Syllabus.

Viewed in any light, it is quite clear that the informer, in these cases, has no vested interest in the subject-matter of these suits, and that both motions ought to be

GRANTED.

The order in the first case is, that it be dismissed, and that order also disposes of Nos. 26, 27, 28, 29, 30, and 33, 34, and 35.

Order in the second case is, that the decree be reversed, as stipulated by the parties, and that the cause be remanded, with directions to dismiss the libel of information; and this order also disposes of Nos. 44, 46, 48, 63, and 64, on the calendar.

[See *supra*, 166, Dorsheimer *v.* United States.]

UNITED STATES *v.* ADAMS.

1. It is the duty of the Secretary of War, as head of the War Department, to see that contracts which belong to his office are properly and faithfully executed, whether he have made the contracts himself or have conferred authority on others to make them; and if he becomes satisfied that contracts which he has made himself are being fraudulently executed, or that those made by others were made in disregard of the rights of the government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the government against the dishonesty of subordinates.
2. If there exist well-grounded suspicions, or facts unexplained, tending strongly to the conclusion that contracts have been entered into, and debts incurred, within a particular military district, in disregard of the rights of the government, the secretary has a right and is bound to issue an order to suspend the payment of all claims against it.
3. In such a case (especially where the military district in which the contracts were made and are to be carried into execution is one distant from Washington, where Congress and the Court of Claims sit, and a resort to these tribunals would occasion delay and expense), the appointment of a board of commissioners, to meet at once at the place where all the transactions out of which the claims and demands of which payment is now suspended originated — the appointment being for the simple purpose of affording to such claimants as might desire a tribunal to speedily

hear and decide upon their claims, without the delay and expense of resorting to those which the law had recognized or provided, and so to relieve them from the hardship resulting from the suspension of the payment, as far as was in the power of the secretary—is a fit measure to be taken by the secretary.

4. If the claimant voluntarily come before a board thus appointed, and present his claim, and the board investigate it, and Congress afterwards enacting that all claims allowed by such board shall be deemed to be due and payable, and be paid upon presentation of a voucher with the commissioners' certificate thereon—the petitioner do present his voucher and receive payment of the sum so allowed by the board, he cannot afterwards recover in the Court of Claims a balance which would remain on an assumption of the validity of his original contract.
5. These principles applied to contracts made in 1861 by General McKinstry, Quartermaster in the Western Military Division, under General Fremont, commanding, for mortar-boats and tug-boats, to be used by the army on the Western rivers during the late civil war.

APPEAL from the Court of Claims.

The suit was founded on the petition of Adams, claiming a balance against the government on contracts with General Fremont, commanding the Western Military District, for the construction of a certain number of mortar-boats and steam tug-boats, to be used on the Western rivers in the late civil war. The contracts were alleged to have been made on or about the 24th of August, 1861, for the mortar-boats, at a cost of $8250 each; and on or about the 10th of September following, for the steam tug-boats, at the cost of $2500 each. The petitioner was also to build cabins and pilot-houses, and construct steering apparatus, and windlasses on the steam-tugs, for which he was to receive the sum of $1800 in addition for each boat.

After these boats were constructed they were received into the service of the government by the orders of the Secretary of War. This was in the latter part of November, 1861. Previous to this, on the 14th of October, of that year, General Fremont was superseded in his command. And, in consequence of representations of *frauds and irregularities committed by General McKinstry, the chief quartermaster of the army of this military district,* who had charge of making contracts for supplies and materials necessary for equipping the troops for the expe-

Statement of the case.

dition contemplated, and who made the contracts, among many others, in question, the Secretary of War, by order of the President, suspended payments upon all contracts within the department until an investigation could be had into the charges thus made.

