

## Statement of the case.

doubt. "Nothing less," says Sir William Scott, "than an uncontrollable necessity, which admits of no compromise, and cannot be resisted," will be held a justification of the offence. Any rule less stringent than this would open the door to all sorts of fraud. Attempted evasions of the blockade would be excused upon pretences of distress and danger, not warranted by the facts, but the falsity of which it would be difficult to expose.

The decree of the court below must be REVERSED, and that court directed to enter a decree condemning the vessel and cargo as lawful prize; and it is

So ORDERED.

KELLOGG *v.* UNITED STATES.

An officer of the United States, under authority of Congress, made a contract with D. and S., by which they agreed to furnish bricks to the government. The contract contained a clause that D. and S. should not sub-let or assign it. D. and S. having abandoned the contract, it was taken up, with the consent of the officer representing the government, by M. and A., the sureties of D. and S. to the government for its performance. M. and A. then entered into a contract with K., by which *he* undertook to perform the contract and to receive payment therefor from the United States at the contract price, and to pay over to M. and A. a certain percentage of the amount received, M. and A. constituting him, at the same time, their *attorney* to furnish the bricks and to receive payment. The government, desiring to abandon their enterprise, proposed to *all* parties respectively *interested on account of their contract, &c.*, that if they would cancel it, the United States would settle with them "on the principles of justice and equity" all damages, &c., incurred by them. *Held*, that K. was not a party to, nor interested in the contract.

## APPEAL from the Court of Claims.

By an act of March 3d, 1853, Congress authorized the commencement of an aqueduct to supply Washington with water. Captain Meigs was appointed to superintend the work.

In January, 1854, Captain Meigs, on behalf of the United

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States, entered into a contract with Degges & Smith, by which they agreed to furnish for the work a certain number of bricks, for which the United States agreed to pay at a specified rate per thousand. To secure performance, Degges & Smith gave bond, with Mechlin & Alexander as sureties.

The contract between Captain Meigs and Degges & Smith contained a provision *that neither the contract, nor any part of it, should be "sub-let or assigned."*

In March, 1855, Congress having appropriated a certain sum for continuing the work, Captain Meigs gave notice to Degges & Smith, and also to their sureties, Mechlin & Alexander, that there would be required for the work of that season, a portion of the bricks. To this notice Degges & Smith made no response, but abandoned their undertaking, and failed to comply with their contract.

Degges & Smith having thus made default, Mechlin & Alexander, in order to save themselves from prosecution on their bond, entered into an arrangement with Captain Meigs, by which *they* assumed the contract which had been made with Degges & Smith.

Mechlin & Alexander, accordingly, made preparations for the manufacture of the bricks necessary to fulfil their contract; but before completing their arrangements, *they*, in March, 1856, entered into a contract with one Kellogg, by which *he* undertook to furnish all the bricks required, and to receive payment therefor from the United States at the contract price, and to pay over to Mechlin & Alexander, 5 per cent. of the amount so received; and Mechlin & Alexander by deed constituted him *their lawful attorney to furnish the bricks, and to receive payment therefor.*

Kellogg continued to furnish bricks, *as the agent of Mechlin & Alexander*, during the summer of 1856, until what remained of the appropriations for the building of the aqueduct was exhausted, when he received notice from Captain Meigs not to make or deliver any more.

On the 3d of March, Congress passed a joint resolution, containing a proposition to *"all parties respectively interested on account of their contract for manufacturing bricks for the*

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Washington aqueduct," that, if they would cancel it, the United States would settle with them, "on the principles of justice and equity, all damages, losses, and liabilities incurred by said parties respectively on account of their contract."

After the passage of this resolution, Mechlin & Alexander, and Kellogg, also accepted the proposition, and cancelled the contract.

Upon this, the Secretary of the Treasury proceeded to make the settlement contemplated by said joint resolution, and awarded to Mechlin & Alexander, *as the only persons included in the provisions of the resolution*, \$29,534. Of the sum so awarded by the secretary to Mechlin & Alexander, Kellogg, accepting it under protest, received \$10,476, as the amount he was entitled to receive under his contract with Mechlin & Alexander.

Kellogg now filed his petition in the court below, setting forth the facts above stated, and insisting that the award of the said sum of money to Mechlin & Alexander, and the exclusion of him from the benefits of the resolution by the secretary, was erroneous, and contrary to the intent of the resolution; and that the secretary should have awarded him, as the amount he was entitled to receive under the resolution, as "a party interested in said contract," the sum of \$62,692; to recover which sum and interest, amounting in all to \$91,389, the suit was instituted.

To this petition the United States demurred; and the demurrer having been sustained by the Court of Claims and the petition dismissed, the case was now here on appeal.

*Messrs. Carlisle and McPherson, for the claimant, Kellogg.*

*Mr. Talbot, contra.*

Mr. Justice GRIER delivered the opinion of the court.

The case, well stated by the reporter, sufficiently demonstrates that there was no error in the decision of the Court of Claims sustaining the demurrer to the plaintiff's petition.

## Syllabus.

The claimant has not shown that he was ever known or recognized by the United States as one of the parties to, or as interested in, the contract made by Captain Meigs, on behalf of the United States, for furnishing bricks for the construction of the Washington aqueduct. That contract provides that it should not be sub-let or assigned.

The petition shows that the claimant was acting under a contract with Mechlin & Alexander (who were the sureties for the fulfilment of the contract of Degges & Smith), and not under a contract with the United States, and was recognized only as agent, attorney-in-fact, or *employé* of the sureties; and that under the resolution of Congress, approved March 3d, 1857, by which the Secretary of the Treasury was authorized to settle with all the parties, respectively, in the *contract*, the claimant was not included, because he was no party to it either originally or by substitution.

The award made by the Secretary of the Treasury, and the payment of the money under it, were in strict accordance with the provisions of the resolution. The secretary properly declined to settle the account between Mechlin & Alexander as to how the money so paid should be divided between them and their agent. Of this sum the petitioner received \$10,476, which he accepted, "under protest;"—which could only mean saving his right to importune Congress or the Court of Claims for *more*. This has occasionally proved a valuable privilege. But something more is necessary to recover in a court of justice.

JUDGMENT AFFIRMED.

## EX PARTE BRADLEY.

1. The Supreme Court of the District of Columbia, as organized by the act of March 3, 1863, is a different court from the criminal court as fixed by the same act, though the latter court is held by a judge of the former. Hence the former court has no power to disbar an attorney for a contempt of the latter.
2. An attorney cannot be disbarred for misbehavior in his office of an attorney generally, upon the return of a rule issued against him for con-