

"be valid as against the United States when made by some officer of the Government acting under lawful authority, with power vested in him to make such contracts, or to do acts which imply them, the very essence of a tort is that it is an unlawful act, done in violation of the legal rights of some one. For such acts, however high the position of the officer or agent of the Government who did or commanded them, Congress did not intend to subject the Government to the results of a suit in that court. This policy is founded in wisdom, and is clearly expressed in the act defining the jurisdiction of the Court, and it would ill become us to fritter away the distinction between actions *ex delicto* and actions *ex contractu* which is well understood in our system of jurisprudence, and thereby subject the Government to payment of damages for all the wrongs committed by its officers or agents, under a mistaken zeal, or actuated by less worthy motives."

It is, therefore, always to be borne in mind that for the wrong of the public officer there is no remedy against the state unless the legislature thereof has created the liability and given an appropriate remedy. Of such instances of "liberality of legislation" (to use a term found in the opinion of Mr. Justice Davis that has been cited) the statutes of Canada and other British colonies afford a considerable number of instances. (*The City of Quebec v. The Queen*, 2 Ex. C. R. 252); and in 17 Dalloz Rep. Jur., cap. 10, s. 1, Art. 5, p. 704, will be found a case where the owner of property stolen from a box in the custody of the Customs officers recovered from the administration the value thereof under the provisions of the Customs law of 1791. But there is no suggestion that there is in the case under consideration any statute to aid the plaintiffs. Mr. Curran, for them, pointed out that the case differed from the storage of goods in a bonded warehouse, in which case the importer may exercise his option to leave the goods in the warehouse or not, but that in such a case as the present he has no option, but must submit to having his goods taken to the Examining warehouse to be examined by the officers of the Customs. That is, no doubt, true, and it might be an element to take into consideration if the case depended upon the law applicable to bailees. But we have seen that in such a case the Crown is not a bailee. The temporary control and custody of goods imported into Canada, which the law gives to the officers of the Customs to the end that such goods may be examined and appraised, is given for the purpose of the better securing the col-