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Argument for the appellant.—Argument for the United States.

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tions to enter a decree of dismissal as to this first count in the petition.

Mr. Justice FIELD dissented from this judgment.

[See the next case.]

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#### CLYDE *v.* UNITED STATES.

A rule of the Court of Claims, requiring parties to present their claims to an executive department before suing in that court, is unauthorized and void.

APPEAL from the Court of Claims; the case being argued and disposed of at the same time with the preceding one.

Clyde, the claimant in the preceding case, presented his petition in that court, the same petition mentioned in that case, claiming by the second count of it compensation for the use of his barge William Hunt, as he had in the former appeal, claimed by the first count, compensation for the use of the Tallacca.

The Court of Claims dismissed the claim on the ground that it was not presented in conformity with a rule of practice which the court then had, but which has since been abrogated. This rule required that where the case was such as is ordinarily settled in any executive department, the petition should show that application for its allowance had been made to that department, and without success, and its decision thereon.

From the action of the court, Clyde, the claimant, appealed to this court.

*Messrs. C. F. Peck and T. J. Durant, for the appellant,* argued that the rule in question was one both arbitrary and without authority.

*Messrs. B. H. Bristow and C. H. Hill, contra,* contended that it was both useful and proper; and that not having

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Opinion of the court.

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been complied with, the court below properly refused to hear the case.

Mr. Justice BRADLEY delivered the opinion of the court.

However useful and proper such a rule as that complained of by the appellant may have been prior to the enactment of the law passed June 25th, 1868,\* which requires the Attorney-General to obtain from the proper department, and the department to furnish, such facts, circumstances, and evidence as it might be in possession of in relation to any claim prosecuted in the Court of Claims, we are of opinion that it was not competent for the Court of Claims to impose it as a condition of presenting a claim in that court. Instead of being a rule of practice, it was really an additional restriction to the exercise of jurisdiction by that court. It required the claimant to do what the acts giving the court jurisdiction did not require him to do before it would assume jurisdiction of his case.

The act of 1855, which created the court, declares that it shall "hear and determine all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States, which may be suggested to it by a petition filed therein." The rule adopted by the court required that the claimant should not only have such a claim as stated in the act, but should have first gone through the department which might have entertained it, before he would be permitted to prosecute in that court. This was establishing a jurisdictional requirement which Congress alone had the power to establish.

This judgment of dismissal is therefore reversed, and the record remitted with directions to proceed to a hearing on the second count.

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\* 15 Stat. at Large, 76.