

Decatur Vs. Paulding

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SooperKanoon Citation : sooperkanoon.com/79727

Court : US Supreme Court

Decided On : 1840

Appeal No. : 39 U.S. 497

Appellant : Decatur

Respondent : Paulding

Judgement :

Decatur v. Paulding - 39 U.S. 497 (1840)

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Decatur v. Paulding

39 U.S. (14 Pet.) 497

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR

THE COUNTY OF WASHINGTON, IN THE DISTRICT OF COLUMBIA

SYLLABUS

On 3 March, 1837, Congress passed an act giving to the widow of any officer who had died in the naval service of the United States authority to receive, out of the navy pension fund, half the monthly pay to which the deceased officer would have

been entitled under the acts regulating the pay in the navy in force on 1 January, 1835. On the same day, a resolution was adopted by Congress giving to Mrs. Decatur widow of Captain Stephen Decatur, a pension for five years out of the navy pension fund, and in conformity with the act of 30 June, 1834, and the arrearages of the half-pay of a post captain, from the death of Commodore Decatur to the 30 June, 1834, the arrearages to be vested in trust for her by the Secretary of the Treasury. The pension and arrearages, under the Act of 3 March, 1837, were paid to Mrs. Decatur on her application to Mr. Dickerson, the Secretary of the Navy, under a protest by her that by receiving the same she did not prejudice her claim under the resolution of the same date. She applied to the Secretary of the Navy for the pension and arrears under the resolution, which were refused by him. Afterwards, she applied to Mr. Paulding, who succeeded Mr. Dickerson as Secretary of the Navy, for the pension and arrears, which were refused by him. The Circuit Court of the County of Washington, in the District of Columbia, refused to grant a mandamus to the Secretary of the Navy, commanding him to pay the arrears, and to allow the pension under the resolution of March 3, 1837. *Held* that the judgment of the circuit court was correct.

In the case of [*Kendall v. United States*](#), 12 Pet. 527, it was decided by the Supreme Court that the Circuit Court of Washington County for the District of Columbia, has the power to issue a mandamus to an officer of the federal government commanding him to do a ministerial act.

In general, the official duties of the head of one of the executive departments, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the government in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel, and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive, in which judgment and discretion

were to be exercised.

If a suit should come before the Supreme Court which involved the construction of any of the laws imposing duties on the heads of the executive departments, the Court certainly would not be bound to adopt the construction given by the head of a department. And if it supposed his decision to be wrong, it would, of course, so pronounce their judgment. But the judgment of the Court upon the construction of a law must be given in a case in which it has jurisdiction, and in which it is their duty to interpret the act of Congress, in order to ascertain the rights of the parties in the cause before them. The Court could not entertain an appeal from the decision of one of the secretaries, nor revise his judgment in any case where the law authorized him to exercise his discretion or judgment. Nor can it, by mandamus, act directly upon the officer, or guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his official duties. The interference of the court with the performance of the ordinary duties of the executive departments of the government would be productive of nothing but mischief, and this power was never intended to be given to them.

The principles stated and decided in the case of [*Kendall v. United States*](#), 12 Pet. 610 and [37 U. S. 614](#) , relative to the exercise of jurisdiction by the Circuit Court of the District of Columbia, where the acts of officers of the executive departments of the United States may be inquired into for the purpose of directing a mandamus to such officers, affirmed.

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On 3 March, 1837, an act was passed by Congress giving to the widow of any officer who had died in the naval service of the United States, out of the navy pension fund, half the monthly pay to which the deceased officer had been entitled to receive under the laws in force on 1 January, 1835, the half-pay to commence from the death of such officer, the pension so allowed to cease on the intermarriage or death of the widow, &c.;

On the same 3 March, 1837, a resolution was passed by Congress, "granting a pension to Susan Decatur, widow of the late Stephen Decatur." The resolution directs that Mrs. Susan Decatur be paid from the navy pension fund a pension for five years, commencing from 30 June, 1834, in conformity with the provisions

"of the act concerning naval pensions and the navy pension fund, passed thirtieth June, eighteen hundred and thirty-four, and that she be allowed from said fund the arrearages of the half-pay of a post captain, from the death of Commodore Decatur to 30 June, eighteen hundred and thirty-four, together with the pension hereby allowed her, and that the arrearage of said pension be invested in the Secretary of the Treasury in trust for the use of the said Susan Decatur, provided that the said pension shall cease on the death or marriage of the said Susan Decatur."

Under the law of March 3, 1837, Mrs. Decatur applied to Mahlon Dickerson, Esq., then Secretary of the Navy, and trustee of the navy pension fund, and received out of the navy pension fund the whole amount of the pension, which, as the widow of Commodore Decatur, she was entitled to by the provisions of the law. This was received by her under a reservation of her rights under the resolution of 3 March, 1837, she at the same time claiming the benefit of that resolution.

