CUSTOM-HOUSE OFFICERS—ADDITIONAL PAY.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A report from the Secretary of the Treasury, in reference to claims of custom-house officers for additional pay.

JANUARY 25, 1853.—Referred to the Committee on the Judiciary.

To the House of Representatives of the United States:

In obedience to a resolution of your honorable body, of December 27, 1852, in reference to claims of custom-house officers for additional pay, I have the honor herewith to transmit a report from the Secretary of the Treasury giving the desired information; and, in answer to the seventh interrogatory, asking "whether in my opinion further legislation is necessary or advisable, either to protect the treasury from unjust claims or to secure the claimants their just rights," I would state that in my opinion no further legislation is necessary to effect either object. My views on this subject will be more fully seen on reference to an opinion given by me to the Secretary of the Treasury, a copy of which is annexed to his report.

MILLARD FILLMORE.

WASHINGTON, *January* 24, 1853.

TREASURY DEPARTMENT,
January 21, 1853.

SIR: I acknowledge receipt of the following copy of a resolution of the House, of 27th ult., referred by you to this department, viz:

THIRTY-SECOND CONGRESS—SECOND SESSION.

CONGRESS OF THE UNITED STATES.

IN THE HOUSE OF REPRESENTATIVES,
December 27, 1852.

On motion of Mr. Benjamin Stanton—

Resolved, That the President of the United States be requested to inform the House of Representatives whether claims are pending before the Treasury Department in favor of sundry persons who now are, or heretofore have been, custom-house officers, whose accounts have been settled and paid in pursuance of the law supposed by the

department to be in force at the time of such settlement, for additional pay under some construction of the laws regulating their compensation not heretofore recognised by the department; and if any such claim be pending, that the President inform this House—

1st. What grade or character of officers is claiming such additional compensation?

2d. Under what law or laws their accounts were settled and paid?

3d. Under what law or laws additional compensation is now claimed?

4th. What number of persons would be entitled to increased compensation on the construction of the laws urged by the claimants, and for what time; and what would be the aggregate amount of all the claims for increased compensation under their construction of the laws?

5th. When and by whom were these claims first presented to the Treasury Department, and what action has been had upon the subject by the Secretary or any of the accounting officers of the treasury?

6th. What opinions have been given by the President or the heads of any of the executive departments in relation to the validity of said claims?

7th. Whether, in the opinion of the President, any action of Congress is necessary or advisable, either to protect the treasury from unjust claims or to secure to the claimants their just rights?

Attest:

P. BARRY HAYES,
Chief Clerk House of Representatives.

And presuming that said resolution has reference to the claims of the custom-house gaugers, weighers, and measurers for additional compensation, I have the honor to state, in reply, that the subject of these claims was brought to the notice of the department nearly or quite three years since, and was, it is believed, first presented by Messrs. M. L. Ogden, H. D. Johnson, and C. H. Stewart, as agents of some of the claimants. The nature of these claims can be briefly stated.

As the tariff act of 1832 reduced the compensation of the above class of officers, Congress, by subsequent legislation, provided for the deficiency, but limited their compensation, which was to be paid from fees, to $1,500 per annum, which provision was made perpetual by the act of July 21, 1840. It is now contended by the claimants that, as the tariff act of 1832 was repealed by the new tariff act of 1842, such repeal rendered nugatory the provisions of the different acts, including that of 21st July, 1840, so far as regards the maximum compensation of said officers, and that they are entitled to all the fees received, without limitation, since the passage of the tariff act of 1842.

My opinion has always been adverse to the validity of these claims; but the question, at the instance of the parties interested, having been submitted to the Attorney General, he gave an opinion coinciding with their views as to the effect of the act of 1842, in repealing the restrictions imposed upon the rate of their compensation by the acts of 1838 and 1840; but on other points connected with the subject, which were subsequently submitted to him, he gave an opinion adverse to the validity of their present claims, notwithstanding the implied repeal of the above laws.

Under all these circumstances of the case, and after full investigation and consideration of the subject, the department has had no difficulty in deciding against these claims, all of which have therefore been rejected.

In further reply to the resolution of the House, I transmit herewith copies of the following documents:

A. Copy of an argument in favor of the claimants, submitted by their agents, Messrs. M. L. Ogden and H. D. Johnson, dated 28th of May, 1850.

B. Copy of a letter dated November 20, 1852, from the Commissioner of Customs.

C. Copy of an opinion of December 8, 1852, on the subject of these claims, by the President.

D. Copy of an opinion of December 28, 1852, by the Attorney General.

E. Copy of a report from the Commissioner of Customs, stating, in reply to the resolution of the House, the number of claimants, and the probable amount of their claims.

All of which is respectfully submitted:

THO. CORWIN,
Secretary of the Treasury.

The PRESIDENT.

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A.

