

**United States Vs. Nourse**

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**Court :** US Supreme Court

**Decided On :** 1832

**Appeal No. :** 31 U.S. 470

**Appellant :** United States

**Respondent :** Nourse

**Judgement :**

United States v. Nourse - 31 U.S. 470 (1832)

U.S. Supreme Court United States v. Nourse, 31 U.S. 6 Pet. 470 470 (1832)

**United States v. Nourse**

**31 U.S. (6 Pet.) 470**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR*

*THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

The agent of the Treasury of the United States, under the provisions of the Act of Congress passed on 15 May, 1820, entitled "An act for the better organization of the Treasury Department," issued a warrant to the marshal of the District of

Columbia under which the goods and chattels, lands, and tenements of Joseph Nourse, late Register of the Treasury of the United States, were attached for the sum of \$11,769.13, alleged to be due to the United States upon a settlement of his accounts at the Treasury of the United States. Mr. Nourse, under the authority of the fourth section of that act, applied to the District Judge of the District of Columbia for an injunction to stay proceedings under the warrant, and alleging that a balance was due to him by the United States as commissions for the expenditure of large sums of money for the United States, and as a compensation for other duties than those of Register of the Treasury, in the disbursement of the said sums of money, to which commissions and compensation he claimed to be entitled according, as he alleged, to the established practice, and by the application to his claims of the same rules which had been applied to other and similar cases in the adjustment of accounts at the Treasury Department. The district judge granted an injunction to stay proceedings under the warrant, and the United States having filed an answer to the bill of Mr. Nourse, auditors were appointed by the district judge to audit and settle the accounts of Mr. Nourse with the United States. The auditors reported the sum of \$23,582.72 due to Mr. Nourse by the United States, for extra services rendered to the United States in receiving and disbursing public money. Allowing credit in the audit of the accounts of the sum of \$11,769.13, claimed by the United States, a balance of \$11,813.59 would be due to Mr.

Nourse. The district judge made a decree that the injunction should be perpetual. The United States appealed to the circuit court, and the decree for a perpetual injunction was affirmed in that court. The United States appealed to the Supreme Court, and on a motion by the appellee to dismiss the appeal for want of jurisdiction, it was held that no appeal is given by the act of Congress from a decree of the district judge to the circuit court.

The special jurisdiction created by the act of Congress must be strictly exercised within its provisions. A particular mode is pointed out by which an appeal from the decision of the district judge may be taken by the, person against whom proceedings have issued; consequently it can be taken in no other way. No

provision is made for an appeal by the government; of course, none was intended to be given to it.

It appears that no provision is made in the general act organizing the courts of the United States to authorize an appeal from the judgment or decree of the district court to the circuit court except in cases of admiralty and maritime jurisdiction. On the principle of the case of *United States v. Goodwin*, the

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appeal in this case cannot be maintained. If it be a case in chancery, no provision is made in the general law to appeal such a case from the district to the circuit court.

Mr. Coxe, for the complainant, moved to dismiss this appeal for want of jurisdiction.

The circumstances and proceedings in this case, as exhibited in the record, were the following:

Joseph Nourse was removed from the office of Register of the Treasury of the United States in 1829. The following communication was afterwards addressed to him from the Treasury Department.

"Treasury Department, Comptroller's Office"

"26th June 1829"

"Sir: Upon a statement of a general account comprehending the different agencies under which you acted as late Register of the Treasury, the following balances were found to be due on them, respectively, to the United States, to-wit: "

As agent for the joint library committee of Congress . . \$2,502.55

Ditto for paying the expenses of stating and printing

the public accounts. . . . . 934.98

Ditto for paying the superintendent and watchmen of  
the buildings occupied by the state and Treasury

Departments. . . . . 1,325.41

Ditto for paying the expenses of printing certificates  
of the public debt . . . . . 1,011.29

Ditto for paying the contingent expenses of the  
Treasury Department. . . . . 5,994.90

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Amounting, in the whole, to . . . . . \$11,769.13

"In the general account rendered by you, a balance of \$9,367.87 is claimed; between which and the balance above stated, there is a difference of \$21,137, and is occasioned, with the exception of \$54.50 paid to Gabriel Nourse and James Watson, suspended for want of vouchers,

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by your having charged a commission of two and a half percent on all the moneys which have passed through your hands, under the different agencies above specified, but which the accounting officers of the Treasury could not allow, there being no law to authorize or sanction such a charge."

