*Young *v.* Preston.

Assumpsit for work and labor.

If A. agree, under seal, to do certain work for B., and does part, but is prevented by B. from finishing it, according to contract; A. cannot maintain a *quantum meruit* against B., for the work actually performed, but must sue upon the sealed instrument.

Preston *v.* Young, 1 Cr. C. C. 357, reversed.

Error to the Circuit Court for the district of Columbia, in an action of *assumpsit*, brought by Preston against Young, upon a *quantum meruit* for work and labor.

At the trial below, the defendant, Young, offered in evidence a sealed agreement between the parties, and offered further evidence that the work and labor for which this action was brought, were done in consequence of that agreement; and prayed the court to instruct the jury that, if, from the evidence, they should be of opinion, that the said work and labor was done in consequence of the sealed agreement, the action of *assumpsit* would not lie: which instruction the court refused to give, evidence having been offered to the jury, that the plaintiff was prevented from completing the work mentioned in the agreement, by the defendant, who employed another person to finish it.

But the court instructed the jury, that if, from the evidence, they should be of opinion, that the plaintiff was prevented by the defendant from proceeding to complete the said work, according to the said agreement, in a reasonable time, then the plaintiff had a right to recover, in this form of action, from the defendant, as much money as the plaintiff deserved to have for the work done by him for the defendant, although the same was done in consequence of the said agreement, and although the whole work mentioned in the said agreement was not completed. To which refusal and instruction, the defendant excepted; and the judgment below being against him, he brought his writ of error.

Upon the opening of the case, This Court, without argument, reversed the judgment.

*240] *On a subsequent day, *C. Simms*, one of the counsel for the defendant in error, not having been present at the opening of the case, was permitted by the court to cite authorities in support of the opinion of the court below, and cited the following: *Towers* v. *Barrett*, 1 T. R. 133, where it was decided, that *assumpsit* for money had and received will lie to recover money paid on a contract which is put an end to, as where, either by the terms of the contract, it is left in the plaintiff's power to rescind it by any act, and he does it; or where the defendant assents to its being rescinded. In that case, the counsel for the defendant admitted, that when the party has done anything to preclude himself from going into the contract, then money had and received will lie. Buller, J., said, "The defendant left it in the power of the plaintiff to put an end to the contract. If the contract be open, the plaintiff's demand is not for the whole sum, but for damages arising out of that contract."

So, in *Giles* v. *Edwards*, 7 T. R. 181, there was a special contract between the plaintiff and the defendant, which the defendant had prevented the plaintiff from completing. The court was clearly of opinion, that "as

by the defendant's default, the plaintiffs could not perform what they had undertaken to do, they had a right to put an end to the whole contract, and recover back the money they had paid under it." So, here, *Simms* contended, that as the defendant had prevented the plaintiff from completing the contract, the plaintiff had a right to put an end to it. If he had paid money under the contract, he would have had a right to recover it back ; but as instead of advancing money, he had done work and labor, which could not be recovered back in specie, he had a right to recover its value.

So, in 1 Powell on Contracts 417, "If he, who is benefited by another's fulfilling his contract or agreement, is the occasion why it is not carried into execution, the contract or agreement is thereby entirely dissolved, and the party bound discharged from his obligation."

But notwithstanding these authorities, THE COURT adhered to their first impression, some of the judges saying, *that the plaintiff had a clear right of action upon the sealed instrument ; he might aver in his declaration that he had, in part, performed the work, and was ready to do the rest, but was prevented by the defendant. And whenever a man may have an action on a sealed instrument, he is bound to resort to it. [*241

Judgment reversed.[1]

ROSE v. HIMELY.[2]

Jurisdiction of foreign court of admiralty.

If a claim be set up under the sentence of condemnation of a foreign court, this court will examine into the jurisdiction of such court; and if that court cannot, consistently with the law of nations, exercise the jurisdiction which it has assumed, its sentence will be disregarded.

But of their own jurisdiction, so far as it depends upon municipal laws, the courts of every country are the exclusive judges.

Every sentence of condemnation by a competent court, having jurisdiction over the subject-matter of its judgment, is conclusive as to the title to the thing claimed under it.

The prohibition, by France, of all trade with the revolted blacks of Santo Domingo, was an exercise of a municipal, not of a belligerent right; and seizures under that prohibition were only authorized, within two leagues of the coasts of that island.

A seizure beyond the limits of the territorial jurisdiction, for breach of a municipal regulation, is not warranted by the law of nations; and such a seizure cannot give jurisdiction to the courts of the offended country; especially, if the property seized be never carried within its territorial jurisdiction.

Quære? Whether a French court can, consistently with the law of nations, and the treaty, condemn American property, never carried into the dominions of France, and while lying in a port of the United States.

Rose *v.* Himely, Bee 316, reversed.

THIS was an appeal from the sentence of the Circuit Court for the district of South Carolina, which reversed that of the district judge, who awarded restitution to Rose, the libellant, of certain goods, part of the, cargo of the American schooner Sarah.[3]

This vessel, after trading with the brigands or rebels of St. Domingo

[1] See notes to January *v.* Goodman, 1 Dall. 208.

[2] As to the point that the foreign court has no jurisdiction, Rose *v.* Himely was overruled in Hudson *v.* Guestier, 6 Cr. 281. But that the jurisdiction is examinable, see Slocum *v.* Wheeler, 1 Conn. 429; Palmer *v.* Oakley, 2 Doug. (Mich.) 491.

[3] Reported in the district court, Bee 300, 308