militia court martial in New York.

Steddiford was president, nineteen thousand two hundred and sixteen dollars and twenty-nine cents.

Balance of appropriation made Feb. 19, 1818, &c.

For the balance of an appropriation made nineteenth of February, eighteen hundred and eighteen, to defray the expenses of employing a brigade of militia, being the amount thereof carried to the surplus fund, twelve thousand three hundred and seventy-four dollars and fifty-seven cents.

For survey of certain ports, &c.

For replacing the like amount of appropriations made for the survey of certain ports and harbours, which has been carried to the surplus fund, the sum of one thousand three hundred and thirty-four dollars and seventy-eight cents.

For medals for officers of the army, &c.

For replacing the like amount appropriated to procure medals for officers of the army, carried to the surplus fund, the sum of eight thousand two hundred dollars.

For relief of Col. William Lawrence, &c.

For replacing the like amount appropriated for the relief of Colonel William Lawrence and others, carried to the surplus fund, the sum of one thousand four hundred and forty dollars and twelve cents.

For carrying into effect the treaty concluded at Chicago, &c.

For carrying into effect the treaty concluded at Chicago, on the twenty-ninth day of August, eighteen hundred and twenty-one, the sum of eighteen thousand one hundred and seven dollars and ten cents.

For carrying into effect the treaty with the Creeks, in relation to compensation of citizens of Georgia.

For carrying into effect so much of the fourth article of the treaty of the eighth of January, one thousand eight hundred and twenty-one, between the United States and the Creek nation, in relation to the compensation due to the citizens of Georgia by the Creek nation, fifty thousand dollars.

For holding treaties with the Cherokees and Creeks.

For the purpose of holding treaties with the Cherokee and Creek tribes of Indians, for the extinguishment of the Indian title to all the lands within the state of Georgia, pursuant to the fourth section of the first article of the agreement and cession, concluded between the United States and the state of Georgia, on the twenty-fourth of April, one thousand eight hundred and two, the sum of thirty thousand dollars.

Out of money in the treasury.

Sec. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid out of any money in the treasury not otherwise appropriated.

No money to be advanced or paid on any contract, or to any officer in arrears until he has accounted and paid, &c. 1822, ch. 11.

Sec. 3. *And be it further enacted*, That no money appropriated by this act, or by the act, entitled "An act making appropriations for the military service of the United States for the year one thousand eight hundred and twenty-two," shall be advanced or paid to any person on any contract, or to any officer who is in arrears to the United States, until he shall have accounted for, and paid into the treasury, all sums for which he may be liable.

Approved, May 7, 1822.

Statute I.

May 7, 1822.

Chap. XC.—*An Act further to amend the several acts relative to the Treasury, War, and Navy, Departments.* (a)

The second section of act

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the second section of the

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

act, entitled "An act making alterations in the Treasury and War Departments," passed the eighth day of May, seventeen hundred and ninety-two; the second section of the act, entitled, "An act to alter and amend the several acts for the establishment and regulation of the Treasury, War, and Navy, Departments," passed the sixteenth day of July, seventeen hundred and ninety-eight; and the seventh section of the act, entitled "An act to provide for the prompt settlement of public accounts," passed the third day of March, eighteen hundred and seventeen, be, and hereby are, repealed, from and after the thirtieth day of June, eighteen hundred and twenty-two.

of May 8, 1792, ch. 37.

Second section of act of July 16, 1798, ch. 85:

And seventh section of act of March 3, 1817, ch. 45, repealed after June 30, 1822.

Sec. 2. *And be it further enacted*, That on the day and year last aforesaid, all moneys which may remain in the hands of the treasurer of the United States, as agent of the War and Navy Departments, shall, under the direction of the secretaries of those departments, respectively, be repaid into the treasury, and carried to the credit of the proper department upon the books of the treasury.

All moneys remaining in the hands of the treasurer as agent of the War and Navy Departments, to be repaid into the treasury.

Sec. 3. *And be it further enacted*, That all moneys appropriated for the use of the War and Navy Departments, shall, from and after the day and year last aforesaid, be drawn from the treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the secretaries of those departments, respectively, countersigned by the second comptroller of the treasury, and registered by the proper auditor.

All moneys for the use of the War and Navy Departments, to be drawn by warrant of the Secretary of the Treasury, &c.

Sec. 4. *And be it further enacted*, That so much of the said act of the third day of March, eighteen hundred and seventeen, as is repugnant to the foregoing provisions, be, and is hereby, repealed, from and after the thirtieth day of June, eighteen hundred and twenty-two.

So much of the act of March 3, 1817, ch. 45, as is repugnant, &c., repealed.

Approved, May 7, 1822.

Statute I.

May 7, 1822.

Chap. XCI.—*An Act fixing the compensation of the commissioner of the public buildings.* (*a*)

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That instead of the salary of two thousand dollars, heretofore allowed by law to the commissioner of the public buildings, there shall henceforth be allowed to the said commissioner a salary of one thousand five hundred dollars a year, to be paid quarterly, out of any moneys in the treasury not otherwise appropriated.

The salary of the commissioner of the public buildings, to be hereafter 1500 dollars per annum to be paid quarterly, &c.

Sec. 2. *And be it further enacted*, That the said commissioner shall

The commis-

for the President, unless their duties were regarded as executive, in which judgment and discretion were to be exercised. Decatur *v.* Paulding, Secretary of the Navy, 14 Peters, 497.

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

(*a*) By the act of May 2, 1828, "An act making appropriations for the public buildings, and for other purposes," passed May 2, 1828, ch. 45, sec. 3, the commissioner of public buildings is required to reside near the Capitol; and by the third section of the act making appropriations for public buildings, passed March 3, 1829, ch. 51, the commissioner is required to report annually to Congress the manner in which all appropriations for the public buildings and grounds have been expended.

By the act of 1843, ch. 75, an act to fix the compensation of the commissioner of public buildings, the compensation of the commissioner was fixed at two thousand dollars per annum, and no portion of the appropriation for public buildings and grounds to be applied to the payment of clerks, unless the same be expressly provided for in the act.