arose, as matter of law, upon the facts disclosed in the record, and it was the duty of the court to enforce it; and hence the excess over this increased duty, arising under the 17th section, constituted the just amount which the plaintiffs were entitled to recover.

Judgment of the court below affirmed.

JOHN PEMBERTON, LIQUIDATOR OF THE MERCHANTS' INSURANCE COMPANY, APPELLANT, *v.* EDWARD LOCKETT, JAMES G. BERRET, AND HENRY D. JOHNSON.

An agreement between a claimant and certain persons in Washington, whereby the claimant agreed to allow those persons a proportion of what might be recovered, was terminated when the United States and Great Britain made a convention, providing for the appointment of a board of commissioners to decide upon claims, in which the one in question was included.

The agreement looked only to the services in Washington of the persons employed; and the facts of the case indicate that such was the intention of the parties.

THIS was an appeal from the Circuit Court of the United States for the District of Columbia.

The facts are stated in the opinion of the court.

The Circuit Court decreed that $14,230, (being the one-half of the sum of $28,460 awarded,) less five per cent., together with interest thereon from the 20th of June, 1855, and costs, be paid by Pemberton to the complainants. From this decree, Pemberton appealed to this court.

It was argued by *Mr. Brent* and *Mr. Johnson*, with whom was *Mr. May*, for the appellant, and by *Mr. Bradley* for the appellees, on which side there was also a brief filed by *Mr. Bradley* and *Mr. Hayes*.

There were many points raised by the counsel for the appellant; but as several of them were not touched upon in the decision of the court, it is proper to mention only such as were. The principal points which were included in the decision related to the facts of the case, and were as follows:

Pemberton resided in New Orleans; Berret, Johnson, and Lockett, resided in Washington city; and the agreement was made in New Orleans.

This Creole claim was presented to the Executive Government of the United States, and was considered by it, (See Opinion of Attorney General Legare of July 20, 1842, 4 vol., 98,) was discussed in Congress, and became the subject of negotiation between our Government and that of Great Britain.

At length a convention, on the 8th of February, 1853, was made between these Governments, for the adjustment of all claims of the citizens of either Government against the other, and commissioners were appointed for hearing and deciding upon said claim.

10 Stat. at Large, 988.

These commissioners sat in London. and a public officer, called the law agent of the United States, was duly commissioned under the convention, to represent all claims of our citizens before the board; and he was present in London, and performed his duties, and was paid for them by the Government of the United States.

Neither of the defendants in error appeared before the board or the umpire appointed under the convention.

Before that board the "Creole case" was presented, and "it was considered and discussed *as a single case*, and not in the name of a particular claimant."

The questions of fact and law were common to all who were interested in this claim.

There was *no other* argument presented to the commission in the "Creole case," except that which was made *verbally* by the said law agent of the United States.

The papers in the claim were transmitted to London by the State Department.

Trinder & Eyre, of London, solicitors, were employed by Pemberton, under the advice of Senator Benjamin, to represent his claim before the board, so far as it was competent for private counsel to do so. And they presented to the law agent of the United States a memorial in his behalf, and properly-authenticated evidence in support of the claim.

and "which went before the commissioners when the papers were placed in their hands."

Without authentic data to establish the loss of each claimant, no specific amounts could have been awarded.

That another memorial and proof to sustain it was forwarded by Johnson, one of the defendants in error, to the said law agent at London, and was presented by him and used in support of Pemberton's claim.

That said Johnson claimed to be counsel for others, and among them for said Lockett, one of the defendants in error, before said board in the "Creole case," and forwarded a memorial in his case.

That by the 3d article of said convention all claims were to be presented within six months from the day of the first meeting of the board.

10 Stat. at L., p. 988, art. 1; 990, art. 3.

That said Johnson did not transmit the memorial prepared by him for Pemberton's claim until after 29th of May, 1854, and after the lapse of six months from the opening of the board.

