The CHIEF JUSTICE said, he did not know how his opinion might be, if the question were a new one.

LINDO *v.* GARDNER.

Action of debt on promissory note.

Debt will not lie, in Maryland, upon a promissory note.
Quære? Whether the statute of limitations can be given in evidence, on *nil debet?*[1]

THIS was an action of debt brought by the administrators of Archibald Gardner against Abraham Lindo, upon a promissory note, in the Circuit Court of the district of Columbia, sitting in Washington. The act of congress respecting the district of Columbia had adopted the laws of Maryland as the law of this part of the district. In Maryland, the statute of 3 & 4 Anne, c. 9, respecting promissory notes, had been "introduced, used and practised by the courts of law," and thereby, and *by virtue of the declaration of rights, section 3d, it became the law of the land; and [*344
the courts of Maryland, in their construction of that statute, had always respected the adjudications of the English courts. In the court below, there was a verdict and judgment for the plaintiffs; to reverse which judgment, the defendant sued out the present writ of error.

The declaration was, "of a plea that he render to them $336.97, money of account of the United States of America, for that the defendant, on the 5th of October 1795, at, &c., by his certain note in writing, of that date, subscribed with his proper manuscription, and now here shown to the court, acknowledged himself to owe to Archibald Gardner the said sum of $336.97, which the said defendant promised to pay the said Gardner, and to the order of the said Gardner, at sixty days after the date of the said note in writing, it being in consideration of value received." It then averred the non-payment, &c., and made a *profert* of the letters of administration, which were averred to be "in due form."

The defendant in the court below pleaded *nil debet;* and after verdict against him, moved in arrest of judgment, because, 1. An action of debt cannot be maintained upon the promissory note set forth in the declaration. 2. It does not appear that the plaintiffs had obtained such letters of administration, as to entitle them to maintain an action upon the said note. 3. The declaration is in the *debet* and *detinet*, and ought to be in the *detinet* only.(*a*)

There was also a bill of exceptions stating the refusal of the court to suffer the defendant to give the statute of limitations in evidence on the plea of *nil debet.* The note was in these words:

(*a*) The *capias*, which, in Maryland, is considered as part of the record, was in the *detinet* only. The declaration was in neither the *debet* nor *detinet*, having omitted those words altogether.

[1] Every statute of limitation must be specially pleaded, unless it be otherwise provided. Heath *v.* Page, 48 Penn. St. 130.

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"Philadelphia, October 5, 1796.

At sixty days, I promise to pay to the order *of Mr. Archibald, Gardner, three hundred and thirty-six dollars and ninety-seven cents value received. A. LINDO."

Peacock, for the plaintiff in error, was about to produce authorities on the first point, when he was stopped by CHASE, J., who said, that an action of debt will not lie, in Maryland, upon a promissory note.[1]

No opposition being made on the part of the defendant in error, judgment was afterwards reversed, without argument.(*a*)

HODGSON *v.* DEXTER.

Responsibility of public officer.

A public agent of the government, contracting for the use of government, is not personally liable, although the contract be under his seal.[1]

Quære? What shall be said to be the act of God; and what, inevitable casualty?

Hodgson *v.* Dexter, 1 Cr. C. C. 109, affirmed.

THIS was an action of covenant brought by Joseph Hodgson against Samuel Dexter, late secretary at war, for not keeping in good repair, and for not delivering up, in like good repair, at the end of the term, certain premises which had been leased by the plaintiff to the defendant, for the purpose of offices for the war department; the buildings having been destroyed by fire, during the term. The lease was in these words:

"This indenture, made the 14th day of August, in the year of our Lord one thousand eight hundred, between Joseph Hodgson, of the city of Washington, and territory of Columbia, of the one part, and Samuel Dexter, of the same place, secretary of war, of the other part, witnesseth, that the said Joseph Hodgson, for and in consideration of the sum of four hundred dollars, current money of the United States, to him in hand paid by the said Samuel Dexter, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath demised, granted and to farm let, and by these presents, doth demise, grant and to farm let, to the said Samuel Dexter, and his successors, all that the three story messuage or
*346] tenement, erected and built *on part of lot number 14, in square number 75, situate on the Pennsylvania Avenue, in the city of Wash-

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(*a*) See note (B) in the Appendix, p. 462.

[1] The action of debt lies, whenever a sum certain is due to the plaintiff, or a sum which can readily be reduced to a certainty, requiring no future valuation to settle its amount. Stockwell *v.* United States, 13 Wall. 531; Chaffee *v.* United States, 18 Id. 516; United States *v.* Foster, 2 Biss. 453; United States *v.* Ebner, Id. 117. It lies by the payee or indorsee of a bill, against the acceptor. Raborg *v.* Peyton, 2 Wheat. 385; Kirkman *v.* Hamilton, 6 Pet. 20. And by a remote indorsee against the drawer, on striking out the intermediate indorsements. Home *v.* Semple, 3 McLean 150. Also by the indorsee of a promissory note against the maker. Camp *v.* Bank of Owego, 10 Watts 130; Willmarth *v.* Crawford, 10 Wend. 341. Or by the indorsee against a remote indorser. Loose *v.* Loose, 36 Penn. St. 538; Onondaga County Bank *v.* Bates, 3 Hill 53. Whenever *indebitatus assumpsit* can be maintained, the action of debt lies; and *indebitatus assumpsit* will, undoubtedly, lie in the cases above stated. Ibid.

[2] Parks *v.* Ross, 11 How. 362; Cook *v.* Irvine, 5 S. & R. 492; Olney *v.* Wickes, 18 Johns. 122.