against other tenants, by virtue of which the marshal turned John Evans out of possession; who, as tenant of the petitioners, resided on the place which had been occupied by the Bryants. A rule to show cause was granted, and on its return, restitution was awarded. To this judgment of restitution, this writ of error is awarded.

The judiciary act authorizes this court to issue writs of error to bring up any final judgment or decree in a civil action or suit in equity, depending in the circuit court, &c. This is not a final judgment in a civil action, nor a decree in a court of equity. It is no more than the action of a court on its own process, which is submitted to its own discretion. This court takes no jurisdiction in such a case. It is not, we think, given by the judiciary act. The writ of error is quashed and the suit dismissed, the court having no jurisdiction.

In error to the circuit court of the United States for the district of Kentucky.—This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky, and was argued by counsel: On consideration whereof, it is the opinion of this court, that this is not a final judgment in a civil action, nor a decree in a court of equity, but no more than the action of a court on its own process, which is submitted to its own discretion, and that the court cannot take jurisdiction in such a case, it not being given by the judiciary act; and that the writ of error must be quashed and the suit dismissed, the court having no jurisdiction. Whereupon, it is considered, ordered and adjudged by this court, that this writ of error be and the same is hereby dismissed, for the want of jurisdiction.

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*United States, Plaintiffs in error, *v.* Joseph Nourse. [*8

Conclusiveness of former decree.

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 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 were 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 $943,308.83, 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.

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.

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.

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 law 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.

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Under the act of congress, the chief justice of the district of Columbia had full jurisdiction over the case.

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.

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 render his accounts, or pay over, in the manner required by law, any sum of money remaining in the hands of such officer.

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.

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.[1]

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.

Error to the Circuit Court of the District of Columbia, for the county of Washington. This was an action of *assumpsit*, instituted by the United States, in the circuit court, on an account stated at the treasury of the United States, against "Joseph Nourse, late register of the treasury of the United States." The account was dated "auditor's office, 28th of

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[1] S. P. United States *v.* Cox, 11 Pet. 162.

July 1829," showing a balance in favor of the plaintiffs, of that day, of $11,769.13, and was duly and regularly certified, according to the provisions of the acts of congress, by the officers of the treasury. The defendant pleaded *non assumpsit.*

The cause was submitted to the circuit court, on an agreement of the parties, stating that the suit was brought upon a transcript from the treasury, which was annexed to a record in a former proceeding, originating in the district court of the district of Columbia, and brought before the supreme court by appeal. It was also agreed, that the defendant should have the benefit of the proceedings in that case, as if the same had been pleaded, or as if given in evidence upon the trial. That upon this statement, judgment should be given, as on a case agreed, and that either party should be at liberty to refer to the printed record in the case of the *United States* v. *Nourse*, as if the same were fully incorporated in the record. (See 6 Pet. 470). The circuit court gave judgment for the defendant, and the United States prosecuted this writ of error.

The case was argued by *Butler*, Attorney-General, for the plaintiffs in error; and by *Coxe*, for the defendant.

For the United States, the *Attorney-General* said, that the only question in the case was, whether the proceedings against the defendant, under the warrant of distress, and the decision of the district judge in that case, were conclusive, and a bar to further action by the United States. The court will examine particularly the case in 6 Pet. 470. He contended, that the whole object of the act of congress of 1820 (3 U. S. Stat. 592), in giving to a public debtor, "an officer" of the United States, who had received public money, a right to apply to a district judge of the United States, when a warrant of distress was issued against him, was, to ascertain whether the United States were entitled to the summary process of a distress-warrant to which they had *resorted. This construction of the act will regulate the case before the court. An examination of the third section of the [*11 act (Ibid. 594), will fully maintain, that if the United States do not think proper to avail themselves of that act, they may proceed against their debtors as in other cases.

It is admitted by the plaintiff in error, that if this court had decided that the proceedings in the former cause were judicial, they would be conclusive. But the contrary has been the decision; and they have been held not to be judicial in their nature. The true view of the law is, that in cases where it is perfectly clear, on the books of the treasury, that there is indebtedness by a public officer for public money received by him, the proceedings by distress-warrant may be resorted to; and if the party submits to it, there is an end of the matter. But if he thinks proper to apply to the district judge, and satisfies him, the judge may restrain the United States from proceeding further on the execution. Afterwards, the United States may sue for the debt claimed by them, in the usual form, and as if the distress warrant had not issued. By this construction of the law, both the United States, and the defendant in the suit, have secured the right of a trial by a jury; while, by a different version of the law, this right is entirely taken away.

But supposing the proceeding, in a proper case, and one which the law was intended to comprehend, may be final; the case set up in bar to this suit was not such a case. It does not appear, that the person against whom the distress-warrant issued, was "an officer," within the act of 1820. The general rules as to the conclusiveness of judicial proceedings are perfectly settled. No one is to be twice vexed for the same matter, and former proceedings are a complete bar to all subsequent actions for the same cause of action; and may be pleaded and given in evidence as an estoppel. This case may stand for the consideration of the court, as if the former proceedings had been regularly pleaded in bar. When, in cases of such a character, or resting on the plea of former proceedings, it appears, that the merits have not been decided, as in causes of "nonsuit" and "*retraxit*," the matters may be examined and decided upon a subsequent suit. Stark. Evid. part 2,
*12] p. 198, and the cases referred to. *It must distinctly appear that the merits were examined. 3 Wend. 27, 33; 8 Ibid. 9.

In the bill filed by the defendant in the case in 6 Peters, Mr. Nourse took the ground, that the money charged to him in the treasury transcript, had not been received by him as "an officer of the treasury," but as a mere "agent" of that department. He claimed in his bill that the term "officer," in the act of congress, was applicable only to those who, in such a capacity, received the money charged to him, and which formed the items of the account. 6 Pet. 405. The other matters in the bill alleged that nothing was due to the United States, but that a balance was due to the complainant. Thus, it appears, that one of the material grounds for the application made to the district judge, was, that the money was not received by Mr. Nourse, as an "officer." In the case of *Randolph*,(*a*) which came before

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(*a*) Circuit Court of the United States for the Eastern District of Virginia, December 21st, 1833. Present, MARSHALL, Chief Justice, and BARBOUR, District Judge.

