that none of the persons who became purchasers would have bid for them.

The bill referred to your committee has been submitted by the Secretary of War to the Attorney-General for his opinion. He has suggested certain amendments which your committee approve, and they now report back the bill with amendments, and recommend that it pass.

Aside from the questions of law and equity presented in this case, it is the opinion of your committee that it is better for the government that the purchasers of these lands should be relieved from their purchases of these lands on equitable terms.

The larger portion of the purchasers are unable to pay for them, and it is doubtful if proceedings to condemn the lands to sale for the purchase-money would result in the collection of more money than would be required to pay the necessary legal expenses.



U.S. Shenandoah Ferry Lot, Ferry, and 68 Acres of

Land on South Side of the Shenandoah River.

Record Group 153, Office  
of the Judge Advocate General-  
Military Reservation Division,  
1809-1942, Box 111,  
National Archives, Wash. D.C.

**An Important Decision.**

**STATE LEGISLATION CANNOT DESTROY A  
GOVERNMENT FRANCHISE.**

WHEELING, W. VA., May 30.—The United States Circuit Court, Judge Jackson, presiding, which has been in session during this week, has been mostly occupied in determining one of the most interesting and important cases which has ever come before a Federal Court for adjudication, involving, as it does, governmental questions growing out of the Constitution of the United States, and questions concerning the relations between State and Federal jurisdiction. It appears that the United States, when they owned the Armory at Harper's Ferry, away back in 1813, were the owner of lands across the Shenandoah river, upon which grew chestnut timber in large quantities, and which was largely used by the authorities of the Armory after it had been burned into charcoal. At that time the famous Lord Fairfax owned a licensed ferry across this Shenandoah river, and there being no other way by which to cross the river, the Government purchased the ferry, paying five thousand dollars for it. The Government then leased it out and reserved the right to carry over, free of tolls, their men and teams. Matters thus stood till 1842, when Congress authorized a bridge company to build a bridge near the ferry site, which they did, and in which event the ferry was worthless; hence it was not used any longer by them. In 1862 or 1863 the rebels burned the bridge, and when the United States authorities regained possession of Harper's Ferry they resumed possession of the ferry and commenced to operate it. Thus matters stood till 1869, when all the Government property of Harper's Ferry was sold, by direction of the Secretary of War, under an act of Congress, at which time the ferry was sold and was operated by the vendees of the Government till within a few months past. Mr. J. M. Mason, of Charlestown, who owned or claimed some lands adjoining the United States ferry, made application to the Circuit Court of Jefferson County for a license to establish a ferry alongside of the present ferry, claiming that, under the laws of Virginia and West Virginia, which declare "that any disuse of a ferry franchise for two years discontinues the same." Applying this law to the Government ferry, which had not been used for some twenty years, whilst the bridge stood, the County Court declared the Government ferry not a legal one, and granted Mr. Mason's application, whereupon the District Attorney made application on Tuesday last to Judge Jackson for an injunction to restrain Mr. Mason from operating his ferry under the County

Court grant upon the grounds that it would injure the revenues legitimately due the ferry or run by the vendee of the Government. The cause came on for hearing on the motion on Tuesday, and it was elaborately argued by counsel for two days. The defendants claimed that the Government could not own a franchise, and that if it could, still it was not in existence in 1869 by reason of the disuse for twenty years; hence the Government had no ferry to sell, and that the Federal Court could not interfere with the judgment of the County Court, under which Mason claimed to run his ferry. His Honor, Judge Jackson, overruled the objection raised by the defendants and decided that the Government could buy any sort of property when they needed it; that when purchased for a constitutional purpose the State laws could not affect it, and that non-use could not be set up against the United States. The injunction was awarded as prayed for in the bill of complaints.

General N. Goff, Jr., United States Attorney, and James D. Butt, Esq., appeared for the United States, and Mr. Mason was represented by himself and Hon. D. B. Lucas, of Charlestown.

We learn that our friend James D. Butt, of Harper's Ferry, was the principal attorney in behalf of the Government in engineering the above case, and we sincerely congratulate him upon his deserved success, and especially so when it is stated that the above was one of the most important cases ever come before a Federal Court for adjudication. Mr. B. is a young man of fine legal ability, quite successful, and has already had considerable experience in his profession in behalf of the government as well as individual clients. We predict for him a prosperous future.

1st edition- for May 19, 1880 sale [not held]

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Washington, D.C., National Archives RG 121 Public Buildings Service  
Harpers Ferry Case No. 155 (ms), ("Announcement," E. Rayner,  
Solicitor of the Treasury, n.p., pre May 19, 1880), 4 pp.

"UNITED STATES SALE OF VALUABLE WATER POWER AND  
MACHINERY. ALSO OF 126 LOTS OF LAND AT  
HARPERS FERRY, W. VA.

By virtue of section 3749 Revised Statutes, also  
of sections 2 and 3 of the Act of Congress approved  
June 14, 1878 authorizing the resale of certain lots  
of land by the United States at Harpers Ferry,  
West Virginia, the undersigned the Solicitor of  
the Treasury will offer at public auction  
on the premises at Harpers Ferry West  
Virginia commencing at one O'clock P.M.  
on Wednesday the 19th of May 1880, the  
following described property belonging to  
the United States as laid out and desig-  
nated on a map of Harpers Ferry made  
in the year 1869 by S. Howell Brown, Surveyor  
to wit:

Lot one embracing the water-power entire of  
the Potomac River, the canal & locks, and a  
strip of land and bluff bordering on the  
Potomac River, lying between that river and  
the streets and lots as laid down on the  
map aforesaid, beginning at Shenandoah  
Street and extending to the western line of  
the United States property. The walls of two  
large buildings, the John Brown Engine  
House and the foundations of several other  
buildings are standing & large quantities

[2]

- Block 'H.H' on Camp Hill Lots 6,7,8.
- Block 'J.J.' on Camp Hill Lots 1,4,5,6,7,8,10,11,14.
- Block 'K.K' on Camp Hill Lots 1,2,3,4
- Block 'L.L.' on Camp Hill Lots 2,3,5,6,7,8,9,10,11,12.
- Block 'M.M' on Camp Hill Lots 3,7,9.
- Block H on Camp Hill Lot 7
- Block I on Camp Hill Lots 4,13.
- Block J on Union Square Lots 6,10,11,12,13.

- Block L on S. side Ridge Street Lots 536.
- Block N. between Ridge & Putnam Sts. Lots 323.
- Block O between Ridge & Putnam Sts. Lot 9 1/2.
- Block P. between Ridge & Putnam Sts. Lots 6,14,18.
- Block Q between Ridge & Putnam Sts. Lots 1,2,3,4,5,8,15,17,18,20.
- Block R. N. of Ridge Street Lots 1,2,3,4,5,6,7,8.
- Block S. N. of Ridge Street Lots 2,3,4,5,6.
- Block T. N. of Ridge Street Lot 4.
- Block U. N. of Ridge Street Lots 1,4.
- Block V. between Putnam & Van Wert Sts. Lots 1,2,3,4,5.
- Block 2 between Van Wert & N. Cliff Sts. Lots 326.

Terms of sale on purchases under fifty dollars cash, on purchases exceeding that sum one-third the purchase money in cash, balance in one and two years with six per cent interest a lien being reserved on the property to secure payment of same, or all cash at the option of the purchaser, to be complied with within ten days. A deposit of \$200 on account of lots

[3]

of dressed building flagging & other stone are upon the ground. The machinery consists of three Turbine wheels and four cast iron wheels of large dimensions with gearing flumes & etc.

Lot two embracing the water-power of the Shenandoah River as held by the United States, and the site of the old rifle factory with all the appurtenances.

- Lot 4. The perpetual right to cut and remove wood from a tract of 1395 5/8 acres of mountain land lying on the south side of the Shenandoah River adjoining the Ferry tract.
- Block 'F' on Shenandoah Lot 1 with brick house. Lot 2.
- Block 'G' on Shenandoah Lots 2,3, and 4.
- Lot 1 with stone building & Lots 2,3,4,5,7,8, N. of Shenandoah Street extending to S. Cliff Street.
- Block 'H' on Shenandoah Street Lots 1,2,3,4,5,6.
- Block 'I' on same Lots 1,2,3,4,5.
- Wager six acre Reservation Lots 27 with stone house.
- Block 'A.A' on Washington & Potomack Streets Lots 4,5,6.

- Block 'B.B' on Washington & Ridge Streets Lots 2,3.
- Block 'C.C' on Washington & Clay Streets Lots 1,3.
- Block 'D.D' between Fillmore & Clay Streets Lots 2,3,4,6.
- Block 'E.E' between S. Cliff & Clay Streets Lots 1,2.
- Block 'F.F' on Camp Hill Lots 2,3,4,5,6,7.
- Block 'G.G' on Camp Hill Lots 3 and 6.

[4]

one or two will be required at time of sale. A conveyance will be made on behalf of the United States to the purchaser of all its right, and title to the property which is believed to be perfect in every case. A map showing the notes and bounds of the several lots will be exhibited at the time of the sale.

The Government reserves the right to withdraw any of the lots to prevent unusual sacrifice if the bids are unsatisfactory.

[Allegible initials]  
[signed] E. Rayner  
Solicitor of the Treasury

Approved

[signed] John Sherman  
Secretary of the Treasury."

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Washington, D. C., National Archives R G. 121 Public Buildings  
Service, Harpers Ferry Case No. 155, printed pamphlet 6" x 9",  
8 pages.

Final addition of Catalogue for May 25, 1880 sale.

"CATALOGUE OF PROPERTY OF THE UNITED STATES

AT HARPER'S FERRY, W. VA.,

To Be

SOLD BY THE SOLICITOR OF THE TREASURY  
On the 25th day of May, A. D. 1880,  
AT HARPER'S FERRY.

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The following is a schedule of United States property at Harper's Ferry, as divided into lots by S. Howell Brown, surveyor, as per map of 1869, made under the supervision of Captain Daniel J. Young, U.S. Army, acting under instructions from the Ordnance Department at Washington, issued pursuant to an act of Congress approved December 15, 1868, entitled 'An Act providing for the sale of the lands, tenements, and water privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia,' now to be sold on the 25th day of May, 1880, at Harper's Ferry by the undersigned, the Solicitor of the Treasury, in pursuance of the 2d and 3d sections of the act of Congress of June 14, 1878, and of other provisions of law:

No. of  
Lot.

1. The water-power entire of the Potomac River, as held by the United States, embracing the site of the old armory buildings or musket factory, and all that strip of land and bluff bordering on the Potomac River and lying between said river and the streets and lots as laid down on map of 1869.

The present and half-completed dam of the United States across the Potomac River backs the water far above the present limit of the United States land in that direction. But the Keep Tryste Furnace Tract, binding on the south side of the said river above the falls thereof, was formerly owned by the United States, and thus the title to the falls was acquired while said lands were in the occupancy of the United States. The limit, therefore, of the United States claim to these water privileges is governed by this prescriptive right.

2. The water-power entire of the Shenandoah River, as held by the United States, embracing the site of the rifle factory, with all the appurtenances thereto belonging.

No. of  
lot

- 4. The perpetual right to cut and remove wood from a tract of 1,395 5/8 acres of mountain land, lying on the south side of the Shenandoah River, adjoining the ferry tract.

BLOCK F, ON SHENANDOAH STREET.

- 1. Sixty-six feet front on Shenandoah street and 166 feet on Wood street, running back to Hamilton street, with front of 35 feet on the same line with No. 2, parallel to Wood street.
- 2. Two hundred and thirty-one feet front on Shenandoah street, running back with lot No. 1, 145 feet to the Shenandoah Canal and thence with it to Shenandoah street. Brick stable.

BLOCK G, ON SHENANDOAH STREET.

- 2. Sixty-six feet front on Hamilton street, back with No. 1, 190 feet, and with No. 3, 185 feet, to the Shenandoah River; sides of lot parallel to Tell street. Vacant.
- 3. Sixty-six feet front on Hamilton street, back with No. 21, 185 feet, and with No. 4, 155 feet, to the Shenandoah River; sides of lot parallel. Vacant.
- 4. One hundred and twenty-five feet front on Hamilton street, back with No. 3, 155 feet to the Shenandoah Canal, and thence with it to Hamilton street. Vacant.

LOTS NORTH OF SHENANDOAH STREET AND BETWEEN THE  
SAME AND SOUTH CLIFF STREET.

- 1. Adjoining Catholic school lot, 106 feet front on Shenandoah street; 110 feet deep and 48 feet on back line. Large stone warehouse.
- 2. Two hundred and thirty-seven feet front on Shenandoah street, 213 feet front on South Cliff street, and extending from York street on the west to 'Jefferson's Rock Lot' on the east. Stone house.
- 3. Six hundred and fifty-eight feet front on Shenandoah street, 653 feet front on South Cliff street, and extending from York street on the east to Lancaster street on the west. Vacant.

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4. Three hundred and sixty-one feet front on Shenandoah street, 360 feet front on South Cliff street, and extending from Lancaster street on the east to Columbia street on the west. Vacant.
  5. Two hundred and forty-four feet front on Shenandoah street, 241 1/2 feet front on South Cliff street, and extending from Columbia street on the east to Gilmore street on the west. Vacant.
  7. Two hundred and twelve feet on Shenandoah street, 195 feet front on South Cliff street, and extending from McDowell street on the east to the angle in South Cliff street on the west, and thence with east line of said angle prolonged to Shenandoah street. Vacant.

3

No. of  
Lot.

8. Two hundred and thirty-six feet front on Shenandoah street, 215 feet front on South Cliff street, and extending from Hall street on the west to the angle in South Cliff street on the east, on the line of lot No. 7, and thence with it to Shenandoah street. Vacant.

BLOCK H, ON SHENANDOAH STREET.

1. One hundred and ninety-two feet front on South Cliff street and 66 feet front on Hall street; sides and ends parallel. Vacant.
2. Sixty-six feet front on Hall street, and running back, with both Nos. 1 and 7, 192 feet to lot No. 4. Vacant.
3. One hundred and ninety-two feet front on South Cliff street and 66 3/4 feet front on Taylor street; sides parallel, and running back to No. 1. Vacant.
4. Sixty-six and three-fourths feet front on Taylor street, and running back, sides parallel, to lot No. 2; back line 66 feet. Vacant.
5. Sixty-six and three-fourths feet front on Taylor street, and running back, sides parallel, to line of No. 7; back line 66 feet. Vacant.

- 6. Sixty-six and three-fourths feet front on Taylor street, and running back, sides parallel, to line of hb. 7; back line 66 feet. Vacant.

**BLOCK 1, ON SHENANDOAH STREET**

- 1. Three hundred and thirty-three feet front on South Cliff street, 66 feet on Boundary street, and 66 feet on Taylor street. Vacant.
- 2. Sixty-six feet front on Boundary street and 66 feet front on Taylor street, with 333 feet in depth. Vacant.
- 3. Sixty-six feet front on Boundary street and 66 feet front on Taylor street, with 333 feet in depth. Vacant.
- 4. Sixty-six feet front on Boundary street and 66 feet front on Taylor street, with 333 feet in depth. Vacant.
- 5. Three hundred and forty feet front on Shenandoah street, and running back, with Taylor street on the east and Boundary street on the west, to lot No. 4. Vacant.

**LOTS IN THE WAGER "SIX-ACRE RESERVATION."**

- 27. Thirty-two and one-third feet front on Washington street, and extending back to Potomac street, with a breadth of  $31 \frac{1}{3}$  feet. Stone house.

