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Statement of the case.

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## VIGO'S CASE: EX PARTE UNITED STATES.

1. When a claim on the government, not capable of being otherwise prosecuted, is referred by special act of Congress to the Court of Claims, acting judicially in its determination, a right of appeal to this court, in the absence of provision to the contrary, is given by the act of June 25th, 1868 (section 8707 Revised Statutes). That act gives to the United States the right of appeal from the adverse judgment of the said court, in all cases where it is required by any general or special law to take jurisdiction of a claim made against the United States, and act judicially in its determination.
2. A right of appeal, though not given in terms in such special act, may be inferred from its general character and its particular indications.
3. Some of these pointed out in the present case.

SUB petition for mandamus.

On the 8th of June, 1872, Congress passed the following act:

*"An act referring the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, to the Court of Claims for adjustment.*

*"Be it enacted, &c., That the claim of the heirs and legal representatives of Colonel Francis Vigo, deceased, late of Terre Haute, Indiana, for money and supplies furnished the troops under command of General George Rogers Clarke, in the year 1778, during the Revolutionary war, be, and the same is hereby, referred, along with all the papers and official documents belonging thereto, to the Court of Claims, with full jurisdiction to adjust and settle the same; and, in making such adjustment and settlement, the said court shall be governed by the rules and regulations heretofore adopted by the United States in the settlement of like cases, giving consideration to official acts, if any have heretofore been had in connection with this claim, and without regard to the statutes of limitations."*

On the 31st October, 1873, the heirs of Colonel Vigo filed in the Court of Claims their petition against the United States, under the authority of this act, and with their petition filed "the papers and official documents belonging" to the claim. Judgment was rendered in the action on the 18th

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January, 1875, against the United States for \$49,898. From this judgment the United States asked the Court of Claims for the allowance of an appeal to this court, which was refused. The present application was for a mandamus from this court directing the judges of that to allow the appeal.

*Mr. J. S. Blair, for the United States (with whom were Mr. G. H. Williams, Attorney-General, and Mr. John Goforth, Assistant Attorney-General), cited Meade v. United States,\* to show that if, as the other side of necessity assumed, the Court of Claims was authorized to enter a judgment which was to be paid out of the appropriations for the judgments of the said court, then the United States was entitled to an appeal and re-examination of the whole case.*

*Mr. William Penn Clarke, contra, relied on Ex parte Atocha,† which case, as he contended, showed that where jurisdiction was given to the Court of Claims by special act—as here—the authority of this court to review its action was limited and controlled by the provisions of the act; arguing, in addition, that the provisions of the present act did not provide for an appeal.*

The CHIEF JUSTICE delivered the opinion of the court.

The Court of Claims, by the terms of the act under which it is organized, has jurisdiction, among other things, to hear and determine all claims which may be referred to it by either House of Congress.‡ All petitions and bills praying or providing for the satisfaction of private claims founded upon any law of Congress, or upon any contract, expressed or implied, with the government, are required to be transmitted, with all the accompanying documents, to the Court of Claims, by the secretary of the Senate or the clerk of the House of Representatives, unless otherwise ordered by a resolution of the House in which they are introduced.§ In

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\* 9 Wallace, 691.

† 17 Id. 439.

‡ 10 Stat. at Large, 612; Revised Statutes, § 1059.

§ 12 Stat. at Large, 765; Revised Statutes, § 1060.

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all cases of final judgments by the Court of Claims, the sum due thereby is to be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of the judgment.\* By the act of June 25th, 1868,† in force when the proceedings in the Court of Claims were commenced in this case, it was provided that an appeal should be allowed on behalf of the United States "from all final judgments of the said Court of Claims adverse to the United States, whether the said judgment shall have been rendered by virtue of the general or special power or jurisdiction of said court." This act is substantially re-enacted in section seven hundred and seven of the Revised Statutes, and, as we think, gives to the United States the right of appeal from the adverse judgment of the Court of Claims in all cases where that court is required by any general or special law to take jurisdiction of a claim made against the United States and act judicially in its determination.