General McKinstry was afterwards dishonorably dismissed the service for frauds found to have been committed against the government while serving as chief quartermaster of this army. And, after his suspension, on the 25th of October, 1861, the secretary, by a like order, appointed a board of commissioners "to examine and report, to the Secretary of War, upon all unsettled claims against the military department of the West, that had originated prior to the 14th of October, 1861, the day General Fremont had been superseded." This board, composed of three gentlemen of the highest intelligence and character (Messrs. David Davis, Joseph Holt, and Hugh Campbell), met, without delay, at the city of St. Louis, the headquarters of the military department in which the irregularities and frauds in its administration, as charged, had been committed, and entered upon their duties; first giving notice to all persons holding claims against the government to present them for examination, with such proofs and explanations as the claimant might think proper to exhibit. Under this notice, the petitioner, on the 10th of December, 1861, presented his claims, which were as follows:

The United States to Theodore Adams, Dr.

For building 38 mortar-boats for the United States, as per order of Major-General Fremont, herewith attached, dated August 24, 1861, ...		$313,500 00
Deduct this amount, paid by Major McKinstry on the —— day of ——, ...	$75,000	
Deduct this amount, paid by Major A. Allen, quartermaster, 7th to 12th November, .	55,000	
Total to be deducted, ...		130,000 00
Balance due, ...		$183,500 00
On this account the commissioners allowed the petitioner		$75,959 24

The United States to Theodore Adams, Dr.

For building 4 hulls for tug-boats for the United States, as per contract herewith, dated September 10, 1861, by Major McKinstry, quartermaster, at $2500 each,	$10,000 00
For building 4 hulls for tug-boats for the United States, as per contract herewith, by Major McKinstry, quartermaster, dated September 21, 1861, at $2500 each,	10,000 00
For building 8 cabins for tug-boats for the United States, as per contract herewith, dated September 20, 1861, by Major McKinstry, quartermaster, for $1800 each,	14,400 00
	$34,400 00
Deduct amount already paid,	9,000 00
Balance,	$25,400 00
On this account the commissioners, deducting therefrom $5204 from the charge for tug-boats, allowed the petitioner	$20,196 00

For these several sums, $75,959.24 and $20,196.00, this board gave vouchers to the claimant as due from the government on these contracts, and *received from him a receipt in full of all demands, which he signed under protest.* When the papers were exchanged does not appear; but not long afterwards, on the 11th of March, 1862, Congress passed the following joint resolution:

"That all sums allowed to be due from the United States to individuals, companies, or corporations, by the commission heretofore appointed by the Secretary of War (for the investigation of military claims against the Department of the West) composed of David Davis, Joseph Holt, and Hugh Campbell, now sitting at St. Louis, Missouri, shall be deemed to be due and payable, and shall be paid by the disbursing officer, either at St. Louis or Washington, in each case upon the presentation of the voucher, with the commissioners' certificate thereon, in any form plainly indicating the allowance of the claim, and to what amount. This resolution shall apply only to claims and contracts for service, labor, or materials, and for subsistence, cloth-

ing, transportation, arms, supplies, and the purchase, hire, and construction of vessels."

Under this resolution the claimant and petitioner below presented his vouchers, and received payment of the several sums allowed by the board.

The present suit, as has already been said, was brought by him against the government to recover the balance of the contract price of the mortar and steam tug-boats, with their fixtures, over and above the amount allowed by the board, after an investigation into the merits and the payment of the same under this joint resolution.

The Court of Claims decided that he was entitled to recover that balance, and gave judgment for him against the United States for $112,748.76; finding, also, that the value of the mortar-boats and tug-boats was $274,408.80.

Mr. Hoar, Attorney-General, and Mr. Dickey, Assistant Attorney-General, for the appellants:

The case nowhere shows—the Court of Claims, we mean, has nowhere found as a fact—

1st. That anybody had authority to make these contracts; or—

2d. That anybody ratified, or meant to ratify them; or—

3d. That there was any emergency which justified making them.

The whole case is:

1st. That during the late civil war General Fremont did contract for the boats; and,

2d. That, after they were built, they were taken by the government, under orders of the Secretary of War, into government use.