Ex parte Robert B. Randolph. [1]

BARBOUR, J.—This is a *habeas corpus*, issued by this court, upon the application of Robert B. Randolph, alleging that he was imprisoned by the marshal of the eastern district of Virginia, without lawful authority. The marshal returns as the cause of the retainer of the party, a warrant of distress, issued by the solicitor of the treasury of the United States, against Randolph, for a sum of money stated in the warrant to be due from him to the United States, and which he has failed to pay, in the manner and at the time required by law; which warrant was issued under the third section of the act of the 15th of May 1820, concerning the treasury department. From the warrant, and the account annexed to it, and referred to, as part of it, it appears, that the sum claimed from the party, is claimed as being due from him, a lieutenant in the navy, as acting purser, on board the frigate Constitution, for his transactions in that character, in the year 1828. It appears, from another document produced by the party, duly authenticated by the fourth auditor, and sanctioned by the comptroller, that Randolph had, in October in 1828, settled his account as acting purser on board the Constitution; but, notwithstanding this previous settlement, the account on which the warrant of distress was issued, under which the party is imprisoned, is one stated at the treasury of the United States, in February 1833, against him, as late acting purser of the frigate Constitution, for the same period embraced in the account above mentioned to have been settled in October 1828; the present fourth auditor of the treasury having opened the former account, and restated it, so as to produce the result

[1] 2 Brock. 448.

the chief justice of this court, *and the district judge of the eastern district of Virginia, in the circuit court of that district, it was decided, that it must appear in the account for which a distress-warrant shall issue,

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stated in the account of February 1833, before mentioned, upon the ground, as appears from the face of this last account, of the subsequent discovery of errors and omissions, since the settlement of that of 1828.

Upon this state of facts, the party's counsel have argued, that he is entitled to be discharged; and in the course of the argument, have brought into discussion, many and various points, the first of which is of the gravest import; it calls in question directly, the constitutionality of the act of congress under which this proceeding is had. The decision of a question of this sort, is certainly the highest, and most solemn function, which the judiciary could be called upon to perform; for, as was said with sententious brevity by the court, in one of the earliest cases on this subject, it involves the inquiry, whether the will of the representatives, as expressed in the law, is, or is not, in conflict, with the will of the people, as expressed in the constitution. Great, however, as is the responsibility involved in this exercise of judicial power, I should meet it without difficulty, if it were necessary to the decision of this cause. But I fully concur in the sentiment of counsel, that whilst, on a proper occasion, it ought to be met with firmness, on the other hand, it is the part of wisdom, to decline the decision of such a question, when not necessary.

From the view which I have taken of this case, I do not consider it necessary, and shall therefore, pass it, without further remark. It is wholly irrelative to the merits of this case, to inquire whether there may not have been error committed by the auditor, in the stating of the account, on which this proceeding is founded; because, we are not sitting here, to review this case, as an appellate court, on a writ of error, nor, is it before us, as the proceedings of special jurisdictions in England are before the king's bench, by *certiorari*. In either of those aspects, the decision which we should be called upon to make, would depend upon the result of the inquiry, whether there was or was not, error in the proceedings; but, sitting as we are, upon a *habeas corpus*, the question is not, whether there is error in the proceedings, but whether there was jurisdiction of the case, in the auditor of the treasury. It was settled as early as the great *Marshalsea Case*, in 10 Co. 76, and the principle has never been departed from, that where a court has jurisdiction, and proceeds *inverso ordine*, or erroneously, there the proceeding is only voidable; but where the court has not jurisdiction of the case, there the whole proceeding is *coram non judice*, and void; the books, both English and American, abound in cases exemplifying this principle.

But a *habeas corpus* will not lie, where the imprisonment is under voidable process, but only where it is merely void; for void process is the same thing as if there were none at all; and then the party is in effect imprisoned without any authority whatever. Hence, the question would seem naturally to arise, whether the auditor had jurisdiction in the case—in other words, whether the person and subject-matter are such as to bring the case within the provisions of the act of congress—for these are the *criteria* of jurisdiction. This question was elaborately argued at the bar, and I have considered it with great care. I forbear, however, to enter into the discussion of it here; because, although it should be clearly made out, that the auditor had once had jurisdiction, yet upon the facts in this case, another question arises, which, in my opinion, is decisive of the case; and that is, after the auditor shall once have settled an account of a public officer, and closed it, as in this case, is it competent for him, at an after time, upon an allegation of error, or omission, or for other cause, to open it, restate it, and upon the account thus restated, to institute proceedings by a warrant of distress against the debtor? I think it is not. Let us try the question by reference to some analogous cases. I take it to be a sound principle, that when a special tribunal is created, with limited power, and a particular jurisdiction, that whenever the power given is once executed, the jurisdiction is exhausted and at an end—that the person

that the money claimed has been received by the debtor to the United States as an officer. The statute, it was held, should be construed strictly.

*14] *It will be said, that the district judge proceeded, in the former case, on the ground, that Mr. Nourse was "an officer;" that he took

