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NORTH CAROLINA LAW REVIEW

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Volume 7 | Number 3

Article 13

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4-1-1929

# Jurisdiction Over Federal Lands Within the State

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## Recommended Citation

J. H. Anderson Jr., *Jurisdiction Over Federal Lands Within the State*, 7 N.C. L. REV. 299 (1929).

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ably have contemplated, due to the currency of negotiable instruments that it would find its way into another state. If the court holds that fraud<sup>1</sup> was practiced by bringing the note into Virginia for the sole purpose of attaching the collateral, the fraud would be against the holder rather than Smith.

Burpee, J., in *Siro v. American Express Co.*,<sup>22</sup> advances an argument which apparently has been given little consideration by other courts. He says, "The defendant has not been oppressed or seriously harmed by the retention of the money in the hands of its agent. It has not lost it. . . . If the defendant has a good defense to plaintiff's suit it should rather welcome its determination. . . . Its plea to the jurisdiction is not adopted to appeal persuasively to the equitable powers of the court."

There is a reluctance upon the part of the courts to grant relief in cases which fall in the penumbra of the rule. They are afraid of giving the appearance of fighting for jurisdiction of causes, a practice for which the old common law courts are condemned. Foreign attachment is today an important and needful remedy and should be allowed, in the absence of actual fraud, in the type of case herein discussed.

HARRY ROCKWELL.

#### JURISDICTION OVER FEDERAL LANDS WITHIN THE STATE

In view of the present ownership by the United States of large tracts of land in North Carolina (including post-office sites, military reservations, custom houses, national forests, etc.), and the prospective ownership of the proposed Great Smoky Mountain National Park,<sup>1</sup> our courts will probably have to decide a number of controversies involving a balance of state and federal power.

The necessity for absolute independence of the National Government and exclusive sovereignty over the seat of government and certain other places was impressed upon the framers of the Constitution by the insults of rioting soldiers to the Continental Congress at Philadelphia in 1778, forcing it to seek the protection of the state of New Jersey. When the original resolution on the subject was introduced in the convention, it only provided for exclusive jurisdiction over lands to be acquired for the seat of government. The committee

<sup>22</sup> *Supra* note 12.

<sup>1</sup> N. C. Public Laws, 1927, ch. 48, authorizing acquisition by United States of 700,000 acres in North Carolina for public park purposes.

to whom the proposition was referred added the words "and to exercise like authority over all places purchased \* \* \* for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." When the report of the committee, with this amended provision, came before the convention, Mr. Gerry contended that the "power might be made use of to enslave any particular state by buying up its property, and that the strongholds proposed would be a means of awing the state into undue obedience to the general government." Thereupon Mr. King moved to insert after the word "purchase" the words "by consent of the legislature of the state," and with this amendment the resolution was adopted, and became part of the Constitution.<sup>2</sup>

In the leading case on this subject,<sup>3</sup> Mr. Justice Field sets out that there are three ways in which the United States can acquire or hold land within the limits of a state: (1) by purchase or condemnation of land belonging to a private party; (2) purchase with consent for governmental purposes defined in the constitution; (3) public land at the time of the admission of the state into the union.

The manner of acquiring the land has controlling effect upon the jurisdiction of the federal government. The United States may acquire needed lands by purchase, without consent of the state, or by eminent domain, where needed to execute powers conferred by the Constitution.<sup>4</sup> It is fundamental, however, that no state can be de-

<sup>2</sup> U. S. Const., Art. 1, §8, cl. 17. For history of this clause, see 5 ELLIOTT'S DEBATES, 57 *et seq.*; 3 Story's Comm. on Const. 1219. In the Federalist No. 43, Madison writing of this clause, says:

"The necessity of a like authority over forts, magazines, etc., established by the general government, is not less evident. The public money expended over such places, and the public property deposited in them, require that they should be exempt from the authority of the particular state. Nor would it be proper, for the places on which the security of the entire Union depends, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the states concerned, in every such establishment."

<sup>3</sup> Fort Leavenworth R. R. Co. v. Lowe, 114 U. S. 525, 5 S. Ct. 995, 29 L. Ed. 264 (1884).