Now, it cannot be successfully maintained that Fremont had power, even in virtue of his office, to bind the government by contracts whose magnitude was limited only by his own judgment. His power can be maintained only by an unjust and most dangerous extension of a just and safe principle, the principle that all *appropriate* means are allowable to carry out *legitimate* ends.

As to the Secretary of War, he had no power, because the statute of May 1, 1820,* thus enacts:

"No contract shall hereafter be made by the Secretary of State, or of the Treasury, or of the Department of War, or of the Navy, except (1) under a law authorizing the same, or (2) under an appropriation adequate to its fulfilment; and excepting also (3) contracts for the subsistence and clothing of the army and navy, and (4) contracts by the Quartermaster's Department, which may be made by the secretaries of the departments."

The whole case of the claimants, therefore, must rest on a ratification of the contract, as matter of law, upon the facts of the case; in other words, upon an assumption that by the secretary's taking the boats and tugs into the service of the United States, void contracts, by force of ratification, become valid ones. But the fact that property came into the possession of, and was used by the government, has no tendency to prove that it was received under a contract for a specific price, which contract the agents of the government receiving it, had no legal power to make. The only thing which can be presumed, where goods are accepted by a party, in the absence of all contract about what he shall pay for them, is, that he will pay for them what they are reasonably worth. That is presumable enough. This case, therefore, afforded grounds for a *quantum meruit*. And it afforded nothing else. But a settlement, and receipt of the money, upon this basis of a *quantum meruit*, understood to be paid upon that footing, precludes the subsequent assertion of a special different contract. And that, we submit, is the sort of settlement and receipt which took place in this case.

Messrs. Carpenter and Wills, contra, for the appellee; and Messrs. Carlisle and Corwine for appellees in other cases argued with this and involving the same question in principle. A brief of *Mr. B. R. Curtis* being also filed in the present case.

* 3 Statutes at Large, 568, § 6.

1st. Had General Fremont power, under his authority as commanding general, to make these contracts?

In attempting to solve this question, it is in vain for the counsel of the government to seek the *full measure* of the authority of the commander of a military department, in time of war, either in the statutes of the United States or in the Regulations of the Army; for neither of them have attempted to define his powers.

It is true, that the Regulations of the Army declare that "the Ordnance Department furnishes all ordnance and ordnance stores for the military service,"* and that "the Quartermaster's Department provides the quarters *and transportation* of the army," &c.† But they are silent, and from the nature of the case, must be, on the great and essential points in time of war, of the plan of campaign, the ends to be attained, the ways and means of their attainment, and when, and where, and to what extent the services of these subordinate departments shall be required. They are but instruments, means to ends. The commanding general, on the contrary, in the execution of his plans, breathes into them life, and dictates the time, and place, and extent of their action. They work according to rule, it is true, but they work under his direction, and for the attainment of his ends. He is charged with the success of the campaign, and he alone is responsible for results, and for the manner in which he discharges that duty.

The war powers of Congress, and of the President, as commander-in-chief of the army and navy, and (as a necessary consequence) of his subordinate commanding generals in their several military departments, are *unlimited* in time of war, *except by the law of war itself.*

The rationale of this fundamental principle of law in war, may be stated in the language of Alexander Hamilton: It "rests upon two axioms, simple as they are universal: the *means* ought to be proportioned to the *end;* the persons from whose agency the attainment of the *end* is expected, ought

* Revised Regulations for 1861, Article 47, § 1375.

† Ib., Article 42, § 1064.

to possess the *means* by which it is attained." Chief Justice Marshall is explicit to the same effect.*

It is matter of public history, history which the court will judicially notice, that the mortar-boats were designed for the double purpose of pontoons for moving armies across rivers, and of floating batteries, for dislodging the enemy from fortified points on the river; and that the tug-boats were designed, among other general uses, to furnish the necessary motive power for towing them rapidly from point to point, in the descent of the river; and matter of public history, moreover, that they were used with success during the war.