Upon an examination of the act of Congress under which the court took jurisdiction in this case, we find that the claim, "along with all the papers and official documents belonging thereto," was referred to the court "with full jurisdiction to adjust and settle the same." It is a fact of some significance that the word "referred" is here employed, inasmuch as that is the word used in the act defining the general jurisdiction of the court in respect to claims transmitted by either House of Congress.

It also appears that the bar of the statute of limitations applicable to that court is removed in this case and that in some respects the rules of evidence are relaxed. All this would have been unnecessary if the court was not to be governed by the general laws regulating its practice and jurisdiction except so far as they might be modified to meet the necessities of this *special* case. So, too, we find that no provision is made for the payment of any judgment that

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\* 12 Stat. at Large, 766; Revised Statutes, § 1089.

† 15 Stat. at Large, 75.



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might be rendered or for any report from the court to Congress, although it must have been expected that a judgment against the United States was at least possible. Such an omission would hardly have occurred if it had not been supposed that provision for payment had already been made in the general law regulating the payment of all judgments of that court.

From all this we think it manifest that Congress intended to refer this claim to the court for judicial determination and to confer special power and jurisdiction for that purpose. Such being the case the right of appeal necessarily follows.

Atocha's case is materially different from this. In that, the claim of Atocha was against Mexico, and the obligation of the United States for its payment grew out of the treaty of Guadalupe Hidalgo. By that treaty the United States exonerated Mexico from all demands of their citizens, which had previously arisen and had not been decided against that government, and engaged to satisfy them to an amount not exceeding \$3,250,000. They also stipulated for the establishment of a board of commissioners to ascertain the validity and amount of the claims, and provided that its awards should be final. On the 14th of February, 1865, Congress passed a special act for the relief of Atocha, and in it directed the Court of Claims to examine into his claim, and if found to be just and within the treaty, to fix and determine its amount. The act also directed that the amount adjudicated and determined *by that court* should be paid out of any money in the treasury not otherwise appropriated, but the amount to be paid was in no event to exceed the balance of the moneys provided in the treaty for the payment of such claims which remained unapplied to that object. The Court of Claims was of the opinion "that it was the intention of Congress that the court should proceed, not as a court in trying an action against the United States, but as a commission similar to that provided by the treaty." And this court construed the act as referring the matter "to the court to ascertain a particular fact to guide the government in the execution of its treaty stipulations," and held that "as no

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mode was provided for a review of its action, it must be taken and regarded as final."

We think that the return of the judges of the Court of Claims to the alternative writ in this case is not sufficient, and a

PEREMPTORY MANDAMUS IS ORDERED.

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## UNITED STATES v. BOECKER ET AL.

The provision in the sixth section of the act of July 20th, 1868, as to notice of the *place* at which a distiller is to carry on his business, is not matter of form; and when the distiller's bond, following the notice, recites that a person is about to be the distiller at one place, as *ex. gr.*, "*at the corner of Hudson Street and East Avenue, situate in the town of Canton,*" his sureties are not liable for taxes in respect of business carried on by him at another, as *ex. gr.*, "*at the corner of Hudson and Third Streets,*" in the same town, even though he have had no distillery whatever at the first-named place; about four squares from the last-named.

ERROR to the Circuit Court for the District of Maryland.

The United States sued Henry Boecker, principal, and C. Schorr and F. Altevoght, his sureties, in a distiller's bond. The bond was in the penal sum of \$6000, and conditioned that, whereas the said Henry "is now, or intends, on and after the 4th day of May, 1869, to be a distiller within the second collection district of the State of Maryland, to wit, *at the corner of Hudson Street and East Avenue, situate in the town of Canton, county of Baltimore, and State aforesaid;* now, if the said Henry shall in all respects faithfully comply with all the provisions of law in relation to the duties of distillers," &c., "then this obligation to be void, otherwise it shall remain in full force."

It was proved upon the trial that Boecker was largely indebted to the United States "for taxes assessed against him in respect to his business of distilling, carried on by him at his distillery *at the corner of Hudson and Third Streets, in the town of Canton,* for the months of May, June, July, Aug<sup>1st</sup>,