**BLOCK AA, BETWEEN WASHINGTON AND POTOMAC STREETS.**

- 4. Sixty-one feet front on Washington street, and extending back to Potomac Street, with front of 60 feet. Vacant.
- 5. Sixty-one feet front on Washington street, and extending back to Potomac street, with front of 60 feet. Vacant.
- 6. Sixty-one feet front on Washington street, and extending back to Potomac street, with front of 60 feet. Vacant.

4

No. of  
Lot.

**BLOCK B B, ON WASHINGTON AND BRIDGE STREETS.**

- 2. Sixty-feet front on Washington street, and extending back to Ridge street, with a front of 60 feet. Vacant.



- 3. Sixty-foot front on Washington street, and extending back to Ridge street, with a front of 60 feet. Vacant.

BLOCK CC, ON WASHINGTON AND CLAY STREETS.

- 1. Three hundred and fifty-eight feet front on Washington street, 367 feet on Clay street, and 74 feet with lot No. 2. Vacant.
- 3. One hundred and ninety-four and one-half feet front on Washington street, 194 1/2 feet on Clay street, and 153 feet on York street. Vacant.

BLOCK D D, BETWEEN FILLMORE AND CLAY STREETS.

- 2. Eighty-three feet on Fillmore street, and extending back to Clay street, with front thereon of 84 1/2 feet. Vacant.
- 3. Sixty feet front on Fillmore street, and extending back to Clay street, with front thereon of 61 feet. Vacant.
- 4. Sixty feet front on Fillmore street, and extending back to Clay street, with front thereon of 61 feet. Vacant.
- 6. Sixty feet front on Fillmore street, and extending back to Clay street, with front thereon of 61 feet; also front on Young street of \_\_\_\_\_ feet. Vacant.

BLOCK EE, BETWEEN SOUTH CLIFF AND CLAY STREETS.

- 1. One hundred and sixty-eight feet front on South Cliff street, between graveyard and Episcopal church lot, extending back between these lots to Clay street, with front thereon of 179 feet. Vacant.
- 2. One hundred and seventy-eight feet front on Clay street, running back with lots Nos. 1 and 3, 98 feet to the graveyard, with it, 179 feet. Vacant.

BLOCK F F, ON CAMP HILL.

- 2. Sixty feet front on Fillmore street, and running back at right angles 137 feet. Vacant.

- 3. Sixty feet front on Fillmore street, and running back at right angles 137 feet. Vacant.
- 4. Sixty feet front on Fillmore street, and running back at right angles along Gilmore street 137 feet. Vacant.
- 5. Sixty feet front on South Cliff street, and running back with Gilmore street 137 feet, at right angles. Vacant.
- 6. Sixty feet front on South Cliff street, and running back at right angles 137 feet. Vacant.
- 7. Sixty feet front on South Cliff Street, and running back at right angles 137 feet. Vacant.

5

No. of Lot. BLOCK GG, ON CAMP HILL.

- 3. Fifty-six feet front on Fillmore street, and running back at right angles 137 feet. Vacant.
- 6. Fifty-six feet front on South Cliff street, and running back at right angles 137 feet. Vacant.

BLOCK H H, ON CAMP HILL.

- 6. Sixty-one feet front on South Cliff street, and running back at right angles 137 feet. Vacant.
- 7. Sixty-one feet front on South Cliff street, and running back at right angles 137 feet. Vacant.
- 7. Sixty-two feet front on South Cliff street, and running back with McDowell street 137 feet. Vacant.

BLOCK JJ, ON CAMP HILL.

- 1. Sixty feet front on Washington street, 163 feet on Storer College lot, and 167 feet on lot No. 2. Vacant.
- 4. Sixty feet on Washington street, 176 feet on lot No. 3, and 181 feet on lot No. 5. Vacant.

- 5. Sixty feet on Washington street, 131 feet on lot No. 4, and 185 feet on lot No. 6. Vacant.
- 6. Sixty feet front on Washington street, 165 feet on lot No. 5, and 189 feet on lot No. 7. Vacant.
- 7. Fifty-two and one-half feet front on Washington street, 193 feet on Taylor street, and 189 feet on lot No. 6. Vacant.
- 8. Fifty-two and one-half feet front on Fillmore street, and 163 feet on Taylor street and lot No. 9. Vacant.
- 10. Sixty feet front on Fillmore street, and 163 feet on lots Nos. 9 and 11. Vacant.
- 11. Sixty feet front on Fillmore street, and 163 feet on lots Nos. 10 and 12. Vacant.
- 14. Sixty feet front on Fillmore street, and 163 feet on lot Nos. 13 and Storer College lot (No.25). Vacant.

BLOCK KK, ON CAMP HILL.

- 1. Sixty feet front on Washington street, 195 feet on Taylor street, and 199 feet on lot No. 2. Vacant.
- 2. Sixty feet front on Washington street, 199 feet on lot No. 1, and 203 feet on lot No. 3. Vacant.
- 3. Sixty feet front on Washington street, 203 feet on lot No. 2, and 206 feet on lot No. 4. Vacant.
- 4. Sixty-two feet front on Washington street, 206 feet on lot No. 3, and 220 feet on lot No. 5. Vacant.

6

No. of Lot,

BLOCK LL, ON CAMP HILL

- 2. Sixty feet front on Fillmore street, and 207 1/2 feet on lots Nos. 1 and 3. Vacant.
- 3. Sixty feet front on Fillmore street, and 207 1/2 feet on lots Nos. 2 and 4. Vacant.

- 5. Sixty feet front on Fillmore street, and 207 1/2 feet on lots Nos. 4 and 6. Vacant.
- 6. Eighty-nine feet front on Fillmore street, 209 feet on Boundary street, 64 feet on lot No. 7, and 207 1/2 feet on lot No. 5. Vacant.
- 7. Two hundred and nine feet front on Boundary street, 39 feet front on South Cliff street, 64 feet on lot 6, and 207 1/2 feet on lot No. 8. Vacant.
- 8. Sixty feet front on South Cliff street, and 207 1/2 feet on lots Nos. 7 and 9. Vacant.
- 9. Sixty feet front on South Cliff street, and 207 1/2 feet on lots Nos. 8 and 10. Vacant.
- 10. Sixty feet front on South Cliff street, and 207 1/2 feet on lots Nos. 9 and 11. Vacant.
- 11. Sixty feet front on South Cliff street, and 207 1/2 feet on lots Nos. 10 and 12. Vacant.
- 12. Sixty feet front on South Cliff street, and 207 1/2 feet on Taylor street and lot No. 11. Vacant.

BLOCK LM, ON CAMP HILL

- 3. Sixty feet front on Fillmore street, and 207 1/2 feet on lots Nos. 2 and 4. Vacant.
- 7. Fifty-two and one-half feet front on Fillmore street, 207 1/2 feet on Taylor street, and 207 1/2 feet on lot No. 6. Vacant.
- 9. Sixty feet front on South Cliff street, and 207 1/2 feet on lots Nos. 8 and 10. Vacant.

BLOCK H, ON CAMP HILL

- 7. Thirty-nine feet front on Ridge street, 132 feet on lots Nos. 6 and 8, and 47 feet on Methodist Episcopal parsonage lot. Sold in 1852, but not paid for. Vacant.

BLOCK I, ON CAMP HILL

- 4. Sixty feet front on Washington street, and running back 132 feet. Vacant.
- 13. Sixty feet front on Ridge street, and running back 132 feet. Vacant.

7.

No. of  
lot.

BLOCK J, AT UNION SQUARE.

- 6. Seventy-nine feet front on Washington street, 86 feet on Union Square, 101 feet on lot No. 5, and back line 93 feet. Vacant.

- 10.)
  - 11.)
  - 12.)
  - 13.)
- Each 60 feet front on Ridge street, and running back 132 feet. Vacant.

BLOCK K, ON SOUTH SIDE OF RIDGE STREET.

- 5.) Each 60 feet front on Ridge street, and running back 132
- 6.) feet. Vacant.

BLOCK L, BETWEEN RIDGE AND PUTNAM STREETS.

- 3. Sixty feet front on Ridge street, and running back 132 feet. Vacant.
- 8. Sixty feet front on Putnam street, and running back 132 feet. Vacant.

BLOCK M, BETWEEN RIDGE AND PUTNAM STREETS.

- 9 1/2. Forty-five feet front on Putnam street, and running back 132 feet.

BLOCK N, BETWEEN RIDGE AND PUTNAM STREETS.

- 6. Sixty feet front on Ridge street, and running back 132 feet. Vacant.

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- 14. ) Each 60 feet front on Putnam street, and running back 132 feet.
- 15. ) Vacant.

BLOCK Q, BETWEEN RIDGE AND PUTNAM STREETS.

- 8. )
- 1. )
- 2. ) Each 60 feet front on Ridge street, and running back 132 feet.
- 3. ) Vacant.
- 4. )
- 5. )
- 15. ) Each 60 feet front on Putnam street: Lot 15 running back 132
- 17. ) feet; lots 17 and 18 a slightly greater distance, owing to curve
- 18. ) in street. Vacant.
- 20. ) Small corner lot, 60 feet in width on lot No. 1, but cut obliquely by Taylor street, on which it has a greater front. Vacant.

BLOCK R, NORTH OF RIDGE STREET.

- 1. )
- 2. )
- 3. ) Each 60 feet front on Ridge street, and running back 132 feet.
- 4. ) Vacant.
- 5. )
- 6. )
- 7. )

8

- No. of Lot.
- 8. ) Seventy-eight feet front on Ridge street, and running back, with Taylor street and lot No. 7, 132 feet. Vacant.

BLOCK S, NORTH OF RIDGE STREET.

- 2. ) Each 45 feet front on Ridge street, and running back 132
- 3. ) feet. Vacant.
- 4. ) Forty-two feet front on Ridge street, and running back 132 feet. Vacant.
- 5. ) Each has 43 feet front on Ridge street and 132 feet on Jackson
- 6. ) street. Vacant.

BLOCK T, NORTH OF RIDGE STREET.

- 4. Sixty feet front on Ridge street, and running back 132 feet. Vacant.

BLOCK U, NORTH OF RIDGE STREET.

- 1. Forty-one feet front on Ridge street and 132 feet on Columbia street. Vacant.
- 4. Sixty feet front on Ridge street, and running back 132 feet. Vacant.

BLOCK V, BETWEEN PUTNAM AND VAN WERT STREETS.

- 1.)
- 2.)
- 3.) Each 60 feet front on Putnam and Van Wert streets, varying in depth from point as streets diverge. Vacant.
- 4.)
- 5.)

BLOCK TWO (2), BETWEEN VAN WERT AND NORTH CLIFF STREETS.

- 3. One hundred and twenty-five and a half feet on Van Wert street; 143 feet on North Cliff street; 330 and 330 feet deep; contains 1 acre, 4 perches. Vacant.
- 6. One hundred and sixty-five feet on Van Wert street; 170 feet on North Cliff street; 594 and 627 feet deep; contains 2 acres, 1 rood, 10 perches. Vacant.

K. RAYNER,  
Solicitor of the Treasury."

Park Bldg. No. 36, located Lot 2, Block B, Shenandoah Street.

Washington, D. C., National Archives, RG 121 Public Buildings Service Harpers Ferry Case No. 155 (ms), (Letter, John Koonce, Harpers Ferry, W. Va. to Solicitor of the Treasury, December 28, 1880).

Harpers Ferry, W. Va. Dec. 28/80

Hon. Sir:

In reply to yours of the 27th the Front Room south side 17 1/2 x 15.3 used as Post Office by Alexander Fossett. Pays Quart per /ly. Commencing / Feb. 1st has paid up to October 31st 80.

Room back of Post Office south side 17.4 x 15.3 used by Mrs. Trail. Passage 7 feet 2 in Wide stairs running up to second floor. Two Rooms. North side 18 x 15 front room 17 x 15 Back room, folding doors used by Board of Education for school. Pay no rent. President of the Board T. A. Kirwan. These 4 Rooms are on first floor main Building sealing sic / 11 feet 9 in high. This is inside measure.

Wing or back Building Kitchen 20.3 x 17.6 sealing sic / 10 feet. Small room or Pantry 9 x 5. Basement Kitchen 20.3 x 17.3 is damp used for coal. Second floor of Wing 2 rooms, 15 x 9.4 and 14.10 x 10. Second floor south side 2 rooms 17.4 x 15.8 and 17.6 x 15.8. Hall room 13 x 7.3. Used by Mrs. Trail. Pays by the Quarter. Paid up to October 31/80.

[2]

Front Room se<sup>cond</sup> floor 18 x 15 used for Council room & Mayors office by the Corporation. North side Back room se<sup>cond</sup> floor -- 17 x 15. Used by Rev. Campbell. Pays when convenient but rented by the month. Owe two months, \$2.00. The Building is in fair condition with the Exception of the front sic / spouting which was broken down this last snow & the back porch sic / of the Wing wants a new floor. Hoping the discription sic / may be satisfactory the Building is cared for by the Mayor & Council J. H. Hartgrove told me this morning he would take his horse out of the Watch House today. G. C. Johns says that he received a letter from you stating that he must pay some compensation & wanted me to set the price. I refused told him I had no authority to do so. Mr. Z. D. Butt will be down tomorrow & will see you about it so says Johns.

Yours etc.

Signed John Koonce



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November 17, 1881

Document  
No. 4

78 REPORT OF THE ATTORNEY-GENERAL.

EXHIBIT Q.—*Report of the Solicitor of the Treasury.*

DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
Washington, D. C., November 17, 1881.

SIR: I have the honor to transmit herewith seven tabular statements exhibiting the amount, character and results of the litigation under my direction for the fiscal year ending June 30, 1881, shown by the docket entries of this office.

These tables embrace, respectively—

1. Suits on transcripts of accounts of defaulting public officers, excepting those of the Post-Office Department, adjusted by the accounting officers of the Treasury Department.
2. Post-office suits, embracing those against officers of the Post Office Department, and cases of fines, penalties, and forfeitures for violation of the postal laws.
3. Suits on custom-house bonds.
4. Suits for the recovery of fines, penalties, and forfeitures under the customs-revenue and navigation laws.
5. Suits against collectors of customs and other officers or agents of the government for refund of duties and acts done in the line of their official duty.
6. Suits in which the United States is interested, not embraced in the other classes.
7. A general summary or abstract of all the other tables.

An examination of the tables will show that the whole number of suits commenced within the year was 2,716, of which 72 were of class 1, for the recovery of \$488,477.97; 180 were of class 2, for the recovery of \$121,720.76; 31 were of class 3, for the recovery of \$21,020.81; 201 were of class 4, for the recovery of \$235,526.81; 888 were of class 5; 1,344 were of class 6, for the recovery of \$500,012.38; making a total sued for, as reported, of \$1,366,758.73.

Of the whole number of suits brought, 1,050 were decided in favor of the United States, 7 were adversely decided, 324 were settled and dismissed, in 28 penalties were remitted by the Secretary of the Treasury, leaving 1,307 still pending.

Of those pending at the commencement of the year, 568 were decided for the United States, 91 were decided adversely, 1,283 were settled and dismissed, and in 8 penalties were remitted by the Secretary of the Treasury.

The entire number of suits decided or otherwise disposed of during the year was 3,359; the whole amount for which judgments were obtained, exclusive of decrees *in rem*, was \$750,671.83, and the entire amount collected from all sources was \$875,564.48.

