brought, and at the same time may submit to costs; but, as the privilege of bringing suit against the sovereign is a special privilege, —the waiver of a right,—so the right to recover costs is a special provision, confined to the special case. The act is the law of the case, and in that act we must find as well the right to recover costs in the suit as the right to sue, else such right does not exist.

The action in the main case was brought under the act of 1890. That act is the only authority for such a suit. Nowhere does the act make any provision for the payment of costs by the United States. The silence of the act on this subject is significant. Its manifest purpose is to bring together in one act all acts relating to the collection of revenue. Its title embraces all laws in relation to revenue, and declares an intent to simplify them. It repeals 31 sections of the Revised Statutes and 2 acts of congress on this subject, and all acts and parts of acts inconsistent with its provisions. Among the sections of the Revised Statutes is section 3011. That section, as originally prepared, provided a mode of relief from payment of excessive dues. It made no provision as to interest and costs in case of recovery by the importer. It was amended by an act approved 1st February, 1888 (25 Stat. 6), wherein provision was made for payment of costs of suit, and interest at the rate of 3 per cent. per annum, on all judgments obtained for overpayment of duties. The act of 1890, legislating on this same subject, and providing a substitute for the proceeding allowed in that section, and for a suit and appeal thereon, repeals the section, but says nothing whatever as to interest and costs. It is impossible to escape the conclusion that congress either did not intend that the United States should pay costs in the cases provided for, or that it omitted to insert such intention, and that this omission defeats the claim for costs. One sentence in the fifteenth section of the act of 1890 has been pressed on our attention, as indicating an intent that costs shall be paid "on such original application, and, on any such appeal, security for damages and costs shall be given as in case of other appeals in cases in which the United States is a party." The reference here is to sections 1000 and 1001 of the Revised Statutes. These provide that in all cases in which the United States is appellee, the other party must give bond and security for costs, but that in no case shall such bond and security be required from the United States; and only in cases in which "such costs are taxable by law against the United States" is any provision made for the payment of them out of the contingent fund of the department. As we have seen, there is no provision by this act of 1890 for costs taxable against the United States. It is contended, however, that this is an action against William M. Marine, collector, and that the incident of costs follows the judgment. Originally this was the case. Elliott v. Swartwout, 10 Pet. 137; but, congress having required the collector to pay all moneys received by him into the treasury of the United States, this defeated the common-law right of action against the collector (Cary v. Curtis, 3 How. 236); and, although the legislation of congress has been somewhat contradictory on this subject, none of it restored the common-law right of

action against the collector. The legislation created a statutory right of action, governed exclusively by the provisions of the statutes of the United States. Arnson v. Murphy, 109 U. S. 238, 3 Sup. Ct. 184. In other words, notwithstanding that the name of the collector was used, the real purpose of the proceeding was to get money out of the treasury of the United States, and the United States was the real and only party in interest, the suit being governed wholly by the provisions of the statutes of the United States. This brings us precisely to the conclusion we have reached.

With regard to interest, we think that this case is controlled by the case of U. S. v. Sherman, 98 U. S. 567, quoted and affirmed in the case of U. S. v. North Carolina, 136 U. S. 217, 10 Sup. Ct. 920. The court say:

"When the certificate is given, the claim of the plaintiff in the suit is practically converted into a claim against the government, but not until then. Before that time the government is under no obligations, and the secretary of the treasury is not at liberty to pay. When the obligation arises, it is an obligation to pay the amount recovered; that is, the amount for which judgment has been given. The act of congress says not a word about interest. Judgments, it is true, are by the law of South Carolina, as well as by federal legislation, declared to bear interest. Such legislation, however, has no application to the government, and the interest is no part of the amount recovered. It accrues only after recovery has been had. Moreover, whenever interest is allowed either by statute or at common law, except in cases in which there is a contract to pay interest, it is allowed for the delay or default of the debtor. But delay or default cannot be attributed to the government. It is presumed to be always ready to pay what it owes."

The decree of the circuit court is reversed, without cost to either party. Let the case be remanded to the circuit court, with instruction to enter judgment for the appellee in the sum of $366.24, without interest or costs.

JOHNSON CO. v. PENNSYLVANIA STEEL CO.

(Circuit Court, E. D. Pennsylvania. January 23, 1894.)

No. 59.

1. PATENTS—INVENTION—CABLE-RAILWAY CROSSINGS.
   In a cable-railway crossing, where girder guard rails are to cross slot rails, and be secured thereto, there was no invention in cutting a notch in the top of the slot rails, and thus depressing the girder guard rail sufficiently, without cutting away its floor, so as to weaken the guard.
2. SAME.
   The Entwistle patent No. 367,746, for a "girder slot rail crossing," is void, as to the second claim, for want of invention.

This was a suit in equity by the Johnson Company against the Pennsylvania Steel Company for infringement of a patent.

George Harding and George J. Harding, for complainant.
Joshua Pusey and Philip T. Dodge, for respondent.

DALLAS, Circuit Judge. This is a suit upon letters patent No. 367,746, dated August 2, 1887, granted to Edward B. Entwistle, for "girder slot rail crossing." It contains two claims, and the bill involves both of them; but upon the hearing the complainant,