That so carelessly was the same prepared, that he did not even correctly present the *name* of said Pemberton, nor did he forward it for forty-two days after he swore to it, as shown by his letter of the 29th day of May, enclosing it; and this, though the memorial, as sworn to, shows on its face that it was then out of season, and liable to be ruled out.

That neither the said Berret nor Lockett appear to have had any agency or part whatever in representing or prosecuting the said claim.

That besides the said memorial and papers transmitted by said Johnson to said law agent, the only part he had or took in representing the said claim of Pemberton was a mere reference to the same by a letter to the said board, stating that his argument, presented in said Lockett's case, "was applicable to the case of the Merchants' Insurance Company."

That said Lockett's claim was a heavy one, being for the value of seventy-five slaves, and it comprised all the labor and service rendered by said Johnson in the "Creole case;" and that the same was submitted on said Johnson's argument,

made in that behalf alone, so far as he was concerned, and without other act or thing done by him in behalf of Pemberton, other than the reference aforesaid.

That the said Lockett, Berret, and Johnson, before the case was argued in London, released and abandoned their said joint contract for their services to said Pemberton; and the said Johnson, who *alone* afterwards appeared or was known in the case, was a mere volunteer, and offered to make a new contract for his services, to be rendered for one-half the amount stipulated for in the said joint agreement.

That said Trinder & Eyre were present at the argument of the claim, and aided the law agent of the United States in the case, and their correspondence will show an actual and faithful performance of duty. And they were compensated by Pemberton.

That the award in the "Creole case" was made on the 9th of January, 1855, by the umpire, Mr. Bates; and two several items of claim were allowed said Pemberton, amounting to $28,460, on the 15th of January, 1855.

And this sum was transmitted to the Department of State at Washington, and received by the Secretary of said Department, as the money of the said Pemberton, as liquidator, and to be paid to him as such, subject to a deduction of five per cent. for the expenses of the commission.

That the full amount due and payable to said Pemberton was by him claimed at the State Department, from the then Secretary thereof, the Hon. William L. Marcy, and the payment of one-half thereof was refused and restrained by injunction issued from said Circuit Court on the 20th of June, 1855, "commanding said Pemberton, his attorneys, agents, &c., not to demand or receive the remaining half of said award to him as liquidator, to wit: the sum of $14,230, subject to said deduction of five per cent." And the said sum of money has remained and now is in the said Department of State, under the said injunction, which has *never been dissolved.*

The counsel for the appellees contended, amongst other points, that the contract had neither been rescinded by the acts of the parties nor the change of circumstances.

Upon the latter proposition, their argument was as follows:

2. The contract was not rescinded or annulled by any change of circumstances rendering it impossible to be carried into effect.

The appellees deny the allegation in the answer, that compensation was agreed upon in the event of a recovery of the claim against the United States. No such condition is expressed or implied in the contract. The appellees also deny the allegations in the answer, that the contract was entered into for services to be performed in Washington city, and that the provision in the convention, "that it shall be competent for each Government to name one person to attend the commissioners, as *agent* on *its behalf*, and to answer claims made upon it, and to represent it generally in all matters connected with the investigation and decision thereof, were circumstances of themselves which put an end to the contract, so that complainants had no longer any right to recover thereon." No such conditions are found in the agreement.

The most important work in the prosecution of the case (viz: the preparation of evidence) could only be done in the United States, and particularly in the city of Washington. The evidence shows that the appellees were employed several weeks in obtaining testimony from the Departments in Washington. The convention provided that the claims should be heard upon such evidence or information as shall be furnished by or on behalf of their respective Governments. (Report of Decisions of the Commission of Claims, p. 9.) Thus, all the memorials and proofs were required to be presented through the Department of State at Washington.

The appointment of an agent in behalf of the United States did not dispense with the necessity for employing associate counsel. Such counsel were frequently associated with the agent of the United States. (Report of Decisions of the Commission, pp. 16, 18, 29, 41, &c.)

There was no necessity for employing English counsel, as is alleged, as the case was not before an English court, but a joint commission; and, from the peculiarity of the case, English counsel were totally unfitted to manage it.

Mr. Justice NELSON delivered the opinion of the court.