Argument presented by M. L. Ogden and H. D. Johnson, on the part of the claimants.

COMPENSATION OF UNITED STATES WEIGHERS.

The compensation of United States weighers is provided for in the second section of the compensation act of 2d March, 1799. They are allowed for their services, in the district of New York, for the weighing of every 112 pounds, one cent and a quarter, "to be paid monthly, by the collector, *out of the revenue*, and charged to the 'United States.'"

This compensation is increased by the act of the 26th April, 1816, which allows "an addition of fifty per cent. upon the sums allowed as compensation" by the act of 2d March, 1799; "to be ascertained, certified, and paid under the regulations prescribed in the above-mentioned act."

Congress has, by these laws, regulated the compensation of United States weighers by the services performed.

The tariff law of the 14th July, 1832, exempts from duty many articles of import which were before subject to duty, and were required to be weighed, viz: tea, coffee, cocoa, almonds, currants, prunes, figs, raisins, black pepper, ginger, mace, nutmegs, cinnamon, cassia, cloves, pimento, camphor, crude, saltpetre, flax, &c., &c.

The compensation accruing to United States weighers was diminished by this law of 1832, as it was unnecessary to ascertain the exact quantity of articles yielding no revenue. Their fees for weighing these articles—such service not being required—were cut off when the articles were exempted from duty.

It having thus being directed by the law of 14th July, 1832, that the

compensation of these officers should be curtailed, and Congress not deeming it expedient to carry into effect such curtailment, a clause, by way of proviso, to the law of 1832, which was to go into operation on the 3d March, 1833, was inserted in the general appropriation bill of 2d March, 1833, section 5, enacting:

"That the Secretary of the Treasury be, and he is hereby, authorized to pay to collectors, naval officers, surveyors, gaugers, weighers, and measurers of the several ports of the United States, out of any money in the treasury not otherwise appropriated, such sums as will give to said officers, respectively, the same compensation in the year 1833, according to the importations of that year, as they would have been entitled to receive, if the act of the 14th July, 1832, had not gone into effect."

Thus, in order to prevent the curtailment of compensation directed by the law of 1832, the officers in question were allowed to compute fees for services not performed.

This temporary provision of the appropriation act of 1833 was re-enacted year after year, with various provisos thereto.

In the general appropriation act of June 27, 1834, section 2, the above provision of the act of 1833 is re-enacted for the year 1834, with the proviso "that in no case shall the compensation of any other officers than collectors, naval officers, and surveyors, whether by salaries, fees, or otherwise, exceed the sum of $2,000 each per annum; nor shall the union of any two or more of these offices in one person entitle him to receive more than the sum of $2,500 per annum: *And provided, also*, That no officer shall receive, under this act, a greater annual salary than was paid to such officer for the year 1832."

In the general appropriation act of March 3, 1835, section 3, the above provision of the act of 1833 is re-enacted for the year 1835, with the proviso "that no officer shall receive, under this act, a greater annual salary or compensation than was paid to such officer for the year 1832; and that in no case shall the compensation of any other officers than collectors, appraisers, and surveyors, whether by salaries, fees, or otherwise, exceed the sum of $1,500 each per annum; nor shall the union of any two or more of these offices in one person entitle him to receive more than that sum per annum."

In the supplementary appropriation act of July 4, 1836, section 3, the above provision of the act of 1833 is re-enacted for the year 1836, with the proviso limiting the compensation of certain officers to $1,500 per annum, and a further proviso "that in the event of any act being passed by Congress at the present session to regulate and fix the salaries or compensation of the respective officers of the customs, then this section shall operate and extend to the time such act goes into effect, and no longer."

In the general appropriation act of March 3, 1837, section 2, the above provision of the act of 1833 is re-enacted for the year 1837, with the proviso limiting the compensation of certain officers to $1,500 per annum, and the proviso limiting the operation of the section in the event of a further law being passed regulating the compensation of officers of the customs.

In the act to provide for the support of the Military Academy, &c., of July 7, 1838, section 3, the provision in question and the provisos are re-enacted for the year 1838.

"SEC. 3. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, authorized to pay the collectors, naval officers, surveyors, and their respective clerks, together with the weighers, gaugers, measurers, and markers of the several ports of the United States, out of any money in the treasury not otherwise appropriated, such sums as will give to the said officers, respectively, the same compensation in the year 1838, according to the importations of that year, as they would have been entitled to receive if the act of July 14, 1832, had gone into effect: *Provided*, That no officer shall receive, under this act, a greater annual salary or compensation than was paid to such officer for the year 1832; and that in no case shall the compensation of any other officers than collectors, naval officers, surveyors, and clerks, whether by salaries, fees, or otherwise, exceed the sum of $1,500 each per annum; nor shall the union of any two or more of those officers in one person entitle him to receive more than that sum per annum. * * * * *Provided, also*, That, in the event of any act being passed by Congress at the present session to regulate and fix the salary or compensation of the respective officers of the customs, then this section shall operate and extend to the time such act goes into effect, and no longer."

