the principles of sound legislation. Whether it is considered as an act of limitations, or one in the nature of a recording act, or as a law *sui generis*, called for by the peculiar situation of that part of the state on which it operates; we are unanimously of opinion, that it is not a law which impairs
*291] the obligation *of a contract; and that in receiving the award in evidence, and declaring it to be competent and conclusive on the right of the plaintiff, there was no error in the judgment of the court below. The judgment is, therefore, affirmed.

This cause came on to be heard, on the transcript of the record from the court for the trial of impeachments and correction of errors for the state of New York, and was argued by counsel: On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said court for the trial of impeachments and correction of errors for the state of New York, in this cause, be and the same is hereby affirmed, with costs.

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*292] *Samuel D. Harris, Plaintiff in error, *v.* James Dennie.

*Attachment against dutiable goods.—Entry of imported merchandise. Error to state court.*

Twenty-three cases of silk were imported from Canton, in the ship Rob Roy, into the port of Boston, consigned to George De Wolf and John Smith; after the arrival of the vessel, with the merchandise on board, the collector caused an inspector of the customs to be placed on board; soon afterwards, and prior to the entry of the merchandise, and prior to the payment, or any security for the payment, of the duties thereon, the merchandise was attached by the deputy-sheriff of the county, in due form of law, as the property of G. De Wolf and J. Smith, by virtue of several writs of attachment, issued from the court of common pleas for the county of Suffolk, at the suit of creditors of G. De Wolf and Smith; these attachments were so made, prior to the inspector's being sent on board the vessel. At the time of the attachment, the sheriff offered to give security for the payment of the duties on the merchandise, which the collector declined accepting; the merchandise was sent to the custom-house stores, by the inspector, and several days after, the custom-house storekeeper gave to the deputy-sheriff an agreement, signed by him, reciting the receipt of the merchandise from the inspector, and stating, "I hold the said merchandise to the order of James Dennie, deputy-sheriff." The marshal of the United States afterwards attached, took and sold the merchandise, under writs and process in favor of the United States, against George De Wolf; which writs were founded on duty-bonds, due and unpaid, for a larger amount than the value of the merchandise, given before by De Wolf and Smith, who, before the importation of the merchandise, were indebted to the United States, on various bonds for duties, besides those on which the suits were instituted: *Held*, that the attachments issued out of the court of common pleas of the county of Suffolk, did not affect the right of the United States to hold the merchandise, until the payment of the duties upon them; and that the merchandise was not liable to any attachment, by an officer of the state of Massachusetts, for debts due other creditors of George De Wolf and John Smith.

It has often been decided in this court, that it is not necessary, that it shall appear, in terms, upon the record, that the question was presented in the state court, whether the case was within the purview of the 25th section of the judiciary act of 1789, to give jurisdiction to this court, in a case removed from a state court; it is sufficient, if, from the facts stated, such a question must have arisen; and the judgment of the state court would not have been what it is, if there had not been a misconstruction of some act of congress, &c., or a decision against the validity of the right, title, privilege or exemption set up under it. p. 301.

The United States have no general lien on merchandise, the property of the importer, for duties due by him upon other importations; the only effect of the first provision in the 62d section of the act of 1799, ch. 128, is, that the delinquent debtor is denied at the custom-house any further credit for duties, until his unsatisfied bonds are paid; he is compellable to pay the duties in cash, and upon such payment, he is entitled to the delivery of the goods

*imported; the manifest intention of the remaining clause in the section, is, to compel the original consignee to enter the goods imported by him. p. 302.

No person but the owner, or original consignee, or, in his absence or sickness, his agent or factor is entitled to enter the goods at the custom-house, or give bond for the duties, or to pay the duties: §§ 36, 62. Upon the entry, the original invoices are to be produced and sworn to; and the whole objects of the act would be defeated, by allowing a mere stranger to make the entry, or take the oath prescribed on the entry. p. 304.

The United States having a lien on goods imported, for the payment of the duties accruing on them, and which have not been secured by bond; and being entitled to the custody of them, from the time of their arrival in port, until the duties are paid or secured; any attachment by a state officer, is an interference with such lien and right to custody; and being repugnant to the laws of the United States, is void.[1] p. 305.