<sup>4</sup> Kohl v. U. S., 91 U. S. 367, 23 L. Ed. 449 (1875); Chappell v. U. S., 160 U. S. 510, 49 L. Ed. 514, 16 S. Ct. 400 (1895); U. S. v. O'Neill, 198 F. 677, 682 (D. Ct. Col., 1912), power conferred on Secretary of Interior to condemn lands for irrigation works not limited by state laws on eminent domain. It is generally assumed that the United States may condemn state property for federal purposes. See St. Louis v. Western Union Tel. Co., 148 U. S. 92, 101, 13 S. Ct. 427, 40 L. Ed. 389 (1893). In U. S. v. Gettysburg Elec. Ry. Co., 160 U. S. 668, 16 S. Ct. 427, 40 L. Ed. 576 (1896), the U. S. took for a park the route of a state electric road; and in Nahant v. U. S., 136 F. 273, 69 L. R. A. 723 (C. C. A. 1st., 1905), it took for fortification purposes the public streets, and water works appurtenant, of a Massachusetts city.

prived of sovereignty over any territory without its consent. Therefore, where the land is acquired otherwise than by purchase with consent, the United States acquires only the powers and rights of a proprietor in such land. As an instrumentality of the General Government, these lands are free from such state control as would impair their effective use for the designated purposes.<sup>5</sup> Insofar as the state laws do not contravene the "needful" federal legislation,<sup>6</sup> the state has "concurrent" jurisdiction within such territory.

Upon these lands, a single act may constitute an offense against the United States, and against the state. But the United States cannot without encroachment upon the police power of the state, deal with acts of personal violence upon the lands, as such; these are within the exclusive jurisdiction of the state tribunals. Only when the acts are made the means of effecting a prohibited interference with the proper use of government property, can the general government take any account of them.<sup>7</sup>

The most recent application of this principle is found in the case of *United States v. Hunt*,<sup>8</sup> where the issuance of licenses for killing deer on a national forest reservation in violation of state game laws,

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In *Pacific R. R. Removal Cases*, 115 U. S. 1, 5 S. Ct. 113, 29 L. Ed. 319 (1885), it was apparently assumed that a state might condemn part of the depot grounds of a federal railroad corporation in order to widen a street. *U. S. v. R. R. Bridge Co.*, 27 Fed. Cas. 686, 692 (N. D. Ill., 1855), held that a state has the right of eminent domain over federal owned lands not in use.

<sup>5</sup> Such is the law with reference to all instrumentalities created by the Federal Government: *Panhandle Oil Co. v. Mississippi*, 48 S. Ct. 451 (U. S., 1928); *Van Brocklin v. Tenn.*, 117 U. S. 151, 6 S. Ct. 679, 29 L. Ed. 845 (1886); *Pundt v. Pendleton*, 167 F. 997 (D. C. N. D. Ga., 1909), teamster in quartermaster's department at military post cannot be required to work out road tax.

<sup>6</sup> U. S. Const., Art. 4, §3, cl. 2, Congress has power to make all needful rules and regulations for disposition and control of federal territory.

<sup>7</sup> *McKelvey v. U. S.*, 260 U. S. 353, 67 L. Ed. 301, 43 S. Ct. 132 (1922), where an assault committed in obstructing passage over federal land in violation of federal statute held punishable in federal court; *Utah Power and Light Co. v. U. S.* 243 U. S. 389, 403, 37 S. Ct. 387, 389, 61 L. Ed. 791 (1917), Congress has power to control lands although this may involve exercise of police power. In *U. S. v. Penn.*, 48 F. 669 (C. C. E. D., Va. 1880), larceny of private property on Arlington Cemetery (concurrent jurisdiction type) was held not cognizable by federal court.

<sup>8</sup> 49 S. Ct. 38 (U. S., 1929). The order of the Secretary of Agriculture in this case, authorizing hunting licenses to be issued for killing deer, is an administrative ruling of statutory rank. The court considered the National Forest as being within the concurrent jurisdiction of the State and Federal government, but it seems that the United States had exclusive jurisdiction over the land by virtue of the cession act of Kansas. Therefore the order of the Secretary of Agriculture would be supreme on the reservation regardless of its necessity for protection of the property, as will appear in subsequent discussion.

