

**United States Vs. Dickson**

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**Court :** US Supreme Court

**Decided On :** 1841

**Appeal No. :** 40 U.S. 141

**Appellant :** United States

**Respondent :** Dickson

**Judgement :**

United States v. Dickson - 40 U.S. 141 (1841)

U.S. Supreme Court United States v. Dickson, 40 U.S. 141 (1841)

**United States v. Dickson**

**40 U.S. 141**

*ERROR TO THE CIRCUIT COURT FOR THE*

*SOUTHERN DISTRICT OF MISSISSIPPI*

Samuel W. Dickson, the defendant, was appointed by the President of the United States receiver of public money for the Choctaw District in the State of Mississippi, and entered on the duties of his office on 22 November, 1833, and retained the office, performing the duties thereof, until 26 July, 1836, having on that day resigned the same. The United States claimed a large balance as due to them,

and the defendant paid, in Natchez, the whole sum alleged to be due by him, with the exception of the items charged to him in the

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Treasury transcript which were the subject of controversy in this case.

A suit was instituted by the United States on the official bond of Samuel W. Dickson and his sureties in May, 1839, in the District Court of the United States for the Southern District of Mississippi, in which the United States claimed certain sums of money received by Samuel W. Dickson, as receiver, and not paid over to the United States. These sums were claimed by the defendant, and had been retained by him as his official compensation for the annual period of his service in the office from 22 November, 1833, and for the fraction of the last year in which he was in office, commencing on 22 November, 1835, and ending on 26 July, 1836, during which latter period he had received public money exceeding in amount \$250,000.

On the trial of the cause, the court charged the jury that the defendant, Dickson, was entitled to credit for \$3,000 as compensation, including his salary of \$500 for the year commencing November 22, 1833, and ending November 22, 1834; that he was entitled to the same compensation for the year commencing November 22, 1834, and ending November 22, 1835, and for the fraction of the year between 22 November, 1835, and 26 July, 1836, he was entitled to \$2,500 commissions. To this charge of the court the United States excepted, and prosecuted this writ of error, a verdict and judgment for the defendants having been given conformable to the opinion of this Court.

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STORY, JUSTICE, delivered the opinion of the Court.

The defendant in error, Samuel W. Dickson, was duly appointed a receiver of public moneys for the Choctaw District in Mississippi, and entered upon the duties of his office on 22 November, 1833. He continued to hold the office until 26 July,

1836, when he resigned it. In May, 1839, a suit was instituted upon his official bond against him and his sureties to recover certain sums of public moneys received by him and not paid over. At the trial of the cause, Dickson insisted upon certain credits to be allowed to him, and proved the receipt by him, while receiver, into his office, as receiver of public money, amounting to more than \$250,000 in each year, during the two years of his continuance in office, and also of more than \$250,000 for the fraction of a year commencing on 22 November, 1835, and ending on 26 July, 1836, when he resigned

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his office, and he also proved the depositing of sufficient amounts in Natchez to entitle him to credit for the disputed items of his account. Upon this evidence, the court below charged the jury that Dickson was entitled to credit for \$3,000 as compensation, including his salary of \$500, for the year commencing on 22 November, 1833, and ending on 22 November, 1834, and to the like compensation for the year commencing on 22 November, 1834, and ending on 22 November, 1835, and that for the fraction of a year between the 22 November, 1835, and 26 July, 1836, he was entitled to \$2,500 for commissions. To this opinion and charge of the court a bill of exceptions was taken by the United States, and a verdict having been found accordingly by the jury and judgment rendered thereon, the present writ of error has been brought to revise that judgment.

Upon the argument in this Court, two points have been made on behalf of the United States:

1st. That the charge of the court below was erroneous in allowing the receiver to calculate his yearly commission on the amount of public moneys received by him during a year commencing from the date of his appointment, instead of calculating it by the fiscal year, which commences with the calendar year, or on the first day of January of every year.

2d. That the charge of the court below was erroneous in allowing the receiver to charge the whole yearly maximum of commissions for the fractional portion of the year in which he resigned.

The validity of these objections to the charge of the circuit court must essentially depend upon the true interpretation of the act of 20 April, 1818, ch. 118. Originally the receivers of public moneys in the land offices were paid a commission of one percent on the moneys received by them, as a compensation for clerk hire, receiving and keeping and transmitting the public moneys to the Treasury of the United States. This was originally provided by the Act of 10 May, 1800, ch. 55, § 6. By the Act of 26 March, 1804, ch. 35, § 14, the compensation was increased by an addition of one-half percent to the former commission, and also of an annual salary of \$500, with the exception of the land office

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of Marietta, where the annual salary was \$200 only. Then came the Act of 20 April, 1818, ch. 118, which provided

"That instead of the compensation now allowed by law to the receivers of the public moneys for the lands of the United States, they shall receive an annual salary of \$500 each and a commission of one percent on the moneys received as a compensation for clerk hire, receiving, safekeeping, and transmitting such moneys to the Treasury of the United States, provided always that the whole amount which any receiver of public moneys shall receive, under the provisions of this act, shall not exceed for any one year, the sum of \$3,000."