Mr. Dickerson, the Secretary of the Navy, referred the question whether Mrs. Decatur was entitled to both pensions, to the Attorney General of the United States, and he decided that she might make her election to receive either pension, but that she was not entitled to both. On the retirement of Mr. Dickerson from the Navy Department, he was succeeded by Mr. Paulding, the defendant in error. In the autumn of 1838, Mrs. Decatur applied to Mr. Paulding, requiring him, as the trustee of the navy pension fund, to pay the sum claimed to be due to her under the resolution of Congress of March 3, 1837, stated in an amended petition filed in the circuit court to be eighteen thousand five hundred and ninety-seven dollars, with interest on the same. It was stated that there were ample funds and money of the navy pension fund to pay the amount claimed.

The Secretary of the Navy refused to comply with this demand, and on 25 November, 1837, Mrs. Decatur applied by petition to the Circuit Court of the County of Washington setting forth all

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the circumstances of the case, and asking from the court a writ of mandamus,

"to be directed to the said James K. Paulding, Secretary of the Navy of the United States, commanding him, that he shall fully comply with, obey, and execute the aforesaid resolution of Congress of 3 March, 1837, by paying to your petitioner and to the Secretary of the Treasury, in manner and form as said act or resolution provides, or as your honors shall think proper, the full and entire amount of the aforesaid sum or sums of money, with interest thereon, or such part or portion thereof as your honors may direct."

The circuit court granted a rule on the Secretary of the Navy to show cause why the writ of mandamus, as prayed for, should not be issued, and to this rule the Secretary made the following return:

"To the honorable the judges of the circuit court of the District of Columbia for Washington County."

"The undersigned, James K. Paulding, Secretary of the Navy of the United States, respectfully states: "

"That he hath been served with notice of an order or rule from this honorable court requiring him to show cause why a writ of mandamus should not be issued from the said court, directed to him as Secretary of the Navy of the United States, upon the petition of Mrs. Susan Decatur, commanding him to pay certain sums of money out of the navy pension fund, claimed by said petitioner to be due to her under a certain resolution of Congress referred to in the aforesaid petition."

"The undersigned considers it his duty in the first place to protest against the jurisdiction of the circuit court invoked on this occasion, for the following reasons: "

"1st. Because, as Secretary of the Navy of the United States, he is not subject, in the discharge of the duties of his office by the Constitution and laws of the United States, to the control, supervision, and direction of the said court."

"2d. Because, as such Secretary, he is by law constituted the trustee of the navy pension fund, and it is made his duty, as such, 'to receive applications for pensions, and to grant the same according to the terms of the acts of Congress in such cases provided.' He is also required to cause books to be opened, and regular accounts to be kept, showing the condition of the navy and privateer pension funds, the receipts and expenditures thereof, the names of the pensioners, and the dates and amount of their respective pensions, with a statement of the act or acts of Congress under which the same may be granted, and he shall annually report to Congress an abstract showing the condition of these funds in all these particulars, and the receipts and expenditures during the year, and there is no law authorizing the circuit court of this district to control and direct him in the discharge of these duties."

"3d. Because such jurisdiction in this Court would, if assumed, operate as such an interference with the discharge of the official

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duties of the undersigned, as to make it impossible for him to perform them as required and intended, and would transfer to the said court the discharge of the said duties, and the whole management and disposition of the said fund, and subject all applicants for pensions to the delay, expense, and embarrassments of legal controversies as to their rights, and to a suspension of the provisions to which they might be entitled under the laws, till these controversies were judicially decided."

"4th. Because such a jurisdiction in the circuit court would make the United States suable in that court, and subject the money of the United States, in the Treasury of the United States, to be taken therefrom by the judgments of said court."

"5th. Because if the circuit court assumes the jurisdiction of compelling the Secretary of the Navy, or the head of any other department, to revise and reverse the decisions that may have been made by their predecessors in office, these officers will necessarily be taken off from the discharge of their immediate and most urgent public duties, and made to apply their time and attention, and that of their clerks in the departments, in an endless review and reconsideration of antiquated claims and settled questions, to the delay and hindrance of measures of vital importance to the national welfare and safety."

"For these and other reasons, which he trusts will be obvious, on further consideration, to the court, he respectfully objects to the jurisdiction assumed in this case, and will now proceed under such protest to show cause why the mandamus prayed for should not be issued."

"The undersigned was somewhat surprised to see it stated in the petition of the relatrix that"

"he had been often requested by her to pay the two several sums of money stated in the petition, amounting to the aggregate sum of twenty-three thousand four hundred and twenty-two dollars and twenty-five cents,"

"and that he had refused so to do; and, that 'he pretended to say that the petitioner was not entitled to the same, or any part thereof.' The undersigned has no recollection of ever having refused the payment of any sum, or any sums of money demanded in behalf of Mrs. Decatur, except so far as this may have been inferred from his declining to reconsider her claim on grounds which he will now proceed to state."

"Sometime in September, 1838, the undersigned received a communication from the counsel of Mrs. Decatur informing him that they had examined the documents connected with her claims, and the opinion of the late Attorney General, Mr. Butler, upon the strength of which the claim appeared to have been disallowed by his predecessor, and that they were satisfied that the decision which had been made was not warranted by law."

