election either to claim damages for the value of the cotton on that day, as a case of tortious conversion, or for the value of the cotton on the 23d of August following, when the letter of the plaintiff of the 22d of July was received, which authorized a sale. If the price of cotton was higher on that day, than at any intermediate period, he was entitled to the benefit thereof. If, on the other hand, the price was then lower, he could not justly be said to be damnified to any extent beyond what he would lose by the difference of the price of cotton on the 3d of June, and the price on the 23d of August.

For these reasons, we are of opinion, that both the instructions given by the circuit court to the jury were erroneous; and therefore, the judgment ought to be reversed, and the cause remanded, with instructions to the court to award a *venire facias de novo.*

WAYNE, Justice, and CATRON, Justice, dissented.

Judgment reversed.

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*497] *SUSAN DECATUR, Plaintiff in error, *v.* JAMES K. PAULDING, Secretary of the Navy, Defendant in error.

Pensions.— Mandamus.—Heads of departments.

On the 3d of March 1837, congress passed an act giving to the widow of any officer who had died in the naval service of the United States authority to receive, out of the navy pension fund, half the monthly pay to which the deceased officer would have been entitled, under the acts regulating the pay in the navy, in force on the 1st day of January 1835; on the same day, a resolution was adopted by congress, giving to Mrs. Decatur, widow of Captain Stephen Decatur, a pension for five years, out of the navy pension fund, and in conformity with the act of 30th June 1834, and the arrearages of the half-pay of a post-captain, from the death of Commodore Decatur to the 30th June 1834; the arrearages to be vested in trust for her by the secretary of the treasury. The pension and arrearages, under the act of 3d March 1837, were paid to Mrs. Decatur, on her application to Mr. Dickerson, the secretary of the navy, under a protest by her, that by receiving the same she did not prejudice her claim under the resolution of the same date; she applied to the secretary of the navy for the pension and arrears, under the resolution, which were refused by him; afterwards, she applied to Mr. Paulding, who succeeded Mr. Dickerson as secretary of the navy, for the pension and arrears, which were refused by him. The circuit court of the county of Washington, in the district of Columbia, refused to grant a *mandamus* to the secretary of the navy, commanding him to pay the arrears, and to allow the pension under the resolution of March 3d, 1837: *Held*, that the judgment of the circuit court was correct.

In the case of Kendall *v.* United States, 12 Pet. 527, it was decided by the supreme court, that the circuit court of Washington county, for the district of Columbia, has the power to issue a *mandamus* to an officer of the federal government, commanding him to do a ministerial act.

In general, the official duties of the head of one of the executive departments, whether imposed by act of congress or by resolution, are not mere ministerial duties; the head of an executive department of the government in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion; he must exercise his judgment in expounding the laws and resolutions of congress, under which he is, from time to time, required to act; if he doubts, he has a right to call on the attorney-general to assist him with his counsel; and it would be difficult to imagine, why a legal adviser was provided by law for the heads of departments, as well as for the president, unless their duties were regarded as executive, in which judgment and discretion were to be exercised.

If a suit should come before the supreme court, which involved the construction of any of the laws imposing duties on the heads of the executive departments, the court certainly would not be bound to adopt the construction given by the head of a department; and if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But the judgment of the court upon the construction of a law, must be given in a case in which they have jurisdiction; and in which it is their duty to interpret the act of congress, in order to ascer-

tain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the secretaries, nor revise his judgment, in any case where the law authorized him to exercise his discretion or judgment; nor can it, by *mandamus*, act directly upon the officer, or guide and control his judgment or discretion, in the matters committed to his care, in the ordinary discharge of his official duties; the interference of the court with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and this power was never intended to be given to them.[1]

The principles stated and decided in the case of Kendall *v.* United States, 12 Pet. 610, 614, relative to the exercise of jurisdiction by the circuit court of the district of Columbia, where the acts of officers of the executive departments of the United States may be inquired into, for the purpose of directing a *mandamus* to such officers, affirmed.

*Error to the Circuit Court of the District of Columbia, and county of Washington. On the 3d of March 1837, an act was passed [*498 by congress, giving to the widow of any officer who had died in the naval service of the United States, out of the navy pension fund, half the monthly pay to which the deceased officer had been entitled to receive under the laws in force on the 1st day of January 1835; the half-pay to commence from the death of such officer; the pension so allowed, to cease on the intermarriage or death of the widow, &c. On the same 3d of March 1837, a resolution was passed by congress, "granting a pension to Susan Decatur, widow of the late Stephen Decatur." The resolution directed that Mrs. Susan Decatur be paid from the navy pension fund, a pension, for five years, commencing from the 30th June 1834, in conformity with the provisions "of the act concerning naval pensions and the navy pension fund, passed 30th June 1834, and that she be allowed from said fund the arrearages of the half-pay of a post-captain, from the death of Commodore Decatur, to the 30th of June 1834, together with the pension hereby allowed her; and that the arrearage of said pension be invested in the secretary of the treasury in trust for the use of the said Susan Decatur; provided that the said pension shall cease on the death or marriage of the said Susan Decatur."

Under the law of March 3d, 1837, Mrs. Decatur applied to Mahlon Dickerson, Esq., then secretary of the navy, and trustee of the navy pension fund, and received out of the navy pension fund the whole amount of the pension, which, as the widow of Commodore Decatur, she was entitled to by the provisions of the law. This was received by her, under a reservation of her rights under the resolution of the 3d of March 1837; she, at the same time, claiming the benefit of that resolution. Mr. Dickerson, the secretary of the navy, referred the question whether Mrs. Decatur was entitled to both pensions, to the attorney-general of the United States; and he decided, that she might make her election to receive either pension, but that she was not entitled to both. On the retirement of Mr. Dickerson from the navy department, he was succeeded by Mr. Paulding, the defendant in error. In the autumn of 1838, Mrs. Decatur applied to Mr. Paulding, requiring him, as the trustee of the navy pension fund, to pay the sum claimed to be due to her under the resolution of congress of March 3d, 1837, stated in an amended petition filed in the circuit court to be $18,597, with interest on the same. It was stated, that there were ample funds and money of the navy pension fund to pay the amount claimed. The secretary of the navy refused to

[1] S. P. Brashear *v.* Mason, 5 How. 101; United States *v.* Seaman, 17 Id. 230; United States *v.* Guthrie, Id. 304; United States *v.* The Commissioner, 5 Wall. 563; McElrath *v.* McIntosh, 11 Law Rep. 399; Ex parte Reeside, Id. 448.

comply with this demand ; and on the 25th November 1837, Mrs. Decatur applied by petition to the circuit court of the county of Washington, setting
*499] forth all *the circumstances of the case, and asking from the court a writ of *mandamus*, "to be directed to the said James K. Paulding, secretary of the navy of the United States, commanding him, that he shall fully comply with, obey and execute the aforesaid resolution of congress, of the 3d of March 1837, by paying to your petitioner and to the secretary of the treasury, in manner and form as said act or resolution provides, or as your honors shall thing proper, the full and entire amount of the aforesaid sum or sums of money, with interest thereon, or such part or portion thereof as your honors may direct."

The circuit court granted a rule on the secretary of the navy to show cause why the writ of *mandamus*, as prayed for, should not be issued ; and to this rule the secretary made the following return : To the honorable the judges of the circuit court of the district of Columbia, for Washington county. The undersigned, James K. Paulding, secretary of the navy of the United States, respectfully states : That he hath been served with notice of an order or rule from this honorable court, requiring him to show cause why a writ of *mandamus* should not be issued from the said court, directed to him as secretary of the navy of the United States, upon the petition of Mrs. Susan Decatur, commanding him to pay certain sums of money out of the navy pension fund, claimed by said petitioner to be due to her under a certain resolution of congress referred to in the aforesaid petition. The undersigned considers it his duty, in the first place, to protest against the jurisdiction of the circuit court invoked on this occasion for the following reasons :

1. Because, as secretary of the navy of the United States, he is not subject, in the discharge of the duties of his office, by the constitution and laws of the United States, to the control, supervision and direction of the said court.

2. Because, as such secretary, he is by law constituted the trustee of the navy pension fund, and it is made his duty, as such, "to receive applications for pensions, and to grant the same, according to the terms of the acts of congress in such cases provided." He is also required to cause books to be opened, and regular accounts to be kept, showing the condition of the navy and privateer pension funds, the receipts and expenditures thereof, the names of the pensioners, and the dates and amount of their respective pensions, with a statement of the act or acts of congress under which the same may be granted ; and he shall annually report to congress an abstract showing the condition of these funds in all these particulars, and the receipts and expenditures during the year ; and there is no law authorizing the circuit court of this district to control and direct him in the discharge of these duties.

3. Because such jurisdiction in this court would, if assumed, operate as
*500] such an interference with the discharge of the official *duties of the undersigned, as to make it impossible for him to perform them as required and intended, and would transfer to the said court the discharge of the said duties, and the whole management and disposition of the said fund, and subject all applicants for pensions to the delay, expense and embarrassments of legal controversies as to their rights, and to a suspension of the

provisions to which they might be entitled under the laws, till these controversies were judicially decided.

4. Because such a jurisdiction in the circuit court would make the United States suable in that court ; and subject the money of the United States, in the treasury of the United States, to be taken therefrom by the judgments of said court.

5. Because, if the circuit court assumes the jurisdiction of compelling the secretary of the navy, or the head of any other department, to revise and reverse the decisions that may have been made by their predecessors in office, these officers will necessarily be taken off from the discharge of their immediate and most urgent public duties, and made to apply their time and attention, and that of their clerks in the departments, in an endless review and reconsideration of antiquated claims and settled questions, to the delay and hinderance of measures of vital importance to the national welfare and safety. For these and other reasons, which he trusts will be obvious, on further consideration, to the court, he respectfully objects to the jurisdiction assumed in this case ; and will now proceed, under such protest, to show cause why the *mandamus* prayed for should not be issued.

The undersigned was somewhat surprised to see it stated in the petition of the relatrix, that " he had been often requested by her to pay the two several sums of money stated in the petition, amounting to the aggregate sum of $23,422.25 ;" and that he had refused so to do ; and, that " he pretended to say that the petitioner was not entitled to the same, or any part thereof." The undersigned has no recollection of ever having refused the payment of any sum, or any sums of money demanded in behalf of Mrs. Decatur, except so far as this may have been inferred from his declining to reconsider her claim, on grounds which he will now proceed to state.

Sometime in September 1838, the undersigned received a communication from the counsel of Mrs. Decatur, informing him that they had examined the documents connected with her claims, and the opinion of the late attorney-general, Mr. Butler, upon the strength of which the claim appeared to have been disallowed by his predecessor, and that they were satisfied, that the decision which had been made was not warranted by law. A reconsideration of the case was then asked of the undersigned, " if he felt himself at liberty to revise the decision of his predecessor." And if this could not be complied with, he was then asked *" to give such instructions to the district-attorney as will enable him to concur with them in bring- [*501
ing the subject before a competent tribunal, in order to obtain a judicial decision upon the case." To this application, the undersigned replied, " that the claim having been examined and decided by his predecessor, in conformity with the opinion of the late attorney-general, he did not feel himself authorized to disturb that decision, as no new facts had been adduced to call for a re-examination." And further, that he also declined the second proposition of the counsel ; " being unwilling to give a precedent, which, if once established, will place every executive officer of the government in the attitude of a defendant, in all cases where individuals are dissatisfied with his decisions." After this reply, no further application was made to the undersigned ; but in February last, a memorial was presented to the president of the United States, in behalf of the claimant, by her counsel, in which a reconsideration of the case and his interference were requested, and that

"if he should be of opinion, that the claim was lawful and proper to be allowed, that he would direct the secretary of the navy to execute the resolution in favor of the claimant, without further delay." In this memorial, the opinion of the late attorney-general, and the decision of the late secretary of the navy were stated; and it was added, that "the claim had been recently renewed before the present secretary of the navy, and again rejected, not upon a consideration of its merits, but because it had been before acted upon and denied, and no new matter shown upon the new application." On this memorial, the president decided, that "he did not find in the papers submitted to him, sufficient to justify the interfence asked for;" and of this the counsel for the claimant was informed.

The undersigned has been thus particular, for the purpose of showing distinctly the nature of the application, and its refusal. He desires it should be seen, that he placed this refusal solely upon the ground that his predecessor had decided it, after a full consideration, and after calling for the official opinion of the attorney-general, and that no new facts were adduced to suthorize him to reconsider it; and he desires now that this shall be considered by the court as a distinct ground of objection to the relief now prayed for. He presumes, that even if the court shall decide that it possesses the jurisdiction claimed, it will not consider that it is bound to exercise it, in all cases, and under all circumstances; and that after a claim has been heard and rejected by the officer authorized to decide upon it, it still remains in the power of the claimant to call it up, and compel a reconsideration of it from every successive officer, who may be subsequently appointed in the place of the officer making the decision. It is obvious, that if such a course is allowed, there can be no such thing as the final decision of a controverted claim. The executive officers must always continue to consider it as an *open claim, and the funds of the government as still liable to its demands. Nor is it possible for the affairs of the government to be properly administered, if the executive officers, instead of devoting themselves to the discharge of the duties brought before them, and which are abundantly sufficient to occupy all their time and attention, are to be called upon to go back to the times of their predecessors, and determine whether they have properly discharged the duties they were required to execute.