"A copy of the Treasury settlement of your account is enclosed for your information. It becomes my duty to request that you will deposit the above-mentioned balance of \$11,769.13, in the office of discount and deposit of the branch bank of the United States at Washington City to the credit of the Treasury of the United States, taking duplicate receipts therefor from the cashier, one of which you will forward to this department."

"Respectfully,"

"Jos. ANDERSON, *Comptroller* "

"JOS. NOURSE, Esq., *late Register of the Treasury* "

The request contained in this letter not having been complied with, on 14 of July, 1829, the following process was issued by order of the agent of the Treasury.

"To Tench Ringgold, Esquire, Marshal of the District of Columbia."

"Whereas Joseph Nourse, late Register of the Treasury, in relation to his several accounts as United States agent, stands indebted to the United States in a cash balance of \$11,769.13; agreeably to the settlement of his account, made by the proper accounting officers of the Treasury, a copy of which is herewith enclosed, and whereas the said Joseph Nourse, having failed to pay over according to the act of Congress, passed 15 May, 1820, entitled 'An act for the better organization of the Treasury Department,' the said sum of \$11,769.13, these are, therefore, in pursuance of the said act, to command you to proceed immediately to levy and collect the said sum of \$11,769.13 by distress and sale of the goods and chattels of the said Joseph Nourse, giving ten days previous notice of such intended sale by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the said goods or chattels were taken or in the town or county

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where the owner of such goods or chattels may reside, and should there not be found sufficient goods and chattels to satisfy the said sum of \$11,769.13, remaining due and unpaid as aforesaid, you are hereby commanded to commit the body of the said Joseph Nourse to prison, there to remain until discharged by due course of law; and should the said Joseph Nourse be committed to prison, as aforesaid, or if he abscond, and goods and chattels sufficient to satisfy the said sum of \$11,769.13, be not found, you are hereby commanded to levy upon, and expose to sale, at public auction, for ready money, to the highest bidder, the lands,

tenements and hereditaments of the said Joseph Nourse, or so much thereof as may be necessary to satisfy the said sum of \$11,769.13, or whatever sum there may remain due and unpaid thereof, after you shall have given notice of the said sale, at least three weeks prior to its taking place, in not less than three public places in the county or district where such real estate is situate, and all moneys which may remain of the proceeds of such sale after satisfying the said sum of \$11,769.13 and paying the reasonable costs and charges of the sale, you are required to return to the proprietor or proprietors of the land or real estate sold as aforesaid; and whatever you may do in obedience to this warrant, make return thereof to this office; and for so doing this shall be your sufficient authority. Given under my hand and seal at my office, in the Department of the Treasury of the United States at the City of Washington in the District of Columbia this 14 July in the year of our Lord 1829."

"S. PLEASANTON [SEAL]"

"Agent of the Treasury"

This warrant was issued under the second section of the act of Congress passed May 15, 1820, 3 Story's Laws U.S. 1791, entitled "an act providing for the better organization of the Treasury Department." The third section provides

"That if any officer employed, or who has been heretofore employed in the civil, military, or naval departments of the government to disburse the public money appropriated for the service of those

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departments respectively, shall fail to render his accounts or to pay over in the manner and in the times required by law, or the regulations of the department to which he is accountable any sum of money remaining in the hands of such officer, it shall be the duty of the First or Second comptroller of the Treasury, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified, the account of such delinquent officer to the agent of the Treasury, who is hereby authorized and required, immediately, to proceed

against the delinquent officer in the manner directed in the preceding sections, all the provisions of which are hereby declared to be applicable to every officer of the government charged with the disbursement of public money, and to their sureties, in the same manner and to the same extent as if they had been described and enumerated in the said section."

The second section of the act directs the warrant to issue to the marshal of the district where the delinquent resides, and that the marshal shall proceed to levy the sum due by distress and sale of the goods and chattels of such delinquent, and if there be not sufficient goods and chattels to satisfy the warrant, the marshal is authorized to take the person of the delinquent, and to commit him to prison, there to remain until discharged by due course of law, &c.;

The fourth section provides

"That if any person shall consider himself aggrieved by any warrant issued under the act, he may prefer a bill of complaint to any district judge of the United States setting forth the nature and extent of the injury of which he complains, and thereupon the judge aforesaid may, if in his opinion the case requires it, grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires; but no injunction shall issue until the party applying shall give bond and sufficient security, conditioned for the performance of such judgment as shall be awarded against the complainant in such amount as the judge granting the injunction shall prescribe: nor shall the issuing of said injunction in any manner impair the lien produced by the issuing of such warrant. And the same proceeding shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and if upon

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dissolving the injunction, it shall appear to the satisfaction of the judge who shall decide upon the same that the application for the injunction was merely for delay, the judge may add damages, not to exceed ten per centum on the principal sum."