"A reconsideration of the case was then asked of the undersigned, 'if he felt himself at liberty to revise the decision of his predecessor.' And if this could not be complied with, he has then asked "

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"to give such instructions to the district Attorney as will enable him to concur with them in bringing the subject before a competent tribunal, in order to obtain a judicial decision upon the case."

"To this application the undersigned replied,"

"that the claim having been examined and decided by his predecessor, in conformity with the opinion of the late Attorney General, he did not feel himself authorized to disturb that decision, as no new facts had been adduced to call for a re-examination."

"And further, that he also declined the second proposition of the counsel"

"being unwilling to give a precedent, which, if once established, will place every executive officer of the government in the attitude of a defendant, in all cases where individuals are dissatisfied with his decisions."

"After this reply, no further application was made to the undersigned, but in February last, a memorial was presented to the President of the United States in behalf of the claimant, by her counsel, in which a reconsideration of the case and his interference were requested, and that"

"if he should be of opinion that the claim was lawful and proper to be allowed, that he would direct the Secretary of the Navy to execute the resolution in favor of the claimant without further delay."

"In this memorial, the opinion of the late Attorney General, and the decision of the late Secretary of the Navy were stated, and it was added that"

"the claim had been recently renewed before the present Secretary of the Navy, and again rejected, not upon a consideration of its merits, but because it had been before acted upon and denied, and no new matter shown upon the new application."

"On this memorial the President decided that 'he did not find in the papers submitted to him, sufficient to justify the interference asked for,' and of this the counsel for the claimant was informed."

"The undersigned has been thus particular, for the purpose of showing distinctly the nature of the application and its refusal. He desires it should be seen that he placed this refusal solely upon the ground that his predecessor had decided it, after a full consideration, and after calling for the official opinion of the Attorney General, and that no new facts were adduced to authorize him to reconsider it, and he desires now that this shall be considered by the court as a distinct ground of objection to the relief now prayed for."

"He presumes that even if the court shall decide that it possesses the jurisdiction claimed, it will not consider that it is bound to exercise it in all cases, and under all circumstances, and that after a claim has been heard and rejected by the officer authorized to decide upon it, it still remains in the power of the claimant to call it up, and compel, a reconsideration of it from every successive officer, who may be subsequently appointed in the place of the officer making the decision. It is obvious, that if such a course is allowed, there can be no such thing as the final decision of a controverted claim."

"The executive officers must always continue to consider it as an

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open claim, and the funds of the government as still liable to its demands. Nor is it possible for the affairs of the government to be properly administered if the executive officers, instead of devoting themselves to the discharge of the duties brought before them, and which are abundantly sufficient to occupy all their time and attention, are to be called upon to go back to the times of their predecessors

and determine whether they have properly discharged the duties they were required to execute."

"These considerations, and an experience of the impossibility of thus conducting the public business committed to them, have long since obliged all the executive departments, under every administration, with the sanction, as the undersigned believes, of several successive attorneys general to adopt the rule that no claim once fully heard and rejected by the competent officer can be considered open to the review and reconsideration of the successor to such officer unless new matter can be shown to justify such reexamination."

"It is evidently as important to the public interests, if the courts shall be considered as invested with the jurisdiction claimed on this occasion, that they should respect this rule."

"The inconveniences resulting from disregarding it by the courts in the exercise of such a jurisdiction are the same. The same unsettled state of controverted claims, the same uncertainty as to the national funds, kept open to rejected demands, which may interfere with the rights of other claimants and with the public interests, and the same misemployment of the time and attention of the public officers to cases already decided by their predecessors, must continually occur, for although the decision is ultimately made by the court, yet the officer to whom the command is to be directed must examine the case and everything connected with it, so as to present it to the consideration of the court. Indeed, much more of his time and attention may be withdrawn from the immediate duties of his station by his being called to answer before a judicial tribunal on such occasions, and make that defense against the proceedings which he may feel bound to do than by a reconsideration of the claim."

"Under such circumstances it has been heretofore thought necessary by claimants whose demands have been rejected, and who were dissatisfied with such rejection, to make their application to Congress, and where it has been thought reasonable and just by the legislature that their claims should be allowed, acts have passed for their allowance or the accounting officers have been authorized to

open and reconsider their claims. And it appears to the undersigned that there would be a peculiar propriety in seeking that mode of redress in relation to the present claim, which arises from the circumstance of there being two legislative enactments of the same date making nearly similar provisions for the claimant, and the question being whether she is entitled to one or both of these"

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provisions. The decision of that question by the late Secretary of the Navy, and the opinion of the Attorney General upon which it is founded, are herewith presented to the court.

"The undersigned observes that a specific sum is stated in the petition as being the amount of the pension claimed. He has already stated that no sum was stated in the application made to him. It appears from the amount stated that the petitioner claims not only half the pay to which the deceased was entitled, but half the pay and rations or pay and emoluments."