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These considerations, and an experience of the impossibility of thus conducting the public business committed to them, have long since obliged all the executive departments, under every administration, with the sanction, as the undersigned believes, of several successive attorneys-general, to adopt the rule, that no claim once fully heard and rejected by the competent officer can be considered open to the review and reconsideration of the successor to such officer, unless new matter can be shown to justify such re-examination. It is evidently as important to the public interests, if the courts shall be considered as invested with the jurisdiction claimed on this occasion, that they should respect this rule. The inconveniences resulting from disregarding it by the courts, in the exercise of such a jurisdiction, are the same. The same unsettled state of controverted claims, the same uncertainty as to the national funds, kept open to rejected demands, which may interfere with the rights of other claimants and with the public interests, and the same misemployment of the time and attention of the public officers

to cases already decided by their predecessors, must continually occur; for, although the decision is ultimately made by the court, yet the officer to whom the command is to be directed must examine the case and everything connected with it, so as to present it to the consideration of the court. Indeed, much more of his time and attention may be withdrawn from the immediate duties of his station, by his being called to answer before a judicial tribunal on such occasions, and make that defence against the proceedings which he may feel bound to do, than by a reconsideration of the claim.

Under such circumstances, it has been heretofore thought necessary by claimants whose demands have been rejected, and who were dissatisfied with such rejection, to make their application to congress; and where it has been thought reasonable and just by the legislature, that their claims should be allowed, acts have passed for their allowance, or the accounting officers have been authorized to open and reconsider their claims. And it appears to the undersigned, that there would be a peculiar propriety in seeking that mode of redress, in relation to the present claim, which arises from the circumstance of there being two legislative enactments of the same date, making nearly similar provisions for the claimant, and the question being whether she is entitled to one or both of these *provisions. The decision of that question by the late secretary of the navy, and the [*503 opinion of the attorney-general, upon which it is founded, are herewith presented to the court.

The undersigned observes, that a specific sum is stated in the petition as being the amount of the pension claimed. He has already stated, that no sum was stated in the application made to him. It appears from the amount stated, that the petitioner claims not only half the pay to which the deceased was entitled, but half the pay and rations, or pay and emoluments. This will present to the court, in case they should assume the jurisdiction, and decide in favor of the petitioner, a question under the pension laws as to the construction of the words "half the pay" and "half the monthly pay," in those acts of congress. The uniform construction of all these laws, in all the departments of the government, has invariably been such as to confine the pension to the pay proper; the expression being in all these acts "pay," and not pay and rations, or pay and emoluments. The undersigned is not aware that any claimant of a pension has ever before suggested a different construction.

In conclusion, he admits, in relation to the state of the navy pension fund, that there is at present a sufficient amount to pay the claim of the petitioner, if it was now to be paid. What may be its state when the payment may be ordered, if it should be ordered, it will be impossible for him to state; inasmuch as it will depend on the number of applicants whose claims may be made and allowed in the meantime. And he thinks it proper to state, that if the payment of the sum stated in the petition shall be commanded by the decision of the court, in consequence of the court's deciding that the pensioners under these acts of congress are entitled to half-pay and rations, or pay and emoluments, of the deceased officers and seamen, then he apprehends the navy pension fund would be greatly insufficient to pay the present claimant and the other pensioners whose claims have been

allowed, but who have only received half the pay proper, exclusive of rations or emoluments. All which he respectfully submits.

J. K. PAULDING.

OPINION OF THE ATTORNEY-GENERAL.

Attorney-General's Office, April 11th, 1837.

Sir:—I have had the honor to receive your letter of the 15th ult'o, relative to the case of Mrs. Susan Decatur. It is assumed in your statement of the case, that Mrs. Decatur would be entitled to the pension granted by the act of the 3d ultimo, for the equitable administration of the navy pension fund, "were it not for the doubt created by the passage, on the same day, of the joint resolution for her special benefit. And on these two laws, you inquire whether she is entitled under the resolution, or under the act, or under both." This case differs from that of Mrs. Perry, referred to in the note of Mrs. Decatur, accompanying your letter, inasmuch as the law *504] *under which Mrs. Perry ultimately obtained her pension was in existence at the time of his death, at which time she was also entitled (although not then aware of the fact) to its benefits. I held, in her case, that the law granting her an annuity, for such it was called, could not deprive her of the pension given by a pre-existing law; and that as congress were presumed to be acquainted with the laws in force, the legal intendment must be, that the annuity was designed as an additional provision; and consequently, that she was entitled to both. After maturely considering the history of the general and special provisions on which the present case depends, I am of opinion, that but one pension can be allowed; but if the general provision includes the case of Mrs. Decatur, then I am of opinion, she is entitled to take, under that provision, or under the joint resolution, at her election. I am, very respectfully, your ob't serv.

B. F. BUTLER.

The Hon. MAHLON DICKERSON, Secretary of the Navy.

LETTER FROM SECRETARY OF THE NAVY TO MRS. DECATUR.

Navy Department, 14th April 1837.

Dear Madam:—The attorney-general has given his opinion, that in your case but one pension can be allowed; he, however, thinks that you have your selection to take under the general law, or under the resolution in your particular case; as soon as your pleasure upon this subject shall be known, the warrant for pension shall be made out. I am, with great respect and esteem, your ob't h'le s't,

M. DICKERSON.

Mrs. SUSAN DECATUR, Georgetown, D. C.

The circuit court overruled the order to show cause to the secretary of the navy, and refused the application of Mrs. Decatur for a *mandamus;* and this writ of error was prosecuted by her.

The case was argued by *Brent* and *Coxe*, for the plaintiff in error; and by *Gilpin*, Attorney-General of the United States, for the defendant.

Upon the part of the *plaintiff* in error, it was said:—1. That there was error in the refusal in the court below to award the *mandamus*, and it ought to have been granted. 2. That the secretary of the navy, the appellee, was

bound to execute said resolution, that he had no discretion in so doing. 3d. That the said resolution being clear and explicit as an act of legislation, the said secretary of the navy ought not (acting as he did, ministerially, in carrying it into execution) to refuse to execute the same. *4. That having refused to do the same, the court ought to have issued the [*505 *mandamus*. 5. If there be a doubt upon the laws of congress, whether the relatrix is entitled, that doubt is removed by an examination of the journals and proceedings of congress connected with the claim of the relatrix.

The counsel for the plaintiff, in support of the jurisdiction of the circuit court to issue the *mandamus*, as prayed for, cited *Marbury* v. *Madison*, 1 Cranch 137; 6 Pet. 241; *Kendall* v. *United States*, 12 Ibid. 524.

They contended, that it was the intention of congress to give the pension to Mrs. Decatur under the resolution; and also a pension under the general pension law, passed on the same day the resolution was adopted and approved. The pensions, it will be seen, by an examination of the resolution and of the law, are not the same, but are cumulative. Each law is a clear and distinct act of legislation, expressing the will of the legislature, directed to the secretary of the navy, in a ministerial capacity; and he should have obeyed both. He has no right to collate the two laws for the purpose of interpreting them. While acting under the provisions of the pension law, the secretary of the navy may have a discretion, and he is to inquire into facts on which he is to decide; but under the first resolution, giving a pension to Mrs. Decatur, he is to act only ministerially. The history of the proceedings of congress, granting a pension to Mrs. Decatur, by the resolution, and contemporaneously giving pensions to the widows of officers of the navy, shows that the claims of the plaintiff in error are well founded. The allowances are different. The rate of the pension under the resolution, and that given by the law, is different. One is given for five years, and a trustee is to hold the arrears, for the use of Mrs. Decatur. The sum given by the resolution is greater than that given by the pension law. One allows the rations of the captain to form a part of the estimate; the law gives only half of the pay proper. The true construction of the law and resolution will be obtained by a reference to the principles which have been applied to wills giving more than one legacy to the same persons. The courts, in such cases, always adjudged, that when the legacies are distinct and independent, and have no reference to each other, both legacies are payable. Cited, 1 Bro. C. C. 389; 6 Mad. 300, 303; 2 Russ. 272; 1 Coxe 391. When there is a doubt as to the intention of the legislature, the law should be construed favorable to those who claim under it. 6 Dane's Abr. 570.

Gilpin, for the defendant in error.—The navy pension fund was established by the act of 2d March 1799. (1 U. S. Stat. 716.) It was made up from a certain proportion of the sales of prizes, taken by the officers and seamen of *the American navy, the investment of which it provided [*506 for, so as to establish the fund in question. From the time of its establishment, occasional changes were made (2 Ibid. 53, 293, 790; 3 Ibid. 287; 4 Ibid. 572, 714; 5 Ibid. 180) in the organization of the trust, the amount of pension, and the persons entitled to it. In the year 1832, the fund was in the treasury of the United States, in charge of three commissioners, being the secretaries of the navy, war, and treasury departments,

who were authorized to make the necessary regulations for admitting pensioners and paying pensions; and the payments to the pensioners were made by warrants drawn in their favor, by the secretary of the navy, on the treasurer of the United States; every officer, seaman and marine, disabled in the line of his duty, received such pension as the commissioners might allow, not exceeding his full monthly pay; and the widow of any one killed in service during the late war, or dead of wounds and casualties then received, was to have half his monthly pay, for twenty-five years after his death. On the 10th July 1832 (4 U. S. Stat. 572), the navy pension fund was reorganized; the commissioners were abolished; their duties were imposed on the secretary of the navy alone; and he was to "receive applications for pensions, and grant them according to the terms of the acts of congress;" but no change was made as to the persons entitled to receive them, or in the amounts. On the 30th June 1834 (Ibid. 714), an act was passed, adding to the persons previously entitled to pensions, "the widows of officers, seamen and marines, who died in the naval service, since 1st January 1824, or who might die by reason of disease, casualties or injuries received while in the line of their duty." This law did not include the widows of those dying in the naval service, previous to that day, although they might have contributed as much to the fund as those who died after it. Such was the case in regard to the plaintiff in error, the widow of the gallant Decatur. In 1830, a special resolution was introduced in congress to grant her half pay for five years from 30th June 1834, which, in the succeeding year, was extended, by adding thereto arrearages of half pay, from her husband's death to the 30th June 1834 (Journal of House of Representatives 336); in that shape it passed the house, and was sent to the senate. In the meanwhile, that body had taken up the subject, and had before it a general law to provide for the widows of all officers, seamen and marines similarly situated; which bill they passed and sent to the house, without adopting the special measure for Mrs. Decatur's relief. The general bill then gave rise to discussion, and it not having passed the day before the close of the session, the senate adopted the special resolution in regard to the plaintiff in error, which was approved by the president. Subsequent to the passage of the special resolution, the general bill was also passed by both houses, and approved by the president, among the last acts at the close of the session. Journal of the Senate, 41, 132, 206, 300, 318, 330, 331, 340. Journal of the
*507] House of Representatives 569. *The general law embraced in its provisions the case of Mrs. Decatur, and differed in no respect from the special resolution, except that it extended the pension to her death, instead of limiting it, as the resolution did, to five years.

The application by Mrs. Decatur to Secretary Dickerson, to pay her a double pension, the one under the general act, and the other under the special resolution, was refused, by the advice of the attorney-general; and she received the sum to which she was entitled under the former, without, however, waiving her claim to the latter. She subsequently applied to Secretary Paulding, the defendant in error, to revise this decision of his predecessor, which he declined to do; and afterwards to the president, who decided, that, "he did not find in the papers submitted to him, sufficient to justify the interference asked for." Thereupon, Mrs. Decatur applied to the circuit court of this district to issue a *mandamus* to Secretary Paulding, to comply

with the special resolution, by paying to Mrs. Decatur, and to the secretary of the treasury, in trust for her, the full amount of the arrearages and pension, including therein half the rations, as well as half the monthly pay. The refusal of the court to issue such a *mandamus*, is alleged to be error.

1. It is submitted, that there was no error in this refusal of the court below, because that court was not authorized to issue a *mandamus*, for the purposes prayed for. It is an attempt to compel the secretary of the navy, through the mandate of an inferior and local tribunal, to take from the treasury of the United States a sum raised by the gallantry of men, most of whom are dead, and placed there under his charge, as their trustee, and to appropriate it in a manner contrary to what, in his own judgment, the law sanctions, contrary to the opinion of the attorney-general, and not approved of or sanctioned by the chief executive officer. There must be strong grounds to authorize such an exercise of power, to permit the circuit court of this district thus to compel a public officer to take money from the treasury, when he believes he is forbidden by law so to do, and when he is confirmed in that belief by an officer, whose opinion, he is, by law, to require, in every doubtful case. It effects, in practice, a radical change in the mode of managing and disbursing the public money; it takes, in point of fact, the responsibility of superintending a particular fund from the officer made answerable for it by law, and transfers it to a court of justice; it changes materially the modes of proceeding in relation to the trust; it may delay the payment of numerous pensioners, during the progress of a tedious and complicated litigation; if the power of prohibiting as well as compelling payments to certain pensioners exists (and it results from the same principle), those of whose rights the secretary of the navy, as their trustee, has no doubt, may be forced to contend for them by expensive and protracted law-suits.

