day in June next, divide the members into two classes, in manner following, to wit: Those members who are now in office, and, by virtue of their election in June last, shall be entitled to take their seats in the new board, as members from the wards in which they shall, respectively, reside, shall be placed in the first class; and those members who shall be elected from the same wards in June next, shall be placed in the second class; and the other members shall be placed in their respective classes by lot; and the seats of the first class shall be vacated at the end of the first year, and the seats of the second class shall be vacated at the end of the second year; so that one member shall be elected in each ward every year thereafter. And the members of the board of aldermen shall be hereafter, ex officio, justices of the peace for the county of Washington, unless holding commissions in the army or navy of the United States.

First class.

Second class.

Others by lot.

Vacation of aldermen's seats.

Aldermen are, ex officio, justices of the peace unless holding military or naval commissions.

Sec. 17. *And be it further enacted*, That this act shall continue in force for and during the term of twenty years, and until Congress shall, by law, determine otherwise.

Approved, May 15, 1820.

Statute I.

May 15, 1820.

Chap. CVII.—*An Act providing for the better organization of the Treasury Department.*

Act of March 3, 1817, ch. 45.

Act of March 3, 1797, ch. 20.

An officer to be designated by the President, as agent of the treasury.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be the duty of such officer of the Treasury Department as the President of the United States shall, from time to time, designate for that purpose, as the agent of the treasury, to direct and superintend all orders, suits, or proceedings, in law or equity, for the recovery of money, chattels, lands, tenements, or hereditaments, in the name, and for the use of the United States.

Officers receiving public money before it is paid into the treasury, failing to account—

The 1st comptroller to state and certify the amount due—

The agent to issue a warrant of distress against delinquent and sureties to the marshal.

Sec. 2. *And be it further enacted*, That from and after the thirtieth day of September next, if any collector of the revenue, receiver of public money, or other officer who shall have received the public money before it is paid into the treasury of the United States, shall fail to render his account, or pay over the same in the manner, or within the time required by law, it shall be the duty of the first comptroller of the treasury to cause to be stated the account of such collector, receiver of public money, or other officer, exhibiting truly the amount due to the United States, and certify the same to the agent of the treasury, who is hereby authorized and required to issue a warrant of distress against such delinquent officer and his sureties, directed to the marshal of the district in which such delinquent officer and his surety or sureties shall reside; and where the said officer and his surety or sureties shall reside in different districts, or where they, or either of them, shall reside in a district other than that in which the estate of either may be situate, which may be intended to be taken and sold, then such warrant shall be directed to the marshals of such districts, and to their deputies respectively; therein specifying the amount with which such delinquent is chargeable, and the sums, if any, which have been paid. And the marshal authorized to execute such warrant, shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and country where the said goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside; and if the goods and chattels be not sufficient to satisfy the said warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until

Marshal or deputy to proceed to levy and collect by distress and sale of goods and chattels of delinquent.

Ten days' notice of sale, at two or more public places, &c.

Goods, &c.

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discharged by due course of law. Notwithstanding the commitment of such officer, or if he abscond, or if goods and chattels cannot be found sufficient to satisfy the said warrant, the marshal or his deputy may, and shall proceed to levy and collect the sum which remains due by such delinquent officer, by the distress and sale of the goods and chattels of the surety or sureties of such officer; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold, at two or more public places in the town or county where the said goods or chattels were taken, or in the town or county where the owner of such goods or chattels resides. And the amount due by any such officer as aforesaid, shall be, and the same is hereby declared to be, a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against him or them, and a record thereof, made in the office of the clerk of the district court of the proper district, until the same shall be discharged according to law. And for want of goods and chattels of such officer, or his surety or sureties, sufficient to satisfy any warrant of distress issued pursuant to the provisions of this act, the lands, tenements, and hereditaments of such officer and his surety or sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, prior to the time of sale, may and shall be sold by the marshal of such district or his deputy; and for all lands, tenements, or hereditaments sold in pursuance of the authority aforesaid, the conveyance of the marshals or their deputies, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer, or his surety or sureties. And all moneys which may remain of the proceeds of such sales, after satisfying the said warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be: *Provided*, That the summary process herein directed shall not affect any surety of any officer of the United States, who became bound to the United States before the passing of this act; but each and every such officer shall, on or before the thirtieth day of September next, give new and sufficient sureties for the performance of the duties required of such officer. (*a*)

being insufficient, the person of the officer is liable, &c.

Warrants remaining unsatisfied by proceedings against delinquent.

Ten days' notice of sale, at two or more public places, &c.

Amount due by delinquent officer, a lien upon lands, &c. of himself and sureties.

For want of goods, &c. lands, &c. may be sold.