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thus invested with power is, in the law, *functus officio*. This proposition is, I think, sustained by the case in 6 Bing. 85, where it is said by the court, that when a magistrate, who has power to convict, has once convicted, his jurisdiction is at an end—he is *functus officio*. Could he, at any after time, upon some supposed error, quash, or in any way impair the efficiency of his own conviction? Suppose, a controversy to have been submitted to arbitrators, and that they had made a final award, and delivered it, could they, afterwards, on their own mere motion, change or set aside their own award? Lest, however, it might be supposed, that there might be any thing peculiar in this case, by reason of these being judges of the parties' own choosing, let us suppose some cases of special jurisdiction, or powers given by law. Under the acts imposing direct taxes, assessors were appointed to value the lands and slaves of the country, with a view to a just apportionment. After the had made and completed their assessment, so that it was once communicated, agreeable to the requirements of the law, could they, afterwards, in any manner, have altered it, so as to change the valuation? Suppose, that commissioners of bankruptcy had once decided in a given case,—that the party was a trader, that he had committed an act of bankruptcy—and had, in all respects, completely executed the power conferred upon them, could they, afterwards, by their own authority, have vacated or set aside their act? Finally, suppose, that the commissioners appointed (under any one of the treaties, under which we procured an indemnity from Spain, France or Naples) to adjudge the claims of our citizens, had fully executed that trust—had made and announced an entire distribution of the fund —could they, at an after time, have varied their own adjudication? In all the cases which I have put, I inquire into the power of the special jurisdiction, of its own mere authority, to alter or impair what they had done. Examples might be indefinitely multiplied—these are sufficient to illustrate my idea, viz., that whenever a special jurisdiction has once executed the power with which it was invested, their power is at an end, as to the subject in relation to which it has been executed. Let us trace the injurious consequences of a contrary doctrine. Until the power of the auditor is once executed, the officer knows that it is his duty to account, and having accounted, to pay. But if, after the account had once been stated and closed, he could open it again, how often, and within what period of time, shall he do it? There is obviously no limitation, either as to length of time, or to frequency. Suppose, after once stating it, and then opening it, and restating it upon alleged error, he should think he had discovered error, he must open and restate it again. It will be observed, too, that though the auditor in this case did give the party notice, the law does not require it; unless, therefore, he shall be restrained to one settlement, it would be competent to him, years after the death of the original party, without notice, in the absence of his representatives, who might be dispersed through the United States, and in the absence of all proof on their part, to resettle the account in a manner which would produce great injustice. But again, if it be competent to him to open the account in favor of the United States, the converse of the proposition must be equally true, upon the principles of justice; it must be competent to him also, after the lapse of years, to open it against the United States, and in favor of the party. Might not this course most injuriously affect the public interest? It seems to me, that a doctrine, which leads to such consequences, cannot be sound; and that the government is not without ample remedy, though this power shall be denied to the auditor. I suppose, there can be no doubt, that a bill in equity would lie, to surcharge and falsify, as in case of a settled account between individuals, and moreover, according to the doctrine of the supreme court (11 Wheat. 237), even at law, although a settled account would be *primâ facie* evidence, yet it could recover, upon proving mistakes or omissions, any

jurisdiction of the case, upon that view of it; but it is submitted to this court, that this must manifestly appear; it must be fully and clearly established, that in the decree, or opinion of the judge, he was an officer

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sum, of which it had been thus unjustly deprived. Nobody doubts the power of the auditor to settle the accounts of the public officers, from time to time, as they shall fail to account, or pay, any sums accruing after previous settlements; the objection is, to resettle an account, once settled, and which must have imported to have been a full and final settlement, at the time when made; for the law requires that to be done.

I have felt some difficulty upon the question, whether a *habeas corpus* could be sustained in favor of a party imprisoned under civil process, as in this case. The difficulty arose from the doubt expressed by two high authorities, although decided by neither. In Ex parte Wilson, 6 Cranch 52, the party was arrested by a *capias ad satisfaciendum*, and was in prison-bounds. An application was made for a *habeas corpus*, on the ground, that the creditor had refused to pay his daily allowance. The court said, it was not satisfied, that a *habeas corpus* was the proper remedy, in the case of arrest, under civil process. In 15 Johns. 152, the supreme court of New York, except one of the judges, express the same doubt, and refer to the case in Cranch. The judge, in delivering the opinion of the court, says, if it were necessary to decide the point, he should say, it would not lie in such a case.

I suppose, that, probably, the doubt originated from this fact. The celebrated *habeas corpus* act of 31 Car. II., which, as Judge KENT, in his Commentaries, says, is the basis of almost all the American statutes on the subject, and which, in practise, by reason of its valuable provisions for insuring speedy action, has almost superseded the common law, has been held in England to be confined to criminal cases. All the judges of England, in answer to a question propounded to them by the House of Lords, answered; that it did not extend to any case of imprisonment, detainer, or restraint whatever, except cases of commitment for criminal or supposed criminal matters, 3 Bac. Abr. 438, n. At the same time, this question, in substance, was put to them; whether, if a person imprisoned apply for a *habeas corpus ad subjiciendum*, at common law, and make affidavit that he does not believe that his imprisonment is by virtue of a commitment, for any criminal or supposed criminal matter, would such affidavit, as the law then stood, be probable cause for awarding the writ? The question being objected to, was not put. This would seem to leave the point in an unsettled state. Yet there are two books of authority, which, I think, sustain the doctrine, that the writ is not confined to criminal cases. Blackstone, in his 3d. vol. p. 132, says, that the great and efficacious writ, in all manner of illegal confinement, is the *habeas corpus ad subjiciendum*. Bacon, 3d. vol. p. 421, says, whenever a person is restrained of his liberty, by being confined in a common jail, or by a private person, whether it be for criminal or civil cause—he may regularly, by *habeas corpus*, have his body and cause removed to some superior jurisdiction, &c.

Now, the act of congress authorizes us to issue the writ, "for the purpose of inquiring into the cause of commitment." Upon this, the supreme court, in Ex parte Watkins, 3 Pet. 201, remarks, "that no law of the United States prescribes the cases in which this great writ shall be issued, nor the power of the court over the party brought up by it. The term is used in the constitution as one which was well understood. This general reference to a power which we are required to exercise, without any precise definition of the power, imposes on us the necessity of making some inquiry into its use, according to that law, which is, in a considerable degree, incorporated in our own." If, in making this inquiry, we were to consult the British statute alone, we should find it, as already stated, confined, in its construction, to criminal cases. But, if we look to the common-law authorities which I have mentioned, it seems to me, that we are justified in applying it to a case of civil process. Indeed, we know it to have been repeatedly applied in England to the domestic relations of life, such as the liberation of a wife from the unjust restraint of a husband, and a child

within the intendment *of the statute; and this is not the fact. In the former case, a reference of the accounts between the United States and the complainant in the bill, was made to auditors. The credits

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from that of a parent. And certainly, we are well warranted in making this reference to the common law; because, although it is admitted by all, that it is not a source of jurisdiction, yet it is habitually, rightfully, nay, necessarily, referred to, for the definition and application of terms—indeed, there are many terms in the constitution which could not otherwise be understood. Nor do even the doubts expressed in the cases from Cranch and Johnson apply to this; for both of those were on process of civil execution, issuing from a court of record and general jurisdiction, whereas, this is a case of process, issuing from a special jurisdiction, which can neither be supervised by *certiorari*, nor re-examined by writ of error. In this case, then, if a *habeas corpus* would not lie, there would be no relief from imprisonment without lawful authority. In cases of execution from courts of record, the courts themselves can quash it, if it do not conform to the judgment; if it do, and that judgment be erroneous, it can be corrected in a court of appellate jurisdiction. Upon the whole view of the subject I am of opinion, that the party should be discharged.