The number of cases in which offers of compromise were pending and received during the fiscal year ending June 30, 1881, was 190, involving the sum of \$2,459,785.97. The number of offers accepted was 72, involving the sum of \$615,963.10; amount accepted, \$105,058.18. The number of offers rejected was 71, involving the sum of \$814,420.48; amount rejected, \$70,990.23. The number of offers pending at the close of the year was 47, involving the sum of \$1,029,402.39; amount offered in cases pending, \$58,011.58.

I desire to bring to your attention a branch of the business of this office involving matters of considerable interest in a pecuniary way to the government, and not before brought in a formal manner to the notice of the head of this department. I refer to lands which from

## REPORT OF THE ATTORNEY-GENERAL.

time to time have been acquired in payment of debt, and are by law under the exclusive charge of the Solicitor of the Treasury.

Section 3470 of the Revised Statutes provides that "at every sale, or execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof."

By section 3750 of the same, that officer has charge of all lands and other property which have been or may be set off or conveyed to the United States, and of all trusts created for the use of the same in payment of debts, and of the sale and disposal of such lands, excepting those set off or conveyed in payment of or as security for debts arising under internal revenue laws. The charge of the lands last mentioned devolves by similar law upon the Commissioner of Internal Revenue. By section 3749 of those statutes the Solicitor of the Treasury is authorized, with the approval of the Secretary of the Treasury, to rent for a period not exceeding three years, or to sell at public sale, any unproductive lands or other property of the United States acquired under judicial process or otherwise in the collection of debts, after advertising the time, place, &c., of such sale for three months preceding, in some newspaper published in the vicinity thereof, in such manner and upon such terms as may in his judgment be most advantageous to the public interest. And by the act of June 14, 1878, he is vested with a special authority to lease for a term of years or to sell certain real estate at and near Harper's Ferry in accordance with existing law as to advertising, &c.

Under the operations of these statutes, or of the original acts, lands in all parts of the country have accumulated during fifty years past under the charge of this office. A tabulated statement of the numerous lots and tracts, title to which either absolute or qualified in the United States appears of record, is annexed hereto. These tracts have been acquired for the most part under execution or set-off for the satisfaction of judgments rendered in favor of the United States. In many cases, in order to secure any part of a judgment debt, this office has been obliged to direct the purchase of the lands levied upon and to receive the title of the debtor, or a vesture of his interest in the property, whatever it may be. It so happens that the title or interest thus acquired is often involved in doubt, or that there are defects to be removed, and these practically operate to forbid a sale of the property by the government. In many cases, as the title does not pass immediately to the purchaser because of the different State laws as to the right of the debtor to redeem in a given time, the property continues to remain in the possession of the judgment debtor, or in some one claiming title or interest through him. Taxes also in some of the States accrue or have accrued on the lands, and parties continue to hold or claim possession under tax titles, which, in some instances, it may be, have become or are likely to become absolute after a lapse of a few years. Again, there are former judgment liens and incumbrances on some of the tracts of more or less validity. All these circumstances combine to render a general sale of this class of property and even a sale of particular parcels inexpedient. It becomes necessary often to prepare the property for sale to advantage, sometimes by a removal of persons holding possession and in other cases by curing the defects of title. To this end the examination of records and the institution of proper proceedings in court are required, all of which are attended with more or less expense. To a recent period there has been no appropriation by law for the payment of such expenses, not even for the purpose of recording the deeds obtained with the change of owner.

ship, nor any appropriation for the payment of the advertising charges, auction fees, or other attending expenses of sale. Before the passage of the laws guarding the disbursement of appropriations and requiring proceeds of sales, &c., to be covered in the Treasury without abatement, these expenses were provided for out of the purchase money. It is questionable, I think, whether the yearly appropriation of the civil-sundry act for the "custody, care, and protection of lands and other property belonging to the United States" is strictly applicable in all cases. This appropriation is not under the control of or adapted to objects of expenditure in this department, but is made for objects under the control of the Treasury Department. The want of a proper appropriation in the past and the restriction of the law as regards the proceeds have, doubtless, contributed to deter my predecessor from offering for sale much of this property which was substantially free from defects in the title. In consequence there is a great deal of valuable land belonging to the government over which no sufficient care or control has been exercised for years, and the same has become or is likely to become occupied, either without color of title or through tax titles where the same could be acquired. Besides this, the requirement of law that the sale shall be advertised for three months operates to the disadvantage of the government in other ways than as regards the unnecessary expense. It becomes necessary sometimes, in order to sell to the greatest advantage, that the sale take place with reference to particular seasons of the year or to some special opportunity, and in such cases a long period of notice must necessarily overreach the period or opportunity which might be availed of if the time of advertisement was short or discretionary. More recent enactments as to sales of lands under control of the Commissioner of Internal Revenue require but twenty days as the period of advertising in these cases. This is certainly sufficient in these days of speedy communication.

I would therefore respectfully suggest the necessity for legislation, first to provide an appropriation for the purpose of enabling the Solicitor of the Treasury to carry out the provisions of the acts aforesaid and to defray the expenses of the examination of county and other records, of perfecting titles to lands under his charge, and getting the same ready for sale; second, by way of amendment to section 3749 of the Revised Statutes, so as to admit of an advertisement of three weeks in some newspaper published in the vicinity of the property to be sold, and for that or a shorter period in such other newspapers as a proper notice of the sale may seem to him to require.

The following is a draught of a bill to carry these objects into effect. Respectfully submitted.

K. RAYNER,  
*Solicitor of the Treasury.*

HON. SAMUEL F. PHILLIPS,  
*Acting Attorney-General.*

AN ACT to enable the Solicitor of the Treasury to carry out the provisions of sections 3749 and 3750 of the Revised Statutes and of the act of June 14, 1878, relating to lands of the United States in his charge, and to amend the same.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time required in said section 3749 of the Revised Statutes for advertising the time, place, and conditions of sale where lands acquired under judicial process, or otherwise, in the collection of debts are offered for sale by the Solicitor of the Treasury, shall be three weeks in some newspaper published in the vicinity of the property, or for that or a less period in such other newspaper or newspapers beside as may seem to him expedient and in the interest of the United States as regards such sale.*

SEC. 2. That the third section of the act of June 14, 1878, entitled "An act authorizing the Solicitor of the Treasury, by and with the consent of the Secretary of War, to cancel certain contracts for the sale of land made at Harper's Ferry in the year 1869 by the United States, to resell the same, and sell or lease all other real estate and riparian rights now owned by the United States at Harper's Ferry, West Virginia," be amended to read as follows: SEC. 3. That the Solicitor of the Treasury is further authorized to make sale, in pursuance of law, of the whole or any part of said property, or, if he deems it expedient and better for the public welfare, lease for any term of years or sell any part of all other real estate and riparian rights now owned by the United States at or near Harper's Ferry, Jefferson County, West Virginia, after advertising the same as provided in the preceding section of this act.

SEC. 3. That the sum of one thousand dollars, to be disbursed under the supervision of the Attorney-General, be appropriated and paid from any moneys in the Treasury not otherwise appropriated, to enable the Solicitor of the Treasury to carry out the provisions of sections 3749 and 3750 of the Revised Statutes and of this act in relation to the sale, care, custody, and protection of lands, the charge of which devolves upon him by the said sections of the Revised Statutes and by the act aforesaid as amended hereby, the sum so appropriated, or so much as may be required, to be used to defray the expense of examining county records, of freeing the property in his charge from defects of title, and kindred expenses, as well as those incident to the preparation of the lands for sale and the sale of the same as authorized by law.

S: Ex. 4—6

November 7, 1881

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## REPORT OF THE ATTORNEY-GENERAL.

Statement of real property belonging to the United States, &amp;c.—Continued.

## WEST VIRGINIA.

When acquired.	From whom acquired.	Tracts or lots of land.	Where situated.
Apr. 17, 1877	Harper's Ferry Water Power Company and Francis C. Adams.	The water-power entire of the Potomac River, site of old armory buildings, and all that strip and bluff of land bordering on the Potomac and lying between the river and the streets and lots as laid down on the map of 1869, at Harper's Ferry.	Harper's Ferry, Jefferson County.
Apr. 17, 1877	.....do.....	The water-power entire of the Shenandoah River, the site of the old rifle factory at Harper's Ferry.	Do.
*July 29, 1878	John Wilson.....	Lot 5, north of Shenandoah street.....	Do.
*Aug. 7, 1878	N. Marmion.....	Lot 5, block I, on Shenandoah street.....	Do.
*Sept. 23, 1878	Z. Butt's heirs.....	Lot 6, block J, on Union Square.....	Do.
*July 30, 1878	Daniel Ames.....	Lots 10, 11, 12, and 13, block J, on Union Square, and lots 1, 2, 3, and 4, block Q.	Do.
*Sept. 12, 1878	W. A. Winters.....	Lot 5, block Q.....	Do.
*July 30, 1878	Daniel Ames.....	Lots 6, 15, 17, and 18, block Q.....	Do.
*Sept. 12, 1878	W. A. Winters.....	Lot 20, block Q.....	Do.
*July 30, 1878	Daniel Ames.....	Lot 1, block R.....	Do.
*Aug. 7, 1878	N. Marmion.....	Lots 2 and 3, block R.....	Do.
*July 22, 1878	John L. Walsh.....	Lot 5, block R.....	Do.
*Aug. 7, 1878	N. Marmion.....	Lot 6, block R.....	Do.
*July 30, 1878	Daniel Ames.....	Lots 7 and 8, block R.....	Do.
*Sept. 24, 1878	David M. King.....	Lot 2, block S.....	Do.
*July 30, 1878	Daniel Ames.....	Lots 3 and 4, block S.....	Do.
*Aug. 12, 1878	E. A. Chambers.....	Lot 5, block S.....	Do.
*Oct. 1, 1878	Mary A. Percival.....	Lots 1 and 3, block U.....	Do.
*Sept. 12, 1878	W. A. Winters.....	Lots 1, 2, 3, 4, and 5, block V.....	Do.
	Francis Gannon.....	Lot 3, block 2.....	Do.
*Aug. 7, 1878	N. Marmion.....	Lot 6, block 2.....	Do.
*July 22, 1878	John L. Walsh.....	Lot 2, block BB.....	Do.
*Oct. 9, 1878	Charles E. Beller.....	Lot 3, block BB.....	Do.
*Aug. 3, 1878	Louisa Evans.....	Lot 7, block LL.....	Do.
*Oct. 11, 1878	Mrs. D. H. Erwin.....	Lots 8 and 9, block LL.....	Do.
*July 30, 1878	Daniel Ames.....	Lots 10 and 11, block LL.....	Do.
†June 15, 1796	John Wager <i>et al.</i> .....	Lot 2, block B, on Shenandoah street; lot 6, block N, on Shenandoah street.	Do.
†July 1, 1847	G. B. Wager.....	Lot 18, Wager 6-acre reservation.....	Do.
†Mar. 7, 1848	A. Kennedy.....	Lot 23, Wager 6-acre reservation.....	Do.
†June 8, 1847	N. H. Swayne.....	Lot 28, Wager 6-acre reservation.....	Do.
†Feb. 20, 1797	T. Rutherford.....	Lots 10 and 12, block I, Camp Hill; lot 10, block P.	Do.
†1798-'97	Grantees of Robert Harper.	Lots 7, 9 and 10, block AA; lots 5, 8, 9 and 10, block BB; lots 2 and 4, block CC; lots 4 and 5, block DD; lots 3 and 1, block EE.	Do.
†Feb. 20, 1797	T. Rutherford.....	Lots 9, 12 and 13, block JJ; lots 5, 9, 10, 11 and 12, block KK.	Do.

January 27, 1882

House of Representatives  
Executive Documents No. 66-  
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16TH CONGRESS, HOUSE OF REPRESENTATIVES, 1st Session. No. 66.

SALE OF CERTAIN REAL ESTATE AT HARPER'S FERRY.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

IN RESPONSE TO

*A resolution of the House of the 16th instant, relative to the sale or lease of certain real estate and riparian rights at Harper's Ferry, W. Va.*

JANUARY 30, 1882.—Referred to the Committee on Public Buildings and Grounds and ordered to be printed.

TREASURY DEPARTMENT.

January 27, 1882.

SIR: In response to the resolution of inquiry adopted in the House of Representatives on the 16th instant, requesting the Secretary of the Treasury to inform the House concerning the action of the Solicitor of the Treasury under the provisions of the act of June 14, 1878, relating to the sale or lease of certain real estate and riparian rights at Harper's Ferry, W. Va., I have the honor to transmit herewith a copy of a letter from the Solicitor, to whom the resolution was referred for report, which furnishes the required information.

By this letter it will be seen that proper action has been taken to carry out the provisions of said act, and there remain unsold, in addition to the two pieces of water power property, seventy-two town lots, twenty-nine of which are not subject to sale under the authority of the special act above referred to, nor under the general powers conferred by section 3749, Revised Statutes.

Concurring in the views of the Solicitor, that further legislation is necessary and desirable to enable the government to dispose of the property remaining unsold without unreasonable sacrifice, I respectfully submit herewith a draft of a bill to amend the act of June 14, 1878, under which, if enacted, all this property may be sold to the best advantage.

Very respectfully,

CHAS. J. FOLGER,  
Secretary.

Hon. J. WARREN KEIFER,  
Speaker of the House of Representatives.

2 SALE OF CERTAIN REAL ESTATE AT HARPER'S FERRY.

A BILL to amend the act of June 14, 1878, relating to real estate and riparian rights owned by the United States at Harper's Ferry, West Virginia.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the third section of the act of June 14, 1878, entitled "An act authorizing the Solicitor of the Treasury, by and with the consent of the Secretary of War, to cancel certain contracts for the sale of land made at Harper's Ferry, in the year 1869, by the United States, to resell the same, and sell or lease all other real estate and riparian rights now owned by the United States at Harper's Ferry, West Virginia," be amended to read as follows: Sec. 3. That the Solicitor of the Treasury is further authorized to make sale, in pursuance of law, of the whole or any part of said property, or, if he deems it expedient and better for the public welfare, lease for any term of years or sell any part of all other real estate and riparian rights now owned by the United States at or near Harper's Ferry, Jefferson County, West Virginia: *Provided*, That the Solicitor of the Treasury, with the approval of the Secretary of the Treasury, shall, before the sale of the water-power property, cause it to be appraised at its fair cash value, and shall not sell the same for less than its appraised value.

DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
Washington, D. C., January 23, 1882.

SIR: I have the honor to acknowledge the reference by Mr. French, acting Secretary of the Treasury, of a transcript of the resolution adopted on the 16th instant by the House of Representatives of the Forty-seventh Congress, in the following words:

*Resolved*, That the Secretary of the Treasury be requested to inform the House what action has been taken by the Solicitor of the Treasury, under the provisions of the act of June fourteenth, eighteen hundred and seventy-eight, to sell or lease all real estate and riparian rights now owned by the United States at Harper's Ferry, West Virginia; and if no action has been taken under the authority conferred by said act, to communicate to the House why no sale or lease of said property has been made.

I am requested to forward the information desired to your office for transmission to Congress.

Preliminary thereto, it seems to me necessary for an intelligent understanding of the matter, to refer to the provisions of the act bearing upon the authority given the Solicitor of the Treasury to sell or lease the real estate referred to in the resolution.

By the first section of that act, that officer, with the consent of the Secretary of War, was authorized to cancel contracts with and release each and all purchasers of lots of land from their purchases made on the 30th of November, 1869, at and near Harper's Ferry, W. Va., whenever such purchaser or purchasers shall quit-claim said lots or parcels of land to the United States: *Provided*, such quit-claim shall be executed and tendered to the Secretary of War within four months from the passage of the act.