"This will present to the court, in case it should assume the jurisdiction, and decide in favor of the petitioner, a question under the pension laws as to the construction of the words 'half the pay' and 'half the monthly pay,' in those acts of Congress. The uniform construction of all these laws, in all the departments of the government, has invariably been such as to confine the pension to the pay proper, the expression being in all these acts 'pay,' and not pay and rations or pay and emoluments. The undersigned is not aware that any claimant of a pension has ever before suggested a different construction."

"In conclusion, he admits, in relation to the state of the navy pension fund, that there is at present a sufficient amount to pay the claim of the petitioner if it was now to be paid. What may be its state when the payment may be ordered, if it should be ordered, it will be impossible for him to state, inasmuch as it will depend on the number of applicants whose claims may be made and allowed in the meantime. And he thinks it proper to state that if the payment of the sum stated in the petition shall be commanded by the decision of the court, in consequence of

the court's deciding that the pensioners under these acts of Congress are entitled to half-pay and rations, or pay and emoluments, of the deceased officers and seamen, then he apprehends the navy pension fund would be greatly insufficient to pay the present claimant and the other pensioners whose claims have been allowed, but who have only received half the pay proper, exclusive of rations or emoluments. All which he respectfully submits."

"J. K. PAULDING"

" *OPINION OF THE ATTORNEY GENERAL* "

"Attorney General's Office, April 11, 1837"

"Sir -- I have had the honor to receive your letter of the 15 ult'o relative to the case of Mrs. Susan Decatur."

"It is assumed in your statement of the case that Mrs. Decatur would be entitled to the pension granted by the act of the 3 ultimo for the equitable administration of the navy pension fund"

"were it not for the doubt created by the passage, on the same day, of the joint resolution for her special benefit. And on these two laws you inquire whether she is entitled under the resolution, or under the act, or under both."

"This case differs from that of Mrs. Perry, referred to in the note of Mrs. Decatur, accompanying your letter, inasmuch as the law

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under which Mrs. Perry ultimately obtained her pension was in existence at the time of his death, at which time she was also entitled (although not then aware of the fact) to its benefits. It held in her case that the law granting her an annuity, for such it was called, could not deprive her of the pension given by a preexisting law, and that as Congress was presumed to be acquainted with the laws in force, the legal intendment must be that the annuity was designed as an additional provision; and, consequently, that she was entitled to both."

"After maturely considering the history of the general and special provisions on which the present case depends, I am of opinion that but one pension can be allowed; but if the general provision includes the case of Mrs. Decatur, then I am of opinion she is entitled to take, under that provision, or under the joint resolution, at her election."

"I am, very respectfully, your ob't serv."

"B. F. BUTLER"

"The Hon. MAHLON DICKERSON"

" *Secretary of the Navy* "

" *LETTER FROM SECRETARY OF THE NAVY TO MRS. DECATUR*"

"Navy Department, 14 April, 1837"

"Dear Madam -- The Attorney General has given his opinion that in your case but one pension can be allowed; he however thinks that you have your selection to take under the general law, or under the resolution in your particular case, as soon as your pleasure upon this subject shall be known, the warrant for pension shall be made out."

"I am, with great respect and esteem, your ob't h'le s't,"

"M. DICKERSON"

"Mrs. SUSAN DECATUR"

" *Georgetown, D.C.* "

The circuit court overruled the order to show cause to the Secretary of the Navy, and refused the application of Mrs. Decatur for a mandamus, and this writ of error was prosecuted by her.

MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

This case is brought here by a writ of error, from the judgment of the circuit court of the United States for the District of Columbia, refusing to award a peremptory mandamus.

The material facts in the case are as follow:

By an Act of Congress passed on 3 March, 1837, the widow of any officer who died in the naval service became entitled to receive out of the navy pension fund half the monthly pay to which the deceased officer would have been entitled, under the acts regulating the pay of the navy, in force on 1 January, 1835, the half-pay to commence from the time of the death of such officer, and upon the death or intermarriage of such widow, to go to the child or children of the officer.

On the same day the following resolution was passed by Congress:

"No. 2. Resolution granting a pension to Susan Decatur, widow of the late Stephen Decatur."

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled that Mrs. Susan Decatur, widow of the late Commodore Stephen Decatur, be paid from the navy pension fund a pension for five years, commencing from the thirtieth day of June, eighteen hundred and thirty-four, in conformity with the provisions of the act concerning naval pensions

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and the navy pension fund, passed the thirtieth June, eighteen hundred and thirty-four, and that she be allowed, from said fund, the arrearages of the half-pay of a post captain, from the death of Commodore Decatur to the thirtieth of June, eighteen hundred and thirty-four, together with the pension hereby allowed her, and that the arrearage of said pension be vested in the Secretary of the Treasury, in trust for the use of the said Susan Decatur, provided that the said pension shall cease on the death or marriage of the said Susan Decatur."

"Approved, March 3, 1837"

By the Act of Congress of July 10, 1832, the Secretary of the Navy is constituted the trustee of the navy pension fund, and as such it is made his duty to grant and pay the pensions, according to the terms of the acts of Congress.