The fifth section provides that such injunctions may be granted in or out of court, and the sixth section enacts,

"That if any person shall consider himself aggrieved by the decision of such judge, either in refusing to issue the injunction, or if granted, on its dissolution, it shall be competent for such person to lay a copy of the proceeding had, before the district judge of the supreme court, to whom authority is hereby given, either to grant the injunction or permit an appeal, as the case may be, if in the opinion of such judge of the Supreme Court the equity of the case requires it, and thereupon the same proceedings shall be had upon such injunction in the circuit court as are prescribed in the district court, and subject to the same conditions in all respects."

The Marshal of the District of Columbia having levied the warrant on the lands and tenements, goods and chattels of Mr. Nourse, on 25 August, 1829, he presented to the district judge of the United States for the said district the following bill for relief.

"To William Cranch Esq., Chief Justice of the District of Columbia, and judge of the district court of the United States for said district: "

"This the bill of complaint of Joseph Nourse, late Register of the Treasury of the United States, shows that his public accounts as such register and agent of the Treasury Department in disbursing certain funds and settling certain accounts of contingencies and other miscellaneous matters, and as agent for the joint library committees of Congress, matters altogether distinct from and unconnected with his duties as such register, have been settled at the Treasury since his removal from office, upon which settlement a pretended balance has been found against him for the sum of \$11,250.26, for which a warrant of distress has been issued against his lands and tenements, goods and chattels, by Stephen Pleasonton, Esq., agent of the Treasury, in the pretended execution of the Act of Congress passed on 15 May, 1820, 'providing for the better

organization of the Treasury Department,' which warrant has been levied, during the absence of this complainant, on his lands, tenements, goods and chattels, by the marshal of this district, copy of which is annexed. That the said account is unjust and illegal, and so far from any balance being due thereon to the United States, a considerable balance should have been struck thereon in favor of this complainant, as appears by an account hereto annexed, which he declares is just and true."

"That besides his regular duties as register, established by law, and stated according to the custom and routine of his office as such register, he was, for a long course of years -- that is to say from the year 1790 till his recent dismissal from office -- duly employed by the proper department of the government of the United States in the separate, independent, and wholly extra business of special agent for the disbursement of the contingent funds of the Treasury Department, and for the settlement, as such special agent, of all the numerous accounts connected with the disbursement of those funds."

"That this distinct branch of duty, which he took upon himself, at the special instance and request of the proper department of the government, and having competent authority to engage him or any other agent in that capacity, and for the performance of those duties, devolved upon him great labor, responsibility, and risk, altogether independent of and apart from, his proper duties as register, and occupied a great portion of his private hours, that is, of those hours when, according to the established order and routine of his department, he was altogether discharged and free from the proper duties appertaining to his office of register, and had his time entirely as his own disposal, but for his employment as special agent as aforesaid. That the extent of the extra labor and responsibility so devolved upon him cannot be adequately described or conceived without a reference to and inspection of his books, bank accounts, and vouchers connected with this branch of his employment in the public service, and he therefore prays that these documents may be ordered to be produced from the Treasury Department and audited in this Court; that besides the great labor and consumption of time induced by this extra employment, he was exposed to

considerable

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pecuniary losses, from the ordinary errors that occasionally occur in the accounts of the best accountants, from the multiplicity and minuteness of the various accounts and vouchers to be settled and preserved; that when he undertook this branch of public employment, the precise nature and amount of compensation therefor were not ascertained by any particular stipulation; that if the government had employed any indifferent person to perform these duties, without any other precise compensation stipulated beforehand, a reasonable mercantile commission or percentage on the sums disbursed would have resulted to such person according as well to general usage as to the custom of the Treasury Department in the like cases. That the usage of the Treasury Department and other departments of the government, has invariably been, since the organization of the general government, to allow such commissions or percentage not only to unofficial persons so employed, but to official persons and clerks of the departments when such duties were distinct from the stated duties appertaining to their offices and stations, notwithstanding such official persons were in the receipt of fixed salaries for their stated duties."