The Venice,† in which the authority of law was given to a proclamation of General Butler, maintains the authority which we here assert for General Fremont.

The question of authority to make the contracts in this case may, therefore, be regarded as settled.

It was objected by the United States, after taking and using the boats, that, in point of fact, General Fremont agreed to pay *too much* for them; but that is a question which does not legitimately arise in the case. The only question is, whether the contracts were made by competent authority, and within the scope of the authority of the public agent who made them. That being shown, in the absence of fraud (which, if pretended, is not proven), the contract price becomes the law of the case.

But again. We go further. The authority of General Fremont being shown, even if it were admitted that he had not made a judicious bargain for the government in the matter of price, or be shown that he had received and violated private instructions in the matter of price, directing him to give what has been allowed by the St. Louis commission, and no more, nevertheless, under well-established principles of the law of agency, the government would be

* McCullough *v.* Bank of Maryland, 4 Wheaton, 409, 421; and see Whiting's "War Powers under the Constitution," 10th edit. 35, 77, 81. Note, 82–83, 167–168, 270, 307–308.

† 2 Wallace, 276, 278, 279.

bound by his contracts in the matter of price, because his instructions being *private*, and the subject-matter of the contracts being within the general scope of his authority, the claimant was justified in contracting with him as a public agent, possessed of full power to contract on its behalf.* The government, therefore, could not, in law, have disowned his contract, even if, after it was made, it had done so in fact.

It is denied on the other side, that the United States are bound by these contracts, because the Secretary of War could not authorize Fremont to make them; he being prohibited from making them by the act of May 1st, 1820.

But each of the exceptions in that act constitutes an alternative *condition*, the existence of which in any case takes the given case out of the prohibition of this law, and at the same time authorizes a contract to be made by the secretaries of the departments named. There can be no doubt that such contracts, from their nature and subject-matter, belonged to the Quartermaster's Department. Moreover the power to contract is not limited by the act to any particular form or mode of making the contract.

Conceding that General Fremont had no power as agent of the government to bind it. How stands the case then?

The case does not show that the appellee knew, or had any means of knowing what consultations had taken place, or what arrangements had been made, between General Fremont and the department. He did know that General Fremont undertook to contract in behalf of the United States; and there is no reason to doubt that he was induced to begin, prosecute and complete the work, in the faith that he was doing it under these special contracts with the United States. The moment that the boats were completed for service, which was of course at the earliest date practicable, they were surrendered into the possession of the United States, and under the authority of the Secretary of War they went into their military service. This amounts to an

* United States *v.* Arredondo et al., 6 Peters, 729.

adoption by the secretary of the contracts under and by force of which the boats had been built, and under which alone the United States were entitled to receive them. The transfer of the boats to the United States must be intended to have been made under and by force of some contract, express or implied, either for agreed sums, or for such sums as they were reasonably worth; for it will not be pretended either that the appellee made a gift of them to the government, or that they were taken by law under the right of eminent domain. Under some contract then the boats were delivered, and why not under the actually existing contracts. The appellee had acted throughout under those contracts. He had in all things conformed to their requirements. The boats were completed without any notice that the contracts were repudiated by the United States, and they were delivered and received into the military service of the United States.

If General Fremont had not lawful power to bind the United States, he undertook to do so, and the appellee *contracted and bound himself* as if the General had been the lawful representative of the United States. It was competent for the secretary to adopt and confirm a contract already agreed to, and thus to make a contract. And the acceptance of the boats for service, and the subsequent employment of them under his authority, is in judgment of law an adoption of the only agreements by force of which the boats had been built and were prepared for service.