Three weeks' notice of sale of lands, &c.

Conveyance of the marshal to give a valid title to lands sold, &c.

(*a*) The cases decided upon the provisions of this section are:

The Treasury Department of the United States, on the 14th of July, 1829, issued a warrant of distress, directed to the marshal of the District of Columbia, commanding him to levy and collect, by distress and sale of his goods and chattels, a sum of money alleged to be due to the United States, on a treasury transcript, by Joseph Nourse late register of the treasury. This warrant was issued in pursuance of the 2d, 3d, and 4th sections of the act of May 15th, 1820, "providing for the better organization of the Treasury Department." Under the provisions of the 4th section of the act, Mr. Nourse obtained an injunction from the chief justice of the District of Columbia to stay all further proceedings on the said warrant. The bill presented by Mr. Nourse to the chief justice of the District of Columbia asserted that the United States was indebted to him for compensation for extra services he had rendered to the United States, in a sum exceeding the amount claimed by the United States: which claim was denied in the answer filed by the district attorney of the United States, both as to the legality and the amount of the claim.

The court determined that Mr. Joseph Nourse was entitled to compensation for the extra services he had rendered to the government, in the agencies mentioned in the bill; and appointed auditors to ascertain the value of his services and compensation, and to report thereon without delay. The report of the auditors allowed to the complainant a commission of two and a half per cent. on the sum of nine hundred and forty-three thousand three hundred and eight dollars, and eighty-three cents, disbursed by him in the several agencies in which he had been employed, leaving a balance due to him from the United States. The report was confirmed, and the injunction made perpetual.

The United States then instituted their suit against Joseph Nourse in the circuit court for the District of Columbia, in the county of Washington, on an account authenticated according to law, by the proper accounting officers, being the same account, and claiming the same amount as in the warrant of distress, and on which the decree of the Chief Justice was pronounced. It was agreed that the defendant should have the benefit of the proceedings in that case, as if the same had been pleaded and given in evidence. The circuit court adjudged the proceedings in the former action a bar to this action.

By the Court. It is a rule to which no exception is recollected, that the judgment of a court of competent jurisdiction, while unreversed, concludes the subject-matter as between the same parties. They cannot again bring it into litigation. The United States *v.* Nourse, 9 Peters' Rep. 8.

Sec. 3. *And be it further enacted*, That, from and after the thirtieth day of September next, if any officer employed, or who has heretofore been employed, in the civil, military, or naval, departments of the government, to disburse the public money appropriated for the service of those

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An execution is the end of the law. It gives the successful party the fruits of his judgment, and the distress warrant is a most effective execution. It may act on the body and estate of the individual against whom it is directed. *Ibid.*

It would excite some surprise if, in a government of laws and of principle, furnished with a department whose appropriate duty is to decide questions of right, not only between individuals, but between the government and individuals, a ministerial officer might, at his discretion, issue this powerful process, and levy on the person, lands, and chattels of the debtor, any sum he might believe to be due, leaving to that debtor no remedy, no appeal to the laws of his country, if he should believe the claim to be unjust. But this anomaly does not exist; this imputation cannot be cast on the legislature of the United States. *Ibid.*

Under the act of Congress the chief justice of the District of Columbia had full jurisdiction over the case. *Ibid.*

After a reference to auditors, according to the course of courts of chancery in matters of account, a final decree was pronounced against the United States, and a perpetual injunction awarded. This decree is now in full force, and was in force when this suit was instituted. The act of Congress gave jurisdiction in the specific case to the district judge. He might have enjoined the whole or a part of the warrant. His decree might have been for or against the United States for the whole or a part of the claim. On the sum which he found to be due, he is directed to assess the lawful interest; he may add such damages, as with the interest, shall not exceed the rate of ten per cent. per annum on the principal sum. Had the district judge finally enjoined a part of the sum claimed by the United States, and decreed that the residue should be paid with interest, all would perceive the unfitness of asserting a claim in a new action to that portion of the debt which had been enjoined by the decree of the court. And, yet between the obligation of a decree, against the whole claim, and against a part of it, no distinction is perceived. *Ibid.*

The relief which is given by the act of Congress on which the warrant of distress may be issued, by application to any district judge of the United States for an injunction to stay proceedings on such warrant, is not confined to an officer employed in the civil, military, or naval departments of the government, to disburse the public money appropriated for the service of those departments respectively, who shall fail to render his accounts, or pay over in the manner required by law, any sum of money remaining in the hands of such officer. *Ibid.*

When the legislature turns its attention to the individual against whom the warrant may issue, the language of the law is immediately changed. The word person is substituted for officer; and it declares, "that if any person should consider himself aggrieved by any warrant issued under this act, he may prefer a bill of complaint, &c.," and thereupon the judge may grant an injunction, &c. *Ibid.*

