UNITED STATES *v.* FISHER *et al.*, assignees of BLIGHT, a bankrupt. (*a*)

Priority of the United States.

In all cases of insolvency or bankruptcy of a debtor of the United States, they are entitled to priority of payment out of his effects. It extends to debts of every kind, such as the indorsement of a bill of exchange, of which the government is the holder.[1]

The statute conferring such priority is a valid exercise of the powers conferred on congress by the constitution.

United States *v.* Fisher, 1 W. C. C. 4, reversed.

ERROR from the Circuit Court for the district of Pennsylvania. The action was instituted to try two questions, all the necessary facts being conceded, to bring the law before the court. The questions were—

1. Whether an attachment laid by the United States, on property of the bankrupt, in the hands of the collector of Newport, in Rhode Island, after the commission of bankruptcy had issued, is available against the assignees?

2. Whether the United States are entitled to be first paid and satisfied, in preference to the private creditors, a debt due to the United States, by Peter Blight, as indorser of a foreign bill of exchange, out of the estate of the bankrupt, in the hands of his assignees?

The opinion of the court below was in favor of the defendants, upon both points, and a bill of exceptions was taken by the United States.

Dallas (Attorney of the United States for the district of Pennsylvania), for the plaintiffs in error.—

I. As to the particular right of the United States under the attachment. The title of the assignees is good against all who are bound by the bankrupt act; but we say the United States are not bound by that act. This exemption is not claimed as matter of prerogative, as in England, but by reason of an express legislative exception.[2] By the 62d section of the Bankrupt Law of 4th April 1800 (2 U. S. Stat. 36), it is enacted, "that nothing contained in

(*a*) Present, MARSHALL, Ch. J., CUSHING, PATERSON, WASHINGTON and JOHNSON, Justices.

[1] The priority of the United States, in cases of insolvency, extends as well to equitable, as to legal debts. Howe *v.* Sheppard, 2 Sumn. 133. And to a penalty incurred for a violation of the revenue laws. Ex parte Rosey, 5 Ben. 507. The laws giving such priority are of general application, and if a debtor be accepted out of the general rule, it is incumbent on him to show it. United States *v.* Duncan, 4 McLean 607. To bring a debtor within the operation of the statute, there must be a legal insolvency, not a mere failure or inability to pay. Prince *v.* Bartlett, 8 Cr. 431; Thelusson *v.* Smith, 2 Wheat. 396; Conard *v.* Atlantic Ins. Co., 1 Pet. 386; Conard *v.* Nicoll, 4 Id. 308; Beaston *v.* Farmers' Bank, 12 Id. 102; United States *v.* Clarke, 1 Paine 629. There must exist a state of notorious insolvency, or the debtor must execute a voluntary assignment of all his property. United States *v.* Hooe, 3 Cr. 73; United States *v.* Mott, 1 Paine 188; Thelusson *v.* Smith, Pet. C. C. 195. A partial assignment is not enough. United States *v.* Hooe, *ut supra*; Conard *v.* Atlantic Ins. Co., *ut supra*; Conard *v.* Nicoll, *ut supra*; United States *v.* Langton, 5 Mason 280; United States *v.* Munroe, Id. 572; United States *v.* Clark, *ut supra.* The right of priority, however, is not in the nature of a lien. United States *v.* Hooe, *ut supra*; Beaston *v.* Farmers' Bank, *ut supra*; United States *v.* Mechanics' Bank, Gilp. 51. The government has no preference over the claim of a lien creditor. The Thomas Scattergood, Gilp. 1. Nor to the sum allowed, under a state law, to the widow of an insolvent debtor. Postmaster-General *v.* Robbins, 1 Ware 165.

[2] The claim of the United States to priority of payment, does not stand upon any sovereign prerogative, but is exclusively founded on the provisions of the statutes. United States *v.* Bank of North Carolina, 6 Pet. 29; United States *v.* Canal Bank, 3 Story 79.

this law shall in any manner affect the right of preference to prior satisfaction of debts due to the United States, as secured or provided by any law heretofore *passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States, or to any of them." [*359

Congress had a right to declare that the act should not affect a public debt. Have they done it? The words contemplate: 1. The right of preference existing by prior laws: 2. The general right to, or security for, any money due to the United States. The effect of this section is, that the bankrupt act shall in no manner affect the right of the United States to recover any money due to them. To say, then, that the commission of bankruptcy should prevent the United States from attaching the effects of the bankrupt, is in direct repugnance to the section. This exception in favor of the United States, was not necessary to prevent the certificate from being a bar to their claim, nor to protect a lien actually existing, as a mortgage, &c.; because the United States not being named in the body of the act, are not bound by it. Thus, in England, upon the same principle, the king is not barred by the certificate. Such were also the decisions upon the Pennsylvania bankrupt law, in the courts of that state, by which it was uniformly adjudged, that the state was not bound. A mortgage, or other specific lien, was sufficient to protect itself. The section, therefore, could have no use, but that of declaring expressly that so far as relates to the debt due to the United States, the right, the security and the remedy, should all remain unimpaired by anything contained in that law. This principle was decided by the circuit court, in the case of *United States* v. *King*, Wall. C. C. 13, in which the court held, that in the case of a legal bankruptcy, the right of the United States remained unimpaired. So far as the claim of the United States was was concerned, the assignment under the commission of bankruptcy did not transfer the property. If the claim of the United States was by matter of record, the assignees were bound to take notice of it, and if the effects came to their hands, they held in trust for the United States, until the claim was discharged; so, if the claim was by matter *en pais*, if the assignees had notice, they were bound by it, and could not distribute, until the claim was satisfied.

*The whole title of the assignees depends upon the statute; if, then, the assignment under the statute is set up to prevent the United States from getting the money, it is in direct violation of the 62d section. [*360

II. As to the general right of the United States to priority of payment in all cases. The United States are bound to maintain the public credit, and to pay all their debts, as well those due before, as since the present constitution. They must have all necessary powers incident to that duty; among these is the authority to purchase bills, and to enter into negotiations for making remittances to foreign countries. They are not bound to freight a ship with specie. Every fiscal system ought to have two objects; certainty in the collection of the revenue, and fidelity in its expenditure. Hence, the necessity of priority in collecting the public debts; of surety for the conduct of public officers; and of a guard against the failure of the public debtors. With this view, it is enacted by the act of July 11th, 1798, § 12 (1 U. S. Stat. 593), that the supervisors, inspectors and collectors should give bond with surety, for the faithful performance of their duty. And by the 15th section

of the same act, the amount of all debts due to the United States by any supervisor, or other officer of the revenue, is declared to be a lien upon his lands and those of his surety, from the time when a suit shall be instituted for the recovery of the same.

The debtors of the United States may be arranged in three classes. 1. Debtors on credit for public dues. 2. On receipt of public money. 3. On purchases or contracts.

1. Debtors on credit for public dues, were : 1. For import duties : 2. For internal taxes. *By the act of 31st July 1789, § 21 (1 U. S. Stat. 42) it is provided, that "in all cases of insolvency, or where any estate in the hands of executors or administrators shall be insufficient to pay all the debts due from the deceased, the debt due to the United States on any such bond (*i. e.*, for the payment of duties) shall be first satisfied." The act of August 4th, 1790, § 45 (Ibid. 169), has the same provision. By the act of 2d of May 1792, § 18 (Ibid. 263), in cases of insolvency, the surety who pays the debt due to the United States, on any bond given for duties on goods imported, shall have the same priority of payment out of the effects of the insolvent, as the United States would have had by virtue of the 44th (45th) section of the act of 4th of August 1790. And it is further declared, "that the cases of insolvency in the said 44th (45th) section mentioned, shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay all his or her debts, shall have made a voluntary assignment thereof, for the benefit of his or her creditors, or in which the estate and effects of an absconding, concealed, or absent debtor shall have been attached by process of law, as to cases in which an act of legal bankruptcy shall have been committed."

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Thus, as early as 1792, the priority in the case of bonds given for duties on goods imported was complete. The only addition afterwards made was by the 65th section of the act of March 2d, 1799 (1 U. S. Stat. 676), which makes executors and administrators personally liable, if they pay away the assets, without first satisfying the debt due to the United States.

2. As to debtors for internal taxes. The duties on distilled spirits are to be secured by bond. March 3d, 1791, § 17 (1 U. S. Stat. 203). But this act gave no priority on such bonds. The duties on snuff and sugar were also to be secured by bond. June 5th, 1794, § 11 (Ibid. 387), but no priority is given by this act. *It is difficult to conceive why the United States should have made this distinction between debts due for duties on goods imported, and on spirits distilled, &c. There certainly was no reason for it.

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The legislature saw the defect, and in 1797, passed the act upon which the present question depends, and which gives the United States a priority of payment in all cases whatsoever. The 5th section of the act of 3d of March 1797 (1 U. S. Stat. 515), is that on which we rely. It is in these words: "And be it further enacted, that where any revenue officer, or other person, hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor, in the hands of executors or administrators, shall be insufficient to pay all the debts, due from the deceased, the debt due to the United States shall be first satisfied; and the priority hereby established shall be deemed to extend as well to cases in which a debtor, not having sufficient property

to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor, shall be attached by process of law, as to cases in which an act of legal bankruptcy shall be committed."

