

IN THE SENATE OF THE UNITED STATES.

MAY 12, 1856.—Referred to the Committee on Claims.

DECEMBER 18, 1857.—Referred to the Committee on Claims and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

MICHAEL NOURSE *vs.* THE UNITED STATES.

1. The petition of the claimant to the Court of Claims.
2. Claimant's petition to Congress, with accompanying documents, referred to the Court of Claims by the House of Representatives and returned to that House.
3. Statement showing the number of days the claimant acted as Register of the Treasury, transmitted to the House of Representatives.
4. Opinion of the Court in this case, with a bill for the relief of claimant.
5. Opinion of the Court in the case of Asbury Dickins *vs.* The United States.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Washington, this seventh day of May,
[SEAL.] A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the Honorable the Judges of the Court of Claims:

The petition of Michael Nourse respectfully sheweth:

That prior to the 3d March, 1849, your petitioner being then chief clerk in the office of the Register of the Treasury, at several different periods was appointed Acting Register of the Treasury by the Presidents of the United States.

These appointments were made under the authority of the eighth

section of the act of 8th May, 1792, entitled "An act making alterations in the Treasury and War Departments."—(Stat. at Large, vol. 1, page 281.)

Your petitioner exhibits herewith the certificate of Mr. Hunter, Assistant Secretary of State, to show the date of his several commissions, and by whom the appointments were made; and the certificate of Finley Bigger, Register of the Treasury, to show the performance of the service under the several commissions.

The aggregate service prior to the 3d of March, 1849, was three hundred and forty-four days. This, at the rate of \$3,000 per annum, (the salary of the Register,) amounts to \$2,827 32. During the same time your petitioner received his salary as chief clerk, amounting to \$1,622 19.

Your petitioner presented his claim to the Senate, first session of the thirty-third Congress, a favorable report (No. 197) was made, and a bill for his relief passed the Senate, and in the House of Representatives was referred to the Committee on Claims. That committee reported unfavorably. The report was not acted upon in the House.

Your petitioner is advised there is justly due him from the United States compensation for these services; any he prays the judgment of this Court therefore.

Your petitioner is the sole owner of his claim, not having assigned it to any one else.

MICHAEL NOURSE.

DISTRICT OF COLUMBIA, }
Washington County. }

Personally appeared before me, a justice of the peace in and for the county aforesaid, Michael Nourse, who made oath according to law that the facts stated in the annexed petition are true, to the best of his knowledge and belief.

PAUL STEVENS,
Justice of the Peace.

JULY 17, 1855.

COURT OF CLAIMS.

MICHAEL NOURSE *vs.* THE UNITED STATES.

The petition is referred to for a statement of the case.

1. For the petitioner it will be contended: That one man may hold two offices, if not incompatible; there may be two incumbents in the same office; and a man holding two offices is entitled to the salary of each; and if there be two incumbents of the same office, each may be entitled to a salary.

The following authorities are referred to:

Viner's Abridgment, vol. 16, title "Officers and Offices," letter (C 2,) (C 3,) (C 4) letter R. Bacon, vol. 6, title "Offices," letter K, act of 1792.

Opinions of Attorneys General:

Mr. Attorney General Butler on Mr. Hunter's case, April 16, 1838, (Ho. Doc. 55, page 1182; Hall, vol. 3, page 324.) Mr. Attorney General Legaré on Mr. Young's case, November 26, 1842, (Ho. Doc. 1550; Hall, vol. 4, 122.) Mr. Attorney General Nelson on Hoffman's case, December 15, 1843, (Ho. Doc. 1664.) Mr. Attorney General Mason on Mr. Butler's case, August 3, 1846, (Ho. Doc. 1809.) Ditto on Andrew Porter's case, January 10, 1846, (Ho. Doc. 1776-'77; Hall, vol. 4, 464.) Mr. Legaré on Clerks district and Circuit Courts, (Ho. Doc. 1565-'66; Hall, vol. 4, 145.) Mr. Attorney Toucey, (contra,) March 1, 1849, (Ho. Doc. page 2141; Hall, vol. 5, page 74.)

Manuscript opinions of Judge Taney:

United States *vs.* M^d Daniel, 7 Peters, 3; United States *vs.* Riply, 7 Peters, 9; United States *vs.* Fillebrown, 7 Peters, 29; United States *vs.* Gratiot, 15 Peters, 336; Milnor *vs.* Metz, 16 Peters, 221; United States *vs.* Morse, 3 Story, 87.

