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tentive to their duties they must have known that those in charge of the propeller did not understand their signal, and consequently if they made the proposed change in the course of their steamer, a collision would follow, and if they did not so understand the matter, it was their own fault.

Viewed in any light, the propeller was not at fault, and the responsibility must rest on the steamboat. Our conclusion is, that the Johnson is liable for the whole damage, and that the decree of the Circuit Court should be in all things affirmed.

Appeal was taken by the libellants from so much of the decree as exonerated the propeller, but their claim, in the view of this court, is against the colliding steamboat, and not against the propeller.

DECREE IN EACH CASE AFFIRMED.

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BONNER v. UNITED STATES.

The United States cannot be sued in the Court of Claims upon equitable considerations merely. Hence the holder of a military bounty-land warrant can have no legal right through that court, against the United States, for compensation on the allegation that the government has wrongfully appropriated to other uses the lands ceded for his benefit.

APPEAL from the Court of Claims; the case being this:

The State of Virginia, during the Revolutionary war, promised bounty lands to her troops, on Continental establishment, and at an early day set apart for their benefit a tract of country within the limits of the present State of Kentucky, which it was supposed at the time would be sufficient for the purpose. Recognizing, however, that this reservation might prove insufficient to satisfy the claims of these troops, Virginia, in ceding, March 1st, 1784, to the United States the territory beyond the Ohio River, reserved all the lands lying between the Scioto and Little Miami Rivers, to supply any deficiency of lands in the Kentucky district. It was very

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soon manifest that the apprehended deficiency existed, and the second reservation, therefore, became operative. In order to ascertain the limits of this reservation, it was necessary to find the sources of these two rivers and to run the line between them. The execution of this object was the occasion of much difficulty and the cause of frequent legislation by Congress. Two lines were run by different surveyors, one by Ludlow and the other by Roberts. It is unnecessary here to trace the history of these lines, or to show which is scientifically correct. It is enough to say that Congress, in 1818,\* established Ludlow's line as the true boundary, and excluded entries upon the *west* side of it.

In this state of things, Wallace, being the owner and holder of unsatisfied military bounty-land warrants, issued by the State of Virginia for the services of her troops on the Continental establishment in the war of the Revolution, located them, in 1838 and 1839, on lands which he asserted to be within the district reserved by Virginia to satisfy warrants of this class, in her deed of cession to the United States of March 1st, 1784. The entries were, however, made on the *west* side of Ludlow's line. That line, therefore, excluded the land on which Wallace located his entries, though Roberts's line included them.

The lands on which the attempt was thus made to locate these warrants had long before that time been disposed of to other parties, and the government declined to recognize the validity of Wallace's proceedings, and refused to issue patents to him. Wallace accordingly filed a petition in the Court of Claims; a court which, by the act constituting it,† has power to hear and determine claims against the United States, *founded upon any law of Congress, or regulation of an executive department, or upon any contract with it, express or implied.* His claim was that as the government had wrongfully appropriated the lands on which the warrants were laid, and as he could not get the lands themselves, he should be paid the amount of money received into the treasury from their

\* 3 Stat. at Large, p. 424.

† See 10 Stat. at Large, 612.

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sale, with interest, or, in lieu thereof, have land scrip issued to him; the petitioner stating that he would be satisfied with this, "or with such other mode, if any there be, as will be *equitable and just*."

Wallace dying soon after, his executor and devisee, one Bonner, took his place upon the record. He insisted in the Court of Claims that there was no power in Congress to establish Ludlow's line as the true boundary, since Virginia had not assented to this action on its part, and since it was demonstrable that this line did not include all the lands between the two rivers.

The Court of Claims, however, took a different view of the obligations of the government, and decided adversely to the claim on its merits.

The case being now here for review.

*Mr. Hoar, Attorney-General, and Mr. Talbot, special counsel, for the United States*, having argued the question of merits, in reply to *Mr. J. J. Coombs, for the appellant*, contended that there was a defect in the appellant's case on its face; that the allegation of the petition was of property held in trust by the United States for the satisfaction of these bounty warrants, and of a violation of this trust by the trustee; with a prayer not for judgment for a sum of money, but in fact for any equitable relief; that the Court of Claims being created by statute, its equitable jurisdiction was to be sought for in the acts of Congress defining its powers; and that there no such jurisdiction could be found. It was not authorized to give judgment except upon the basis of an act of Congress, a regulation of an executive department, or a contract, which terms did not include a case of trust arising out of a Virginia bounty-land warrant.

Mr. Justice DAVIS delivered the opinion of the court.

If the position of the counsel of the United States, that the Court of Claims has no authority to hear a case of this character, be well taken, we are relieved of the necessity of deciding the merits of the controversy.



