

## Opinion of the Court.

In other words, during the whole period covered by the claim in suit, the consul at Tangier was in the fifth class, and there was in force an act of Congress declaring that consuls of that class should receive \$2000 per annum; in other words, that sum should be in full compensation for his services each year. The only possible object of transferring the office of consul at Tangier from the third to the fifth class was to reduce the annual salary of that officer to the sum fixed for the annual salaries of consuls of the latter class. The error in the argument in behalf of the appellant is, that he gives no effect whatever to the words "at \$2000 per annum," to be found in every appropriation act covering the period in question. But, clearly, those acts, placing this consul in the fifth class, at \$2000 per annum, repealed, by necessary implication, so much of previous enactments, including that of June 11, 1874, as placed the consul at Tangier in the third class, at \$3000 per annum. The argument to the contrary is not at all aided by the circumstance that the diplomatic and consular appropriation act of March 3, 1887, for the first time after the passage of the act of June 11, 1874, expressly declared that the sums thereby appropriated should be "in full compensation" for the services therein mentioned. That act was passed after the decision in Langston's case, and the words "in full compensation" were introduced therein, out of abundant caution, to preclude any doubt in the future as to the intention of Congress.

*Judgment affirmed.*

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UNITED STATES v. MULLAN.

## APPEAL FROM THE COURT OF CLAIMS.

Submitted October 26, 1887. — Decided November 7, 1887.

An officer in the regular Navy, whose service therein was continuous in various grades from 1860 to 1868, and who held the rank of lieutenant-commander when the act of July 15th, 1870, c. 295, § 3, 16 Stat. 330, now § 1556 of the Revised Statutes, was passed, giving graduated pay

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for various ranks, is entitled to the benefit of the act of March 3d, 1883, c. 97, 22 Stat. 473.

It is not necessary that he should have entered the service more than once.

THIS was an appeal from a judgment in the Court of Claims in the claimant's favor. The case is stated in the opinion of the court.

*Mr. Attorney General, Mr. Assistant Attorney General Howard, and Mr. F. P. Dewees* for appellant.

*Mr. John Paul Jones and Mr. Robert B. Lines* for appellee.

MR. JUSTICE BLATCHFORD delivered the opinion of the court.

This is an appeal by the United States from a judgment of the Court of Claims, for the sum of \$356.03, in favor of Dennis W. Mullan. Mullan is an officer in the regular Navy, who has served continuously therein since September 21st, 1860, on which day he was appointed acting midshipman. He was appointed acting ensign, October 21st, 1863; master, May 10th, 1866; lieutenant, February 21st, 1867; and lieutenant-commander, March 12th, 1868. He was paid for all of his services in those capacities, in accordance with the laws in force at the time they were performed. In addition, he claimed to be entitled to the benefit of the provisions of the act of March 3d, 1883, c. 97, 22 Stat. 473, which reads as follows: "And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the regular Navy in the lowest grade having graduated pay held by such officer since last entering the service: *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the volunteer Army or Navy."



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The Court of Claims held that Mullan was entitled to \$356.03 under that act. The amount is not questioned by the Government, if the Court of Claims decided the question of law correctly. Graduated pay for various ranks in the Navy was given by the act of July 15th, 1870, c. 295, § 3, 16 Stat. 330, now § 1556 of the Revised Statutes. At the time of the passage of the act of 1883, Mullan was a lieutenant-commander, who had served as an officer in the regular Navy from September 21st, 1860, by continuous service; and, while he held the rank of lieutenant-commander, graduated pay was given by statute to officers of that rank and other officers. By the provisions of the act of 1883, he is to be credited with his actual time of service, and is to receive all the benefits of that service in all respects, in the same manner, as if all of that service had been continuous in the lowest grade having graduated pay held by him since last entering the service.

It is contended on the part of the United States that the act of March 3d, 1883, applies to officers serving in the regular Navy only when their term of service has not been continuous. The view is urged, that the expression "since last entering the service" implies that the officer, to be entitled to the benefit of the statute, must have entered the service more than once. But we think that this is an overstrained interpretation. Mullan entered the service once. It was his last entry as well as his first entry. Where an officer has entered the service twice, the second entry is the last entry, and that entry is to be taken in applying the statute to his case; but where an officer has entered the service but once, that entry is to be taken as the last entry, within the meaning of the statute. So, too, the expression, "as if all said service had been continuous," is not to be held to confine the benefits of the statute to a service which has been non-continuous. The expression is satisfied by considering it as an extension of the benefits of the statute to interrupted, non-continuous service, and by crediting the officer with the actual time of such service, as if it had been continuous service. Otherwise, the statute cannot be carried out. It says that "all officers of the Navy shall be credited with the actual time

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they may have served as officers or enlisted men in the regular or volunteer Army or Navy, or both;" and the benefits of such actual service are to be received, where the service has been continuous, in the regular Navy.

The judgment of the Court of Claims is

*Affirmed.*

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CRAIG v. LEITENSCHORFER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF COLORADO.

Argued October 12, 13, 1887. — Decided October 31, 1887.

If an official act of an executive officer in the Land Office is challenged for error of law, or for fraud in a judicial proceeding between private parties, in a court of the United States, no jurisdiction attaches unless the controversy relates to rights existing in the parties, or one of them, derived from the act, and unless definite relief or redress under some known head of judicial jurisdiction is demanded.

The acts of June 21, 1860, 12 Stat. 71, and February 25, 1869, 15 Stat. 275, having referred to the Land Office and the Department of the Interior the adjustment of the claims of settlers within the Las Animas grant in Colorado, and their definition by the prescribed surveys and plats, and of all questions of possession and of boundary and of conflict, the free course of that administration, within the limit of the law, cannot be interrupted or interfered with by the judicial power.

If the plaintiff's contention is well founded that the duty of the Commissioner of the General Land Office to take up, hear and determine his appeal exists, that duty, so far as relates to entering upon its performance, is strictly ministerial, and his remedy is at law, by mandamus, and not in equity.

The controversy in this case being confined to the conflicting claims of actual settlers, "holding possession under titles or promises to settle," made by Cornelio Vigil and Ceran St. Vrain, and established under the provisions of the acts of June 21, 1860, 12 Stat. 71, and February 25, 1869, 15 Stat. 275; and it appearing from the pleadings, as amended, that the plaintiff below did not aver an equitable interest in himself in the lands which were so established in favor of the defendant, and that the only remedy, which he sought, was to have it judicially determined that the defendant's title was obtained by means of the fraudulent act