Before this act was passed, the only preference existing was in the case of a custom-house bond. The cases not provided for, were; 1. Revenue officers; 2. Accountable agents; 3. Debts on bond, or contract. The act of 1797 embraces them all. It includes all persons who should thereafter become indebted to the United States, by bond, or otherwise, and who should become insolvent.

Peter Blight, after the date of the act, did become indebted to the United States, otherwise than by bond, and has become insolvent. He is, therefore, within the plain and express words of the act. No language can make the case clearer. There is nothing doubtful in the words themselves, nothing ambiguous, nothing to be explained, and therefore, no room for construction. But the gentlemen have chosen to resort to other parts of the act, and even to other acts, not to explain what was *ambiguous, but to render ambiguous what was plain; not to remove, but to create a doubt; not to illustrate what was obscure, but to darken what was clear. [*363

The title of the act has led to the whole opposition in this case. It is "an act to provide more effectually for the settlement of accounts between the United States and receivers of public money." It is true, that it only professes to relate to the settlement of accounts, and conveys no idea of priority. But then it speaks of receivers of public money, not revenue officers and accountable agents only, not those who receive it by collection, any more than those who receive it by contract. The first section relates exclusively to revenue officers, and accountable agents, but every other section takes a larger scope.

If the body of the act is to be the slave of the title, how are we to account for the general provisions it contains? But the case comes within the very words of the title. Who are receivers of public money? We say, a person who indorses and sells a bill of exchange to the United States, is a receiver of public money. He is accountable for it, upon a contingency. If the bill is not duly honored, he contracts to refund the money. Hence, then, our opponents are obliged to restrict even the title itself. If Mr. Blight had received the money, to carry to Holland, he certainly would have been a receiver of public money. But he has received it here, under an engagement to pay it there. What is the difference?

The account has been settled with the treasury, and the balance ascertained, in which account he has been charged with the public money. The act of September 2d, 1789, § 3, 5 (1 U. S. Stat. 66), provides for the settlement of all accounts, and the recovery of all debts. The act of March 3d, 1795 (Ibid. 441), obliges all accountable agents to render and settle their accounts at the treasury.

*The act of 1797 (1 U. S. Stat. 512), provides for the recovery of the debt by suit, after final settlement of the accounts of a receiver of public money. Having in the four first sections expounded the provisions of the law respecting the pre-existing cases of adjusted accounts, the subsequent sections take a larger range, and provide for new cases. [*364

The first section applies exclusively to receivers of public money and accountable agents. The second speaks of delinquency, and is thereby connected with the first. It also makes copies of bonds or other papers relating to the settlement of any account between the United States and an individual, as good evidence as the original. Here the phraseology is altered : the subject is enlarged and by no means limited by the title : the word "delinquent" is dropped, and the expression is general, *any* account between the United States and an individual. The suit directed to be brought in the first section is always founded on the account settled, whatever may have been the original cause of action ; whether a bond, note, covenant, contract or open account.

The third section, by the words "as aforesaid," refers to such suit upon the adjustment of the account, and admits the defendant to set up equitable credits which had been submitted to the accounting officers of the treasury, and rejected, previous to the commencement of the suit. But no new voucher is to be admitted. In the fourth section, the word of reference is omitted. The subject of suits, in general, between the United States and individuals is taken up. The word "delinquents" is not used. It would have been improper. It is not a term applicable to mere debtors, but to *defaulters*, persons who have misapplied public money. The words of the fifth section are general, and there is nothing either in the title or preceding sections which can restrict them. It is not, like some of the former sections restricted to adjusted accounts, nor to accountable agents, nor to collectors of public money, nor to persons who receive the public money to distribute. *365] And *yet we find, that when the legislature meant to restrict the subject of legislation, restrictive words were not wanting. By not using words of restriction in the fifth section, after having used them in the preceding sections, they have shown a manifest intention of making a general provision upon the subject of priority in all cases. The sixth section is also general in its terms. It embraces all writs of execution upon any judgment obtained for the use of the United States. The seventh section saves all the remedies which the United States before had for the recovery of debts.

The general right of priority is recognised by subsequent statutes. Thus, in the act for the relief of persons imprisoned for debts due to the United States, June 6th, 1798 (1 U. S. Stat. 561), the provision is general, "that any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, may apply," &c.; and the secretary of the treasury being satisfied that such debtor is unable to pay the debt, and that he has not concealed or made any conveyance of his estate in trust for himself, or with an intent "to defraud the United States, or deprive them of their *legal priority*," &c., may order him to be discharged from custody. From the force of these expressions, as applied to the subject matter, it is evident, that a general priority was contemplated. So, in the 62d section of the bankrupt law of April 4th, 1800 (2 U. S. Stat. 36), the words "the right of preference to prior satisfaction of debts due to the United States, as secured or provided by any law heretofore passed." There is no priority given in case of bonds with pecuniary penalty, other than custom-house bonds, unless it be given by the act of 1797 ; yet by the act of 2d March 1799, § 65 (1 Ibid. 676), if the surety in any bond with penalty shall pay the

debt, he shall enjoy the like priority and preference as are reserved and secured to the United States.

The title of a law is no part of the law. In England, it is prefixed by the clerk, and is never passed upon by parliament. In congress, it is never read but once. Jefferson's *Manual, § 42 ; 6 Bac. Abr. (Gwillim) 369 ; Carrington on Statutes, 449 ; *Coleman* v. *Cook*, Willes 394 ; *Mace* v. *Cadell*, Cowp. 232 ; *Swaine* v. *De Mattos*, 2 Str. 1211 ; 3 Wilson 271 ; *Pattison* v. *Bankes*, Cowp. 540 ; *Cox* v. *Liotard*, Doug. 166. [*366

The title of the act of 2d March 1799 (1 U. S. Stat. 627) is, "an act to regulate the collection of duties on imports and tonnage," yet the 62d section, p. 673, prescribes the form of bonds to be taken to the United States in all cases. And the 65th section, p. 676, directs bail to be taken in all cases of pecuniary penalties. No argument, therefore, can be drawn from the title.

As to the argument *ab inconvenienti.* It amounts merely to this, that one merchant cannot know when he is safe in trusting his neighbor, because he does not know what bills he has indorsed to the United States, or what bills with his indorsements may get into their hands. The same objection may be made as to sureties in custom-house bonds, and receivers of public money ; cases in which the priority is acknowledged. The act has done no more than the debtor himself has a right to do. Independent of the bankrupt law, a debtor may convey all his property to one of his creditors, in exclusion of all the rest, and the conveyance will be good. So, a foreign attachment may come and sweep away the whole estate. But if the words of the law are clear and positive, it cannot be altered by the consideration of its inconvenience. That would be a subject for legislative, not judicial inquiry.

Harper, contrà.—The ground of prerogative seems to be abandoned. The few observations I shall make, will be confined to the case of an indorser of a bill of exchange which gets into the hands of the United States.

*The argument is rested on statutory provisions only. It is contended, that the priority extends to all debtors. On the other side, it is confined to fiscal debts, of which there are only two kinds : bonds for duties, and debts due from accountable agents. The general words of the act extend to all cases ; but we contend, that those general words are restricted by the spirit of the act, and by the intention of the legislature. The general observations which have been made, tending to show that it would have been prudent in congress to extend the priority to all cases, do not show that they have done it. [*367

But it is said, that the 62d section of the bankrupt law restricts the general operation of the act, so that none of the provisions shall affect the right of the United States. This is admitted. Then we are brought back to the question, what rights had the United States before that act ? If they had no priority before, that act did not give it to them. It is admitted, that a voluntary assignment, before the act, and since its repeal, would deprive the other creditors of their right to the property. If, then, the United States are to be considered as a common, and not as a privileged creditor, the voluntary assignments made by Blight, before the bankrupt law, would bar the United States as well as any other creditor. The bankrupt act neither gives nor takes away the right of priority ; so that the question again returns, what was their former right ?

"The words, "or other person," and "or otherwise," in the 5th section of the act of 1797, it is said, give this clause a general operation in all cases. The word "hereafter" has also furnished an argument for the plaintiffs in error. It is said, that the priority was to apply *instanter* to the case of a revenue officer, but in other cases, it was to apply only to such debts as should be thereafter contracted. But there is no such distinction. The printer has committed an error in placing a comma after the words "revenue officer," whereas, the words "hereafter becoming indebted," apply as well to "revenue officer" as to "other person."

*368] *We admit, that neither a title nor preamble can control the express words of the enacting clauses ; but if these are ambiguous, you may resort to the title or preamble to elucidate them. It is said, that Blight was a receiver of public money, and therefore, within the title of the act. But that appellation is not more applicable to him, than it would be to a man who receives payment for timber furnished for the use of the United States. No account against him can be opened in the books of the treasury. He merely sold the bill and received payment. He received it as his own money, not that of the United States. And although he might, by matter *ex post facto*, become indebted, yet when he received it, he did not receive it as public money for which he was to account. The right of action of the United States did not accrue upon his receipt of the money, but upon the breach of his contract. The indorser of a bill engages that it shall be duly honored. When the bill was dishonored, and not before, the claim of the United States accrued. When he received the money, it depended upon a contingency, whether he should ever become indebted to the United States: and if they should not take all the steps of due diligence, notice, &c., he never would be indebted.