Nor is there any usage or principle of law which would sanction such an interference as was sought from, but properly refused *by the circuit court. The secretary of the navy is an executive officer; the cases [*508 in which any court, even one admitted to have the power of issuing a *mandamus*, can control such an officer in the performance of an executive duty, have been fully discussed; this court has examined the subject so as to lay down the rules by which he may be guided; yet in no instance has a case like the preset been sustained by a judicial sanction. The case of *Marbury* v. *Madison*, 1 Cranch 137, was that of a commission already signed by the president, sealed, and ready for delivery. This court held, that a court having legal authority to issue a *mandamus*, might do so in such a case, because the course prescribed was a precise one, pointed out by law, to be strictly pursued, and "in which there could be no variation." 1 Cranch 158. Apply this test to the duty devolved on the secretary of the navy, as trustee of this fund. Was he bound to pay a certain sum, under all circumstances? Was it a proceeding "which could not be varied," even if the fund was insufficient? Must he not look to the state of the fund—to other existing claims upon it under the laws then in force? Could he pay it out of the fund committed to him, if already exhausted, or if there were other legal claims upon it, made prior to, or at the same time with Mrs. Decatur's, under prior or equal legal sanctions, and it was insufficient to pay all? By this test, it was a proceeding that might, nay, must, of necessity, be varied;

the exercise of the trustee's discretion was required to examine the state of the fund and the validity of other claims; and the performance of the required act must depend on, and might be varied by, the result of that examination. Again, this court held, in the same case (1 Cranch 164), that where the secretary of war was directed by an act of congress to place certain designated names on the pension list, his refusal would authorize a *mandamus*. In such a case, the duty of the executive officer is plain; had congress directed Mrs. Decatur's name to be put on the pension list, it would have prescribed an act merely and strictly ministerial; but they order him to pay her out of the navy pension fund, of which he is trustee, which he is bound to administer and dispose of according to other existing laws, and to the legal sufficiency of which he must look, whenever he makes a payment. So, when it was held, that the secretary of state might be compelled to deliver a patent which had been duly signed, sealed and recorded (1 Cranch 165), we have a proceeding which could not be varied; the secretary could do nothing but the act required; it had no communion with any other act; but suppose, the patent had not been signed and sealed, and that the secretary was of opinion, that all the necessary pre-requisites had not been complied with; or suppose, the right of the patentee was limited to a location within a certain designated body of land (as in military bounties), and all the lands therein had been exhausted, could the secretary, in such a case, be compelled to issue and deliver the patent by a writ of *mandamus?* Again, the court held, in the same case, that an officer might be *compelled to do an act, peremptorily enjoined, and affecting individual or private rights (1 Cranch 166); thus distinguishing such an act from those of a public or political character, or those which affect the rights and interests of various persons. To place a name on the pension list, to deliver his patent to a patentee, to record the commission of a justice of the peace, are acts not of a public concern, but solely affecting the interest of the individual. On these, as the court say, it is "their province to decide; not to inquire how the executive, or executive officers, perform duties in which they have a discretion." Is the plaintiff in error solely interested in the act which she requires the secretary of the navy to do? Does it affect her individual rights alone? Are not other claimants on the fund equally interested? Is not the executive officer responsible for the correctness of his decision in performing a public trust? Are not the nation, the public, bound to see that the fund is properly applied, and to make good any deficiency arising from an erroneous payment, even though made under the sanction of the circuit court of this district? The tests thus established by this court, in the case of *Marbury* v. *Madison*, exclude the act asked for by the plaintiff in error, from the class of ministerial acts; they place it clearly among those which are executive, and to a certain extent discretionary.

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In the case of *McCluny* v. *Silliman*, 2 Wheat. 369, a pre-emption claim had been rejected by the register of the land-office, on the ground, that the land belonged to another; a *mandamus* was refused, because the court held, that they had no controlling power over the officer, in such a case, whatever might be the justice of the applicant's claim; but that "the parties must be referred to the ordinary mode of obtaining justice, and not resort to the extraordinary one of a *mandamus*." Yet in what respect was the proceed-

ing asked for in that case, less sustained by law than the present? The case of *Kendall* v. *United States*, 12 Pet. 610, was, like that of *Marbury* v. *Madison*, very fully examined; important principles were settled; rules were carefully laid down; and those cases distinguished in which an executive officer would be, and would not be, compelled to act by a *mandamus*. The court said, that to justify such a proceeding, the act required to be done, must be "a mere ministerial act;" the postmaster-general was "to credit" the relators with a certain sum exactly ascertained and reported to him by an officer authorized so to do; the act was precise, definite and purely ministerial; no money whatever was to be paid. All those are points distinguishing the case from the present one, especially the payment af money; here, too, it is to be withdrawn out of a particular fund in the treasury, which, as the officer having it in charge believes, is appropriated to other purposes.

These decisions of this court seem to be sufficient to sustain the judgment of the court below, and they are abundantly sanctioned, if it were necessary to go beyond them, by the opinions of other *tribunals. 3 Hall's Law Journ. 128; 5 Binn. 104; 6 Ibid. 9; 1 Whart. 1. They [*510 mark with exactness the line between executive and merely ministerial duties; and they place the act which the secretary is now called on to perform, clearly within the former. It is one requiring the exercise of deliberate judgment in the construction of a long series of laws; in a determination between conflicting legal provisions; in ascertaining the rights of different parties, that may seriously interfere with each other, and in apportioning between all an inadequate fund. It is, therefore, in no sense, an act in which a court is authorized to interfere with an executive officer. Much less is it so, when the effect of such interference must be to require a revision of decisions previously made in the most deliberate manner, and to oblige every incumbent of an office, already laborious, to investigate and open anew, without the exhibition of additional facts, subjects that have been already fully and finally decided.

2. But if the act which the secrtary of the navy is required to perform were ministerial, and such as a court having competent jurisdiction might compel him to perform; it is yet submitted, that upon the merits the applicant would not be entitled to the relief prayed for. Mrs. Decatur had no right to claim payment under the resolution, having received it under the general law. To make such a double payment out of the navy pension fund, would be a violation of the trust created in the establishment of that fund. It was not raised by congress; it was taken from the sale of prizes captured by the naval officers and seamen. By what right, on what principle of justice, can the widow of one officer receive from that fund twice as much as another? Congress never designed so to violate the principles of justice, or so to appropriate any portion of a fund raised by the services and gallantry of the whole navy. That they could not, is strikingly shown in the instance of their gratuity to the widow of Commodore Perry; she was entitled to her pension from this fund; but when congress resolved, under circumstances of strong sympathy, to add to her compensation, they gave her an annuity "payable out of the treasury;" not a double pension, to be taken from the navy pension fund, to the detriment of those to whom it belonged, according to the terms of the original trust. (6 U. S. Stat. 260.)

It was evidently the intention of congress, to substitute the general for the special provision; to give to all the widows of the officers and seamen, the same relative gratuity; with this object, the special resolution in favor of Mrs. Decatur was withheld till the latest moment; it was only when it was found that a difference between the two houses might prevent the passage of the general bill, at that session, that the special resolution in her behalf was adopted. This is evinced, by the identity of every provision in the two, except that which prolongs the pension during life. An intention so clearly exhibited must always prevail in construing a statute. *Brown* v. *Barry*, 3 Dall. 365. But were there a doubt as to the intention to abrogate the special provision by the general law, it would not sanction the
*511] assumption that congress meant the latter to apply to the case of Mrs. Decatur, while the former continued in force. It would be more reasonable to suppose, that her claim, having been separately presented, separately discussed, and separately legislated upon, any which she might have had under the general law was extinguished.

In the construction of statutes, where a general legislative provision embraces a special one, it is a substitute for, not an addition to it. The general provision embraces and controls the special one. This arises from two well-established principles in regard to statutes: that all legislative provisions on the same subject are to be taken together; and that later regulations, if at variance with previous ones, are to control them. It is said by Lord Coke (2 Inst. 13), that earlier clauses in the same statute are to be restrained by those that are subsequent. Where an act provided for the place where treason, committed by particular persons, should be tried, and a subsequent act established the mode of all trials for treason, the latter was held to supersede the former. 11 Co. 63. In *Rex* v. *Loxdale*, 1 Burr. 447, it is said, that all statutes relating to one subject are to be taken together. When the act of 5 Geo. III. punished "seducing artificers," with three months' imprisonment, and that of 23 Geo. III., with six months, the last was held to supersede the former; though there was no express repeal. *Rex* v. *Cator*, 4 Burr. 2026. In *Williams* v. *Pritchard*, 4 T. R. 2, it is said, that a subsequent act controls a prior one on the same subject. In the *Attorney-General* v. *Chelsea Waterworks*, Fitzg. 195, it is said, that the latter part of the same statute controls the former part. In *Bywater* v. *Brandling*, 7 Barn. & Cres. 643, it is said, that statutes are to be so construed as to give effect to the whole, not to separate clauses. In *Gaye* v. *Currier*, 4 Pick. 399, where an act of 1793 gave limited privileges, as to church membership, to a particular town, and an act of 1823 gave general privileges on the same subject to the whole state, the latter was held to supersede the former. Applying these principles, we must admit, that where a pension to the widow of a deceased officer is given, and subsequently thereto, a pension is allowed to all such widows, including by its terms the one for whom the special act was passed, it is to be taken as one general provision.

It is held, that the same rules should govern the construction of statutes as of wills. *Butler and Baker's Case*, 3 Co. 27; *Attorney-General* v. *Chelsea Waterworks*, Fitzg. 195. If so, the principle contended for is clearly established. It cannot be doubted, that if, in a will, an annuity for five years, of a specific sum, payable out of a specific fund, were bequeathed to the plaintiff

in error, and shortly afterwards, by a codicil, an annuity in all respects similar, except that it was to last for life, were bequeathed to a class of persons of whom the plaintiff was necessarily one, that the latter would be regarded, not as an addition to, but a substitute for, the former. In *St. Albans* v. *Beauclerk*, 2 Atk. 638, where the same sum *was given to the same person, in two codicils, it was held to be but one legacy; [*512 and that even a greater sum to the same person is only an augmentation, not a second legacy. In *James* v. *Semmens*, 2 H. Bl. 213, an annuity of the same sum, to the same person, in a will, and afterwards in a codicil, was held to be but one, because made chargeable on the same fund. In *Allen* v. *Callow*, 3 Ves. 289, a legacy was given to a child named, and by a codicil, the same sum to the children generally; and it was held to be a mere repetition. In *Osborne* v. *Leeds*, 5 Ves. 384, a legacy to children generally, and a codicil giving the same sum to a particular child, was held to be merely a repetition. In *Dewitt* v. *Yates*, 10 Johns. 158, a legacy to a grand-daughter, and afterwards one of the same sum to the same person, but payable by a different legatee, was held to be only a substitution. None of these cases are so strongly indicative of the intention to substitute the last for the first provision, as that of Mrs. Decatur.

But if the first provision be not superseded, is it not expressly repealed by the last? The general act provides, that the navy pension fund shall be distributed in a certain manner, and no other; it then repeals all other laws at variance with it. Is not the special act, therefore, repealed? Even if not superseded or repealed, does not the well-established principle apply, that where two modes are are given to recover the same thing, one must be chosen? Co. Litt. 145.

On these several grounds, it is submitted, that the plaintiff in error, having received her pension under one law, cannot claim it under the other, for which the former was only a substitute. Even if both were passed intentionally; if congress, on the same day, knowingly passed two distinct acts, relating to the payment of a widow's pension out of the navy pension fund, they can be regarded only as two sections of a single law; the one providing for the person named, the other for all widows. How would the clauses be considered in such a case? The most favorable construction would be, that Mrs. Decatur might take under either—might claim her right to select; that she was to have a special benefit, if she chose under the one section, not being required to offer any evidence to sustain her claim, as others were obliged to do; or that she was to have her pension for life, if she preferred to waive that benefit. The special clause excepted her from the general provisions imposed on all other persons. *Rex* v. *Armagh*, 8 Mod. 8; *Churchill* v. *Crease*, 5 Bing. 180; *Torrington* v. *Hargraves*, Ibid. 492.

3. But again, the circuit court was right in refusing the *mandamus*, because it asked for the payment of a sum under the resolution, which the resolution did not warrant. The plaintiff in error asked a *mandamus* to compel the secretary of the navy to pay her the full and entire amount of the sums of money stated in her petition, which were one-half of the monthly pay of her husband, and also one-half of the daily rations to which he was entitled. The resolution gives her a pension "in conformity with the provisions of the act concerning naval pensions and the navy pension fund, *passed 30th June 1834" (4 U. S. Stat. 714), and also, "the arrear- [*513

ages of the half-pay of a post-captain." No authority or reason for including the daily rations (the subsistence of an officer or seaman) in his pay, can be shown, either by statute or usage. Uniform construction, from the beginning of the government, has excluded them. This exposition of the law is so strong, that a court of justice would now scarcely change it, even if the language admitted of doubt. 1 Dall. 136, 178–9. The whole current of legislation shows that they are considered as distinct. 1 Story's Laws, 321 502, 514 ; 2 Ibid. 130, 1090, 1210 ; 3 Ibid. 1810. And in the case of *Parker* v. *United States*, 1 Pet. 297, it evidently appears, that this court regarded the rations of an officer as distinct from his pay.

On these gounds, it is submitted, that it was no error in the circuit court to refuse the *mandamus* which was prayed for. The act of the secretary of the navy, which it was sought to compel, was not such as that tribunal had a right to control ; and if it had been, the payment already received by the plaintiff in error appears to have been all that congress intended her to have, by virtue of the resolution on which she relied. That the generous liberality of the legislature might be justly extended to reward the gallant services of the brave and lamented Decatur, no one can doubt ; but it is not to be supposed, that they desired to effect that object, by an unequal charge upon a fund collected by the gallantry and intended for the benefit of the officers and seamen of the navy in general.

Taney, Ch. J., delivered the opinion of the court.—This case is brought here by a writ of error, from the judgment of the circuit court of the United States for the district of Columbia, refusing to award a peremptory *mandamus*. The material facts in the case are as follow :

By an act of congress, passed on the 3d of March 1837, the widow of an officer who died in the naval service, became entitled to receive out of the navy pension fund half the monthly pay to which the deceased officer would have been entitled, under the acts regulating the pay of the navy, in force on the 1st day of January 1835 ; the half-pay to commence from the time of the death of such officer ; and upon the death or intermarriage of such widow, to go to the child or children of the officer. On the same day, the following resolution was passed by congress :

No. 2. Resolution granting a pension to Susan Decatur, widow of the late Stephen Decatur.