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The claimant insists that there was no power to establish Ludlow's line as the true boundary, and exclude entries on the west side of it, as Virginia did not assent to this action on the part of Congress, and as it is demonstrable that this line does not include all the lands between the two rivers.

If this position be correct, this claim is based on the theory that the United States has violated the trust contained in the deed of cession of the Northwestern Territory, and is bound in good conscience to furnish compensation to the Virginia beneficiaries who suffer by this misconduct. This makes a case for the interposition of a court of equity, and if it were a controversy between two private suitors, it would have to be settled there, for a court of law could not afford the proper mode and measure of relief. But the Court of Claims has no equitable jurisdiction given it, and was not created to inquire into rights in equity set up by claimants against the United States. Congress did not think proper to part with the consideration of such questions, but wisely reserved to itself the power to dispose of them.

Immunity from suit is an incident of sovereignty, but the government of the United States, in a spirit of great liberality, waived that immunity in favor of those persons who had claims against it which were founded upon any law of Congress or regulation of an executive department, or upon any contract with it, express or implied, and gave the Court of Claims the power to hear and determine cases of this nature.

The inquiry then arises whether the present case, in view of this limited jurisdiction, is one that the Court of Claims had a right to consider. The answer to this question seems to us of easy solution. It is not pretended that there was any regulation of a department to justify the entries in dispute, and it is certain, instead of having a law of Congress to rest upon, they were made in violation of the whole course of legislation by Congress on the subject. Congress has not only, in fixing the boundary line of the reservation, excluded these entries, but has also limited the time in which the

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holders of warrants of the class in question should have the right to locate them, and, in addition to this, has forbidden their location on tracts of land for which patents had been previously issued, or which had been previously surveyed.\*

As the land in question had been previously patented to individuals, or granted for the use of schools, it follows that the attempt on the part of the claimant to locate his warrants on them was contrary to law, and that the claim which he now makes for compensation, because of the failure of this proceeding, cannot be said to be founded on a law of Congress. Nor can it be said to be based on a contract in the sense of the law conferring jurisdiction on the Court of Claims. That court was authorized to enforce legal rights and obligations, but it could not proceed further and judge of the equities between the citizen and his government. In the absence of legislation by Congress the holder of a Virginia military bounty-land warrant can have no legal right against the United States for compensation on the allegation that the government has wrongfully appropriated to other uses the lands ceded for his benefit.

It is only a contract authorized by law that the Court of Claims can consider, and as there is no law of Congress on this subject there is nothing on which that court could base a judgment against the United States if, in the opinion of that tribunal, it had not fulfilled its duties towards the beneficiaries under the Virginia deed of cession. The liability of the government, if at all, arises out of the breach of an accepted trust, and that liability cannot be enforced at law. The claimant is in no better position because the government is the trustee than he would be if a private person occupied that relation, and it is very clear, if such were the case, that a court of equity would alone have the power to deal with him.

As the government has not thought fit to allow itself to

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\* See the following acts of Congress: March 23, 1804, 2 Stat. at Large, 274; March 2, 1807, *Ib.* 425; April 2, 1818, 3 *Id.* 423; March 1, 1823, 3 *Id.* 772; July 7, 1838, 5 *Id.* 262.

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be sued in the Court of Claims on equitable considerations, it follows that the remedy of the claimant, if any now exists, is with Congress.

The judgment of the court below is REVERSED, and the case is remanded to that court with directions to dismiss the petition for

. WANT OF JURISDICTION.

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THE HARRIMAN.

Performance of a contract of charter-party to proceed to a distant port specified, made during a war and for the obvious purpose of furnishing articles to one of the parties to it, held not dispensed with by the fact, learned in the course of the voyage, that the whole purpose of the voyage was defeated by the changed condition of military operations; the language of the charter-party having been absolute in its terms, and without provision for any contingency.

APPEAL from the Circuit Court for the District of California, the case being thus:

During the recent war between Spain and the Republics of Chili and Peru, the Spanish fleet being engaged in active hostilities in the South American waters against the ports of the enemy, required supplies of steam-coal, and vessels were taken up on charter, in San Francisco, to convey cargoes for delivery at sea to the vessels of the fleet in aid of the hostile operations of blockade and bombardment of the Chilian ports.

Among these vessels taken up by persons watching the operations of the Spanish fleet, was the ship B. L. Harriman, which was engaged in this service by a charter-party, under date of May 4th, 1866, entered into between one C. J. Jansen, her owner, a merchant of San Francisco, and a certain Emeric, as freighter, also a merchant of that city.

The ship engaged her whole capacity to the freighter, and to take no cargo except from him or his agent, he stipulat-