"That as early as the year 1800, this complainant made out an abstract of his disbursements under these extra agencies, claiming to be allowed a compensation therefor, which original abstract is on file in the Treasury Department, from whence he prays that it may be produced and audited in this Court. That he has duly made out and presented his account to the proper accounting officers of the Treasury, charging his commission at the rate of two and one-half percent on the amount of his disbursements, which, if allowed, would, after a full and fair settlement of all his public accounts, leave the United States indebted to him in a balance of \$9,886.24, which he has good reason to believe and does verily think and believe to be justly and equitably due and owing to him from the United States, as stated in his said annexed account. That the accounting officers of the Treasury have altogether rejected and thrown out his said charge and denied him any manner of compensation for his extra services as such special agent as aforesaid, not upon

the ground or pretense that his charge of commission is too high or unreasonable if he were entitled to

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any compensation, but that he is not entitled to any compensation whatever for his extra services as such special agent, and pretending that his stated salary as register shall be received as full compensation, not only for his proper duties as register, but for his extra employment and services in the agencies above mentioned."

That the commissions or percentage so charged by the complainant are not only reasonable and usual in the like cases, but are an inadequate compensation for the peculiar labor and responsibility of the complainant in the discharge of the particular employment and duties for which they are charged. And this complainant further shows that he is well advised by counsel and believes that the act of Congress under which the said warrant of distress is pretended to have been issued, being a law in derogation of common right and of the ordinary and approved remedies under the general law of the land, ought to be construed with the utmost strictness against any authority assumed under it and in favor of the citizen, but that in no reasonable construction of the same can this complainant or his accounts, either as register of the Treasury or as the special agent of the Treasury or as the agent of the joint library committees of Congress, above described, be brought within the description of persons over whom that act gives jurisdiction to the agent of the Treasury.

"By the second and third sections of the said act, the officers subjected to the summary jurisdiction and process of such Treasury agent are distributed into two classes: 1st, those employed to collect and receive the public money before it is paid into the Treasury; 2dly, those employed to disburse the public money after it is paid into the Treasury, appropriated for the service of the civil, naval, or military departments. There can be no pretense whatever, and he presumes none is set up, to bring this complainant within the first class, and therefore the only question is whether he falls within the second."

"This class he is well advised and believes was intended to comprehend none but the regularly appointed officers of the government, charged *ex officio* with disbursements for any of the three great departments named in the act. That this description cannot embrace mere subordinate agents employed

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by any particular department of the government, as by the Treasury, to disburse the contingent funds of the department, such agent not being an officer who is *ex officio* to disburse the public money appropriated for the service of either of the three great departments named, but, in the strictest sense, a mere unofficial agent, employed informally, without any letter patent or commission or letter of appointment, to perform extra services for the Treasury as a commission merchant or banker, to make purchases or accept bills on public account, might be employed without attaching to such commission merchant or banker the character of functions of a public officer. Whereas the third section of the act throughout describes the party subjected to the summary process authorized by it as"

"any officer employed, . . . such delinquent officer, . . . and as to his office of register of the Treasury, which constituted the only official relation between him and the government of the United States, it was not an office the duties or employment of which consisted in the disbursement of any public money appropriated for the services of any of the three great departments of service named in the third section of the act of Congress."

"Nor did this complainant, as such register, receive or disburse, nor was he competent as such register to receive or disburse, any of the public money charged to him in the said pretended account so settled by the accounting officers of the Treasury and upon which the said warrant of distress was issued as aforesaid."

"Nevertheless the said accounting officers of the Treasury have unjustly and unlawfully charged him, in the settlement of his official account as register, with all the moneys received by him for disbursement as such special agent as aforesaid,

and the whole of the alleged delinquency is charged to him officially as register and under that official head, and against him, officially as register, such warrant was issued. Whereas his said account for the receipts and disbursements of public money was wholly unofficial and connected with his official duties and station as register."

"The complainant therefore submits that, whatever its merit, in the opinion of the court, of the essential dispute on matters of account between him and the accounting officers, the parties

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may be remitted to the ordinary process of law, so as to have a fair trial and regular adjudication of the merits, before execution be had of his body or estate. Therefore this complainant prays that injunction may be granted to him to stay proceedings on the said warrant altogether, and that he may have such further and other relief in the premises as to this Court shall seem meet and agreeable to equity and good conscience."

"JOSEPH NOURSE"

The district judge granted the injunction as prayed for, which was served upon the agent of the Treasury, and a citation was issued, directed to him, to appear and answer the bill of injunction at the next court, to be holden in Alexandria.

The following answer was filed on behalf of the United States.

"The answer of the United States of America, to a bill of injunction filed against them in the district Court of the United States for the District of Potomac, by Joseph Nourse, late register of the Treasury of the United States."