MARSHALL, Ch. J.—Robert B. Randolph, late acting purser of the frigate Constitution, was brought into court, on a writ of *habeas corpus*, and a motion is now made for his discharge from imprisonment. The writ was directed to the marshal of this district, in whose custody he is. The return of the officer shows the cause of caption and detention to be a warrant issued by the accounting officers of the treasury, under authority of the act passed the 15th day of May 1820; which, after reciting that Robert B. Randolph, late acting purser of the United States frigate Constitution, stands indebted to the United States in the sum of $25,097.83, agreable to the settlement of his account, made to the proper accounting officers of the treasury, and has failed to pay it over, according to the "act for the better organization of the treasury department," commands the said marshal to make the said sum of $25,097.83, out of the goods and chattels of the said Randolph; and in default thereof, to commit his body to prison, there to remain until discharged by due course by law. If these proceedings fail to produce the said sum of money, the warrant is to be satisfied out of his lands and tenements. The return shows, that the body of the said R. B. Randolph was committed to prison, and is detained by virtue of this process.

Several objections have been taken to the legality of the warrant, the first and most important of which is, that the act of congress under the authority of which it issued, is repugnant to the constitution of the United States. If this objection be sustained, the warrant can certainly convey no authority to the officer who has executed it, and the imprisonment of Randolph is unlawful. The counsel of the prisoner rely on several parts of constitution, which they suppose to have been violated by the act in question. The first section of the third article, which establishes the judicial department, and the seventh amendment, which secures the trial by jury in suits at common law, are particularly selected, as having been most obviously violated. No questions can be brought before a judicial, tribunal, of greater delicacy than those which involve the constitutionality of a legislative act. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other points, a just respect for the legislature requires, that the obligation of its laws should not be unnecessarily and wantonly assailed.

The act of congress, under the authority of which the process by which Mr. Randolph is imprisoned, was issued, makes it the duty of certain officers of the treasury, to settle and cause to be stated, the account of any collector of the revenue, &c., who shall fail to render his account, or pay over the same, in the manner or in the time required by law, exhibiting truly the amount due to the United States, and certifying the same to the agent of the treasury, who is authorized and required to issue a war-

claimed against the balance of the accounts stated at the treasury, were founded on items of expenditures made by Mr. Nourse, as agent for their disbursement; and a perpetual *injunction was awarded. It does not appear in the decreee, what the decision of the judge was, as to [*16

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rant 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; which officer is commanded to make good the money appearing to be due to the United States, by seizing and selling the goods and chattels of such delinquent officer and his sureties, and by committing the body of such delinquent officer to prison, there to remain until discharged by due course of law. If this ascertainment of the sum due to the government, and this issuing of process to levy the sum so ascertained to be due, be the exercise of any part of the judicial power of the United States, the law which directs it, is plainly a violation of the first section of third article of the constitution, 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 supreme and inferior courts, shall hold their offices during good behavior." The judicial power extends to "controversies to which the United States shall be a party." The persons who are directed by the act of congress to ascertain the debt due from a delinquent receiver of public money, and to issue process to compel the payment of that debt, do not compose a court ordained and established by congress, nor do they hold offices during good behavior. Their offices are held at the pleasure of the president of the United States. They are, consequently, incapable of exercising any portion of the judicial power, and the act which attempts to confer it, is absolutely void. In considering the validity of this act, therefore, it is necessary to discard every idea of its conferring judicial power. We must not view the statement or certificate of the account as a judgment, or the warrant which coerces payment as judicial process. They must be viewed as mere ministerial agents. They cannot be otherwise sustained.

I will, for the present, assume, that the power of collecting taxes and of disbursing the money of the public, may authorize the legislature to enact laws by which the agents of the executive may be empowered to settle the accounts of all receiving and disbursing officers, and to issue process in the nature of an execution, to compel the payment of any sum alleged to be due. But these agents are purely ministerial, and their acts are necessarily to be treated only as ministerial acts. The inevitable consequence is, that their validity must be decided by those legal principles which govern all acts of this character. These require that the authority, whether given by a legislative act or otherwise, must be strictly pursued. Such agents cannot act on other persons, or on other subjects, than those marked out in the power, nor can they proceed n a manner different from that it prescribes. This is a general rule, applicable to such cases generally; it applies with peculiar force to that now before the court.

I will not attempt to detail the severities and the oppression which may follow in the train of this law, if executed in contested cases. They have been brought into full view by counsel, in their arguments, and I will not again present them. It may be said, with confidence, that the legislature has not passed any act which ought, in its construction, to be more strictly confined to its letter. By this rule, its words will be examined. The first objection to this warrant is, that Mr. Randolph is not one of those persons on whom the law was designed to operate. The act does not declare, that every debtor of the public shall be subject to this summary process. The particular persons against whom it may be used are enumerated. Those stated in the second section are, "any collector of the revenue, receiver of the public money, or any other officer who shall have received the public money, before it is paid into the treasury of the United States." The obvious construction of these words is, I think, that they describe persons who hold offices under government, to whose hands the public money comes, before it reaches the treasury. A collector of the revenue is an officer

the capacity in which Mr. Nourse acted, in the receipt of the money; nor does he say anything to negative or affirm the fact. Nor is it material to the claim of the United States, that the proceeding is not a bar to this

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of this description; so is a receiver of the public money; and the following words, "or other officer who shall have received the public money, before it is paid into the treasury of the United States," denominate the kind of persons who were in the mind of the legislature. The subsequent words preserve the idea, that regularly appointed officers only were intended. The word *officer* is retained, and is regularly used throughout the section, showing plainly, that no other debtor than one who was properly designated by the term *officer*, was contemplated by the act. Throughout the section, too, the sureties of such officer are regularly connected with him, and subjected to the same process, so far as respects their property. I do not mean to say, that the liability of the officer is made to depend on his having actually executed an official bond, with sureties. I do not mean to say, that an officer, regularly appointed, who should receive the money of the public, before the execution of his bond, might not be liable to this treasury execution. But I mean to say, that this language proves incontestibly, that the legislature contemplated those officers only, who were required to give bond, with surety, as the objects of the law. The sureties are spoken of throughout, as inseparable from the officer—as existing whenever the officer exists.

