been contracts made with himself originally. Now, one necessary incident to such a contract would be, that the right of action would vest in his personal representative, and the act of congress saves the suit from abatement, by authorizing the substitution of the executor or administrator, instead of the deceased plaintiff. The same answer applies to the antiquated doctrine of continuance by journey's account. The fact is, that the mode of continuing a suit in the name of the executor or administrator, provided for by statute, is a complete substitute for the continuance by journey's account. But even at common law, such a continuance or connection of suit was allowed in no case of voluntary abandonment, and if the benefit of it was intended to be asserted, it was necessary to claim it, in the form of renewing the action.

Judgment affirmed, with costs.

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*94] *Crowell and others *v.* McFadon. (*a*)

Seizure—Embargo.

Under the 11th section of the embargo act of 25th April 1808, the collector was justified in detaining a vessel, by his honest opinion, that there was an intention to violate or evade the provisions of the embargo laws. It was not necessary for him to show that his suspicion was reasonable.

Error to the Supreme Judicial Court of the Commonwealth of Massachusetts. The case, as stated by Duvall, J., in delivering the opinion of the court, was as follows:

An action of trover for 650 barrels of flour, of the cargo of the schooner Union, was brought by John McFadon against Joseph Otis and the appellants, in the court of common pleas for Suffolk county, in the commonwealth of Massachusetts, where a trial was had and judgment rendered in favor of the defendants. From this decision there was an appeal to the supreme judicial court of that state, in which the cause was again tried and a verdict and judgment rendered for the plaintiff for $3716.30 and costs. Joseph Otis died, whilst the suit was depending in the supreme judicial court.

The following are the principal facts appearing on the record in this case: The schooner Union, Benjamin Hawes, commander, with a cargo of 650 barrels of flour, and five tons of logwood, shipped by John McFadon, of Baltimore, was cleared at that port for Machias, in Massachusetts, late in the month of April, in the year 1808. She had originally cleared for Passamaquoddy, on the 16th of April, before the collector had received notice of the act of the 25th of the same month, which authorised him to detain the vessel: the destination was changed to Machias, and a clearance obtained accordingly. But the original destination of the flour on board, for Eastport, remained on the face of the manifest. The flour was shipped for account and risk of Josiah Dana, of Machias, and in his absence, Jonathan Bartlett, of Eastport, or his assigns.

The Union sailed from Baltimore, the last of April, and meeting with head winds, the commander put into Hyannis, in the district of Barnstable. She was soon afterwards boarded by Joseph Crowell, one of the inspectors

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(*a*) February 16th, 1814. Absent, Washington, Justice.

of the revenue in that district, who, on inspecting her papers, thought proper to *submit them to the examination of Joseph Otis, the collector. [*95
The collector, upon a consideration of the circumstances before stated, was of opinion, that it was the intention of the concerned to violate or evade the provisions of the embargo laws, and therefore, detained the vessel, by virtue of the authority vested in him by the 6th and 11th sections of the act of the 25th of April 1808 (2 U. S. Stat. 500–1), until the decision of the president of the United States could be had thereon. The president, after due inquiry, approved and confirmed the conduct of the collector. The vessel remained in this situation until the 25th of July, when she was taken to Gage's wharf by Joseph Hawes, inspector of the port, and her cargo landed and stored, with the assent of the agent of the owners, and the vessel discharged. On the 4th of October following, the collector offered to deliver the flour to the agent, on payment of the expense of storing.

The collector detained the Union, under the 6th and 11th sections of the act of the 25th of April 1808. The 6th section provides, "that no ship or vessel, having any cargo whatever on board, shall, during the continuance of the act laying an embargo on all ships and vessels in the ports and harbors of the United States, be allowed to depart from any port of the United States, for any other port or district of the United States, adjacent to the territories, colonies or provinces of a foreign nation; nor shall any clearance be furnished to any ship or vessel bound as aforesaid, without special permission of the president of the United States." The 11th section provides, that the collectors of the customs be and they are respectively authorised to detain any vessel, ostensibly bound with a cargo to some other port of the United States, whenever, in their opinion, the intention is to violate or evade any of the provisions of the acts laying an embargo, until the decision of the president of the United States be had thereupon.

With this evidence, the cause came on to be heard in the supreme judicial court of Massachusetts, and at the trial, the judge charged and instructed the jury, that under the circumstances proved by the defendant, neither the said collector, nor any person, by his order, by virtue of the act aforesaid, had any right to intermeddle with or unlade the cargo of the said schooner, and that *such unlading was an unlawful act and a conversion of the cargo by the defendants; and with this direction, the jury [*96
found a verdict for the plaintiff to the amount before mentioned. To this opinion, an exception was taken, and the cause was removed to this court, by writ of error, in pursuance of the 25th section of the act to establish the judicial courts of the United States.

Pinkney (late attorney-general of the United States), for the plaintiff in error, contended, that as the landing and storing the cargo was by consent of the agent of the owner, the only question was, whether the collector was justified in detaining the vessel, by his honest suspicion that the intention was to violate or evade the provisions of the embargo laws. Upon this point, he insisted, that it was not incumbent on the collector to show that he had reasonable grounds of suspicion. It was sufficient, if he satisfied the jury, that, in his honest opinion, there was such an intention.