This is an appeal from a decree of the Circuit Court of the United States for the District of Columbia.

The bill was filed in the court below, by the respondents, against the appellant, Pemberton, liquidator of the Merchants' Insurance Company, in the city of New Orleans, representing the interest of that company, which was insolvent, for the purpose of establishing a title to certain moneys in the possession of the Government, which had been received under the convention between the United States and Great Britain, of the 8th of February, 1853. The money had been awarded by the umpire, under that convention, to the company, which had been subrogated to the rights of one of the claimants for compensation against Great Britain, in the case of the brig Creole. The umpire allowed to the company $28,460. The complainants below set up, in their bill, a title to one-half of this fund, as the agents and attorneys of Pemberton in the prosecution of the claim.

The right rests upon the following agreement, entered into between them and the defendant (Pemberton) at New Orleans, dated the 23d of December, 1851:

"For and in consideration of services rendered, and to be rendered, by James G. Berret, Henry D. Johnson, and E. Lockett, of Washington city, D. C., in the prosecution of our claims for the value of slaves freed at Nassau, N. P., which we had to pay for, we do hereby agree to allow to said Berret, Johnson, and Lockett, their heirs or assigns, one-half of any or all such sums of money, principal and interest, as may be recovered on account of our said losses, it being understood that the said Berret, Johnson, and Lockett, are to use their best exertions in the prosecution of said claim, and that no allowance whatever, as expenses or compensation for their services, is to be made by us to the said Berret, Johnson, and Lockett, unless our said claim shall be allowed, in whole or in part. Witness our hand and seal, at New Orleans, this 23d day of December, in the year of our Lord 1851."

The claims referred to in this agreement originated as far back as the year 1841, in consequence of the unwarrantable

interference of the public authorities at Nassau, in the island of New Providence, one of the Bahama Islands, belonging to Great Britain, and liberating a cargo of slaves, who were on a voyage from Virginia to New Orleans, and who had mutinied, overcome the officers, and carried the vessel into that port.

The persons interested in the slaves, of which they were deprived by this interference, immediately appealed to their own Government for redress. A correspondence was opened between this Government and Great Britain on the subject, which continued down to the time of the convention already mentioned, of the 8th of February, 1853.

This convention provided for the appointment of a board of commissioners, one to be named by each Government, and the two to appoint an umpire, to decide upon all claims in which a difference of opinion should occur.

The board sat in the city of London, and were bound, according to the terms of the convention, to receive and peruse all written documents or statements which might be presented to them, by or on behalf of their respective Governments, in support of or in answer to any claim; and to hear, if required, one person on each side, in behalf of each Government, as counsel or agent for such Government, on each separate claim. Each Government appointed an agent to represent it before the board; and, as we have said, the umpire allowed to the insurance company $28,460.

It is insisted, on behalf of the defendant, (Pemberton,) that this contract, entered into with complainants in 1851, had reference to the solicitation of claims before, and allowance by, the Government, at the city of Washington; that they were employed as gentlemen residing at that place, engaged in business of this character; and that the convention between the two Governments, the appointment of a board of commissioners, and prosecution of the claims against Great Britain before it, under the authority of the United States, put an end to the contract. Although its terms are general, and open to some difficulty as to the real meaning and intent of the parties, we are inclined to concur in this view of it. We

think it could hardly have been within the contemplation of either of the parties, that the prosecution spoken of in the argument was a prosecution or solicitation of claims against the foreign Government, or in a tribunal sitting there, and before which this Government had taken upon itself the duty of the prosecution. We are satisfied these agents were under no obligation, according to the true intent of the agreement, to follow these claims to London, and prosecute them there; and if not, it is quite clear the transfer of them to the commission there put an end to the agreement. And this seems to have been the view taken of it by the parties themselves, as manifested by their conduct after the appointment of the commission.

By the third article of the convention, the claims were to be presented before the board within six months from the day of its first sitting, unless a good reason could be given for the delay. The board first met in London on the 15th of September, 1853; and on the 15th of October it adopted rules and regulations in respect to the proceedings before it, and, among others, required all claims to be presented within six months from the 15th of September, the day of its first sitting.

