of Congress, or their committees, and not to those of any of the executive departments. The section itself is its own best interpreter. In view of the long supervision over the botanic garden by the Library Committee, and of the previous legislation referred to, language could hardly be plainer than that which it contains.

But there is additional evidence that this increase of salary was intended to be confined to persons employed under the immediate direction of the two Houses of Congress and their committees, in the fact, that by a joint resolution of February 28th, 1867,* 20 per cent. was added to the salaries of all employés of the several executive departments, including the Department of Agriculture, for one year from and after the 30th of June, 1866; and the claimant actually received such addition accordingly. It is not reasonable to suppose that Congress intended to single out this particular employé from all the government employés as alone entitled to a double addition of 20 per cent. to his compensation, which he certainly would receive for the year named, if his construction of the act of July 28th, 1866, is the correct one.

JUDGMENT REVERSED, and the cause remanded with directions to

DISMISS THE PETITION.

PIATT'S ADMINISTRATOR *v.* UNITED STATES.

Where a contractor has large claims on different accounts against the United States, and the United States have a counter claim of fixed though of much less amount against him, and arrest him and put him in jail, and then by an act passed for his relief direct the accounting officers of the government to "settle" his accounts on just and equitable principles, giving all due weight and consideration to certain settlements and allowances already made, and to certain assurances and decisions of one of the executive departments which the party alleged to have been made to him, "*provided that the sum allowed under the said assurances shall not exceed the amount claimed by the United States and for which suits have*

* 14 Stat. at Large, 569.

Statement of the case.

been commenced;" a settlement by the accounting officers and a reception by the party of the amount fixed will not, in the absence of words to show that it is meant as a payment in full, prevent his recovering any further balance due, and which the proviso in italics prevented the accounting officers of the government from allowing. The case distinguished from *United States* v. *Child* (12 Wallace, 232), and *United States* v. *Justice* (14 Id. 535), and *Mason* v. *United States* (17 Id. 70).

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

J. H. Piatt, on the 26th of January, 1814—during our second war with Great Britain—by a written contract with the then Secretary of War, General Armstrong, became a contractor of supplies for the Northwestern Army for one year, to begin on the 1st day of June, 1814, and end on the 31st day of May, 1815, at an average rate of twenty cents the ration; and as the usage then was to make advances in money to contractors, he retained in his hands, as an advance from the department, the balance of the commissariat fund; which at the close of his engagements amounted to $48,230.77.

On the 26th of January, 1814, when the contract was made, the government was in good credit and paying its debts in gold and silver. By the 1st of June following, when it was to take effect, the gold and silver were exhausted, and the government had resorted to treasury notes, which passed at a discount. In the month of August, 1814, the enemy captured Washington and burnt the capitol; an event which assisted to depress the business of the country. All the banks south and west of New York suspended specie payments. The currency soon became the irredeemable paper of State banks. Its value went down and the price of produce went up, till supplies could not be had for less than forty-five cents the ration.

By the 1st of January, 1815, after expending the balance of the commissariat fund, and all other funds he had received, the United States owed him, for supplies already delivered, a large sum of money, and his drafts on the government lay under protest for the want of funds in the treasury to pay them.

In this condition of things, and in an exigent moment, on the 26th of December, 1814—the army in the Northwest being about to make a move—requisition was made on him for a large further supply of rations. He went, on the 1st of January, 1815, to Washington, to lay matters before the War Department; and, *as the Court of Claims found as facts of the case*, "at a personal interview there with him, notified to Mr. Monroe, then Secretary of War, that he would furnish no more rations under the contract. Secretary Monroe admitted to Piatt the inability of the government to comply with the terms of the contract on their part, both as to money already due, and as to money which might become due for future supplies. But the military exigency then rendering it necessary that a large quantity of rations should be furnished immediately for the Northwestern Army, it was thereupon agreed by parol, between Piatt and the secretary, that if Piatt would furnish the rations which might be required, he should receive for them whatever price they should be reasonably worth at the time and place of delivery; and that the defendants, instead of paying as required by the terms of the original contract, should defer payment until such time or times as they should have the requisite funds."