After the passage of the law and resolution of March 3, 1837, Mrs. Susan Decatur, the widow of Commodore Decatur, applied to Mahlon Dickerson, then Secretary of the Navy, to be allowed the half-pay to which she was entitled under the general law above mentioned; and also the pension and arrearages of half-pay specially provided for her by the resolution passed on the same day.

The Secretary of the Navy, it appears, doubted whether she was entitled to both, and referred the matter to the Attorney General, who gave it as his opinion that Mrs. Decatur was not entitled to both, but that she might take under either, at her election. The Secretary thereupon informed her of the opinion of the Attorney General, offering at the same time to pay her under the law, or the resolution, as she might prefer. Mrs. Decatur elected to receive under the law, but it is admitted by the counsel on both sides that she did not acquiesce in this decision, but protested against it, and by consenting to receive the amount paid her, she did not mean to waive any right she might have to the residue.

Sometime afterwards, Mr. Dickerson retired from the office of Secretary of the Navy, and was succeeded by Mr. Paulding, the defendant in this writ of error, and in the fall of 1838 Mrs. Decatur applied to him to revise the decision of his predecessor, and to allow her the pension provided by the resolution. The Secretary declined doing so, whereupon Mrs. Decatur applied to the Circuit Court for Washington County, in the District of Columbia, for a mandamus to compel him to pay the amount she supposed to be due to her. A rule to show cause was granted by the court, and upon a return made by him, stating, among other things, the facts above mentioned, the court refused the application for a peremptory mandamus. It is this decision we are now called on to revise.

In the case of [*Kendall v. United States*](#), 12 Pet. 524, it was decided in this Court that the Circuit Court for Washington County in the District of Columbia, has the power to issue a mandamus to an officer of the federal government, commanding him to do a ministerial act. The first question, therefore, to be considered

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in this case is whether the duty imposed upon the Secretary of the Navy, by the resolution in favor of Mrs. Decatur, was a mere ministerial act.

The duty required by the resolution was to be performed by him as the head of one of the executive departments of the government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of Congress or by resolution, are not mere ministerial duties. The head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of Congress, under which he is from time to time required to act. If he doubts, he has a right to call on the Attorney General to assist him with his counsel, and it would be difficult to imagine why a legal adviser was provided by law for the heads of departments, as well as for the President, unless their duties were regarded as executive in which judgment and discretion were to be exercised.

If a suit should come before this Court which involved the construction of any of these laws, the Court certainly would not be bound to adopt the construction given by the head of a department. And if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of Congress, in order to ascertain the rights of the parties in the cause before them. The Court could not entertain an appeal from the decision of one of the Secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion, or judgment. Nor can it by mandamus, act directly upon the officer, and guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his

official duties.

The case before us illustrates these principles, and shows the difference between executive duties and ministerial acts. The claim of Mrs. Decatur having been acted upon by his predecessor in office, the Secretary was obliged to determine whether it was proper to revise that decision. If he had determined to revise it, he must have exercised his judgment upon the construction of the law and the resolution, and have made up his mind whether she was entitled under one only, or under both. And if he determined that she was entitled under the resolution as well as the law, he must then have again exercised his judgment, in deciding whether the half-pay allowed her was to be calculated by the pay proper, or the pay and emoluments of an officer of the Commodore's rank. And after all this was done, he must have inquired into the condition of the navy pension fund, and the claims upon it, in order to ascertain whether there was money enough to pay all the demands upon it; and if not money enough, how it was to be apportioned among the parties entitled. A resolution of Congress, requiring the exercise of so

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much judgment and investigation can with no propriety be said to command a mere ministerial act to be done by the Secretary.

The interference of the courts with the performance of the ordinary duties of the executive departments of the government would be productive of nothing but mischief, and we are quite satisfied that such a power was never intended to be given to them. Upon the very subject before us, the interposition of the courts might throw the pension fund, and the whole subject of pensions, into the greatest confusion and disorder. It is understood from the Secretary's return to the mandamus that in allowing the half-pay, it has always been calculated by the pay proper, and that the rations or emoluments to which the officer was entitled have never been brought into the calculation. Suppose the court had deemed the act required by the resolution in question a fit subject for a mandamus, and, in expounding it, had determined that the rations and emoluments of the officer were to be considered in calculating the half-pay? We can readily imagine the confusion

and disorder into which such a decision would throw the whole subject of pensions and half-pay, which now forms so large a portion of the annual expenditure of the government, and is distributed among such a multitude of individuals.

The doctrines which this Court now hold in relation to the executive departments of the government are the same that were distinctly announced in the case of [*Kendall v. United States*](#), 12 Pet. 524. In page [37 U. S. 610](#) of that opinion, the Court said

"We do not think the proceedings in this case interferes in any respect whatever with the rights or duties of the executive, or that it involves any conflict of powers between the executive and judicial departments of the government. The mandamus does not seek to direct or control the Postmaster General in the discharge of any official duty, partaking in any respect of an executive character, but to enforce the performance of a mere ministerial act, which neither he nor the President had any authority to deny or control."