It is said, that the evil to be remedied by the act of 1797 was, that the collectors of the internal revenue were not subject to the priority. The case of the collectors of the external revenue had been provided for before. We admit the rule, that every part of the act is to have effect, but it does not require, that the words should be extended to an indorser of a bill of exchange. There are other persons upon whom the whole effect of the section may operate. There are accountable agents, that is, agents who receive the public money to distribute. These are indebted to the United States "otherwise" than by bond : these are the other persons than revenue officers, to whom the act alludes. Those two classes of persons, revenue officers, and accountable agents, are sufficient to satisfy all the expression of the section.

Innumerable inconveniences and embarrassments will follow a further extension of the words ; and if there is no necessity of extending them further, those inconveniences *will furnish a sufficient ground to suppose that the legislature did not mean so to extend them. *369]

When a man gives a bond for duties, or a revenue officer for the faithful discharge of his office, the bond is of record ; all the world has notice. A public agent also is charged of record on the books of the treasury. His neighbors who deal with him are aware of his situation ; they know the extent of his responsibility, and can exercise their judgment in trusting him. But in the case of an indorser of a bill of exchange, no one can have notice. A man may have indorsed a hundred bills, and he may not himself know

how many of them have been purchased by the United States. His creditors trust him, without notice; they believe that if any accident should happen to him, they will share an equal fate with his other creditors. If they had known, as in the case of a collector, that the United States might come in and seize the whole of his effects, they would not have given him credit. Such a construction ought to be supported by the strongest reasons.

The distinction between revenue officers and other persons, runs through the whole act; and you may as well extend the 2d section to all cases, as the 5th, and say, that every debtor of the United States shall be at the mercy of the officers of the treasury department. But the 2d section is evidently restricted, and we have as good a right to restrict the 5th, by connecting it with the 2d, as they would have to extend the 2d, by relation to the 5th. The words "as aforesaid," in the 2d section, restrict its operation to certain fiscal debts, and show the subject-matter of the act to be debts, which, in the usual course, are to be adjusted at the treasury.

The 6th section is relied on, to show that the title is not to control the enacting clauses. But this is because an entirely new subject-matter is introduced, and by no possibility can its words be satisfied, by restricting them to the cases mentioned in the other sections.

The provision of the act of 1799, § 65 (1 U. S. Stat. 676), which makes executors and administrators liable, if they *pay away the assets without first satisfying the debt due to the United States, applies exclusively to custom-house bonds. This may be just, because the executor can always go to the records and know whether his testator was so indebted. But this furnishes no ground to suppose, that congress meant to apply the same provision to the executor of an indorser of a bill, who could not be supposed to know that his testator was so indebted, and who may have paid away the assets without such knowledge.(*a*) [*370

Ingersoll, on the same side.—A claim of preference, which, in monarchies, is boldly avowed by the name of prerogative, presents itself in republics under the milder and more insinuating appellation of privilege. The preference insisted upon for the United States, in the present instance, exceeds that which is considered as incident to the supremacy of any king, emperor or other sovereign in Europe, under similar circumstances.

The United States, by their agent (but who did not declare himself to be such), purchased a bill of exchange, which was returned protested for non-payment. In doing this, they acted the merchant, and ought to be content with preserving a consistency of character. The drawer and indorser became bankrupt; voluntary and provisional, and absolute assignments were made. No public property is specifically identified and traced to the hands of the defendant's assignor. The debtors were not revenue officers, agents of the United States, either general or special; nor did they receive public money to be accountable, nor even know that the purchase was for the use of the United States. They not only were not themselves agents, but they did not know that they were dealing with an agent of the United States.

(*a*) Mr. Harper apologized here for closing his argument; being engaged as one of the counsel, upon the impeachment then pending before the Senate of the United States.

Subsequent to those assignments, the United States attached the property assigned, as belonging to Peter Blight, the assignor.

*371] *We contend; 1. That the laws of the United States do not give the preference claimed. 2. That the attachment, having issued and been laid subsequent to the assignment under the commission of bankruptcy, is an immaterial incident, which cannot affect the general principle. 3. That if the act of congress gives the preference to the extent claimed, it is unconstitutional, and not a law.

1st. Does the law of the United States give the preference claimed, on general grounds, considered abstractedly from the proceedings by attachment.

Particular and secret liens, indiscreetly multiplied, occasion doubtful titles; render an intercourse in business dangerous, and destroy credit, the life of commerce. The claim of priority, as now urged, is accompanied with all the mischief and inconvenience, if it does not fall under the express denomination of a secret lien. For a literal construction of the law, it is scarcely possible, that any man will contend. The counsel for the United States shrink from the conclusion to which such an interpretation would necessarily lead. Property, real or personal, would not be a means of obtaining credit. No lender could secure himself by mortgage, pledge or otherwise, against loss by the insolvency of the borrower. The unfortunate incident, to guard against the consequences of which the security was taken, would itself cause the disappointment and loss. The argument of the opposite counsel recoils upon themselves. Although they disavow the interference with specific liens, yet they must take the principle altogether; and if it lead to these absurd results, it must be unsound in its source.

Their qualified position, however, authorizes the conclusion, that there are supposable cases, in which the United States will not be entitled to *372] priority, on the insolvency of *their debtors, and repels conclusively an adherence to the letter of the law.

If, instead of confining ourselves to particular expressions, we consider the mischief and the remedy, and take the general scope and design of the act into view, we may, with confidence, anticipate the conclusion. Every statute consists of the letter and the spirit; or, in the quaint but strong language of ancient law-writers, of the shell and the kernel; and, by comparing the different parts with each other, from the title to the last sentence, it is found to be its own best expositor. 4 Inst. 424. I am authorized by one of the greatest lawyers that ever lived, to say, that general words in statutes have, at all times, from a variety of considerations, received a particular and restricted interpretation. 4 Inst. 330, 334, 335. The key to unlock the secrets of the law, we admit, is not so much the title (although it is one of many considerations to be taken into view) as the motive, the cause, the principle, that induced the legislature to pass the act. The counsel for the United States has stated this motive to be to put the internal revenue upon the same footing as the import duties; and to that proposition we accede. Let the law cease, where the reason ceases, and we are safe.

It may be useful, to consider the prerogative of the kings of England in this particular, at the least liberal period of its juridical history, when unreasonable preferences of the sovereign over the subject fill and deform its every page. By the statute of 33 Hen. VIII., c. 39, § 74, "his debt shall,

in suing out execution, be preferred to that of every other creditor who hath not obtained judgment, before the king commenced his suit." 3 Bl. Com. 420. This only makes the commencement of the king's suit equivalent to a judgment in favor of a subject. "The king's judgment also affects all lands which the king's debtor hath at or after the time of contracting his debt." 3 Bl. Com. 420. This relates to lands only. The personal estate, at least, escapes the royal grasp. *Even there, the distinction for which we contend has always been observed. The preference in favor of the king is principally confined to cases where public moneys have been received by an accountable officer to public use. It does not extend to transactions of a common nature. By the statute of 13 Eliz., c. 4, the lands and tenements, goods and chattels, of tellers, receivers, collectors, &c., and other officers of the revenue, are made liable to the payment of their debts. [*373

These are the models which the act of congress was intended to imitate. The lands of such revenue officers are liable to process under the king's judgment, even in the hands of a *boná fide* purchaser; though the debt due to the king was contracted by the vendor, many years after the alienation. 3 Bl. Com. 420. Here, the distinction is still kept up between revenue officers and others. If goods are taken on a *fi. fa.* against the king's debtor, and before they are sold, an *extent* come at the king's suit, *tested* after the delivery of the *fi. fa.* to the sheriff, these goods cannot be taken upon the *extent*, but the execution upon the *fi. fa.* shall be completed. *Rorke* v. *Dayrell*, 4 T. R. 402. Even Queen Elizabeth, with all the supremacy of absolute sway, did not carry her prerogative claims to the extent now urged for a federative republic, and representative democracy. With the several exceptious already stated, and which are confined principally to revenue officers, the king of England has no priority in the recovery of his debts, over the meanest peasant of his dominions.

When we advert to the title of the act, we find in its pointed expressions, a direct contradiction by the legislature itself to the present claim of the United States. The words are, "an act to provide more effectually for the settlement of accounts between the United States and receivers of public money," not between the United States and individuals indebted by bond, contract or otherwise. It is substantially in imitation of the English statutes, respecting *tellers, collectors and receivers, who are answerable in the receipt of the exchequer. The act is "more effectually" to provide, &c., alluding to a former provision upon the same subject. That former provision is contained in the act of March 3d, 1795, which, with a title less restricted than that of 1797, is confined, in its enacting part, to persons who have received moneys for which they are accountable to the United States. [*374

We do not contend, that the title can control the plain words of the enacting clause; but where a construction of an enacting clause would lead to unjust, oppressive, and iniquitous consequences, which will be avoided by a construction consistent with the title, a strong argument arises in favor of the latter interpretation. When, in the act of 1795, we find the legislature confining itself throughout to provisions for the settlement of the accounts of accountable receivers of public money; and when, in that of 1797, they declare that their object is to do the same thing more effectually, we naturally infer, that their views are confined to persons of the same description.

We are told by the counsel for the United States, that acts *in pari materia* are to be taken together. We adopt the same rule; and by comparing the two acts together, section by section, the inference will be, that both are confined to revenue officers and accountable agents.