The *actual intention* of the Secretary of War in receiving the boats and employing them in the public service, is not the subject of inquiry. As respects the United States, the secretary had power to acquire the title to the boats either for an agreed price or for a *quantum meruit*. But as respects the appellee, the secretary had no power to compel him to make a new contract or part with his property without any. By receiving the boats the secretary is conclusively presumed to have assented to the only terms on which the builder had signified his willingness to part with them; and the only terms on which the builder ever signified his will-

ingness to part with them were the *contract* terms. He never, in fact, agreed to a *quantum meruit*, and the secretary had no power to make him agree or fix his rights without any agreement. If the government, through its authorized agent, chose to repudiate the contracts made by General Fremont, they might have done so. But the government could not claim and take the property without any contract voluntarily made by the appellee, nor avail themselves of so much of the contract as gave them the title to the property, and repudiate so much of the contract as promised to pay for it.

It is argued that when goods are delivered under a void contract, the party retaining them impliedly promises to pay what they are reasonably worth. The rule has no application to this case. If the secretary had power to make the contracts, he had power to adopt and ratify them. Receiving the property necessarily has that legal effect; and therefore the property was not delivered and accepted under void contracts, but under contracts made valid by the act of acceptance.

Having accepted the boats, the conduct of the secretary in refusing to pay for them and disowning the contract, must be characterized as unusual, harsh, and unjustified. He appointed his commission without reference to the wishes or intentions of the contractors, and ignores and cuts off by a mere official order debts contracted in form. Can he do this? This question brings us to consider the next point.

2d. Is the receipt signed by the appellee a legal bar to his claim?

This inquiry is to be made under the concession that the appellee was justly entitled to rely on his special contracts with the government, and recover the contract prices stipulated therein, or at the least, was justly entitled to receive the actual worth of his work, labor, and materials, which have gone to the benefit of the government; and that he has not actually received either of them.

Now a receipt in full is merely the declaration of a fact. It is not a contract. It is open to explanation or contradic-

tion, like any other statement of facts. And if it appear, outside of the receipt, that the sum received was only parcel of the sum due, the legal claim for the residue is not satisfied.*

It is true that if there is a dispute between parties as to the amount of a claim, and they harmonize that dispute by an agreement that only a certain amount is justly due, and that amount is paid and received in full satisfaction of the claim, that is a bar; it may be pleaded as an accord and satisfaction. And this because there is an accord by the mutual agreement of the parties upon that sum, as what is mutually admitted to be what is justly due, and a satisfaction by the payment of that agreed sum.

The only remaining inquiry then is, whether what took place by reason of the action of the commissioners, amounts in law to an accord and satisfaction.

There is no warrant in the facts for this legal conclusion.

1. The claim presented by the appellee was a claim to be paid the contract prices.

2. The commissioners had no *legal* power whatever. They were agents of the executive government of the United States to ascertain, for the action of the executive government, as well as they could, what debts the government had incurred under certain contracts. But they had no power to increase or diminish any one of those debts; and still less had they any power to fix judicially and finally what any debt amounted to.

Before this provisional committee it appears that the appellee presented his claim. He did so, to a large extent, compulsorily. The commission being appointed, his necessities as contractor compelled him to go before it. This was a sort of duress.† But he stood on his contracts. The committee had no power to fix their validity or invalidity. He certainly did not concede their invalidity; for his claim before them was an

* Pinnel's Case, 5 Reports, 238; Fitch *v.* Sutton, 5 East, 230; Kellogg *v.* Richards, 14 Wendell, 116; Curtiss *v.* Martin, 20 Illinois, 577.

† See Proof *v.* Hines, Cases Tempore Talbot, 111.

assertion that his rights were governed by them alone. This claim they disallowed, and made known their determination that he was entitled to a less sum. They also insisted, and we think, without authority, that he must sign an acknowledgment that no more was due, *as a condition for obtaining the vouchers for that which the committee admitted to be due.* He signed to obtain the vouchers, *protesting* that his acknowledgment that the amount was all that was due, was not true, and was not freely assented to by him. How is it possible to make an accord and satisfaction out of this transaction?