The acknowledgment by the custom-house storekeeper, that he held goods, upon which duties had not been secured or paid, subject to an attachment issued out of the state court, at the suit of a creditor of the importer, was a plain departure from his duty, not authorized by the laws of the United States, and cannot be admitted to vary the rights of the parties. p. 305.

Dennie *v.* Harris, 5 Pick. 120, reversed.

ERROR to the Supreme Judicial Court of Massachusetts, for the counties of Suffolk and Nantucket.

In the court of common pleas of the county of Suffolk, Massachusetts, James Dennie, the defendant in error, a deputy-sheriff of that county, under a precept issued by the authority of the state, attached twenty-three cases of silks, imported in the brig Rob Roy, from Canton, for a debt due by the importers and owners of the goods, George DeWolf and James Smith. Soon after the arrival of the vessel, the collector of the port caused an inspector of the customs to be placed on board. The attachment was made, before the entry of the merchandise, and payment made, or security given for the payment, of the duties thereon, and before an inspector was put on board the vessel. At the time of the attachment, the plaintiff offered to give the collector security for the payment of the duties to the United States, which he declined to accept. About seventeen days after the attachment, the merchandise being in the custom-house stores, under the following agreement, to wit, "District of Boston and Charlestown, port of Boston, August 29th, 1826: I certify, that there has been received into store, from on board the brig Rob Roy, whereof —— —— is master, from Canton, the following merchandise, to wit, twenty-three cases silks, A. O. 1 to 23, lodged by D. Rhodes, Jun., inspector, under whose care the *vessel was unladen. B. H. Scott, public storekeeper. I hold the above-described twenty-three cases silks subject to the order of James Dennie, Esq., deputy-sheriff. B. H. Scott;" the defendant, being the marshal of the United States for the district of Massachusetts, attached and took the same merchandise, by virtue of several writs in favor of the United States against De Wolf, duly issued from the district court of the United States. These writs were founded upon bonds for duties given by De Wolf and Smith, amounting to a sum much larger than the value of the merchandise, which duties were due and unpaid, when the merchandise arrived. [*294

The deputy-sheriff, James Dennie, brought an action of trover against

[1] This case decides no more than that no creditor of the importer can, by any process, take goods imported out of the possession of the United States, until the lien of the government for the duties accruing thereon, is actually discharged. Conard *v.* Pacific Ins. Co., 6 Pet. 262. And see Taylor *v.* Carryl, 20 How. 596.

the marshal for the goods; the judgment of the supreme judicial court of the state, to which the case was removed by writ of error from the inferior court, was in favor of the original plaintiff; and the defendant prosecuted this writ of error.

The following errors were assigned in the supreme judicial court of Massachusetts: that, according to the true construction of the several acts of the congress of the United States, imposing duties on certain goods, wares and merchandise imported into the United States from foreign ports, and also of the act of said congress, made and passed on the 2d day of March 1799, entitled "an act to regulate the collection of duties on imposts and tonnage," it is contended—

1. That upon the arrival of the said merchandise in question at the port of Boston and Charlestown, and prior to the supposed attachment thereof by the said Dennie, a debt immediately accrued to the United States for the amount of the duties thereon; and the collector for said port had, therefore, a legal lien on the said merchandise for the debt aforesaid; and consequently, they were not then subject to the said Dennie's attachment aforesaid.

2. That the offer of the said Dennie, at the time of making his said attachment, to give to the said collector security for the payment of the duties on said merchandise, did not, in point of law, give validity to the said attachment; inasmuch as the said collector was not, at that time, it being prior to any entry of the merchandise at the custom-house, *authorized by law to receive security from the said Dennie, or any other person or persons whomsoever, for payment of the duties aforesaid.

*295]

3. That after the said merchandise was placed in the custom-house store, as is found by the special verdict, and from that period to the time when they are stated to have been attached in behalf of the United States, by the said Harris, as marshal of said district, the legal lien of the United States constantly remained with them; and that the certificate of B. H. Scott, the storekeeper, which appears in the said verdict, can have had no effect to discharge, or in any degree to impair, the force of the said lien.

