

*UNITED STATES, Plaintiffs in error, v. SAMUEL W. DICKSON and others,
Defendants in error.

Compensation of receivers.

Samuel W. Dickson was appointed a receiver of public money for the Choctaw district, Mississippi, and entered on the duties of his office, on the 22d November 1833, and continued to hold the office until the 26th July 1836, when he resigned it; he received more than \$250,000 of public money, in each year, during the two years of his continuance in office; and also, more than \$250,000 during the portion of the year commencing on the 22d November 1835, and ending on the 26th July 1836; he claimed, under the act of congress relating to the compensation and salaries of receivers, a compensation of one per cent. on the sum of \$250,000 in each year; and also a commission of one per cent. on the money received during the fraction of the year, not exceeding, with the salary of \$500, three thousand dollars, in the fraction of the last year; the United States claimed to limit the commissions and salary to the fiscal year, from January 1st, to December 31st, annually; and denied his right to more than a portion of the commissions on the money received by him, limiting the same to the proportion of the year he was in office: *Held*, that the receiver was entitled to charge his commissions on the whole sum received by him in the part of the year he was in office; the same not exceeding, with his salary, the amount of \$3000.

The receiver was entitled to calculate his yearly commission on the amount of public money received by him during a year, commencing from the date of his appointment, instead of calculating it by the fiscal year, which commences with the calendar year; on the first day of January in every year. He had a right to charge the whole yearly maximum of commissions, for the fractional portion of the year in which he resigned.¹

ERROR to the Circuit Court for the Southern District of Mississippi. Samuel W. Dickson, the defendant, was appointed by the president of the United States, receiver of public money for the Choctaw district, in the state of Mississippi, and entered on the duties of his office on the 22d November 1833, and retained the office, performing the duties thereof, until the 26th July 1836, having on that day resigned the same. The United States claimed a large balance as due to them, and the defendant paid, in Natchez, the whole sum alleged to be due by him, with the exception of the items charged to him in the *treasury transcript, which were the subject of controversy in this case. [*142]

A suit was instituted by the United States on the official bond of Samuel W. Dickson and his sureties, in May 1839, in the district court of the United States for the southern district of Mississippi, in which the United States claimed certain sums of money received by Samuel W. Dickson, as receiver, and not paid over to the United States. These sums were claimed by the defendant, and had been retained by him, as his official compensation, for the annual period of his service in the office, from the 22d November 1833, and for the fraction of the last year in which he was in office, commencing on the 22d November 1835, and ending on the 26th July 1836; during which latter period he had received public money exceeding in amount \$250,000.

On the trial of the cause, the court charged the jury, that the defendant, Dickson, was entitled to credit for \$3000 as compensation, including his salary of \$500 for the year commencing November 22d, 1833, and ending November 22d, 1834; that he was entitled to the same compensation for the year commencing November 22d, 1834, and ending November 22d, 1835,

¹ And see *United States v. McCarty*, 1 McLean 306; *United States v. Edwards*, Id. 467.

United States v. Dickson.

and for the fraction of the year between the 22d November 1835, and the 26th July 1836, he was entitled to \$2500 commissions. To this charge of the court, the United States excepted, and prosecuted this writ of error ; a verdict and judgment for the defendants having been given, conformable to the opinion of this court.

The case was argued by *Birchard* and *Gilpin*, Attorney-General, for the United States. No counsel appeared for the defendants.

Birchard, for the United States, contended that the court erred—1. In allowing the receiver to calculate his yearly commission on the amount of public money received in a calendar year, commencing with the date of his *143] appointment, instead of the fiscal year fixed by law. *2. In allowing the receiver the whole yearly maximum of \$2500 of commissions for the fractional portion of the year in which he resigned.

1. In this case, the accounting officers settled the accounts, as is required by law, quarterly. The last quarter of each year terminating on the 31st day of December, annually. The instruction given to the jury by the court below, makes his first year commence on the 22d day of November 1833, and end twelve months thereafter ; and so of the succeeding years. The fractional period, which it treats as a full year, begins November 22d, 1835, and ends July 26th, 1836. It treats the terms used in the statute, “any one year,” as any period of time, equal to twelve calendar months, whether it consists of portions of any two fiscal or calendar years. It disregards the beginning of quarters, weeks or months, and has no reference to the accounting days by quarters, or the fiscal year established by law, and recognised by congress, and the department, from the first establishment of the treasury to the present time.