The main controversy in the present case turns upon the meaning of the phrase "any one year" in the foregoing section. Does it mean "any one year," calculated from the date of the commission of the receiver? or does mean "any one year," commencing with the calendar year -- that is, with the 1st of January of each year, which is commonly called, in matters connected with the Treasury Department, the fiscal year?

The argument addressed to us on behalf of the government is that it means the latter. It is said that all accounting officers (with some unimportant exceptions) are required by law and the regulations of the Treasury Department to render quarterly accounts of the moneys received by them and of the disbursements made by them at the end of each quarter of the calendar year ( see Act of 10 May, 1800, ch. 55), and that all the accounts kept at the Treasury Department are governed by this mode of proceeding, and that if any other mode of keeping the accounts were adopted, it would introduce endless embarrassment and confusion into the department and take away the only adequate means of ascertaining, from time to time, the exact financial state thereof as to debts and credits, and disbursements, which is so essential to the public security and regular operations of the government. And hence, in order to give full effect to this system, it is contended that it is necessary, in all laws of this character, to construe the year to mean the fiscal year.

Admitting the argument in its full force (and we are not disposed to controvert the propriety of the present mode of keeping the public accounts, as being founded as well in law as in public

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convenience), still it does not appear to us to justify the conclusion attempted to be drawn from it. In short, we do not perceive what connection the mode of keeping the accounts in the Treasury Department has with the compensation allowed by law to any public officer. That compensation is to be ascertained from the terms of the law allowing it, and whenever the amount is once ascertained according to those terms, it is to be allowed and credited to the officer whatever may be the form in which the public accounts are kept or the particular times at which they are required to be rendered and settled. Nor are we able to understand why the accounts of any public officer may not be made up regularly, at the end of every fiscal quarter, allowing such compensation as he has then earned and is entitled to by law, where his precedent term of service has been less than a full quarter in consequence of an intermediate appointment to office. The allowance for the fraction of a quarter may just as readily be made at the commencement of his term

of service, by reason of such an intermediate appointment, as it may be where his office terminates in the midst of a quarter, in which case (as is admitted), from necessity, the fraction is brought into his closing official account.

It has been also argued that the uniform construction given to the act of 1818, ever since its passage, by the Treasury Department, has been that the act has reference to the fiscal year. The construction so given by the Treasury Department to any law affecting its arrangements and concerns is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. The construction given to the laws by any department of the executive government is necessarily *ex parte*, without the benefit of an opposing argument in a suit where the very matter is in controversy, and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers, deriving their salary and emoluments therefrom, for they cannot bring the case to the test of a judicial decision. It is only when they are sued by the government for some supposed default or balance that they can assert their rights. Their acquiescence therefore is, almost from a moral necessity when

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there is no choice but obedience, as a matter of policy or duty. But it is not to be forgotten that ours is a government of laws, and not of men, and that the judicial department has imposed upon it by the Constitution the solemn duty to interpret the laws in the last resort, and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender or to waive it.

The present question, then, must be decided upon the same principles by which we ascertain the interpretation of all other laws -- by the intention of the legislature as it is to be deduced from the language and the apparent object of the enactment. The object of the act of 1818 manifestly is to provide a suitable compensation for the receivers and registers of public moneys for the public lands. The

compensation is for services to be rendered by them officially during their continuance in office, and up to a certain point, at least, it is in exact proportion to the extent and duration of those services and the responsibility incurred thereby. The compensation is measured by years. It is to be by an annual salary and by a commission not exceeding an annual amount. The words are that "they shall receive an annual salary of \$500 each." The natural interpretation of these words, certainly is that the salary is to commence at the time when the service is to commence; and that they are to be contemporaneous with each other. We believe this to be the uniform interpretation of all laws of this sort; and that when any person takes office in an intermediate time between one quarter and another, the practice is to pay him a proportion of the quarter's salary, accordingly, and if he leaves office before the end of his official year, to pay him for the like proportion of the last quarter. Indeed, it was admitted at the argument, that this is the rule adopted at the Treasury Department itself, in relation to the salaries of officers, *viz.*, that it is begun and ended with the official year, and not with the fiscal year. Nor was it suggested that in this particular any difficulty arose as to the mode of keeping and settling the official accounts at the Treasury, at the end of each quarter or of the fiscal year.

