Illinois, and the corporation is liable to suit within the narrowest construction of the Constitution.

But it was argued that counties in Illinois, by the law of their organization, were exempted from suit elsewhere than in the Circuit Courts of the county. And this seems to be the construction given to the statutes concerning counties by the Supreme Court of Illinois. But that court has never decided that a county in Illinois is exempted from liability to suit in National courts. It is unnecessary, therefore, to consider what would be the effect of such a decision. It is enough for this case that we find the board of supervisors to be a corporation authorized to contract for the county. The power to contract with citizens of other States implies liability to suit by citizens of other States, and no statute limitation of suability can defeat a jurisdiction given by the Constitution. We cannot doubt the constitutional right of the defendant in error to bring suit in the Circuit Court of the United States upon the obligations of the County of Mercer against the plaintiff in error. And we find no error in the judgment of that court. It must, therefore, be

AFFIRMED.

NICHOLS *v.* UNITED STATES.

1. Under the act of Congress of February 26, 1845, relative to the recovery of duties paid under protest, a written protest, signed by the party, with a statement of the definite grounds of objection to the duties demanded and paid, is a condition precedent to a right to sue in any court for their recovery.
2. Cases arising under the Revenue Laws, are not within the jurisdiction of the Court of Claims.

APPEAL from the Court of Claims.

An act of Congress of February 26, 1845,* construing a former act relative to duties paid under protest, says:

"Nor shall any action be maintained against any *collector*, to

* 5 Stat. at Large, 727.

recover the amount of duties so paid under protest, unless the said protest was made *in writing and signed by the claimant*, at or before the payment of said duties, setting forth distinctly and specifically the grounds of objection to the payment thereof."

In this state of the statute law, Nichols & Co., merchants of New York, imported from abroad to that city, in 1847–51, certain casks of liquor. Duties were imposed at the custom-house, at New York, on the quantity invoiced; that is to say, on the amounts which the casks contained when they were shipped. A portion of the liquors, however, leaked out during the voyage, and being thus lost, was never imported at all, in fact, into the United States. Notwithstanding this circumstance, Nichols & Co. paid the duties, as imposed; that is to say, duties on the amount as invoiced, *making no protest in the matter.* They now, July, 1855, by petition, setting forth their case, including the fact that they had "omitted to protest," brought suit against the United States for the over-payment, in the Court of Claims; a court which, by the acts of Congress establishing it, has power to hear and determine "all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States."

The petition asserted the law, as settled by this court in *Lawrence* v. *Caswell*,* to be, that duty was chargeable only on the value of the liquors imported into the United States, and that the quantity lost by leakage, on the voyage of importation, was not subject to any duty. A view in conformity, as they alleged, with a Treasury circular of January 30, 1847, directing that, "if the quantity of any article falls short of the amount given in the invoice, . . . an abatement of the duties to the extent of the deficiency will be made."†

As a reason for not presenting the claim to the Treasury Department, the petitioners stated that they omitted to protest.

The United States demurred to the petition, and the de-

* 13 Howard, 488.

† 1 Mayo, 391.

murrer being sustained, the petition was dismissed. The importers now appealed.

Mr. William Allen Butler, *for the appellants*, contended, that the case was within the *jurisdiction* of the Court of Claims, for the claim was founded upon—

1st. A law of the United States, to wit, the Tariff Act, in operation at the time of the importations; an act which had regulated the assessment of duties on the liquors; upon—

2d. A regulation of an executive department, to wit, the Treasury; which sort of regulation the circular of January 30, 1847, was; a regulation as to deficiencies; and upon—

3d. An implied contract of the United States, springing from the obligation of the government to refund, irrespective of protests, the duties, if illegally exacted.

Viewed in the light in which the claim was placed by the act creating the Court of Claims, and by the decision in *Lawrence* v. *Caswell*, it was to be judged according to the rules of law applicable to cases where a party sues to recover money paid to another, in order to obtain possession of his goods from the latter, who has withheld them upon an illegal demand, *colore officii*. In such cases the law forces upon the wrongdoer the promise, *in invitum*, to pay the money to the party entitled to it. The Court of Claims has decided that this class of cases come within the provisions of the acts conferring jurisdiction upon the court.*

Neither was a written protest, made at the time before the collector, a pre-requisite to maintain suit *here*. There was no law requiring importers, overcharged by collectors of customs, to pursue the remedy authorized by the act of February 26, 1845, viz.: payment of the duties under protest, and suit against the collector. They might, if they so elected, apply to Congress, by petition, for an act directing the return of the duties. So they might come into this court and ask *its* relief. It was only where the importer

* Schlesinger's Case, 1 Nott & Huntingdon, 16, 17.

exercised his right of action against the collector, that the absence of protest in writing could affect the question of the legality of the exaction. If the exaction was wrongful, and an obligation existed on the part of the government, the principal receiving money, to repay it, that obligation, when sought to be enforced directly against the government, could not be impaired by a condition made by it, for mere security perhaps, respecting the mode of enforcing a liability for the same obligation against its *agents*.