It is respectfully submitted, that the entire legislation of congress shows, that the terms “any one year,” when used in reference to the subject of accounting, import that portion of time intervening between the 1st day of January and 31st day of December ; and that to give the phrase, as used in the act of 20th April 1818 (3 U. S. Stat. 466), any other meaning, or such a meaning as will make it embrace any twelve consecutive months, composing parts of any two years, will subvert the design of congress, introduce perplexity in accounts, and occasion great inconvenience, if it does not produce absurdities. The act of 1818 is not an isolated piece of legislation, to be construed without reference to any other law. There are other statutes, so directly connected with the subject-matter, that they should be considered, if doubts may reasonably be entertained as to its true construction. It is but part and parcel of a code, and must be examined in reference to the system of laws of which it forms a part, in order that from the whole a construction may be given to it, which will lead to no inconvenient results, or defeat the legislative will.

In *Pennington v. Coxe*, 2 Cranch 35, it was held, that the details of one *144] part of a law or code may contain regulations *restricting or modifying the extent of a general expression used in another part of the same act, and that the whole should be taken into view for the purpose of discovering the mind of the legislature. And in *United States v. Fisher*, 2 Cranch 399-400, Mr. Justice WASHINGTON (in a dissenting opinion, but on this point agreeing with every member of the court) said, “that if, from a

United States v. Dickson.

view of the whole law, or from other laws *in pari materia*, the evident intention is different from the literal import of the terms employed to express it, in a particular part of the law, that intention should prevail, for that, in fact, is the will of the legislature." "So, if the literal expressions of the law would lead to absurd, unjust or inconvenient consequences, such a construction should be given as to avoid those consequences, if, from the purview of the law, and giving effect to the words used, it may fairly be done."

It is by these rules that I propose to test the correctness of the opinion of the court below. By reference to the act of 10th May 1800, § 6 (2 U. S. Stat. 75), it will be seen, that receivers were required to render quarterly accounts to the secretary of the treasury. That they were appointed, not for a term of years, but during good behavior, or the pleasure of the president for the time being, and that they were entitled to a commission of one per cent. on the moneys received. The act of March 26th, 1804, § 14 (*Ibid.* 282); gave them a salary of \$500, and a half of one per cent. in addition. The law of compensation thus stood until 1818, when the act in question was passed. At this period, all the operations of the government were well understood. The departments were formed, the days of rendering and settling accounts were established and known. The act of 1817, § 13 (3 *Ibid.* 368), was in force, making it the duty of the secretary of the treasury to cause all the accounts of his department to be settled within the year. The accounting days had been established for more than a quarter of a century, dividing each year into four quarters, and commencing and terminating the fiscal year on the first day of January, and the 31st of December. There has been no innovation on the part of the executive or congress, in this respect, since the formation of the government.

Looking at the object to be accomplished by the act of 1818, *can it be supposed, that the term "any one year" was ever intended to [145 be so understood as to embrace any other period than that established by usage and recognised by all the laws—any other than the well-known days—the four fixed quarters constituting a year? At each of which the receiver was required to render complete accounts, with the vouchers necessary to a prompt settlement. Especially, when we reflect, that these settlements were to pass at the close of the year from the auditor and comptroller to the register of the treasury, there, with the vouchers, for ever to remain as a finished piece of business. That the balances were to be certified to the secretary of the treasury as the basis of the future action of himself and congress; and that certified copies from the register were made evidence in all legal proceedings. The laws, evidently, as well as the law-makers, contemplated, at that date, that the four quarters of any one year would constitute the entire account of that year, and that the accounts of any two years could not be blended together, without a violation of the legislative will. Such a thing as beginning or terminating an annual or quarterly account in the middle of a quarter, a month or a week (except at the commencement or termination of office, when it arose *ex necessitate*), was then, as now, alike unknown to the department and the laws, and would effectually break in upon that simplicity and order of keeping accounts, which has been, wisely, and for necessary purposes, established for more than half a century.

United States v. Dickson.