The character of the individual against whom the warrant may be issued is entirely disregarded by that part of the law. Be he whom he may, an officer or not an officer, a debtor or not a debtor; if the warrant be levied on his person or property, he is permitted to appeal to the laws of his country, and to bring his case before the district judge, to be adjudicated by him. *Ibid.*

The district judge had full jurisdiction over the case, and his decision is final. The judgment on the warrant of distress, and the proceedings upon it are, consequently, a bar to any subsequent action for the same cause. *Ibid.*

A party was arrested and held in custody, by virtue of a distress warrant, issued from the Treasury Department, under an act of Congress passed the 15th of May, 1820, "to provide for the better organization of the Treasury Department." The act provides, in substance, for the issuing of this warrant by the agent of the treasury, against all military and naval officers, &c., charged with the disbursement of the public moneys, who shall fail to pay and settle their accounts at the Treasury Department. The party in custody, was a lieutenant in the navy of the United States, and had officiated as acting purser of a national ship, supplying a vacancy occasioned by the death of the regularly commissioned purser of the ship, on the Mediterranean station, and had executed no official bond as purser. On his return to the United States, he had settled his account at the proper department, viz., in 1828; and in 1833, the then fourth auditor, opened and re-stated his account, on the ground that it had been erroneously settled in the first instance, and the account as re-stated, exhibited a large balance against the party, due to the United States. Upon this re-stated account, the distress warrant was issued, by virtue whereof, the party was arrested and was brought before the circuit court under a writ of habeas corpus, directed to the officer, who executed the warrant, and held the petitioner in custody. *Held*, That the account of the petitioner as acting purser, having been once stated, and settled at the Treasury Department, the law invests the auditor with no power to open and re-settle it, of his own mere authority. The act creates a special and limited jurisdiction; and after the accounts of any class of officers, on whom it was intended to act, have been adjusted, however erroneously, that special jurisdiction is functus officio, and any process issued upon a re-establishment of such accounts, is absolutely null and void.

Barbour, J. That, assuming that the act, under which this arrest was made, does not violate the Constitution of the United States, which declares, that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as Congress shall, from time to time, ordain and establish; the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour," and extends the judicial power to "controversies to which the United States shall be a party:" yet, the authority vested by this law in certain agents of the treasury, and all acts done in pursuance thereof, are purely ministerial. The statement or certificate, authorized by the act, is not a judgment, and the warrant which coerces payment, is not judicial process. They are ministerial acts, (for, otherwise, they could not be sustained,) and the general principles of construction require, that the authority vested by the act, shall be strictly and literally pursued. Per Marshall,

departments respectively, shall fail to render his accounts, or to pay over, in the manner, and in the times, required by law, or the regulations of the department to which he is accountable, any sum of money remaining in the hands of such officer, it shall be the duty of the first or second comptroller of the treasury, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified, the account of such delinquent officer, to the agent of the treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the preceding section, all the provisions of which are hereby declared to be applicable to every officer of the government charged with the disbursement of the public money, and to their sureties, in the same manner, and to the same extent, as if they had been described and enumerated in the said section: *Provided, nevertheless,* That the said agent of the treasury, with the approbation of the Secretary of the Treasury, in cases arising under this or the preceding section, may postpone, for a reasonable time, the institution of the proceedings required by this act, where, in his opinion, the public interest will sustain no injury by such postponement.

Officers employed to disburse public moneys, being delinquent, in rendering account or paying over, &c., the 1st or 2d comptroller to state and certify the accounts, and the agent of the treasury to proceed against them by warrant of distress, &c.

Proviso.

Sec. 4. *And be it further enacted,* That if any person should consider himself aggrieved by any warrant issued under this act, he may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge aforesaid may, if in his opinion the case requires it, grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires; but no injunction shall issue till the party applying for the same shall give bond, and sufficient security, conditioned for the performance of such judgment as shall be awarded against the complainant, in such amount as the judge granting the injunction shall prescribe; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of such warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States; and if, upon dissolving the injunction, it shall appear to the satisfaction of the judge who shall decide upon the same, that the application for the injunction was merely for delay, in addition to the lawful interest which shall be assessed on all sums which may be found due against the complainant, the said judge is hereby authorized to add such damages as that, with the lawful interest, it shall not exceed the rate of ten per centum per annum on the principal sum.

Persons aggrieved may prefer a bill of complaint to a district judge, &c.

The judge may grant an injunction.

No injunction until bond and security.

Injunction not to impair the lien of the warrant.

Damages, if application for the injunction was merely for delay.

Sec. 5. *And be it further enacted,* That such injunctions may be granted or dissolved by such judge, either in or out of court.