(This law has been carelessly drawn up, and contains two mistakes, but which are so palpable that they cannot be permitted to have any effect; as it is an established maxim of sound interpretation that the real intention of the law-giver, when accurately ascertained, and which is to be collected from the occasion and necessity of the law, and the object in view, will always prevail.—1 *Kent's Com.*, 462. The first mistake is the omission of the word *not* before the word "gone." The phrase should be, "if the act of the 14th July, 1832, had *not* gone into effect," as it stands in the acts of 1833, 1834, 1835, 1836, and 1837; it being a fact that the law of 1832, which is referred to, did go into effect on 3d March, 1833, and was in effect at the time when the act of 1838 was passed. The second mistake is in the phrase, "the union of any two or more of those *officers* in one person," which supposes a physical impossibility. We must substitute for the word "officers" the word *offices*, which is the word used in the laws of 1834, 1835, 1836, and 1837.)

No provision similar to the one in question, which had been re-enacted from year to year, was enacted for the year 1839, during that year.

In the act for the relief of Chastelain and Ponvert, and for other purposes, of 21st July, 1840, it is provided: "SEC. 7. *And be it further enacted*, That the 3d section of the act of July 7, 1838, entitled 'An act to provide for the support of the Military Academy of the United States for the year 1838, and for other purposes,' be, and the same is hereby, revived and continued in force for the year 1840, and until otherwise directed by law."

In the general appropriation act of 3d March, 1841, section 2, it is enacted that the Secretary of the Treasury shall pay to officers of the customs the same compensation for the year 1839 which they would have been entitled to receive if the 3d section of the act of 1838 "had continued in force during 'said year, and subject to the provisions and restrictions therein contained.'"

These several sections of the acts of 1833,–'34,–'35,–'36,–'37,–'38, and '41, were all passed, as they purport to have been, because of the existence of the duty law of 14th July, 1832; and their operation was temporary, terminating with the year for which they were passed, as is evinced by the terms employed and the fact that Congress did deem it necessary, year after year, to re-enact all that had been before enacted.

But the 7th section of the act of 1840 revived the 3d section of the act of 1838, and continued it in force "for the year 1840, and until otherwise directed by law." "Until *what* be otherwise directed by law?"—it may be asked, clearly, until the *regulation* in question be "otherwise directed by law;" that is to say, until the compensation of the officers in question be otherwise regulated by law.

The legal import of this 7th section of the act of 1840 was simply to alter or amend the 3d section of the act of 1838, so that it should read thus: that officers of the customs shall be paid "the same compensation in the year 1838 *and the year* 1840, *and every succeeding year*, according to the importations of that year, as they would have been entitled to receive if the act of the 14th July, 1832, had not gone into effect;" and also to alter or amend one of the provisos, so that it should read thus: "that in the event of any act being passed by Congress at the present, *or any future* session, to regulate and fix the salary or compensation of the respective officers of the customs, then this section shall operate and extend to the time such act goes into effect, and no longer."

If, then, Congress has at any subsequent session passed a law regulating and fixing the compensation of officers of the customs, otherwise than as such compensation was regulated and fixed by the laws in force in 1840, from the time when such new act went into effect, by the very terms of the statute, "this section"—the 3d of the act of 1838, and *the whole of it*—was in force "no longer."

It has been seen that, by the compensation acts of 1799 and 1816, the compensation of United States weighers was regulated by the services performed; that the duty law of 1832 directed the compensation of said officers to be reduced, by exempting from duty many articles which were a source from which their compensation was derived; and that in consequence thereof Congress, by special enactments, permitted their compensation to be regulated "according to the importations" of each successive year of articles dutiable and free, and independently of the services performed, onerous duties being dispensed with, attaching to this liberal provision certain restrictions.

By these special enactments, the compensation of United States weighers was regulated and fixed by computing fees for services not performed—by computing fees for weighing articles which were not required to be, and were not, weighed.

A law requiring that many of these said articles should be actually weighed, would no longer contemplate a compensation by *computing fees for services not performed*, because of the services being *actually performed*. Additional duties would be imposed upon the officers, and their compensation otherwise regulated and fixed.

As the law of 1832, *by exempting from duty* certain articles, directed the compensation of these officers to be reduced, so also a subsequent

law, *by again levying duty* on these same articles, or many of them, would direct the compensation of these officers otherwise.

If, then, the tariff law of 30th August, 1842, required that many articles of import which were free from duty under the law of 1832, and need not therefore be weighed, should be actually weighed, &c., the law of 1842 did direct, regulate, and fix the compensation of United States weighers otherwise than it was directed, regulated, and fixed by the tariff law of 1832, together with the 3d section of the act of 1838, as revived by the 7th section of the act of 1840.