This section does not comprehend the case of a purser in the navy, but I have thought it necessary to enter into its exposition; because it has a material bearing on the third section, which does comprehend persons of that description. The third section enacts, "that if any officer employed, or who has been heretofore employed in the civil, military or naval departments of the government, to disburse the public money appropriated to the service of these departments, shall fail to render his accounts, or to pay over in the manner, and in the time 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," &c. To what person does the word *officer*, as used in this section, apply? Is it to every commissioned officer in the army or navy of the United States, to whose hands any public money may be intrusted, or is it to those officers only whose regular duty it is to receive and disburse the public money, and who are appointed for that purpose? The language of the sentence, I think, answers these questions to a reasonable certainty. It is, "any officer employed to disburse the public money appropriated to the service of these departments respectively." A military or naval officer is employed for military or naval duties, not to disburse the public money appropriated to the service of his department. I cannot suppose, that a military or naval officer, to whose hands money belonging to the public may come, is, from the words of the act, more liable to this summary and severe proceeding than any individual, not bearing a commission, to whom the same money might be confided for similar purposes. The subsequent words of the sentence, "shall fail to render his accounts, or to pay over, in the manner and in the time required by law, or the regulations of the department to which he is accountable," &c., also convey the idea, that a regular disbursing officer, whose duty was prescribed by law, or by the regulations of the department, was contemplated. The idea is still more strongly supported, by that part of the section which adopts all the provisions of the second section, and applies them to the sureties of the officer who is designated by the act, as well as to the officer himself. I think, then, the fair construction of the law is, that regularly-appointed officers who are required to give official bonds, were alone contemplated by the legislature. If we take into consideration the character and operation of the act, the extreme severity of its provisions, that it departs entirely from the ordinary or judicial proceeding, and prescribes an extreme remedy, which is placed under the absolute control of a mere ministerial officer, that in such a case, the ancient established rule is in favor of a strict construction; my own judgment is satisfied that this is the true construction.

suit, that this did not appear. It is enough, that the *allegation was made by Mr. Nourse, that the did not act as "an officer," in making the disbursements, and that the judge so decided the case. The judge says,

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Was Mr. Randolph an officer of this description? The process, by authority of which he is in prison, designates him as "Robert B. Randolph, late acting purser of the United States frigate Constitution." The word acting, qualifies the word purser, and shows that he did not hold that office under a regular appointment, but for the time being, during the existing emergency. The omission to include his sureties in the warrant, as the law directs, shows that he had given no sureties; and this fact, unexplained, is evidence that no official bond with sureties was required. It might be added, that the explanatory accounts, to some of which reference is made in the warrant, prove with sufficient clearness, that Mr. Timberlake was purser of the frigate Constitution, then cruising in the Mediterranean, and that on his death, Lieutenant Randolph was directed to perform the duties of purser, during the cruise. It is then apparent, that he was a mere acting, and not a regular purser. Mr. Nicholas has contended, with much plausibility, that having taken upon himself the office, he takes upon himself also all its responsibilities. This argument is true, to a certain extent, and, so far as respects responsibility alone, is unanswerable. In a regular proceeding against Mr. Randolph, no person will be hardy enough to deny his responsibility, to the same extent as if he had been a regular purser. It is not his responsibility to the United States, but his liability to this particular process, which is the subject of inquiry. Is a mere acting purser designated by the law as one of those officers against whom this summary process may be used? It is in vain to say, that he comes within the same reason, and is within the mischief against which the statute intends to provide. The statute does not reach all public debtors, and has selected especially those for which it is intended. No others can be brought within its purview. Those principles of strict construction, which apply, I think, to all laws restrictive of common right, forbid it. These reasons satisfy my own judgment, that Mr. Randolph was not an officer to whom the law applies the process under which he is imprisoned.

If it were necessary to assign any reason for this distinction between temporary and permanent officers, it would not be difficult to find them. The permanent officer usually receives his money from the treasury, or by its order, so that the document which charges him, appears on the books of that department. The temporary officer will seldom be placed under the same circumstances. He may, and generally does, receive the money with which he is chargeable, in such a manner as to leave the amount subject to controversy. In this particular case, purser Timberlake must stand charged, I presume, with all the moneys advanced to the purser of the Constitution. The portion of this money which came to the hands of Mr. Randolph, would not appear on those books, and may be matter of controversy between him and Timberlake's representatives. Congress might very reasonably make a distinction, when giving this summary process, between an officer whose whole liability ought to appear on the books of the department, and an agent whose liability was most generally to be ascertained by extrinsic testimony. But it is enough for me, that the law, in my judgment, makes the distinction.

The accounts extracted from the books of the treasury, and laid before the court, furnish other matter for serious consideration. The second section of the act requires, that the account stated by order of the first comptroller of the treasury, "shall exhibit truly the amount due to the United States." For what purpose was the word *truly* introduced? Surely, not to prohibit the officers of the government from exhibiting an account known to be erroneous. Congress could not suspect such an atrocity. Its introduction, then, indicates the idea, that this summary process was to be used only when the true amount was certainly known to the department—when the sum of money debited to the officer, appeared certain, and either no credits were claimed, or none about which a controversy existed. The amount due to the United States cannot

that the services were extra-official; and the sums due as an off-set, were for services not official; and that the money received from the United States, was not received by him as register of the treasury.