Resolved, by the senate and house of representatives of the United States of America in congress assembled, that Mrs. Susan Decatur, widow of the late Commodore Stephen Decatur, be paid from the navy pension fund, a pension, for five years, commencing from the 30th day of June 1834, in conformity with the provisions of the act concerning naval pen-
*514] sions *and the navy pension fund, passed the 30th June 1834, and that she be allowed, from said fund, the arrearages of the half-pay of a post-captain, from the death of Commodore Decatur, to the 30th of June 1834, together with the pension hereby allowed her ; and that the arrearage of said pension be vested in the secretary of the treasury, in trust for the use of the said Susan Decatur : provided that the said pension shall cease on the death or marriage of the said Susan Decatur. Approved, March 3, 1837.

By the act of congress of July 10th, 1832, the secretary of the navy is constituted the trustee of the navy pension fund; and as such it is made his duty to grant and pay the pensions, according to the terms of the acts of congress.

After the passage of the law and resolution of March 3d, 1837, Mrs. Susan Decatur, the widow of Commodore Decatur, applied to Mahlon Dickerson, then secretary of the navy, to be allowed the half-pay to which she was entitled under the general law above mentioned; and also the pension and arrearages of half-pay specially provided for her by the resolution passed on the same day. The secretary of the navy, it appears, doubted, whether she was entitled to both, and referred the matter to the attorney-general; who gave it as his opinion, that Mrs. Decatur was not entitled to both, but that she might take under either, at her election. The secretary thereupon informed her of the opinion of the attorney-general, offering at the same time to pay her under the law, or the resolution, as she might prefer. Mrs. Decatur elected to receive under the law; but it is admitted by the counsel on both sides, that she did not acquiesce in this decision, but protested against it; and by consenting to receive the amount paid her, she did not mean to waive any right she might have to the residue.

Some time afterwards, Mr. Dickerson retired from the office of secretary of the navy, and was succeeded by Mr. Paulding, the defendant in this writ of error; and in the fall of 1838, Mrs. Decatur applied to him to revise the decision of his predecessor, and to allow her the pension provided by the resolution. The secretary declined doing so; whereupon, Mrs. Decatur applied to the circuit court for Washington county, in the district of Columbia, for a *mandamus* to compel him to pay the amount she supposed to be due to her. A rule to show cause was granted by the court; and upon a return made by him, stating, among other things, the facts above mentioned, the court refused the application for a peremptory *mandamus*. It is this decision we are now called on to revise.

In the case of *Kendall* v. *United States*, 12 Pet. 524, it was decided in this court, that the circuit court for Washington county, in the district of Columbia, has the power to issue a *mandamus* to an officer of the federal government, commanding him to do a ministerial act. The first question, therefore, to be considered *in this case is, whether the duty imposed upon the secretary of the navy, by the resolution in favor of Mrs. [*515 Decatur, was a mere ministerial act. The duty required by the resolution was to be performed by him, as the head of one of the executive departments of the government, in the ordinary discharge of his official duties. In general, such duties, whether imposed by act of congress, or by resolution, are not mere ministerial duties. The head of an executive department of the government, in the administration of the various and important concerns of his office, is continually required to exercise judgment and discretion. He must exercise his judgment in expounding the laws and resolutions of congress, under which he is, from time to time, required to act. If he doubts, he has a right to call on the attorney-general to assist him with his counsel; and it would be difficult to imagine, why a legal adviser was provided by law for the heads of departments, as well as for the president, unless their duties were regarded as executive, in which judgment and discretion was to be exercised.

If a suit should come before this court, which involved the construction of any of these laws, the court certainly would not be bound to adopt the construction given by the head of a department. And if they supposed his decision to be wrong, they would, of course, so pronounce their judgment. But their judgment upon the construction of a law must be given in a case in which they have jurisdiction, and in which it is their duty to interpret the act of congress, in order to ascertain the rights of the parties in the cause before them. The court could not entertain an appeal from the decision of one of the secretaries, nor revise his judgment in any case where the law authorized him to exercise discretion or judgment. Nor can it, by *mandamus*, act directly upon the officer, and guide and control his judgment or discretion in the matters committed to his care, in the ordinary discharge of his official duties.

The case before us illustrates these principles, and shows the difference between executive duties and ministerial acts. The claim of Mrs. Decatur having been acted upon by his predecessor in office, the secretary was obliged to determine whether it was proper to revise that decision. If he had determined to revise it, he must have exercised his judgment upon the construction of the law and the resolution, and have made up his mind, whether she was entitled under one only, or under both. And if he determined that she was entitled under the resolution as well as the law, he must then have again exercised his judgment, in deciding whether the half-pay allowed her was to be calculated by the pay proper, or the pay and emoluments of an officer of the commodore's rank. And after all this was done, he must have inquired into the condition of the navy pension fund, and the claims upon it, in order to ascertain whether there was money enough to pay all the demands upon it; and if not money enough, how it was to be apportioned among the parties entitled. A resolution of congress, requiring
*516] the exercise of so *much judgment and investigation, can, with no propriety, be said to command a mere minsterial act to be done by the secretary.

The interference of the courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief; and we are quite satisfied, that such a power was never intended to be given to them. Upon the very subject before us, the interposition of the courts might throw the pension fund, and the whole subject of pensions, into the greatest confusion and disorder. It is understood, from the secretary's return to the *mandamus*, that in allowing the half-pay, it has always been calculated by the pay proper; and that the rations or emoluments to which the officer was entitled, have never been brought into the calculation. Suppose, the court had deemed the act required by the resolution in question a fit subject for a *mandamus*, and, in expounding it, had determined, that the rations and emoluments of the officer were to be considered in calculating the half-pay? We can readily imagine the confusion and disorder into which such a decision would throw the whole subject of pensions and half-pay; which now forms so large a portion of the annual expenditure of the government, and is distributed among such a multitude of individuals.

The doctrines which this court now hold in relation to the executive departments of the government, are the same that were distinctly announced

in the case of *Kendall* v. *United States*, 12 Pet. 524. In p. 610 of that opinion, the court say, "We do not think the proceeding in this case interferes, in any respect whatever, with the rights or duties of the executive, or that it involves any conflict of powers between the executive and judicial departments of the government. The *mandamus* does not seek to direct or control the postmaster-general in the discharge of any official duty, partaking in any respect of an executive character; but to enforce the performance of a mere ministerial act, which neither he nor the president had any authority to deny or control." And in p. 614, the court still more strongly state the mere ministerial character of the act required to be done in that case, and distinguish it from official acts of the head of a department, where judgment and discretion are to be exercised. The court there say, "he was simply required to give the credit; this was not an official act, in any other sense than being a transaction in the department where the books and accounts were kept: and was an official act in the same sense that an entry in the minutes of a court, pursuant to an order of the court, is an official act; there is no room for the exercise of any discretion, official or otherwise; all that is shut out by the direct or positive command of the law, and the act required to be done is, in every just sense, a mere ministerial act."

We have referred to these passages in the opinion given by the court in the case of *Kendall* v. *United States*, in order to show more clearly the distinction taken between a mere ministerial act, required to be done by the head of an executive department, and a *duty imposed upon him in his official character as the head of such department, in which judgment and discretion are to be exercised. There was in that case a difference of opinion in the court, in relation to the power of the circuit court to issue the *mandamus*. But there was no difference of opinion respecting the act to be done. The court were unanimously of opinion, that in its character the act was merely ministerial. In the case before us, it is clearly otherwise; the resolution in favor of Mrs. Decatur imposed a duty on the secretary of the navy, which required the exercise of judgment and discretion; and in such a case, the circuit court had no right, by *mandamus*, to control his judgment, and guide him in the exercise of a discretion which the law had confided to him. [*517

We are, therefore, of opinion, that the circuit court were not authorized by law to issue the *mandamus*, and committed no error in refusing it. And as we have no jurisdiction over the acts of the secretary in this respect, we forbear to express any opinion upon the construction of the resolution in question. The judgment of the circuit court, refusing to award a peremptory *mandamus*, must be affirmed.

McLean, Justice.—The answer of the secretary of the navy to the rule to show cause why a *mandamus* should not issue, is conclusive; and I entirely concur with the decision of the circuit court, in refusing the writ. The relatrix having received a pension under the general law, is not entitled to receive one, on the same ground, under the special law. My impression is, that congress having acted upon her case and made a special provision, she cannot claim under the general law. An individual applies to congress for compensation for services rendered to the public, and a special provision is made for his relief. And if a law should be passed at the same

session, making general provision for the payment of similar services, I should think that it could not be successfully contended, that such individual could claim under the general law. The merits of his claim having been considered and decided by congress, he can only claim under the special provision made for him. But in the present case, the claimant having received, under the general law, as large, if not a larger benefaction, than was given under the special law, her right under the latter is extinguished.

I differ from a majority of the judges, who hold, that the construction of this resolution, giving to the relatrix a pension, is a duty, in the discharge of which, an executive discretion may be exercised. The law is directory and imperative, and admits of the exercise of no discretion, on the part of the secretary. The amount of the half-pay pension given in the resolution, is fixed by law ; and is, therefore, certain. I am authorized to say, that my brother STORY agrees with this view of the case.

*518] *BALDWIN, Justice.—I concur with the court in not interfering with the proceeding of the circuit court, refusing the *mandamus* prayed for by the relator, on the ground that she is not entitled to the benefits of the general pension law of the 3d March 1837, and of the special resolution passed on the same day in her favor. My opinion is not founded on any special proceedings in the passage of the law and resolution, which have been referred to from the journals of the two houses, but from the intention of congress, apparent in the provisions of the two acts, not to give cumulative pensions, and the general principle of law, that where provision is expressly made by law for a particular case, it does not come within the general provisions of another law, which may embrace it by its general terms. 4 Story 2542, 2556. Had it been the intention to give both, the presumption is, it would have been so declared ; and the nature of the pensions, one being for life, and the other for five years and arrearages, shows the intention to be contrary, and to give her the election which she should claim ; she has yet that election, as it appears from the return to the rule, and the affidavits in the case, that the receipt of the pension under the general law, was, under such circumstances, no waiver of the pension specially given to her, should she now elect to take it, in preference to the general provision under the contemporary law.

But I cannot concur in opinion with the court, on the grounds on which they affirm the judgment, for two reasons : 1. That the circuit court had jurisdiction of the case ; and 2. That this court had not jurisdiction : and in order to ascertain whether the circuit court had jurisdiction, it is necessary to ascertain what is jurisdiction, as contradistinguished from its exercise ; for we all agree, that if the jurisdiction exists, there was no error in refusing the *mandamus* prayed for. "The power to hear and determine a cause is jurisdiction ; it is '*coram judice*,' whenever a case is presented which brings this power into action ; if the petitioner states such a case in his petition that, on a demurrer, the court would render judgment in his favor, it is an undoubted case of jurisdiction ; whether on an answer denying and putting in issue the allegations of the petition, the petitioner makes out his case, is the exercise of jurisdiction, conferred by the filing of a petition, containing all the requisites, and in the manner prescribed by law."

6 Pet. 709. The objection to jurisdiction "must be considered and decided, before any court can move one farther step in the cause; as any movement is necessarily the exercise of jurisdiction. It is the power to hear and determine the subject-matter in controversy between parties to the suit, to adjudicate, or to exercise any judicial power over them; the question is, whether on a case before a court, their action is judicial or extra-judicial, with or without the authority of law, to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, then the court has jurisdiction; what shall be adjudged or decreed between the parties, and what is the right of the case, is judicial action by hearing and determining it." 12 Pet. 718. If the court can act on any one subject of the petition, any matter "on which the plaintiff asks its interposition, it must be retained; so that the true inquiry is, not as to the extent, but the existence of any jurisdiction" (Ibid. 732); if any case is made out for its exercise (13 Pet. 162); if any relief can be given, we must proceed. 8 Pet. 536; 10 Ibid. 228. "Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed, is binding in every other court. But if it act without authority, its judgments and orders are nullities; they constitute no justification, and all persons concerned in executing such judgments or sentences are considered in law as trespassers." 1 Pet. 340; s. p. 2 Ibid. 163–9; 3 Ibid. 203. When a court of general civil jurisdiction gives judgment for a debt, or confirms an act directed to be done, neither the existence of the debt, nor validity of the act done, can be afterwards questioned, unless on appeal or writ of error; their power to act upon the subject, to judge whether the debt is due or not, is a question always open, collaterally; but if they can act upon it judicially their errors, however apparent, their proceedings, *inverso ordine*, or contrary to law, have no effect on their jurisdiction, or the validity of its exercise, till an appellate power shall reverse them. 10 Pet. 472–6; s. p. 2 Ibid. 167, 169. If the judicial function has been exercised by lawful authority, the court has jurisdiction; otherwise their acts are *coram non judice*. Ibid. 474. The judgment of a competent court, "withdrawn by law from the revision of this," is a sufficient cause to detain a prisoner; we cannot "look beyond the judgment, and re-examine the charges on which it was rendered." The judgment of a court of record, whose jurisdiction is final, is as conclusive on all the world as the judgment of this court would be. It is as conclusive on this court, as it is on other courts. It puts an end to inquiry concerning the fact, by deciding it." 3 Pet. 202–3; s. p. 7 Wheat. 42–45. The circuit court for the district of Columbia is a court of record, having general jurisdiction over criminal cases. An offence cognisable in any court, is cognisable in that. If the offence be punishable by law, that court is competent to inflict the punishment. The judgment of such a tribunal has all the obligation which the judgment of any tribunal can have. To determine whether the offence charged in the indictment be legally punishable or not, is among the most unquestionable of its powers and duties. The decision of the question is the exercise of jurisdiction, whether the judgment be for or against the prisoner, the judgment is equally binding in the one case, as in the other; and must remain in full force, unless reversed regularly by a superior court, capable of reversing it. If this judgment be

obligatory, no court can look behind it. If it be a nullity, the officer who obeys it is guilty of false imprisonment." Ibid. 203–9, *passim.*

These principles draw the line between jurisdiction, and its exercise, so clearly, as to supersede the necessity of my further inquiry what they are respectively; leaving no open question, except their application to this case, which is an application, or motion for a *mandamus* to the secretary of the navy, to compel him to pay to the relator, or to issue his warrant for the pensions claimed by her, under the act and resolution of congress of the 3d March 1837. The first proceeding in the circuit court was on a petition and affidavit in the proper form, praying for a rule to show cause why a *mandamus* should not issue; to which a return having been made; it was adjudged to be sufficient, and the motion for the *mandamus* was refused to be granted. Did, then, the petition, affidavit, &c., present a case for the exercise of the judicial power of the circuit court, or was it a matter *coram non judice*, is the question? for if they could inquire into it, as judges, they had power to grant the rule, however erroneously, illegally or even oppressively, they might act in doing it. In that stage of the cause, the proceeding was on the case as made out by the relator, which might justify the rule; though on the return of the respondent, there might be conclusive reasons for proceeding no further; but as the question of jurisdiction is on the first step, all questions which follow it are matters of discretion in its exercise, so that the only inquiry is, whether the case is "of judicial cognisance." 12 Pet. 623.