Now, many articles of import which were exempted from duty by the act of 14th July, 1832, and no longer weighed, were again subjected to duty by the act of 30th August, 1842, and again required to be weighed, (viz., coffee, when not in American vessels, or from the place of growth, cocoa, almonds, currants, prunes, figs, raisins, black pepper, ginger, mace, nutmegs, cinnamon, cassia, cloves, pimento, camphor, saltpetre, partially refined, flax, &c., &c.) Therefore the provisions of the duty law of 1842 work a complete repeal of the 3d section of the act of 1838, as revived by the 7th section of the act of 1840.

Moreover, as the sections of the several appropriations, acts before quoted, (of 1833,–'34,–'35,–'36,–'37,–'38,–'40, and '41,) were passed, as they expressly purport to have been, because of the existence and operation of the duty law of 14th July, 1832, and as that law of 1832 (together with the acts of 2d March, 1833, and 11th September, 1841, which are supplementary thereto) was superseded or repealed by the subsequent duty law of 30th August, 1842, it follows legally that, with the superseding or repeal of the law of 1832, the 3d section of the act of 1838, as revived by the act of 1840, must cease to have any effect.

The clauses in the acts of 1838 and 1840 having been passed in consideration or in consequence of a certain state of things—the existence and operation of the duty law of 1832—they depend on the preservation of things in the same state. If, therefore, the state of things which induced the clauses in the acts of 1838 and 1840, and without which they would not have been passed, be changed, and it is changed by the repeal of the law of 1832, the enactments of the laws of 1838 and 1840 fall to the ground when their foundation falls. "A law which relates to a certain situation of affairs can only take place in that situation."—*Vattel, bk. 2, ch. 17, p. 262.*

The provisos to the enacting clause of the 3d section of the act of 1838 must also cease to have any effect when the enacting clause ceases to have any effect. A proviso is something engrafted on a preceding enactment; (9 B. & C., 835.) When falls the preceding enactment, the thing engrafted on it must also fall. The branches of the tree are felled when the trunk is severed.

Says Judge Story in the case of Minis *vs.* the United States, 15 Peters, 445: "It would be somewhat unusual to find engrafted upon an act making special and temporary appropriation and provision, which was to have a general and permanent application to all future appropriations: *nor ought such an intention on the part of the legislature to be presumed unless it is expressed in the most clear and positive terms, and where the language admits of no other reasonable interpretation.* The office

of a proviso, generally, is either to except something from the enacting clause or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview. A general rule, applicable to all future cases, would most naturally be expected to find its proper place in some distinct and independent enactment."

The provisos in question are engrafted on a law making "temporary appropriation." The act of 1840 gives a "temporary" extension to that law until "otherwise directed," and no such "most clear and positive terms," to express an intention that these provisos shall have a "permanent application," are anywhere employed by the law-givers.

The duty law of the 30th August, 1842, does, then, effectually bar any operation of the 3d section of the act of 1838, with its provisos, as revived by the act of 1840; and the compensation of United States weighers, from the time when the act of 1842 went into effect, was again regulated by the services performed, as originally under the acts of 1799 and 1816. They were no longer, from that time, to be permitted to compute fees for services not performed; nor were they limited to a compensation of $1,500 per annum. They were entitled to receive the whole of the fees they earned for services actually performed, but no more.

Such portion of their earnings as has not yet been paid to them, they are legally now entitled to; and the Secretary of the Treasury is by law authorized to pay the same, (which are "charges" incident to the collection of the revenue, to be "paid out of the revenue,") out of the permanent appropriation provided for such purpose in the 2d section of the supplementary appropriation act of 16th October, 1837, which enacts: "That if the revenue from duties or from the sales of public lands remaining in the hands of the receiving and collecting officers be not sufficient at any time to pay debentures and other charges, which are by existing laws made payable out of the accruing revenue, before it is transferred to the credit of the Treasurer, the Secretary of the Treasury is hereby authorized to pay the said debentures and other charges out any money in the treasury not otherwise appropriated."

NEW YORK, *May* 28, 1850.

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B.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, November 20, 1852.

SIR: As requested by you, I have read the opinion of the Attorney General, dated the 15th instant, in relation to the compensation of certain officers of the customs, in which reference is made to the letter addressed by me on the 18th of February, 1850, to Mr. Secretary Meredith, which letter is as follows:

"SIR: I beg leave to submit to your examination several accounts of officers of customs for additional compensation, under the provisions of the 3d section of the act of July 7, 1838. This act authorizes the Sec-

retary of the Treasury to pay to collectors, and other officers of the customs, the same compensation in 1838, according to the importations of that year, as they would have been entitled to receive if the act of 14th July, 1832, had not gone into effect.

"The 7th section of the act of 21st July, 1840, revived and continued in force this section until otherwise directed by law.