The court in this case did not find it necessary to discuss the ownership of the wild game on the reservation.

in order to protect the trees and shrubs thereon from destruction, was held within the authority of Congress and paramount to state law.

The inhabitants of federal-owned land not under exclusive jurisdiction of Congress would for all purposes be residents of the state, subject to its laws, taxes,<sup>9</sup> and entitled to suffrage and benefits within the state.<sup>10</sup>

When a purchase of land for any of the purposes enumerated in the Constitution<sup>11</sup> is made by the National Government and the state legislature has given its consent to the purchase, the land so purchased, by the very terms of the Constitution, *ipso facto*, falls within the exclusive legislation of Congress, and the state jurisdiction is completely ousted. "This is the necessary result, for exclusive jurisdiction is the attendant upon exclusive legislation."<sup>12</sup>

A reservation by the state providing for the execution of its criminal and civil process upon the land, which usually accompanies consent to the purchase, is not considered incompatible with the ex-

<sup>9</sup> *Territory v. Delinquent Tax List*, 3 Ariz. 308, 309, 26 Pac. 310, 312 (1891). See collected cases in 14 Anno. Cases. 963.

<sup>10</sup> *Renner v. Bennett*, 21 Ohio St. 431 (1871).

<sup>11</sup> Must have been purchased for some of the purposes specified in the constitution, i.e., ". . . for forts, arsenals, magazines, customhouses, and other needful buildings," *supra* note 2; *U. S. v. Tierney*, 28 Fed. Cas. 158 (S. D. Ohio, 1864.) A broad construction has been put upon the language of this clause, which makes it cover all structures and places necessary for carrying on the business of government; *U. S. v. Tucker*, 122 F. 518, 521 (D. Ct. Ky., 1903), dam-locks; *Sharon v. Hill*, 24 F. 727 (C. Ct. Calif., 1885), appraiser's building; *Steele v. Halligan*, 229 F. 1011 (D. Ct. W. D. Wash., 1916), penitentiary; *Brooks Hardware Co. v. Greer*, 111 Me. 78, 87 Atl. 889 (1911), soldiers' home. But see *In re Kelly*, 71 F. 545 (C. Ct. E. D. Wis., 1895), holding U. S. does not have exclusive jurisdiction over land purchased with consent for soldiers' home, no necessity for such jurisdiction having been expressed by congress.

<sup>12</sup> Associate Justice Field in *Ft. Leavenworth v. Lowe*, *supra* note 3; *U. S. v. Cornell*, Fed. Cas. No. 14,867 (R. I., 1819), murder in Fort Adams; *Battle v. U. S.* 209 U. S. 37, 28 S. Ct. 422, 52 L. Ed. 672 (1907), murder in post-office; *State v. Morris*, 76 N. J. L. 224, 68 Atl. 1103 (1908), no jurisdiction in state of crime on post-office property; *U. S. v. Andern*, 158 F. 996, 1000 (D. Ct. N. J., 1908), exclusive jurisdiction in U. S., state criminal law adopted; *Mitchell v. Tibbetts*, 17 Pick. (Mass.), 298 (1838), vessel hauling stone from another state to navy yard in Massachusetts not subject to state regulation; *Western Union Tel. Co. v. Chiles*, 214 U. S. 278, 29 S. Ct. 613, 53 L. Ed. 997 (1908), penalty under Virginia statute for non-delivery of telegram unenforceable when addressee within navy yard. See also *U. S. v. Carter*, 84 F. 622 (C. Ct. S. D. N. Y., 1897), U. S. jurisdiction exclusive over murder on battleship in Cob Dock. Cf. *Exum v. State*, 90 Tenn. 501, 17 S. W. 107, 15 L. R. A. 381 (1891), state court retains jurisdiction over perjury committed in a state court trial held in a building within the exclusive jurisdiction of U. S.; *U. S. v. World's Col. Exposition*, 56 F. 630 (D. Ct. N. D. Ill., 1893), no exclusive jurisdiction over land taken for a temporary purpose.