By the second section the Solicitor of the Treasury was directed, whenever he shall deem expedient to subserve the public interests, to offer for sale by auction, said lots or parcels of land so quit-claimed, after giving notice by publication according to existing law. And by the third section of the act he "is further authorized to make sale, in pursuance of law, of the whole or any part of said property; or if he deem it expedient and better for the public welfare, lease for any term of years any part or all other real estate and riparian rights now owned by the Government of the United States at or near Harper's Ferry."

In pursuance of the authority vested in me by the first and second sections aforesaid, I released the purchasers of one hundred and twenty-four lots from their contracts for the payment of the purchase money.

## SALE OF CERTAIN REAL ESTATE

upon receiving from the Secretary of War his consent in writing, and the several quit-claim deeds from the purchasers, as provided in the act.

These lots accordingly became subject to sale at public auction under my direction. They were for the most part ordinary town lots, scattered over a large plat of ground, and comparatively for the most part of little value. These lots constituted the only property that I was authorized to sell, in pursuance of the act of Congress mentioned in the resolution. That act does not authorize the sale of the water-power property of the Shenandoah and Potomac Rivers at Harper's Ferry, embracing the sites of the former rifle and musket works and the armory buildings at that point. This latter property was considered of great value, because of the volume of water-power appurtenant thereto, which was adapted to extensive manufacturing purposes.

The act to which I refer in its description of "all other real estate and riparian rights" authorized the Solicitor of the Treasury to lease this water-power property for a term of years, in case he deems it expedient and better for the public welfare. This last-mentioned property having been acquired in payment of a debt due the United States was, however, subject to sale under his general power devolving upon him by the provisions of section 3749 of the Revised Statutes.

Accordingly, on the 25th of May, 1880, under the authority of the special and general law respectively, I offered for sale by public auction at Harper's Ferry, the lots previously quit-claimed to the United States, one hundred and twenty-four in number, before referred to, as also the two pieces of water-power previously acquired in payment of debt. The proposed sale was advertised for three months as provided by law in several newspapers published in the vicinity, and for a less period in the principal newspapers at the great manufacturing and commercial centers of Boston, New York, Philadelphia, Baltimore, Pittsburgh, and Cincinnati; as also by hand-bills distributed and displayed at about 100 post-offices in the adjacent and neighboring States. I should say that notwithstanding this general and extensive advertisement, no inquiry was received at this office, either verbally or in writing, indicating any desire to be informed as to the volume, capacity, or adaptability of the water-power, with a view to a purchase of the property.

At the time appointed, I attended the sale in person. The lots were cried off in the order they appeared in a printed catalogue distributed among the crowd present, and 81 were sold, realizing the sum of \$4,644, leaving 43 unsold subject to further action under the special act. The Potomac water-power property was also offered, but only one bid, of \$10,000, was received therefor. This was considered so disproportioned to the great value of the property that the same was withdrawn from sale. Before proceeding to the place of sale I had a conference with the Secretary of the Treasury, as the sale was subject to his approval under the provisions of law in regard to the reservation of a bid on the part of the United States, in order to prevent an undue sacrifice of the property. It was determined at this conference that the same should realize to the government not less than \$50,000. No offer being made for the Shenandoah water-power, it was not put up for sale. Since this time I have endeavored to obtain such a guarantee of a bid from responsible parties as would justify the expense of again advertising the property and offering it for sale, but I have not received any substantial encouragement beyond an informal suggestion that, if the government will determine its minimum price, a party stands ready to bid a considerable sum. In my opinion, the amount of this informal offer is insufficient.



## 4 SALE OF CERTAIN REAL ESTATE AT HARPER'S FERRY.

In addition to the property already mentioned, there are twenty-nine town lots belonging to the United States, which were not quit-claimed to the government under the provisions of the act of 1878, and, like the water-power property, did not become subject to sale under that act. There is no authority of law to sell these lots. As in the case of the water-power property, they may be leased for a term of years. Two of these lots are improved by dwelling houses in very bad repair. These two I have rented for a small monthly or quarterly rent.

In regard to the water-power property, I have had no opportunity to lease the same. There has been some correspondence with parties concerning a project of this sort; but it embraced no substantial offer worthy of consideration. Indeed, I doubt whether it is practicable to lease the property so as to be of advantage to the government.

I have had no substantial offers on the part of any one to take the property upon a lease on any terms. I have deemed it the better course to again offer the property for sale in a short time, endeavoring in the mean time to obtain the guarantee of a substantial bid.

The Potomac water-power property consists of a narrow strip of land extending from near the confluence of the Shenandoah and Potomac rivers—for about a mile along the latter—together with a prescriptive right to the use of the water-power of that river beyond the line of the land now owned by the United States. The road-bed of the Baltimore and Ohio Railroad, with its two tracks, viaduct, &c., occupies a portion of the land over which it runs—the entire length—and on which the company claims to have established the right of way in the courts of the United States. That right of way, however, if it so exists, is complicated with conditions somewhat onerous upon the company, and calculated to tend to secure the property against injury. A riprap dam extends across the stream above the western end of the tract, which has been much impaired by frequent floods. There is also a partially completed dam of the same character at the same point, designed by a greater height to increase the volume of water-power. This dam was in course of construction when the rebellion compelled a suspension of the work, as well as the abandonment of the armory, musket and rifle works, before carried on upon an extensive scale. The water-power has been considered in times past of immense value. The dams across the two rivers, the canals, gates, forebays, masonry buildings, machinery, &c., were constructed at an enormous cost, and in the best and most durable manner. A great deal of the machinery, consisting of three turbine and four cast-iron wheels of large dimensions, together with the larger part of their gearing, flumes, &c., is upon the ground or buried under it—all very much broken, rusted, and injured by exposure for over twenty years. Besides, there is a large quantity of building material, iron, and dressed stone, of considerable value, the debris of the very extensive government works, which were once the pride of this historic place and the substantial support of an industrious and thriving community.

The water-power of the Shenandoah, as constructed and used in early times, is now of little value, because of the changes in the river bed made from time to time by devastating floods, so memorable in this region, and of the almost certain prospect of frequent overflow.

The Baltimore and Ohio Railroad Company also occupy a portion of this property with its road-bed.

For two decades this whole property, on both rivers, has been given to destruction by the filling up of the canals or race-ways, through floods in the rivers principally; by the continuous disintegration of the

## SALE OF CERTAIN REAL ESTATE AT HARPER'S FERRY. 5

dams; by the loss of material through the depredation of trespassers; and by the rust and decay consequent upon exposure to the weather. There would accordingly seem to be no reason on the part of the government to hold the property for better prices, but every reason to part with it for any reasonable sum that may be offered.

To this office it has been a ceaseless source of embarrassment and annoyance, because of its unprotected state, the want of adequate appropriation for its care against the depredations of trespassers, and of the ever-recurring thought that the property is depreciating constantly in value, for which there is no apparent responsibility, yet no remedy in the very nature of things. I would suggest for your recommendation to Congress legislation of some positive character, as to its sale by this office for such a sum as it will bring over a fixed appraisement, such appraisement to be guarded as in other cases, so that the property shall not be unreasonably sacrificed.

Very respectfully,

K. RAYNER,  
*Solicitor of the Treasury.*

Hon. CHAS. J. FOLGER,  
*Secretary of the Treasury.*

H. Ex. 66—2

April 24, 1884

45TH CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT  
1st Session. } { No. 1353.

CONVEYANCE OF LOT AND BUILDINGS AT HARPER'S  
FERRY.

APRIL 24, 1884.—Committed to the Committee of the Whole House on the state of the  
Union and ordered to be printed.

Mr. AIKEN, from the Committee on Education, submitted the following

REPORT:

[To accompany bill H. R. 1625.]

*The Committee on Education, to whom was referred the bill (H. R. 1625) to authorize and direct the Secretary of War to convey by deed a certain lot in the town of Harper's Ferry, W. Va., to the Board of Education of that district, for common-school purposes, having had the same under consideration, beg leave to report:*

The property alluded to in the bill 1625, is said by the assessors of the town of Harper's Ferry, to be worth \$1,500. Formerly, it was used by the United States armory and arsenal at Harper's Ferry. After the war the property of the Government at this place was abandoned, and has lapsed into ruin. By act passed December 15, 1868, Congress directed the sale of this property, and donated the net proceeds of the sale to the common-school fund of West Virginia. This same act donated four lots with valuable buildings upon them to a private institution for the education of colored youths. This sale miscarried, and the property has in consequence fallen into dilapidation. Situated in the heart of the village, and exempt from taxation, this property greatly increases the heavy burden of the community in supporting their common schools, and represses efforts towards recuperation and prosperity in the village.

Your committee are further informed that an excellent brick school building, erected at the expense of the district just prior to the war, was taken possession of by the Government, torn down, and its material used for building shanties for the United States troops. In 1865, these shanties, or the material of which they were built, were sold and the money covered into the Treasury. We are further informed this building is detached from all other public property, and is not used for any public purpose.

In view of these facts, your committee respectfully recommend that the bill be passed with the following amendment: "Provided, That the Secretary of War, after proper investigation, shall find that the property alluded to in this bill is not worth more than three thousand dollars."

48th Congress, 1st Session

May 7, 1884

House Reports of  
Committees, Vol. 6  
1883-1884  
Serial No. 2258

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48th CONGRESS, } HOUSE OF REPRESENTATIVES. { REPORT  
1st Session. } { No. 1525.

SALE OF UNITED STATES LANDS AT HARPER'S FERRY,  
WEST VIRGINIA.

MAY 7, 1884.—Referred to the House Calendar and ordered to be printed.

Mr. BIBBLE, from the Committee on Public Buildings and Grounds,  
submitted the following

REPORT:

[To accompany bill H. R. 1628.]

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 1628) authorizing and directing the sale of the real estate and riparian rights now owned by the United States at Harper's Ferry, in the State of West Virginia, having had the same under consideration, report it to the House with the recommendation that it pass. The buildings formerly used as workshops, armory, and arsenal at Harper's Ferry having been destroyed during the war, the Government abandoned the property for public uses, and Congress having obtained the opinion of the Attorney-General that the United States had a fee-simple title to the same, passed an act December 15, 1868, directing the Secretary of War to make sale at public auction of the lands, tenements, and water privileges belonging to the United States at or near Harper's Ferry. In pursuance of this authority the Secretary of War sold said property on November 30 and December 1 and 2, 1869, consisting, 1, of the water-power and grounds on which the arsenal, armories, and factories formerly stood; 2, an ore bank; 3, a ferry privilege; 4, a large number of lots. The total amount bid for said property was \$297,803.50, of which the water-power and the property connected therewith brought \$206,000. The sale was upon credit, and it eventually appeared that the chief item, the water-power, was bid in by a company of irresponsible speculators, who took no steps toward using or improving the property, and defaulted in the payment of their bonds. After several years' delay, during which a disastrous flood reduced its value, and that value otherwise steadily depreciated, the Government was unable to collect anything on the bonds and was compelled to enforce its vendor's lien, and bought back said property at a mere fraction of the original price. Moreover, the 240 lots sold to private individuals for the aggregate of \$73,803.50 had been bought on the faith of the improvement of the water-power and consequent restoration of some measure of prosperity to the town. This having failed, the purchasers, who were generally the poor people of the vicinage, were, except in a few cases, unable to comply with the terms of purchase, and Congress finally came to their relief by act passed June 14, 1878, authorizing the Solicitor of the Treasury to cancel their contracts and release the purchasers. Thus, after 10 years the Government became again seized of almost all the property it had sold, greatly diminished in value. The same act authorized

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UNITED STATES LANDS AT HARPER'S FERRY, W. VA.

the Solicitor to resell the whole or any part of said property or to let the same for a term of years. Any effort to sell under this authority is greatly hampered by the fact that the value of the property has become so shrunken and speculative that as long as the sale remains in the discretion of any officer, it imposes an embarrassing responsibility upon him to judge whether the price is really an advantageous one. The object of the present bill is to effect an early sale of the property and relieve from any such embarrassment, by making the order for sale peremptory in case a minimum limit is reached, and at the same time providing that it shall only be made at public auction, after full and fair advertising, and at open competition. This is at once for the interest of the United States and of the locality itself, where recuperation and prosperity are totally repressed by the continued disuse and desolation of this property.

The Government is incurring expense by holding on to property which it declines to use for any purpose, while its value is steadily diminishing upon its hands. It is also a matter of sheer justice to the State of West Virginia and to the particular locality that this large area of property in the very heart of the village of Harper's Ferry, abandoned and in ruins, exempt from taxation, and by its very abandonment repressing all prosperity and almost destroying the value of contiguous private property, should be as soon as possible transferred to ownership which will improve it, develop its capabilities, and subject it to its equitable share of local burdens.

Moreover, your committee deem it equally impolitic and unjust for the Government, after ceasing to use property for the public purposes for which it was acquired, to become a lessor thereof to private individuals, for the erection of works which would be tax free. The legislature of West Virginia has passed a joint resolution asking for the sale of this property.

Your committee therefore, looking to the interest of the Government, and to the rights of the State wherein the property is located, recommend the passage of this bill, with the following amendments:

In section 1, line 7, of printed bill, after the word "reservation" insert the words "except as hereinafter provided."

Add to section 1 the following proviso: "Provided, that the property shall not be sold for a less sum than twenty thousand dollars."

Add to section 2, the words: "but so that at least one-third of the purchase money shall be paid in cash, and the credit portion shall bear interest at the rate of six per cent. per annum."

Insert in the bill as section 3 the following:

"SEC. 3. That upon the compliance of any purchaser or purchasers of the whole, or of any parcel purchased as aforesaid, with the terms of sale, such purchaser or purchasers shall be let into possession of the premises so purchased; and upon full payment of the purchase money, and interest (if any be due), the Solicitor of the Treasury, for and in behalf of the United States, shall make, seal, and deliver to the purchaser or purchasers good and sufficient deed or deeds, conveying all the right, title, interest, and estate of the United States in the said property, or parcel thereof, as the case may be, in fee-simple."

Insert section 3 of the original bill as section 4.

June 24, 1884

CONGRESS,  
Session.

SENATE.

REPORT  
No. 770.

IN THE SENATE OF THE UNITED STATES.

JUNE 24, 1884.—Ordered to be printed.

M. MAXEY, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill H. R. 1628.]

*Committee on Military Affairs, to whom was referred the bill (H. R. 1628), authorizing and directing the sale of the real estate and riparian rights now owned by the United States at Harper's Ferry, in the State of West Virginia, respectfully submit the following report:*

Attention is called to the communication of the Solicitor of the Treasury, addressed to Hon. S. M. Stockslager, of the House of Representatives, herewith, as follows:

DEPARTMENT OF JUSTICE,  
OFFICE OF THE SOLICITOR OF THE TREASURY,  
Washington, D. C., February 15, 1884.

I am in receipt of your letter of the 12th instant, inclosing House bill 1628, authorizing the sale of United States property at Harper's Ferry, and requesting me to make any recommendation in reference to the matter.

The property mentioned in the bill consists mainly of the water-powers of the Potomac and Shenandoah Rivers at that place, formerly used for the manufacture by the United States of ordnance material for the Army. Its chief and perhaps only value consists in the water-power of the two rivers, and the machinery, water-wheels, dam, and building material on the ground. By sections 3749, 3750, Revised Statutes, and by act of Congress of June 14, 1878 (20 Stats. at L., sec. 130), the care and custody of this property devolves on the Solicitor of the Treasury.