It is true that if one does an act having a fixed and necessary legal operation, his protest accompanying that act that he does not do it, can have no effect. He does it, and saying that he does not is futile. But signing a receipt is not an act having a fixed and necessary legal operation. It is simply an admission of a fact, which carries with it *primâ facie* evidence of that fact, or it is evidence of an assent to a compromise of rights, and when it is relied on for the latter purpose, as it is here, if it appears that there was no actual assent to a compromise of rights, that the receipt was accompanied by a protest that they were not intended to be relinquished, and that the receipt was signed only under the pressure of necessity to obtain a part of the just dues of the creditor, the law is clear that it does not operate as a bar.

As to the act of Congress ordering the sums fixed by the committee to be paid, and the receipt by the appellee of the sum said to be due to him, it is not perceived how his fixed legal rights can have been affected thereby. Congress did not attempt to give any force to the action of the committee, further than to authorize the payment of the sums they had declared to be due. Any claims for a further sum, justly due from the United States on special contracts, does not appear to have been brought, in any way, to the notice of Congress. And certainly there is no presumption, wholly outside of the terms and subject-matter of this act, that Congress meant to dictate to any one having a just claim against the United States, that if he should accept what was thereby appropriated for him, he should be deemed

thereby to waive and abandon all further claim. Such waiver and abandonment is a substantive and important thing, and it is not provided for by the act, either in terms, or by any just implication.

Reply: It is not the receipt, or the decision of the commission, but the taking the voucher on the receipt, and taking the money under the act of Congress by means of it, which ended the affair.

As to duress. Can he who has a just claim against the United States be allowed to say, in its courts of law, that his means and prospects of obtaining justice were so deficient and inadequate that, in taking a sum of money from the government, paid to him in full satisfaction of it, he was acting under duress? We have, indeed, "diversities of administration;" but the same spirit of justice works in all. It is an old maxim of English law, that the *king* can do no wrong. It must, at least, be held by the highest judicial tribunal of this nation, that an apprehension of injustice from the United States cannot be rightfully assumed and adopted by any citizen as a rule of action, or asserted as a justification of any course of conduct otherwise indefensible.

Mr. Justice NELSON delivered the opinion of the court.

There has been a good deal of discussion between the learned counsel upon the questions, whether or not General Fremont possessed competent power, as commander of the military department, to make a valid contract with the petitioner for the construction of the boats, in the absence of any authority from the Quartermaster-General or Secretary of War; and if not, whether the delivery of the boats, acceptance by the secretary, and employment in the service of the government, did not operate as a ratification of the same? In the view the court have taken of the case, it is not material how these questions are answered. For the purposes of the decision, we may admit the competency of the power.

The Secretary of War, subject to the authority of the President, is at the head of the department of the government on whom the duty devolved to provide these boats for the military expedition in contemplation by General Fremont, after their construction had been determined on. The head of the appropriate bureau of this branch of the service is the quartermaster-general, who is under the direction of the secretary.* And whether the contracts for the construction were made by General Fremont or by the quartermaster-general, the source of the authority is the head of the War Department. And whether he makes the contracts himself, or confers the authority upon others, it is his duty to see that they are properly and faithfully executed; and if he becomes satisfied that contracts which he has made himself are being fraudulently executed, or those made by others were made in disregard of the rights of the government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the government against the dishonesty of subordinates. This duty is too plain and imperative to call for comments. As the head of the department under whose charge the contracts were made and were being carried into execution, and over which he had the superintendence and control, he was responsible to the government for any detriment to its interests which it was reasonably within his power to prevent or remedy. We do not agree, therefore, that there was anything unusual, harsh, or unjustifiable on the part of the secretary, if there existed well-grounded suspicions or facts unexplained, tending strongly to the conclusion that contracts had been entered into, and debts incurred, within this military district, in disregard of the rights of the government, in issuing the order to suspend the payment of all claims against it. This was a proper if not an indispensable step to prevent the consummation of the frauds. He would have been recreant to his duty if he had acted otherwise; and

* 1 Stat. at Large, 696; 4 Id. 173; 5 Id. 257; Regulations of 1861, art. 1064.