clusive sovereignty or jurisdiction of the United States.<sup>13</sup> It has been said to operate "as an agreement of the new sovereign to permit its free exercise, as, *quoad hoc*, its own process."<sup>14</sup> The object of reservations of this type is merely to prevent these lands from becoming a sanctuary for fugitives from justice. The courts have construed such reservations as collateral agreements rather than as qualifications to the consent. Indeed, it has been doubted whether Congress is, by the terms of the Constitution, at liberty to purchase lands for the enumerated purposes when the consent of the state is so qualified that it will not permit the exclusive legislation of Congress there.<sup>15</sup> If the land is not acquired under the constitutional provision, the state may cede such jurisdiction as it sees fit to the federal government, with any conditions not inconsistent with the free and effective use of it for the public purposes for which acquired.<sup>16</sup> The jurisdiction depends on the terms of the cession.

It is competent for the legislature to cede exclusive jurisdiction over places needed by the general government in the execution of its powers, such use being for the people of the state as well as of the United States.<sup>17</sup> In *Fort Leavenworth v. Lowe*,<sup>18</sup> Mr. Justice Field stated *obiter* that such jurisdiction would necessarily end when the places ceased to be used for those purposes. If cession of jurisdiction to the United States is free from any condition or limitation as to duration, the land should be considered as within the sole jurisdiction of the United States as long as it remains in federal government ownership, regardless of the use to which it is temporarily put. In accord with this principle, the Supreme Court held in *Arlington Hotel Co. v. Fant*<sup>19</sup> that a lease of an acre of land on the United

<sup>13</sup> *In Re Ladd*, 74 F. 31, 36 (C. Ct. N. D. Neb., 1896); U. S. v. Cornell, *supra* note 12. Right of serving state process exists whether specifically reserved or not; 9 Op. Att. Gen. 197 (1858); U. S. Rev. St. 4662, Title 33 U. S. C. A. 728.

<sup>14</sup> Field, J., in *Ft. Leavenworth R. R. v. Lowe*, *supra* note 2.

<sup>15</sup> Therefore, consent of the state legislature to purchase of land for public buildings is required by act of Congress: 5 Stat. 468, 8 Fed. St. Anno. 1105, §355. Where act of legislature contains provision for punishment of violations of state's criminal law within federal land, it does not satisfy this federal statute; 20 Opin. Att. Gen. 611 (1863). If legislative act of state amounts to a consent to purchase, any exceptions or qualifications contained in the act are void: 10 Opin. Att.-Gen. 34 (1861).

<sup>16</sup> *Ft. Leavenworth R. R. v. Lowe*, *supra* note 2, reservation of right to tax private property on federal territory.

<sup>17</sup> *Steele v. Halligan*, 229 F. 1016 (D. Ct. W. D. Wash., 1916).

<sup>18</sup> *Supra* note 2.

<sup>19</sup> *Williams v. Arlington Hotel Co.*, 15 F. (2d) 412 (D. C. E. D. Ark.); reversed on appeal in 22 F. (2d) 669 (C. C. A. 8th, 1927); *Williams v. Arlington*

States Hot Springs reservation, to a private corporation for hotel purposes did not divest the federal government of exclusive jurisdiction over that acre. In *Benson v. United States*,<sup>20</sup> it was said that the court will not inquire into the actual use that is made of the land ceded, but that it will consider it appropriated to the use for which the political department has designated the entire tract of land. Where the land has clearly been abandoned for use by the United States, the state should be revested with complete jurisdiction, immediately and without the necessity of a recession by Congress. The probability of a constitutional controversy arising over this question is alluded to by Chief Justice Taft in the Arlington Hotel case.<sup>21</sup>

The inhabitants of these lands (exclusive jurisdiction type) are non-residents of the state,<sup>22</sup> and are not entitled to the benefits of its

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Hotel Co., 170 Ark. 440, 280 S. W. 20 (1926), in accord with U. S. Supreme Court.

