that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter.

The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted, "that whoever drew blood in the streets should be punished with the utmost severity," did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire—"for he is not to be hanged because he would not stay to be burnt." And we think that a like common sense will sanction the ruling we make, that the act of Congress which punishes the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder.*

The questions certified to us must be answered IN THE NEGATIVE; and it is SO ORDERED.

Mr. Justice MILLER, having been absent at the hearing, took no part in this order.

MULLIGAN *v.* CORBINS.

A statute of a State releasing "whatever interest" in certain real estate may "rightfully" belong to it, is not a law impairing the obligation of a contract in a case where an agent of the State, having by contract with it acquired an interest in *half* the lot, undertakes to sell and conveys the *whole* of it. In such case—and on an assumption that the agent does own one half—the statute will be held to apply to the remaining half alone.

ERROR to the Court of Appeals of Kentucky; the case being this:

Solomon Brindley, a free colored man, was the owner, in

* See also United States *v.* Hart, 1 Peters's Circuit Court, 390.

Statement of the case.

1808, of a small house and lot of trifling value, on Upper Street, in the city of Lexington, and was now dead. It did not appear when he died, or that he ever transferred the title to the property; but, at a very early day, William T. Barry occupied it, and this occupancy was continued after *his* death, by his legal representatives, until 1843, when it was sold, as Barry's property, on an execution in favor of the old Bank of Kentucky (then mainly owned by and under the control of the State), and purchased for Martha Ann Corbin, and Martha Ann Corbin, her daughter, two of the defendants in error, who occupied and claimed it until November, 1855.

At this date, T. B. Monroe, Jr., an attorney-at-law, was employed by the auditor of public accounts, in conformity with a statute of Kentucky,* by a written contract, to sue for and recover the property, as having escheated on the death of Brindley, it being agreed that Monroe was to have for his compensation a moiety of the property recovered. Monroe, in the execution of his employment, prosecuted a suit in the name of one Baxter, the agent appointed to take charge of escheated estates in Fayette County, where the property was situated, and procured a judgment of eviction, and afterwards undertook to sell the property to Mulligan, the plaintiff in error, and to deliver possession to him. The record did not show that Baxter was a party to this sale, or had sanctioned it. At this point of time the legislature stepped in, and on the 4th of April, 1861, passed a statute, enacting,

"That *whatever interest* in a small house and lot on Upper Street, in the city of Lexington, which was conveyed, in the year 1808, by Thomas Bodley to Solomon Brindley, may *rightfully belong to the State* by escheat, or otherwise, since the death of the said Brindley, without any known legal heirs, be, and the same is hereby, *released to, and vested in*, Martha Ann Corbin for her life, and her daughter, Martha Ann, absolutely after her said mother's death. The said property having been

* 1 Stanton's Statutes of Kentucky, chap. 34, p. 459.

bought, in the year 1843, as the property of William T. Barry, claiming and possessed of it, after said Brindley's death, and conveyed, in 1844, to the said mother and daughter, and who have occupied it as theirs ever since said sale and conveyance."

Mulligan, having filed a petition against the Corbins to recover possession of the property, insisted that this act of 1861 was inhibited by the Constitution of the United States, because it impaired the obligation of the contract which the auditor made with Monroe. The Court of Appeals directed the petition to be dismissed, and Mulligan brought the case by writ of error here.

Mr. Garrett Davis, for the plaintiff in error, made very numerous objections to the title of the Corbins, in addition to that of the unconstitutionality of the act of the 4th April, 1861.

Mr. Moore, contra.

Mr. Justice DAVIS delivered the opinion of the court.

The only question that arises in this case, which it is competent for this court to decide, is, whether the act of the legislature of Kentucky, passed on the 4th day of April, 1861, is repugnant to the Constitution of the United States, because it impairs the obligation of a contract.

If the legislature had the power to release to the defendants in error the right of the State to the property in controversy, both common justice and the good name of the commonwealth demanded the exercise of that power, under the circumstances of this case. It appears that the affairs of the old Bank of Kentucky were substantially under the control of the State when the house and lot were seized as the property of Barry, and sold. The purchasers at that sale had a right to conclude that the State would never interfere to their prejudice, and no other party could, if Brindley died without heirs. The legislature, after the facts were known, would have been guilty of a great wrong, if they had refused to pass an act to give validity, as far as it

had power to do so, to a sale of which the State derived the benefit.

The general power of the legislature to grant to individuals the lands belonging to the State is not denied; but it is claimed there was a restraint in this instance, on account of the previous contract, concerning the property, between the auditor and Monroe.

It is charitable to suppose that the auditor would never have employed Monroe to dispossess the Corbins, had he known the manner in which they acquired possession, and that his proceedings were prompted by a commendable zeal for the true interests of the State.

But, after all, did the contract with Monroe have the effect claimed for it by the plaintiff in error? It certainly did not vest in him the title to the property. If, as is admitted, the auditor had the authority to contract with an attorney-at-law to give him one-half the escheated estate, as compensation for its recovery, still, this contract did not confer on him a license to sell the property after it was recovered, or to make any disposition of it that would bind the government.

The legislature had intrusted the management of escheated property with bonded officers, and confided to them the exclusive power of selling, under the written directions of the auditor.* In no other mode could the legal title of the State be divested, and it nowhere appears that Baxter, in whose name the suit against the Corbins was prosecuted, and who was the agent for escheated estates in Fayette County, where the property is situated, was a party to the sale to Mulligan, or that he ever sanctioned it. Viewing the transaction in the aspect most favorable to Mulligan, it is apparent that his rights, under this contract, are those which belonged to Monroe, and that he has no other or better rights than Monroe had. The case, then, resolves into this question: what were the rights of Monroe, and how are they affected by the act of the legislature? The answer to this question is very plain, and relieves the proceeding of any difficulty.

* 1 Stanton's Statutes of Kentucky, chap. 34, p. 459.

Syllabus.

When the escheat was perfected, the legal title to the entire property was vested in the State; but as the State, through its auditor, had bargained with Monroe to concede a moiety to him for his services, it follows that the State was under obligations to convey, in some proper form, this moiety to him. This left the State the undisputed owner of one-half the property, with such power of disposition as the legislature, in its wisdom, should see proper to give it. The act in question does not attempt to interfere with any privilege which belonged to Monroe, and we have no right to presume it was passed with any such intention. It does not profess to grant to the Corbins any particular estate, but simply releases to them whatever interest the State had to the property they occupied, and as the State undoubtedly had an interest in it to the extent of one moiety, how can it be said that the obligation of the contract between the auditor and Monroe was impaired by this statute?

The statute operated rightfully on the moiety owned by the State, and there is no authority for saying the legislature meant to do anything more.

It is not our province to decide any other point in this case, and as the act of the legislature of Kentucky does not, either in terms or by necessary implication, impair the obligation of the auditor's contract with Monroe, it follows that the judgment of the Court of Appeals must be

AFFIRMED.

UNITED STATES v. GILMORE ET AL.

1. Before a depositary of public money can, in a suit against him by the United States for a balance, offer proof of credits for clerk hire, he must show by evidence from the books of the treasury — a transcript of the proceedings of the officers being a proper form of such evidence — that a claim for such credits had been presented to the proper officers of the treasury (that is to say, to the first auditor, and afterwards to the first comptroller for his final decision), and by them had been, in whole or in part, disallowed.
2. If proof of such credits have been permitted to go to the jury without