4. That by the provisions contained in the 62d section of the aforesaid act of March 2d, 1799, the goods in question, the same having been imported by and consigned to George De Wolf and John Smith, as by said verdict is found, are, in point of law, to be considered as their property, so far as to be holden liable for the payment of all the debts then due from them to the United States, for duties on merchandise heretofore imported by them into the said port of Boston and Charlestown.

It was also, in this court, contended, that the defendant in error had no property, either absolute or special, nor possession, nor the right of possession, in the goods, which were the object of the supposed trover and conversion in the declaration mentioned.

The case was argued by *Berrien*, Attorney-General, and *Dunlap*, District-Attorney of the United States for the district of Massachusetts, for the plaintiff in error; and by *Webster*, for the defendant.

For the plaintiff in error, Mr. *Dunlap* stated, that the position contended for in the state court was, that, under the revenue law, the government of the United States has a lien on goods imported, not only for the duties

accruing on that importation, but also for the payment of all debts due from the consignees, arising from antecedent importations. This question, he admitted, had since been disposed of against the United States. *Conard* v. *Atlantic Ins. Co.*, 1 Pet. *386. It is supposed, that the great question in the cause now before the court is, whether goods imported can, [*296 before entry at the custom-house, and while under the lien of the government, in possession of the custom-house officers, be leagally attached by virtue of a process from a state court. Such an attachment, it is claimed, is not only void, by the laws of the United States, but also by the laws of the state of Massachusetts; and therefore, the defendant in error did not, by the process, obtain any property or right of possession in the goods, which could enable him to maintain an action of trover.

The laws of the United States provide, that goods imported shall, until entered at the custom-house, be taken into the possession of the officers of the government, and after a certain time, be deposited in the custom-house stores; and afterwards, a further time having expired, if they have not been entered by or for the importer, they are to be sold, according to the 36th and 56th sections of the act of March 3d, 1799. An attachment, at the suit of any creditor of the importer, upon goods thus situated, would interfere with and destroy the possession and lien of the government, thus secured by law. Such an attachment, thus interfering with rights thus given, is the exercise of "an authority under a state," which "is repugnant to the laws of the United States." The exercise of such an authority is in opposition to the exemption claimed to exist in favor of those goods from such process, and is a defence for the marshal of the United States to this action of trover by the deputy-sheriff. This case is, therefore, one properly within the action of the 25th section of the judiciary law; and is well brought before this court, to reverse the judgment of the supreme judicial court of Massachusetts.

The attachment from the state court is void, as well by the laws and adjudged cases of Massachusetts, as by the laws of the United States. A statute of the state, if it interfered with the law of the general government in reference to subjects within its legitimate operation, would be void; but no such law, in reference to the proceedings and claims of the defendant in error, is to be found. To constitute a legal *attachment of [*297 goods, they must be taken within the actual or constructive possession of the officer; and when this cannot be done, on account of the existence of prior liens, or from any other cause, no attachment can be valid. The decisions in the state of Massachusetts fully sustain this position. *Phillips* v. *Bridge*, 11 Mass. 247; *Badlam* v. *Tucker*, 1 Pick. 389; *Watson* v. *Todd*, 5 Mass. 271. In *Pierce* v. *Jackson*, 6 Mass. 242, the court say, that when goods are attached, they must be seized under execution, within thirty days, or the lien of the judgment is gone. The goods in the custom-house stores could not have been sold under any process. *Vinton* v. *Bradford*, 13 Mass. 114. *Lane* v. *Jackson*, 5 Ibid. 157, decides, that the officer must have the actual possession and custody of the goods. *Odiorne* v. *Colley*, 2 New Hamp. 66, 317; *Holbrook* v. *Baker*, 5 Greenl. 309; 6 Conn. 356; 1 Show. 169; Vin. Abr. Distress, E, 2, H, 42, H, 52.

The effect of the acknowledgment of the storekeeper could not be to vest a property in the goods in the deputy-sheriff. It was unauthorized, and the storekeeper had nothing to dispose of. He was the agent of the

United States, to protect and preserve the property while in the public stores; and he could not divest himself of these relations, and become the bailee of the sheriff.