after having thus suspended these claims upon grounds and for the reason stated, which we are of opinion fully justified him, unless some provision had been made affording an immediate opportunity to the claimants to exhibit their claims, and establish their justice and integrity, their only remedy would have been an appeal to Congress or to the Court of Claims, which, as then organized, had no power to render judgment against the government. Both these bodies were soon to be in session at Washington, so that, without any great delay, they could have been presented there, examined, and allowed or rejected. But these tribunals were distant from the place where these contracts had been made and were being carried into execution, and a resort to them would have occasioned delay and involved much expense. Under these circumstances, although they were the appropriate and, we may say, only legal tribunals to investigate and adjust claims that the heads of departments had felt it their duty to suspend or reject, it was fit, and commendable in the secretary, to appoint this board of commissioners to meet at once at a place where all the transactions had occurred out of which the claims and demands in dispute originated. It was impracticable for the secretary himself to hear and adjust them, even if the parties had desired it. The only immediate relief, therefore, within his power to provide, consistent with his duty under the circumstances, was to appoint persons to represent him.

We agree that this board possessed no authority, nor would the secretary, if he had appeared in person, have possessed any, to compel a hearing and adjustment of the claims, nor did they hold themselves out as possessing any such authority. The board were constituted for the simple purpose of affording to such claimants as might desire a tribunal to speedily hear and decide upon their claims, without the delay and expense of resorting to those which the law had recognized or provided. It was to relieve them from the hardship resulting from the suspension of the payment, as far as was in the power of the secretary; a suspension which he had felt compelled to order, under the circum-

stances, from a sense of duty to government. We cannot, therefore, appreciate the force of the argument that has been urged on behalf of these claimants, that the facility thus furnished by the board to hear and pass upon their claims, in some way operated compulsorily, to submit them for investigation; not legally, but morally; and that their necessities compelled them to seek this early opportunity to have them heard and adjusted. This, we think, a misapprehension. It was not so much the presence of this board that compelled the submission, if any compulsion existed, but the certainty, if the opportunity was not accepted, they would be obliged to encounter the delay and expense of an application to Congress or the Court of Claims. The constitution of the board presented simply a choice of tribunals to hear these claims. It was their preference for the tribunal sitting in their midst, and the high character of its members, that controlled the choice. This tribunal also afforded an additional advantage over the others, namely, that if after the hearing and adjustment of the claims the claimants were not satisfied, they were free to dissent, and look for redress to the only legal tribunals provided in such cases.

It has been strongly argued, that the receipt in full of all demands, which the board exacted from the claimant before the delivery of the voucher, or finding, was unauthorized; or, if authorized, that it is no bar to that portion of the original claim rejected by the board, as it is an instrument subject to explanation; that a receipt for payment in full, when only part of the debt is paid, is no defence to an action for the balance; and, further, that it was signed under protest. In the view we have taken of the case, the giving of this receipt is of no legal importance. The bar to any further legal demand against the government does not rest upon this acquittance, but upon the voluntary submission of the claims to the board; the hearing, and final decision thereon; the receipt of the vouchers containing the sum or amount found due to the claimant; and the acceptance of the payment of that amount, under the act of Congress providing therefor. From the time the secretary issued his

order, suspending the payment, and which we have held was well justified, under the circumstances, they must be regarded as claims disputed by the government; and unless this board had been constituted, could have been adjusted only by Congress or the Court of Claims. They fell within that mass of claims which the heads of the several departments had refused to adjust according to the views of the claimants, and this was the character that attached to them when presented before the board. We do not doubt but that there have been, and may be hereafter, cases where payments have been mistakenly or wrongfully withheld, and the claimant compelled either to give up his claim or seek redress before the appropriate tribunals, existing at the time, to hear and determine them. But this is no argument against the power or right of the heads of the departments to refuse the payment. What other remedy has the government to arrest the execution of fraudulent contracts, made by its subordinates, or the unfaithful execution of them? In such cases the courts are open to protect the rights of private individuals, but this remedy is unavailable to the government. The multitude of agents, official and otherwise, which it is obliged to employ in conducting its affairs, render this remedy utterly impracticable. Unless, therefore, some power exists in the government, summarily, to interfere, and arrest the frauds and irregularities committed against it, they must be allowed to go on to consummation. No one, we think, on reflection, will deny this power.