Now, the first step taken by these complainants in behalf of the claims of Pemberton, under the convention, was a letter written to him by Lockett, dated December 15, requesting that a power of attorney should be given to Johnson, to act for him before the commission. This was three months after the commencement of its sittings, and after half the period had expired within which the claims were required to be presented. It does not appear that this letter was answered by Pemberton.

The next step taken was a letter from Johnson himself, dated at Washington, 22d of March, 1854, in which he announces that he had prepared a memorial on behalf of the claims of the insurance company, and was ready to forward it to the commissioners, in London. This was seven days after the expiration of the six months.

In the mean time, Pemberton had employed agents residing in London to attend to his claims, and who, it appears, had the charge and management of the business until the close of the commission.

What is very material, also, in this letter of Johnson of the 22d of March, he there states, in respect to the situation of his two associates, as an inducement to Pemberton to give him, individually, the power of attorney—that Lockett is absent, and that Berret was unable to attend to the business, having been appointed postmaster of the city; and then proposes to conduct the business himself alone, for the compensation of twenty-five per centum of the money recovered, the half only of what is now claimed under the agreement of 1851. It does not appear that any answer was returned to this letter, doubtless for the reason that other agents had already been employed.

It is true, that Johnson drew up the memorial to the commissioners, on behalf of Pemberton, as above mentioned, but without any authority from him, and swore to it, at Washington, on the 17th of April, 1854, in which he endeavored to explain the delay in presenting the claim; and forwarded the same from this country on the 29th of May following. But the subject had already been brought to the notice of the Government agent, and before the board of commissioners, as early as the 23d of that month, by the agents of Pemberton in London. This memorial, therefore, was of no particular importance.

It appears from the report of the proceedings under the commission, and of its decisions, communicated to Congress by the President, 11th of August, 1856, (Senate Docs., vol. 15, 1855–'6,) that there were six separate claimants, besides Pemberton, for compensation arising out of the case of the Creole, and all depending, substantially, upon the same facts. And there were, also, the cases of the brig Enterprise and schooner Hermosa, involving principles similar to those upon which the reclamation depended in the case of the Creole. All the parties whose claims arise out of the case of the Creole were equally interested in furnishing the proofs upon which the general claim against the British Government rested; and the three vessels were interested in common, as to the principles of international law that should govern the decision of the board of commissioners.

The Government agent and commissioners took this view of these several claims, and but one argument was made in all of them, and that in the case of the brig Enterprise, and but one opinion delivered by the commissioners. As they disagreed, a second argument was made before the umpire.

The preparation of the claim of Pemberton, beyond the proofs of the interest of his company in the case of the Creole, was a very trifling matter; and even these proofs had been already furnished to this Government, at the time the appeal was made there for redress. And as it respects the questions of international law involved in these cases, they had been the subject of repeated discussion between this Government and Great Britain, and also in Congress, by some of the most distinguished statesmen and jurists of the country; and the preparation for the argument of the claim before the board of commissioners required little else than the labor of digesting and reproducing the principles and reasoning to be found in these discussions.

For the reasons above given, we are satisfied the agreement and proofs in the case furnish no legal or just ground for a claim to the sum of money awarded by the court below, and that the decree should be reversed, and the proceedings remitted, with directions to enter a decree dismissing the bill.

DANIEL POORMAN AND OTHERS *v.* WILLIAM A. WOODWARD AND WILLIAM C. DUSENBERRY, LATE PARTNERS UNDER THE FIRM OF WOODWARD & DUSENBERRY.

Where certain persons gave a joint and several note for the purpose of raising money, and their agent received a certificate of deposit, which certificate was afterwards duly paid upon presentation, the signers of the note cannot escape from their responsibility upon the plea that a certificate of deposit was not money.

THIS case was brought up by writ of error from the Circuit Court of the United States for the southern district of Ohio.

The facts are stated in the opinion of the court.