Under the sections of the Revised Statutes aforesaid, in the character of property acquired through judicial process in the payment of debt, a sale is subject to the approval of the Secretary of the Treasury.

The difficulty has been in estimating the actual value of the water-power privileges, and in fixing some limit as a minimum to prevent sacrifice. In the year 1869 the War Department offered the two properties at public auction, and the same were bid off and sold on a credit of two years for \$206,000. This was manifestly a fabulous price. However, not a dollar of the purchase-money was ever paid, and on a foreclosure of the lien in 1876 the United States, by the Solicitor of the Treasury, bid the property for the payment of the debt upon it, at \$70,000.

Since then an offer of \$15,000 has been made or guaranteed as a bid in case of advertisement for sale. I think the property should be sold at any reasonable sum. It is rapidly deteriorating in its material and capabilities, and besides, in this region of the country, water-power, as compared with steam, is of much less value for obvious reasons than in former years.

The value of the property in question has no doubt been exaggerated very greatly in the minds of the Government officers who have had charge of it. It has been well criticised over the country, and there has been little or nothing to convince me that it would attract any general attention at an auction sale. The best and perhaps the only test of its value is the sum it will realize by competitive bidding after extended notice of the sale.

In regard to the bill which has been prepared, I would say that I am inclined to

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favor that feature thereof which makes the offer to sell imperative; and there should be some limit or guard that the property may not be unduly sacrificed.

I would suggest that the bill be amended so as to authorize and direct a sale at price not less than \$15,000 for the two water-power tracts.

Very respectfully,

K. RAYNER  
Solicitor of the Treasury

Hon. S. M. STOCKSLAGER,  
Chairman House Committee on Public Buildings and Grounds.

The committee adopt the House of Representatives report on the subject as follows:

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 1628) authorizing and directing the sale of the real estate and riparian rights now owned by the United States at Harper's Ferry, in the State of West Virginia, having had the same under consideration, report it to the House with the recommendation that it pass. The buildings formerly used as workshops, armories, and arsenal at Harper's Ferry having been destroyed during the war, the Government abandoned the property for public uses, and Congress having obtained the opinion of the Attorney-General that the United States had a fee-simple title to the same, passed an act December 15, 1868, directing the Secretary of War to make sale at public auction of the lands, tenements, and water privileges belonging to the United States at or near Harper's Ferry. In pursuance of this authority the Secretary of War sold said property on November 30, and December 1 and 2, 1869, consisting, 1, of two water-power and grounds on which the arsenal, armories, and factories formerly stood; 2, an ore bank; 3, a ferry privilege; 4, a large number of lots. The highest amount bid for said property was \$207,063.50, of which the water-power and other property connected therewith brought \$200,000. The sale was upon credit, and eventually appeared that the chief item, the water-power, was bid in by a company of irresponsible speculators, who took no steps toward using or improving the property, and defaulted in the payment of their bonds.

After several years' delay, during which a disastrous flood reduced its value, and that value otherwise steadily depreciated, the Government was unable to collect anything on the bonds and was compelled to enforce its vendor's lien, and bought back said property at a mere fraction of the original price. Moreover, the 240 lots sold to private individuals for the aggregate of \$73,363.50 had been bought on the faith of the improvement of the water-power and consequent restoration of some measure of prosperity to the town. This having failed, the purchasers, who were generally the poor people of the vicinage, were, except in a few cases, unable to comply with the terms of purchase, and Congress finally came to their relief by act passed June 11, 1878, authorizing the Solicitor of the Treasury to cancel their contracts and release the purchasers. Thus, after ten years the Government became again seized of almost all the property it had sold, greatly diminished in value. The same act authorized the Solicitor to resell the whole or any part of said property or to lease the same for a term of years. Any effort to sell under this authority is greatly hampered by the fact that the value of the property has become so shrunken and speculative that as long as the sale remains in the discretion of any officer, it imposes an embarrassing responsibility upon him to judge whether the price is really an advantageous one. The object of the present bill is to effect an early sale of the property and relieve the Government of any such embarrassment, by making the order for sale peremptory in case a minimum limit is reached, and at the same time providing that it shall only be made at public auction, after full and fair advertising, and at open competition. This is in the interest of the United States and of the locality itself, where recuperation and prosperity are totally repressed by the continued disuse and desolation of this property.

The Government is incurring expense by holding on to property which it declines to use for any purpose, while its value is steadily diminishing upon its hands. It is also a matter of sheer justice to the State of West Virginia and to the particular locality that this large area of property in the very heart of the village of Harper's Ferry, abandoned and in ruins, exempt from taxation, and by its very abandonment repressing all prosperity and almost destroying the value of contiguous private property, should be as soon as possible transferred to ownership which will improve it, develop its capabilities, and subject it to its equitable share of local burdens.

Moreover, your committee deem it equally impolitic and unjust for the Government after ceasing to use property for the public purposes for which it was acquired, to become a lessor thereof to private individuals, for the erection of works which would be tax free. The legislature of West Virginia has passed a joint resolution asking for the sale of this property.

June 24, 1884

## SALE OF PUBLIC PROPERTY AT HARPER'S FERRY. 3

The committee, therefore, looking to the interest of the Government, and to the interest of the State wherein the property is located, recommend the passage of this bill with the following amendments:

In section 1, line 7, of printed bill, after the word "reservation" insert the words "except as hereinafter provided."

Add to section 1 the following proviso: "Provided, that the property shall not be sold for a less sum than twenty thousand dollars."

Add to section 2 the words: "but so that at least one-third of the purchase-money shall be paid in cash, and the credit portion shall bear interest at the rate of six per cent per annum."

Insert in the bill as section 3 the following:

SEC. 3. That upon the compliance of any purchaser or purchasers of the whole, or of any parcel purchased as aforesaid, with the terms of sale, such purchaser or purchasers shall be let into possession of the premises so purchased; and upon full payment of the purchase-money, and interest (if any be due), the Solicitor of the Treasury, for and in behalf of the United States, shall make, seal, and deliver to the purchaser or purchasers good and sufficient deed or deeds, conveying all the right, title, interest, and estate of the United States in the said property, or parcel thereof, in the case may be, in fee-simple."

Insert section 3 of the original bill as section 4.

The committee are of opinion that there is no reasonable probability that this property will ever again be used for Governmental purposes, in which case it is best that it pass into private hands upon just compensation, in order that it may be used for productive purposes. It seems not just that, if not intended to be used by the Government, it is but fair that it should be subjected to taxes like other property in West Virginia.

The bill appears to be well guarded: wherefore the committee report the said bill without amendment, and recommend that the same do pass.



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Page 290 - May 25, 1880 Sale:

Solicitor of the Treasury'.  
 Annual Report, October 29, 1885, 49th  
 Congress, 1st Session- 1885- 86  
 House of Representative Executive  
 Documents, Vol 20, Part Q of the Attorney  
 Generals Annual Report. Serial No. 2381  
 Document No. 7, Part Q

290 REPORT OF THE ATTORNEY-GENERAL.

Statement of real property at Harper's Ferry sold at public auction May 25, 1880, under the provisions of act of Congress of July 4, 1878.

When and from whom acquired.	Description.	To whom sold.	Amount sold for.
Apr. 17, 1877: Harper's Ferry Water Power Company and F. C. Adams.	Part of lot 1, water-power property: Potomac River: 330 feet.	Alexander Murphy...	520 00
Do	The perpetual right to cut timber from 1,395 acres lying south of Shenandoah River.	G. W. Green, 883 acres } E. Tierney et al. 512 } acres.	310 00 250 00
July 16, 1878: William Doran.	Lot 3, block G	E. Tierney et al	7 00
July 16, 1878: Isaac Gilbert.	Lot 27, Wager six-acre reservation.	J. McGraw	320 00
Do	Lot 2, block H, Shenandoah street.	Storer College	10 00
Do	Lot 4, block I, Shenandoah street.	N. C. Brackett	14 00
July 16, 1878: William Erner	Lot 1, block J, J. Camp Hill.	J. Conway and E. Tierney.	70 00
July 16, 1878: M. Doran.	Lot 2, block G, Shenandoah street.	E. Tierney et al	10 00
July 16, 1878: J. W. Mottitt.	Lot 6, block P, between Ridge and Putnam streets.	Col. M. E. Church of Bolivar, &c.	10 00
July 17, 1878: A. Bussey	Lot 6, block H, H. Camp Hill.	Storer College	10 00
Do	Lot 7, block H, H. Camp Hill.	do	20 00
Do	Lot 8, block H, H. Camp Hill.	do	35 00
July 17, 1878: G. H. Bender	Lot 3, block L, Ridge street.	O. F. Kemp	25 00
July 22, 1878: W. Butts	Lot 6, block G, G. Camp Hill.	J. Conway and E. Tierney.	40 00
July 22, 1878: J. L. Walsh.	Lot 2, block E, E. between South Cliff and Clay street.	Alexander Murphy...	20 00
July 23, 1878: F. N. Trail.	Lot 1, block K, K. Camp Hill.	J. Conway and E. Tierney.	40 00
July 26, 1878: J. Ward.	Lot 3, block H, between Ridge and Putnam streets.	O. F. Kemp	15 00
July 26, 1878: H. Reinson.	Lot 18, block P, between Ridge and Putnam streets.	M. E. Welcome.	7 00
July 26, 1878: M. A. Cavalier.	Lot 4, block A, A. Washington and Potomac streets.	P. Higgins.	20 00
July 27, 1878: T. B. Winters.	Lot 5, block L, L. Camp Hill.	J. Faberty.	27 00
Do	Lot 6, block L, L. Camp Hill.	E. O'Brien.	20 00
July 29, 1878: W. B. Chambers.	Lot 9, block M, M. Camp Hill.	Storer College	20 00
July 29, 1878: John Wilson.	Lot 2, block F, Shenandoah street.	J. M. Marquette.	60 00
July 30, 1878: O. Blanchfield.	Lot 3, block M, M. Camp Hill.	J. Conway and E. Tierney.	45 00
July 30, 1878: D. Ames	Lot 5, block H, Shenandoah street.	W. H. Bell	16 00
Do	Lot 6, block H, Shenandoah street.	do	16 00
Do	Lot 8, block Q, between Ridge and Putnam streets.	T. Jefferson	10 00
Do	Lot 2, block L, L. Camp Hill.	N. C. Brackett	20 00
Do	Lot 2, block L, L. Camp Hill.	John Faberty	22 00
Do	Lot 12, block L, L. Camp Hill.	N. C. Brackett	20 00
Do	Lot 1, block F, Shenandoah street.	Alexander Murphy...	250 00
Do	Lot 4, north of Shenandoah street.	E. Tierney et al.	31 00
July 31, 1878: J. Doady.	Lot 1, block N, Shenandoah street.	Storer College	20 00
July 31, 1878: A. Seabold.	Lot 4, block I, Camp Hill.	O. T. Kemp	20 00
July 31, 1878: M. Tearney.	Lot 6, block A, A. between Washington and Potomac streets.	J. P. Schilling.	50 00
July 31, 1878: J. Leisaring.	Lot 2, north of Shenandoah street.	G. L. Myers	400 00
July 31, 1878: F. Garman.	Lot 8, block J, Camp Hill.	Storer College	30 00
Aug. 3, 1878: L. Evans.	Lot 2, block I, Shenandoah street.	J. G. Hurst	15 00
Do	Lot 3, block I, Shenandoah street.	C. N. Trail	15 00
Aug. 3, 1878: S. V. Yantis.	Lot 4, block P, north of Ridge street.	J. McFadden.	12 00
Aug. 5, 1878: M. B. Rodrick.	Lot 3, block K, K. Camp Hill.	W. Exner	20 00
Aug. 6, 1878: George Freeman.	Lot 3, block H, Shenandoah street.	Storer College.	20 00
Do	Lot 4, block H, Shenandoah street.	do	20 00
Do	Lot 1, block I, Shenandoah street.	E. Tierney et al.	15 00
Aug. 7, 1878: N. Marmion.	Lot 13, block I, Camp Hill.	do	11 50
Do	Lot 4, block R, north of Ridge street.	do	1 00
Aug. 12, 1878: E. N. Chambers.	Lot 6, block S, north of Ridge street.	J. G. Hurst.	1 00

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May 25, 1880 sale report

REPORT OF THE ATTORNEY-GENERAL.

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Statement of real property at Harper's Ferry sold at public auction, &c. -Continued.

When and from whom acquired.	Description.	To whom sold.	Amount sold for.
Aug. 12, 1878; E. N. Chambers.	Lot 2, block D D, between Fillmore and Clay streets.	C. L. Cool	\$25 00
Do.	Lot 5, block C C, Washington and Clay streets.	do	20 00
Aug. 19, 1878; James Gilbert.	Lot 14, block P, between Ridge and Putnam streets.	Col. M. E. Church of Bohvar, &c.	12 00
Aug. 21, 1878; O. Hall.	Lot 8, block N, between Ridge and Putnam streets.	H. Robinson	15 00
Aug. 21, 1878; J. F. Conlahan.	Lot 5, block F F, Camp Hill	C. H. Trail	26 00
Aug. 21, 1878; J. Page	Lot 9, block O, between Ridge and Putnam streets.	W. Ransome	15 00
Aug. 26, 1878; E. Tierney.	Lot 3, north of Shenandoah street	E. Tierney et al.	31 00
Do.	Lot 5, block A A, between Washington and Potomac streets.	P Higgins	46 50
Aug. 26, 1878; A. Clemmer.	Lot 2, block F F, Camp Hill	Storer College	50 00
Do.	Lot 3, block F F, Camp Hill	do	40 00
Do.	Lot 4, block F F, Camp Hill	C. H. Trail	50 00
Do.	Lot 6, block F F, Camp Hill	Storer College	16 50
Do.	Lot 7, block F F, Camp Hill	do	20 00
Do.	Lot 3, block G G, Camp Hill	J. Conway and E. Tierney	50 00
Sept. 12, 1878; heirs J. O'Farrell.	Lot 6, block D D, between Fillmore and Clay streets.	C. L. Cool	50 00
Do.	Lot 1, block E E, between S. Cliff and Clay streets.	Alexander Murphy	25 00
Sept. 19, 1878; W. M. Graham.	Lot 6, block L, south of Ridge street.	O. T. Kemp	36 00
Sept. 24, 1878; D. M. King.	Lot 1, block C C, Washington and Clay streets.	J. Cavalier	20 00
Sept. 25, 1878; J. W. Hapwood.	Lot 6, block J J, Camp Hill	J. Conway and E. Tierney	64 00
Do.	Lot 7, block J J, Camp Hill	J. E. Erwin	50 00
Sept. 25, 1878; H. King	Lot 4, block U, north of Ridge street.	E. Tierney	15 00
Sept. 26, 1878; S. J. D. Grubb.	Lot 4, block K K, Camp Hill	M. E. Crawford	76 00
Oct. 1, 1878; J. T. Reed.	Lot 4, block J J, Camp Hill	A. Cross	40 50
Do.	Lot 5, block J J, Camp Hill	do	40 25
Do.	Lot 10, block J J, Camp Hill	do	40 50
Do.	Lot 11, block J J, Camp Hill	do	40 50
Oct. 1, 1878; F. W. Paternfield.	Lot 7, block M M, Camp Hill	Storer College	20 50
Oct. 9, 1878; M. A. Percival.	Lot 7, block north of Shenandoah street	do	40 00
Oct. 9, 1878; J. D. Holmes.	Lot 1, block north of Shenandoah street	J. Cavalier	850 00
Oct. 11, 1878; D. H. Erwin.	Lot 8, block north of Shenandoah street	Storer College	50 00
Do.	Lot 3, block D D, between Fillmore and Clay streets.	C. L. Cool	46 00
Oct. 12, 1878; F. V. Cockrell.	Lot 4, block G, Shenandoah street	E. Tierney et al.	15 75
Aug. 14, 1878; M. D. Cochrane.	Lot 14, block J J, Camp Hill	J. Conway and E. Tierney	70 00
Total			4, 650 00

October 29, 1885

Serial No. 2387

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October 22, 1884 sale report

292 REPORT OF THE ATTORNEY-GENERAL.

Statement of real property at Harper's Ferry, West Virginia, sold at public auction October 22, 1884, under the provisions of act of Congress of July 4, 1884.