In this case, exclusive jurisdiction was ceded by Arkansas by act of 1903, to the Hot Springs National Park "so long as the same shall remain the property of the United States, with a further reservation of the right to tax private property thereon. The federal government leased to the defendants a tract of land, within the reservation, for hotel purposes. The plaintiff brings suit for loss of personal property when the hotel is burned without fault of the defendant. The law of the state in relation to liability of innkeepers at the time of cession of jurisdiction was the common law liability of insurer of a guest's goods. By state statute of 1913 an innkeeper's liability was for negligence only. The Supreme Court held the statute of 1913 inoperative within the reservation because exclusive jurisdiction had been ceded by the state and the lease to the defendants did not divest the U. S. of exclusive jurisdiction. Therefore, the defendants were liable under the common law of the state at the time of transfer of jurisdiction, which became the law of the federal territory in absence of federal statutes to the contrary.

<sup>20</sup>146 U. S. 325, 13 S. Ct. 60, 36 L. Ed. 991 (1892), murder on part of Fort Leavenworth reservation which was used solely for farming purposes was held to be within exclusive jurisdiction of federal court. Accord: *U. S. v. Holt*, 168 F. 141 (C. Ct. W. D. Wash. 1909), boundary of military reservation not subject to scrutiny by court; *Baker v. State*, 47 Tex. Cr. App. 484, 83 S. W. 112 (1904), part of land used for street outside garrison walls.

Cf. *Palmer v. Barrett*, 162 U. S. 399, 16 S. Ct. 837 (1896); *Crook, Horner and Co. v. Old Pt. Comfort Hotel Co.*, 54 F. 604, 610 (C. Ct. E. D. Va., 1893). The cession act governing these cases limited the use of the land ceded.

<sup>21</sup>In reference to counsels' argument that "the United States may, where land is ceded by a state to the exclusive jurisdiction of the national government, treat land thus ceded by the state for such purpose as it would treat national public land which had never come within the jurisdiction of the state," Chief Justice Taft said: "This issue may in the future become a subject of constitutional controversy, because some 20 or more parks have been created by Congress, in a number of which exclusive jurisdiction over the land has been conferred by the act of cession of the state."

<sup>22</sup>*Bank of Phoebus v. Byrum*, 110 Va. 708, 67 S. E. 345, 27 L. R. A. (N. S.) 437 (1910), defendant at Ft. Monroe held subject to attachment as non-resident of the state although process could be served on him there.

laws,<sup>23</sup> nor subject to its penalties or taxes.<sup>24</sup> The state court has no jurisdiction over crimes committed therein.<sup>25</sup> With the change of government, the laws of the state at the time of the purchase, or cession of exclusive jurisdiction, not being inconsistent with any law of the United States, remain in force as the law of the federal territory until changed by act of Congress.<sup>26</sup>

In *Arlington Hotel Co. v. Fant*,<sup>27</sup> the defendant hotel keeper was held liable as an insurer under the common law of Arkansas at the time of the cession act in 1901, since the Arkansas statute of 1913, making the innkeeper liable for loss by negligence only, was inoperative within the Hot Springs reservation. If we apply this principle to North Carolina, contracts made or wrongs occurring on federal property, as post offices, Fort Bragg, and other places of the exclusive jurisdiction type, would be governed by the law of North Carolina at the time the property was acquired by the federal government, and not by the present law of the state.<sup>28</sup>

As to the third class of land mentioned above by Associate Justice

<sup>22</sup> *Sinks v. Reese*, 19 Oh. St. 306 (1865), inmates of soldiers' home not entitled to vote in state; *St. v. Willett*, 117 Tenn. 343, 97 S. W. 299 (1906), same. Opinion of Justices, 1 Met. 580 (1841), not entitled to school law; *Farley v. Scherno*, 208 N. Y. 269, 101 N. E. 891, 47 L. R. A. (N. S.) 1031 (1913), state liquor license a nullity within federal military reservation.

<sup>24</sup> *U. S. v. Naylan*, 3 Alaska 94, civil employee resident on military reservation not subject to state road tax; *Harper's Ferry Armory case*, 6 Ops. Att.-Gen. 577, private property not taxable by state; *Brooks Hardware Co. v. Greer*, *supra* note 11, inmate of soldiers' home not subject to garnishee process of state.

<sup>23</sup> *Supra* note 12, cases cited.