*18] *Because the United States submitted to the proceeding, it has not validity. All the proceedings, after the warrant of seizure, would

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be truly exhibited, when the claim is shown, by the account itself, to exceed what is really due. I do not mean to say, that the debtor is not bound to show, with precision, the credits to which he is entitled. I do not mean to say, how far this failure to separate payments made from his own funds, and from those of his predecessor, may deprive him, in a suit at law, of the credits he claims. I mean to say only, that the amount claimed, is not the amount truly due to the United States, if the account itself shows that a smaller amount is due. The necessity of withholding the credit may justify proceedings against the debtor, in a court of justice, in which he must make good his credits; but will not, I think, justify issuing an execution, without any judicial inquiry, against the body and estate of the delinquent, for a sum confessedly more than is due. The third section omits the word truly, but requires that the account shall be stated, and directs the agent of the treasury to proceed in the manner directed in the preceding section, all the provisions of which are declared to be applicable to every officer of government chargeable with the disbursement of public money. It may be contended, that the provisions of the preceding section, thus adopted in the third, are those only which relate to proceedings after the account is stated. But I do not think this the fair construction of the statute. I think, the legislature can no more have intended, in the one case than in the other, that a treasury execution should issue for confessedly more than is due, by which the person of the debtor should be imprisoned, probably interminably, and his property sold. Congress must have designed to leave such cases to the regular course of law.

If these principles be correct, let them be applied to the case before the court. Mr. Randolph is charged in the account on which the warrant issued, with cash left by purser Timberlake, on board the frigate Constitution, and, according to his own confession, received by him, $11,483. That he must account for this sum, is certain. I shall not inquire now, whether the treasury might issue an execution for it, or ought to have applied to a court of justice. I will proceed to other items of th account. He is recharged with slops, issued by him, which belongs to the estate of Mr. Timberlake, as appeared by his books. Is this to be settled at the treasury, under this act of congress, or does the inquiry properly belong to a court of justice? He is charged with German linen, belonging to his private stores, which he turned into the navy-store at Charlestown, as slops. This item had been allowed to him, on a former settlement of his accounts. It is not alleged, that this linen has been returned to him. The United States may, and probably, have used it. Whether he is entitled to any, and to what credit, for this item, is a proper inquiry for a court of justice. The treasury may refuse the credit, and refer the question to a court of justice, but cannot, I think, issue an execution for it, as the case now stands. The material item allowed in a former settlement of accounts, and now re-charged, is the amount of advances on his pay-roll to officers and men, while he acted as purser of the Constitution, it now appearing by the memoranda of sales, by the evidence of Commodore Patterson and others, and by the general state of the account, that portions of these advances were made out of the money and stores of purser Timberlake, and out of the ship's stores. I will not make the obvious objection to this item, that if Mr. Randolph paid the money, or sold the stores of Mr. Timberlake, on his own account, he is responsible to the estate of Mr. Timberlake, and that the treasury department of the United States does not represent him, nor that credit given for money paid by Mr. Randolph as his own, cannot be rescinded, by alleging that the money really belonged to another person, nor will I inquire by what authority the treasury department settles the accounts between Timberlake's representatives and Randolph. But I will say, that

be illegal, if the government had not a right to issue it; and no act of the officers of the United States could be of avail, to give it validity. Suppose, the warrant had issued by direction of the solicitor *of the treasury, who has no authority to order it, and no exception had been to it; [*19 would the proceedings under it have had a legal existence? As it may be considered, that the decree was made by the district judge, on the allegation in the bill for the injunction, that the money was not received as an officer, this court will not infer that this was the point decided.

Coxe, for the defendant, contended, that the whole proceedings in the case, which is reported in 6 Peters, were judicial. Two [*20 grounds for relief were presented to the district judge. The judge ordered the accounts between the United States and Mr. Nourse to be audited, thus passing by one of the grounds, and considering Mr. Nourse as "an officer;" and *deciding the case, after the report of the auditors, in that view [*21 of it. As to the nature of such a proceeding, he cited 5 Dane's Abridgment 223: "where one acts as a judge, and the matter is within his jurisdiction, his sentence binds, until reversed." In awarding the injunction, he acted judicially, and no other *view can be taken of his [*22 action in this case, when the record and the decree are examined. In the case of *Arredondo*, 6 Pet. 709, 711, this court have said, the power to hear and determine a cause, is jurisdiction; it is *coram judice*, whenever a cause is presented which brings this power into action. 6 Pet. 709. All questions arising in the case are to be *decided. Ibid. 700. By con- [*23 senting to be sued, and submitting the decision to judicial action, the United States have considered it as a purely judicial question. Ibid. 711. The United States, by adopting the proceeding authorized by the act of congress of 1820, claimed that the party against whom the warrant issued, was within the act; and in the *answer to the bill presented to the district judge by Mr. Nourse, his liability as an officer is re-asserted. [*24 The district judge acted on this state of things, and gave a final decree upon them thus presented to him.

If the decree in this case had been in the form of chancery proceedings in England, it would have been drawn up at large, and the whole audit of the accounts would then appear in the decree; and it would be seen, that the very accounts upon which the United States have now instituted this

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this entry admits that part of the money was paid by Randolph out of his own funds, and certainly diminished his debt to the United States to that amount. Consequently, the whole amount for which execution issued was not due.

If I am correct in saying that this summary process can be used only to coerce the payment of the sum actually due, not to coerce the payment of more than is due, that such controverted question ought to be decided in a court of justice; then this warrant has been issued in a case which the law does not authorize—in a case which ought to have been submitted to a court of justice. On both these points, I am of opinion, that the agent of the treasury has exceeded the authority given by law, and consequently, that the imprisonment is illegal. I have not had time to state my opinion on the remaining point on which my brother judge has given his opinion. It is of no importance, as I concur with him on it. Mr. Randolph is to be discharged from custody.

action were the subject-matter of the whole proceeding. In the case of the *Bank of the United States* v. *Ritchie*, 8 Pet. 128, this court held, that although the decree did not set forth the whole of the matters in which it was given, yet a party on a bill of review may take advantage of anything appearing in the record. The application of this rule is asked to the case before the court; and the objections on the part of the United States, that the character and object and purpose of this suit, and of the warrant of distress, are not shown to be the same, will not be urged.

As to the position, that it does not appear in the first proceeding that Mr. Nourse was "an officer," within the objects of the statute: it is sufficient to say, that however the money claimed by the United States came into his hands, he was entitled to a legal and valid set-off to the claim. The United States proceeded against him as "an officer," claiming from him a
*25] *balance for money he received as the register of the treasury; and he exhibited a set-off, beyond the whole sum demanded by the United States, to the satisfaction of the auditors appointed by the district judge, which report was confirmed by his decree.