In ascertaining the jurisdiction of the circuit court of this district, I shall confine myself to the opinion of this court in *Kendall* v. *United States*, in which it was decided, that the case was proper for a *mandamus*, and that that court had power to issue it. After a review of former decisions, they proceed: "The result of these cases clearly is, that the authority to issue the writ of *mandamus* to an officer of the United States, cammanding him to perform a specific act required by a law of the United States, is within the scope of the judicial powers of the United States, under the constitution." 12 Pet. 618. "Congress has the entire control of the district, for every purpose of government; and it is reasonable to suppose, that in organizing a judicial department here, all judicial power necessary for the purposes of government would be vested in the courts of justice. The circuit court here, is the highest court of original jurisdiction; and if the power to issue a *mandamus* in a case like the present exists in any court, it is vested in that court." Ibid. 619. "There can be no doubt, but that in the state of Maryland a writ of *mandamus* might be issued to an executive officer, commanding him to perform a ministerial act required of him by law; and if it would lie in that state, there can be no good reason why it should not lie in this district, in analogous cases." Ibid. 621. The court then decided, that the circuit court of the district has the power to issue a *mandamus*, under the first, third and fifth sections of the 27th February 1801 (Ibid. 622), and in applying the law to the case before them, say, "there was no want of jurisdiction, then, as to the person; and as to the subject-matter of jurisdiction, it extends, according to the language of the act of congress, to all cases in law or equity. This, of course, means cases of judicial cognisance. That proceedings on an application to a court of justice for a *mandamus*, are judicial proceedings, cannot admit of a doubt; and that this is a case in law

is equally clear." Ibid. 623–4. The court then construe the third section of the act of the 27th February 1801 (2 U. S. St. 105), "as if the 11th section of the act of 13th February 1801 has been incorporated into it," by which this section declares, "that the circuit courts shall have cognisance of all cases in law or equity, arising under the constitution and laws of the United States, and treaties made, or which shall be made, under their authority; which are the very words of the constitution, and which is, of course, a delegation of the whole judicial power, in cases arising under the constitution, laws, &c.; which meets and supplies the precise want of delegation of power, which prevented the exercise of jurisdiction, in the case of *McIntire* v. *Wood*, and *McClung* v. *Silliman;* and must, on the principles which governed the decision of the court in those cases, be sufficient to vest the power in the circuit court of this district." 12 Pet. 626. Its judgment, awarding a peremptory *mandamus* against the postmaster-general, was accordingly affirmed. See 6 Wheat. 600.

As the authority of that case has been recognised in the opinion of the court delivered in this, it must be considered as settled, that the circuit court of this district, having the cognisance of all cases in law or equity, and being a court of general jurisdiction, is invested with the whole judicial power of the constitution, in relation to writs of *mandamus;* which is jurisdiction, if judicial cognisance of the person, the subject-matter, and the power to hear and determine, is jurisdiction; and of consequence, that court has a right to decide every question which arises in the cause, when their first step is judicial, under the authority of law. 1 Pet. 340. It is admitted, that if the law had required the secretary of the navy to do a ministerial act, the jurisdiction of that court would be unquestionable; not only to grant the rule to show cause, to issue the *mandamus*, but enforce it by ultimate process, if no sufficient cause is shown to the contrary in the return: which appears to me to be also an admission, that that court may and must judicially inquire whether the act enjoined by law and refused to be performed, is ministerial, executive or discretionary, in its nature. It is of the essence of the jurisdiction of any and every court of record, which is authorized to decide on any class of cases; to inquire whether, in the one before them, it is of that class; whether it is proper for the exercise of their power; and how it shall be exercised; otherwise, its action is abortive, and its proceeding by the most solemn consideration is a nullity, if their jurisdiction is to be tested by the judgment which they shall render.

If a decision in this case, that a *mandamus* shall not issue, is not a nullity, a contrary one cannot be; for such a decision is the result of a judicial inquiry, which the law authorizes to be made, whether the rule shall be granted, and the proceedings be followed up to consummation, or not: the law authorizes this inquiry into the facts of the case, and the judgment of the court puts an end to the "inquiry concerning the fact, by deciding it." To determine whether the facts of the case are legally sufficient to award the process of the court, "is among the most unquestionable of its powers and duties." 3 Pet. 203. The decision of these questions is the exercise of jurisdiction, whatever judgment may be given; and if the principles laid down in the case of Kendall, are law in this, the result is irresistible, that the court which can decide the facts and law, on which the granting or refusing a *mandamus* depends, has jurisdiction to hear, determine and render a

judgment on the application; which is conclusive till reversed. When this court has most solemnly adjudged, that the authority to issue a *mandamus* "is within the scope of the judicial power of the United States, under the constitution;" that if it exists in any court, it is vested in the circuit court of this district; and that the power in that court to exercise this jurisdiction, "results irresistibly" from the act of 1801; I am wholly unable to reconcile the conclusion formed in this case, with the principles and premises established in that; or to view the two cases in connection, on this point, without the conviction, that they are entirely repugnant, as well in principle as in their consequences.

It is the settled law of this court, that it cannot issue a *mandamus* to a public officer, in virtue of its original jurisdiction (1 Cranch 174, &c.; 12 Pet. 621); that this circuit court, by its original, general jurisdiction, has been invested with this power; that it exists in no other court; is within the scope of the judicial power of the United States; and consequently, exclusively within the judicial cognisance of that court. An award of a peremptory *mandamus* to the head of one executive department, has been affirmed as an act within the jurisdiction of the court, and is a case proper for its exercise; because the thing commanded to be done was ministerial in its nature. 12 Pet. 618, 626. A decision of the same court, refusing a *mandamus* to another head of an executive department, has also been affirmed, on the ground, that that court had no jurisdiction of the case, because the act which that officer was called on to perform, was of an executive, discretionary nature, and consequently, not ministerial; from which no other conclusions can result, than these:

1st. That the court, which has exclusive, original jurisdiction, to award a *mandamus* to a head of department, in any case, the only court in whom this power is invested, has neither jurisdiction, nor power to inquire judicially, whether the act which is the subject of the application for a *mandamus*, is of that nature as to justify the awarding of this writ, and of consequence, cannot decide whether it shall issue or not, for if it can so inquire and decide, that is necessarily the exercise of jurisdiction.

2d. That the only court, which has any original jurisdiction over the person and subject-matter, to which the application for the *mandamus* applies, is incompetent to hear and determine it on its merits; if this court, in its exercise of appellate power on a writ of error, shall be of opinion, that the circuit court ought not to award the *mandamus* in the case before them, on the sole ground that the act complained of was not ministerial, and that, therefore, the subject-matter was *coram non judice*, in that court.

3d. Whence it follows, that this court, in virtue of its appellate jurisdiction, can alone exercise the judicial power of the United States, to hear and determine a case on a *mandamus*, which turns on the question, whether the act sought to be commanded to be done, was of a ministerial nature, a proper subject for the writ, or of an executive or discretionary character, which made it improper to issue it. In other words, that the award of a *mandamus*, in a case where its award would be erroneous, was an usurpation of the judicial function, a nullity, had it been made in this case; which conclusions can, in my opinion, be drawn only by overlooking the settled distinction between jurisdiction, and its erroneous exercise.

Though it matters not, for the purposes of this case, on what ground the judgment below is affirmed, a view of the consequences which must result from a denial of jurisdiction, under the opinion of this court, must lead to the most serious considerations ; for the want of original jurisdiction leaves a judgment rendered in a case *coram non judice*, as utterly null and void, when objected to in a collateral action, as it is after a reversal on error. Nay, more so, where the nullity arises from an intrinsic want of power, it requires not the action of an appellate court, to authorize all the world to disregard it, to oppose, even by force, the officer who attempts to execute any order or judgment, which the court may make or render, and makes him liable to an action or indictment, if he actually executes it. Now, let it be supposed, that in enforcing a proceeding by *mandamus*, the marshal or the defendant is maimed ; an indictment is found ; it must be tried in the circuit court of this district ; they decide that they had jurisdiction in the *mandamus*, and power to issue the attachment ; that the marshal had lawful authority to execute it by force, if resisted, convict, sentence, and imprison the defendant ; the hands of this court are paralysed by its own decisions. The sentence of the circuit court is final, absolute and conclusive of the facts, as well as the law ; it is withdrawn from any revision by this court, by *habeas corpus* (7 Wheat. 42 ; 2 Pet. 202, 209), by writ of error (3 Cranch 170–2, 174), or *mandamus* (3 Dall. 42 ; 13 Pet. 290, 408); the judgment " is as conclusive on all the world, as the judgment of this court would be, as conclusive on this court at on other courts" (2 Pet. 203), though this court should be of opinion, that in law the marshal ought to have been convicted. Ibid. 209. An imprisonment under a judgment cannot be unlawful, unless that judgment be an absolute nullity ; and it is not a nullity, if the court has general jurisdiction of the subject, although it should be erroneous." Ibid. Let this principle be applied to a *mandamus*, according to the opinion in *Kendall's Case*, it will be manifest, that the circuit court, having original, exclusive and general jurisdiction in this case, had, if that case remains authoritative, full authority to exercise it, by any order, judgment or process, which they deemed to be called for, in the exercise of their discretion, on the exigencies of the cause. It does not come within any power of this court, by looking to consequences, to remove any restrictions on its appellate jurisdiction, or to exercise it, where it is not clearly given ; it may decide on the errors of inferior courts, in assuming, or exercising, their powers ; but if it is admitted, that they have jurisdiction over the person and subject-matter, and power to issue the process in question, the power of this court is restricted to a revision of the exercise of those powers. " Whether such a restriction be not inconsistent with sound public policy, and does not materially impair the rights of other parties, as well as of the United States, is an inquiry deserving of the most serious attention of the legislature. We have nothing to do, but to expound the law as we find it ; the defects of the system must be remedied by another department of the government." 3 Wheat. 309. " We are entirely satisfied to administer the law as we find it." "The argument of inconvenience has been pressed upon us with great earnestness. But where the law is clear, this argument is of no avail ; and it will probably be found, that there are also serious inconveniences on the other side. Wherever power is lodged, it may be abused; but this forms no solid objection to its exercise. Con-

fidence must be reposed somewhere ; and if it should be abused, it will be a public grievance, for which a remedy may be applied by the legislature, and is not to be devised by courts of justice." 7 Wheat. 45. "The question whether an offence was or was not committed, that is, whether the indictment did or did not show that an offence had been committed, was a question which that court was competent to decide." 3 Pet. 206. So, on a motion for a *mandamus*, the question is, whether on the petition and affidavits on the part of the relator, a rule should be granted to show cause, or the writ be awarded, or refused." "The cases are numerous, which decide that the judgments of courts of record having general jurisdiction of the subject, although erroneous, are binding, until reversed." "This acknowledged principle seems to us to settle the question now before the court. The judgment of the circuit court in a criminal case, is of itself evidence of its own legality, and requires for its support no inspection of the indictments on which it is founded. The law trusts that court with the whole subject, and has not confided to this court the power of revising its decisions. We cannot usurp that power, by the instrumentality of the writ of *habeas corpus*. The judgment informs us that the commitment is legal, and with that information it is our duty to be satisfied." Ibid. 207. "Without looking into the indictment, &c., we are unanimously of opinion, that the judgment of a court of general criminal jurisdiction justifies this imprisonment," &c. (though as this court had declared, "that court has misconstrued the law, and has pronounced an offence to be punishable criminally, which, as we may think, is not so"); and "that the writ of *habeas corpus* ought not be awarded." Ibid. 209.

