MIGUEL *v.* McCARL, COMPTROLLER GENERAL, ET AL.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 435. Argued February 14, 15, 1934.—Decided March 5, 1934.

1. Where the duty to make a payment of public money is imposed so plainly by statute as to leave no play for judgment or discretion, the duty is purely ministerial and its performance may be compelled by mandamus or mandatory injunction. P. 451.
2. A native of the Philippine Islands who enlisted under the Act of February 2, 1901, "for service in the Army" as a Philippine Scout, became "an enlisted man in the Army" within the meaning of the Act of March 2, 1907, and, after having served 30 years, was eligible under the latter Act to be placed upon the retired list, with the pay and allowances therein prescribed. P. 452.
3. Provisions in later Acts cited in the opinion deal with the status of officers of the Philippine Scouts, but not enlisted men, and cast no doubt upon this right of the latter. P. 453.
4. A duty to pay, plainly imposed by the statutes, can not be affected by a contrary decision of the Comptroller General. P. 454.
5. The Chief of Finance of the Army being charged by law with the duty of disbursing all the funds of the War Department, including the pay of the Army, is the proper party defendant to a suit for a mandatory injunction brought by a retired enlisted man to enforce payment of retired pay and allowances. P. 455.
6. The disbursing officer to whom the voucher was presented, being a subordinate of the Chief of Finance, is not an indispensable party to such suit. *Id.*
7. The United States is not a necessary party to such a suit. *Id.*
8. It is not a ground for dismissing such a suit that recovery of the pay may be had in the Court of Claims. *Id.*
9. In granting relief by injunction requiring the Chief of Finance of the Army to satisfy claims for retired military pay and allowances, as to which the Comptroller General upon request under 31 U.S.C. (Supp.) § 74 had rendered an advance decision which was adverse to payment, *held* unnecessary to require the Comptroller General to recall the decision or to return the voucher. P. 455.

62 App.D.C. 259; 66 F. (2d) 564, reversed in part.

CERTIORARI, 290 U.S. 618, to review the reversal of a decree commanding the Chief of Finance of the Army to satisfy claims of the plaintiff for retired military pay and allowances; enjoining the Comptroller General from interfering, and requiring him to return from his files to a disbursing officer a voucher upon which he had rendered an adverse advance decision.

Mr. Samuel T. Ansell, with whom *Mr. George M. Wilmeth* was on the brief, for petitioner.

The Comptroller General had no jurisdiction to review the order of the President, acting through the Secretary of War, placing petitioner on the enlisted men's retired list of the Army with pay.

The Comptroller General was not required by law, when applied to by a disbursing officer, to decide the question of petitioner's right to retired pay notwithstanding the action of the President placing him on the retired list with pay.

The decision of the Comptroller General was not based on statutes of uncertain meaning. The status of petitioner was not doubtful under the applicable statutes and his right to mandamus was clear.

The Court of Appeals erred in holding by implication that no appropriation was available from which the retired pay could be paid to petitioner and that this was a question solely for the determination of the Comptroller General.

Mr. Harrell O. Hoagland, with whom *Mr. R. L. Golzé* was on the brief, for McCarl, Comptroller General, respondent.

What primarily is brought in question by the petitioner is the constitutional control (Art. I, § 9, cl. 7) by the legislative branch over the uses of public moneys, as maintained through the appropriation acts and the duly con-

stituted accounting officers. The form of the proceeding has for its object the frustration of such legislative control by coercing a subordinate administrative official to make payment on a disputed claim against the United States under a general appropriation not conceded to be available for such purpose, as contrasted with the procedure which has been authorized by Congress under the Tucker Act of a suit on the merits in the Court of Claims, in which any judgment obtained by the petitioner would be for submission to the legislative branch for an appropriation, payment thereunder to be made on settlement by the General Accounting Office.

The decision of the Comptroller General followed a practice which the government accounting officers have followed without interruption, at least since the Act of March 30, 1868, 15 Stat. 54, to decide every question of law and of fact necessary to be decided in determining whether payment on a claim is authorized under existing appropriations. Only in rare cases has Congress by specific language, plainly expressing its purpose, made the decision of some other official conclusive on the question whether payment is authorized.