The first section of the former law is confined to notifying the accountable officer to render his accounts to the auditor of the treasury; and in default thereof, the comptroller is authorized to order suit. By the first section of the act of 1797, it is made the duty of the comptroller, to institute such suits against delinquent revenue officers, and other persons accountable for public money. The delinquent is to forfeit his commissions, and pay six per cent. interest from the time of receiving the money. No person was to be sued under this act, who was not entitled to commissions for receiving and paying away money; *because, in all cases of delinquency, such commissions were to be forfeited. The whole act is employed in stating who shall be sued, who shall sue them, when the cause shall be tried, the evidence to be received on the trial, the mode of defence, the judgment, and execution. Congress had been in the habit of preserving a priority in a limited way, and in certain cases. It was tracing the public money, specifically, in the character of the receiver.

*375]

The act of July 31st, 1789, confined the priority to custom-house bonds. That of 4th August 1790, on more full consideration, limited it in the same manner. That of 2d May 1792, which places the surety on the same footing with the United States, shows the same restricted construction. The present act comes next in order of time. Its title and its first section are confined in the same manner. It does not, of itself, authorize the settlement or adjustment of any accounts; it only determines what proceedings may be had on such settlements and adjustments as are made under the act of 3d March 1795, which does not authorize the settlement or adjustment of any accounts, but those of persons who have received public money, for which they are accountable to the United States.

An alternative here presents itself. Either the officers of the treasury department had a right to settle definitively and exclusively the demand of the plaintiffs for this bill of exchange, or, the second section is restricted in its operation to revenue officers and accountable agents. We are told, that the first part of the second section is so restricted, but that the second part of it includes all debtors to the United States.

In the first part, which we agree is restricted, a transcript from the treasury books is made evidence. The second part is merely supplementary to the first, providing that copies of any papers connected with the settlement of any account, authenticated in a prescribed form, shall be as good evidence as the originals. Of course, as to those persons against whom the originals are not evidence, under the first part of the section, the copies are not evidence, under the second.

*376] *The very words of the clause, as well as the general scope and design of the act, preclude any further extension of the provision. The legislature evidently consider it as implied, that the provisions will be understood in a restricted sense, although they use general expressions, without a relative term in the whole sentence. The term individuals, in the 2d section, must, for the reasons just stated, mean officers and agents who have received public money, to be accountable. If, then, the legislature, in

that section, leave general words to be restricted in construction by the subject-matter, without relative words, it will be strange, if they are not understood as intending to do the same, when they use general expressions in the subsequent sections.

My argument is, that general expressions, in every subsequent section, are to be understood in a sense limited by the views of the legislature, as explained in the first clause. I contend, that all persons comprised in any part of the act, are included in the first section; because all persons to whom the act refers, were to be sued upon default. If, then, I ascertain, who were to be sued upon default, I show the extent of the act, as to the persons against whom it was to operate.

No persons were to be sued, but receivers of public money; for in every instance, the defendant was to forfeit his commissions, and pay interest from the time he received the money, until repaid into the treasury. Such a construction is warranted by authorities, American as well as British. 1 Bl. Com. 60, 61. 4 Tuck. Bl. 372, 373, 374, n. 4. The law of Virginia of December 15th, 1796, usually termed the Penitentiary Act (Randolph's Abridgment, p. 359), in the first section, enacts, that "no crime whatsoever, committed by any free person against this commonwealth (except murder of the first degree) shall be punished with death." In all the subsequent sections, the word free is omitted, and no word of reference used so as to connect them with the first section, and yet it has been uniformly held, that all *the provisions of that law relate to free persons only; that the [*377] subsequent sections, although the words are general, shall be restricted by the first, and by the general intention of the legislature indicated in that section.

The 3d section of the act of 1797, by using the words "as aforesaid," expressly refers to the description of debtors in the 1st section. The 4th section shows that the legislature meant to leave the general expression, "individuals," to be limited by the subject-matter. It is still speaking of the suits mentioned in the 1st section, and yet it used a general expression. It provides, in terms, that in suits between the United States and individuals, no claim for a credit shall be admitted upon trial, but such as shall have been presented to the officers of the treasury, and by them disallowed. If Peter Blight had paid a part of this debt, and a suit had been brought against him, is any man so extravagant, as to contend, that he could not prove that partial payment, without showing that he had accounted at the treasury department? Those officers had no power to call him to an account with them; no right to allow or disallow his credits. Such a law would have been unconstitutional. It would deprive him of his right of trial by jury, without his consent. The agents who receive money to be accountable may, perhaps, be considered as having named the accounting officers as their referees, and to have assented to that mode of settlement when they received the money.

We have shown, that the present case is not within the first four sections of the act, and we contend, that as the legislature have in those sections relied on the subject-matter, to give a proper restriction to the general expressions therein contained, we are justified in saying, that they meant that the general expressions in the subsequent section should also be limited within the same bounds.

It is remarkable, that the 5th section begins with the words of the 1st, as if it was intended to be an exact copy, in respect to the description of persons. By inadvertence, as it often happens, the relative word "such," or *378] the additional words "accountable for public money," *are omitted; or the legislature thought them unnecessary, as the subject-matter was in itself sufficient to qualify the generality of the terms. If this section was intended to be general, why this useless profusion of words? Why specify revenue officers? Why say, by bond? Why drop the general word "individuals," used in the 4th section? Why not say, any person becoming indebted to the United States? It begins as if congress meant to make a specific description of persons, as in the first section. Why this sudden change of the subject of legislation? Why use words of description which can only tend to mislead? How strange and improbable is it, that congress should give the United States a preference so much exceeding the royal prerogative of England?

Unless such a construction be absolutely necessary, the inconveniences attending it will, undoubtedly, prevent its adoption. Besides the destruction of private credit, and the ruin of individuals, it would repeal all the state laws of distribution of intestate estates; it would prostrate all state priority, which, in those cases, has been long established. It would produce a collision between the prerogative of the states and of the United States. Suppose, the treasurer of a state should become indebted to the United States, the latter would take his whole property, in opposition to any law of the state which had passed, to secure herself against the default of her officers.

2d. The attachment having issued subsequently to the assignment under the commission of bankruptcy, leaves the question to be decided on the general principle. The statutory is always accompanied by a personal assignment that transfers the property. The king of England, although not within the provisions of the bankrupt law of that country, is barred by the actual assignment. There was not, at that time, any property of Peter Blight to be attached, and if the United States are entitled, it must be under some *379] of the acts which give them *a priority. It cannot be under the bankrupt law, unless they had some right prior to the assignment. The attachment gave them no right, because it was subsequent.

3d. If the act is to have the extended construction contended for on the part of the United States, and the 5th section is to be considered as including every debtor to the United States, and if the settlement of the account at the treasury is to be conclusive, the act is unconstitutional and void. If liens, general or specific, if judgments and mortgages are to be set aside, by the prerogative of the United States, it will be to impair the obligation of contracts, by an *ex post facto* law.

Under what clause of the constitution is such a power given to congress? Is it under the general power to make all laws necessary and proper for carrying into execution the particular powers specified? If so, where is the necessity, or where the propriety, of such a provision? and to the exercise of what other power, is it necessary? But it is in direct violation of the constitution, inasmuch as it deprives the debtor of his trial by jury, without his consent.

Johnson, J.—Do you admit the law respecting the final adjustment of accounts at the treasury to be constitutional, as to revenue officers?

Ingersoll.—We neither admit nor deny it, as to them; but we deny the power of congress to give the United States a preference, in all cases of persons who may become indebted to them, in every possible manner.

Paterson, J.—Do you contend, that by the 5th section, the priority of the United States will avoid even a mortgage to an individual?

Ingersoll.—I say, that the opposite construction leads to that.

Lewis, on the same side, *in addition to the arguments urged by *Harper* and *Ingersoll*, contended, that the act of 1797 was repealed [*380] by that of March 2d, 1799, inasmuch as the former was within the purview of the latter, the 65th section of which took up the case of priority, and made a different provision on the subject; and the 112th section of which expressly repeals all former laws which came within the purview of that act. Everything is within the purview, which is within the same evil, and which comprehends the same subject.

C. Lee, on the same side, contended, that the priority of the United States is confined to debts of record, or for which suit is brought, and that it attaches only from the time of the commencement of the suit. That the act of 1797 is explained by the act of 11th July 1798 (1 U. S. Stat. 594), which creates a lien upon the lands of revenue officers, from the time of the suit brought. If the United States had a general lien by the former law, whether suit was brought or not, why did the legislature, in a subsequent law, create the special lien, and limit its commencement to the time of instituting the suit, and confine it to revenue officers?

The prerogative of the United States cannot be construed to exceed that of the king of England. He is bound by an actual assignment, because the property is thereby transferred. The title of the subject, if prior and complete, shall be preferred to that of the king. *The King* v. *Cotton*, Parker, 126.

Paterson, J.—Do you consider the doctrine of prerogative as extended to this country? are the United States not bound by a law, unless named in it?

Lee.—It has been so contended, by some persons in this country. I believe it has been so decided in Pennsylvania, under the insolvent act of the United States. Judge Peters made some such report to congress, who passed a law specially respecting the debtors of the United States.