"Under the belief that the authority thus conferred related to the operation of the act of 14th July, 1832, and that upon its repeal, and the passage of the 2d section of the act of 23d August, 1842, (vol. 5, page 510,) that authority ceased, I have deemed it my duty to suspend action upon accounts of this character until your opinion in regard to them could be known.

"In view of the foregoing provisions of law, and the practice of the department, I respectfully submit whether the accounts now presented shall be allowed and paid."

Mr. Meredith concurred in the opinion that, subsequent to the act of 21st July, 1840, Congress had otherwise directed in regard to the additional compensation provided for in the act of 7th July, 1838, and, consequently, the provisions of that act in this respect were not in force, and the claims for additional compensation could not be allowed.

In regard to the limitation of the compensation of measurers, weighers, gaugers, and markers to the sum of $1,500 per annum, contained in the act of 7th July, 1838, the opinion of Mr. Secretary Meredith was communicated to Mr. M. L. Ogden, of New York, upon the presentation of the claim of the representatives of the late James Campbell, formerly a weigher at the port of New York, which letter is as follows:

"TREASURY DEPARTMENT,
"*Office of Commissioner of Customs, June* 7, 1850.

"SIR: Your letter of the 28th ultimo, addressed to the Secretary of the Treasury, presenting the claim of the legal representatives of the late James Campbell, formerly a weigher at the port of New York, for the sum of $3,309 45, for services rendered by him from September 1, 1842, to March 31, 1848, has, with the accompanying papers, been referred to this office.

"In reply, I would respectfully state that the accounts of collectors Curtis, Van Ness, and Lawrence, under whom Mr. Campbell served, show that he received the maximum compensation authorized and limited by law for the services performed by him.

"The accounts of those collectors have been adjusted and closed upon the books of the department, and the accounting officers of the treasury would not feel authorized to reopen them upon a claim of an officer of the customs of a misapprehension of the law relating to his compensation.

"I deem it proper to add that the provisions of law under which the compensation of weighers, measurers, and gaugers 'shall not exceed the sum of fifteen hundred dollars each per annum,' having been in operation through the entire period of Mr. Campbell's service as weigher and being still in operation, I am of the opinion that nothing

is due to the estate of Mr. Campbell, he having received the maximum compensation allowed by law.

"I am, very respectfully, your obedient servant,

"C. W. ROCKWELL,
"*Commissioner of Customs.*

"M. L. OGDEN, Esq., *New York.*"

I find, upon reference to the published statements of the compensation of the officers referred to, whose compensation was limited to $1,500 per annum by the act of 7th July, 1838, that it exceeded that sum at the port of New York, reaching, in two cases, in 1833, the sums of $3,839 37 and $4,331 57, and in 1839, when there was no limitation, ranging as high as $3,870 15 in one case, and above $3,000 in several others.

I am not aware of any act of Congress that repeals the limitation of the compensation of weighers, measurers, and gaugers, nor any act repugnant thereto, and hence have regarded the sum of $1,500 per annum as the maximum compensation which they are by law allowed. This maximum allowance has prevailed since the act of the 7th July, 1838, was revived and continued in force by the act of 21st July, 1840.

The papers submitted are herewith returned.

I have the honor to be your obedient servant,

C. W. ROCKWELL,
Commissioner of Customs.

Hon. THOMAS CORWIN,
Secretary of the Treasury.

C.

WASHINGTON, *December* 8, 1852.

SIR: Agreeably to your request, I have read the opinion of the Attorney General, of November 15, 1852, and that of the Commissioner of Customs, of November 20, on the subject of the compensation of weighers and measurers, &c., and am inclined to the following opinion:

I understand the case to be this: By the statute of 1799, (1 Statutes at Large, pp. 706, 707,) weighers received certain fees for their services, which were increased fifty per cent. by the act of 1816, (3 Statutes at Large, p. 306,) and no limitation was placed upon the amount. It was supposed that the tariff act of 1832 would diminish the amount of this compensation in many cases, and consequently the 3d section of the act of July 7, 1838, (5 Statutes at Large, pp. 264, 265,) was passed to provide for such deficiency; but provisos were added, limiting the compensation, in all cases, to $1,500 per annum; and this act was made perpetual by the act of July 21, 1840, (6 Statutes at Large, p. 815.) A weigher, whose fees amount to more than $1,500 per annum, now claims the surplus; and the question is, is he entitled to it, or does the act of 1838 limit him to $1,500, and is that act still in force? That it limits him to $1,500 there can be no doubt, if it has not been repealed or modified by subsequent legislation. It is not pretended, I perceive, that the 3d section of the act of 1838 has been repealed; but it is alleged that it provided for an additional compensation to

weighers, on the ground that the effect of the tariff act of 1832 reduced the compensation of those officers below the sum which was allowed them for that year, and that the act of 1832 being repealed by the tariff act of 1842, the reason for the passage of the act of 1838 has ceased to exist, and its provisions have consequently become nugatory or been repealed.