And in page [37 U. S. 614](#) , the Court still more strongly state the mere ministerial character of the act required to be done in that case, and distinguish it from official acts of the head of a department, where judgment and discretion are to be exercised. The Court there said

"He was simply required to give the credit. This was not an official act in any other sense than being a transaction in the department where the books and accounts were kept, and was an official act in the same sense that an entry in the minutes of a court, pursuant to an order of the court, is an official act. There is no room for the exercise of any discretion, official or otherwise; all that is shut out by the direct or positive command of the law, and the act required to be done is, in every just sense, a mere ministerial act."

We have referred to these passages in the opinion given by the Court in the case of *Kendall v. United States* in order to show more clearly the distinction taken between a mere ministerial act, required to be done by the head of an executive department, and a

duty imposed upon him in his official character as the head of such department, in which judgment and discretion are to be exercised. There was in that case a difference of opinion in the Court, in relation to the power of the circuit court to issue the mandamus. But there was no difference of opinion respecting the act to be done. The Court was unanimously of opinion that in its character the act was merely ministerial. In the case before us, it is clearly otherwise, and the resolution in favor of Mrs. Decatur imposed a duty on the Secretary of the Navy, which required the exercise of judgment and discretion, and in such a case the circuit court had no right by mandamus to control his judgment and guide him in the exercise of a discretion which the law had confided to him.

We are therefore of opinion that the circuit court were not authorized by law to issue the mandamus, and committed no error in refusing it. And as we have no jurisdiction over the acts of the Secretary in this respect, we forbear to express any opinion upon the construction of the resolution in question.

The judgment of the circuit court, refusing to award a peremptory mandamus, must be

Affirmed.

MR. JUSTICE Mc LEAN.

The answer of the Secretary of the Navy to the rule to show cause why a mandamus should not issue is conclusive, and I entirely concur with the decision of the circuit court, in refusing the writ. The relatrix having received a pension under the general law, is not entitled to receive one on the same ground under the special law. My impression is that Congress having acted upon her case and made a special provision, she cannot claim under the general law.

An individual applies to Congress for compensation for services rendered to the public, and a special provision is made for his relief. And if a law should be passed at the same session, making general provision for the payment of similar services,

I should think that it could not be successfully contended, that such individual could claim under the general law. The merits of his claim having been considered and decided by Congress, he can only claim under the special provision made for him. But in the present case, the claimant having received under the general law as large if not a larger benefaction than was given under the special law, her right under the latter is extinguished.

I differ from a majority of the judges, who hold that the construction of this resolution, giving to the relatrix a pension, is a duty in the discharge of which an executive discretion may be exercised. The law is directory and imperative, and admits of the exercise of no discretion on the part of the Secretary. The amount of the half-pay pension given in the resolution, is fixed by law, and is therefore certain. I am authorized to say that my brother Story agrees with this view of the case.

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MR. JUSTICE CATRON.

Between the circuit court of this district and the executive administration of the United States there is an open contest for power. The court claims jurisdiction to coerce by mandamus in all cases where an officer of the government of any grade refuses to perform a ministerial duty, and of necessity claims the right to determine, in every case, what is such duty; or whether it is an executive duty; when the power to coerce performance is not claimed. Where the line of demarcation lies the court reserves to itself the power to determine. Any sensible distinction applicable to all cases it is impossible to lay down, as I think; such are the refinements, and mere verbal distinctions, as to leave an almost unlimited discretion to the court. How easily the doctrine may be pushed and widened to any extent this case furnishes an excellent illustration. The process of reasoning adopted by those who maintain the power to assume jurisdiction, is that where a right exists by law to demand money of an officer, and he refuses to pay, the court can enforce the right by mandamus, and to ascertain the existence of the right it is

the duty of the court to construe the law; and if by such construction the right is found, and the refusal to pay ascertained to have been a mistake, then the officer will be coerced to pay out the money as a ministerial duty.

In most cases, as in this, the court will be called on to try a contest only fit for an action of assumpsit. First, it must ascertain the existence of the right, from complicated facts, and the construction of doubtful laws; this found, the duty follows, it being a duty, it is for the court to say whether it is clear; if so, being an ascertained duty, and clear, then coercion, of course, would follow.

What few cases of contested claims against the government would escape investigation were these assumptions recognized is free from doubt.

The great question, then, standing in advance of all others in this cause, and the only one I feel myself authorized to examine is the broad one, whether the Circuit Court of the District of Columbia can, by a writ of mandamus, force one of the secretaries of the great departments, contrary to the opinion and commands of the President of the United States, to pay money out of the Treasury. Mrs. Decatur claimed a double pension; a single one was paid by the Secretary of the Navy; she demanded the additional one, amounting to nearly twenty thousand dollars; the Secretary refused to pay it; she then memorialized the President, and he concurred with, and affirmed the decision of the Secretary that the claim could not be allowed, and from this final decision of the executive department of the nation, Mrs. Decatur appealed in the form of a petition

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for a mandamus to the Circuit Court of the District of Columbia, to reverse and annul the decision, made by the Secretary, and sanctioned by the President.