These acknowledged principles must apply to the judgment or order of the former court on a *mandamus*, as it has the same original, general and exclusive jurisdiction in those cases, as it has on criminal offences ; the judgment is, of course, equally evidence of its own legality, and conclusive till reversed ; the only difference between the two classes of cases, is dependent on the question, whether this court has power to revise a judgment on a *mandamus*, either by a writ of *habeas corpus*, or a writ of error. On the application for a *habeas corpus*, this court must see that there is a judgment of a court, having knowledged power to act in the case ; all inquiry thus ceases, as this court cannot look beyond the judgment ; if they inspect the petition, &c., to ascertain whether the case presented is one proper for the exercise of original jurisdiction, they usurp it, by placing themselves in the seat of the circuit court, in exercising the precise function which has been delegated to that court, in the plenitude of judicial power. On the same ground, this court might revise the judgment of a circuit court held in a state, on an action, or indictment, by *habeas corpus*, and discharge the defendant from imprisonment ; not because the court below had not power to hear, determine or render a judgment ; but because on the case, as it appeared by looking beyond the judgment, it ought to have been for the defendant. Such power has never been asserted or exercised in relation to any circuit court ; it has been solemnly denied as to the court of this district, which has "larger powers, in cases of *mandamus*, than any other court." 12 Pet. 615, 626. If a writ of *habeas corpus* does not lie on its judgments in criminal, and other civil cases, it cannot lie on a judgment in a case of *mandamus ;* if the party cannot be discharged on *habeas corpus*, it is decisive of jurisdiction, and

shows most clearly, that the only questions which can be revised relate to errors alleged on matters of law, apparent in the record and judgment. That this is a case within the jurisdiction of the circuit court, I, therefore, cannot doubt, even admitting that had it been exercised, in any way interfering with the defendant, under the circumstances of this case, it would have been contrary to law, on the construction of the act and resolution of congress; but that the action of that court can be declared to be extra-judicial, on a matter within their acknowledged jurisdiction, merely because it related to an act which this court deem not to be ministerial, seems to me to be the subversion of principles which have been long established, and till now have been held as acknowledged ones in every past adjudication.

In my opinion, there can be no subject on which this court should act with more caution, or adhere more steadily to the marked corner-trees of the law, than those which point to, and denote the line between the jurisdiction of inferior courts and its exercise; indeed, there is no subject on which a departure from an established principle would more radically "subvert our whole system of jurisprudence." 9 Pet. 602. When it is considered, that on the adherence to this line, or a departure from it, every order, decree or judgment of the courts of the United States, on the various subjects of their jurisdiction, is absolutely conclusive on the subject-matter decided, if no appeal or writ of error lies or is taken; or an absolute nullity, binding neither on other courts, parties, nor the officers of those courts which render a judgment, who may refuse to execute, or become punishable in executing it; the inquiry into jurisdiction becomes a question of the highest import. If the past adjudications of this court had settled the law to be, that on the question whether a circuit court had jurisdiction of an action of ejectment or debt, this court could look through the judgment, to the declaration and evidence, when the parties and subject-matter were confessedly within their jurisdiction; and make the mode in which it had been exercised by a judgment, for plaintiff or defendant, the test of the power to render any judgment at all; or if it had the right, on an indictment and sentence, to make the same inquiry, when the power of the court to try and punish was admitted; I should feel bound to apply the same principles to a case of *mandamus*, in the circuit court of this district, without feeling myself at liberty to look to the consequences. But finding the law to be settled otherwise, in all other cases, and being wholly unable to discover in the decisions of this court, any one rule or principle, which will except the case of a *mandamus* from the application of the cases cited; I feel bound to examine the effect of testing the jurisdiction of a court on *mandamus*, by a rule, which is repudiated in every other case, civil or criminal. The difference between an adherence to, or an innovation upon, established principles of general application, on any supposed inconvenience, seems to me to be as visible, as practical, and as important, as the difference between a change of system of jurisprudence by legislative power, and the assumption of a power by a court, to make it what it ought to have been made by a law. Being fully convinced, that on the authority of this court, the proposition, that if the circuit court can deliberate, by judicial power, on granting a rule to show cause why a *mandamus* should not issue; all intermediate questions between the rule, and an attachment, are and can be nothing else

but the exercise of jurisdiction, is fully supported, I have nothing to add on this point.

It is also my opinion, that the acts to be performed by the secretary of the navy, in relation to the payment of a pension, either under the general laws, or the special resolution in favor of the relator, if, by their fair construction, she was entitled to the extent of her claim, are of a purely ministerial nature, according to the decisions of this court. If the right of the relator was in all other respects clear, except so far as they depended on the construction of the acts of congress, the case was of judicial cognisance only; the duty of a secretary is not judicial; it is not his province to construe laws, which enjoin on him the performance of definite acts, differently from what the courts have done, or may do. Where the law directs him to act, he must act according to law, on all matters where his duty is prescribed, so as to restrain his discretion; as the commissioner of the navy pension fund, he decides whether the applicant comes within the law, on the evidence adduced before him; but when he has decided that a pension is due, or when the law declares that a person named is entitled to one, and prescribes the amount, he has no longer a discretion to withhold it. The ascertainment of the date at which the pension commenced, its amount and duration, are ministerial acts on which discretion is excluded, for its exercise cannot alter either; if the payment is a right of the applicant, the law makes it a duty to pay, or give a warrant for payment by the officer who holds the fund. Thus, under the general act, it is enacted, "that if any officer," &c., "have died," &c., "leaving a widow," such widow shall be entitled to receive," &c. (5 U. S. Stat. 180), or resolved, "that the widow of the late S. D. be paid from the navy pension fund a pension," &c. (Ibid. 199), the command of the law is unqualified in both cases; if the applicant comes within the description, the officer whose duty it is to pay, or direct the payment, has no discretion to do it or not, after being satisfied of the right of the applicant, as one of the beneficiaries of the law. The name must be inscribed on the pension roll, and thenceforth, the payment is but the execution of a specific defined duty, prescribed by law, of the same nature as entering an ascertained credit, on the account of a contractor in the post-office department (12 Pet. 614), the issuing a patent, after all the requisites of the law have been complied with (6 Wheat. 600), or the payment of a liquidated claim, under a special act of congress directing it to be done. In all these cases, the act to be done is purely ministerial; all the discretion to be exercised has been exhausted; the duty is positive, by the command of the law, which no authority can supersede or grant a dispensation from its performance; nor while *Kendall's Case* is recognised as authority, can the nature of an executive office exempt the incumbent from the supervisory power a competent court, in a case otherwise proper for its exercise. 12 Pet. 610–15.

The judges of the courts of the United States are not clothed with any immunity or exemption from this power; it is applied to them; and courts of record, of general jurisdiction, to the extent of the judicial power of the United States, by this court, and on the same principles, as to an executive officer, by the court of this district, not where the law confides a discretion to do or withhold a particular act, but where it requires it to be done, as a ministerial duty. As, where the law required, that after the court

had rendered a judgment, it should be signed by the judge, and the judge died after the rendition of the judgment, but without affixing his signature to the record; his successor refused to sign it, because the judgment had been given by his predecessor, and this court held: That the judge in office had a discretion to set aside the judgment by granting a new trial; but if he did not exercise his discretion by doing it as a judicial act, he was bound to sign the judgment as a mere ministerial act required by law; in order to give one party a right to execution, and the other a right of appeal or writ of error. In the opinion of this court, there is the following sentence, which is too appropriate to one ground of objection to the jurisdiction, and action of the circuit court, in this case, to be omitted; it is this: "But the district judge is mistaken in supposing that no one but the judge who renders the judgment can grant a new trial. He, as the successor of his predecessor, can exercise the same powers, and has a right to act in every case that remains undecided on the docket, as fully as his predecessor could have done. The court remains the same, and the change of the incumbent cannot, and ought not, in any respect, to injure the rights of the litigant parties." A peremptory *mandamus* was awarded. 8 Pet. 303-4. In this case, the change of officers who had the disbursement of the pension fund, can have no effect on the rights of the relator; a refusal by the predecessor of the present incumbent, is no legal cause for his refusal to do the act required, had it been enjoined by law; it can be considered only as a repeated refusal of successive applications, having the same effect as if made to himself to perform the same ministerial act, which it would have been the duty of either to perform, if the right claimed had existed, but as it did not exist, the refusal was justifiable.

The remaining point in this case is, whether a writ of error lies from this, to the circuit court of this district to remove and revise the proceeding on *mandamus;* which I shall not examine in detail, as my opinion in *Holmes* v. *Jennison*, on the same question in the kindred case of *habeas corpus*, is given at length. If this question remained as unembarrassed by the authority of this court, as it was in the case of Holmes, I should have as little doubt in this, as I had in that case; but as this court asserted their power to issue the writ of error in the case in 7 Wheat. 534, and acted on it in 12 Pet. 608-26; the question can no longer be considered exclusively on the principles of the common law, the terms of the judiciary act, or analogous decisions of this court. Yes as the case in 7 Wheaton did not call for any action of this court, as the argument is not set out, nor any authority quoted in favor of the writ of error, and the court confined themselves to a mere declaration that it would lie, and in the case in 12 Peters, this question was argued only on one side, and entirely unnoticed by the court in their opinion, it cannot be considered as conclusively settled.

That the great questions of jurisdiction, which arise in this court, in cases on error under the 22d or 25th sections of the judiciary act, should be considered with the greatest deliberation, and remain open till all doubts are removed, especially, in cases where the common law is decisive against the jurisdiction, no one will deny. When the court express an opinion, or act in a case involving their jurisdiction, in which there is either no argument, a partial one, or *ex parte* only; it ought not, and cannot have the

same weight as judicial authority, as when the whole subject is presented to the court ; considered as it may be elsewhere than in open court, it is necessarily in the absence of counsel, and of any but a very limited reference to adjudged cases. In other times, this court often declared, that a point decided without argument remained open for consideration (3 Cranch 172 ; 6 Ibid. 317), till it was directly made ; even on a question of jurisdiction, which was for the first time made, thirty-four years after the court had been in the constant exercise of that which was objected to. In *Buel* v. *Van Ness*, it was objected, that the amount of a judgment in a state court, was not sufficient to ground an appeal or writ of error, this court say : "This is a new question ; thirty-four years has this court been adjudicating under the 25th section, &c. ; and familiarly known to have passed in judgment upon cases of very small amount, without ever having its attention drawn to the construction, &c., now contended for. Nevertheless, if the received construction has been erroneously adopted, without examination, it is not too late to correct it now. But we think that is not necessary to sustain our practice upon contemporaneous, and long-protracted expositions, that as well the words of the two sections under which we exercise appellate jurisdiction, as the reasons and policy on which those clauses were enacted, will sustain the received distinction between the cases to which those sections extend." 8 Wheat. 321–2. As no past opinion of this court has taken this course, in considering this question, I hold it to be as open now, as it was in the case just quoted ; and shall pursue that which the court then took.

A *mandamus* is directed to a judge, to an inferior court, or an officer, commanding the performance of a specific act ; but it lies in neither case, on any matter of discretion, or to coerce the judgment as to the manner of acting, where the law permits the doing or refusing to do the act ; though it does lie to enforce the performance of a mere ministerial act, by an executive officer (12 Pet. 610), a judge or court (8 Pet. 302), which they have no "authority to deny or control." Ibid. The *mandamus* acts upon no right of the respondent, of person or property, where he has no interest in the subject-matter, as in the case now before us. "The real parties to the dispute are the relator and the United States," who cannot be sued, or the claim be in any way enforced against them, without their consent through an act of congress ; but when they consent to submit the whole subject of pensions, to an officer of their own, and impose on him a positive duty to pay, he is the mere instrument to execute the law. See 12 Pet. 611–12.

The command of the writ of *mandamus*, is no "final judgment" in a cause before a court, "on which a writ of error may issue for its reversal" (8 Pet. 303) ; it is one of "those intermediate proceedings, which take place between the institution and trial of a suit ; obedience may be refused, if it be shown that there are matters in the cause, which are within the discretion of the court below, which justifiy the refusal (8 Pet. 589–90) ; and what is conclusive on this point, is, that a writ of error may be dismissed by this court, for the want of jurisdiction, as was done in 12 Pet. 140, in the the same case, in which a peremptory *mandamus* had been awarded four years before (8 Pet. 304), to sign a judgment previously rendered ; and in which this court refused a second *mandamus*, to render a final judgment. 9 Pet. 602, 605. All that this court can do, is to order the court below to proceed to judgment ; but it will not direct in what manner its discretion

shall be exercised (8 Pet. 304 ; 9 Ibid. 602–3) ; it compels them to "proceed to a final judgment, in order that we may exercise the jurisdiction of review given by the law" (12 Pet 622), but only for that purpose. Ibid.

A *mandamus* never issues to an executive officer to control his discretion or judgment, where the law gives him any right to deliberate, it is to perform ministerial acts which the law has enjoined on him ; the *mandamus* is a summary order to enforce the duty, by supplyinga remedy for a denial of an existing right, where, for the want of a specific one, there would otherwise be a failure of justice. 12 Pet. 620. The writ of *mandamus*, like the writ of *habeas corpus*, is a writ of right ; but the proceeding upon it is matter of discretion, in no wise partaking of the character of a final judgment, its effect, or an award in the nature of a final judgment, which can be revised on error ; so the law has been finally settled in England by the house of lords, as declared and recognised by this court in 6 Pet. 657 ; and so it must be considered here, unless a final judgment means one thing in the judiciary act, and another and different thing at common law, which distinction is negatived in the same case. The writ of *mandamus*, as known to the common law, is well defined in 1 Cranch 171 ; 5 Pet. 192, and 12 Ibid. 620 ; it is a prerogative writ, which is issued from the court of king's bench, in virtue of its general supervising power over all inferior tribunals and officers, to compel them to what that court has determined, or supposes, to be consonant to right and justice, where there is no other specific remedy prescribed. Yet this court have held, that the mandatory writ in the register, which issues from the *officina brevium*, under the seal of the court of chancery, performs the same office, without the interference of the court of king's bench. 5 Pet. 192–4. If this be so, then there is a specific remedy by an appropriate writ in the register, grantable on motion in chancery ; there is a concurrent jurisdiction in the two courts ; and of consequence, it would seem not to be a prerogative writ, even by the common law, when directed to an inferior court ; but a writ in the nature of a *mandamus* described in 12 Pet. 622. In 5 Pet. 193, a *mandamus* to a public officer, is declared to be the exercise of original jurisdiction, but appellate when directed to a court ; the power of this court to issue this writ is asserted, under the 13th section of the judiciary act, to be the same which is exercised by the chancellor, in England, and by the supreme courts of the states, in virtue of their "general superintendence of inferior tribunals," and the court use this language : "The judiciary act confers this power expressly on this court ; no other tribunal exists by which it can be exercised." Ibid. 194. In 12 Pet. 621, "the power to issue this writ, and the purposes for which it may be issued in the courts of the United States, other than this district, is asserted under the 14th section, as a power common to this and the circuit courts in the states. But this power is not exercised, as in England, by the king's bench, as having general supervising power over inferior courts, but only for the purpose of bringing the case to a final judgment or decree, so that it may be reviewed. Ibid. 622. So far, then, as respects a *mandamus* from this to a circuit court, or from a circuit to a district court, it is clear, that no decision upon such writ is a final judgment revisable in error or on appeal, as well on these principles, as the following language of this court in 9 Pet. 602, in an unanimous opinion delivered by the late chief justice, on a motion for a *mandamus :*

"This court is asked to decide, that the merits of the case are with the plaintiffs; and to command the district court to render judgment in their favor. It is an attempt to introduce the supervising power of this court into a cause, while depending in an inferior court, and prematurely to decide it. In addition to this obvious unfitness of such a proceeding, its direct repugnance to the spirit and letter of our whole judicial system cannot escape notice. The supreme court, in the exercise of its ordinary appellate jurisdiction, can take cognisance of no case, until a final judgment or decree shall have been rendered in the inferior court. Though the merits of the cause may have been substantially decided, while anything, though merely formal, remains to be done, this court cannot pass upon the subject. If, from any intermediate stage in the proceeding, an appeal might be taken to the supreme court, the appeal might be repeated, to the great oppression of the parties So, if this court might interpose in the progress of a cause, by way of *mandamus*, and order a judgment or decree; a writ of error may be brought to the judgment, or an appeal from the decree, and a judgment or decree entered in pursuance of a *mandamus*, might be afterwards reversed. Such a procedure would subvert our whole system of jurisprudence."