The ruling of the Supreme Court of the District of Columbia in the present case, in failing to recognize that it was the statutory official duty of the Comptroller General to decide the question of petitioner's right to pay, was in conflict with the precedents of that court. Likewise it was in conflict with the decisions of the Court of Appeals of the District, holding that the duty of the Comptroller General to decide for the executive branch of the Government whether payment on a claim against the United States is authorized involves judgment and discretion which will not be controlled by mandamus or injunction. *U.S. ex rel. Margulies & Sons* v. *McCarl,* 10 F. (2d) 1012; 56 App.D.C. 147; cert. den., 273 U.S. 696; *McCarl* v. *Walters,* 59 App.D.C. 237; 38 F. (2d) 942;

McCarl v. *U.S. ex rel. Leland,* 59 App.D.C. 362; 42 F. (2d) 346; cert. den., 282 U.S. 839; *McCarl* v. *Rogers,* 60 App.D.C. 111; 48 F. (2d) 1023; *McCarl* v. *Hoeppel,* 62 App.D.C. 393; 68 F. (2d) 440. Distinguishing: *Smith* v. *Jackson,* 241 Fed. 747, 761; aff'd 246 U.S. 388; *McCarl* v. *Cox,* 8 F. (2d) 669; cert. den., 270 U.S. 652; *McCarl* v. *Pence,* 18 F. (2d) 809. Cf. *U.S. ex rel. Lisle* v. *Lynch,* 137 U.S. 280; *Brashear* v. *Mason,* 6 How. 92; *U.S. ex rel. Goodrich* v. *Guthrie,* 17 How. 284; *Decatur* v. *Paulding,* 14 Pet. 497; *Case* v. *Terrell,* 11 Wall. 199; *Hagood* v. *Southern,* 117 U.S. 52, 71; 22 R.C.L. 492, 494, §§ 172, 173; *Riverside Oil Co.* v. *Hitchcock,* 190 U.S. 316, 324, 325.

The United States is bound by a decision of the Comptroller allowing active pay or retired pay to those claiming as officers or employees of the United States, whereas the claimants' substantive legal rights are not affected but they are left free to proceed against the United States in the Court of Claims to have their rights judicially decided, *St. Louis, B. & M. Ry. Co.* v. *United States,* 268 U.S. 169, 173–174; *U.S. ex rel. Skinner & Eddy Corp.* v. *McCarl,* 275 U.S. 1. This makes it even more clear why the courts have declared the Comptroller General may not be directed by mandamus or injunction to decide a claim in a particular way. See *McElrath* v. *United States,* 102 U.S. 426; *Geddes* v. *United States,* 38 Ct. Cls. 428; *Mullett* v. *United States,* 21 Ct. Cls. 485; *Longwill* v. *United States,* 17 Ct. Cls. 288, 291; *Charles* v. *United States,* 19 Ct. Cls. 316, 319; *Ex parte Rock,* 171 Fed. 240, 241–242.

The record does not present any facts establishing it to be the plain legal duty of the Chief of Finance, an unbonded subordinate in the War Department, to pay, or to cause any bonded disbursing officer to pay, retired pay and allowances to petitioner.

A decree in accordance with the prayers of the petitioner's bill would be contrary to law.

The decision of the Comptroller General upon the allowance of accounts within his jurisdiction is conclusive upon the executive branch of the Government. Act of July 31, 1894, § 8, 28 Stat. 162, 207, following the provisions of the earlier Act of March 30, 1868, 15 Stat. 54; Act of June 10, 1921, § 304, 42 Stat. 24; *U.S. ex rel. Skinner & Eddy Corp.* v. *McCarl,* 275 U.S. 1, 4–5; *In re Departmental Reference No. 167,* 59 Ct. Cls. 813.

Such a decision is required to be rendered "without direction from any officer." Act of June 10, 1921, § 304, 42 Stat. 24; 31 U.S.C., § 44.

No court may direct the decision of the Comptroller General to be rendered in a particular way. *James Howden & Co.* v. *Standard Shipbuilding Corp.,* 17 F. (2d) 530, 532; *In re Departmental Reference No. 167,* 59 Ct. Cls. 813; *Brumback* v. *Denman,* Law No. 3316, decided June 5, 1933, Dist. Ct. U.S., Nor. Dist. of Ohio, W.Div., refusing an order in the nature of a mandamus to the Comptroller General.