Injunction, &c., either in or out of court.

Sec. 6. *And be it further enacted,* That if any person shall consider himself aggrieved by the decision of such judge, either in refusing to issue the injunction, or, if granted, on its dissolution, it shall be competent for such person to lay a copy of the proceedings had before the district judge before a judge of the Supreme Court, to whom authority is hereby given,

Persons aggrieved by the district judge, may apply to a judge of the Supreme Court,

C. J. The act does not apply, in sound construction, to every commissioned officer of the army or navy of the United States, to whose hands any public money may be intrusted, but only to those regularly appointed disbursing officers, who have given official bonds, with sureties for the faithful discharge of the duties of their office; it does not embrace a mere acting purser in the navy. The construction put by the court upon this act does not affect the responsibility of a temporary acting disbursing officer of the army or navy, but simply denies his liability to the particular process authorized by the act. The responsibility of such an officer is precisely the same with that of the regularly appointed officer, who has given his official bond with surety; and if his account has been erroneously settled, it may be opened, and any balance remaining due from him to the United States, may be recovered in a regular course of legal proceeding. *Per Curiam.* In case of an erroneous settlement, a bill in equity would lie to surcharge and falsify, as in the case of a settled account between individuals. If even at law, though the settled account would be prima facie evidence, might not the true balance be recovered upon proving mistakes and omissions? Per Barbour, J. Ex parte Randolph, 2 Brockenb. C. C. R. 447.

who may grant relief.

either to grant the injunction, or permit an appeal, as the case may be, if, in the opinion of such judge of the Supreme Court, the equity of the case requires it; and thereupon the same proceedings shall be had upon such injunction in the circuit court, as are prescribed in the district court, and subject to the same conditions in all respects whatsoever.

Attorneys of the United States to conform to instructions from the agent of the treasury.

Attorneys, at the end of every term, to forward a statement of cases decided, &c. and information, to the agent, &c.

Sec. 7. *And be it further enacted*, That the attorneys of the United States, for the several judicial districts of the United States, in the prosecution of all suits in the same, in the name and for the benefit of the United States, shall conform to such directions and instructions, touching the same, as shall, from time to time, be given to them, respectively, by the said agent of the treasury. And it shall, moreover, be the duty of each of the said attorneys, immediately after the end of every term of the district and circuit courts, or of any state court, in which any suit or action may be pending, on behalf of the United States, under the direction of any district attorney, to forward to the said agent of the treasury a statement of the cases which have been decided during the said term, together with such information touching such cases as may not have been decided, as may be required by the said officer.

Clerks of circuit and district courts, within 30 days after term, to forward a list of judgments and decrees entered, to the agent, showing the amount, &c.

Marshals, within 30 days before terms, to make returns, to the agent, of proceedings on writs of execution, &c.

Sec. 8. *And be it further enacted*, That it shall be the duty of the clerks of the district and circuit courts, within thirty days after the adjournment of each successive term of the said courts, respectively, to forward to the said agent of the treasury a list of all judgments and decrees which have been entered in the said courts, respectively, during such term, to which the United States are parties, showing the amount which has been so adjudged or decreed for or against the United States, and stating the term to which execution thereon will be returnable. And it shall, in like manner, be the duty of the marshals of the several judicial districts of the United States, within thirty days before the commencement of the several terms of the said courts, to make returns, to the said agent, of the proceedings which have taken place upon all writs of execution or other process which have been placed in his hands for the collection of the money which has been so adjudged and decreed to the United States in the said courts, respectively.

Nothing in this act to impair any right or remedy, under preceding laws.

Sec. 9. *And be it further enacted*, That nothing in this act contained shall be construed to take away or impair any right or remedy which the United States now have, by law, for the recovery of taxes, debts, or demands.

Approved, May 15, 1820.

Statute I.

May 15, 1820.

[Obsolete.]

The President authorized to cause to be built, &c. not exceeding five vessels of war, of not more than 12 guns each.

60,000 dolls. appropriated for the object.

Chap. CVIII.—*An Act authorizing the building of a certain number of small vessels of war.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States is hereby authorized to cause to be built and equipped, any number of small vessels of war (not exceeding five) which, in his judgment, the public service may require; the said vessels to be of a force not more than twelve guns each, according to the discretion of the President. And, for carrying this act into effect, the sum of sixty thousand dollars is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated.

Approved, May 15, 1820.

Statute I.

May 15, 1820.

[Expired.]

Act of April 10, 1806, ch. 25,

Chap. CIX.—*An Act to revive and continue in force an act, entitled "An act to provide for persons who were disabled by known wounds received in the revolutionary war," and for other purposes.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act, entitled "An