Mr. Evarts, Attorney-General, and Mr. Talbot, contra:

This appeal assumes as true that, at common law, the appellant has, against the United States, a right of action to recover the moneys claimed in his petition, which right was made available by the statutes establishing the Court of Claims, under no limitations save those prescribed for proceedings in that court. The assumption is false. The common law implies no contract on the part of the government to repay money erroneously collected into the public treasury for public dues. This point sustained, the appeal fails. But further:

1. No new liability on the part of the government, in this respect, has been created by the statutes establishing or relating to the Court of Claims. This appears by the statutes themselves.

2. What the revenue statutes define to be a compulsory payment in a case like this, and that alone, is such. Everything else is voluntary.

3. At common law the payment alleged by the petition is not compulsory.*

Mr. Justice DAVIS delivered the opinion of the court.

Two questions arise in this case:

1st. Was there any liability on the part of the government to refund these duties prior to the act establishing the Court of Claims?

* Bend *v.* Hoyt, 13 Peters, 268.

2d. If not, has that act fixed any new liability on the government?

The immunity of the United States from suit is one of the main elements to be considered in determining the merits of this controversy. Every government has an inherent right to protect itself against suits, and if, in the liberality of legislation, they are permitted, it is only on such terms and conditions as are prescribed by statute. The principle is fundamental, applies to every sovereign power, and but for the protection which it affords, the government would be unable to perform the various duties for which it was created. It would be impossible for it to collect revenue for its support, without infinite embarrassments and delays, if it was subject to civil processes the same as a private person.

It is not important for the purposes of this suit, to notice any of the acts of Congress on the subject of the payment of duties on imports, anterior to the act of February 26, 1845.* This act altered the rule previously in force, and required the party of whom duties were claimed, and who denied the right to claim them, to protest in writing, with a specific statement of the grounds of objection.

Through this law Congress said to the importing merchant, you must pay the duties assessed against you; but, as you say, they are illegally assessed, if you file a written protest stating wherein the illegality consists, you can test the question of your liability to pay, in a suit against the collector, to be tried in due course of law, and, if the courts decide in your favor, the treasury will repay you; but in no other way will the government be responsible to refund.

The written protest, signed by the party, with the definite grounds of objection, were conditions precedent to the right to sue, and if omitted, all right of action was gone. These conditions were necessary for the protection of the government, as they informed the officers charged with the collection of the revenue from imports, of the merchant's reasons for claiming exemption, and enabled the Treasury Depart-

* 5 Statutes at Large, 727.

ment to judge of their soundness, and to decide on the risk of taking the duties in the face of the objections. There was no hardship in the case, because the law was notice equally to the collector and importer, and was a rule to guide their conduct, in case differences should arise in relation to the laws for the imposition of duties. The allowing a suit at all, was an act of beneficence on the part of the government. As it had confided to the Secretary of the Treasury the power of deciding in the first instance on the amount of duties demandable on any specific importation, so it could have made him the final arbiter in all disputes concerning the same. After the passage of the law of 1845, the duties in controversy were paid.

The appellants say they were illegally exacted, because it was decided by this court, in *Lawrence* v. *Caswell*,* that the duties ought to be charged only upon the quantity of liquors actually imported, and not on the contents stated in the invoices; but the Chief Justice took occasion to observe in deciding that case, "that where no protest was made the duties are not illegally exacted in the legal sense of the term. If the party acquiesces, and does not by his protest appeal to the judicial tribunals, the duty paid is not illegally exacted, but is paid in obedience to the decision of the tribunal (the Secretary of the Treasury) to which the law had confided the power of deciding the question." In view of this decision and the plain requirements of the law, how can Nicholl & Co. complain? They knew by proceeding in a certain way they could resort to the legal tribunals, and yet for a series of years they imported liquors, and paid the duties demanded without objection. They had an equal right, with the Secretary of the Treasury, to construe the law under which the duties were claimed, and as they chose not to appeal to the courts, they adopted the construction which the secretary put on the law, and are concluded by his decision. If a party who did not adopt that construction placed himself in a way to contest it, and got a decision that it was

* 13 Howard, 488.

erroneous, such decision cannot enure to the benefit of Nicholl & Co., who by their conduct notified the government, so far as they were concerned, they acquiesced in the secretary's construction of the law. It may be their misfortune that they did not appeal from the secretary's decision; but it is a misfortune that occurs to any party, in a lawsuit, who refuses to appeal from the decision of an inferior court, and afterwards finds, by means of another's litigation, that if he had appealed the decision would have been reversed.

If the duties demanded of Nicholl & Co. had been paid under protest, their payment, in the sense of the law, would have been compulsory, but as they were paid without protest it was a voluntary payment, doubtless made and received in mutual mistake of the law; but in such a case, as was decided in *Elliott* v. *Swartwout*,* no action will lie to recover back the money. And so this court has repeatedly held.†

It is clear, therefore, that the appellants are without remedy, unless a new liability has been imposed on the government by the act creating the Court of Claims.

Does this act confer on the appellants any further or different rights than they had prior to its passage? If not, there is an end to this suit.

The Court of Claims has power to hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States.