A decree in accordance with the prayers of the petitioner's bill would be contrary also to § 267 of the Judicial Code. *Hurley* v. *Kincaid,* 285 U.S. 95, 104.

Reservation in decisions by the Comptroller General of doubtful questions, for judicial decision in direct proceedings under the Tucker Act, does not prejudice the claimants. See, e.g., *Williams* v. *U.S.,* 289 U.S. 553; *St. Louis, B. & M. Ry. Co.* v. *United States,* 268 U.S. 169, 173–174; *Longwill* v. *United States,* 17 Ct. Cls. 288, 291; *Major Collins's Cases,* 14 Ct. Cls. 568, 15 *id.* 22. It does operate, however, to protect the interests of the United States and the authority of the legislative branch over the public moneys; *Mullett* v. *United States,* 21 Ct. Cls. 485, distinguishing *McElrath* v. *United States,* 102 U.S. 426; and also to make all interested parties secure from possible future litigation in case of unauthorized payments by disbursing officers. *Wisconsin Central R. Co.*

v. *United States* 164 U.S. 190; *United States* v. *Keehler,* 9 Wall. 83; *Heidt* v. *United States,* 56 F. (2d) 559, cert. den., 287 U.S. 601; *Fidelity & Deposit Co.* v. *United States,* 55 F. (2d) 100; *United States* v. *Moore,* 168 Fed. 36; *United States* v. *Dempsey,* 104 Fed. 197.

This is in reality an action against the United States. *In re Ayers,* 123 U.S. 443, 506; *Belknap* v. *Schild,* 161 U.S. 10, 25; *Minnesota* v. *Hitchcock,* 185 U.S. 373, 386–387; Letter of Attorney General Mitchell to the Secretary of War, of May 10, 1932. The United States is an indispensable party. *Morrison* v. *Work,* 266 U.S. 481, 485–486; *Lambert Co.* v. *Baltimore & Ohio R. Co.,* 258 U.S. 377, 383; *Hopkins* v. *Clemson College,* 221 U.S. 636, 642–643; *Oregon* v. *Hitchcock,* 202 U.S. 60, 68; *Belknap* v. *Schild,* 161 U.S. 10; *N.Y. Guaranty Co.* v. *Steele,* 134 U.S. 230, 232; *Louisiana* v. *Garfield,* 211 U.S. 70, 78; *Louisiana* v. *McAdoo,* 234 U.S. 627, 628–629; *Goldberg* v. *Daniels,* 231 U.S. 218, 221–222.

Solicitor General Biggs, with whom *Messrs. Erwin N. Griswold,* of the Department of Justice, and *Archibald King,* of the Office of the Judge Advocate General of the War Department, were on the brief, argued that the judgment should be reversed.

The Philippine Scouts are a part of the regular Army. The petitioner enlisted for service in the Army. Not only is this plain from the express terms of the statute under which he enlisted, but it has also been recognized by Congress in the appropriation acts. The practice under these statutes has also been uniform.

It seems impossible therefore to say that there is any substantial basis for contending that the Philippine Scouts are not members of the Army. If it may fairly be regarded as plain that petitioner, as a Philippine Scout, is a member of the Army, then there can be no doubt of the authority of the Secretary of War to retire him.

The determination of the War Department as to petitioner's eligibility to retirement was not subject to reexamination by the Comptroller General.

The act of the Secretary of War retiring the petitioner with pay was an exercise of the President's jurisdiction in a matter committed to him by the Constitution and by the statutes, and was, we submit, binding and conclusive. The Comptroller General was without power or jurisdiction to review and revise this act or to make independent decision of the same questions of law and of fact that were committed by the Constitution and laws to the decision of the President through his agents; and mere doubts as to the correctness of that decision (if doubts can be said to exist) did not justify refusal upon the Comptroller General's part to accord it credit.

The Comptroller General's duty was purely ministerial and his refusal to follow the plain mandate of the statute may be coerced in mandamus or in equity. His attempted exercise of discretion in a field in which he had no discretion can not serve to shield him from those remedies.