"The United States, by Thomas Swann, its attorney, answer and say that upon a settlement by the proper officers of the government of the general account of the complainant, comprehending the different agencies under which he acted as register of the Treasury, he was found indebted to the United States in the sum of \$11,769.13, as will appear by the account settled as aforesaid, a copy of which is

exhibited by the complainant, in his bill of complaint, with the letter of Joseph Anderson, Comptroller, and to which the United States refers and requests that they may be considered as a part of this answer."

"The United States, by its attorney aforesaid, states that the said complainant had rendered to the United States his general account against them, charging a commission of two and a half percent upon all moneys which had passed through his hands in the different agencies in which he had acted as aforesaid, and claiming, by that account, a balance, as due to him from the United States, of \$9,367.87, as will appear by a copy of the said account, exhibited by the complainant, and made a part also of his said bill of complaint. "

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"The United States, by its said attorney, states that the grounds upon which the United States had claimed from the complainant the aforesaid balance of \$11,769.87, are fully stated and disclosed by the aforesaid letter of the Comptroller, and the difference between the account of the United States and that rendered by the complainant, with the exception of \$54.50, as stated in the Comptroller's letter, arises from the charges of a commission, as hereinbefore stated, of two and a half percent upon the public money which had passed through the hands of the complainant as aforesaid."

"The United States, by its said attorney, denies that the complainant is entitled to the commission which he claims as aforesaid, and says that there is no law of the United States authorizing any such commission or any commission whatever upon the public moneys which had passed through his hands as aforesaid, and it insists that the balance of \$11,769.13 is justly and fairly due from the complainant to the United States, and that the United States was authorized by law and fully justified in resorting to the remedy by distress to enforce the payment of the said balance; the United States does therefore request that the injunction granted to the said complainant in this case may be dissolved and that it may be permitted to pursue their legal remedies for the recovery of the said balance."

"THOMAS SWANN, *Att'y U.S.* "

On 20 December, 1830, the district judge having heard the counsel on behalf of the complainant and of the United States, made an order and decree

"That the said Joseph Nourse has produced satisfactory evidence that he did, for a long course of years, render various services and disburse large sums of money for the use of the United States, and, at its request, from time to time, made, through the respective Secretaries of the Treasury of the United States for the time being, which services and disbursements were performed and made by the said Joseph Nourse over and above the services required by the duties of his office as Register of the Treasury of the United States, for which said extra services and disbursements he has never been allowed any compensation in the

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settlement of his accounts at the Treasury Department, and, it being by the court deemed expedient to ascertain, by the report of auditors to be appointed by the court for that purpose, the value of those services, and the compensation to which the said Joseph Nourse is equitably entitled therefor, and for his disbursements as aforesaid, it is further ordered that Robert J. Taylor, Phineas Janney, and Colin Auld be and they are hereby appointed auditors to ascertain the said value and compensation and to report thereon to this court without delay, and that such of the papers and evidence in this cause as relate to that subject be submitted to the said auditors for their better information thereon."

The auditors, on 31 December, 1830, reported as follows:

"The subscribers, appointed auditors by the decree of the court in the above cause made on the 20th day of this month (of which a copy is annexed), to value the services of the complainant and the compensation to which he is equitably entitled for the same and for disbursements of public money made by him at the request of the United States through the respective Secretaries of the Treasury for the time being, over and above the services required by the duties of his office of Register of the Treasury of the United States, respectfully report; that it appears from the

documents and evidence submitted to them that, from 10 April, 1790, to 31 May, 1829, thirty-nine years, one month, and twenty-one days, the complainant, as agent for the payment of contingent expenses of the Treasury Department, for stationary, and printing of public accounts, for payment of the superintendent and watchman of the State and Treasury Departments, for miscellaneous disbursements, comprising fifteen different agencies, for advances made to sundry persons who brought from the several states the votes for Presidents and Vice-Presidents of the United States, and on account of the Congressional Library, disbursed the sum of \$943,318.83, the services rendered in which said agencies and in making said disbursements were over and above the services required of him by the duties of his office as Register of the Treasury of the United States; we find that for similar services, where no

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special provision had been made by law, a commission of two and a half percent has been heretofore in many cases allowed at the Treasury of the United States, and we are of opinion that a commission of two and a half percent on the said sum of \$943,318.83, amounting to the sum of \$23,582.72, is an equitable compensation for the services so as aforesaid rendered to the United States by the said Joseph Nourse, and that the said services are equitably worth the said last mentioned sum."

"All which is respectfully submitted."

"R. J. TAYLOR, PHINEAS JANNEY, COLIN AULD"

"Alexandria, Dec. 31, 1830"

Whereupon the following decree was made by the district judge on 4 January, 1831.