If the sheriff had no right to make the attachment, he acquired by it neither a general nor a special property, which is necessary in order to maintain trover; and in fact, he never had the actual possession of the goods. The only title he asserts is, as an officer, by virtue of the attachment; and if that is adjudged illegal and void, the foundation of his action fails. 2 Saund. 47; 7 T. R. 9.

*Webster*, for the defendant, contended, that this court has no jurisdiction of the case, according to the provisions of the judiciary law. It is not required, that it should appear, in form, that an act of congress has been misconstrued; if it has been *substantially the fact, it is sufficient *298] to give the writ of error to the highest state tribunal. But it does not appear in any part of this record, that such was the proceeding in the supreme judicial court of Massachusetts. The question originally raised in this case was, whether the United States had a general lien on goods imported, for debts due to them by the importer; and that question has, since this action was brought, been decided in the negative, in *Conard* v. *Atlantic Insurance Company*. The only question remaining in this case was, whether the goods were liable to attachment, and this was a question properly for the decision of the state courts. The United States claimed to attach and hold the goods for the debts due to them by De Wolf and Smith and the other creditors of those persons denied this claim, and proceeded by an attachment. The United States stood in no other relations, and with no other rights, before the state court, than the other creditors. In the state court, and upon the state decisions, the attachment for the creditors was considered valid. This is an answer to the argument, that such is not the law of Massachusetts. This decision does not, therefore, bring into question the construction of any act of congress.

*Berrien*, Attorney-General, in reply, argued, that there was enough in the record, to show that a question of the application of a statute of the United States was decided by the supreme judicial court of Massachusetts; and this would sustain the jurisdiction, although it may not have been the only question in the case. 2 Wheat. 363; 1 Ibid. 304. This is an action of trover against an officer of the United States, the marshal, for taking goods out of the hands of an alleged bailee, for a debt due to the United States; and the question is, was there then an existing lien in favor of the United States under the 62d section of the duty act? The construction of this statute was thus brought into question, by the inquiry whether there was a conversion by the marshal. He says, that his proceedings were under the authority of the law; and it was, therefore, essential, that the state court should decide upon the law, and construe the law. *2. In an action of *299] trover and conversion, the plaintiff must show property, and a right to retain it. The goods were in the possession of the custom-house, and subject to duties which were unpaid. It was necessary that the court should decide, that goods, before the payment of the duties, can be taken out of the possession of the custom-house by the process of the state courts. This question is to be decided by a reference to the laws of the United States. Such

an exercise of power would be inconsistent with the provisions of the laws of the United States. The position which is asserted by the plaintiff in error, is, that goods so situated are exempt from such process. The plaintiff in the state court contended, that they could be taken under the authority of the state of Massachusetts; and this was the assertion of a claim of authority under a state, against the laws of the United States.

Upon these grounds, it is manifest, that the construction of the laws of the United States immediately entered into the question before the state court. It must appear to this court: 1. That the goods were liable to be attached. 2. That there is nothing in the laws of the United States which prevents this. 3. That the United States had no lien on the goods. All these points must be decided in favor of the plaintiff below, before it can be held, that the marshal was guilty of a conversion.

STORY, Justice, delivered the opinon of the court.—This is a writ of error to the judgment of the supreme judicial court of the state of Massachusetts. The original action was trover, brought by the defendant in error, against the plaintiff in error, for twenty-three cases of silk, which had been attached by Dennie, as deputy-sheriff of the county of Suffolk, and afterwards attached by Harris, as marshal of the district of Massachusetts. The cause was tried upon the general issue, and a special verdict found, upon which the state court rendered judgment in favor of the original plaintiff.