2. It will be contended that the laws of 1839 and 1842 do not affect this claim.

The act of March 3, 1839, 5 Statutes at Large, 349; 9th section of act of May 5, 1842, 5 Statutes at Large, 487; 4th section of act of March 3, 1849; vol. 9 Statutes at Large, 370, and the above authorities, will be noticed. Also the following items of receipts and expenses of 1849, page 15 of Civil List:

James Monroe, salary as Acting Secretary of State.....	\$2,069 44
Fletcher Webster, Acting Secretary of State.....	1,836 06
Wm. Jones, Acting Secretary of the Treasury.....	4,016 95
McClintock Young, Acting Secretary of the Treasury.....	4,199 80

Receipts and expenses for 1850, page 3 of Civil List:

Henry Dearborn, Acting Secretary of the Navy.....	1,296 20
S. L. Southard, Acting Secretary of War	2,194 91

3. Ought interest to be allowed on this claim? On this question the following authorities are referred to:

Sellock *vs.* French, 1st American Leading Cases, page 341, and note thereto, with authorities cited; Beau Marchais *vs.* Commonwealth, 3 Call, 107, marg. 123; Commonwealth *vs.* Cunningham & Co., 4 Call, 331; Attorney General *vs.* Turpin, 3 Hen. & Munf., 548; Res publica *vs.* Mitchell, 2 Dallas, 101; Attorney General *vs.* Cape Fear N. Co., 2 Iredell, Equity Rep., 444; Milne *vs.* Rem Publicum, 3 Yeates, 102; Auditor *vs.* Duggen, 3 Leigh, 241; Commonwealth *vs.* Newton, 1 Hen. & Munf., 89; United States *vs.* Joseph Nourse, 9 Peters, 9; act of May 15, 1820, 3 Statutes at Large, 593; United States *vs.* Wilkins & Wheat., 135.

S. S. BAXTER,
For Plaintiff.

MICHAEL NOURSE *vs.* THE UNITED STATES.

Opinion of the Court delivered by BLACKFORD, J.

The claimant claims compensation for his services as Acting Register of the Treasury, at different times, between the 16th of February, 1830, and May 12, 1847, both days inclusive.

The evidence shows that the claimant was regularly appointed Acting Register of the Treasury at various times between the dates aforesaid, and that he served in that office at various times between those dates, for three hundred and forty-four days. The claimant, during the times he served as Acting Register of the Treasury, was chief clerk in the office of the Register of the Treasury.

This case is the same in principle with that of *Dickins vs. The United States*, recently decided by this Court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons for our decision in the present case.

The Solicitor, in opposition to a part of this claim, relies on the act of 1839, 5 Stat. at Large, page 349, section 3, and the acts of 23d and 26th of August, 1842, 5 Stat. at Large, page 510, section 2, and page 525, section 12. But we do not think that these acts apply to this case. They do not contemplate a case where the same person holds two distinct offices at the same time, which is the present case.

We consider the claimant entitled, for his services as Acting Register of the Treasury, to the same compensation that was, at the times of his service, allowed by law to the Register of the Treasury—that is, at the rate of three thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of *The United States vs. White and others*, cited in our opinion in the case of *Dickins vs. The United States*.

Annexed to this opinion are documents marked A and B, one of which is the statement of W. Hunter, Assistant Secretary of State, and the other, that of F. Bigger, Register of the Treasury. These documents prove the service of the claimant to have been rendered as aforesaid, for three hundred and forty-four days. The compensation due to him for that service, at the rate of three thousand dollars a year, is two thousand eight hundred and twenty-seven dollars and thirty-nine cents. Judgment is therefore hereby rendered for the claimant against the United States for the last named sum, and a bill for that amount is accordingly reported.

A BILL for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to Michael Nourse the sum of two thousand eight hundred and twenty-seven dollars and thirty-nine cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as Acting Register of the Treasury at various times between the sixteenth of February, eighteen hundred and thirty, and the twelfth of May, eighteen hundred and forty-seven, both days inclusive.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the Court delivered by Judge BLACKFORD.

This is a claim for compensation for services performed by the claimant as Acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833, both days inclusive. It is also a claim for compensation for services performed as Acting Secretary of State, at different periods, between the 10th of August, 1833, and the 9th of November, 1836, both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states further, that during the times the claimant was acting as Secretary of the Treasury he was also chief clerk in the Treasury Department; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states, that the claimant's appointments of Acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of Acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows:

"SEC. 9. *And be it further enacted*, That the compensation allowed by this act to clerks shall commence from and after the 31st day of March last. And it shall be the duties of the Secretaries for the Departments of State, Treasury, War, and Navy, of the commissioners of the navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act. And all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed."—(3 Stat. at Large, 447.)

The meaning of that part of the above section, relied on by the Solicitor, is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and, if any, to what amount, for his discharge of the duties of the other offices conferred on him?

The 8th section of the act of Congress referred to by the claimant is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose

appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease.”—(1 Stat. at Large, 281.)

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times; and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk for extra services. His claim for compensation, beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

“But he is entitled to set off the sum of \$5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement. But in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the

duties of another office is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(*The United States vs. White and others*, April term, 1851.)

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as Acting Secretary of the Treasury and as Acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence of the amount to which the claimant is entitled.

The Solicitor refers us to certain acts of Congress of 1839 and 1842. —(5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