<sup>26</sup> *Chicago Rock Is. etc. R. R. Co. v. McGlinn*, 114 U. S. 542, 545, 5 S. Ct. 1005, 29 L. Ed. 270 (1884); *In re Chavez*, 149 F. 73 (C. C. A. 8th, 1906); *Hoffman v. Leavenworth Light Co.*, 91 Kan. 452, 138 Pac. 633, 50 L. R. A. (N. S.) 574 (1914).

Criminal laws of the state in force at the time of passage or reenactment of federal statute adopting such laws, apply to federal lands: 35 Stat. 1145, 7 Fed. St. Anno. p. 938, §289.

But in *U. S. v. Press Pub. Co.*, 219 U. S. 1, 31 S. Ct. 212, 55 L. Ed. 65 (1911), circulation of libel in government reservation at West Point was held not punishable in Federal court, since the state law afforded adequate punishment for the offense, because the plain purpose of federal statute adopting state criminal laws was that there should be but a single prosecution and conviction for criminal libel.

<sup>27</sup> *Supra* note 19.

<sup>28</sup> In *Williams v. Arlington Hotel Co.*, 170 Ark. 440, 280 S. W. 20 (1926), the Arkansas court took cognizance of the cause as a transitory action, but held that the law of the Hot Springs Reservation where the loss occurred would govern the case. The court then held that the defendant would be liable according to the law of Arkansas twenty-five years previous.

See also *Divine v. Unaka Nat. Bk.*, 125 Tenn. 107, 140 S. W. 749 (1911), holding the state court had probate jurisdiction over estate of inmate of soldiers' home.



Field, *i.e.*, public lands at the time of admission of a state into the Union, it seems that the jurisdiction of the state is complete unless Congress makes reservation of jurisdiction as a condition of admission.<sup>29</sup> A state, once admitted, is on the same basis as the other states.

It may be noted that North Carolina has given in advance consent to the acquisition by the federal government of land within the state in accordance with the constitutional method.<sup>30</sup> Hence, federal jurisdiction over land purchased for purposes specified in the Constitution will be exclusive. It seems that places rented for these same purposes, however, are of the concurrent jurisdiction type. As to federal forest reserves, the North Carolina legislature authorizes the federal government to acquire such lands but does not cede jurisdiction over the lands.<sup>31</sup> Likewise the proposed Smoky Mountain National Park will be subject to the concurrent jurisdiction of the United States and the State of North Carolina.<sup>32</sup>

J. H. ANDERSON, JR.

#### RECORDATION OF CHATTEL MORTGAGE AS NOTICE TO PURCHASER OF AUTOMOBILE FROM STOCK IN TRADE

By statute in North Carolina<sup>1</sup> and other states, registration of chattel mortgages is notice to all the world of the mortgagee's interest in the chattel. No notice, however full and formal, is a sufficient substitute for registration.<sup>2</sup> The North Carolina statute does not make any exception in regard to the recordation of chattel mortgages on stock in trade exposed for sale. As a result of this omission, is recordation of chattel mortgages on stock in trade notice to otherwise bona fide purchasers for value of the mortgagee's interest in the article purchased? Very few courts have passed on this question.<sup>3</sup>

<sup>29</sup> *Ft. Leavenworth v. Lowe*, *supra* note 2; *U. S. v. Tully*, 140 F. 899 (C. Ct. Mont., 1905), unless legally set aside for military purposes, no exclusive jurisdiction vests; mere occupancy by army not sufficient.

<sup>30</sup> C. S., §§8058, 8059.

<sup>31</sup> "This consent is given upon condition that the state shall retain concurrent jurisdiction with the United States . . . so far as civil process in all cases, and such criminal process as may issue under the authority of the state . . . may be executed . . ." C. S., §8057. These reservations seem to be placed in the statute out of abundance of caution.

<sup>32</sup> Pub. Laws, 1927, ch. 48.

<sup>1</sup> N. C. Cons. Stat. 3311, 3312.

<sup>2</sup> *Blalock v. Strain*, 122 N. C. 283, 29 S. E. 408 (1895).

<sup>3</sup> If the mortgagor is left in possession, the mortgagee generally makes some provision as to the mortgagor selling the stock in trade and applying part of the proceeds on the mortgage debt. Hence the paucity of cases as to the particular point in question.