Conceding, that this jurisdiction draws to it cases arising under the revenue laws, then it is contended, as this suit is founded on one of the tariff acts of Congress, which has been judicially interpreted so as to sustain the claim, therefore the case of the appellants is brought within the first jurisdictional clause of the act creating the Court of Claims. But this result does not follow, for if the court has decided that the appellants, if they had protested, would have been entitled

* 10 Peters, 153.

† Bend *v.* Hoyt, 13 Peters, 268; Lawrence *v.* Caswell, 13 Howard, 488; Curtis *v.* Fiedler, 2 Black, 461.

to be reimbursed for the excess of duties paid by them, it has also decided, by not protesting they lost all right to ask for repayment; and there has been no law of Congress passed since this decision placing them in the position they would have been if they had protested. Neither can they invoke to their aid a regulation of the Treasury Department, which alone of all the departments deals with the question of duties on imports, for there is no regulation touching the subject, as is very evident from the averment in their petition, that the Treasury Department would not pay them because they omitted to protest.

Besides, if there had been a regulation of the department on the subject, it could not affect the rights of the appellants, for such a regulation cannot change a law of Congress.

It is insisted, however, if this suit cannot be sustained on these grounds, it can be sustained on an implied contract springing from the obligation of the government to refund all duties that are illegally exacted. But we have seen that these duties were not illegally exacted, were paid voluntarily, and there is no such thing as an implied promise to pay against the positive command of a statute.*

Enough has been said to show that if the Court of Claims could take jurisdiction of this class of cases, its judgment was right on the merits of this particular case.

But after all, the important subject of inquiry is, did Congress, in creating the Court of Claims, intend to confer on it the power to hear and determine cases arising under the revenue laws?

The prompt collection of the revenue, and its faithful application, is one of the most vital duties of government. Depending as the government does on its revenue to meet, not only its current expenses, but to pay the interest on its debt, it is of the utmost importance that it should be collected with despatch, and that the officers of the treasury should be able to make a reliable estimate of means, in order to meet liabilities. It would be difficult to do this, if the receipts

* Cary v. Curtis, 3 Howard, 236.

from duties and internal taxes paid into the treasury, were liable to be taken out of it, on suits prosecuted in the Court of Claims for alleged errors and mistakes, concerning which the officers charged with the collection and disbursement of the revenue had received no information. Such a policy would be disastrous to the finances of the country, for, as there is no statute of limitations to bar these suits, it would be impossible to tell, in advance, how much money would be required to pay the judgments obtained on them, and the result would be, that the treasury estimates for any current year would be unreliable. To guard against such consequences, Congress has from time to time passed laws on the subject of the revenue, which not only provide for the manner of its collection, but also point out a way in which errors can be corrected. These laws constitute a *system*, which Congress has provided for the benefit of those persons who complain of illegal assessments of taxes and illegal exactions of duties. In the administration of the tariff laws, as we have seen, the Secretary of the Treasury decides what is due on a specific importation of goods, but if the importer is dissatisfied with this decision, he can contest the question in a suit against the collector, if, before he pays the duties, he tells the officers of the law, in writing, why he objects to their payment.

And an equal provision has been made to correct errors in the administration of the internal revenue laws. The party aggrieved can test the question of the illegality of an assessment, or collection of taxes, by suit; but he cannot do this until he has taken an appeal to the Commissioner of Internal Revenue. If the commissioner delays his decision beyond the period of six months from the time the appeal is taken, then suit may be brought at any time within twelve months from the date of the appeal.* Thus it will be seen that the person who believes he has suffered wrong at the hands of the assessor or collector, can appeal to the courts; but he cannot do this until he has taken an intermediate appeal to

* 14 Stat. at Large, 111, amendment to § 44; § 19, on p. 152.

the commissioner, and at all events, he is barred from bringing a suit, unless he does it within a year from the time the commissioner is notified of his appeal. The object of these different provisions is apparent. While the government is desirous to secure the citizen a mode of redress against erroneous assessments or collections, it says to him, we want all controverted questions concerning the revenue settled speedily, and if you have complaint to make, you must let the Commissioner of Internal Revenue know the grounds of it; but if he decides against you, or fails to decide at all, you can test the question in the courts if you bring your suit within a limited period of time.

These provisions are analogous to those made for the benefit of the importing merchant, and the same results necessarily follow. If the importer does not protest, his right of action is gone. So, if the party complaining of an illegal assessment does not appeal to the commissioner, he is also barred of the right to sue, and he is without remedy, even if he does appeal, unless he sues within twelve months. Can it be supposed that Congress, after having carefully constructed a revenue system, with ample provisions to redress wrong, intended to give to the taxpayer and importer a further and different remedy?

The mischiefs that would result, if the aggrieved party could disregard the provisions in the system designed expressly for his security and benefit, and sue at any time in the Court of Claims, forbid the idea that Congress intended to allow any other modes to redress a supposed wrong in the operation of the revenue laws, than such as are particularly given by those laws.

Without pursuing the subject further, we are satisfied that cases arising under the revenue laws are not within the jurisdiction of the Court of Claims.

JUDGMENT AFFIRMED.