If, then, the terms of the act of 1818 were of doubtful import, might it not be claimed, that an exposition contemporaneous with the law itself, and always uniform, is strong, if not conclusive, evidence of its own correctness? May it not be claimed, with propriety, that in all their enactments touching the subject of accounts, congress have legislated in express reference to the existence of this principle, as a fundamental one? If so, the rule is conclusive. It seems to me, there is no doubt upon the point. Yet I will not press it further than to observe, that it behooves us to be cautious in the inquiry, whether, inadvertently or intentionally, a special innovation has been introduced by this act.

It is contended, that the act may receive such a construction as will harmonize with the laws and usages upon the subject of accounts, fully effect the object of its framers, and give to each and *every sentence *146] its appropriate meaning, without the least violence to the language employed. To do this, it must be examined here, as it has been by the several eminent lawyers who, at various periods, have presided in the general land-office and treasury department, all of whom adopted the rule which was applied in settling this account, and all of whose settlements are erroneous, if the court below was not in error. In 1818, no such thing as a term of years for the office of a receiver of public money was known to the law. The 1st section of the act of May 15th, 1820 (3 U. S. Stat. 582), first limited the office to the term of four years, and the same act, in the second section, employs words limiting and defining the word year, as there used, so as to clearly distinguish it from the accounting year. No aid in construing the act of 1818 can be derived from this posterior law. We must look to the state of things existing at the time of its passage, for what it meant then, it means now. It is evident, that the amount of one and a half per cent. had become exorbitant at some offices, owing to the increase and irregularity of land-sales, and that the object was to limit the expenses of each office to a fixed sum per annum. It is manifest, that congress considered \$6000 a year, an adequate compensation to both register and receiver; that let the business be more or less at any office, in any one year, this sum out of the public treasury was considered enough to pay for all the services which the two officers would be able to bestow upon one set of plats and books. And that, if little business was to be done, a less sum would be ample pay for it. Hence, a salary of \$500 per annum was appropriated for each office, and \$5000 limited as the maximum commissions for both offices. This sum is all that the law designed to appropriate, and this is not given absolutely, but only upon condition that the receipts of the office should be such as to entitle the officers to the sum of \$3000 each. Nothing can be found in the old mischief or the new remedy; nothing in the title or text of the act, to induce the belief, that any change in the time, the manner and form of rendering and closing accounts was designed. The terms of the law are such, that they could have been literally complied with, without preventing *147] the final adjustments required to be made yearly by the *act of 1817, § 13, and the then existing treasury regulation. "Any one year" naturally imports the fiscal and calendar year. It is tortured into an unnatural meaning, unknown to the common acceptation of the words, if made to embrace parts of different years.

But for argument sake, let it be admitted, that the construction, which

United States v. Dickson.

stood unshaken till 1837, is erroneous ; that according to the judicial term, "any one year" does not, as in the common acceptation, import the fiscal and calendar year, known to the laws and the almanacs ; that an entire thing may be composed of different portions of entirely different things, and still retain its identity, and let us trace the consequences which must follow. If the path remains plain, free from perplexity and confusion, then, construction may prevail, without public detriment, and without resulting in embarrassment or absurdity. There are seventy land-offices, each having a register and receiver, who are bound to return their accounts quarterly, on the last days of March, June, September and December, annually, with the vouchers necessary to a prompt settlement. These accounts, the commissioner of the general land-office is obliged to settle and pass over to the first comptroller, who revises and approves them ; reports the result to the secretary of the treasury ; and then files them with the register of the treasury. At this stage of the business, the law supposes the work to be finished. In making the settlement, the accounting officer is required to ascertain the money brought into the treasury during the year, and to allow the register and receiver each a commission of one per cent. thereon, if the sum does not exceed \$2500. With four accounting days, at stated periods, the work is simple and produces no difficulty. Will it be equally so, if the accounting days per annum are doubled ? But doubling the number will not effect the object, for of the whole 140 officers, scarce any two will be found who entered upon duty on the same day. It must be trebled, giving twelve accounting days for each officer, four for the quarterly fiscal accounts required by law, four to give the *data* on which the register's commission is to be computed, and four for that of the receiver ; and as to these last accounts, those of one officer will be no check upon those of the *other, because from the nature of the case, both accounts will not cover the same period of time. [*148 Again, the result will often give to one officer commissions on the sales of a calendar year to the amount of \$5000, while the other, on the same sales, will be entitled to but \$2500, a thing which is manifestly against the spirit of the law. It is notorious, that in years past, repeated sales within a year have been held at a newly opened land-office, and that in the following year, the sales have been nominal only. The annual reports of the department show frequent cases, where one quarter's receipts amount to near \$1,000,000, and the receipts of the preceding year fall short of \$20,000 ; while a third year has net to the treasury over \$250,000.