**Dallas*, in reply.—The questions to be decided are: 1. What has congress done? 2. Had congress a right to do it? [*381]

The ground now taken is essentially different from that relied upon in the circuit court. Each of the four gentlemen opposed to me has taken a different position. The first admits the intent of the law to be, to place the internal revenue on the same footing with the external. The second admits not only the officers of the internal revenue to be included in the law, but also accountable agents. The third declares the law to be unconstitutional,

and also to be repealed by the act of 1797. The fourth admits that the law extends to all debts, but says the priority does not attach until suit brought. All have conceded that the case was within the words of the act. What do we claim?

1st. Negatively, we do not contend, that the priority attaches with the creation of the debt, or with the acceptance of the office, nor while the debtor remains master of his own property. Nor that it extends to purchasers for valuable considerations, or to a mortgagee or pawnee, before insolvency; nor to a purchaser from the assignees; nor that it will be valid against a creditor of more merit or vigilance.

2d. Affirmatively, we claim an exemption from the operation of the bankrupt law, as to our right, our remedy, and our security. *We claim [*382] a preference in all cases of actual, notorious insolvency or bankruptcy, whether the debtor be alive or dead. We claim a preference, when the property has passed out of the debtor, and he has, by his own act, attempted to give a preference to others. We claim it also, where the law assumes the disposal of his property, and directs a distribution among his creditors. We say, that the priority attaches from the moment the insolvency is testified by any *overt* act. Independently of the bankrupt law, a debtor had a right to give a preference. At the moment of Blight's voluntarily assignment (whatever may have been its ultimate fate, or legal invalidity on account of fraud), his property was liable to the claim of the United States. This voluntary assignment was after the act of 1797, and before the existence of the bankrupt law.

Does the act of 1797 bear a resemblance to royal prerogative? At common law, the king can take the body, lands and goods of his debtor in execution, at the same time. His execution is preferred, if his suit was commenced, before a judgment in favor of a subject, although his judgment be subsequent. The lands of his debtor are bound, from the date of the debt, and as to the officers mentioned in 13 Eliz. c. 4, their lands are bound from the time of their entering into office. And all this, whether the debtor remain solvent or not. He has also a priority in all cases of legal distribution. 2 Bl. Com. 511.

The act of 1797 has done nothing more than the greater part, if not all the states have done. They have long claimed the priority in case of distribution of the estates of their deceased debtors. And what reason can be given for a distinction between the dead and the *living insolvent. [*383] The laws have even extended the priority to an executor who has a right to retain for his own claims against all other private creditors. Such a right was necessary to protect the United States from fraud. They could not exercise the same degree of vigilance as individuals. Their debtors were making voluntary assignments to elude the demands of the United States. The several states had their insolvent laws, their attachment laws, and their state priorities. Without such a power, the United States would stand no chance in the general scramble. Was it not politic, was it not necessary, that the United States should guard against those evils?

Against the plain words of the act, what is opposed? 1. The inconvenience and impolicy of the provision. 2. Its unconstitutionality.

1. The inconvenience or impolicy of a law are not arguments to a judicial tribunal, if the words of the law are plain and express. Such arguments

must be reserved for legislative consideration. But the inconvenience is the same in the case of a priority in the distribution of the estate of a deceased, as of a living debtor. If it be allowed in the one case, why not in the other? The creditor knows not how soon his debtor may die, and he know that if he dies insolvent, the United States, or the individual state, may sweep the whole.

It is said, that the act of 1797 is repealed by that of 1799, the former being within the purview of the latter. *But this is not the case. [*384 The 5th section of the act of 1797 is not within the purview of the act of 1799. The subjects are different. The act of 1799 speaks only of custom-house bonds. But when it provides that the surety shall have the same priority as the United States, it implies that there are other cases of priority already existing, but it neither gives nor takes away such priority.

2. As to the question of constitutionality. The constitution is the supreme law of the land, and not only this court, but every court in the Union is bound to decide the question of constitutionality. They are bound to decide an act to be unconstitutional, if the case is clear of doubt; but not on the ground of inconvenience, inexpediency or impolicy. It must be a case in which the act and the constitution are in plain conflict with each other. If the question be doubtful, the court will presume that the legislature has not exceeded its powers. *Hylton* v. *United States*, 3 Dall. 173, 175.

Congress have duties and powers expressly given, and a right to make all laws necessary to enable them to perform those duties, and to exercise those powers. They have a power to borrow money, and it is their duty to provide for its payment. For this purpose, they must raise a revenue, and, to protect that revenue from frauds, a power is necessary to claim a priority of payment.

There is no case under the act of 1797 in which the trial by jury is excluded. It is true, that no credits are to be admitted on the trial (except under particular circumstances) but such as have been submitted to the accounting officers of the treasury, and by them disallowed in whole or in part. But this does not abridge the power of the jury. It is only establishing an inferior tribunal, and saying, that no new evidence shall be admitted on the appeal, unless in the excepted cases. All claims against the United States, whether urged as independent claims, or by way of offset, must pass the *ordeal of the accounting officers of the treasury. If they reject [*385 them, there is an appeal, except in the case of one class of debtors. The decision of the comptroller is final and conclusive only as to the credits claimed by "a person who has received moneys for which" (that is, for the expenditure of which) "he is accountable to the United States," and this not by the act of 1797, but by that of 1795. (1 U. S. Stat. 441.)

MARSHALL, Ch. J., delivered the opinion of the court.—The question in this case is, whether the United States, as holders of a protested bill of exchange, which has been negotiated in the ordinary course of trade, are entitled to be preferred to the general creditors, where the debtor becomes bankrupt? The claim to this preference is founded on the 5th section of the act, entitled "an act to provide more effectually for the settlement of accounts between the United States and receivers of public money." (1 U. S. Stat. 515.)

The section is in these words: "And be it further enacted, that where any revenue officer, or other person, hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor, in the hands of executors or administrators, shall be insufficient to pay all the debts due from the deceased, the debt due to the United States shall be first satisfied ; and the priority hereby established shall be deemed to extend, as well to cases in which a debtor, not having sufficient property to pay all his debts, shall make a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed or absent debtor shall be attached by process of law, as to cases in which an act of legal bankruptcy shall be committed."

That these words, taken in their natural and usual sense, would embrace the case before the court, seems not to be controverted. "Any revenue officer, or other person, hereafter becoming indebted to the United States by bond or otherwise," is a description of persons, which, if neither explained nor restricted by other words or circumstances, would comprehend every debtor of the public, however his debt might have been contracted.

*386] *But other parts of the act involve this question in much embarrassment. It is undoubtedly a well-established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole. It is also true, that where great inconvenience will result from a particular construction, that construction is to be avoided, unless the meaning of the legislature be plain ; in which case it must be obeyed. On the abstract principles which govern courts in construing legislative acts, no difference of opinion can exist. It is only in the application of those principles, that the difference discovers itself.

As the enacting clause in this case would plainly give the United States the preference they claim, it is incumbent on those who oppose that preference, to show an intent varying from that which the words import. In doing this, the whole act has been critically examined ; and it has been contended, with great ingenuity, that every part of it demonstrates the legislative mind to have been directed towards a class of debtors, entirely different from those who become so by drawing or indorsing bills, in the ordinary course of business.

The first part which has been resorted to is the title. On the influence which the title ought to have in construing the enacting clauses, much has been said ; and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends, that the title of an act can control plain words in the body of the statute ; and neither denies that, taken with other parts, it may assist in removing ambiguities. Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived ; and in such case, the title claims a degree of notice, and will have its due share of consideration.[1]

*387] The title of the act is unquestionably limited to "receivers *of public money ;" a term which, undoubtedly, excludes the defendants

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[1] United States *v.* Palmer, 3 Wheat. 631; Smythe *v.* Fiske, 23 Wall. 380; Ogden *v.* Strong, 2 Paine 584; Baring *v.* Erdman, 14 Haz. Pa. Reg. 129; United States *v.* McArdle, 2 Sawyer 367.

in the present case. The counsel for the defendants have also completely succeeded in demonstrating, that the first four sections of this act relate only to particular classes of debtors, among whom the drawer and indorser of a protested bill of exchange would not be comprehended. Wherever general words have been used in these sections, they are restrained by the subject to which they relate, and by other words, frequently in the same sentence, to particular objects, so as to make it apparent, that they were employed by the legislature in a limited sense. Hence, it has been argued, with great strength of reasoning, that the same restricted interpretation ought to be given to the fifth section likewise.

If the same reason for that interpretation exists ; if the words of the act, generally, or the particular provisions of this section, afford the same reason for limiting its operation, which is afforded with respect to those which precede it, then, its operation must be limited to the same objects.

The 5th section relates entirely to the priority claimed by the United States in the payment of debts. On the phraseology of this act, it has been observed, that there is a circuity of expression, which would not have been used, if the intention of the legislature had been to establish its priority in all cases whatever. Instead of saying, " any revenue officer, or other person hereafter becoming indebted to the United States," the natural mode of expressing such an intent would have been, " any person indebted to the United States ;" and hence it has been inferred, that debtors of a particular description only were in the mind of the legislature. It is true, the mode of expression which has been suggested, is at least as appropriate as that which has been used ; but between the two, there is no difference of meaning, and it cannot be pretended, that the natural sense of words is to be disregarded, because that which they import might have been better, or more directly expressed.