The contention that this suit must fail because petitioner has a remedy at law through a suit in the Court of Claims is, we submit, not well taken. That a proceeding such as this may be maintained, although the claimant has a right of action in the Court of Claims, would seem to be established by this Court's decision in *Smith* v. *Jackson,* 246 U.S. 388. A similar result has been reached in many other cases.

Mr. Justice Sutherland delivered the opinion of the court.

The petitioner served as an enlisted man in the Philippine Scouts under successive enlistments from October 1, 1901, until October 31, 1931, at which time, upon proper

application, he was, by order of the Secretary of War acting for the President, placed on the retired list of the army with the rank of master sergeant in pursuance of the Act of March 2, 1907, c. 2515, 34 Stat. 1217, which provides:

"When an enlisted man shall have served thirty years either in the Army, Navy, or Marine Corps, or in all, he shall, upon making application to the President, be placed upon the retired list, with seventy-five per centum of the pay and allowances he may then be in receipt of, . . ."

A voucher for the retired pay and allowances for the month of November, 1931, was presented to the army disbursing officer for Manila, who, without making payment, forwarded it to the Comptroller General through the respondent Coleman, Chief of Finance, with a request for "an advance decision as to the legal authority for payment." The Comptroller General, on January 19, 1932, rendered a decision holding that " the retirement of enlisted men of the Philippine Scouts is not authorized even by the remotest implication of the laws," and advising the disbursing officer that he was not authorized to pay the voucher, which would be retained in the files of the office of the Comptroller General.

Petitioner thereupon brought this suit in the Supreme Court of the District of Columbia to enjoin the Comptroller General from interfering with the respondent Coleman, Chief of Finance, or with any finance or disbursing officer of the army, to prevent payment to petitioner of the retired pay and allowances due for the month of November and subsequent months; and to enjoin and command the Comptroller General to return forthwith to the disbursing officer the voucher then being retained in the files of his office. The bill further sought to enjoin and command respondent Coleman, Chief of Finance, to pay or cause to be paid to petitioner such retired pay and

allowances for November and subsequent months. Motions of respondents to dismiss the bill were denied by the supreme court of the District, and thereupon respondents filed separate answers. A motion to strike these answers and for a decree in favor of petitioner was granted by the supreme court of the District. Final decree against respondents followed in accordance with the prayer of the bill.

Upon appeal to the court of appeals of the District, this decree was reversed and the cause remanded to the supreme court of the District with instructions to dismiss the bill. 62 App.D.C. 259; 66 F. (2d) 564. The holding of that court rested upon the view that mandamus would not lie against the Comptroller General to determine the right of a retired member of the Philippine Scouts to receive retirement pay and allowances, because the question of his status was disputed in good faith on the merits; and that neither mandamus nor injunction should issue "in a case of doubtful inference from statutes of uncertain meaning, for in such circumstances the duty sought to be controlled is regarded as involving the character of judgment or discretion."

No appearance is made here by respondent Coleman, and no brief filed or argument made in his behalf. The Solicitor General, however, has filed a comprehensive brief (in which the Judge Advocate General of the War Department joins) urging the correctness of the petitioner's contention and uniting with him in challenging the decision below. The Comptroller General, contending that the decision is right and should be affirmed, states the point of inquiry to be whether the Chief of Finance and the Comptroller General can be compelled by mandatory injunction, the one to pay or cause to be paid the voucher in question, and the other to approve and allow credit for such payment, after the latter, on application for a decision by the disbursing officer before whom the

voucher was pending for payment, has rendered his decision holding such payment not authorized under existing appropriations.

The principal question upon which the case turns, and the only one we need consider, is whether the statutes involved so plainly require the payment of the voucher that such payment constitutes a mere ministerial act on the part of the disbursing officer. Following numerous cases theretofore decided, the applicable rule in respect of the writ of mandamus is stated in *Wilbur* v. *United States,* 281 U.S. 206, 218–219, as follows:

"Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use. It also is employed to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way nor to direct the retraction or reversal of action already taken in the exercise of either.

"The duties of executive officers, such as the Secretary of the Interior, usually are connected with the administration of statutes which must be read and in a sense construed to ascertain what is required. But it does not follow that these administrative duties all involve judgment or discretion of the character intended by the rule just stated. Where the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command it is regarded as being so far ministerial that its performance may be compelled by mandamus, unless there be provision or implication to the contrary. But where the duty is not thus plainly prescribed but depends upon a statute or statutes the construction or application of which is not free from doubt, it is regarded as involving the character of judgment or discretion which cannot be controlled by mandamus."