Try the rule of the court below, by the operations of such an office, suppose the register to enter upon duty the 1st of January, and the receiver on the 1st of May, for the year 1834 ; and that during the year 1834, no sales are had ; that in March 1835, a sale brings over \$300,000, and in December 1835, a second sale brings other \$300,000 ; that in 1836, no sales are had, and the office is discontinued on the last day of December. In this case, the register will have held office just three years, and under the rule of the court, he could receive as commissions but \$2500 ; it being the maximum upon the sales from 1st of January to 31st of December 1835. The receiver, however, who held office three months less, and performed only equal labor, would be allowed the maximum of \$2500 on the sales in March 1835, as it would be within his first year ;

United States v. Dickson

and also the maximum on the sale of December 1835, as that would fall in his second year from his entrance upon duty. I submit, that congress never contemplated such a result ; and yet under the rule of the court, such cases would be of daily occurrence. It is doubted, if a single officer can be found whose accounts have been settled, since the year 1818, without varying greatly, possibly thousands, from what this rule would give.

Here an account, settled by Justice McLEAN, was read, showing
 *149] *the rule of adjustment in 1820, when he was commissioner of the general land-office, to be as contended for now.

But the unequal results as to the officer is not the only objection. In the case put, and in all that can happen, it compels the accountant to blend the operations of different years together. Instead of an account being closed, at the end of a year, as the law contemplates, the officer is compelled to keep it open, and often to overhaul a business which, in legal contemplation, is already settled. Thus, in the case put, the account of the receiver, which the law looks upon as closed on the 31st of December 1834, must be re-opened, and three-fourths of a year's commissions allowed in the first quarter of 1835. And the account for the year 1835 could not be closed, at the end of that year, because, out of the sums received, an allowance must be made to the receiver for the year 1836, during which no sales were had. Instead of being provided with given *data* upon which to make his annual estimates, the secretary of the treasury, under such a plan of doing business, must ever act upon conjecture, and can never inform congress, at the opening of, or during, a session, of the actual state of the treasury ; for he can never possess accurate *data*, until near a year has elapsed from the day of the date of the officer's last appointment.

Could the department, with this rule in operation, ever form, at the close of the year, an estimate of the annual net receipts of such offices as New York, Philadelphia, Boston, Baltimore and New Orleans, which would approximate accuracy by from ten to fifty thousand dollars ? The list of officers is from ten to two hundred at each of those places, each of whose salary, or pay, is in like manner limited. It would be difficult, if not impossible. It would seem, that the inconveniences which flow from the rule, and the apparent effect it will have in defeating the legislative intent to regulate and equalize the pay of registers and receivers, prove its unsoundness. More especially, as, by considering the words "quarter," "yearly," of the act of 1800, to mean fourth parts of the "any one year," mentioned in the act of 1818 ; and the phrase "any one year," to import simply the said four quarters, an easy and natural sense and meaning is allowed to each phrase ; all vexation, confusion and apparent inequality of emoluments
 *150] is avoided, and perfect harmony *is found to exist between this law and all others upon the subject of accounting.

Have the United States been prejudiced by the supposed error in this case ? A *pro rata* allowance of commissions, from November 22d, 1833, to December 31st, as will be seen, has been allowed by the jury, although it does not appear, that any sale was made, or money paid into the treasury, during that time. This error, if it be one, is carried through the whole term of the receiver, and deducts from the receipts of 1834 over \$2700.

