

## Statement of the case.

PARISH ET AL. *v.* UNITED STATES.

1. A contract made by a surgeon and medical purveyor of a military department of the United States, with parties for furnishing ice, for the use of the sick and wounded in the hospitals of the United States in 1864, was invalid until approved by the Secretary of War. Without such approval the surgeon could not bind the United States in any way.
2. A contract thus approved being executed by the other parties, superseded a previous contract signed by the surgeon, although the latter conformed strictly to proposals made by the parties, and accepted by the surgeon.

APPEAL from the Court of Claims. The case was thus:

On the 4th of December, 1863, D. L. Magruder, the surgeon and medical purveyor of the military department of the West, acting under instructions of the Surgeon-General of the United States, gave notice that proposals would be received at his office in Louisville, Kentucky, until the 20th of that month, for furnishing ice to all the general hospitals of the United States at the West, including the division of the Mississippi and the Department of the Gulf, in such quantities as might be required, for the use of the sick and wounded, during the year 1864. Under this notice, Parish & Co., the claimants, submitted proposals which were accepted, and, on the 13th of the same month, a contract was prepared and signed by them and Magruder, by which they were to furnish ice for twenty different places, one of which was New Orleans. It was understood between the parties that this contract was not to be binding until it should receive the approval of the Surgeon-General, to whom it was forwarded. It received such approval, and was then despatched by mail to Magruder; but, before reaching him, the approval was reconsidered, and the contract, by order of the Secretary of War, was recalled, and the draft of another contract prepared in its place. After this draft had reached Magruder, he was directed by the secretary to erase from it the name of New Orleans, as one of the places to be supplied with ice, and have it executed in lieu of the contract originally proposed, and this was done. The claimants then executed

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the instrument, but, in doing so, they protested against the alteration, stating, however, that they would lay all the facts before the officials at Washington, and seek from them redress. But, notwithstanding this protest, they treated the contract thus made as the only one binding upon them, and carried out their obligations under it. They did not deliver, or offer to deliver, any ice at New Orleans.

*Mr. A. L. Merriman, for the appellant; Mr. T. L. Dickey, Assistant Attorney-General, contra.*

Mr. Justice FIELD, after stating the facts, delivered the opinion of the court, as follows:

Upon the facts found by the Court of Claims, it is difficult to perceive upon what ground the contractors can urge any claim for damages against the government. The contract with New Orleans erased, superseded all other proposed contracts. No other had any validity. The action of Magruder, until the approval of the Secretary of War, was merely initiatory to a contract. He could not bind the United States in any way.

If the claimants had any objections to the provisions of the contract they signed, they should have refused to make it. Having made it, and executed it, their mouths are closed against any denial that it superseded all previous arrangements.

The case of *Gilbert & Secor v. United States*,\* is one much stronger than this. There it was insisted that the act of Congress, under which the secretary acted in making a contract with Gilbert & Secor, was itself an acceptance of certain proposals presented by them, and that, taken in connection with the proposals, it constituted a contract binding on the government. The secretary made with the parties a contract requiring, in one particular, different kind of materials from those originally proposed; but this court held that the parties were bound by the contract signed, and could not claim any compensation for the difference in value between the materials used and those proposed.

\* *Supra*, 358.

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But, independent of any consideration respecting the character of the contract, it nowhere appears that the claimants suffered any damages from the supposed injury alleged. They did not offer to deliver any ice at New Orleans, and it is not shown that they secured any for such delivery, or, if they secured any, that they were unable to part with it at prices as remunerative as those they might have obtained at New Orleans.

The appeal is frivolous, and the decree of the court below is

AFFIRMED.

## ALDRICH v. AETNA COMPANY.

1. A judgment in the highest court of law or equity of a State, if otherwise a proper subject for review here, under the 25th section of the Judiciary Act, is not rendered incapable of being reviewed by the fact that judgment was rendered on a voluntary submission of a case agreed on for judgment, under the provisions of the code of the State.
2. An allowance of a writ of error by the chief judge of the court in which the judgment was, in fact, rendered, is not ground for dismissing the writ of error, though the record, by order of such court, may have been sent to an inferior court, and an additional entry of what was adjudged in the appellate one there entered.
3. A defendant, who has waived the irregularity by an appearance, cannot object to jurisdiction, because the citation is not signed by the judge who allowed the writ of error.
4. When the question in the highest court of law or equity of a State is whether the mortgage of a vessel, duly recorded under an act of Congress, gives a better lien than an attachment issued under a State statute, and the decision is, that it does not; a proper case exists for review in this court, under the 25th section of the Judiciary Act.
5. The mortgage of a vessel, duly recorded, under an act of Congress, cannot be defeated by a subsequent attachment, under a State statute, enacting, that no mortgage of such property shall be valid, as against the interests of third persons, unless possession be delivered to and remain with the mortgagee, or the mortgage be recorded in a manner specified, in which a mortgage, whose lien in this case was the subject of controversy, was not. *White's Bank v. Smith* (7 Wallace, 646) affirmed.

## ERROR to the Court of Appeals of New York.

The code of procedure of the State of New York\* thus enacts:

\* §§ 372, 374.