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

such proper foundation for it having been first laid, it must be afterwards excluded, and all consideration of the claims withdrawn from their consideration. To allow them to remain, even with instructions whose purpose was to control and cure its effect, or with any instructions short of withdrawal, is error.

3. Whether testimony in support of such claims was properly in the case, was a question for the court and not for the jury.

ERROR to the Circuit Court for Nebraska; the case having been submitted *by Mr. Ashton, Assistant Attorney-General, for the United States.*

No argument on the other side.

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

This is an action of debt upon the bond of Gilmore, one of the defendants in error, as receiver of public moneys "for the district of lands subject to sale in the Territory of Nebraska," and also as a depositary of public moneys.

Upon the trial the defendants claimed a credit for the hire of certain clerks employed by Gilmore as such depositary, and offered proof in support of the demand. The attorney of the United States objected to the admission of the evidence upon several grounds. One of them was, that it must first be shown that the claim had been exhibited to the proper accounting officer of the treasury and disallowed, and that the exhibition and disallowance could be proved only by the certificate of such officer. "Whereupon the court stated it would permit the evidence, and control the matter by instructions to the jury. Objections overruled, and ruling excepted to by plaintiffs."

The same things occurred with reference to a claim for office rent, set up by Gilmore as such depositary.

Gilmore subsequently testified as follows:

"I presented these claims to the accounting officer, and they were disallowed."

To what officer they were presented is not disclosed. This is all the testimony the bill of exceptions contains upon the subject.

The statutory provisions prescribing what shall be done by the debtor in such cases are found in the 4th section of the act of March 3d, 1797.* That section, so far as it is material to be considered in the case before us, is as follows:

"In suits between the United States and individuals, no claim for a credit shall be admitted upon the trial but such as shall appear to have been presented to the accounting officers of the treasury for their examination, and by them disallowed in whole or in part."

Those officers were then the auditor and comptroller. There was but one of each at that time.† It was made the duty of the auditor "to receive all public accounts, and after examination to transmit the accounts, with the vouchers and certificate, to the comptroller for his decision thereon."

The act of the 25th of April, 1812,‡ created the General Land Office, and transferred to the commissioner the duties of the auditor in respect to all accounts relating to the public lands. The act of March 3d, 1817,§ created four additional auditors and one additional comptroller. It gave the charge of all accounts accruing in the Treasury Department to the first auditor, and made it his duty to report them to the first comptroller. The language employed is the same as that used in the act of 1797. This did not affect the duties of the Commissioner of the General Land Office as to all accounts relating to the public lands, which the act of 1812 had devolved upon him.

Receivers and depositaries are required to keep accounts of their contingent expenses. Those accounts are separate and distinct from those of their receipts and disbursements of the public moneys. Where the offices of receiver and depositary are united in the same person, the expense accounts of the two offices are nevertheless required to be kept separately from each other.

The claims in question in the case before us grew out of

* 1 Stat. at Large, 515.
† Act of September 2, 1789, Id. 66.
‡ 2 Stat. at Large, 716.
§ 3 Id. 366.

that branch of Gilmore's duties which related to his office of depositary, and had no connection with his office of receiver. They should, therefore, have been presented to the first auditor for examination, and afterwards to the first comptroller for his final decision. If disallowed, the disallowances would have appeared in the "statement of the differences of account" transmitted by the auditor to the comptroller with the accounts, vouchers, and certificate, as required by the statute. If the comptroller had confirmed the decision of the auditor, a transcript of the proceedings of those officers would have been the proper evidence for the defendants to produce.

If the claims were not presented until after the account was closed upon the books of the treasury, still it was necessary to submit them for examination to both those officers. The action of both was necessary. A transcript showing that action would have been sufficient. Parol evidence in such cases is wholly inadmissible. Evidence from the books of the treasury in some form is indispensable.

These remarks have no application to those provisions of the section under consideration which have not been referred to.

The court should not have permitted any proof of the claims to be given until the proper foundation for it had been laid. When the defendants failed to produce the evidence necessary to warrant the introduction of such testimony, all which had been given should have been excluded, and the claims withdrawn from the consideration of the jury. To allow them to remain in the case was an error, and any instruction given afterwards, short of their withdrawal, was unavailing to cure it. The course proposed to be pursued when the objection by the district attorney was taken, could hardly fail, under any circumstances, to mislead and confuse, and to prevent the proper trial of the cause. The object of pleading is to concentrate the controversy upon the questions of fact and of law, which should control the result. The value of the system in the administration of justice can hardly be too highly estimated. The

exclusion from the testimony of everything irrelevant and incompetent is not less important.

Was the error committed by the admission of the testimony objected to subsequently remedied?

Nothing further upon the subject appears in the record but the following passages at the close of the bill of exceptions:

"The plaintiff requested the court to charge the jury as follows:

"1st. That in this action no claim for credit can be admitted as a defence, unless it is first shown to the jury that such claim was presented to the proper officer of the government for examination, and by such officer disallowed in whole or in part; or that the defendant, Gilmore, first shows that he was prevented from exhibiting such claim or account of expenses at the treasury by absence from the United States, or some unavoidable accident."

Another instruction, not material to be stated, was also asked. The bill then proceeds:

"Which said two points were not given by the court in the form requested, but were substantially given in the oral charge of the court to the jury. The first point and the second were given with a modification, to which the plaintiffs then and there excepted."

What the modification of the first instruction was to which this exception relates is not shown. We cannot, therefore, consider it.

Whether the testimony in support of the claim was properly in the case was a question for the court, and not for the jury. Yet it was left to the latter for them to determine. It is clear that the incompetent testimony which had been admitted was not withdrawn from their consideration.

The judgment is, therefore, REVERSED, and the cause will be remanded to the Circuit Court with instructions to issue a

VENIRE DE NOVO.