"And at a court continued and held for the said district, 4 January, 1831, the auditors, Robert J. Taylor, Phineas Janney, and Colin Auld, to whom, by an interlocutory order of this Court, bearing date December 20, 1830, it was referred

to ascertain the value of the services rendered by the complainant to the defendant over and above the regular official duties attached to his office of Register of the Treasury of the United States, as set forth in said interlocutory order as aforesaid, having made and returned their report to the court, bearing date 31 December, 1830, in and by which the said auditors state, among other things, that a commission of two and a half percent upon the sum of \$943,308.83, amounting to the sum of \$23,582.72, is an equitable compensation for the services so as aforesaid rendered to the United States by the said Joseph Nourse, and that the said services are equitably worth the said last mentioned sum, and no sufficient reasons having been presented to the court against the confirmation of said report of said auditors, it is thereupon, this 4 January, 1831, ordered, adjudged, and decreed that the said report be and the same is hereby in all particulars confirmed and made absolute."

"And the said cause now also coming on for final decision upon said report and the bill, answer, replication, exhibits, depositions,

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and other evidence admitted by the parties and upon the equity reserved under and by the said interlocutory order, it is further ordered, decreed, and adjudged that the injunction heretofore granted in this cause be and the same is hereby perpetuated, and that the said defendants be and they are hereby perpetually enjoined from proceeding further against the said complainant upon the warrant of distress in the bill mentioned for or on account of a claim or demand for the recovery of which the said warrant of distress issued."

The United States appealed to the circuit court, in which court a motion was made to discuss the appeal, which was overruled. The circuit court affirmed the decree of the district judge, and the United States prosecuted this appeal.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

A motion is made by the counsel for the defendant, the appellee, to dismiss this suit for want of jurisdiction.

The proceedings in this case were instituted by the government under an act of Congress "providing for the better organization of the Treasury Department," passed 15 May, 1820.

By the second section of this act, it is provided

"That from and after 30 September next, if any collector of the revenue, receiver of public money or other officer who shall have received the public money before it is paid into the Treasury of the United States shall fail to render his account or pay over the same in the manner or within the time required by law, it shall be the duty of the First Comptroller of the Treasury to cause to be stated the account of such collector, receiver of public money, or other officer, exhibiting truly the amount due to the United States, and certify the same to the agent of the Treasury, who is hereby authorized and required to issue a warrant of distress against such delinquent officer and his sureties, directed to the marshal, &c.;, who is authorized to collect the sum remaining due by distress and sale of the goods and chattels of such delinquent officer, on ten days' notice, &c.;, and if the goods and chattels be not sufficient to satisfy the said warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law."

The fourth section provides

"That if any person should consider himself aggrieved by any warrant issued under this act, he may prefer a bill of complaint to any district judge of the United States setting forth therein the nature and extent of the injury of which he complains, and thereupon the judge aforesaid may, if in his opinion the case requires it, grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires; but no injunction shall issue until the party

applying for the same shall give bond and sufficient security, conditioned for the performance of such judgment as shall be awarded against the complainant in such amount as the judge granting the injunction shall prescribe, nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of such warrant. And the same proceedings shall be had on such

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injunction as in other cases, except that no answer shall be necessary on the part of the United States, and if upon dissolving the injunction it shall appear to the satisfaction of the judge who shall decide upon the same that the application for the injunction was merely for delay, in addition to the lawful interest, the judge is authorized to add such damages as with the interest shall not exceed the rate of ten percent per annum upon the principal sum."

The fifth section provides that such injunctions may be granted or dissolved by such judge, either in or out of court.

And in the ninth section,

"That if any person shall consider himself aggrieved by the decision of such judge, either in refusing to issue the injunction, or, if granted, on its dissolution, it shall be competent for such person to lay a copy of the proceedings had before the district judge, before a judge of the Supreme Court, to whom authority is given, either to grant an injunction or permit an appeal, as the case may be, if, in the opinion of such judge of the Supreme Court, the equity of the case requires it; and thereupon the same proceedings shall be had upon such injunction in the circuit court as are prescribed in the district court, and subject to the same conditions in all respects whatsoever."

Under these provisions, a warrant of distress was issued against the defendant, as late Register of the Treasury of the United States, for the sum of \$11,769.13, which was alleged to be a balance found against him in favor of the United States, on a final settlement of his accounts.

On presenting his bill to the district judge setting forth that he was not indebted to the United States, the defendant obtained the allowance of an injunction, and it was issued on his giving the requisite security.