I confess I do not see the force of this reasoning. Assuming that the operation of the act of 1832 lessened the compensation of these officers, and that, therefore, the act of 1838 was passed to increase their compensation, and that, in consequence of the repeal of the act of 1832, the reason for the act of 1838 has ceased to exist, yet that cannot repeal the act itself, but only furnishes a reason for its repeal. It is a maxim of the common law, that when the reason for the law ceases, the law also ceases; but this is not true in reference to statutes. The cessation of the reason which induced the legislature to enact them cannot nullify or repeal the act; but, as I said before, it can at most only furnish a reason for the legislature to do so. Take, for instance, the case which now exists in California. Congress, at its last session, annexed the southern judicial district to the northern, and authorized the judge of the northern district to perform the duties in both, and gave him an additional salary. The reason of the addition to this salary undoubtedly was the supposed additional labor which was thus cast upon him.

But suppose the present Congress should deprive him of this additional jurisdiction, without repealing the law which gives an addition to his salary: the reason for that addition would cease to exist; but, nevertheless, I apprehend that the law granting that additional compensation would remain in full force, and he would be entitled to receive it. And so in reference to the act of 1838. It appears to me that it is neither repealed nor annulled by any act to which I am referred in these opinions, and I am surprised to see that the Attorney General states that it has been considered as repealed or annulled, so far as it limits the compensation of collectors, naval officers, &c., but not as respects the weighers, gaugers, &c. I think he is clearly right in saying that, if it be repealed as to the one, it must be as to all. But I cannot perceive how the repeal of a prior act can work the repeal of one subsequent; but I can understand that the repeal of a repealing act may revive the act which had been repealed.

But if I could apply the common law maxim to this act, and say that, when the reason ceases to exist which operated upon the law-makers to induce them to make the act, then the act also ceased, it seems to me, with all due respect, that that rule would not apply to this case. The apprehended reduction of compensation by the act of 1832 was the reason for providing additional compensation; but it certainly was no reason for limiting the compensation under the acts of 1799 and 1816.

The reason for the limitation was, because the compensation of those officers, when it exceeded a certain specified sum, was deemed to be too high; and there is no cause for supposing that that reason has ceased to exist; and, therefore, admitting the reason which induced the increase of compensation to have failed, and consequently to have nullified that portion of the act of 1838, yet, the other reason for limiting

the compensation being still in full force, that portion would also remain in full force. But, as I said before, I have no conception of any reasons of this kind which can repeal or nullify an act of Congress. The result, therefore, of my opinion is, that the 3d section of the act of 1838 remains in full force in all its parts, and is neither nullified, nor repealed, nor modified, by the repeal of the act of 1832. I however express this opinion with great deference, but not without considerable examination and reflection; and, unless the law officer of the government shall concur in it, I think it would be my duty, and the duty of all other officers, to defer to his opinion.

I have not had time to go into the reasons at large for this opinion. If I am right in saying that the act of 1838 has neither been repealed nor nullified by the repeal of the act of 1832, all the other conclusions follow, as a necessary consequence; but if the Attorney General be right on this point, then it seems to me he is also correct in his conclusions.

I herewith return the papers.

I am, respectfully, yours,

MILLARD FILLMORE.

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D.

OFFICE OF THE ATTORNEY GENERAL,
December 28, 1852.

I have received your letter of the 18th instant, asking my opinion in relation to certain questions of law.

To avoid all inaccuracy by attempting to restate the contents of your letter, I will here transcribe it. It is as follows:

TREASURY DEPARTMENT,
December 18, 1852.

The accompanying papers are submitted to the Attorney General for his opinion on the following points:

1. The Commissioner of Customs states that the letter addressed by him to M. C. Ogden, esq., dated June 7, 1850, was written at the request and by order of Mr. Meredith, then Secretary of the Treasury; that the question now submitted by the weighers, &c., was then submitted to Mr. Meredith, and that his decision is contained in the letter above referred to.

The Attorney General is requested to determine whether the foregoing facts constitute a decision by the Treasury Department; and, if so, whether it is competent for the present Secretary of the Treasury to set aside such decision?

2. The various officers of the customs who claim under the present application have been paid ever since, under the limitation of law supposed to have been repealed, receiving in no case more than $1,500 a year for their services ever since the act of 1842 was passed—the department always acting upon the belief that the law forbade any larger compensation. No written protests were filed against the construction of the law, nor were any applications made to the depart-

ment for additional compensation, until the year 1850, when the above letter was written.

The Attorney General is requested to decide whether such acquiescence in the construction put upon the law by the proper authorities does not bar the present claim, after such a lapse of time.

Very respectfully, your obedient servant,

THOMAS CORWIN,
Secretary of the Treasury.