2. The court erred in treating the fraction of two quarters and twenty-six days as a full year, and allowing therefor \$2500, instead of \$1428, the *pro rata* allowance. The receipts of this fractional year were \$285,959. The receipts of the residue of the year were \$249,937. The accounting officers allowed Dickson \$1428, and to his successor, for the residue of the year, \$1072. The decision of the court below gives all to Dickson, and leaves nothing for his successor, without taking double commissions out of the collections of that year.

Dickson resigned, after serving half a year. Can he have all that congress provided for keeping the office open for the year 1836; and shall his successor have nothing? We must suppose, that in 1818, congress knew that land-sales occurred at irregular periods; that money from this source was collected in unequal quantities; and that the accounts of each year would be settled separately. All this was notorious. It was well known, that the footing of accounts on the 31st of December, would enable the accountant to adjust the commissions upon principles of equity, as between different officers and the government. Can it be inferred, that an innovation upon the fundamental principles of settling accounts was designed? Can we presume, that by implication, a door was meant to be opened, out of which public money was to flow, in the shape of land-office emoluments, at a greater rate for each office than \$6000 per annum? The law does not, in direct terms, appropriate more; and the *constitution prohibits the payment of what an act has not appropriated. The [*151 money received for lands is public money. The sole title of any officer to any part of it must be derived from the act. That only gives him title, by prescribing to the accountant the duty of making him an allowance, when he closes his yearly account. If Mr. Dickson's fraction of a year will draw full pay, by what rule can any other man's fractional year be deprived of full pay? The cases have been frequent, in times past, and may be expected to be so in future, where a new office has realized to the amount of say \$3,000,000 in a year, one per cent. of which, to each officer, makes an aggregate of \$60,000.

Suppose, a public land-sale, at some such office, to take place each month in twelve, and each sale to amount to \$250,000, and a new set of officers to be given for each month; will each month not be a fractional year? and will not each fraction be as well entitled to the maximum of \$250,000 as Mr. Dickson's fraction? When any one year is thus multiplied into twelve years, the cost of the office per annum will be \$31,000 instead of \$6000; and the manifest intention of the legislature will be defeated. It will not do to say, that this is an extreme case, for the substantial facts as supposed have often occurred in practice. Let the rule of the court below be forced upon the department, and it is powerless, and cannot prevent hereafter the results supposed. The president must keep land-offices supplied with officers. He cannot force these officers to continue in service, after they choose to resign. He cannot refuse to sell lands, when the laws direct a sale. He is bound by oath to see all laws executed, and must employ the means given for that purpose. Will it be wise, to suppose, that men having adverse pecuniary interests to be subserved by a contrary course, will hold themselves long to the guidance of a rule of conscience more fair than the one which this court is to pronounce lawful? It is far more likely, that public

United States v. Dickson.

officers will square their consciences to the morality of the rules judicially established.

Is there any difficulty to prevent the application of a rule which will accomplish the object of congress, in requiring annual settlements? Does *152] not the whole of "any one year," as well as the whole of any other object, comprise all its parts? Does not the law contemplate that each land-office has one receiver always, and never but one? Can it be doubted, that the object of the act of 1818 was, to limit the whole expenses of an office to \$3000 per year? If there is no difficulty in discovering the answers, then why shall not practice give efficacy to the law, and make it mean what its makers meant? The general land-office and the comptroller have done this. They found that Dickson had received and paid into the treasury, in 1826, money sufficient to entitle him to the maximum of commissions, and that his successor had also done the same thing, and they allowed each his due proportion. They gave to each what he earned, and broke down no rule in so doing, and opened no door through which the nation may be plundered, or the treasury pillaged. In what was their error? Did they a wrong?

It has been supposed, that the case of an officer, who should be discontinued after three months' service, he having, in that time, paid \$250,000 into the treasury, would be a case of hardship, and it has been asked, if the government would not be a gainer, under the rule contended for, if the successor, in the last three quarters, should make no sales, and of consequence, earn no commissions; or whether, to avoid the supposed evil, the government would give to the latter the earnings of the former? To all this, I have to observe, that in examining the accounts, as settled by the department, ever since 1818, I have never found any case of hardship of the kind. In the case supposed, it would be easy to avoid all injustice, by allowing to each man what he earned. The incumbent of the first quarter of the year earned full commissions, therefore, give it to him. The incumbent for the last three quarters earned none, and would, of course, neither claim nor receive any. Each would have his own, and the United States would retain nothing which the law designed to bestow upon others. Thus in Dickson's case, if, for the half of the year 1836, he would claim the compensation of the full year, and reverse the settlement of the department, he should prove his case fully, by showing to the court that no other officer earned any commissions during the same period. This he did not do, and *153] could not have done. Without this proof, the *presumption of law is, that the accounts were properly and equitable adjusted. Such also is the fact.