Marshall, Ch. J., delivered the opinion of the court.—The United States had 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. The cause being at issue on the plea of *non assumpsit*, the following case was agreed between the parties.

"In this case, it was agreed, that the suit is instituted upon a transcript from the treasury of the United States, which is annexed to the record, in a former proceeding originating in the district court of the district of Columbia, and brought before the supreme court by appeal. And it is further agreed, that the defendant shall have the same benefit of the proceedings in said case, as if the same had been pleaded, or as if given in evidence upon the trial of the general issue; and upon this statement, judgment shall be given as upon a case agreed, and either party be at liberty to refer to the printed record in said case of *Nourse* v. *United States*, as if the same were fully incorporated into this record."

The case referred to in this special statement grew out of a warrant of distress, issued by the treasury department, on the 14th day of July 1829, directed to the marshal of the district of Columbia, commanding him to levy and collect the sum of $11,769.13, by distress and sale of the goods and chattels of Joseph Nourse, late register of the treasury. This warrant was issued in pursuance of the act of May 15th, 1820, "providing for the better organization of the treasury department." The third section of this act enacts, in substance, that "if any 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, shall fail to render his accounts, or pay over, in the manner required by law, any sum of
*26] money remaining in the hands of *such officer, it shall be the duty of the officer charged with the revision of the accounts of such officer, to cause the same to be stated to the agent of the treasury, who is required to proceed against the delinquent in the manner directed in the preceding

section." That section directs the agent of the treasury to issue a warrant of distress against such delinquent officer and his sureties, directed to the marshal, who shall proceed to levy and collect the money remaining due, by distress and sale of the goods and chattels of such delinquent officer, having given ten days' notice of such intended sale; and if the goods and chattels be not sufficient to satisfy the said warrant, the same may be levied on the person of such officer, &c. The fourth section provides, that if any person shall consider himself aggrieved by any warrant issued under the act, he may prefer a bill of complaint to any district judge, setting forth the nature and extent of the injury of which he complains, and thereupon, the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires; and the same proceeding shall be had on such injunction, as in other cases, except that no answer shall be required on the part of the United States. Under the authority given by this section, an injunction was awarded by William Cranch, chief justice of the district of Columbia, and judge of the court of the United States for that district, to stay all further proceedings on the said warrant.

In his bill, the complainant states, that his public accounts, as register of the treasury of the United States, and agent of the treasury department, in disbursing certain funds, and settling certain accounts of contingencies and other miscellaneous matters, and as agent for the joint library committee of congress, have been settled at the treasury, since his removal from office; upon which settlement, a pretended balance has been found against him for the sum of $11,250.26, for which warrant of distress has been issued by the agent of the treasury, which has been levied on his lands, tenements, goods and chattels, by the marshal of the district. That the said account is unjust and illegal; and so far from any balance being due thereon to the United States, a considerable balance should have been struck thereon in favor of the complainant; *as appears by an account annexed to the bill, which [*27
he declares to be just and true. That besides his regular duties as register, he was, from the year 1790 till his recent dismissal from office, employed by the proper department of the government, in the separate business of special agent for the disbursement of the contingent funds of the treasury department, and for the settlement of the numerous accounts connected therewith. These duties devolved upon him great labor and responsibility, and occupied a great portion of his private hours. When he undertook this branch of public employment, no stipulation was made for the precise amount of compensation. The usage of the treasury and other departments of the government has invariably been, to allow commissions not only to unofficial persons so employed, but to official persons and clerks of the departments, when such duties were distinct from the stated duties appertaining to their offices. That he has regularly made out and presented his account to the proper accounting officers of the treasury; charging his commission at the rate of two and a half per cent. on the amount of disbursements; which, if allowed, would leave the United States indebted to him in the sum of $9886.24, which he believes to be justly due to him. The complainant further states, that he is advised, that the act of congress under which the said warrant of distress is pretended to have been issued, being a

law in derogation of common right, ought to be construed with the utmost strictness: but that, on no reasonable construction, can this complainant or his accounts, either as register of the treasury, or as agent of the joint library committees of congress, be brought within the descriptions of persons over whom that act gives jurisdiction to the agent of the treasury. The bill prays for an injunction and for further relief.

The United States, in their answer, refer to and rely on the general account of the complainant, settled by the proper officer of the government, by which he was found indebted in the sum of $11,769.13. They admit that the complainant had rendered an account, charging a commission of two and a half per cent. on all the moneys which had passed through his hands in the different agencies in which he had acted, exhibiting a balance in his favor of $9367.87. *They deny the right of the complainant to a commission on the moneys disbursed by him; and contend, that they were authorized by law to enforce the payment of the balance due to the government, by warrant of distress. They, therefore, pray, that the injunction may be dissolved, and that they may be permitted to pursue their legal remedies for the sum due to them.

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The court determined, that the said 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 $943,308.83, 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. Some further proceedings were had in that cause, which do not affect the case now before this court.

This suit is instituted on the same account on which the distress-warrant was issued, and against which the decree of the district judge was pronounced. The defendant relies on that decree, as a bar to the action. The circuit court adjudged it to be a bar; and that judgment is now to be revised in this 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. 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.

It would excite some surprise, if, in a government of laws and of principle, furnished with a department whose appropriate duty it 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.

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While it was perceived, that the public interest required a prompt remedy against public defaulters, the legislature was not unmindful of the rights of individuals, and provided that this remedy should not be used oppressively. The party who thinks himself aggrieved may appeal from the decision of the treasury to the law, and prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury; who may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. And the same proceedings shall be had on such injunctions, as in other cases, except that no answer shall be required on the part of the United States.

Joseph Nourse, in pursuance of the permission given by this section, did file his bill of complaint, alleging, among other things, that he owed nothing to the United States, and praying the judge to enjoin all further proceedings on the warrant. The injunction was granted, and the whole cause thus transferred before the district judge, who was directed to proceed therein as in other cases. He had, consequently, full jurisdiction over it. After a reference to auditors, according to the course of courts of chancery in matters of account, he pronounced his final decree against the United States, and awarded a perpetual injunction. 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 [*30 between the obligation of a decree against the whole claim, and against a part of it, no distinction is perceived.