The above is a copy of your letter. I beg leave to say that, as to the "accompanying papers" mentioned in your letter, and submitted with it, I have made but a very partial examination. My opinion must be founded upon the statements made in your letter. It is not my business to investigate facts, or judge of evidence. The law has not entrusted that duty to me, nor imposed on me that burden. My authority and duty in this respect are limited to the giving of legal opinions, or advice on *cases stated.* I allude to these things only to say that my opinion in this instance will be founded exclusively upon the case stated in your letter, and not upon any facts that might appear or be deduced from the bundles of papers that accompanied it.

A question touching the claim, as I understood, of these same "weighers, &c.," now alluded to in your letter, was, some time ago, submitted by you for my opinion. It depended on a complication of statutes relating to their official compensation, and, as the question was then propounded to me, it required only a construction or interpretation of those statutes, from their own face. It was a mere question of construction, though difficult, and about which differences of opinion might well exist.

After a careful examination of the statutes, with the single purpose of ascertaining the meaning and intention of Congress, I adopted certain views and conclusions on the subject, which were communicated to you in my letter of ——— day of ———. A reference to it, if necessary, will show what were these conclusions. My opinion is not changed on the question as then presented.

But the question now presented is quite different. It is no longer an original question of mere construction of statutes. You ask me the following questions:

1st. If certain facts stated by you amount to a decision by your predecessor, Mr. Meredith, of the point in question; and, if so, whether it is competent for you to set aside such decision?

To this I answer, that the law has prescribed no *form* for the decisions of the Secretary of the Treasury on the current business of his department. In respect to them there is no prescribed legal formality, either as to the mode in which they are to be given, attested, or authenticated. They must, of course, be made known to the subordinate officers of his department, whose official duty it may be to conform to and carry them into effect. But how they are to be rendered, or how communicated—whether orally or in writing—is left open to the sound discretion of the Secretary. And it seems to me to be quite necessary to the despatchful administration of his department that it should be so left; for it is obvious that the progress of the public business would be greatly impeded, and that it would be difficult, if not impossible,

for any Secretary to perform the duties of his office if every order, decision, or direction, which he may find it necessary or proper to give to any of his subordinates in office, must be reduced to writing, and attended with formalities. When any such order, decision, or direction shall be of a character or importance to require it, the Secretary would, no doubt, feel it to be his duty to reduce it to writing, as a more certain and lasting memorial of his acts. But this, also, is a matter within his own discretion.

As, then, it was not essential to the alleged decision of your predecessor in the present case, or to its force and effect, that it should have been made in writing, it must follow, that if made orally, and without such writing, it may and must be proved, if at all, by other evidence than the production of such writing. It would be idle to say that the decision might be given orally, but that it could only be proved and allowed to have effect by the production of the decision in writing, signed by the Secretary himself.

It would, no doubt, always be more satisfactory to you, whenever the decisions of your predecessors become objects of interest or inquiry, to have written evidence of those decisions under their own signatures. When that does not exist, you may resort to other sources for evidence or information; and if it be asked what description of evidence or information will be requisite, I should answer that it is governed by no technical rules, and is a subject for your sound discretion and judgment only. The object of such inquiries is to satisfy the mind of the Secretary, and whatever satisfies him is sufficient.

It can hardly be necessary to add that, in such a case, the information ought to be distinct, clear, and definite.

When, however, the Secretary has ascertained to his satisfaction an oral decision made by his predecessor, such decision is entitled to the same influence and effect that it would have been had it been ever so formally made in writing.

In reference to the particular case now presented to me, I cannot say that the *statements* of the Commissioner of Customs, even when corroborated by his official letter of the 7th June, 1850, "*constitute a decision*" of the former Secretary of the Treasury. But I can say that it is legitimate and appropriate *evidence* of such a decision. It is not my province to judge of the weight or credibility of evidence. It is for you to determine that, and to state to me, for my legal opinion, not *evidence*, but *facts;* and, by the terms of your reference, I understand you to have done so in this instance—for, after reciting the statements of the Commissioner of Customs, and his letter of the 7th June, 1850, you allude to them as the "*foregoing facts*," and ask my opinion thereon.

Taking, then, the evidence as true, and the statements of the commissioner as *facts*, I can have no doubt or difficulty in saying that "*the question* now submitted by the weighers, &c., was submitted" to your predecessor, Mr. Meredith, and by him decided against the claim of the weighers, &c., as stated in the said letter of the 7th June, 1850; and that decision upon a matter properly before him, and, so far as it has been carried into effect in the regular transactions of the Treasury Department, cannot, as I think, be properly set aside by you, except for special causes not stated or appearing in this case.