When and from whom acquired.	Description.	To whom sold.	Amount sold for.
April 17, 1877: Harper's Ferry Water-Power Company and F. C. Adams.	The water-power entire of the Potomac River, site of old Armory buildings, and all the strip and bluff of land bordering on the Potomac and lying between the river and the streets and lots as laid down on the map of 1869.	Thomas H. Savery (except 330 feet of bluff on Potomac street, sold May 25, 1880, to Alexander Murphy).	\$25,100 00
Do.....	The water-power entire of the Shenandoah River, embracing the site of the rifle factory, with the appurtenances.	Thomas H. Savery.....	810 00
July 22, 1878: J. L. Walsh.	Lot 5, block R, Ridge street.....	C. H. Trail and J. G. Hurst.	5 00
Do.....	Lot 2, block B B, Washington and Ridge streets.	J. Conway.....	25 00
July 29, 1878: John Wilson.	Lot 5, north of Shenandoah street.....	J. C. Child.....	13 00
July 30, 1878: D. Ames.	Lot 10, block J, Union Square.....	T. A. Kerwan and J. Watson.	14 00
Do.....	Lot 11, block J, Union Square.....	J. C. Child.....	3 00
Do.....	Lot 12, block J, Union Square.....	do.....	3 00
Do.....	Lot 13, block J, Union Square.....	do.....	4 00
Do.....	Lot 1, block Q, between Ridge and Putnam streets.	L. W. Delander.....	6 50
Do.....	Lot 2, block Q, between Ridge and Putnam streets.	O. T. Kemp.....	1 00
Do.....	Lot 3, block Q, between Ridge and Putnam streets.	J. H. Renner.....	4 00
Do.....	Lot 4, block Q, between Ridge and Putnam streets.	do.....	5 50
Do.....	Lot 15, block Q, between Ridge and Putnam streets.	T. A. Kerwan and J. Watson.	3 00
Do.....	Lot 17, block Q, between Ridge and Putnam streets.	J. H. Renner.....	14 50
Do.....	Lot 18, block Q, between Ridge and Putnam streets.	T. A. Kerwan and J. Watson.	17 50
Do.....	Lot 1, block R, north of Ridge street.....	C. H. Trail and J. G. Hurst.	5 00
Do.....	Lot 7, block R, north of Ridge street.....	do.....	24 50
Do.....	Lot 8, block R, north of Ridge street.....	L. B. Lightner.....	22 50
Do.....	Lot 9, block S, north of Ridge street.....	L. W. Delander.....	4 00
Do.....	Lot 4, block S, north of Ridge street.....	L. B. Lightner.....	3 00
Do.....	Lot 10, block L L, Camp Hill.....	J. L. Daily.....	13 00
Do.....	Lot 11, block L L, Camp Hill.....	do.....	15 00
July 31, 1878: M. Tearney.	Lot 2, block K K, Camp Hill.....	L. B. Lightner.....	61 00
July 31, 1878: F. Ganman.	Lot 3, block 2 between Van Woert and North Cliff streets.	T. A. Kerwan and J. Watson.	6 25
Aug. 3, 1878: L. Evans.	Lot 7, block L L, Camp Hill.....	do.....	11 50
Aug. 7, 1878: N. Marmon.	Lot 5, block I, Shenandoah street.....	J. Conway.....	8 50
Do.....	Lot 2, block R, north of Ridge street.....	C. H. Trail and J. G. Hurst.	4 00
Do.....	Lot 3, block R, north of Ridge street.....	T. A. Kerwan and J. Watson.	5 50
Do.....	Lot 6, block R, north of Ridge street.....	C. H. Trail and J. G. Hurst.	7 25
Do.....	Lot 6, block 2, between Van Woert and North Cliff streets.	T. A. Kerwan and J. Watson.	10 75
Aug. 12, 1878: E. H. Chambers.	Lot 7, block H, Camp Hill.....	Colored M. E. Church of Bolivar, &c.	1 00
Agst. Do.....	Lot 5, block S, north of Ridge street.....	L. B. Lightner.....	3 50
Sept. 12, 1878: W. A. Winters.	Lot 5, block Q, between Ridge and Putnam streets.	J. C. Child.....	3 00
Do.....	Lot 20, block Q, between Ridge and Putnam streets.	T. A. Kerwan and J. Watson.	5 25
Do.....	Lot 1, block V, between Putnam and Van Woert streets.	do.....	25 00
Do.....	Lot 2, block V, between Putnam and Van Woert streets.	do.....	3 25
Do.....	Lot 3, block V, between Putnam and Van Woert streets.	do.....	2 00
Do.....	Lot 4, block V, between Putnam and Van Woert streets.	do.....	2 75
Do.....	Lot 5, block V, between Putnam and Van Woert streets.	do.....	3 00
Sept. 23, 1878: heirs of F. Z. Butt.	Lot 6, block J, Union Square.....	C. H. Trail and J. G. Hurst.	38 00
Sept. 24, 1878: D. M. King.	Lot 2, block S, north of Ridge street.....	S. V. Yantis.....	2 25
Do.....	Lot 3, block U, north of Ridge street.....	E. D. Colgate.....	10 00

October 29, 1885

Serial No. 2387

140

October 22, 1884 sale report

REPORT OF THE ATTORNEY-GENERAL.

295

Statement of real property at Harper's Ferry, West Virginia, &c.—Continued.

When and from whom acquired.	Description.	To whom sold.	Amount paid for.
Oct. 1, 1878; M. A. Percival.	Lot 1, block U, north of Ridge street.	S. V. Yantis.	\$2 50
Oct. 9, 1878; C. E. Biller	Lot 3, block B B, Washington and Ridge streets	J. Conway.	50 00
Oct. 11, 1878; D. H. Erwin.	Lot 8, block L L, Camp Hill.	J. J. Faherty.	6 00
Do.	Lot 9, block L L, Camp Hill.	do.	13 00
Do.	Lot 6, north of Shenandoah street.	W. B. Hill.	54 00
Do.	Lot 2, block B, Shenandoah street.	J. G. Hurst.	2,600 00
Do.	Lot 18, Wager six acre reservation.	G. and J. Dittmeyer.	1,055 00
Do.	Lot 10, block I, Camp Hill.	R. H. Cavalier.	18 00
Do.	Lot 4, block E E, Camp Hill.	P. Higgins.	10 00
Do.	Lot 5, block H H, Camp Hill.	Storer College.	25 00
Do.	Lot 10, block P, between Ridge and Putnam streets.	E. D. Colgate.	12 00
Do.	Lot 7, block A A, between Washington and Potomac streets.	L. A. Montague.	50 00
Do.	Lot 9, block A A, between Washington and Potomac streets.	J. Conway.	100 00
Do.	Lot 10, block A A, between Washington and Potomac streets.	do.	100 00
Do.	Lot 5, block B B, between Washington and Ridge streets.	G. R. Marquette.	30 00
Do.	Lot 6, block B B, between Washington and Ridge streets.	do.	20 00
Do.	Lot 9, block B B, between Washington and Ridge streets.	C. H. Trail and J. G. Hurst.	20 00
Do.	Lot 10, block B B, between Washington and Ridge streets.	L. A. Montague.	30 00
Do.	Lot 2, block C C, between Washington and Clay streets.	J. C. Child.	34 00
Do.	Lot 8, block F F, South Cliff street.	C. H. Trail and J. G. Hurst.	33 00
Do.	Lot 4, block D D, between Fillmore and Clay streets.	H. C. Brackett.	40 00
Do.	Lot 5, block D D, between Fillmore and Clay streets.	do.	20 00
Do.	Lot 3, block E E, between South Cliff and Clay streets.	J. Conway.	25 00
Do.	Lot 1, block F F, Camp Hill.	C. J. Franklin.	190 00
Do.	Lot 9, block J J, Camp Hill.	J. Conway.	30 00
Do.	Lot 12, block J J, Camp Hill.	E. D. Colgate.	161 00
Do.	Lot 13, block J J, Camp Hill.	T. A. Kerwan and J. Watson.	76 00
Do.	Lot 5, block K K, Camp Hill.	J. Conway.	127 00
Do.	Lot 9, block K K, Camp Hill.	J. J. Faherty.	30 00
Do.	Lot 10, block K K, Camp Hill.	J. Conway.	41 00
Do.	Lot 11, block K K, Camp Hill.	J. J. Faherty.	42 00
Do.	Lot 12, block K K, Camp Hill.	do.	51 00
Total			\$2,357 71

23<sup>d</sup> CONGRESS.]

No. 581.

[1<sup>st</sup> SESSION.]

ON GRANTING TO A RAILROAD COMPANY THE RIGHT OF WAY OVER THE GROUNDS  
OF THE ARMORY AT HARPER'S FERRY, VIRGINIA.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES APRIL 30, 1834.

Mr. R. M. JOHNSON, from the Committee on Military Affairs, to whom the letters of Mr. Bruce, president, and Mr. Morell, engineer of the Winchester and Potomac Railroad Company, were referred by the Secretary of War, at the instance of the President of the United States, asking for the right of way through the property of the United States at or near Harper's Ferry, reported :

That the Winchester and Potomac railroad, in order to effect a suitable junction with the Baltimore and Ohio railroad at Harper's Ferry, must pass through property belonging to the United States at said place ; and that such a work, penetrating a region among the richest in the Union in agricultural and mineral resources, and offering a route for its ready extension, will greatly promote the interests of the national armory by furnishing materials for its manufacture and supplies for workmen and others there employed ; and, in the event of foreign invasion, might tend to strengthen the national arm by providing a rapid medium of transporting men and munitions of war from the interior of the country to the seaboard. But, independent of the reasons here advanced, the committee are of opinion, as this is a great public work which ought to have a fair encouragement, and as the right of way through the property of the United States at Harper's Ferry, which the company ask, can do no manner of injury to said property, but, on the contrary, greatly increase the value thereof, as also benefit the public in general, the committee therefore report a joint resolution granting to the Winchester and Potomac Company the right of way as asked for.

WAR DEPARTMENT, April 18, 1834.

Sir : I have the honor to transmit copies of letters received from Mr. Morell, the engineer, and Mr. Bruce, the president of the Winchester and Potomac Railroad Company, by which it will be seen that that company is desirous of running their road through the public grounds at Harper's Ferry. I am instructed by the President to inform the Committee on Military Affairs that, not feeling authorized to accede to the proposition made on this subject, the matter is referred to the consideration of the committee.

Very respectfully, your most obedient servant,

LEW. CASS.

Hon. R. M. JOHNSON, *Chairman of the Committee on Military Affairs, House of Representatives.*

WINCHESTER, April 14, 1834.

SIR : A copy of a letter from Colonel Bomford, of the 29<sup>th</sup> ultimo, to General Rust, containing the decision of the Secretary of War upon the application of the Winchester and Potomac Railroad Company, made through General Rust, has been furnished me as agent of that company. From the terms of the decision I infer that the request of the company has not been presented to the War Department in a manner to make its nature fully understood.

By an act of the general assembly of Virginia, incorporating the Winchester and Potomac Railroad Company, they are authorized "to enter upon all lands and tenements through which they may judge it necessary to make the said railroad, and to lay out the same according to their pleasure, so that neither the dwelling-house, yard, garden, or castilage of any person be invaded *without his consent.*"

The Winchester and Potomac railroad cannot reach the Potomac at Harper's Ferry without passing through the yards, &c., of the occupants of the land held by the government at that place, and the request of the company is not that the War Department shall dispose of the public land, but that it shall not obstruct a great public improvement by withholding its consent to the passage of the road through the yards, &c., of the individuals occupying that ground.

It is contemplated to carry the road in the rear of the dwelling-houses, and to elevate it upon trusses to a height sufficient to admit at all places ready access from the front to the rear of all the lots either by men or horses; and it is believed, by adopting this mode of construction, that there is not a single occupant who would refuse his assent to the passage of the road through his grounds.

If, under this view of the subject, the Secretary of War shall feel authorized to give the consent required, he will please cause me to be notified of the same at as early a period as his convenience will permit.

I am, with great respect, your obedient servant,

Hon. LEWIS CASS, *Secretary of War.*

WM. H. MORELL.

WINCHESTER, APRIL 14, 1834.

SIR: It is, I believe, known to you that one of the contemplated routes for the Winchester railroad passes down the left bank of the Shenandoah, near Harper's Ferry, and partly through the United States property at that place. A sketch of the localities of the public property, likely to be affected by our undertaking, was forwarded through General Rust, I think, to Colonel Bomford, that the department might be possessed of such materials as would enable it to determine what facilities could be extended to a work which, no doubt, will be of great benefit to the armory, and enhance the value of property belonging to the government in its vicinity. It has been stated to me, though unofficially, that, as head of the War Department, where I supposed the power to reside, you were disinclined to act on the subject of our request, and, supposing that it arose from an apprehension that our expectations might be greater than they really are, I have taken the liberty thus personally to address you.

Although the location of our road passes through several private yards and gardens, yet the holders of property, save one, have gratuitously conveyed us the right of way. A similar right we solicit of the federal government; and, in addition, the use of a portion of the public ground near the arsenal as a place of deposit for our trade, now occupied, in part, as a wood and lumber yard, out of the region of the workshops, and embracing no improvement of any value whatever. The spot referred to, near the arsenal, is particularly desirable to give efficiency to our operations, as it at once would accommodate the trade of the armory and village, give us easy access to the Chesapeake and Ohio canal, and promises a ready junction with the Baltimore and Ohio railroad. Penetrating the richest valley in Virginia, leading to inexhaustible beds of fine iron ore, from which some of the best metal used at the armory has been obtained, the commencement of a line of improvement, likely to be excelled by few in the accommodation of national trade and travel, I cannot doubt that the general government will extend encouragement to the work commensurate with its importance.

Would it be asking too much of the department to direct a personal examination into the localities and objects above alluded to? The engineer of the company will cheerfully communicate its views, and (excuse me if I should appear importunate) it would give me much pleasure to meet such agent next week, on the ground; Mr. Thomas, of the Baltimore company, having solicited an interview with me upon business of the two companies, on the 23d instant, at Harper's Ferry.

Should you feel indisposed to act decisively in this matter, and advise its reference to the slow action of Congress, I beg you will be kind enough to inform me early, as our desire is to have the subject settled as soon as possible, as well as to put the anxiety of the inhabitants of Harper's Ferry to rest about the final location of the work as to enable the company to decide, however reluctantly, upon occupying the right bank of the Shenandoah, by means of a bridge about a mile above its junction with the Potomac.

Allow me to hope that a work, fostered at its commencement by the general government, and stamped with the testimony of its national importance by the able engineer then employed, will receive the same liberality now advancing towards its completion.