The special verdict was as follows: The jury find, that *the merchandise described in the declaration was brought in a vessel of the [*300 United States, into the port of Boston, in the collection district of Boston and Charlestown, in Massachusetts, from a foreign port, prior to the commencement of this action. That the said merchandise came consigned to George De Wolf and John Smith, as was evidenced by the manifest of the cargo of the said vessel, at the time of the importation. That soon after the arrival of the said vessel, with the merchandise on board, as aforesaid, the collector of the said port caused an inspector of the custom-house to be placed on board thereof, in conformity with the requirements of law in such cases. That soon after the arrival of the said vessel, and prior to the entry of the said merchandise with the collector, and prior to the payment, or any security for the payment, of the duties thereupon, the same were attached in due form of law, as the property of the said George De Wolf and John Smith, by virtue of several writs of attachment issued from the court of common pleas for the said county of Suffolk, in favor of Andrew Blanchard and others; the said attachment having been made by the plaintiff, in his capacity of a deputy of the sheriff of the aforesaid county of Suffolk, prior to the inspector's being put on board, as aforesaid. That at the time of the said attachment, the said sheriff offered to give to said collector security for the payment of the duties upon the said merchandise, which the said collector declined to accept. That about seventeen days subsequently to the time of the attachment, the said merchandise being in the custom-house stores, under the following agreement, viz: "District of Boston and Charlestown, port of Boston, August 29th, 1826. I certify that there has been received in store, from on board the brig Rob Roy, whereof —— —— is master, from Canton, the following merchandise, viz., twenty-

three cases of silk, A. O. 1 to 23, lodged by D. Rhodes, Jun., inspector, and under whose care the vessel was unladen. (Signed) B. H. Scott, public storekeeper. I hold the above twenty-three cases of silks subject to order of James Dennie, deputy-sheriff, (Signed) B. H. Scott:" the defendant (Harris) being marshal, &c., attached the said merchandise, and took the
*301] same by virtue of several writs to *him directed, in favor of the United States, against the said De Wolf; which writs were duly issued from the district court of the United States for the district of Massachusetts; which writs were founded on bonds for duties theretofore given by the said De Wolf and Smith, and which bonds were then due and unpaid, being for a large sum of money. That the said De Wolf and Smith, at the time of the said importation of the merchandise aforesaid, were jointly and severally indebted to the United States on various other bonds for duties, besides those on which the writs aforesaid were instituted, which said first-mentioned bonds were also then due and unsatisfied; and that the bonds for duties, above referred to, and upon which the attachment by the said marshal was made, amounted to a much larger sum than the value of the merchandise thus attached. But whether or not, &c., in the common form of special verdicts.

As this case comes from a state court, under the 25th section of the judiciary act of 1789, ch. 20, it is necessary to consider, whether this court can entertain any jurisdiction thereof, consistently with the terms of that enactment. That section, among other things, enacts, that a final judgment of the highest state court may be revised, where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision is in favor of their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute or commission.

The objection is, that this court has not jurisdiction of this case, because it does not appear upon the record, that any question within the purview of the 25th section, arose in the state court, upon the decision of the special verdict. But it has been often decided in this court, that it is not necessary that it should appear, in terms, upon the record, that any such question was
*302] made. It is sufficient, if, from the *facts stated, such a question must have arisen, and the judgment of the state court would not have been what it is, if there had not been a misconstruction of some act of congress, &c., or a decision against the validity of the right, title, privilege or exemption set up under it. 4 Wheat. 311; 12 Ibid. 117; 2 Pet. 245, 380, 409. In the present case, it is contended, that the United States, by virtue of the 62d section of the revenue collection act of 1799, ch. 128, had a lien on the present merchandise for all debts antecedently due on custom-house bonds by De Wolf and Smith, and that, consequently, the attachment of the marshal overreached that of the private creditors, and that the state court have decided against such lien. If there be no such lien, still it is contended, that under the provisions of the revenue collection act of 1799, ch. 128, the merchandise was not liable to attachment at the suit of any private creditors,

under the circumstances, and that the state court, in giving judgment for the plaintiff, must have overruled that defence, and misconstrued the act.