In *Roberts* v. *United States,* 176 U.S. 221, this court held that where the proper construction of a statute is

clear, the duty of an officer called upon to act under it is ministerial in its nature and may be compelled by mandamus. The opinion points out (p. 231) that every such statute to some extent requires construction by the officer; that he must read the law and, therefore, in a certain sense, construe it in order to form a judgment from its language what duty he is required to perform. "But that does not necessarily and in all cases make the duty of the officer anything other than a purely ministerial one. If the law direct him to perform an act in regard to which no discretion is committed to him, and which, upon the facts existing, he is bound to perform, then that act is ministerial, although depending upon a statute which requires, in some degree, a construction of its language by the officer. Unless this be so, the value of this writ is very greatly impaired." This view of the matter has been uniformly approved in subsequent decisions. See, for example, *Lane* v. *Hoglund,* 244 U.S. 174, 181; *Wilbur* v. *Krushnic,* 280 U.S. 306, 318. The mandatory injunction here prayed for is in effect equivalent to a writ of mandamus, and governed by like considerations. *Warner Valley Stock Co.* v. *Smith,* 165 U.S. 28, 31, 33. With the foregoing well settled rule in mind we turn to the pertinent legislation.

Section 36 of the Act of February 2, 1901, c. 192, 31 Stat. 748, 757, authorizes the President, when in his opinion conditions in the Philippine Islands justify such action, "to enlist natives of those islands for service in the Army, to be organized as scouts, with such officers as he shall deem necessary for their proper control, or as troops or companies, as authorized by this Act, for the Regular Army."

Petitioner enlisted under this act, and it does not admit of doubt that thereby he enlisted "for service in the Army" as a member of the organization of Philippine Scouts. One who enlists for service in the army certainly

becomes " an enlisted man . . . in the Army "; and when he " shall have served thirty years " therein, he falls within the plain terms of the Act of March 2, 1907, *supra,* and, in accordance therewith, is entitled to " be placed upon the retired list " with the pay and allowances therein prescribed. Statutory provisions so clear and precise do not require construction. In such case, as this court has often held, the language is conclusive. " There can be no construction where there is nothing to construe." *United States* v. *Shreveport Grain Co.,* 287 U.S. 77, 83, and cases cited.

The court below cites § 26 of the National Defense Act of June 3, 1916, 39 Stat. 166, 185; §§ 22 and 26 of the Act of June 4, 1920, 41 Stat. 759, 770, 775; and § 17 of the Act of June 10, 1922, 42 Stat. 625, 632, in support of its view that this is a case of " doubtful inference from statutes of uncertain meaning " in the sense of the rule stated in *Wilbur* v. *United States, supra,* hereinbefore quoted. But those sections fail, in our opinion, to disclose anything which conflicts with the positive words of § 36 of the Act of 1901, *supra.* Section 26 of the 1916 act simply provides that captains and lieutenants of the Philippine Scouts who are citizens of the United States shall be entitled to retirement under the laws governing retirement of enlisted men of the regular army, but to be retired with the grade held by them at the date of their retirement. The section is confined to the officers named and has nothing to do with enlisted men. The provision was necessary, as pointed out in the brief of the Solicitor General, because prior to the enactment of the Act of June 4, 1920, *supra,* these officers were usually enlisted men of other branches of the regular army, whose appointments were of a provisional character. Special legislation was therefore required to enable them to retire with the pay and allowances of officers instead of enlisted men. The provisions in the Act of June 4, 1920, which are referred

to, relate to "all officers of the Philippine Scouts," but it is expressly provided that nothing in the act shall alter the status of enlisted men. Section 17 of the Act of June 10, 1922, likewise relates to officers and former officers of the Philippine Scouts, according them the status of officers in the regular establishment; and again it is provided that the act shall not be construed as affecting the enlisted men.