Aware of the difficulty of maintaining an action on a claim on which a court of competent jurisdiction has passed a judgment, still in force; the attorney-general questions the jurisdiction of the district court, and rests his argument for the reversal of the judgment of the circuit court, chiefly on this point. He contends, that Joseph Nourse was not an officer contemplated by the act providing for the better organization of the treasury department; that the warrant of distress could not legally be issued against him; and, consequently, that this is not a case in which the district court can exercise jurisdiction. He refers to the bill of complaint, which is drawn with a double aspect; it alleges, that the complainant is not indebted to the United States; and that, were it otherwise, he is not an officer contemplated by the act against whom a distress-warrant can legally be issued. This argument has been considered.

Did the case depend upon the question whether Joseph Nourse, in any of the characters in which he is charged in the account accompanying the warrant, was an officer subjected by law to this process, some difficulty would exist in finding in the record sufficient information on

which to decide it. The following are the items of the account. To balance due—

As agent for the joint library committee of congress,	$2502 55
As agent for paying the expenses of stating and printing the public accounts,	934 98
As agent for paying the superintendent and watchmen of the buildings occupied by the state and treasury departments,	1325 41
As agent for paying the expenses of printing certificates of the public debt,	1011 29
As agent for paying the contingent expenses of the treasury department,	5994 90
	$11,769 13

*31] Whether in any or all of these agencies, Joseph Nourse acted *as an officer against whom a distress-warrant could legally be issued, for any sum in which he might be found a defaulter, the record does not furnish the means of deciding clearly. But the district court took no notice of that part of the bill which suggests this objection. It acted on the merits of the case, and decreed against the United States on those merits. Still, however, the attorney-general contends, that in so doing, it transcended its jurisdiction, and has taken cognisance of a case which could not legally be brought before it. This is founded entirely on the assumption that the warrant was issued against a person not liable to it. Let this be conceded.

It would be strange indeed, if the legislature, intending to give a prompt remedy against a particular class of debtors, should carefully guard that class against any abuse of the remedy; and yet leave all other persons, whether debtors or not, exposed to that abuse; that an officer liable to the process should be enabled to correct it, if it issued injuriously, by appealing to the law; and yet that an individual not liable to the process, should be compelled to submit to the oppression and to suffer the wrong. The act is not chargeable with this inattention to the rights of individuals. The sections which regulate the proceedings of the treasury department on the warrant, contemplate the officer against whom it may be issued, and confine it to him; but when the legislature turns its attention to the individual against whom it may issue, the language of the law is immediately changed. The word person is substituted for officer, and the act 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." The character of the individual against whom the warrant may be issued is entirely disregarded by this part of the act. 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.

*32] *The district court then had complete jurisdiction over this case, and its decision is final. The judgment is, consequently, a bar to any subsequent action for the same cause. The judgment of the circuit court is affirmed.

Bank of Alexandria v. Swann.

THIS cause came on to be heard, on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel: On consideration whereof, it is adjudged and ordered, that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

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*The President, Directors and Company of the BANK of ALEXANDRIA, Plaintiffs in error, *v.* THOMAS SWANN. [*33

Promissory notes.—Notice of non-payment.

The general rule, as laid down by this court in Lenox *v.* Robert, 2 Wheat. 373, is, that the demand of payment of a promissory note should be made on the last day of grace; and notice of the default of the maker be put into the post-office, early enough to be sent by the mail of the succeeding day.

The note on which the action in this case was brought, having become due at the Bank of Alexandria, where it was made payable, payment of the same was demanded at the bank, before three o'clock on that day; notice of non-payment was put into the post-office on the following day, directed to the indorser, the defendant in error, who resided in Washington; according to the course of the mail from Alexandria to the city of Washington, all letters put into the mail, before half-past six o'clock, P. M., at Alexandria, would leave there some time during the night, and would be deliverable at Washington, the next day, at any time after half-past eight o'clock. The defendant in error contended, that as demand of payment was made before three o'clock, P. M., notice of the non-payment of the note should have been put into the post-office on the same day it was dishonored, early enough to have gone with the mail that evening. The court held, that the law does not require the utmost possible diligence in the holder in giving notice of the dishonor of the note; all that is required is ordinary reasonable diligence; and what shall constitute reasonable diligence ought to be regulated with a view to practical convenience, and the usual course of business.

The law, generally speaking, does not regard the fractions of a day; and although the demand of payment at the bank was required to be made during banking hours, it would be unreasonable, and against what the special verdict finds to have been the usage of the bank at that time, to require notice of non-payment to be sent to the indorser on the same day. This usage of the bank corresponds with the rule of law on the subject.

If the time of sending notice is limited to fractions of a day, it will always come in question, how swiftly notice could be conveyed. The notice sent by the mail, the next day after the dishonor of the note, was in due time.

The law has prescribed no particular form for such notice; the object of it is merely to inform the indorser of the non-payment by the maker, and that he is held liable for the payment thereof.

The note on which the suit was brought was for $1400, made by H. P., in favor of the defendant in error, and the notice described it as for the sum $1457; in the margin of the note, was set down in figures $1457, and the special verdict found, that the note was discounted at the bank, as for a note of $1457; the defendant in error was not an indorser on any other note drawn by H. P. and discounted at the bank, or placed there for collection. This case falls within the rule laid down by this court in the case of Mills *v.* Bank of the United States, 11 Wheat. 431, that every variance, however immaterial, is not fatal to the notice; it must be such a variance as conveys no sufficient *knowledge to the party of the particular note which [*34
has been dishonored. If it does not mislead him, if it conveys to him the real fact, without any doubt, the variance cannot be material, either to guard his rights, or avoid his responsibility. In that case, as in the one now before the court, it appeared, that there was no other note in the bank, indorsed by Mills; and this the court considered a controlling fact, to show that the indorser could not have been misled by the variance in the date of the note, which was the misdescription complained of.[1]

Where it did not appear on the record, that a bond had been given to the clerk of the circuit

[1] See note to Mills *v.* United States Bank, 11 Wheat. 431; also. United States Bank *v.* Watterson, 4 Cr. C. C. 445.