I have the honor to be your most obedient servant,

JOHN BRUCE,

*President of Winchester and Potomac Railroad Company.*

HON. SECRETARY OF WAR.

[23D CONGRESS.]

No. 586.

[2D SESSION.]

ON GRANTING TO A RAILROAD COMPANY THE RIGHT OF WAY OVER THE GROUNDS  
OF THE ARMORY AT HARPER'S FERRY, VIRGINIA.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES DECEMBER 12, 1834.

Mr. THOMSON, of Ohio, from the Committee on Military Affairs, to whom was referred the resolution of the House of Representatives of the 9th instant, embracing so much of the report of the Secretary of War as relates to the joint resolution of Congress, passed at the last session, providing for the construction of a railroad through the public grounds at Harper's Ferry, reported:

That the committee have examined the subject referred to them, and find that the Winchester and Potomac Railroad Company could not make the contemplated railroad without passing through the ground belonging to the United States, which had some small improvements erected thereon, and which, on an examination made by officers appointed by the proper authority for that purpose, may amount to about \$450; there are some other buildings on the line of the railroad, as now located, such as smoke-houses, sheds, &c., of little value, which can be removed with but little expense. The committee being of opinion that the completing of the Winchester and Potomac railroad, and forming a junction with the Baltimore and Ohio railroad at Harper's Ferry, is an affair in which the public feel a great interest, and that it is an undertaking which deserves every fair encouragement, recommend the passage of the accompanying joint resolution, as amendatory to the one passed at the last session.—(See antecedent document No. 581.)

TOPOGRAPHICAL BUREAU, *October 23, 1834.*

Sir: I have the honor to lay before you the report of Lieutenant Colonel Kearney and Captain Turn-  
Tull, of the corps of topographical engineers, in reference to a resolution of Congress passed during its  
last session, authorizing the President to grant, under certain conditions, a right of way to the Winchester  
and Harper's Ferry Railroad Company over the public land at Harper's Ferry.

The report, 1st, describes the ground and the improvements which would be interfered with.

2d. It states the conditions which ought to be exacted in case the grant is made.

3d. It alludes to the power to make the grant under the limitation which appears to be placed  
upon that power in the resolution, and the circumstances which were found to exist.

Upon the last question the whole subject may be considered to depend; but as its interpretation pro-  
perly belongs to authority higher than this bureau, it is respectfully submitted to your better judgment,  
with all the papers involved in its consideration.

I have the honor to be, sir, very respectfully, your obedient servant,

J. J. ABERT, *Lieutenant Colonel, Top. Eng.*

Hon. Lewis Cass, *Secretary of War.*

WASHINGTON CITY, October 7, 1834.

Sir: Agreeably to your orders we have examined the ground on which the Winchester and Potomac Railroad Company propose to locate their road and depots at and near Harper's Ferry, as well as the effect of that location upon the property and interests of the United States, and we have the honor to report:

That the company intend, on leaving the main land near Strider's island, that the road shall traverse the islands which border the northern shore of the Shenandoah river, viz: Strider's, Throop's, Hall's, and Virginius islands, whence it will reach the narrow plains at Harper's Ferry, about forty-three yards above the foot-bridge at the lower end of the island. Upon one of these islands are the works erected by the United States for the manufacture of rifles; and on the main land, near the ferry, are the arsenals for the storage of arms, and many of the houses, offices, and other buildings, intended for the accommodation of the officers and workmen in the employ of the government.

Covered as the ground at the ferry is with houses, gardens, and fences, and crossed by streets and lanes, it would be difficult, if not impracticable, to construct a road of double tracks without interfering with some interest or convenience, and it would be equally difficult to avoid all improved property. The route which the company has traced is, in fact, almost altogether on improved property, on which are several houses, as the maps accompanying this report, and the statement marked F, will show.

We are of opinion, nevertheless, that it is liable to fewer objections on the part of the United States than any other route that the company could have selected on the public lands.

The company call for a breadth of thirty feet for their road in its passage over the islands, and to the eastward of the street or alley on which the Globe inn is situated. From this point (say thirty-four feet east of that street) to the eastern boundary of the United States property the company propose to increase the width of the ground on which their road is to be constructed to fifty feet, to enable them to lay four tracks.

The parallel lines (traced and shaded in red lake) upon the maps hereto annexed, and marked A, B, and C, exhibit the location of the road, which covers about 7,000 square yards of public land.

We are of opinion that a breadth of thirty feet is not more than will be necessary for a double track elevated above the natural surface of the ground; and the connexion of the road with that of the Baltimore and Ohio Company, which has a peculiar width between the rails, renders four tracks indispensable at the place where they unite with each other.

As a place of deposit, and for the general accommodation of the trade, the company ask for the ground lying south of their road and east of the paymaster's dwelling. This is also colored in red lake upon the maps, (marked A and B,) and contains about 2,900 square yards. It includes part of the paymaster's garden and a small house of little value, and it extends to the river shore.

This ground will probably be scarcely sufficient for the purposes for which the company intend it. The privilege of wharfing in front of it would enable the company to communicate directly with the river trade and enlarge their limits. Should the United States be disposed to grant more space than is here indicated, the grant ought to be confined to the ground lying between the railroad and the Shenandoah river, and east of the lane on which the Globe inn is situated.

Between the railroad and Shenandoah street, and to the east of the Globe inn, the United States has no more ground than is required for the establishments which it has formed there. It is through this ground, nevertheless, that the company wish to open a communication between the railroad and Shenandoah street, and they propose to erect a warehouse immediately north of and in connexion with the road, for the benefit of the trade of Harper's Ferry and its neighborhood, and for the general accommodation of passengers.

The company have chosen two modes, by either of which it would be willing to effect this object; that is, directly by the space lying between the arsenal and the master armorer's, and colored in red lake on map A, or otherwise through the Globe Inn lane, and thence between the northern rails and the red dotted lines shown upon the same map.

As it is intended to lay the rails along this part of the line at such a height that their surface will be nowhere less than ten feet above the natural surface of the ground, and as the ground can be easily graded to fourteen feet below the rails, they can be established on trestles or frames, or upon piers, so as to leave sufficient room under them for all purposes of transportation or intercourse between the depots south of the road and the Globe Inn alley, and thence to Shenandoah street.

Inasmuch as the ground which the company require for a depot on the southern side of their road necessarily approaches the paymaster's dwelling rather nearer than is supposed to be consistent with his comfort and convenience, or the safety of his property, and as the buildings which the United States have upon that lot are very conveniently situated for the purpose, and would be useful to the company for the accommodation of their officers and attendants at the depot, it is suggested whether it would not be to the mutual advantage of the parties to yield this lot and its improvements to the company for a fair price. We learn that there is an unexpended appropriation for enlarging the paymaster's establishment. Should it be considered advisable to locate him elsewhere, (on the hill, for example,) there could not be a fairer opportunity, nor one more in accordance with the interests of all parties, than the one now presented.

Should the President of the United States resolve to convey to the company the right of way over the public land, we conceive it to be our duty respectfully to suggest that, among others, the following conditions and restrictions ought to be embraced in the act of conveyance, viz:

Restraining the company from diminishing the watercourses by which the works on the Shenandoah are supplied with water; from impeding the free passage of the water through them; from diminishing the height, length, breadth, or strength of the embankments which now are or may be hereafter erected to protect the works or property against freshets or backwater; the like restrictions as to waste-weirs,



sluices, dams, &c.: from interrupting or reducing the water communication between these channels and the river; from impeding or injuring the navigation of the rivers near the United States property; from preventing or impeding the erection of any dam or other work that the United States may propose to erect upon the Shenandoah, reserving to the United States to add to, enlarge, diminish, or otherwise alter or change such channels, sluices, waste-weirs, dams, embankments, or other works, as now are or hereafter may be deemed necessary or convenient.

Further, we think that the company ought to be restrained from embanking any part of the ground over which their road is to be constructed near the public land without the express permission hereafter of the United States. The rails ought, therefore, to be supported, wherever they are elevated above the natural surface, upon frames or trestles, or upon piers or viaducts, so as to leave free and unimpeded, as far as practicable, the communication between the ground lying north of the road and that which lies next to the river, so that the passage across or under the road may always be free and open to the United States and to the public, so far, at least, as may consist with the safety of the property of the company; and, for this purpose, the surface of the rails ought not to be less than ten feet above the ground anywhere at Harper's Ferry, nor less than fourteen feet above the ground at and east of the Globe Inn alley.

This freedom of communication, so far as it relates to the ground on which the company's depot is to be situated, might be limited to the property of the United States, and to the officers and persons in their employment; and with that limitation might be connected a right to land stores and other property at the wharves and upon the grounds of the company at Harper's Ferry, and to transport them over the said grounds by the most direct and convenient routes, free of charge for wharfage, damage, or use of grounds. The company should be also restrained from obstructing the streets across which their road may be carried, and from interrupting the drainage of the ground north of it. It ought to be held to erect and maintain sufficient fences between its property and that of the United States wherever and whenever required. It ought to remove, at its proper cost, such houses, sheds, &c., as may fall within the limits conveyed to it, to such places as they may be reasonably required to remove them to, and to restore them in as good condition to their owners as they were in immediately before their removal; or (at the option of the owners) it should pay for them at a fair valuation. It ought also to be obligatory upon the company to use every precaution against fire, and to repair any damage or loss that the United States property may sustain in consequence of the proximity of the company's works to the same.

Whether there exists sufficient authority to make arrangements and conditions such as we have suggested, or whether any conveyance of the right of way over the property of the United States at Harper's Ferry at or near the line of location laid down on the accompanying maps, or on any other practicable line, can be made consistently with the provisions of the joint resolution, a copy of which accompanies this report, and especially whether such conveyance may be made consistently with the clause which requires that the ground to be conveyed shall be "at present not improved," we do not conceive to be within the sphere of our duty to inquire. It is for others to determine whether the authority to do so be sufficient or not. Our duty is confined to the simple statement of the facts which we have collected, and the restrictions and conditions which occur to us, as being worthy of the President's consideration. If there are any other than those we have stated, they have escaped our attention, or have not appeared sufficiently important to be noted.

Very respectfully, we are, sir, your obedient servants,

JAMES KEARNEY, *Lieut. Col., and Top. Eng.*  
WM. TURNBULL, *Captain, and Ass't Top. Eng.*

Lieut. Col. J. J. ABERT, *Topographical Bureau.*

F.

*Explanation of maps accompanying the foregoing report.*

At the eastern termination of the government land a high stone wall is erected, immediately on the line between the United States and Wager's.

No. 1, carriage-house of superintendent, value \$40; can be removed.

No. 2, carriage-house and stable of paymaster, value \$50; can be removed.

No. 3, carriage-house and stable of master armorer, value \$150; can be removed.

No. 4, dwelling, belonging in part to the United States, and the balance to George S. Butler—say, United States \$100, Butler \$140, as ascertained by appraisers. This building *cannot* be removed.

The other buildings laid down on the map in the line of the railroad are frame smoke-houses, privies, and sheds, of but little value, and can be removed with but little expense. The ground occupied by a kitchen attached to the paymaster's quarters is required for a part of the depot. This building is of frame, of little value, and also easily removed.

It may not be improper to remark that the fencing of the lots will be much increased by the opening of the contemplated railroad. It will also be necessary to secure a free passage along the streets extending from Shenandoah street to the river; that is, that the rails should be sufficiently elevated for the passage of wagons under them.

August 12, 1834.

dated the first day of May, One thousand, eight hundred, conveyed his one fourth part of the premises aforesaid to the said William Wilson & John Potts as will more fully and at large appear by a reference to the several deeds recorded in Berkeley County and which said tract is bounded as follows: To wit Beginning as [sic] an Elm near a marked Symmore on the bank of the river Potomack below the furnace and running thence South seventy one degrees west eighty eight poles to a double bodied black oak sappling [sic] on the East side of a valley thence North twenty nine degrees west fifty poles to sundry

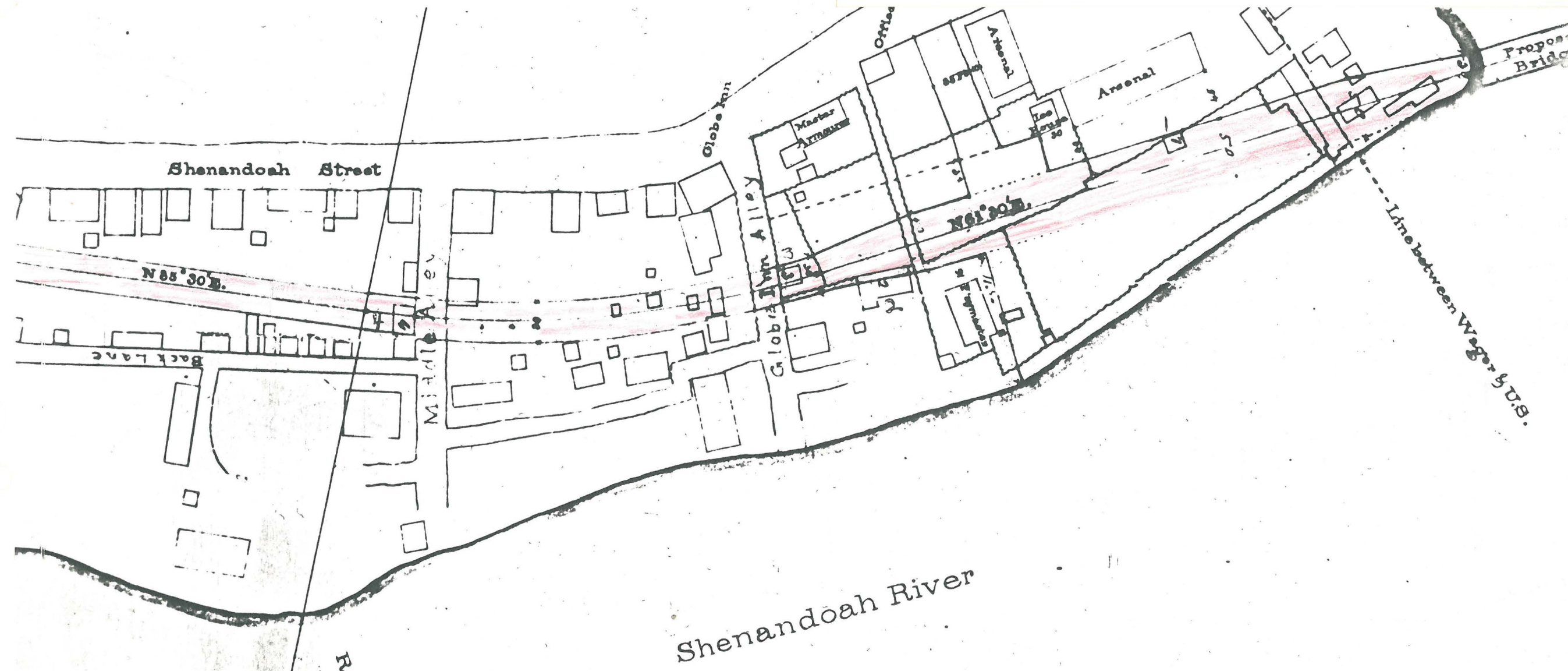
[Third page]

marked saplings on a steep hill side on the south side of Elk branch, thence up said branch North sixty nine degrees west seventy six poles to a stake between two red oaks near a meadow, thence south fifty one degrees west twenty five poles to sundry marked saplings on a North Hill side, thence North Eighty nine degrees west thirty six poles to a walnut thence south seventy six degrees west twenty poles to a stake between an Elm and Lynn tree by a cleft of rocks, thence south fifty degrees west nineteen poles to two red oaks and a Locust on the North side of a steep hill, thence North fifty nine degrees west, sixty seven poles to two white oak sapplings in a valley, thence North fourteen degrees west one hundred & thirteen poles to two white oaks on the north side of the branch five or six poles from the said branch on the side of a hill, thence North forty two degrees east twenty four poles to sundry marked sapplings supposed to be on William Stroops line, thence along said line south seventy seven degrees east two hundred & sixty poles down to Stroops corner standing on the Bank of the river, thence down the meanders of the river South twenty degrees east twenty six poles, south thirty degrees east, forty eight poles, thence south forty six degrees east seventy poles to the beginning except Four acres and forty two rods sold to Frederick Sligh & bounded as follows: Beginning at a stone one rood from a small white oak in the original line of Henry Lee and Matilda his wife [sic] deed to George North, William Wilson, John Potts & Robert E. Hobart and running thence with the same North fourteen degrees thirty minutes west twenty five poles to two small white

[Fourth page]

Oak sapplings corner to the said deed, still with the same North forty one degrees thirty minutes East twenty four poles

October 7, 1834 Map showing Right Of Way



### PLOT OF HARPERS FERRY

Exhibiting the limits of the ground requisite for the passage of the Winchester & Potomac Rail Road through the Town

Map from Washington, D. C., National Archives, Records of the Office of the Chief of Engineers (RG 77), Fortifications Map File, Dr. 150, sheet 78-17

Scale 100 Feet to the Inch.