*As a branch of this argument, it has also been said, that the description commences with the very words which are used in the beginning of the first section ; and from that circumstance, it has been inferred, that the same class of cases was still in view. The commencing words of each section are, " Any revenue officer, or other person." But the argument drawn from this source, if the subject be pursued further, seems to operate against the defendants. In the first section, the words are, "any revenue officer, or other person accountable for public money." With this expression completely in view, and having used it in part, the description would probably have been adopted throughout, had it been the intention of the legislature to describe the same class of debtors. But it is immediately dropped, and more comprehensive words are employed. For persons "accountable for public money," persons "hereafter becoming indebted to the United States, by bond or otherwise" are substituted. This change of language strongly implies an intent to change the object of legislation. [*388

But the great effort on the part of the defendants is to connect the fifth with the four preceding sections ; and to prove that as the general words in those sections are restricted to debtors of a particular description, the general words of the 5th section ought also to be restricted to debtors of the same description. On this point, lies the stress of the cause.

In the analysis of the foregoing parts of the act, the counsel for the defendants have shown, that the general terms which have been used are uni-

formly connected with other words in the same section, and frequently in the same sentence, which necessarily restrict them. They have also shown, that the provisions of those parts of the act are of such a nature that the words, taking the natural import of the whole sentence together, plainly form provisions only adapted to a class of cases which those words describe, if used in a limited sense. It may be added, that the first four sections of the act are connected with each other, and plainly contain provisions on the *389] same subject. They all relate to the *mode of proceeding on suits instituted in courts, and each section regulates a particular branch of that proceeding. Where the class of suits is described in the first section, it is natural to suppose, that the subsequent regulations respecting suits apply to those which have been described.

The first section directs that suits shall be instituted against revenue officers, and other persons accountable for public money, and imposes a penalty on delinquents, where a suit shall be commenced and prosecuted to judgment. The second section directs that certain testimony shall be admitted at the trial of the cause. The third section prescribes the condition under which a continuance may be granted : and the fourth section respects the testimony which may be produced by the defendant. These are all parts of the same subject ; and there is strong reason, independent of the language of the act, to suppose that the provisions respecting them were designed to be co-extensive with each other.

But the fifth section is totally unconnected with those which precede it. Regulations of a suit in court no longer employ the mind of the legislature. The preference of the United States to other creditors becomes the subject of legislation ; and as this subject is unconnected with that which had been disposed of in the foregoing sections, so is the language employed upon it, without reference to that which had been previously used. If this language was ambiguous, all the means recommended by the counsel for the defendants would be resorted to, in order to remove the ambiguity. But it appears, to the majority of the court, to be too explicit to require the application of those principles which are useful in doubtful cases.

The mischiefs to result from the construction on which the United States insist, have been stated as strong motives for overruling that construction. *390] That the consequences *are to be considered in expounding laws, where the intent is doubtful, is a principle not to be controverted ; but it is also true, that it is a principle which must be applied with caution, and which has a degree of influence dependent on the nature of the case to which it is applied. Where rights are infringed, where fundamental principles are overthrown, where the general system of the laws is departed from, the legislative intention must be expressed with irresistible clearness, to induce a court of justice to suppose a design to effect such objects. But where only a political regulation is made, which is inconvenient, if the intention of the legislature be expressed in terms which are sufficiently intelligible, to leave no doubt in the mind, when the words are taken in their ordinary sense, it would be going a great way, to say that a constrained interpretation must be put upon them, to avoid an inconvenience which ought to have been contemplated in the legislature, when the act was passed, and which, in their opinion, was probably overbalanced by the particular advantages it was calculated to produce.

Of the latter description of inconveniences are those occasioned by the act in question. It is for the legislature to appreciate them. They are not of such magnitude as to induce an opinion, that the legislature could not intend to expose the citizens of the United States to them, when words are used which manifest that intent.

On this subject, it is to be remarked, that no lien is created by this law. No *bonâ fide* transfer of property, in the ordinary course of business, is overreached. It is only a priority in payment, which, under different modifications, is a regulation in common use ; and this priority is limited to a particular state of things, when the debtor is living ; though it takes effect, generally, if he be dead.(*a*)

Passing from a consideration of the act itself, and the consequences which flow from it, the counsel on each side have sought to strengthen their construction by other acts *in pari materia.* *The act of the 3d of March [*391 1797, has been supposed to be a continuation of legislative proceeding on the subject which was commenced on the 3d of March 1795 (1 U. S. Stat. 441), by the act "for the more effectual recovery of debts due from individuals to the United States," which relates exclusively to the receivers of public money. Admitting the opinion, that the act of 1797 was particularly designed to supply the defects of that of 1795, to be correct, it does not seem to follow, that a substantive and independent section, having no connection with the provisions made in 1795, should be restricted by it.

The act of 1795 contains nothing relative to the priority of the United States, and therefore, will not explain the 5th section of the act of 1797, which relates exclusively to that subject. But the act of 1797, neither in its title nor its enacting clauses, contains any words of reference to the act of 1795. The words which are supposed to imply this reference are, "to provide more effectually." But these words have relation to the existing state of the law, on all the subjects to which the act of 1797 relates, not to those alone which are comprehended in the act of 1795. The title of the act of 1795 is also, "for the more effectual recovery of debts," and consequently, refers to certain pre-existing laws. The act of 1797, therefore, may be supposed to have in view the act of 1795, when providing for the objects contemplated in that act ; but must be supposed to have other acts in view, when providing for objects not contemplated in that act. As, therefore, the act of 1795 contains nothing respecting the priority of the United States, but is limited to provisions respecting suits in court, the act of 1797 may be considered in connection with that act, while on the subject of suits in court, but when on the subject of preference, must be considered in connection with acts which relate to the preference of the United States.

The first act on this subject passed on the 31st of July 1789, § 21, and gave the United States a preference only in the case of bonds for duties. *On the 4th of August 1790 (1 U. S. Stat. 169), an act was passed [*392 on the same subject with that of 1789, which repeals all former acts, and re-enacts, in substance, the 21st section, relative to the priority of the

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(*a*) The Chief Justice, in delivering the opinion, observed as follows: "I only say for myself, as the point has not been submitted to the court, that it does not appear to me to create a *devastavit* in the administration of effects, and would require notice, in order to bind the executor, or administrator or assignee."

United States. On the 2d of May 1792 (Ibid. 263), the priority previously given to the United States is transferred to the sureties on duty bonds, who shall themselves pay the debt; and the cases of insolvency, in which this priority is to take place, are explained to comprehend the case of a voluntary assignment, and the attached effects of an absconding, concealed or absent debtor.

Such was the title of the United States to a preference in the payment of debts, previous to the passage of the act of 1797. It was limited to bonds for the payment of duties on imported goods, and on the tonnage of vessels. An internal revenue had been established, and extensive transactions had taken place; in the course of which, many persons had necessarily become indebted to the United States. But no attempt to give them a preference in the collection of such debts had been made.

This subject is taken up in the 5th section of the act of 1797. The term "revenue officer," which is used in that act, would certainly comprehend any persons employed in the collection of the internal revenue; yet it may be well doubted, whether those persons are contemplated in the foregoing sections of the act. They relate to a suit in court, and are perhaps restricted to those receivers of public money who have accounts on the books of the treasury. The head of the department, in each state, most probably accounts with the treasury, and the sub-collectors account with him. If this be correct, a class of debtors would be introduced into the 5th section, by the term "revenue officer," who are indeed within the title, but not within the preceding enacting clauses of the law.

But passing over this term, the succeeding words seem, to the majority of the court, certainly to produce this effect. They are, "or other person hereafter becoming indebted to the United States, by bond or otherwise." *393] If this section was designed to place *the collection of the internal revenue on the same footing of security with the external revenue, as has been argued by one of the counsel for the defendants, a design so reasonable, that it would naturally be attributed to the legislature, then the debtors for excise duties would be comprehended within it; yet those debtors cannot be brought within the title, or the previous enacting clauses of the bill. The 5th section, then, would introduce a new class of debtors, and if it does so, in any case, the act furnishes no principle which shall restrain the words of that section to every case to which they apply.

Three acts of congress have passed, subsequent to that under particular consideration, which have been supposed to bear upon the case. The first passed on the 11th of July 1798, and is entitled "an act to regulate and fix the compensation of the officers employed in collecting the internal revenues of the United States, and to insure more effectually the settlement of their accounts." The 13th section of this act (1 U. S. Stat. 593) refers expressly to the provisions of the act of March 1797, on the subject of suits to be instituted on the bonds given by the officers collecting the internal revenue, and shows conclusively, that in the opinion of the legislature, the first four sections of that act did not extend to the case of those officers; consequently, if the 5th section extends to them, it introduces a class of debtors distinct from those contemplated in the clauses which respect suits in court. The 15th section of this act takes up the subject which is supposed to be contemplated by the 5th section of the act of 1797, and declares the debt

due from these revenue officers to the United States to be a lien on their real estates, and on the real estates of their sureties, from the institution of suit thereon. It can scarcely be supposed, that the legislature would have given a lien on the real estate, without providing for a preference out of the personal estate, especially, where there was no real estate, unless that preference was understood to be secured by a previous law.

The same observation applies to a subsequent act of the same session, for laying a direct tax. A lien is reserved *on the real estate of the [*394 collector, without mentioning any claim to preference out of his personal estate.