Gilpin, Attorney-General, for the United States.—The very full examination of the questions connected with this case, by Mr. Birchard, the solicitor of the treasury, leaves little room for further remark. It may not, however, be useless to advert to the long-settled system which has prevailed, with manifest advantage of the public interest, and with no injustice, taking the whole system together, to individuals; and also to notice the unbroken series of laws which seem to establish its accordance with legislative intention. The points at issue do not, in the present instance, involve any considerable sum of money, but their settlement is extremely important in

United States v. Dickson.

the keeping of the accounts at the treasury. It is very desirable, that all doubt in regard to them should be removed, and that a system, uniform in itself, and in accordance with the judicial interpretation of the law, should be, at once, and generally, introduced into the treasury department, if that now existing be incorrect.

1. The compensation of all officers charged with the collection of the revenue, whether derived from the customs or the public lands, depends, not on a fixed salary, but on their receipts. It is graduated, either by a commission on moneys collected, or by the amount of fees received. It depends, therefore, on their own accounts. These accounts must be examined and adjusted, to fix their compensation. The mode, therefore, of keeping and rendering them, should be such as to exhibit, with entire uniformity, and accordance of parts, the two things; the correct discharge of duty in collecting the public money, and the exact amount of compensation due therefor. For each of these objects, are the accounts required. They should be so framed as to exhibit each, whenever they are adjusted. The rule adopted to effect this, and practised, from the beginning of the government, has been to adjust the accounts of these officers on the first days of January, April, July and October. If their term of office commenced on an intervening day, the first account was required to be adjusted, when the first of these days arrived; if it terminated between them, the account was settled for the fraction that elapsed between the last of those *days, [*154 and the end of the official term. For these regular periods, the [*154 accounts were rendered; the commissions, fees and emoluments, during these, were returned and calculated; the compensation was adjusted and allowed according to them. In carrying out the system on these principles, the fiscal year has been invariably regarded as coincident with the calendar year, commencing on the first of January, and ending on the 31st of December.

In the case now before the court, the receiver was appointed to office on the 22d November 1833, and held it until the 26th July 1836. During his first year, according to the mode of settling his accounts at the treasury, his official term was, for the fraction intervening between the 22d November and the 31st December. It then extended through the years 1834 and 1835. It embraced the two quarters of 1836, to the 1st July, and the fractional period of the third quarter, up to the 26th of that month. The district judge of Mississippi has declared this adjustment to be at variance with the law, and has decided, that the first year of the receiver's official term was for twelve months, ending on the 22d November 1834; the second ending on the same day of 1835; and that the interval between that day and the following 26th of July, is to be regarded as the fraction of his third official year.

It is obvious, that the annual compensation, derived from commissions on moneys, or fees received during the year, may differ considerably, as it is calculated by one of these modes, or the other. It may differ in favor, or against, the officer, according to the period of the year, at which the moneys or fees are received. Neither the one mode, nor the other, however, will operate uniformly for, or against, the officer; that depends on the amount and period of the receipts, taken in connection with the time his official term began. The propriety, therefore, of the regulation of the

United States v. Dickson.

treasury department, as compared with that now established by the district judge, is not to be tested by its effect to increase or diminish the amount of an officer's compensation. Whatever mode this court shall direct henceforth to be pursued, it will not, by so doing, augment or diminish the average compensation. It may lessen or increase it, in a particular case, accordingly as greater or less sums of money happen to be *received at a
*155] particular period, but the general result of either plan, will not be, to give, on the average, either greater or less compensation.

Is it a matter of equal indifference, as regards the fiscal operations of the treasury? "Will the public accounts be kept with the same uniformity, simplicity and accordance with the views of the legislature, if the annual term (the "year" of the officer) is made to commence and end with the day of his appointment, in each successive year." Such a regulation will be attended with manifest public inconvenience, and it is contrary to the whole scope of legislative enactments.