The court assumed jurisdiction, compelled the United States, through the Secretary of the Navy, to file a long answer, and in a tedious law suit to defend the United States. That he did so successfully is of little consequence; the evil lies not in the loss of eighteen thousand six hundred dollars to the government, but in the concession by this Court that the circuit court of the District has the power to sit in

judgment on the Secretary's decision; to reverse the same at its pleasure, and to order the money to be paid out of the Treasury, contrary to his will and to the will of the President and that of all those entrusted by the Constitution and laws with the safekeeping of the public moneys.

Stripped of the slight disguise of legal forms, such is the case before us; the conflict between the executive and judiciary departments could not well be more direct nor more dangerous. The idea that they are distinct, and their duties separate, is confounded, if the jurisdiction of the court below is sustained; placing the executive power at its mercy, in case of all contested claims. Few can be more contested than the one before us; if jurisdiction can be exercised in this instance, it is difficult to see in what others it does not exist; to establish which, we will briefly recapitulate the leading facts. On 3 March, 1837, a resolution was passed by Congress giving a pension of the half-pay of the late Captain Decatur, to the petitioner, his widow, and on the same day a bill passed, giving an equal pension to all the widows of naval officers, and seamen, who had died in the service: with this difference in the general law and the resolution, that by the former, the half-pay continued for life, and by the resolution only for five years, if the petitioner so long lived, and continued a widow. She claims by her petition, not only the half-monthly pay proper of a post captain of the navy, but for daily rations, eight, at twenty-five cents each, amounting to one-half of seven hundred and thirty dollars per annum, and also interest on the sum withheld. These claims for back rations and interest are contrary to the construction given by the government to the navy pension acts, for more than forty years. To cover a failure, should the court concur with the executive departments in rejecting these claims, the petition has a double aspect in the form of a bill in equity: first, praying for the whole sum of eighteen thousand five hundred and ninety-seven dollars, or such part or portion thereof as the court may direct.

It was first called on to decide whether the United States owed the petitioner anything; secondly, how much; and thirdly whether there was any money in the Treasury belonging to the navy fund, out of which the claim could then be satisfied.

The Secretary answers he had money enough of the fund at his control when he made the answer, if the old construction was adhered to by the court; but if he was adjudged to pay the petitioner

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for rations, and interest, then all other widows and orphans provided for by the various acts of Congress, and entitled to half-pay out of the fund, would likewise be entitled to come in for half rations and interest, in which case he would not have money to pay the claim, but that the fund would be greatly in arrear. A more complicated and difficult law suit than is found in this cause rarely comes before a court of justice, and to be compelled to defend which the Secretary protests:

"Because such jurisdiction in this Court would, if assumed, operate as such an interference with the discharge of the official duties of the undersigned as to make it impossible for him to perform them as required and intended, and would transfer to the said court the discharge of the said duties, and the whole management and disposition of the said fund and subject all applicants for pensions to the delay, expense, and embarrassments of legal controversies as to their rights and to a suspension of the provisions to which they might be entitled under the laws, till these controversies were judicially decided."

"Because such a jurisdiction in the circuit court would make the United States suable in that court, and subject the money of the United States, in the Treasury of the United States, to be taken therefrom by the judgments of said court."

"Because if the circuit court assumes the jurisdiction of compelling the Secretary of the Navy or the head of any other department to revise and reverse the decisions that may have been made by their predecessors in office, these officers will necessarily be taken off from the discharge of their immediate and most urgent public duties, and made to apply their time and attention, and that of the clerks in the departments, in an endless review and reconsideration of antiquated claims and settled questions, to the delay and hindrance of measures of vital importance to the national welfare and safety."

"For these and other reasons which he trusts will be obvious, on further consideration to the court, he respectfully objects to the jurisdiction assumed in this case, and will now proceed, under such protest, to show cause why the mandamus prayed for should not be issued."

He was, however, compelled to defend the suit, and defeated the claim upon its merits, the discussion of which took up two days in this Court.

But the great question was decided below that the court has jurisdiction and power to order money to be paid out of the Treasury of the United States, by a writ in the nature of an execution, running in the name of the United States, commanding the government to obey its own authority. This prominent feature of the writ demanded it is impossible to disguise. That no other federal circuit court in the Union has power to issue such a writ was recognized as settled in the case of *Stockton and Stokes v. Postmaster General*, by this Court in 1838. The power claimed is confined to this ten miles square. And what is the extent of the