The last law which contains any provision on the subject of preference passed on the 2d of March 1799. The 65th section of that act has been considered as repealing the 5th section of the act of 1797, or of manifesting the limited sense in which it is to be understood. It must be admitted, that this section involves the subject in additional perplexity; but it is the opinion of the court, that on fair construction, it can apply only to bonds taken for those duties on imports and tonnage, which are the subject of the act. From the first law passed on this subject, every act respecting the collection of those duties, had contained a section giving a preference to the United States, in case of the insolvency of the collectors of them.

The act of 1797, if construed as the United States would construe it, would extend to those collectors, if there was no other provision in any other act giving a priority to the United States in these cases. As there was such a previous act, it might be supposed, that its repeal by a subsequent law, would create a doubt whether the act of 1797 would comprehend the case, and therefore, from abundant caution, it might be deemed necessary still to retain the section in the new act, respecting those duties. The general repealing clause of the act of 1799 cannot be construed to repeal the act of 1797, unless it provides for the cases to which that act extends.

It has also been argued, that the bankrupt law itself affords ground for the opinion, that the United States do not claim a general preference. (2 U. S. Stat. 36.) The words of the 62d section of that law apply to debts generally, as secured by prior acts. But as that section was not upon the subject of preference, but was merely designed to retain the right of the United States in their existing situation, whatever that situation might be, the question may well be supposed not to have been investigated at that time, and the expressions of the section were probably not considered with a view to any influence they might have on those rights.

*After maturely considering this doubtful statute, and comparing it with other acts *in pari materia*, it is the opinion of the [*395 majority of the court, that the preference given to the United States by the 5th section, is not confined to revenue officers and persons accountable for public money, but extends to debtors generally.

Supposing this distinction not to exist, it is contended, that this priority of the United States cannot take effect in any case where suit has not been instituted; and in support of this opinion, several decisions of the English judges, with respect to the prerogative of the crown, have been quoted. To this argument, the express words of the act of congress seem to be opposed. The legislature has declared the time when this priority shall have its commencement; and the court think those words conclusive on the point. The

cases certainly show that a *bonâ fide* alienation of property, before the right of priority attaches, will be good, but that does not affect the present case.

From the decisions on this subject, a very ingenious argument was drawn by the counsel who made this point. The bankrupt law, he says, does not bind the king, because he is not named in it; yet it has been adjudged, that the effects of a bankrupt are placed beyond the reach of the king, by the assignment made under that law, unless they shall have been previously bound. He argues, that according to the understanding of the legislature, as proved by their acts relative to insolvent debtors, and according to the decisions in some of the inferior courts, the bankrupt law would not bind the United States, although the 62d section had not been inserted. That section, therefore, is only an expression of what would be law without it, and consequently, is an immaterial section; as the king, though not bound by the bankrupt law, is bound by the assignment made under it; so, he contended, that the United States, though not bound by the law, are bound by the assignment.

But the assignment is made under and by the direction of the law; and a proviso that nothing contained in the law shall affect the right of preference claimed by the United States, is equivalent to a proviso that the assignment shall not affect the right of preference claimed by the United States.

*396] *If the act has attempted to give the United States a preference in the case before the court, it remains to inquire, whether the constitution obstructs its operation. To the general observations made on this subject, it will only be observed, that as the court can never be unmindful of the solemn duty imposed on the judicial department, when a claim is supported by an act which conflicts with the constitution, so the court can never be unmindful of its duty to obey laws which are authorized by that instrument. In the case at bar, the preference claimed by the United States is not prohibited; but it has been truly said, that under a constitution conferring specific powers, the power contended for must be granted, or it cannot be exercised. It is claimed, under the authority to make all laws which shall be necessary and proper to carry into execution the powers vested by the constitution in the government of the United States, or in any department or officer thereof. In construing this clause, it would be incorrect, and would produce endless difficulties, if the opinion should be maintained, that no law was authorized which was not indispensably necessary to give effect to a specified power. Where various systems might be adopted for that purpose, it might be said, with respect to each, that it was not necessary, because the end might be obtained by other means. Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the constitution. The government is to pay the debt of the Union, and must be authorized to use the means which appear to itself most eligible to effect that object. It has, consequently, a right to make remittances, by bills or otherwise, and to take those precautions which will render the transaction safe.

*397] This claim of priority on the part of the United States *will, it has been said, interfere with the right of the state sovereignties, respecting the dignity of debts, and will defeat the measures they have a right

to adopt, to secure themselves against delinquencies on the part of their own revenue officers. But this is an objection to the constitution itself. The mischief suggested, so far as it can really happen, is the necessary consequence of the supremacy of the laws of the United States on all subjects to which the legislative power of congress extends.

As the opinion given in the court below was, that the plaintiffs did not maintain their action, on the whole testimony exhibited, it is necessary to examine that testimony. It appears, that the plaintiffs have proceeded on the transcripts from the books of the treasury, under the idea, that this suit is maintainable under the act of 1797. The court does not mean to sanction that opinion; but as no objection was taken to the testimony, it is understood to have been admitted. It is also understood, that there is no question to be made respecting notice; but that the existence of the debt is admitted, and the right of the United States to priority of payment is the only real point in the cause.

The majority of this court is of opinion, that the United States are entitled to that priority, and therefore, the judgment of the circuit court is to be reversed, and the cause to be remanded for further proceedings.

Judgment reversed.

Washington, J.—Although I take no part in the decision of this cause, I feel myself justified by the importance of the question, in declaring the reasons which induced the circuit court of Pennsylvania to pronounce the opinion which is to be re-examined here. In any instance where I am so unfortunate as to differ with this court, I cannot fail to doubt the correctness of my own opinion. But if I cannot feel convinced of the *error, [*398] I owe it, in some measure, to myself, and to those who may be injured by the expense and delay to which they have been exposed, to show, at least, that the opinion was not hastily or inconsiderately given.

The question is, have the United States a right, in all cases whatever, to claim a preference of other creditors in the payment of debts. At the circuit court, the counsel for the United States disclaimed all idea of founding this right upon prerogative principles, and yet, if I am not greatly mistaken, the doctrine contended for places this right upon ground, at least as broad as would have been asserted in an English court.

The whole question must turn upon the construction of acts of congress, and particularly that of the 3d of March 1797. The title of the law is, "an act to provide more effectually for the settlement of accounts between the United States and receivers of public money." The first section describes more specially the persons who are the objects of the law; points out the particular officer whose duty it shall be to institute suits against those public delinquents thus marked out; declares the rate of interest to be recovered upon balances due to the United States, and imposes a forfeiture of commissions on the delinquent. The 2d section defines the kind of evidence to be admitted on the part of the United States, in the trial of suits in all cases of delinquency. The 3d section gives to the United States, in such actions, a preference of all other suitors in court, by directing the trial of such causes to take place, at the return-term, upon motion, unless the defendant will make oath that he is entitled to credits which have been submitted to the consideration of the accounting officers of the treasury, and rejected. The 4th

section takes up the case of the defendant, and declares under what circumstances he shall be entitled to the benefit of off-sets.

*399] *The 5th section brings us to an important part of the trial, and furnishes a rule to govern the court in the judgment it is to render, in cases where the claim of the United States might, by reason of the insolvency of the debtor, go unsatisfied, unless preferred to that of a private citizen. The 6th section is general in its terms, and relates to executions where the defendant or his property is to be found in any district other than that in which the judgment was rendered. This is a concise view of the different parts of this act, and I shall now examine more particularly the expressions of the 5th section, taken in connection with those which precede it.

The words are, "that where any revenue officer, or other person, hereafter becoming indebted to the United States, by bond or otherwise, shall become insolvent, the debt due to the United States shall be first satisfied," &c. It is conceded, that the words "or other person" are broad enough to comprehend every possible case of debts due to the United States, and therefore, a literal interpretation is contended for by those who advocate the interest of the United States. On the other side, a limitation of those expressions is said to be more consonant with the obvious meaning of the legislature, which contemplates those debtors only who are accountable for public money.

Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently, no room is left for construction. But if, from a view of the whole law, or from other laws *in pari materia*, the evident intention is different from the literal import of the terms employed to express it, in a particular part of the law, that intention should prevail, for that, in fact, is the will of the legislature.

*400] *If a section be introduced, which is a stranger to, and unconnected with, the purview of the act, it must nevertheless take effect according to its obvious meaning, independent of all influence from other parts of the law. Nay, if it be a part of the same subject, and either enlarges or restrains the expressions used in other parts of the same act, it must be interpreted according to the import of the words used, if nothing can be gathered from such other parts of the law to change the meaning. But if, in this latter case, general words are used, which import more than seems to have been within the purview of the law, or of the other parts of the law, and those expressions can be restrained by others used in the same law, or in any other upon the same subject, they ought, in my opinion, to be restrained. So, if the literal expressions of the law would lead to absurd, unjust or inconvenient consequences, such a construction should be given as to avoid such consequences, if, from the whole purview of the law, and giving effect to the words used, it may fairly be done. These rules are not merely artificial; they are as clearly founded in plain sense, as they are certainly warranted by the principles of the common law.

The subject intended to be legislated upon is sometimes stated in a preamble, sometimes, in the title to the law, and is, sometimes, I admit, misstated, or not fully stated. The preamble of an act of parliament is said to be a key to the knowledge of it, and to open the intent of the law-makers: and so I say, as to the title of a law of congress, which being the deliberate

act of those who make the law, is not less to be respected as an expression of their intention, than if it preceded the enacting clause in the form of a preamble. But neither the title nor preamble can be resorted to, for the purpose of controlling the enacting clauses, except in cases of ambiguity, or where general expressions are used inconsistent or unconnected with the scope and purview of the whole law. They are to be deemed true, unless contradicted by the enacting clauses, and it is fair, in the cases I have stated, to argue from them.