Under the parol agreement, Piatt furnished and delivered to the government 73,007,010 rations, the reasonable value of which, at the times and places at which they were furnished, was 45 cents per ration, amounting in the aggregate to	$328,531 54
But, on the settlement of Piatt's account at the close of the war, the officers of the treasury, having no knowledge or evidence of the parol agreement under which the rations were furnished, allowed and paid to him only the price designated in the original written contract, amounting in the aggregate to . .	148,791 87
And leaving due a balance of . . .	$179,739 67

Piatt performed, as he alleged, other valuable services for the government—transportation, &c., to friendly Indians and to distressed refugees of Michigan—(confessedly outside of those contemplated by either the original or the parol agreement), to the value of . . $63,620 48

In September, 1819, an action was brought by the United States against him, and he was arrested on a *capias ad respondendum* for an alleged balance of $48,230.77, due from him as commissary of subsistence. He now brought his claim before Congress, but the Judiciary Committee of the Senate reported against it. However, while the suit was still pending, and he on bail, Congress (8th May, 1820) passed a private act for his relief, as follows:

"*Be it enacted*, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to *settle* the accounts of J. H. Piatt, *including his accounts for transportation*, on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department:

"*Provided*, That the sum allowed under the said assurances shall not exceed the amount now claimed by the United States, and for which suits have been commenced against the said Piatt."

Under this act, the accounting officers of the treasury settled the accounts of Piatt thus:

1st. They allowed him a credit of $63,620.48 for the transportation, &c., furnished by him for the use of the Indians and refugees, not embraced within either of the agreements before described.

2d. They allowed him a credit upon a certain specified portion of the rations delivered upon the parol agreement, equal to the amount then claimed by the United States in the suit against him, to wit, the sum of $48,230.77. The credit was thus ascertained: They first estimated the reasonable value of the specific portion of the rations thus

referred to; they then deducted therefrom the price per ration already paid to him; and from the balance thus ascertained, they made a further deduction sufficient to reduce the amount of the credit to the said sum of $48,230.77, as required by the proviso to the act of Congress, mentioned on the preceding page.

The allowance of the $48,230.77 which did not require the payment of money, was passed to his credit, and the action against him dismissed.

The $63,620.48 allowed for the transportation, &c., &c., to the Indians and refugees was not paid, there having been no appropriation applicable to that claim. His creditors became impatient and put him into prison; and he died in the prison bounds in the city of Washington on the 12th of February, 1822.

Congress subsequently (24th May, 1824) passed an act, making an appropriation for this last-mentioned account, and there was paid under the act, to the administrator of Piatt, the sum of $63,620.48, the same being for the transportation, &c., furnished to Indians and refugees, and not for army supplies.

But the balance of his original claim under the parol contract for $179,739 67
having been reduced by only 48,230 77

his administrator now alleged that his estate was entitled to $131,508 90
and for this sum filed a petition—the petition in the present case—in the Court of Claims.

The petition set out, with circumstance and color, a case which, in its essence, was the same as above given; and after stating the interview with Mr. Monroe, and that Mr. Monroe admitted that the right of the United States to enforce the original written contract had been forfeited by its failure to make payment according to its contract, and that Piatt had a right to refuse to furnish rations under the call made December 26th, 1814, alleged that Mr. Monroe had "appealed to him as a patriot not to desert his country in that

day of its trial, assuring him that he should be fully indemnified, and should not be a loser." The petition then alleged that on the faith of these assurances he, Piatt, had gone on and furnished the subsequently required rations to the amount stated.

Though it did not seem to have been doubted that the rations actually cost the amount claimed, the officers of the treasury, feeling themselves bound only by what appeared of record in the department, allowed in the settlement of the account for rations furnished after the 1st day of January, 1815, no more than the original contract price per ration. The petition then said:

"Under these circumstances Piatt brought his claim before the Secretary of War, Mr. Crawford, who would have settled it on the principles for which the said Piatt then contended, and which your petitioner now claims to be legal and just, *but that, by reason of what he considered countervailing evidence, he had doubts whether such assurances had ever been given.*"*

The Court of Claims, however, as already stated, found as a fact of the case that they had been given.