On 2 January, 1830, although not required, the attorney of the United States filed an answer to the bill, and by consent the cause came on to be heard, when, on motion, the injunction was dissolved and it was agreed that if the cause should be appealed to the circuit court, that a general replication might be filed, and either party have liberty to take and file such testimony as might have been taken in the district court.

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Afterwards, in September, 1830, it was agreed between the parties that

"The order for the dissolution of the injunction and the decree dismissing the bill having been made under a misapprehension that the evidence might be taken in the circuit court upon the appeal, should be set aside and the cause be reinstated upon the docket of the district court at the next term, and that it should be set for hearing at that term; and that testimony should be taken,"

&c.;

In pursuance of this agreement, the cause was docketed in the district court, and on 20 December, 1830, the accounts exhibited by both parties were referred by the court to auditors who, on 4 January, 1831, reported that the defendant, for certain specified services, which he had rendered the United States and for which he had received no compensation, was justly entitled to the sum of \$23,582.72. This report, having been duly considered by the court, was "confirmed and made absolute," and the injunction was decreed to be perpetual.

From this decree an appeal was taken by the government to the circuit court.

And afterwards the following decree was made in that court:

"Whereupon the record and proceedings aforesaid, with the abstracts and accounts and all things thereto relating, having been read and fully understood, and after argument of counsel and mature deliberation thereon had by the court here, for that it appears to the said court that there is no error in the decree in the record and proceedings aforesaid, nor in the giving of the said decree, therefore it is considered by the court here that the said decree, given in form aforesaid, be in all things affirmed and stand in full force and effect."

From this decree an appeal was taken by the government to this Court, and the dismissal of this appeal is the object of the present motion.

The summary proceedings, authorized by the recited act, were designed to secure the interests of the government in cases where the ordinary process of law would be inadequate. To provide for such emergencies, the Treasury Department is vested with extraordinary and responsible powers, and to guard the rights of the citizens from any abuse by the exercise

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of these powers, a special authority is given to a district judge of the United States or one of the judges of this Court to arrest the proceedings by granting an injunction.

The judge who allows the injunction may extend it to the whole or a part of the demand of the government, as the equity of the case may require. He may grant such injunction or dissolve it, either in or out of court. As the proceedings on this injunction in regard to the merits of the case are to be the same as in other cases of injunction, and may be had before the judge, out of court, and as the district court possesses no chancery powers, the jurisdiction given by this act must be limited by it.

If the party be aggrieved either by the refusal of the judge to grant the injunction or by his dissolving it, an appeal may be allowed to the circuit court by a judge of the Supreme Court. As this special mode is pointed out by which an appeal from the decision of the district judge to the circuit court may be taken, it negatives the right

to an appeal in any other manner.

Whilst Congress seemed disposed to protect the citizen from oppression by the exercise of the extraordinary powers vested in the government under the act of 1820, they were not willing that the proceedings should be arrested, except upon equitable ground. No provision is made in the act for an appeal by the government, but it is insisted that this right is secured by the general provisions of the act of 1803.

By the second section of this act it is provided

"That from all final judgments or decrees in any of the district courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed."

This act authorizes an appeal from a decree or judgment of the district court, rendered in the ordinary exercise of its jurisdiction, which is limited to cases at law and of admiralty and maritime jurisdiction. It may be admitted, that an enlargement of the powers of the district court by giving a new remedy would not require a special provision to secure the right of appeal, but if a new jurisdiction be conferred and a special mode be provided by which it shall be exercised, it is

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clear that the remedy cannot be extended beyond the provisions of the act.

If provision had not been made in the act allowing an appeal to the aggrieved party under the sanction of a judge of the Supreme Court, he could take no appeal from the decision of the district judge. And as there is no provision in the act authorizing an appeal by the government, is it not equally clear that it can take no appeal?

In judicial proceedings, no exclusive rights are given to the government in this respect over other suitors except by statutory provisions. From a decision of the district judge out of court, how could the government appeal to the circuit court? It is no answer to this question that the decree under consideration was made by the district judge in court. The right to an appeal cannot depend upon this contingency,

and the objection to the appeal in one case is as strong as in the other.

The government consents to have the summary proceedings instituted by its officers arrested on certain conditions, and gives a right to the aggrieved party to carry his complaint to the circuit court; but no appeal is provided for or seems to be contemplated in behalf of the government. Having submitted itself to the special jurisdiction created by the act, it is as much bound by the decision of the judge as an individual, and can claim no exemption from the decision, by appeal or otherwise, which does not belong equally to the other party, independent of any special provision.

Having the power to collect in this summary mode the sum due from an individual, as established by the books of the Treasury, the legislature may have considered that the interest of the government would be safe in the hands of the judge, to whom the special jurisdiction is given.