A good deal of the argument on the part of the claimant in support of the right to recover the contract price of these boats, is placed upon the ground of the absence of any authority in the board of commissioners to pass, *in invitum*, upon the claims. We have conceded this want of authority. They possessed no judicial power; nor did they claim to exercise any. The government having suspended all payment upon the contracts upon allegations of frauds and irregularities, until an inquiry could be had in respect to them, appointed this board as a favor to its creditors, to enable those who might desire it to have an immediate in-

vestigation. It was an act of kindness to them. They were left free, however, to present or withhold their claims. But we find nothing in the constitution of the board, or in its proceedings, or in the proceedings on the part of the government, indicating expressly, or by implication, that when the investigation was thus voluntarily submitted to, the amount adjusted, and the acceptance of payment by the claimant, the proceeding was not to be final. It could hardly have been supposed or believed by the claimants themselves, that the government would have gone to the expense of furnishing them a tribunal in their midst for this investigation, and subject itself also to the expense of carrying it on in the cases submitted to its cognizance as a matter of mere preliminary inquiry to adjust parts or portions of a contract, and make advances thereon, leaving the residue for further litigation before Congress, or the Court of Claims. This is not the course of litigation between private parties; they are not allowed to split up an entire contract or demand into several parts; and we are not aware of any reason for an exception to the rule in a proceeding against the government. We cannot think that a further hearing before any other tribunal of the same matters was within the contemplation of either party.

The hearing before this board was had more than a year before the present Court of Claims was established, under the act of Congress of March 3, 1863, which authorizes suits and judgments against the government. Previously, the only remedy of the creditor was by an application to Congress, or to the Court of Claims, which was established in 1855, but possessed no authority to render judgment against it. It was but a commission appointed by the government to hear and pass upon claims, but whose determination had no force till confirmed by Congress. It differed from the commission in the present case, as it was established by law, and had general authority to hear all claims; but, so far as respects the cases of voluntary submission before the board, we regard the finding, followed by acceptance of payment, as conclusive upon the claim as if it had been before this

first Court of Claims, and heard and decided there, and the amount found due paid by the government. Now, we suppose that it would be an error in the Court of Claims, as at present constituted, with power to render judgment against the government, to hear and revise the allowance of a claim already heard and decided upon by Congress, or by the former Court of Claims, and payment made, even if the claimant was not satisfied. And, we think, it is equally error, in the present case, upon the same principle and for the same reasons.

Indeed, unless the claimant is barred, under the circumstances stated, it would be difficult for the government to determine when there would be an end to claims put forth against it, as there is no statute of limitations, of which we are aware, applicable to them before this court.

The judgment of the court is, that the decree must be REVERSED, the cause remanded, with directions to enter a decree

DISMISSING THE PETITION.

UNITED STATES v. KIRBY.

1. The temporary detention of the mail, caused by the arrest of its carrier upon a bench warrant, issued by a State court, of competent jurisdiction, upon an indictment found therein for murder, is not an obstruction or retarding of the passage of the mail, or of its carrier, within the meaning of the ninth section of the act of Congress of March 3, 1825, which provides "that, if any person shall knowingly and wilfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall, upon conviction, for every such offence pay a fine not exceeding one hundred dollars."
2. That section applies only to those who know that the acts performed by them, obstructing or retarding the passage of the mail, or of its carrier, will have that effect, and perform them with the intention that such shall be their operation.
3. When the acts which create the obstruction are in themselves unlawful, the intention to obstruct will be imputed to their author, although to attain other ends may have been his primary object. The statute has