Being equally divided upon the right of the claimant to recover, the court could only give a judgment *pro formâ*, and for the purposes of an appeal to the Supreme Court, decided accordingly as conclusions of law:

I. That the parol agreement entered into by Piatt and Mr. Monroe, then Secretary of War, after the forfeiture and abandonment of the original written contract, being a new contract upon a new consideration was valid, and, under such agreement, the government became indebted to Piatt for the reasonable value of the rations furnished under it, and for the balance of $131,508.90.

II. But that this action was barred by the allowance made by the accounting officers of the treasury under the private act of May 8th, 1820, which must be construed to have been intended by Congress as a settlement of all claims against the defendants.

* See Reports of Senate Committee, April 5th, 1820, Doc. 102, p. 5.

The petition was accordingly dismissed, and Piatt's administrator appealed, assigning this second conclusion of law for error.

Messrs. William Johnson and Thomas Wilson, for the appellant:

I. *The act of* 1820 *cannot be, and never was intended by Congress to be, a settlement of all of Piatt's claims against the government, because—*

1st. The proviso attached to the act limits the settlement, prevents it from being full and complete, and prescribes a narrower or smaller amount of relief than that of justice.

This takes the case out of decisions such as *United States* v. *Child*, and similar cases which will doubtless be cited on the other side. Where a settlement is made and a party accepts payment under it, he is *generally* estopped to claim more. And why? Because the arbitrators have taken into consideration everything bearing on the case, and have allowed it full weight. Thus, presumptively, the settlement was fair. But when, by the very order of settlement, the arbitrator is told, "Though the party may have a plain right to such and such items of credit you must not allow them," clearly such a settlement is not made on a just principle, and it ought not to estop further claim.

2d. The act does not say that what was to be done was to be "in full payment," or "in full satisfaction" of his claim, and if the intention that it should be had existed, apt words could have been used to declare it.

3d. The accounting officers of the treasury did not regard the act in the way in which the government now regards it, for they proceeded to state Piatt's accounts, and allowed him in that statement the item of $63,620.48, while the only relief which could have been afforded him under the act was for the sum of $48,230.77, for which a suit had been brought.

4th. Upon the report of the accounting officers, the subsequent Congress appropriated and paid the above sum of $63,620.48.

The intention of Congress in passing the act was appar-

ently this: Congress knew that a balance stood on the books of the treasury against Piatt for moneys due from him as an officer; that a suit had been brought by the United States to recover that balance; that he had been arrested, thrown into prison, and was then on bail; that he alleged that on a true statement of the accounts between him and the United States, it would be shown that he was not indebted to the United States, and that possibly the United States would be found to be indebted to him. Congress, without expressing any opinion upon the facts of the case, enacted that the accounting officers should settle his accounts "on just and equitable principles, giving all due weight and consideration to the settlements and allowances already made, and to the assurances and decisions of the War Department;" and if, upon the making of this settlement or statement it should be found that Piatt was not indebted to the United States, that there was enough coming to him upon these accounts, "assurances," transportation, and the like, to offset the balance claimed from him in the suits commenced, then that this balance should be cancelled and the suits dismissed and he discharged from jail; but if these accounts should not be sufficient to entirely offset this balance, then it should do so *pro tanto*, and upon payment of the remainder he should be discharged from jail.

All question as to payment to him of other moneys which he might claim was reserved for future consideration.

The purpose of Congress seems to have been much the same as when it passed the act for the relief of William Peck.* Peck was indebted to the United States, was sued, judgment recovered against him, and he imprisoned for the debt. Congress declared that he should be released from imprisonment, *provided*, first, that he should assign all the property "which he may now own or be entitled to" to the United States; and second, that any property which he might thereafter acquire should be liable to be taken.

On a question whether the debt was released by his dis-

* 6 Stat. at Large, 109.

charge from imprisonment, this court, in *Hunter* v. *United States*,* says:

"From this proviso it clearly appears that the release from imprisonment was the only object of the statute, and a proper construction of it does not release the judgment."