It is objected that in the consideration of this motion to dismiss the appeal for want of jurisdiction, the court cannot look beyond the decree which was made in the circuit court. And that as that court apparently had jurisdiction, this being a chancery proceeding, its jurisdiction can only be questioned, if at all, on the final hearing.

In the discussion of the motion, the jurisdiction of the circuit court has been fully investigated on both sides, and the

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question must be considered as much before the court as it could be on the final hearing. This being a case in chancery, a motion to dismiss for want of jurisdiction may involve all objections to the jurisdiction, which may be urged without a consideration of the merits of the case.

If it clearly appear that the circuit court had no jurisdiction in this case, still this Court may take jurisdiction so far as it regards the proceedings had before the circuit court; but those proceedings, being wholly unauthorized, must be annulled

or reversed. This Court, however, in such case can take no further jurisdiction of the cause. It cannot remand the cause for further proceedings to the circuit court, because that court has no jurisdiction, and it cannot retain the cause here for further proceedings because this Court can exercise no appellate jurisdiction which is not given to it by statute.

Upon a deliberate consideration of the case, the Court is clearly of the opinion that the special jurisdiction created by the act of 1820 must be strictly exercised within its provisions. A particular mode is provided, by which an appeal from the decision of the district judge may be taken; consequently it can be taken in no other. No provision is made for an appeal by the government, of course none was intended to be given to it.

There is another point of view in which this case may be considered, and which is equally conclusive against the jurisdiction of this Court. The jurisdiction of the district court is limited to cases at law and of admiralty and maritime jurisdiction. From all decrees over a certain amount in the latter, appeals may be taken to the circuit court; but judgments of law must be removed by writ of error.

In the case of [\*United States v. Goodwin\*](#), reported in 7 Cranch 108, this Court decided that no writ of error lies to reverse the decision of a circuit court in a civil action which had been brought to that court from the district court by writ of error. This decision was made under the provision of the twenty-second section of the Judiciary Act of 1799, which subjects no cause to revision in the Supreme Court by writ of error that was brought from the district to the circuit court in any other way than by appeal. And as no cause, except of admiralty and maritime jurisdiction, could be so appealed, it

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followed under that act that such cases only, coming from the district to the circuit court, could be taken to the Supreme Court on a writ of error.

The act of 1803, which provides that,

"From all final judgments or decrees in any of the district courts, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the circuit court,"

made no alterations in the law of 1789, as it respects appeals to the circuit court except in reducing the sum or matter in controversy from three hundred to fifty dollars, on which such appeals shall be allowed. The above provision had no reference to a chancery proceeding, as the district court is not vested with chancery powers, and the words "final judgments or decrees" refer to judgments and decrees in cases of admiralty and maritime jurisdiction. It therefore follows that in such cases only has the law authorized an appeal from the district to the circuit court.

In the second section of the act of 1803, it is also provided

"That from all final judgments or decrees rendered or to be rendered in any circuit court in any cases of equity, of admiralty and maritime jurisdiction, and of prize or no prize, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of \$2,000, shall be allowed to the Supreme Court."

This provision, so far modifies the twenty-second section of the act of 1789, as to allow appeals to be taken from the judgments or decrees of the circuit court in cases of admiralty and maritime jurisdiction, though such causes may have been brought to the circuit court by an appeal from the district court. An appeal is substituted by this act instead of a writ of error to remove such causes from the circuit to the Supreme Court.

It might have been contended in the case of *United States v. Goodwin*, as it has been argued in this case, that as the Supreme Court had power to revise the judgments of the circuit court, it could not dismiss the writ of error in that case for want of jurisdiction. But it decided that its jurisdiction was limited to the provisions of the statute, and that as it contained no provision for the revision in the Supreme Court by writ of error of any judgment or decree of the circuit court in a cause which had been brought to that court

from the district court except by appeal, it could not sustain the writ of error.

If, then, it appears that no provision is made in the general act to authorize an appeal from the judgment or decree of the district court to the circuit court, except in cases of admiralty or maritime jurisdiction; is it not clear on the principle of the case of *United States v. Goodwin* that the appeal cannot be sustained in this case?

If it be a case in chancery, as denominated by the counsel for the government, no provision is made in the general law for the appeal of such a case from the district to the circuit court.

Whether we look to the general law which regulates appeals or to the provisions of the act of 1820 which confers the special jurisdiction that was exercised in this case, the want of jurisdiction in the circuit court is equally clear.

*The decree of the circuit court must be reversed.*