*The object of this law, then, as declared by the title, is to provide [*401 for the effectual settlement of debts due to the United States, from receivers of public money. To effect this, suits are directed, the species of evidence to support the claim on the part of the plaintiff is pointed out, and a speedy trial provided ; on the part of the defendant, a limited right to oppose the claim by off-sets is provided, and the claim of the United States is to have a preference of other creditors, where the debtor is unable to satisfy the whole. Here, then, is one entire connected subject, the different provisions of the law constituting the links of the same chain, the members of the same body. It will not, I presume, be denied, that the first three sections of the law apply to those only who are declared by the title to be the objects of its provisions. The 4th section is the first which uses general expressions, without a reference to those who had before been spoken of ; and yet, I think, it will hardly be contended, that this section is not closely and intimately connected with the same subject. When we come to the 5th section, the reference to the first three sections is again resumed, with the addition of the words " or any other person." So that, instead of the words "revenue officers, or other persons accountable for public money," used in the first section, this section uses the words "revenue officers, or other persons indebted to the United States."

Now, it is obvious, that these expressions may have precisely the same meaning, so as to comprehend the same persons, although the latter may be construed to include persons not within the meaning of the first section. For persons accountable for public money, are also other persons than revenue officers indebted to the United States ; and the latter may, by a construction conformable to the other parts of the law, means persons accountable for public money ; and by an extended construction, they may comprehend others, who in no sense of the expressions used, can be said to be accountable for public money.

It is, then, to be inquired, is the court bound, by any known rules of law, to give to the words thus used in the 5th section, a meaning extensive enough to comprehend persons never contemplated by the title of the law, and most *sedulously excluded by the first three sections ? Does [*402 justice to the public, or convenience to individuals demand it ? Is such a construction necessary, in order to give effect to any one expression used by the legislature ? Shall we violate the manifest intention of the legislature, if we stop short of the point to which we are invited to go, in the construction of this section ? To all these questions, I think myself warranted in answering in the negative.

1. As to the first. Do the principles of equity, or of strict justice, discriminate between individuals standing *in equali jure*, and claiming debts of equal dignity ?

The nature of the debt may well warrant a discrimination; but not so, if the privilege be merely of a personal nature. The sovereign may, in the exercise of his powers, secure to himself this exclusive privilege of being preferred to the citizens, but this is no evidence, that the claim is sanctioned by the principles of immutable justice. If this right is asserted, individuals must submit; but I do not find it in my conscience, to go further in advancement of the claim, than the words of the law, fairly interpreted, in relation to the whole law, compel me. But I do not think, that congress meant to exercise their power to the extent contended for. First, because in every other section of the law they have declared a different intent; and secondly, because it would not only be productive of the most cruel injustice to individuals, but would tend to destroy, more than any other act I can imagine, all confidence between man and man. The preference claimed is not only unequal in respect to private citizens, but is of a nature against which the most prudent man cannot guard himself. As to public officers, and receivers of public money of all descriptions, they are, or may be known as such; and any person dealing with them, does it at the peril of being postponed to any debts his debtor may owe to the United States, should he become unfortunate. He acts with his eyes open, and has it in his power to calculate the risk he is willing to run. But if this preference exists in every possible case of contracts between the United States and an individual, *403] *there is no means by which any man can be apprised of his danger in dealing with the same person.

2. Is this broad construction necessary, in order to give effect to the expressions of the law? I have endeavored to show, that all accountable agents are other persons than revenue officers indebted to the United States. The words, then, "other persons," are satisfied by comprehending all those persons to whom the first section extends.

3. Is this construction rendered necessary, to fulfill the manifest intent of the legislature? So far from it, that to my mind, it is in direct opposition to an intention plainly expressed by all the other parts of the law. To prove this, I again refer to the title of the law; to the first three sections, which are in strict conformity with it, and that too, by express words; and to the fourth section, which is so plainly a part of the same subject, that it cannot be construed to go farther than those which precede it. Is the fifth section a stranger to the others; unnaturally placed there, without having a connection with the other sections? If this be the case, I have already admitted rules of construction strong enough to condemn the opinion I hold. But let us examine this point.

The object of the first four sections is to enforce by suit, where necessary, the payment of debts due to the United States from a particular class of debtors. It points out the officer who is to order the suit, declares at what term the cause shall be tried, lays down rules of evidence to be regarded in support of the action, extends to the defendant the benefit of making offsets, under certain qualifications; and then most naturally, as I conceive, comes the fifth section, relating to the judgment which the court is to render, in case a contest should ensue between the United States and individual creditors, on account of inability in the debtor to satisfy the whole. What if an individual creditor should attach the property of the debtor, before the

United States had taken steps to recover their debt? Or if the debtor should assign away his property, or it should be claimed *by assignees, [*404 under a commission of bankruptcy? or the defendant, being an executor, should plead fully administered, except so much as would be sufficient to satisfy judgments, bond debts, or other debts superior in dignity to that of the United States? This section establishes a plain rule by which the court must proceed in rendering its judgment, whenever those cases occur. What would have signified all the other provisions of the law, unless a rule of decision had been prescribed, in cases where, otherwise, the United States might never obtain the fruit of those steps which their officers were pursuing?

Can a section in a law which professes to afford a remedy in a particular case, by process of law, be said not to belong to the law, when it leads to the point of a judgment, which is the consummation of the proceedings in the case? I think not; and therefore, I cannot acquiesce in the opinion that the 5th section is unconnected with the other parts of the law.

I have before observed, that the 4th section is the first which uses general expressions, without reference to those which had before been particularly mentioned; but that when we come to the 5th section, the reference is again taken up, with the addition of those words which produce the difficulty of the case.

Now, I ask, in the first place, what necessity was there for departing from the mode of expression used in the 4th section, which, for the first time, is general, without particular reference to any of the persons before described. Would it not have been as well, in the 5th as in the 4th section, to say "that where any individual becoming indebted to the United States shall become insolvent," &c.? What reason can be assigned for the specification of revenue officers, one class of persons mentioned expressly in the 1st section, intended in the 2d and 3d, by plain words of reference, and clearly meant in the 4th, when it must be admitted that the words used in the 4th section, or the words "other persons," in the 5th, would have comprehended revenue officers, if they were broad enough to include every description of persons indebted to the United States? *Unless they are [*405 construed to limit and restrain the generality of the words "other persons," they are absolutely without any use or meaning whatever. If the preceding sections had applied only to revenue officers, then, from necessity, we must have construed the words "other persons" as broad as their natural import would warrant, because, otherwise, they would have been nugatory, and we would have found no rule in the law itself, by which to limit the generality of the expression.

But when the law professes, in its title, to relate to all accountable agents besides revenue officers, and the first section specifies, amongst these agents, "revenue officers," we have a rule by which to restrain the sweeping expressions in the 5th section, viz., "or other person accountable, or indebted as aforesaid." This construction renders the law uniform throughout, and consistent with what it professes in every other section.

In confirmation of this construction, the 62d section of the bankrupt law does, in my opinion, deserve attention. If the United States were, at the time that law passed, entitled to a preference in every possible case, by virtue of the general expressions in the law I have just been considering, what

necessity was there for limiting the saving of the right of preference to debts due to the United States, "as secured or provided by any law heretofore passed." This mode of expression leads me to conclude, that the legislature supposed, there were some cases where this preference had not been provided for by law. If not, it would certainly have been sufficient to declare, that the bankrupt law should not extend to, or affect, the right of preference to prior satisfaction of debts due the United States.

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*406] *The Schooner Sally.

United States v. The Schooner Sally.

Admiralty jurisdiction.

The question of forfeiture of a vessel, under the act of congress against the slave trade, is of admiralty and maritime jurisdiction.

This was a libel in the District Court of the United States for Maryland district, against the schooner Sally, of Norfolk, and cargo, Elias De Butts, claimant, seized by the collector of the port of Nottingham, as forfeited under the act of congress prohibiting the slave trade. (1 U. S. Stat. 347.)

In the district court, the vessel and cargo were acquitted on the merits, which decree was, on appeal, affirmed in the circuit court ; whereupon, the United States sued out the present writ of error. The error assigned was, that the cause was of common-law, and not of admiralty and maritime jurisdiction. But—

The Court, upon the authority of the case of the *United States* v. *La Vengeance*, 3 Dall. 297, without argument, affirmed the decree.

Bailiff v. Tipping.

Citation.

Quære? Whether the courts of the United States have jurisdiction, in cases between aliens?[1]
A citation must accompany the writ of error.

The only question in this case would have been, whether one alien could sue another alien, in the courts of the United States. The Circuit Court for the Kentucky district was of opinion, that they had no jurisdiction in such a case. But the writ of error was dismissed for want of a citation.

See *ante*, p. 263, the opinion of the court, in the case of *Mason* v. *The Ship Blaireau*.

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[1] Where both parties are aliens, the federal courts have no jurisdiction, by reason of the character of the parties. Montalet *v.* Murray, 4 Cr. 46; Hinckley *v.* Byrne, 1 Deady 224.