as the President of the United States may approve on the condition, that if such plan shall require said Water to be drawn from any source within the limits of the State of Maryland, the assent of that State shall first be obtained; And Whereas by a joint resolution of Congress passed in September 1841 it is provided that no public money shall be expended upon any Land or site hereafter to be purchased for the United States, until the consent of the Legislature of the State in which the Land or site may be shall be found for such purpose and as it is also made the duty of the Secretary or head of the proper department to apply to said Legislature for a cession of the necessary jurisdiction over said Land therefore &c, Section 1st of this law, then enacts that if the plan adopted by the President of the United States for supplying the City of Washington with Water shall require said Water to be drawn from any source within the limits of this State, consent is hereby given to the United States to purchase such lands and to construct such dams, reservoirs Buildings and other Works and to exercise concurrently with the State of Maryland such jurisdiction over the same as may be necessary for the said purpose; The 2d section enacts that when certain causes prevent the United States from purchasing any lands which may be required for the purpose aforesaid, or from purchasing any earth timber stone or gravel which may be required for the construction of said Works, it shall be lawful for the United States to enter upon such Lands and to take and use such materials after having first made payment or tendered payment for the same at the valuation assessed thereon in the manner prescribed in the 3d section of the act, The third section provides for the condemnation of Lands and materials, The Fourth section prevents any interference with rights vested in the Chesapeake and Ohio Canal Company and the 5 section makes it necessary for the United States to agree to such conditions as the said Company may consider necessary to secure the Canal from injury in carrying into effect any plan that may be adopted for supplying the City of Washington with Water before the act can go into effect, I can find nothing in this Law to justify the opinion that the State of Maryland intended thereby to grant to the United States any of her vacant Lands, for the purposes therein set forth, The title of the law prevents such a construction It is entitled "An Act giving the assent of the State of Maryland to such plan as may be adopted by the President of the United States for supplying the City of Washington with water, A grant of Land by an act with such a title would not be Constitutional, The 17 section of the 3d Article of the Constitution of the State declares that every law enacted by the Legislature shall embrace but one subject, and that shall be described in the title, The dam of the Washington Aqueduct supposed to be erected at the Great Falls of the Potomac was not in the Land included in the Executive Certificate, This title to a portion of this land is now in my opinion vested in the State and she has consented to receive from the Executive the price of such land, The State of Mass her vacant Lands to those who use the greatest diligence in securing them, In this instance the Executive has been the first to apply for a Warrant to take up the vacancy, and using due diligence has fairly complied for the same according to Law, The United States Pats Counsel did apply to the Commissioner of the Land Office to sell said Land, after the Warrant in this case had issued but the Commissioner believing himself possessed of no power to dispose of the States Lands in the manner proposed refused to entertain the application, The United States by using due diligence might have obtained the States grant for the Land in dispute, or have procured the passage of a Law by the State of Legislature

granting said Land for the use of the Washington Aqueduct, with or without compensation to the State, there being in my opinion full power vested in the Legislature to grant the States Lands by Legislative enactment, Failing to do this she must now derive her title from the grantee of the State, as she has full power to do by the act already referred to, were the dam of the Washington Aqueduct already erected the State of the case would be somewhat changed and made more intricate, This Land is yet however unappropriated although selected as the site of the proposed dam, The United States claim the right to select a site for an Aqueduct dam as against the whole world, and to change the same if found unsuitable and so holds quoties until the site selected shall be satisfactory, such being the case in my opinion no site can be permanently selected until a dam is erected and found satisfactory, The issuing of patent to the Executive will not prevent the erection of a dam at this point nor even the cause the United States to pay one cent more for the privilege than a jury chosen in accordance with the provision of the act of 1853 ch 179 will estimate it to be worth,

Whether a grant of the Land included in the Executive Certificate will or will not confer upon the grantee any substantial benefits I cannot determine, If any of said land is covered by the Water of the Potomac River such grant can confer no power or right in conflict with the rights of the public to the use of the Water; and the value of the said so granted to the grantee must be estimated by a Jury as already expressed, There being no dam or work of any kind as yet erected upon this Land and in my opinion no grant of it to the United States, or to any Company or individuals there is no want of contiguity as the law of Maryland reserving to the public the use of the Water flowing over any land granted by patent, no patent can take away or nullify that right so that, even if proved that any of the Land sought to be patented is covered by Water, it would not be necessary upon the face of the patent to reserve the Water, as it is already reserved by the Law of the State, The Patent can only convey to the patentee the States right to the soil.

The granting of a patent in this case cannot add to take away the right of the United States to select a site for an Aqueduct dam as against the whole world, and to change the same as often as it may be found necessary or until the site selected shall be satisfactory, Believing these reasons to be sufficient to justify me in dismissing the Caveat of the United States against the Great Falls Manufacturing Company's Certificate of "The Resurvey on the Resurvey on Lemons Island" I therefore declare said Caveat overruled and dismissed with costs to the Caveatees.

Wm D Bishop
Commissioner of the Land Office,

The following appeal and reasons thereof were filed August 31st 1860.

Rockville Aug 30: 1860

Dear Sir, You will please enter appeal in the cases of the United States vs The Great Falls Manufacturing Co for a patent for Nelsons Degree, as also for a patent for the Resurvey on the Resurvey on Lemons Island and file the enclosed reasons in said case as indicated

I remain your obt Servt. J S Brent.