II. *The circumstances in which Piatt was placed at this time prevent any such legal effect, even if the intention were clearly expressed in the act.*

From the facts, as admitted or found, it is plain that, instead of Piatt being indebted to the United States in the sum of $48,230.77, for which he had been sued, the United States was indebted to him in the two sums of $63,620.48 and $131,508.90. Instead of being the debtor, he was the creditor. Instead of his owing the United States, the United States owed him; and instead of the suit being "*The United States* v. *Piatt*," it might properly have been "*Piatt* v. *The United States*."

These were the circumstances under which the act of 1820 was passed.

Now when a debtor, being a powerful party, on a false allegation of the state of accounts between him and his creditor, arrests that creditor, and throws him into jail, and then, while his creditor is thus illegally imprisoned, offers him a settlement which the creditor accepts in order to be released, *such* settlement, *so* made, is surely of no binding force as a settlement, however definitely or plainly it may have been stipulated and agreed upon.†

Mr. G. H. Williams, Attorney-General, and Mr. John Goforth, Assistant Attorney-General, contra:

Piatt's claim was in dispute. Mr. Crawford doubted the alleged assurances of Mr. Monroe. Piatt could not get the claim allowed.

Being under arrest, the act of May 8th, 1820, was passed,

* 5 Peters, 185.

† Brown *v.* Pierce, 7 Wallace, 214; United States, Lyon, et al. *v.* Huckabee, 16 Id. 431.

requiring the officers of the treasury to "settle his accounts," including his accounts for transportation.

The word settle has an established legal meaning, and implies the mutual adjustment of accounts between different parties, and an agreement upon the balance.*

There was no limit to any claim he might make except the one upon the assurances. All the accounts between the government and himself—all things in dispute—were meant, it is obvious, to be included in the reference to the accounting officers and settled.

Piatt went before the accounting officers and presented his proofs, and made his claims much in excess of the amount awarded him. The settlement was made upon proofs; as to the assurances he was allowed $48,230.77, all that under the act could be allowed.

As to the assurances, the sum of $48,230.77 was paid by passing the amount to his credit and so balancing his debt. A further sum of $63,620.48 was found to be due him, for transportation of friendly Indians and refugees. He accepted these settlements without protest.

The $63,620.48 was paid by an appropriation, made by Congress A.D. 1824.

An allowance by the legislature in full, when accepted by a claimant, is an estoppel of further claim.† That the claimant has no other remedy at the time does not affect the question. This appears to be settled by the case of *Mason v. United States*,‡ in this court, and by other cases here.§

No compulsion was exercised over Piatt at any stage of the proceedings.

Mr. Justice CLIFFORD delivered the opinion of the court.

Attempt is made, chiefly on two grounds, to vindicate the conclusion of the Court of Claims, that the cause of action

* Baxter *v.* Wisconsin, 9 Wisconsin, 44; see also 11 Alabama, 419.

† Sholes *v.* The State, 2 Chandler, 182; Calkins *v.* The State, 13 Wisconsin, 389.

‡ 17 Wallace, 76.

§ United States *v.* Child et al, 12 Wallace, 232; United States *v.* Justice, 14 Id. 535.

is barred by the allowance reported by the accounting officers of the treasury. The grounds are:

(1.) That the auditor passed to the credit of the deceased claimant the amount claimed by the United States as due from him as commissary of subsistence, and that he, the claimant, accepted the settlement without protest.

(2.) That Congress intended by the act directing the adjustment of his accounts that the settlement should be final and conclusive; that the act was in the nature of an offer for a disputed claim, and that the acceptance of the adjustment is a bar to the claim.

1. Verbal agreements between the parties to a written contract made before or at the time of the execution of the contract are, in general, inadmissible to vary its terms or to affect its construction, as all such agreements are considered as merged in the written contract. Both parties admit that proposition, nor is it denied by the defendants that oral agreements subsequently made, on a new and valuable consideration, before the breach of the contract, may have the effect to enlarge the time of performance of the contract, if it is not one within the statute of frauds, or that such an oral agreement may have the effect to vary any of the terms of the written contract or to waive or discharge it altogether.