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power? To overrule the decisions of the five great departments and of the President extending to the payment of money, the delivery of commissions, and innumerable other matters involved in the complicated operations of this government, amounting each year to a hundred thousand separate transactions, to say the least; the validity of all debatable and contested claims are holden to be subjected to the ordeal, and, on their rejection, to the supervision of the circuit court of this district. Beyond doubt, this is the breadth of the assumption of jurisdiction put forth by the cause before us. The entertaining such a cause is calculated to alarm all men who seriously think of the consequences. It is an invitation to all needy expectants, with pretensions of claim on the government, to seek this superior and controlling power (the circuit court of this district) and invoke its aid to force their hands into the Treasury, contrary to the better judgment of the guardians of the public money. Thousands of claims exist quite as fair on their face, and as simple in their details, as is this of Mrs. Decatur's, that have been rejected. She has been allowed to appeal to the court, and been heard, and so

can all others. The assumption of powers need not be pushed further, to let suitors enough into the court to consume the time and absorb the attention of the secretaries; a principal business of theirs presently must be to sit at the bar of the court to ward off its mandate, and keep its officers from forcing the money out of the public treasury, unless this Court arrests the attempt, whether well or ill intended is aside from the purpose; the assumption and exercise of the power is equally poisonous in its consequences to the country; it takes from the hands of those the administration of public affairs that the laws and the people of this nation have entrusted with them; it brings to the bar of the court the nation itself, for it cannot be denied that the United States government is the real defendant in this cause and that if it was cast, it would be forced (on this cause's being remanded for execution) to open the treasury according to the dictates of the circuit court.

The origin of the opinion that the public money could be reached through such instrumentality is of recent date; its history will be found in the case of *Stockton and Stokes v. Postmaster General*. Money was not there asked in a direct form, and the Court put the case upon the express ground that the defendant

"was not called upon the furnish the means of paying any balance that was awarded against the department by the Solicitor of the Treasury. He was simply, [said the Court] required to give the credit,"

and this was no more an official act than the making of an entry by a clerk, by order of a court of justice; it was, in every just sense, a mere ministerial act. [37 U. S. 12](#) Pet. 614. Had it not been placed on this narrow ground, the decision could not have been made. That it falls short of this case, is admitted; still, it was then manifest that the attempt to push the doctrine of ministerial duties further, so as to reach the money in the Treasury, would follow; the case has occurred, and must be met.

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I maintain that the executive power of this nation, headed by the President, and divided into departments in its administration of the finances of the country, acts

independently of the courts of justice in paying the public creditors, and that the decision of the Secretary of the Navy in this case, affirmed by the President, under the advice of the Attorney General, was final on the laws as they stood, and that the petitioner could only appeal to Congress.

And here it may be safely asked whether the Secretary and President, the latter elected by the nation and responsible to the people directly, and to their representatives in Congress, each exercising an undoubtedly legitimate authority, were not the safest and best to decide on the rights of the nation, and of the petitioner seeking justice at its hands? Is the country known, that submits the administration of its finances to the courts of justice, or permits them to control the operations of the Treasury? What guarantee have the people of this country that the circuit court of this district, will as faithfully perform the functions they have assumed, when dealing out the public money to satisfy rejected claims, as the heads of the departments? The court is wholly irresponsible to the people for its acts; is unknown to them; the judges hold appointments of an ordinary judicial character, and are accidentally exercising jurisdiction over the territory where the Treasury and public officers are located. Furthermore, for nearly forty years, this fearful claim to power has neither been exerted, nor was it supposed to exist, but now that it is assumed, we are struck with the peculiar impropriety of the circuit court of this district becoming the front of opposition to the executive administration.

Every government is deemed to be just to its citizens; its executive officers, equally with the judges of the courts, are personally disinterested, and why should not their decisions be as satisfactory and final. They must be final, in most instances, in the nature of things, and the necessities of the government. Money is appropriated for certain objects; none can be drawn from the Treasury save according to some law; of the obligations, the departments must judge in a prompt manner; they cannot await years of litigation to learn their duties, and the responsibilities of the governments from the courts; the Secretary of the Navy could not subject to wants and miseries the whole of the widows and orphans on the navy pension list, until he was informed by the court of this district, whether

Mrs. Decatur should be paid her claim for rations and interest; he had to proceed, as for forty years and more his predecessors had done, and pay out upon the old construction; nor could the government submit to its alteration, for the arrearages would have exhausted the fund, possibly for the next ten years, and left most of the widows and orphans dependent upon it for daily bread, in utter destitution. To permit an interference of the courts of justice with the accounts and affairs of the Treasury, would soon sap its very foundations; money would not be drawn out according to its own rules, nor could the Secretary of the Treasury ever inform

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Congress of the amount needed. Congress would, of necessity, be compelled to consult the court, not the Secretary, when making appropriations. This case again furnishes the illustration: if the courts were to hold that Mrs. Decatur should be paid the eighteen thousand five hundred and ninety-seven dollars, and that the true construction of the acts of Congress was that the widows and orphans pensioned on the navy fund should receive, in addition to the half-monthly pay, half rations, and interest on the arrearages; then an addition of, possibly, a million to the fund would be required.

For these and other reasons, the court below had no jurisdiction of the subject matter, and of course no authority to issue the mandamus to bring the Secretary before it, and therefore I hold the suit must be

Dismissed and the judgment affirmed.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.