References

Ground requisite for the Rail Road

ACT OF AUGUST 1, 1842

STATUTE II.

Aug. 1, 1842.

Authority to erect the bridge and make a road.

Proviso; in doing so not to interfere with the rights of others.

Proviso: location to be approved by the Secretary of War.

Proviso: agents, &c., of the U. S. to pass free of toll.

May erect a toll house adjacent to the bridge. Proviso.

CHAP. CXVIII.—An Act to authorize the Shenandoah Bridge Company, at Harper's Ferry, to erect a Bridge on the land of the United States at the town of Harper's Ferry.

Be it enacted, &c., That the Shenandoah Bridge Company, at Harper's Ferry, be and they are hereby authorized to erect a bridge across the river Shenandoah, on the lands belonging to the United States, at or near the town of Harper's Ferry, and to connect the same by a sufficient road or passway through the said lands, with the road on the east side of said river and the main street of the said town: *Provided*, that, in the construction of said bridge, and the said road or passway to and from it, the said company shall not, in virtue of this act, inter-

fere with the rights and privileges of any individuals or existing corporations: *And provided, also*, That the location of the said bridge upon the public lands aforesaid shall be submitted to and approved by the Secretary of War, prior to the erection thereof: *And provided, also*, That all agents, servants, and property in the service of or belonging to the United States, shall pass and be transported free of toll.

SEC. 2. *And be it further enacted*, That on the said terms and conditions the said Shenandoah Bridge Company shall be, and they are hereby, empowered to erect a toll-house adjacent to the said bridge on the lands aforesaid of the United States: *Provided*, That, should the said bridge never be constructed, or, having been constructed, shall be abandoned by said company, the rights vested therein by this act shall cease and determine.

APPROVED, August 1, 1842.

158 A

1806 Right of Way for Canal

Harpers Ferry National Historical  
Park Microfilm Collection, Reel 1 No.  
22, Vol. 13, pp. 1265-1627. From  
National Archives Record Group 153,  
Office of Judge Advocate General,  
Military Reservation Division, 1609-1942,  
Harpers Ferry, W.Va., Box No. 44.

Articles of Agreement made and  
entered into the third day of March

in the Year of our Lord One thousand Eight-Hundred and Six. Between Thomas Jefferson, President of the United States, on the one part for and in their behalf & the president and Directors of the Potomac Company on the other part. Witnesseth that whereas the said Company are anxious to ~~improve~~ improve the Navigation of the River Shenandoah, by means of a Canal to be taken out of said River upon the Grounds belonging to the U. States and Continued down to a point at or near the old Saw Mill upon the Said grounds, where it is proposed to descend by means of Locks into the bed of the River. In consideration whereof they agreed that the U. States may have the full use and benefit of the Surplus Water in Said Canal - - The said Thomas Jefferson President as afore said Hath and Doth hereby grant to the Said Company the Right and privilege of cutting making and Keeping in Repair at their own proper and exclusive expence a Canal through the Said land belonging to the United States, and in such a Manner and direction as will take the water out of the Shenandoah River and Convey the Same to a point at or Near the old Saw Mill where their Locks may be inserted to descend again into the bed of the River - And the Said Thomas Jefferson in his said Capacity doth hereby further grant to the Said Company for the purposes aforesaid and as necessary for their Accomplishment the Right and privilege of digging and taking Stone Rocks and gravel from Such parts of the public land as Shall not be injurious to the United States; and also the Right of making keeping in Repair and using Suitable towing paths and passages on the banks of the said Canal though the whole extent aforesaid, together with the use and occupancy at all times of a sufficient Space of Ground on each side of the Locks as shall be proper for a Toll house and other necessary uses of Said Locks and the Said president and Directors in consideration of the premises do again and cove<sup>nt</sup> with the U. States as aforesaid that they the Said Company or their assigns will make and Keep in Repair the proposed Canal, and do hereby grant unto the United States as aforesaid forever here after the Right and privilege of drawing Water from any part or parts of Said Canal for the use of any Water Works which may hereafter be erected on any part of the public lands, So far as may consist with the free complete and uninterupted use of the Saod Canal, by the Said Company, and the Said Company doth further agree as aforesaid with the United States to cause to be made and kept in repair such Roads and bridges as may be ~~deemed~~ deemed necessary and proper by the Superintendent of the

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Public Works at Harpers Ferry to remedy any inconvenience which the U.S. may sustain in consequence of the interruption which the proposed Canal and Locks may occasion <sup>to</sup> to the existing road or way -

The said president and directors of the Potomac Company having a complete knowledge of the nature and extent of the title which the United States claim to the Land through which the aforesaid Canal is intended to pass, it is hereby clearly understood and further agreed by the parties hereto, that the said Thomas Jefferson, President as aforesaid only intends to pass to the said Company such right and such only as the United States Claims as are invested with, not meaning to warrant or defend the same, or to subject the United States to any damage or liability whatsoever in Case their title to the Same shall hereafter prove defective.

Signed Thos Jefferson

U.S. Seal By the President  
of the U. States  
H. Dearborn  
Sec. of War

Signed Jos. Brown  
for P. Company

True copy, 3, Nov. 1815.

## L807 Plat

## Explanation of the Plat

- A. The beginning, at which place is three sycamores; - the leased land comes to these trees and no lower down the river.
- B. Shews where the Canal takes the water out of the river.
- D. The Dwelling house occupied by Leonard Harbaugh.
- E. Shews the way the waste water is carries off from the canal.
- F. Shews a situation where a mill may be built, to work two pair of six feet stones, and supplied with water by leading it along the old saw mill race to P and then by cutting a new race along the dotted lines to F, at which situation ten feet of fall may be had and a sufficient supply of water at all times without interfering with the supply of the Canal at B.
- G. G. Shews the new Saw mill, supplied with water from the Canal; at which place a mill ought to be built to work two pair of Six feet stones, with ten feet head of water.
- H I K Shews a Lock Gate, and the 1st and 2nd lock.
- M. Shews a situation for a Mill seat that may work two pair of Six feet stones, which may have 17 feet head and fall of water, and be supplied by taking the water from the canal at the dam mill, G, and leading it along the dotted lines to L, and there carrying it across the canal in a trunk: and if delivered on an overshot wheel the tail water cannot impede the boats passing up or down.
- N. Shews where another Mill might be built to work two pair of Six feet stones, to be supplied with water in the same manner with the last, and have the same head of water.
- T. Shews the Dwelling of Harper Dec.
- XY The dotted line, shews where a dam might be made across that part of the river and the water in the time of a flood turned the other way; leaving an apperture in the dam to let enough through to supply the Boats passing: which would prevent the mills below the locks being stopped by back water.

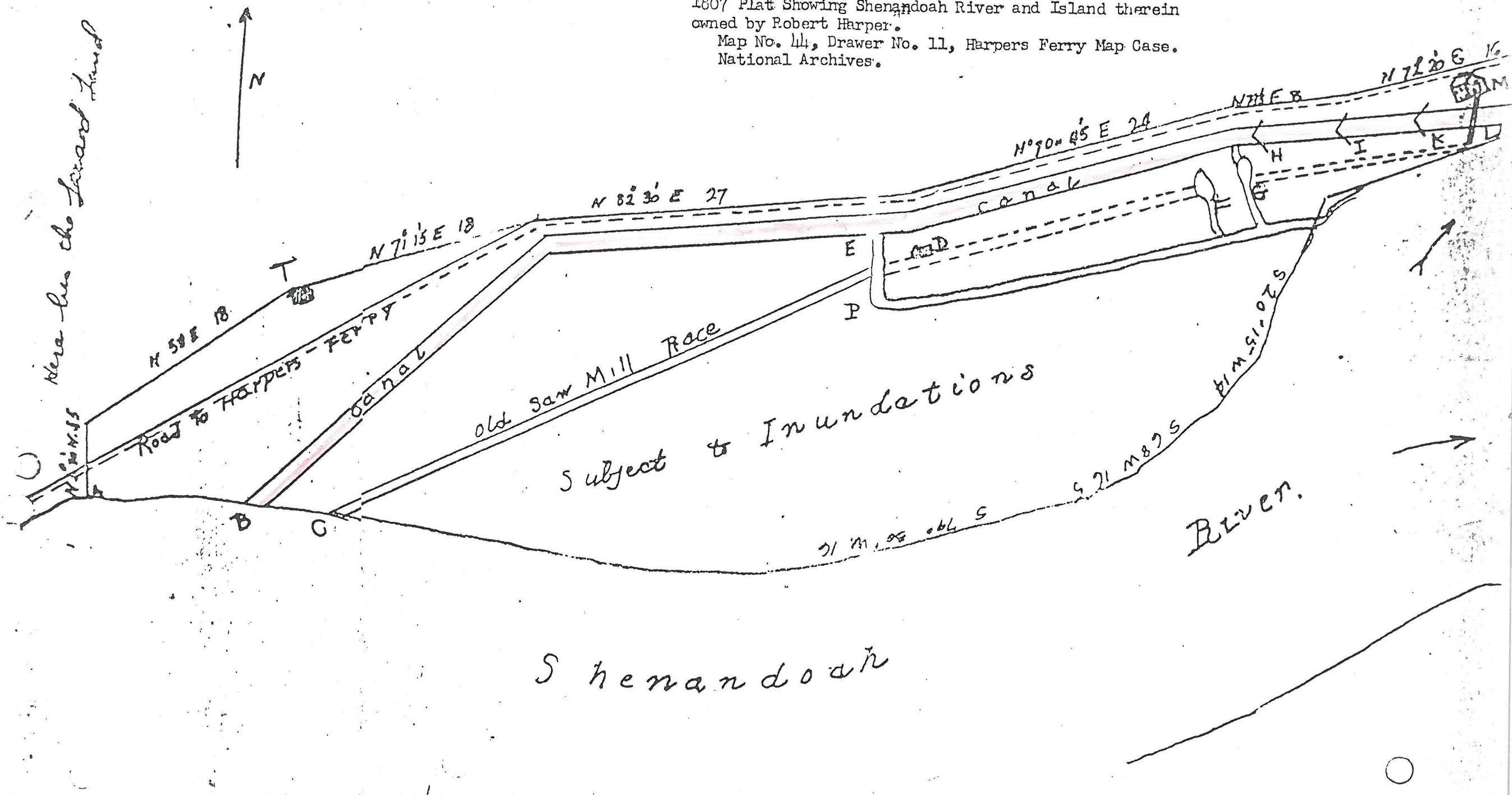
The lines shaded yellow shew the road to Harpers Ferry.

laid down by a scale of 8 perches to an inch.

1807 Plat showing right of way for  
Potomack Company Canal

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1807 Plat Showing Shenandoah River and Island therein  
owned by Robert Harper.  
Map No. 44, Drawer No. 11, Harpers Ferry Map Case.  
National Archives.





John Potts & Eliza his wife & George North & Eliza his wife by their certain Indenture of bargain & sale bearing date the first day of June, one thousand eight hundred have sold and conveyed unto John Adams President of the United States and his Successor and Successors in Office the fee simple estate of and in a certain tract of or piece of land lying & being in the said County of Berkeley containing four acres and fifty rods of land. And whereas the said Eliza, wife of John Potts cannot conveniently travel to the Court of our said County of Berkeley to acknowledge the same, therefore we command you, or any two or more of you, that you personally go to the said Eliza wife of the said John Potts & receive her acknowledgement thereof, and examine /sic./ her privately and apart from her said husband whether she does the same freely and voluntarily without his persuasions or threats and whether she is willing the same shall be recorded in our said County Court together with this commission annexed and when you have received her acknowledgement and examined her as aforesaid that you distinctly and plainly certify us thereof under our hands & seals, sending then there this writ and the said Indenture. Witness Henry Bedinger Clerk of our said Court, at the Court House aforesaid the twentieth day of November, One thousand eight hundred and in the year of this Commonwealth.

signed

H. Bedinger

RIGHT OF WAY FOR WINCHESTER AND POTOMAC RAILROAD

June 25, 1834. III. RESOLUTION giving the right of way through the property of the United States at Harper's Ferry, to the Winchester and Potomac Railroad Company.

Grant of the right of way, and restriction of its use.

Post, p. 792.

Proviso.

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the President of the United States of America be, and he is hereby, authorized to convey to the Winchester and Potomac Railroad Company, free of charge, the right of way through the property held by the United States at Harper's Ferry, (and at present not improved,) if, in his opinion, it should not be inconsistent with the public service; and, also, on the same terms, so much of the ground between the arsenal and the Shenandoah river, and near its junction with the Potomac, as may be deemed consistent with the public interest: to be used for the benefit of the said company in the deposit and accommodation of the trade of said Winchester and Potomac Railroad Company only, and for no other purpose whatever: *Provided, nevertheless,* That the said railroad shall be so located, in the judgment of two or more skilful engineers of the army of the United States, who may be deputed by the President of the United States to make such location, as not to impede or injure, in any manner, the future improvement of the navigation of the river Shenandoah by a lock and dam navigation, or by extending a canal along the left bank thereof, to the river Potomac, or to the canal now constructed along the left bank of the said river.

APPROVED, June 25, 1834.

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TWENTY-THIRD CONGRESS. Sess. II. Res. 1, 2, 3. 1835.

RESOLUTIONS.

Jan. 27, 1835.

Ante, p. 744.

Road to be completed under the approval of the President.

Proviso.

I. Whereas the Winchester and Potomac Railroad Company have found it impracticable to make the railroad through the grounds belonging to the United States at Harper's Ferry, agreeably to the exact tenor of the joint resolution passed for their benefit at the last session of Congress,

*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the said Winchester and Potomac Railroad Company are hereby authorized to complete said railroad, as now located through said grounds, on paying the value of any improvements injured by the road, or giving authority to replace them in other positions, should they be deemed by the President of sufficient importance to be paid for or removed: *Provided, however,* That the road shall be constructed in such place, as far as it passes through the public grounds at Harper's Ferry, as may be approved by the President.

APPROVED, January 27, 1835.