Exceptions, it is everywhere admitted, exist to the rule that parol evidence is not admissible to contradict or vary the terms of a written instrument. Most of such exceptions are enumerated by Mr. Greenleaf, and in the course of that enumeration he says: "Neither is the rule infringed by the admission of oral evidence to prove a *new and distinct agreement* upon a new consideration, whether it be as a substitute for the old or in addition to and beyond it; and if subsequent and involving the same subject-matter it is immaterial whether the new agreement be entirely oral or whether it refers to and partially or totally adopts the provisions of the written contract, provided the old agreement be rescinded and abandoned."*

* 1 Greenleaf on Evidence, 12th edition, § 303; 2 Taylor on Evidence, 6th edition, § 1044; Goss *v.* Nugent, 5 Barnewall & Adolphus, 65; Nelson

Sufficient appears in the very nature of the new arrangement to show that the promise of the United States was made upon a good and valid consideration, as nothing is better settled than the rule that if there is a benefit to the defendant and a loss to the plaintiff consequent upon and directly resulting from the defendant's promise in behalf of the plaintiff, there is a sufficient consideration moving from the plaintiff to enable the latter to maintain an action upon the promise to recover compensation.*

Other authorities state the rule much stronger, authorizing the conclusion that benefit to the party by whom the promise is made, or to a third person at his instance, or damage sustained at the instance of the party promising by the party in whose favor the promise is made is sufficient to constitute a good and valuable consideration for the support of an action of assumpsit.†

Modern authorities supporting the proposition that parol evidence is admissible to prove such a new agreement, under the circumstances disclosed in this case, are very numerous and are quite sufficient to show that the proposition may be regarded as an established rule of decision.‡

Apply that rule to the case and it is quite clear that the whole amount claimed by the plaintiff was due to the deceased claimant at the time his accounts were adjusted by the accounting officers of the treasury in addition to the amount claimed by the United States in set-off for balance due from him as commissary of subsistence. Well-founded doubt upon that subject cannot be entertained, as it satisfactorily appears that in order to reduce his claim to an amount not exceeding the claim of the United States, those

v. Boynton, 3 Metcalf, 400; Leonard *v.* Vredenburgh, 8 Johnson, 39; Marshall *v.* Lynn, 6 Meeson & Welsby, 109; Stead *v.* Dawber, 10 Adolphus & Ellis, 57; Stowell *v.* Robinson, 3 Bingham's New Cases, 927.

* 1 Parsons on Contracts, 6th edition, 431.

† Violett *v.* Stettinius, 5 Cranch, 150; Chitty on Contracts, 28; Townsley *v.* Sumrall, 2 Peters, 182.

‡ Cummings *v.* Arnold, 3 Metcalf, 489; Bank *v.* Woodward, 5 New Hampshire, 99; Blood *v.* Goodrich, 9 Wendell, 75; Lindley *v.* Lacey, 17 Common Bench, New Series, 584.

officers found it necessary to deduct from the aggregate estimate of the value of the rations furnished under the parol agreement, an amount exactly equal to the balance found due to the claimant by the subordinate court from whose judgment the appeal is prosecuted in this case.

Nothing was paid to the claimant under that private act except what was allowed to the claimant for services and expenses in furnishing transportation and rations for the use of Indians and indigent citizens. He was discharged from arrest and the balance due from him to the United States for the moneys in his hands as commissary of subsistence was also discharged, but nothing was paid to him for the large balance now found to be due by the court below. Argument to show that such a settlement is not a bar to the residue of the claim is unnecessary, as the proposition is utterly destitute of merit and repugnant to the plainest dictates both of law and justice.

2. Opposed to that is the suggestion, in behalf of the United States, that the act of Congress was in the nature of an offer of compromise, and that the acceptance of the adjustment is a bar to the claim.

Support to that proposition is attempted to be drawn from the decision of this court in the case of *Mason* v. *United States*,* but the court here is very clearly of the opinion that the case cited affords no countenance whatever to any such conclusion. Muskets were wanted by the United States in that case, and it appears that the plaintiff in that controversy contracted to manufacture and deliver at a specified time large quantities of such arms at the price specified in the contract. Arms of the kind were delivered and paid for, and the plaintiff was notified by order of the Secretary of War that a larger quantity would be received. Preparations were accordingly made by the plaintiff to fill the second order, but the Secretary of War subsequently appointed a special commission to audit and adjust all such orders and claims. They reported that the contract should be con-

* 17 Wallace, 70.

firmed to a certain extent upon the condition that the contractor should, within fifteen days after notice of their decision, execute a bond, with good and sufficient sureties, for the performance of the modified contract, and the case shows that he executed the modified contract and gave the required bond. By that contract he engaged to manufacture thirty thousand muskets, and the finding of the subordinate court showed that the contract was fulfilled by both parties.