In reference to your second point, it seems to me that when the claims

or accounts of public officers, or others, whether for salary or other consideration, have been regularly settled and closed at the Treasury Department, those settlements cannot be set aside or reopened by you, except upon the ground of "*mistakes in matters of fact*," or "the discovery and production of material testimony;" and these are also the special causes above alluded to, which alone would warrant you in setting aside or reopening the decisions of your predecessor upon matters within the scope of his official authority. For all other errors alleged to exist in such settlements and decisions, remedies must be found in the judicial tribunals, or in appeals to Congress. They are not open for revision by your department. The acts of your predecessor were done by an authority and jurisdiction equal to your own; and to set aside an act done by authority competent in law, is the exercise of a *superior* authority. Yours being equal only, you cannot do it.

These views appear to me to be sanctioned by all the legal analogies to be derived from the exercise of special powers and jurisdictions; and that this degree of finality should be attributed to settlements made and completed by the proper authority of your department, and to acts done in pursuance of the decisions of your predcessors, seems to me to be quite necessary to the despatch of the public business, and to be required alike for the security of individuals, and for the security of the public treasury.

Persons who had settled their accounts at the treasury, would be exposed to the danger of having those settlements relieved, at any distance of time, and the same accounts readjusted to their disadvantage, upon no other ground than a difference of opinion between the reviewers and their predecessors in office who made those settlements; and as to individual claims against the treasury, no matter how often and how solemnly rejected, they would still be presented for a more favorable adjudication to every succeeding Secretary, and their chances are greatly in their favor, when half a dozen rejections could not defeat them, and one decision in their favor would give them final success.

The opinions I have expressed upon the points submitted by you are, in all material respects, fully sanctioned and sustained by the decision of the circuit court of the United States for the district of Virginia, in the case "*ex parte* Robert B. Randolph," (Brockenborough's Reports, 2 vol., p. 470, &c.,) and by the decision of the Supreme Court, in the case of the United States *vs.* the Bank of the Metropolis, (Peters's Reports, vol. 15, p. 400.)

In the first of these cases, it was explicitly decided by the Chief Justice Marshall, and Judge Barbour, that when an officer had settled his accounts at the proper department, that settlement could not be opened and restated, upon the ground that it had been erroneously made in the first instance.

In the case of the United States *vs.* Bank of the Metropolis, the expressions of the Supreme Court are so direct and applicable that I must quote a portion of them. That court says:

"The third instruction asked of the court to say, among other things, if the credits given by Mr. Barry (Postmaster General) were for extra allowances, which the said Postmaster General was not legally authorized to allow, then it was the duty of the present Postmaster General to disallow such items of credit.

"The successor of Mr. Barry had the same power, and no more than his predecessor, and the power of the former did not extend to the recall of credits, or allowances made by Mr. Barry, if he acted within the sphere of official authority given by law to the head of the department.

"This right, in an incumbent, of reviewing a predecessor's decisions, extends to mistakes in *matters of fact* arising from errors in calculation, and to cases of rejected claims in which material testimony is afterwards discovered and produced. But if a credit has been given, or allowances made, as these were by the head of the department, and it is alleged to be an illegal allowance, the judicial of the country must be resorted to to construe the law under which the allowance was made, and to settle the rights between the United States and the party to whom the credit was given. It is no longer a case between the correctness of one officer's judgment and that of his successor."

It requires no remarks to show the application and effect of these judicial decisions to the question submitted by you. They are authorities which must govern both you and me, and the legal advice which I have the honor now to address to you is founded upon, and intended to be entirely conformable to them.

I am, very respectfully, yours, &c.,

J. J. CRITTENDEN.

Hon. THOMAS CORWIN,
Secretary of the Treasury,

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E.

TREASURY DEPARTMENT,
Office of Commissioner of Customs, January 15, 1853.

SIR: In answer to the inquiries contained in the resolution of the House of Representatives, dated December 27, 1852, referred by you to this office, I have to report that, under the 2d section of the compensation act of 2d March, 1799, and the 1st section of the act of April 26, 1816, weighers, gaugers, and measurers, the class of custom-house officers presumed to be in view of the resolution, and the claims of some of which class are now pending before the Secretary, were allowed the amount of fees earned by them according to the rates fixed by those acts; but that the 3d section of the act of 7th July, 1838, revived and continued in force by the 7th section of the act of 21st July, 1840, for the relief of Chastelain and Ponvert, as construed by the department, limited the compensation of said officers to $1,500 per annum; since which time they have been paid at the rate of $1,500 per annum, and their official expenses, whenever their fees were sufficient for the purpose.

They now claim the difference between the amount of fees earned and the compensation and expenses which have been paid to them. I estimate the number of claimants from 30th August, 1842, at 225, and the aggregate amount of their claims at $1,250,000.

The resolution of the House of Representatives is herewith returned.

I have the honor to be, very respectfully, your obedient servant,

J. N. BARKER,
Acting Commissioner of Customs.

Hon. THOS. CORWIN, *Secretary of the Treasury.*