If, then, the natural interpretation of the words of the act as

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to the salary has reference to the official year, and not to the fiscal year, what ground is there to presume that Congress, in the subsequent words regulating the commission, did not use the word "year" in the like sense? There is nothing in the language, nor in the nature of the compensation, which leads us to the conclusion that Congress had in view the fiscal year or the mode of keeping the accounts in the Treasury Department as guides to fix the interpretation of the word "year." For aught that appears, it was used in its ordinary sense. The words are

"and a commission of one percent on the moneys received, as a compensation for clerk hire, receiving, safekeeping, and transmitting such moneys of the United States, provided always that the whole amount which any receiver of public

moneys shall receive under the provisions of this act shall not exceed, for any one year, the sum of \$3,000."

The commission is on the moneys received by any one officer, not by one or more officers, during any one year of his services, not during any one calendar year, for the service of one of more officers in that year. It is his compensation for clerk hire, paid by him, and for his responsibilities in receiving, keeping, and transmitting the public moneys, and not for his services and responsibility in connection with other officers. The commission is a compensation attached to the particular officer for his yearly service, and not to the office itself for a fiscal year. If the intention of the legislature had been what the argument for the United States supposes, the language of the proviso would have been different; it would have been provided that the United States shall not, in any one calendar year, pay more than one per centum upon all the moneys received during that year, and that the commission for any one year, to whomsoever paid, shall not, in the whole, exceed the sum of \$2,500. It need not be said how entirely different in its scope and legal intendment such language is from that of the present proviso, and yet the argument is that the court should give them precisely the same interpretation. We cannot but think that this is to call upon the court not to expound the act as it is, but to frame its provisions anew upon a conjecture of what might have been the original intention and object of Congress.

It is further urged that unless we interpret the words to refer

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to the fiscal year, great inconveniences may arise, and the government may, by there being several receivers in office during one and the same fiscal year, each of whom may have received more public moneys than would entitle him to the maximum of commissions, be compellable to pay more than \$2,500 in one year -- nay, may actually pay twice or thrice that amount. Suppose it might be so, it would be a case of very rare occurrence, and to put an extreme case is not a good test of the fair and just interpretation of any statute. In such a case, each successive receiver would only receive his just proportion of the year's salary, and no more

commission than Congress itself had established to be a reasonable compensation for his expenditures and responsibilities in receiving, safekeeping and transmitting the public moneys. There is nothing in the reason of the case why each successive officer, who has incurred the full responsibility by the receipt of \$250,000, should not receive the whole commission up to that extent. The argument *ab inconvenienti* therefore, under such circumstances, does not address itself to this Court with the force which it has been supposed to possess. It amounts merely to this -- that the act is defective in some of its details, and does not reach all the cases which ought to be provided for.

But there would be inconveniences, not to say apparent hardships, upon the receivers in adopting the construction contended for on behalf of the government. Thus, suppose a receiver should die or be removed from office without any default on his own part during the fiscal year, and after he had received and become responsible for public moneys exceeding \$250,000; in such a case, the extent of the act would seem fairly to entitle him to the full commission of \$2,500; and yet, according to the argument, he would be compelled to submit to an apportionment, which might reduce it to a quarter part thereof.

There is another consideration not unimportant in the construction of the act; it is that the limitation of the compensation which any receiver is to receive for any one year, is not, including his salary, to exceed the sum of \$3,000. So that here we have both salary and commissions united together in the ascertainment of the amount, and of course the year

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with reference to each must have the same period of commencement and termination. If, therefore, the salary is to be ascertained by the official year, as has been already suggested, it would seem to be an irresistible conclusion that the same period must be assigned for the commissions.

Passing from these considerations to another which necessarily brings under review the second point of objection to the charge of the court below, we are led to

the general rule of law which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms. In short, a proviso carves special exceptions only out of the enacting clause, and those who set up any such exception must establish it as being within the words as well as within the reasons thereof. Applying this rule to the circumstances of the present case, how does it stand? The enacting clause gives to each receiver a commission of one percent upon all the public moneys received by him. This was precisely in conformity to the antecedent laws. The proviso limits that percentage to an amount not exceeding \$2,500 for one year. Until, then, the percentage of the particular receiver has reached that amount, in whatever period of the year it may arrive, the proviso, according to its very terms, has no operation, and when that maximum is reached, the percentage ceases, whether any more public moneys are received by that officer or not. The case, then, of the present receiver falls directly within the enacting clause. He seeks only the maximum commissions upon the moneys actually received by him during his continuance in office, and the proviso either does not touch his case or it only operates to cut off all subsequent commissions from him for other moneys received during his continuance in office. The proviso contains no limitations of his percentage by connecting it with or making it dependent upon the commissions or the receipt of public moneys by his successor in office. The proviso is that he shall receive no more for any one year, not that any other receiver may not receive a like compensation accruing from his subsequent appointment and

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receipts in office for the portion of any year which is then unexpired.

Upon the whole, we are of opinion that there is no error in the charge and opinion of the court below, and therefore the judgment is

*Affirmed.*

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

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