

Syllabus.

to his giving his own account of the matter. As, for instance, when she says that the original deed from Shepard was drawn by Weatherford, that she has not got it, and that she thinks she gave it to him, it is clear that her letter of July 6, 1875, calling for that deed, and Weatherford's reply of July 14th, enclosing it, are admissible in evidence.

But, apart from Weatherford's evidence, the testimony of Mrs. Blackburn and Drake, together with the documents in the case, fail to satisfy us that there was any deceit or misapprehension in the premises, or any advice given Mrs. Blackburn in fraud or in mistake of fact or law. Buck and his wife purchased the separate halves at different times, and with the intent of holding in moieties, and conveyed Buck's half to Drake, who paid therefor in good faith and without actual notice. The second deed of Shepard was so drawn as to run directly to Buck and wife, and upon the language in which it was couched this claim is set up. And yet that second deed was given, on request of Drake's attorney, at the very time when Buck and his wife were conveying to Drake for valuable consideration. The injustice of allowing Mrs. Blackburn to insist, years afterwards, that by that deed she acquired an estate by entirety is too apparent to need comment; nor could such deed divest the title which had once vested in her husband and herself by the former conveyance from the same grantor, nor alter its nature.

The decree will be reversed and the cause remanded for further proceedings in conformity with this opinion.

UNITED STATES v. McDONALD.

APPEAL FROM THE COURT OF CLAIMS.

No. 1161. Submitted November 5, 1888. — Decided November 26, 1888.

The claim of a navy officer for his expenses when travelling under orders rests, not upon contract with the government, but upon acts of Congress; and when part of such a journey is performed when one statute is in

Opinion of the Court.

force, and the remainder after another statute takes effect, providing a different rate of compensation, the compensation for each part is to be at the rate provided by the statute in force when the travelling was done.

THE case is stated in the opinion.

Mr. Assistant Attorney General Howard and Mr. F. P. Dewees for appellants.

Mr. John Paul Jones and Mr. Robert B. Lines for appellee.

MR. JUSTICE LAMAR delivered the opinion of the court.

This is an appeal by the United States from a judgment of the Court of Claims. The appellee, Joseph McDonald, (plaintiff below,) a boatswain in the navy, on the 21st of June, 1876, was ordered by Rear Admiral Werden, commanding at Callao, Peru, "to proceed to your home in the United States, and upon your arrival, report to the honorable the Secretary of the Navy." Pursuant to said order, McDonald travelled from Callao to Washington, *via* Panama, and reported as directed.

By the act of June 16th, 1874, 18 Stat. 72, c. 285, "only actual travelling expenses" were "allowed to any person holding employment or appointment under the United States." By the act of June 30th, 1876, 19 Stat. 65, c. 159, so much of the preceding act as was "applicable to officers of the navy" was repealed; "and the sum of eight cents per mile" was "allowed such officers" "in lieu of their actual expenses."

The journey from Callao to Panama was made prior to June 30th, 1876, and from Panama to Washington after that date. He was paid his actual travelling expenses for the whole distance, to wit, \$256.60, under the 1st section of the act of June 16th, 1874. McDonald claimed that he should have received eight cents per mile for the distance actually travelled, under the act of June 30th, 1876, which would have been \$368, or \$111.40 in excess of the amount received by him.

The Treasury Department having refused to accede to his

Opinion of the Court.

demand, he brought suit in the Court of Claims against the United States to recover said sum of \$111.40.

That court held, that McDonald should receive only his actual expenses for that part of his journey performed prior to the passage of the act of June 30th, 1876, to wit, from Callao to Panama, and mileage for that portion performed after the passage of said last-mentioned act, to wit, from Panama to Washington; and rendered judgment in his favor accordingly for \$74, that amount being the excess of such mileage from Panama to Washington, over and above his actual travelling expenses for that portion of his journey. An appeal by the United States from this judgment brings the case here.

It is contended on behalf of the United States that the order was made and the travel undertaken while the law of 1874 was in force, and therefore with the understanding that only actual travelling expenses should be paid; and that the rule as to payment under a contract is, that the terms under which the contract is undertaken shall control the amount to be paid. The reply to this is that the claim of this officer rests not upon any contract, expressed or implied, with the government, but upon the acts of Congress which provide for his compensation. The case cited by the Assistant Attorney General in support of his contention, *Washington &c. Packet Company v. Sickles*, 10 How. 419, was a suit upon a special contract between private parties.

The compensation paid to public officers of the United States for their services, or for travelling expenses incidental thereto, is always under the control of Congress, except in the cases of the salaries of the President and the judges of the courts of the United States. As said by this court, in *Embry v. United States*, 100 U. S. 680, 685, "all agree that Congress has full control of salaries, except those of the President and judges of the courts of the United States. The amount fixed at any one time may be added to or taken from at will. No officer except the President or a judge of a court of the United States can claim a contract right to any particular amount of unearned compensation."

The act of June 30th, 1876, having repealed that of June

Syllabus.

16th, 1874, so far as it applied to the travelling expenses of officers of the navy, became operative upon the date of its approval, and thereafter the travelling expenses were regulated and defined by its provisions. Had the court decided in favor of the contention of the appellants that the claimant was entitled to his travelling expenses only, it would have enforced a repealed statute, and would have disregarded the provisions of existing law.

The judgment of the Court of Claims is

Affirmed.

THE GAZELLE AND CARGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MARYLAND.

No. 73. Argued November 9, 12, 13, 1888. — Decided November 26, 1888.

A charter-party of a vessel to a "safe, direct, Norwegian or Danish port, as ordered on signing bills of lading, or as near thereunto as she can safely get and always lay and discharge afloat," requires the charterer to order her to a port which she can safely enter with cargo, or which, at least, has a safe anchorage outside, where she can lie and discharge afloat.

Findings of fact by the Circuit Court in admiralty, that a port to which charterers have ordered a vessel is one having a bar across its mouth, which it was impossible for her to pass, either in ballast or with cargo, and that the only anchorage outside is not a reasonably safe anchorage, nor a place where it is reasonably safe for a vessel to lie and discharge, are not controlled or overcome by a statement in the findings that many vessels have in fact discharged their cargoes at that anchorage.

The omission of the Circuit Court in admiralty to make any findings upon a fact put in issue by the pleadings can only be availed of by bill of exceptions.

A charter-party of a vessel "to a safe, direct, Norwegian or Danish port, or as near thereunto as she can safely get and always lay and discharge afloat," cannot be controlled by evidence of a custom to consider as safe, within the meaning of such a charter-party, a particular Danish port, which in fact cannot be entered by such a vessel, and has no anchorage outside where it is reasonably safe to lie and discharge.

If a charterer prevents the performance of the voyage by refusing to order the vessel to such a port as is designated in the charter-party; and the