1. The invariable practice of the government has been, to make the compensation of its officers, annual; to allow them a certain sum "for the year." Not less invariable has been its practice, to require that their accounts of the moneys they collect, shall be rendered "quarterly;" that is, for every three months. When the amount of annual compensation is made to depend on the amount of money collected, it must be ascertained from these accounts. Hence, it follows, as a necessary consequence, that the accounts must be for periods corresponding with the periods of compensation. If the period of compensation be irregular, and governed by each particular case, the accounts must be equally irregular; they must be made up for the period of compensation, since the compensation depends upon them. It will thus be seen, that if the year is to be such as is designated by the district judge, there must be a settlement of the accounts, when it expires; and this at the end of each year throughout the term of the officer. If the quarterly accounts are to agree with this year, then are they equally irregular; but if not, then must there be a division in the account of that quarter, in every year when the annual term expires; or there must be kept two sets of accounts, embracing exactly the same items of moneys collected, but closing at different days, by one of which, the commissions are to be ascertained, and by the other, the general fiscal duties. Could anything lead to greater confusion and irregularity, than such a system as this? Yet it cannot be obviated, if the fiscal year is to be made to vary with the appointment of the officer.

*156] *It cannot be said, that the accounts may be kept, according to the usual system, throughout the term of office, and then adjusted for the fraction of the closing quarter. This plan will not accord with the law. The law says, the officer is to receive a commission for collections "during the year;" that year is either the one beginning with the date of his appointment, or it is the fiscal year heretofore adopted at the treasury. They cannot be blended during the term. Take the case of the defendant. He is entitled to all the commissions he receives in each year, provided they do not exceed \$2500. Suppose, that the commissions up to the 22d November 1834, amount to that sum; will he not require that the account should be then adjusted and closed? Must it not be so; or, if not, does it not become necessary to dissect informally one of the quarterly accounts of

nited States v. Dickson.

every year? At the end of his term, he will demand that the amount of his commissions shall be made apparent in each year of his term; and this can only be done by a revision of the whole series of accounts, and a re-adjustment of what has been once settled; a revision and re-adjustment, not only fraught with inconvenience, but directly contrary to that provision of law which requires the settlement of accounts quarterly, and their deposit with the register, so as to constitute an unalterable and permanent record.

But the inconvenience does not end here. It is well known, that the compensation of different officers may depend on commissions upon the same sums of money collected. Thus, the register and the receiver are entitled to commissions on the same sums of money collected at the land-offices; the collectors, naval-officers, and surveyors are entitled to fees on the same entries at the custom-houses. The accounts, therefore, of the moneys so received should correspond; they are thus a check upon each other, and they obviate a multiplicity of accounts. Yet how can this be accomplished, if the annual terms of each of these officers are made to differ entirely from those of the others, by commencing with the day of their appointment?

To such inconveniences shall we be led, if we change the settled system, adopted at the treasury, immediately after the organization of the government, and followed, without deviation, for fifty years. It is true, that an argument *ab inconvenienti* is *not to be pressed against the clearly-ascertained rights of individuals, nor is a construction made by the executive officers, to be presented as a controlling authority or precedent to a judicial tribunal. But in this case, it is to be remembered, that the end to be attained is not the interest of an individual, but the best mode of effecting a great public object; that besides, in point of fact, the interest of the individuals is not, as a general rule, affected injuriously by one system more than the other; and that the whole subject is one to which the test of public convenience, or the reverse, may be applied, with peculiar propriety. The construction adopted by the treasury department may not have in itself any controlling weight, but it is to be recollected, that its adoption, at an early period, fixed a rule for the settlement of accounts and compensation, well known to the country and the legislature; numerous laws upon these subjects have since been passed; and it is not, therefore, an unjust inference, that congress had intended its legislation to be applicable to that construction.