It is hard to see how it reasonably can be thought that these acts have any effect upon the status of the enlisted men, since they are limited, in express terms, to officers. They do not modify or purport to modify in any way the provisions of § 36 of the Act of 1901 in respect of such enlisted men. If that conclusion were not clear, the provisos would effectually settle the doubt. Putting aside those acts, therefore, as irrelevant, we have only to consider § 36 of the Act of 1901, which plainly establishes the status of petitioner as an enlisted man in the army, and the Act of March 2, 1907, which just as plainly directs that such an enlisted man, having served thirty years as such, shall be placed upon the retired list. In this situation the duty of the disbursing officer to pay the voucher in question "is so plainly prescribed as to be free from doubt and equivalent to a positive command," and, therefore, is "so far ministerial that its performance may be compelled by mandamus." *Wilbur* v. *United States, supra*, pp. 218–219. It seems unnecessary to add that this duty cannot be affected by a contrary decision of the Comptroller General.

It is said by the Comptroller General that there was no existing appropriation of public money available for payment of retired pay and allowances to petitioner. But this statement quite evidently is made only in the view that the petitioner does not come within the retirement provision of the Act of March 2, 1907, since there was

available an existing appropriation for retired pay and allowances of enlisted men retired under that provision.

The Chief of Finance is charged by law with the duty of disbursing all funds of the War Department, including the pay of the army. U.S.C., Title 10, § 172. The disbursing officer to whom the voucher was presented for payment, therefore, is simply a subordinate of the Chief of Finance, subject to his control and direction, and the suit was properly brought against the latter. The purpose of the suit was to control the action of the Chief of Finance, that is, to compel him to pay or cause to be paid the voucher in question. The disbursing officer as the mere agent of his superior officer is not an indispensable, although he might have been joined as a proper, party. Compare *Warner Valley Stock Co.* v. *Smith, supra,* pp. 34–35; *Gnerich* v. *Rutter,* 265 U.S. 388, 391–393; *Webster* v. *Fall,* 266 U.S. 507; *Alcohol Warehouse Corp.* v. *Canfield,* 11 F. (2d) 214; *Dami* v. *Canfield,* 5 F. (2d) 533. We find no merit in the contention that the United States is a necessary party and this suit not maintainable without its consent, *Payne* v. *Central Pac. Ry. Co.,* 255 U.S. 228, 238; or in the further contention that the suit cannot be maintained because petitioner has a remedy at law in the court of claims for his retired pay. *Smith* v. *Jackson,* 246 U.S. 388; 241 Fed. 747, 760.

It follows that the decree of the court below, in so far as it directs a dismissal of the bill as against the respondent Coleman, must be reversed, and the decree of the supreme court of the District in respect of that respondent affirmed.

As to the Comptroller General, a different situation is presented. The request for an advance decision from him came from the Chief of Finance at the request of the disbursing officer. U.S.C. (Supp.), Title 31, § 74. The Comptroller General undertook nothing on his own

motion, and, as he asserts, did nothing either to coerce or invite the application for an advance decision. Having given that decision, his function in that regard ceased. The effect of the decision is a matter purely of law. Obviously, there is no occasion for compelling him by mandamus to recall his decision. However, he continues to retain possession of the voucher, upon the theory evidently that, having determined that the disbursing officers were without authority to make payment, it belongs in the files of his office. The view of the supreme court of the District, that a mandatory injunction will lie to compel a return of that voucher to the disbursing officer and to enjoin the Comptroller General from any interference with the Chief of Finance tending to prevent payment thereof to petitioner, has not, in the light of the case as now made, met with the concurrence of a majority of this court. In that situation, we, therefore, affirm, without discussion, the decree of the District court of appeals in so far as it relates to the Comptroller General. But it is not to be supposed that, upon having his attention called to our decision, the Comptroller General will care to retain possession of the voucher or that he will interfere in any way with its payment.

The decree of the court below will accordingly be reversed as to the respondent Coleman, and affirmed as to the Comptroller General. But, in accordance with precedent, *Wilbur* v. *Krushnic, supra,* p. 319, the mandatory injunction to Coleman should issue directing a disposal of petitioner's application for pay upon the merits, unaffected by the opinion of the Comptroller General, and in conformity with the views expressed in this opinion as to the proper interpretation and application of the pertinent statutes. A writ in that form is better suited to the circumstances than that indicated by the supreme court of the District.

Reversed in part.
Affirmed in part.