The question, as to the lien of the United States, for duties antecedently due, was certainly presented by the special verdict. But we are all of opinion, that the decision of the state court, disallowing such a lien, was certainly correct. The 62d section of the act of 1799, ch. 128, after providing for the manner of paying duties, and of giving bonds for duties, and the terms of credit to be allowed therefor, goes on to provide, "that no person whose bond has been received, either as principal or surety, for the payment of duties, or for whom any bond has been given by an agent, factor or other person, in pursuance of the provisions herein contained, and which bond may be due and unsatisfied, shall be allowed a future credit for duties, until such bond be fully paid or discharged." Tho only effect of this provision is, that the delinquent debtor is denied at the custom-house any future credit for duties, until his unsatisfied bonds are paid. He is compellable to pay the duties in cash; and upon such payment, he is entitled to the delivery of the goods imported. There is not the slightest suggestion in the clause, that the United States shall have any lien on such *goods, for any duties due on any other goods, for which the importer has given bonds, and for which he is a delinquent. [*303 It was at once perceived by congress, that the salutary effect of this provision, denying credit upon duties, would be defeated by artifices and evasions, and the substitution of new owners or consignees, after the arrival of the goods in port, and before the entry thereof at the custom-house. To repress such contrivances, the next succeeding clause of the act provides, "that to prevent frauds arising from collusive transfers, it is hereby declared, that all goods, &c., imported into the United States, shall, for the purposes of this act, be deemed and held to be the property of the persons to whom the said goods, &c., may be consigned, any sale, transfer or assignment, prior to the entry and payment, or securing the payment of the duties on the said goods, &c., and the payment of all bonds then due and unsatisfied by the said consignee, to the contrary notwithstanding." The manifest intent of this clause was, to compel the original consignee to enter the goods; and if he was a delinquent, to compel him to pay his prior bonds, or to relinquish all credit for the duties accruing upon the goods so imported and consigned to him. It does not purport to create any lien upon such goods for any duties due upon other goods; but merely ascertains who shall be deemed the owner, for the purpose of entering the goods and securing the duties. The state court, therefore, did not, so far as this question is concerned, misconstrue the act of congress, or deny any right of the United States existing under it.

The other point is one of far more importance; and, in our opinion, deserves a serious consideration. If, consistently with the laws of the United States, goods in the predicament of the present were not liable to any attachment by a state officer, it is very clear, that the present suit could not be sustained, and that judgment ought to have been given upon the special verdict, in favor of the original defendant. And in our opinion, these goods were not liable to such an attachment. In examining the revenue collection act of 1799, ch. 128, it will be found, that numerous provisions have been solicitously introduced, in order to prevent *any unlivery, or removal, of any goods imported from any foreign port, in any vessel arriving [*304

in the United States, until after a permit shall have been obtained from the proper officer of the customs for that purpose. These provisions not only apply to vessels which have already arrived in port, but to those which are within four leagues of the coast of the United States. The sections of the act, from the 27th to the 58th, are in a great measure addressed to this subject. From the moment of their arrival in port, the goods are, in legal contemplation, in the custody of the United States; and every proceeding which interferes with, or obstructs, or controls, that custody, is a virtual violation of the provisions of the act. Now, an attachment of such goods by a state officer, pre-supposes a right to take the possession and custody of those goods, and to make such possession and custody exclusive. If the officer attaches upon mesne process, he has a right to hold the possession, to answer the exigency of the process. If he attaches upon an execution, he is bound to sell, or may sell, the goods, within a limited period, and thus virtually displace the custody of the United States. The act of congress recognises no such authority, and admits of no such exercise of right.

No person but the owner or consignee, or, in his absence or sickness, his agent or factor, in his name, is entitled to enter the goods at the custom-house, or give bond for the duties, or pay the duties. §§ 36, 62. Upon the entry, the original invoices are to be produced and sworn to; and the whole objects of the act would be defeated, by allowing a mere stranger to make the entry, or take the oath prescribed on the entry. The sheriff is in no just or legal sense the owner or consignee (and he must, to have the benefit of the act, be the original consignee), or the agent or factor of the owner or consignee. He is a mere stranger, acting *in invitum*. He cannot, then, enter the goods, or claim a right to pay the duties, or procure a permit to unlade them; for such permit is allowed in favor only of the party making the entry, and paying or giving bond for the duties. §§ 49, 50. If, within the number of days allowed by law for unlading the cargo, the duties
*305] are not paid or secured, the *goods are required to be placed in the government stores, under the custody and possession of the government officers. And at the expiration of nine months, the goods so stored are to be sold, if the duties thereon have not been previously paid or secured. § 56.