What the court decided in that case was that the claimant voluntarily accepted the modification of the contract as suggested by the commissioners and that he executed the new contract in the place of the one superseded, which new contract he must have understood was intended to define the obligations of all concerned. Beyond all doubt the new contract in that case was substituted for the old one, and the court held that no party, after accepting such a compromise and executing such a discharge, could be justified in claiming damages for a breach of the prior contract which had been voluntarily modified and surrendered.

Other cases to the same effect have been decided by this court.* None of those cases, however, proceed upon the ground that such a commission possesses any judicial power to bind the parties by their decision or to give the decision any conclusive effect. Claimants in such cases may appear before the commission or not, as they choose, but the decision is, if they do appear and accept the terms awarded as a final settlement of the controversy, without protest, they must be understood as having precluded themselves from further claim and litigation.

Where a party accepts the amount awarded in such a case it is just to conclude that he acquiesces in the decision of the tribunal by which a part of the claim is rejected as well as in the finding in his favor, but the accounting officers in this case were forbidden by law to allow the claimant anything beyond the amount in his hands as commissary of subsistence, and they obeyed the directions given in the act

* United States *v.* Child, 12 Wallace, 232; United States *v.* Justice, 14 Id. 535.

of Congress. Manifestly the claimant had no option upon the subject, and in the opinion of the court it would be an unreasonable construction of the act of Congress to suppose that its framers intended that the claimant should relinquish the large balance found to be due him in consideration of his discharge from arrest and the discontinuance of the suit against him for the recovery of the amount due from him to the United States.

Certain cases from the State reports are referred to which it is supposed assert a different rule, but the court here is of a different opinion.*

Suffice it to say that in the case before the court no appropriation whatever was made in favor of the claimant. Where the claim is disputed and an appropriation is made in favor of the claimant for an amount less than the amount claimed, and appropriation purports to be in full payment of the demand, the rule may be different, but it is sufficient to say in response to those authorities that nothing was appropriated in this case, and the accounting officers of the treasury were forbidden to allow anything beyond what was involved in the pending suit against the claimant.

JUDGMENT REVERSED, and the cause remanded with instructions to render JUDGMENT IN FAVOR OF THE PETITIONER for $131,508.90, the amount found to be due him in the findings of the Court of Claims.

Mr. Justice BRADLEY, with whom concurred Justices SWAYNE, DAVIS, and HUNT, dissenting:

I dissent from the judgment of the court in this case. In my view the case was decided and settled more than fifty years ago. The claim cannot be established without opening that settlement, and declaring that a valid contract was made which had been decided not to be a valid contract, but only a mere claim for some equitable allowance which was in fact made and accepted at that time.

* Sholes *v.* State, 2 Chandler, 182; Baxter *v.* State, 9 Wisconsin, 44; Calkins *v.* State, 13 Id. 389.

Piatt, the original claimant, was an army contractor in the Northwest during the war of 1812. Becoming embarrassed by not receiving funds from the government, and from the great rise in the prices of provisions, he threatened to throw up his contract; but, the allegation is, that at the request of Mr. Monroe, then acting Secretary of War, and upon his assurances that he should not be the loser, he went on, and furnished supplies to a large amount. For these supplies he claimed a large allowance beyond the amount stipulated in his contract. The petition, after alleging that the officers of the treasury, feeling themselves bound only by what appeared of record in the department, allowed to Piatt, in the settlement of his account for rations furnished after the first day of January, 1815, no more than the original contract price per ration, states further that Piatt then brought his claim before the Secretary of War, Mr. Crawford, who would have settled it on the principles for which Piatt then contended, "but that, by reason of what he considered countervailing evidence, he had doubts whether such assurances had ever been given."