Taking it, then, as settled, that on a proceeding by a *mandamus* to an inferior court, no writ of error lies, I now proceed to inquire, whether it will lie, when the *mandamus* is directed to an officer to perform a merely ministerial act, by a court having original jurisdiction to award the writ, as the court of this district, is admitted to possess by the acts of February 1801, referred to in 12 Pet. 619, 622, 624. As the purposes of this case do not require it, I shall not examine into the apparent discrepancy between the opinion in 5 Peters, and 12 Ibid., on the nature or office of the writ of *mandamus*, whether they depend on the 13th or 14th section of the judiciary act; but confine myself to the view which the court take of the subject, under the act which gives jurisdiction to the court of this district to award it, which is this: "That proceedings and an application to a court of justice for a *mandamus*, are judicial proceedings, cannot admit of a doubt; and that this is a case in law, is equally clear. It is the prosecution of a suit, to enforce a right secured by a special act of congress, requiring of the post-master-general the performance of a precise, definite and specific act, plainly enjoined by the law. It cannot be denied, but that congress had the power to command that act to be done; and the power to enforce the performance of the act must rest somewhere, or it will present a case which has often been said to involve a monstrous absurdity in a well-organized government, that there should be no remedy, although a clear and undeniable right should be shown to exist; and if the remedy cannot be applied by the circuit court of this district, it exists nowhere. But by the express terms of this act, the jurisdiction of this circuit extends to all cases in law, &c. No more general language could have been used; an attempt at specification would have weakened the force and extent of the general words, *all cases*. Here, then, is the delegation to this circuit court, of the whole judicial power in this district, and in the very words of the constitution, which declares that the judicial power shall extend to all cases in law and equity arising under the laws of the United States," &c. 12 Pet. 623–4.

No one has ever denied, that congress has power, by the constitution, to give authority to the courts of the United States, to issue a *mandamus*

to an inferior court, or a public officer ; the only objection to its exercise by this court, on the writ directed to the secretary of state was, that it was by original jurisdiction, which could not be granted in such case. 1 Cranch 175. But this objection cannot avail, when applied to a court of general, original and exclusive jurisdiction, in the whole range of the judicial power of the constitution ; which necessarily embraces prerogative, among all other writs known to the common law, or the laws of the states which ceded this district to the United States, with powers of exclusive legislation in and over it. Such is the jurisdiction of the circuit court of this district, as declared in the above extract from the opinion in *Kendall's Case*, which contains in substance the common law definition of the prerogative writ of *mandamus ;* whether it is directed to a court or an officer, it equally comes within the definition, being adapted to the exigency of the case, so as to give an adequate remedy whenever there is an existing right which can be enforced by no other process, which is the very office of the common-law prerogative writ. There is no principle of law, there is no decision of this court, nor any provision of any act of congress, which discriminates a *mandamus* to a court, from one to an officer, either in its nature, the action of the court upon it, or the effect thereof. It is but an order to do an act, ministerial in its nature, enjoined by law, in a case which involves no discretion, nor leaves any alternative ; such an order is never made, where a judicial act remains to be done by a court, or an executive act to be performed by an officer, which the law submits to the exercise of his own judgment on the matter. Thus, in 8 Pet. 304, the order was made to sign a judgment previously rendered, because the law commanded it ; but in the same case, the court refused to order a judgment to be rendered for the plaintiff. 9 Pet. 602. So, in *Kendall's Case*, the *mandamus* was properly issued, for the reasons assigned, the act commanded was purely ministerial ; it was refused in this case, because some discretion was involved, which will be found to be the turning point in all the cases at common law, or in this court, without a *dictum* in either, which asserts the doctrine, that the order of the court partakes any more of the character or effect of a final judgment, in the one class of cases than the other. Each is the prosecution of a suit to enforce a right, secured by a special, or the general, law which governs the case ; the proceeding is the same in both, from the presentation of the petition till the order of the court is made ; and when made, the order relates to a ministerial act, in which neither the court nor the officer has any interest, unless in cases where the *mandamus* restores the relator to an office, of which he has been ousted by an illegal act. But in such cases, the *mandamus* affects only the possession (See 12 Pet. 620); the right to the office remains open on a *quo warranto.*

In the present case, the writ is prayed for in order to obtain the payment of a sum of money, to which the respondent has no claim; the act required of him is to sign such warrant or other order on the officer who has the custody of the pension fund, as will enable the relator to receive what congress have appropriated to her use. Whether such appropriation has been made, depends on the construction of the acts of congress ; which must be decided by the court, and not the secretary ; if the right to the sum claimed exists by the law, its payment is as much a ministerial act in signing the warrant, as signing a judgment already rendered ; both being an execution

of the command of the law; there is no principle which excludes a writ of error in one case, that can justify it in the other. The only question in this case is, whether congress has directed the money to be paid, as it was in *Kendall's Case*, whether the credit should be given; when that is settled, the *mandamus* only enforces the right of the relator to receive that which congress had declared belonged to her; the awarding the writ is by a summary order, made on affidavit and motion, without a jury, or the forms of the common law being pursued, as in suits commenced by original writs. Whether the subject-matter of the order relates to the payment of money, or any other act of a ministerial nature, the nature or character of the order does not become that of a final judgment, revisable by a writ of error, the common law does not authorize any appellate proceedings on a prerogative writ; the judiciary act makes no provision for it; and nothing but future legislation can, in my opinion, convert a summary order on a motion or rule, into a final judgment, so as to make it cognisable in error. The reasoning of the court, in 9 Pet. 602, is conclusive, that error does not lie to an order awarding a *mandamus* to a court. It is admitted, that it does not lie at common law in any case of *mandamus* (6 Pet. 657); for which one reason alone is sufficient to show the true policy of the law. That as this remedy was designed to be a speedy one, the party who had obtained it should not lose its benefit by being hung up by a writ of error (1 Str. 543, 8 Co. 127 *b*), or, in the language of this court, by the appeal being "repeated to the great oppression of the parties" (9 Pet. 602), by subjecting them to all the delay incident to an appeal, or writ of error; which "would subvert our whole system of jurisprudence" (Ibid.), if a summary order shall be deemed a final judgment or decree.

The essence of a prerogative writ is in the promptitude of the remedy; it is devised to create one, where none adequate existed; and it is administered so as to meet the ends of justice in a summary manner. 12 Pet. 620. It is not for me to say, whether power to so act, ought to be subject to revision; my inquiry is only, whether the law has made it so, by prescribing one rule for the case of its exercise on a court or judicial officer, and a different one for an executive or ministerial officer. The most solemn decisions of this court justify me in denying the existence of any revising power in the first classes of cases; every reason and principle on which they are founded apply equally to the last classes; and where I find that the only cases in which the existence of such power is asserted or assumed, contain no reference to precedent authority, or reasons to support them, I cannot feel bound to consider the law to be so settled as to govern this case. Nor, in the course of the opinion now delivered by the court, does there seem to me to be such a train of reasoning, or reference to settled principles, as to overcome the weight of authority in the previous adjudications of this court.

In referring to the case of *Weston* v. *Charleston*, in 2 Pet. 463, wherein it was held, that a writ of error would lie, under the 25th section, to the refusal of a state court to award a prohibition; I think the court has added to the strength of their own opinion, but little, if anything, in principle or authority; for no order of a court partakes less of the character of a final judgment in a suit, than an order awarding or refusing a prohibition. In one case, an inferior court is ordered not to proceed to a judgment, but to

surcease action in the cause ; in the other, it is left free to act ; but in either case, the only question is, whether the inferior court has jurisdiction ; if they have, it cannot be controlled in its exercise : if they have not, they can render no judgment ; the action of the superior court must necessarily be confined to jurisdiction, and its revision by this court can extend no further.

In the opinion in 2 Peters, no adjudged case at the common law, or in this court, is referred to ; its jurisdiction seems to be assumed more from the supposed necessity of its exercise, than from any principle of law, or provision in the judiciary act ; and no argument was had on this point, till it was directed by the court, after an argument on the merits at a preceding term ; for which reasons, I have been disposed rather to look to this case as a beacon, than to adopt it as a precedent. It has been, in my opinion unfortunate for this court, that the course of argument, in cases involving the momentous question of what are the proper subjects for the exercise of its appellate jurisdiction, has been so limited as it appears in the reports of its decisions on this subject. In tracing them back to the organization of the court, it will be found, that forty years had elapsed before there was a writ of error sustained on a prohibition ; more than thirty, before it was asserted that it would lie on a *mandamus ;* fifty, before it was acted on ; and that this is the first case in which it has been held to lie on a *habeas corpus.* This affords, it is true, no conclusive argument that the power exists only by assumption, because it has been so long dormant ; yet it affords the most powerful reasons for the most thorough consideration of a case, where its exercise is invoked for the first time, by a full research into the principles, the analogies, and the usages of law ; which define appellate power and its subjects, according to the common law applied to the judiciary act, which, by reference, adopts it as its basis.

There is great danger of error in bringing any case within the 22d or 25th sections, which is either without precedent in the common law, or opposed to its settled principles, still more so, when both objections apply as they do in the case of a prohibition ; for it will be found very difficult to exercise, under the judiciary act, any appellate power which is repudiated by the principles, usages and adjudged cases of the common law. And if it should so happen, that even on the fullest consideration, a single case of this description is acted upon, too much caution cannot be used in most thoroughly examining another case, supposed to be analogous ; *à fortiori,* where the first innovation was without argument, a partial or *ex parte* one, or one directed on second thought, after the merits of the case had been discussed. No safer course can be adopted than was taken in the case in 8 Wheat. 321–2, wherein the court would not sustain an unquestioned practice of thirty-four years, " by contemporaneous and long-protracted exposition," in the actual exercise of jurisdiction under the 25th section ; but justified it by a reference to " the reasons and policy" developed in that and the 22d sections, in conferring their appellate power. Had this course been taken in this, and the case of *Holmes* v. *Jennison,* by investigating the grounds on which a writ of error had been sustained on a prohibition ; instead of assuming that position as impregnable, then holding that the appellate power to revise the proceedings on a *mandamus* was a consequence resulting from its exercise in a case of prohibition ; and that the

same power over a *habeas corpus* followed, as the conclusion from those premises, the final result would have been more satisfactory, if not entirely different. Where this chain will end no one can tell.

In forming my opinion in this, and the case of Holmes, I have been fully convinced, that it is founded on principles too well established by the adjudged cases, books of authority, and the decisions of this court, to be shaken by the case of *Weston* v. *Charleston*, or those which are dependent upon it; believing that that case rests alone on its own unsupported authority. I cannot recognise it as a basis for this, or the case of Holmes. Nor can I feel bound to consider the point as settled, so as to exclude further consideration, by reversing the course now taken by the court; and looking through the cases of *habeas corpus*, and *mandamus*, to the case of prohibition on which they rest, bringing the exercise of appellate power of this court over that case, to the test of the common law, the judiciary act, and the decisions of this court, cited in this, and the opinion in *Holmes's Case*, which have hitherto remained without notice, in argument or opinion, and consequently, not considered. When this course shall have been taken by the court, mine will conform to whatever conclusion may be adopted; but while those cases referred to by me continue unnoticed, my judgment will be guided by them as authoritative; and until they shall be reconsidered and overruled, I cannot but consider them to be more firmly rooted and planted in the law, more congenial to its principles, its policy, and the reasons on which it is founded, than any decisions which have been since made to the contrary. If the purposes of justice require a further expansion of our appellate power, it is the duty of congress to prescribe it, but while the law remains unchanged by legislative power, I cannot cease to deprecate the onward progress of jurisdiction, by step on step, from case to case, to which no limit seems assignable, so long as the emergency of a cause can be held to justify the assumed necessity for the exercise of that power, where it is not clearly within the provisions of the judiciary act.