Harper, contrà, contended, that the question was not whether the detention was justifiable, but whether the unlading was justifiable. If the land-

ing was by the consent of the agent of the owner, it was a consent forced upon him by the detention of the vessel. But congress could not mean to subject the vessel to the arbitrary opinion of the collector. The detention was not lawful, unless the circumstances justified the suspicion. The collector must, at least, show probable cause. The facts of the case did not authorise the suspicion.

Pinkney, in reply.—The question is still the same. As the unlading was with the assent of the agent of the owner, it was a lawful act, if the detention was lawful. The law did not mean to make the collector responsible for the sound exercise of his discretion. He was to have no guide but
*97] *his own honest opinion. It is not like the case of capture as prize of war, where the officer acts at his peril, and must exercise a sound discretion and must have reasonable grounds of suspicion. But here it is put upon the opinion of the collector, and he is bound to act upon that opinion. If he fail to do so, he is liable for a misdemeanor in his office. If he honestly err in his suspicion, he is excused. Whether it be his honest opinion, is a matter for the decision of the jury.

This cause was argued at last term by the *Attorney-General* and *Jones*, for the plaintiffs in error; and by *Amory* and *P. B. Key*, for the defendants in error.

Pinkney, Attorney-General, suggested a doubt, whether an action for damages, for a seizure on navigable waters, was not as much a cause of admiralty and maratime jurisdiction as if the proceedings were *in rem.*

Amory and *Key* contended, that the 11th section of the act of 25th April 1808, only gave authority to the collector of the district who was to grant the clearance, to detain the vessel, and that the collector of another district had no right to stop a vessel passing through an intermediate district. The law gave no right to seize, but merely to detain, which shows that the authority is given only to the collector within whose official control the vessel is. The collector to whom application is to be made for a clearance, is the only person to whom the discretion is intrusted. He has the best means of information, and if suspicion should be excited, it is there only that the owner can furnish the means of removing it. The opposite construction of the law would give to collectors at the mouths of our bays the whole control of our commerce, and would subject it to much vexation. The whole trade of the Chesapeake would be subject to the control of the collector of Norfolk.

Jones, in reply, contended, that the law authorised any collector of
*98] *any district to stop and detain any vessel which might be passing through his district, if he really suspected her of an intention to violate the provisions of the embargo laws.

February 28th, 1814. DUVALL, J., (*a*) after stating the facts of the case,

(*a*) Judge LIVINGSTON was absent when this opinion was delivered. Judge STORY gave no opinion, having some impression that he was, at a former period, retained as counsel in the cause, although he did not remember arguing it.

delivered the opinion of the court, as follows :—This court is unanimously of opinion, that the direction of the judge of the supreme judicial court of Massachusetts was erroneous. The law of congress under which the collector acted is clear and explicit. The collector was bound by law to seize and detain the Union, on her arrival in his district, if, in his opinion, it was the intention to violate or evade any of the provisions of the embargo laws, and his conduct was approved and confirmed by the president. The landing and storing the cargo, whether to preserve it from injury or to secure it from ruin (which, in this case, was done with the consent of the agent of the owner), was a necessary consequence of the detention. The law places a confidence in the opinion of the officer, and he is bound to act according to his opinion ; and when he honestly exercises it, as he must do in the execution of his duty, he cannot be punished for it. The judgment of the court below is reversed, with costs.

Judgment reversed.

Beatty's administrators *v.* Burnes's administrators. (*a*)

Statute of limitations.

The Maryland statute of limitations of three years, is a good bar to an action of *assumpsit* for money had and received, brought to try a title to lands in the city of Washington, under the 5th section of the act of Maryland of November 1791, ch. 45.

Quære? Whether, by the Maryland act of cession of the district of Columbia to the United States, the state conveyed to the United States the vacant and unappropriated lands in the district ?

Error to the Circuit Court for the district or Columbia, sitting at Washington. *The case as stated by Story, J., in delivering the opinion of the court, was as follows : [*99

This is an action for money had and received, brought by the plaintiffs, as administrators of Charles Beatty, deceased, against the defendant, as administrator of David Burnes, deceased. The declaration alleges the promise to have been made in the lifetime of the respective intestates. The defendant has pleaded the general issue, and the statute of limitations of Maryland.

Upon the trial in the circuit court for the district of Columbia, the plaintiffs sought to support their action, under the 5th section of the statute of Maryland, of November 1791, ch. 45, concerning the territory of Columbia, and the city of Washington, that section is as follows : " And be it enacted, that all the squares, lots, pieces and parcels of land, within the said city, which have been or shall be appropriated for the use of the United States, and also the streets, shall remain and be for the use of the United States ; and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid, shall remain and be to the purchasers according to the terms and conditions of their respective purchasers.

" And purchases and leases from private persons, claiming to be proprietors, and having, or those under whom they claim having, been in possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and

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(*a*) Absent, Washington, Justice.