Thus it is seen that there were two sides to the question at that early day, when all the events were fresh, and when Mr. Monroe was living at the seat of government, and accessible at any moment.

In 1820, Piatt was arrested for $48,230.77, the balance found due to the government in his accounts, as ascertained by the settlement at the department. He then brought his claim before Congress, and the Judiciary Committee of the Senate reported adversely thereto. But on the 8th of May an act was passed for his relief.*

Thereupon his accounts were restated under the provisions of the act; and the officers of the department, after allowing him the sum of $63,620.48 for provisions furnished to friendly Indians and to distressed settlers of Michigan (which was entirely outside of his contract, and was afterwards paid in full), allowed him a credit on the footing of

* See it set out, *supra*, p. 499.—REP.

the assurances of Mr. Monroe for $48,230.77, the full amount of the claim for which he had been arrested. He was thereupon discharged from custody on the 25th of July, 1820, and died in February, 1822. The present claim is prosecuted by his representatives.

Upon these facts it seems difficult to resist the conviction that, in the contemplation of both parties (Piatt and the government), this case was then and there forever ended and determined. Between individuals it must necessarily have been so. Had such a disputed and doubtful claim been held by one man against another, and left to arbitration, subject to the condition that no sum should be awarded beyond a certain amount, and had that amount been awarded and accepted, can there be a doubt that the award would have been binding and conclusive? I think not.

The present case is stronger. Congress proposed to allow Piatt a settlement of his claim by the Treasury Department, in which due weight and consideration should be given to the assurances in question, provided that the sum allowed under them should not exceed the amount claimed by the United States against him, and for which suit had been commenced. He accepted the law, had the benefit of the settlement, and was allowed under the assurances the amount named, which justly cancelled the debt for which he was sued and arrested by the government. Thereupon he was discharged. The declaration of Congress thus made binding by the acts of the party that nothing should be allowed against the government on that claim beyond a certain amount named, was equivalent to a solemn adjudication. It amounted to a declaration of the government that it would not suffer itself to be pursued or molested for a greater sum. Can it now be contended that the act of 1855 constituting the Court of Claims, and allowing suits to be brought against the government on contracts made with it, has opened this adjudication—this settlement and determination of the case? In my judgment, certainly not. The act constituting the Court of Claims was not intended to disturb past adjudica-

tions and settlements, and to open afresh claims that had been disposed of. The Court of Claims had no right to go behind the final settlement, and attempt to establish the original facts of the case. Its findings of fact, in this respect, were illegal and void. The government has never consented to be sued on this claim, or on any claims similarly situated.

The conclusion of law to which the court came, I think, was correct, and the decree should be affirmed.

ROBINSON ET AL. *v.* ELLIOTT.

1. Under the Statute of Frauds in Indiana, which enacts in

> "SECTION 10. That no assignment of goods by way of mortgage shall be valid against any other person than the parties thereto, when such goods are not delivered to the mortgagee, or assignee, and retained by him, unless such assignment or mortgage shall be duly recorded—"

And in

> "SECTION 21. That the question of fraudulent intent in all cases shall be deemed a question of fact—"

A mortgagor of chattels personal may, if the transaction be fair and the mortgage made by him be duly recorded, retain possession of personal chattels.

2. But the effect of the statute is not to make every recorded mortgage, which prior to the statute would have been held fraudulent in law, *primâ facie* valid.

3. The recording of the mortgage contemplated by the statute was meant as a substitute for possession, but was not meant to protect a mortgage from all illegal stipulations contained in it.

4. Hence, where a trading firm in a city in Illinois owing money evidenced by a series of notes, coming due from time to time for some months in advance, made a mortgage of their stock of goods, the mortgage containing this clause:

> "And it is hereby expressly agreed, that until default shall be made in the payment of some one of said notes, or some paper in renewal thereof, the parties of the first part may remain in possession of said goods, wares, and merchandise, and may sell the same as heretofore, and supply their places with other goods, and the goods substituted by purchase for those sold shall, upon being put into said store, or any other store in said city where the same may be put for sale by said parties of the first part, be subjected to the lien of this mortgage—"