Catron, Justice.—Between the circuit court of this district, and the executive administration of the United States, there is an open contest for power. The court claims jurisdiction to coerce by *mandamus*, in all cases where an officer of the government of any grade refuses to perform a ministerial duty: and of necessity claims the right to determine, in every case, what is such duty; or whether it is an executive duty, when the power to coerce performance is not claimed. Where the line of demarkation lies, the court reserves to itself the power to determine. Any sensible distinction applicable to all cases, it is impossible to lay down, as I think; such are the refinements, and mere verbal distinctions, as to leave an almost unlimited discretion to the court. How easily the doctrine may be pushed and widened to any extent, this case furnishes an excellent illustration. The process of reasoning adopted by those who maintain the power to assume jurisdiction, is, that where a right exists by law to demand money of an officer, and he refuses to pay, the court can enforce the right by *mandamus;* and to ascertain the existence of the right, it is the duty of the court to construe the law: and if, by such construction, the right is found, and the refusal to pay ascertained to have been a mistake; then the officer will be coerced to pay out the money, as a ministerial duty. In most cases (as in

this), the court will be called on to try a contest only fit for an action of *assumpsit*. First, it must ascertain the existence of the right, from complicated facts, and the construction of doubtful laws: this found, the duty follows; it being a duty, it is for the court to say, whether it is clear; if so, being an ascertained duty, and clear, then coercion, of course, would follow. That few cases of contested claims against the government would escape investigation, were these assumptions recognised, is free from doubt.

The great question, then, standing in advance of all others in this cause, and the only one I feel myself authorized to examine is the broad one, whether the circuit court of the district of Columbia, can, by a writ of *mandamus*, force one of the secretaries of the great departments, contrary to the opinion and commands of the president of the United States, to pay money out of the treasury? Mrs. Decatur claimed a double pension; a single one was paid by the secretary of the navy; she demanded the additional one, amounting to nearly $20,000; the secretary refused to pay it; she then memorialized the president, and he concurred with, and affirmed the decision of the secretary, that the claim could not be allowed; and from this final decision of the executive department of the nation, Mrs. Decatur appealed, in the form of a petition *for a *mandamus*, to the circuit court of the district of Columbia, to reverse and annul the decision, [*519 made by the secretary, and sanctioned by the president. The court assumed jurisdiction, compelled the United States, through the secretary of the navy, to file a long answer; and in a tedious law-suit, to defend the United States. That he did so successfully, is of little consequence; the evil lies not in the loss of $18,600 to the government, but in the concession by this court, that the circuit court of the district has the power to sit in judgment on the secretary's decision; to reverse the same, at its pleasure, and to order the money to be paid out of the treasury, contrary to his will, and to the will of the president, and that of all those intrusted by the constitution and laws with the safe-keeping of the public moneys.

Stripped of the slight disguise of legal forms, such is the case before us; the conflict between the executive and judiciary departments could not well be more direct, or more dangerous. The idea that they are distinct, and their duties separate, is confounded, if the jurisdiction of the court below is sustained; placing the executive power at its mercy, in case of all contested claims. Few can be more contested than the one before us; if jurisdiction can be exercised in this instance, it is difficult to see, in what others it does not exist; to establish which, we will briefly recapitulate the leading facts. On the 3d of March 1837, a resolution was passed by congress giving a pension of the half-pay of the late Captain Decatur, to the petitioner, his widow; and on the same day, a bill passed, giving an equal pension to all the widows of naval officers and seamen, who had died in the service; with this difference in the general law and the resolution, that by the former, the half-pay continued for life, and by the resolution only for five years, if the petitioner so long lived, and continued a widow. She claims by her petition, not only the half-monthly pay proper of a post-captain of the navy, but for daily rations, eight, at twenty-five cents each, amounting to one-half of $730 per annum; and also interest on the sum withholden. These claims for back rations and interest are contrary to the construction given by the government to the navy pension acts, for more than forty years. To cover

a failure, should the court concur with the executive departments in rejecting these claims, the petition has a double aspect, in the form of a bill in equity; first, praying for the whole sum of $18,597; or such part or portion thereof as the court may direct. It was first called on to decide whether the United States owed the petitioner anything; secondly, how much; and, thirdly, whether there was any money in the treasury belonging to the navy fund, out of which the claim could then be satisfied.

The secretary answers, he had money enough of the fund at his control, when he made the answer, if the old construction was adhered to by the court; but if he was adjudged to pay the petitioner *for rations and interest, then all other widows and orphans provided for by the various acts of congress, and entitled to half-pay out of the fund, would likewise be entitled to come in for half rations and interest; in which case, he would not have money to pay the claim, but that the fund would be greatly in arrear. A more complicated and difficult law-suit than is found in this cause, rarely comes before a court of justice; and to be compelled to defend which, the secretary protests; "because such jurisdiction in this court would, if assumed, operate as such an inference with the discharge of the official duties of the undersigned, as to make it impossible for him to perform them as required and intended; and would transfer to the said court the discharge of the said duties, and the whole management and disposition of the said fund; and subject all applicants for pensions to the delay, expense and embarrassments of legal controversies as to their rights, and to a suspension of the provisions to which they might be entitled under the laws, till these controversies were judicially decided. Because such a jurisdiction in the circuit court would make the United States suable in that court; and subject the money of the United States, in the treasury of the United States, to be taken therefrom by the judgments of said court. Because, if the circuit court assumes the jurisdiction of compelling the secretary of the navy, or the head of any other department to revise and reverse the decisions that may have been made by their predecessors in office, these officers will necessarily be taken off from the discharge of their immediate and most urgent public duties, and made to apply their time and attention, and that of the clerks in the departments, in an endless review and reconsideration of antiquated claims and settled questions; to the delay and hinderance of measures of vital importance to the national welfare and safety. For these and other reasons which he trusts will be obvious, on further consideration, to the court, he respectfully objects to the jurisdiction assumed in this case; and will now proceed, under such protest, to show cause why the *mandamus* prayed for should not be issued." He was, however, compelled to defend the suit, and defeated the claim upon its merits; the discussion of which took up two days in this court.

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But the great question was decided below, that the court had jurisdiction and power to order money to be paid out of the treasury of the United States, by a writ in the nature of an execution, running in the name of the United States, commanding the government to obey its own authority; this prominent feature of the writ demanded, it is impossible to disguise. That no other federal circuit court in the Union has power to issue such a writ, was recognised as settled in the case *Kendall* v. *United States*, by this court, in 1838. The power claimed is confined to this ten miles

square. And what is the extent of the *power? To overrule the decisions of the five great departments, and of the president, extending to the payment of money, the delivery of commissions, and innumerable other matters involved in the complicate operations of this government, amounting each year to a hundred thousand separate transactions, to say the least: the validity of all debatable and contested claims are holden to be subjected to the ordeal, and, on their rejection, to the supervision of the circuit court of this district. Beyond doubt, this is the breadth of the assumption of jurisdiction put forth by the cause before us. The entertaining such a cause is calculated to alarm all men who seriously think of the consequences. It is an invitation to all needy expectants, with pretensions of claim on the government, to seek this superior and controlling power (the circuit court of this district), and invoke its aid to force their hands into the treasury, contrary to the better judgment of the guardians of the public money. Thousands of claims exist, quite as fair on their face, and as simple in their details, as is this of Mrs. Decatur's, that have been rejected. She has been allowed to appeal to the court, and been heard; and so can all others. The assumption of power need not be pushed further, to let suitors enough into the court to consume the time and absorb the attention of the secretaries; a principal business of theirs presently must be, to sit at the bar of the court to ward off its mandate, and keep its officers from forcing the money out of the public treasury, unless this court arrests the attempt: whether well or ill intended, is aside from the purpose; the assumption and exercise of the power, is equally poisonous in its consequences to the country; it takes from the hands of those, the administration of public affairs, that the laws and the people of this nation have intrusted with them; it brings to the bar of the court, the nation itself; for it cannot be denied, that the United States government is the real defendant in this cause; and that if it was cast, it would be forced (on this cause being remanded for execution) to open the treasury according to the dictates of the circuit court.

The origin of the opinion that the public money could be reached through such instrumentality is of recent date; its history will be found in the case of *Kendall* v. *United States*. Money was not there asked in a direct form; and the court put the case upon the express ground, that the defendant "was not called upon to furnish the means of paying any balance that was awarded against the department by the solicitor of the treasury. He was simply (say the court) required to give the credit;" and this was no more an official act, than the making of an entry by a clerk, by order of a court of justice; it was, in every just sense, a mere ministerial act. 12 Pet. 614. Had it not been placed on this narrow ground, the decision could not have been made. That it falls short of this case, is admitted; still, it was then manifest, that the attempt to push the doctrine of ministerial duties further, so as to reach the money in the treasury, would follow; the case has occurred, and must be met.

*I maintain, that the executive power of this nation, headed by the president, and divided into departments in its administration of the finances of the country, acts independently of the courts of justice, in paying the public creditors; and that the decision of the secretary of the navy in this case, affirmed by the president, under the advice of the attorney- [*522

general, was final, on the laws as they stood ; and that the petitioner could only appeal to congress.

And here it may be safely asked, whether the secretary and president, the latter elected by the nation and responsible to the people directly, and to their representatives in congress, each exercising an undoubtedly legitimate authority, were not the safest and best to decide on the rights of the nation, and of the petitioner seeking justice at its hands? Is the country known, that submits the administration of its finances to the courts of justice, or permits them to control the operations of the treasury? What guarantee have the people of this country that the circuit court of this district will as faithfully perform the functions they have assumed, when dealing out the public money to satisfy rejected claims, as the heads of the departments? The court is wholly irresponsible to the people for its acts—is unknown to them ; the judges hold appointments of an ordinary judicial character, and are accidentally exercising jurisdiction over the territory where the treasury and public officers are located. Furthermore, for nearly forty years, this fearful claim to power has neither been exerted, nor was it supposed to exist ; but now that it is assumed, we are struck with the peculiar impropriety of the circuit court of this district becoming the front of opposition to the executive administration.

Every government is deemed to be just to its citizens ; its executive officers, equally with the judges of the courts, are personally disinterested ; and why should not their decisions be as satisfactory and final. They must be final, in most instances, in the nature of things, and the necessities of the government. Money is appropriated for certain objects ; none can be drawn from the treasury save according to some law ; of the obligations, the departments must judge in a prompt manner ; they cannot await years of litigation to learn their duties, and the responsibilities of the governments from the courts ; the secretary of the navy could not subject to want and miseries the whole of the widows and orphans on the navy pension list, until he was informed by the court of this district, whether Mrs. Decatur should be paid her claim for rations and interest ; he had to proceed, as for forty years and more his predecessors had done, and pay out upon the old construction ; nor could the government submit to its alteration, for the arrearages would have exhausted the fund, possibly for the next ten years, and left most of the widows and orphans dependent upon it for daily bread, in utter destitution. To permit an interference of the courts of justice with the accounts and affairs of the treasury, would soon sap its very foundations ; money would not be drawn out according to its own rules,
*523] nor could the secretary of the treasury ever inform *congress of the amount needed. Congress would, of necessity, be compelled to consult the court, not the secretary, when making appropriations. This case again furnishes the illustration : if the courts were to hold that Mrs. Decatur should be paid the $18,597, and that the true construction of the acts of congress was, that the widows and orphans pensioned on the navy fund should receive, in addition to the half-monthly pay, half rations, and interest on the arrearages ; then an addition of, possibly, a million to the fund would be required.

For these and other reasons, the court below had no jurisdiction of the subject-matter ; and, of course, no authority to issue the *mandamus* to bring

the secretary before it: and therefore, I hold the suit must be dismissed, and the judgment affirmed.

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 now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

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*United States *v.* Samuel B. Stone. [*524

Certificate of division.

Action in the district court of the United States for the southern district of New York, by the United States, against the defendant, for a penalty, under the act of 1838, "to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam;" a verdict was rendered for the United States, and without a judgment on the verdict, the case was, by consent, removed to the circuit court of the United States. In the circuit court, certain questions were presented on the argument, and a statement was made of those questions, and they were certified, *pro formâ*, at the request of the counsel for the parties, to the supreme court, for their decision; no difference of opinion was actually expressed by the judges of the circuit court. The judgment or other proceedings on the verdict ought to have been entered in the district court; it was altogether irregular to transfer the proceeding in that condition to the circuit court. The case was remanded to the circuit court.

In some cases, where the point arising is one of importance, the judges of the circuit court have, sometimes, by consent, certified the point to the supreme court, as upon a division of opinion; when in truth they both rather seriously doubted, than differed about it; they must be cases sanctioned by the judgment of one of the judges of the supreme court, in his circuit.

Certificate of Division from the Circuit Court for the Southern District of New York. An action of debt was instituted in the district court for the southern district of New York, by the United States, against the defendant, as master of the steamboat New York, to recover the penalty of $300 imposed by the ninth section of the act of congress, of the 7th of July 1838, entitled, "an act for the better security of the lives of passengers on board vessels propelled in whole or in part by steam." The cause was tried in the district court, in June 1839.

On the trial of the cause in the district court, exceptions were taken by the counsel for the defendant to the decision of the court, on questions of evidence which arose in the trial. Evidence was offered by the defendant, which was overruled by the court; to which decisions, the counsel for the defendant also excepted. The district judge charged the jury in favor of the plaintiffs, on a case agreed upon; but for the more full consideration of the questions in the cause, he recommended, with the consent of the counsel on both sides, that the jury should find a verdict for the plaintiffs, subject to the opinion of the court, upon a case to be made; with leave to either party to turn the same into a bill of exceptions or special verdict. Upon which the jury found such verdict, accordingly. No judgment was entered on the verdict; but by consent of the counsel in the cause, it was transferred to the circuit court, without any other proceedings in the district court.

The record stated, that on the argument of the cause, the circuit court were divided in opinion on questions presented on the argument of the counsel for the plaintiffs and the defendant; and at the *request [*525