It is plain, that these proceedings are at war with the notion, that any state officer can, in the interval, have any possession or right to control the disposition of these goods; and the United States have nowhere recognised or provided for a concurrent possession or custody by any such officer. In short, the United States having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them, from the time of their arrival in port, until the duties are paid or secured, any attachment by a state officer is an interference with such lien and right of custody; and, being repugnant to the laws of the United States, is void.

It has been suggested, that the certificate of the storekeeper, declaring that he held the silks subject to the order of the attaching officer, might vary the application of this doctrine. But such an agreement was a plain departure from the duty of the storekeeper; and was unauthorized by the laws of the United States. It cannot then be admitted to vary the rights of the parties. See 56th section of the act of 1799, ch. 128.

This view of the subject renders it wholly unnecessary to consider the

point so elaborately argued at the bar, whether by the laws of Massachusetts an attachment would lie in such a case. If it would, the present attachment would not be helped thereby; because it involves an interference with the regulations prescribed by congress on the subject of imported goods.

Upon the whole, it is the unanimous opinion of the court, that the judgment of the state court ought to be reversed; and that a mandate issue to that court, with directions to enter judgment upon the special verdict, in favor of the original defendant.

*This cause came on to be heard, on the transcript of the record from the supreme judicial court of the commonwealth of Massachusetts, and was argued by counsel: On consideration whereof, it is the opinion of this court, that the goods in the special verdict mentioned were not, by the laws of the United States, under the circumstances mentioned in the said verdict, liable to be attached by the said Dennie, upon the process in the said verdict mentioned; but that the said attachment so made by him as aforesaid, was repugnant to the laws of the United States, and therefore, utterly void. It is, therefore, considered and adjudged by this court, that the judgment of the said supreme judicial court of Massachusetts, rendered upon the said verdict, be and the same is hereby reversed, and that a mandate issue to that court, with directions to enter a judgment upon the said verdict in favor of the original defendant, Samuel D. Harris; and that such further proceedings be had in said cause as to law and justice may appertain. [*306

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*Rachel Canter, Administratrix of David Canter, deceased, Claimant, *v.* The American Insurance Company and The Ocean Insurance Company of New York, Appellants. [*307

*Decree in admiralty.—Damages and costs.*

The libellants, in their original libel, in the district court of the United States for the district of South Carolina, prayed that certain bales of cotton might be decreed to them, with damages and costs; Canter, who also claimed the cotton, prayed the court for restitution, with damages and costs; the district court decreed restitution of part of the cotton to the libellants, and dismissed the libel, without any award of damages on either side; both parties appealed from this decree to the circuit court, where the decree of the district court was reversed, and restitution of all the cotton was decreed to Canter, with costs, without any award of damages, or any express reservation of that question in the decree; from this decree, the libellants in the district court appealed to this court; no appeal was entered by Canter: *Held*, that the question of a claim of damages by Canter was not open before this court; the decree of restitution, without any allowance of damages, was a virtual denial of them, and a final decree upon Canter's claim of damages; it was his duty, at that time, to have filed a cross-appeal, if he meant to rely on a claim to damages; and not having done so, it was a submission to the decree of restitution and costs only.

The counsel fees allowed as expenses attending the prosecution of an appeal to the circuit court and to the supreme court, in an admiralty case.

This is not a proper case for an award of damages; the proceedings of the libellants were in the ordinary course, to vindicate a supposed legal title; there is no pretence to say, that the suit was instituted without probable cause, or was conducted in a malicious or oppressive manner; the libellants had a right to submit their title to the decision of a judicial tribunal, in any legal mode which promised them an effectual and speedy redress. When parties litigate in the admiralty, and there is probable ground for the suit or defence, the court considers the only compensation which the successful party is entitled to, is a compensation in costs and expenses; if the party has suffered any loss beyond these, it is *damnum absque injuriâ*. p. 318.