2. If the series of acts of congress is examined, it will not be less apparent, that, from the beginning of the government, they have contemplated annual salaries as the compensation of these officers, and quarterly settlements of their accounts; and this, not for arbitrary and uncertain periods, but for distinct and ascertained fiscal terms. This is the case as well with officers of the customs as with those connected with the public lands. The regular days of quarterly settlement, as adopted at the treasury, are also recognised by these acts. 1 Story's Laws 17, 26, 129, 150, 157, 228, 592, 665, 782, 786; 2 Ibid. 868, 932, 933, 950, 1309; 3 Ibid. 1632, 1710, 1790, 1792, 1853, 1857, 1876, 1916. It seems impossible to construe these various provisions as fixing a different rule or period for accounting and for making compensation. The compensation is "for the year;" for the duties performed "during the year;" for the duties embraced in the accounts

United States v. Dickson.

as rendered and settled "for the year." Fixed annual compensation is that which is almost universally established for all offices. The exceptions are comparatively few; and those few congress are constantly removing, as they grow up from some incidental circumstance. The fund from which this compensation is paid does not affect its character or amount. Whether it is paid by a commission out of the accruing *revenue, before it goes into the treasury, or whether it is drawn *158] from the treasury afterwards, is immaterial, if the sum fixed be so much "for the year." If the sum and the term are both fixed, the compensation is in reality a salary, and the payment of it is to be allowed and accounted for, exactly as if it were a salary, payable by annual appropriation out of the treasury. The mere fact that the compensation is for the collection of money, cannot warrant an increase in proportion to the amount collected. From the treasurer of the United States down to the collector of the smallest port, there are numerous officers charged with the management of the public moneys, yet such a general rule has never been adopted.

It would seem, then, that whether we take the system established by public convenience, and by the construction early given to the regulations made for the settlement of accounts and the payment of compensation depending on those accounts; or whether we follow the general scope of the long series of legislative enactments, we are equally authorized to adhere to the existing practice, in preference to that which the decision of the district judge of Mississippi will introduce in lieu of it.

STORY, Justice, delivered the opinion of the court.—This is a case of a writ of error to the circuit court for the southern district of Mississippi. The defendant in error, Samuel W. Dickson, was duly appointed a receiver of public moneys, for the Choctaw district, in Mississippi, and entered upon the duties of his office, on the 22d of November 1833. He continued to hold the office until the 26th of July 1836, when he resigned it. In May 1839, a suit was instituted upon his official bond, against him and his sureties, to recover certain sums of public moneys received by him, and not paid over. At the trial of the cause, Dickson insisted upon certain credits to be allowed to him, and proved the receipt by him, while receiver, into his office, as receiver of public money, amounting to more than \$250,000, in each year, during the two years of his continuance in office: and also of more than \$250,000 for the fraction of a year, commencing on the 22d of November *159] 1835, and ending on the 26th of July 1836, when he resigned *his office; and he also proved the depositing of sufficient amounts in Natchez, to entitle him to credit for the disputed items of his account. Upon this evidence, the court below charged the jury, that Dickson was entitled to credit for \$3000, as compensation, including his salary of \$500, for the year commencing on the 22d of November 1833, and ending on the 22d of November 1834; and to the like compensation for the year commencing on the 22d of November 1834, and ending on the 22d of November 1835; and that for the fraction of a year between the 22d of November 1835, and the 26th of July 1836, he was entitled to \$2500 for commissions. To this opinion, and charge of the court, a bill of exceptions was taken by the United States; and a verdict having been found accordingly, by the jury,

United States v. Dickson.

and judgment rendered thereon ; the present writ of error has been brought to revise that judgment.

Upon the argument in this court, two points have been made, on behalf of the United States : 1st. That the charge of the court below was erroneous, in allowing the receiver to calculate his yearly commission on the amount of public moneys received by him, during a year, commencing from the date of his appointment ; instead of calculating it by the fiscal year, which commences with the calendar year, or on the first day of January of every year. 2d. That the charge of the court below was erroneous, in allowing the receiver to charge the whole yearly maximum of commissions for the fractional portion of the year in which he resigned.

The validity of these objections to the charge of the circuit court, must essentially depend upon the true interpretation of the act of the 20th of April 1818, ch. 118. Originally, the receivers of public moneys in the land-offices, were paid a commission of one per cent. on the moneys received by them, as a compensation for clerk-hire, receiving and keeping, and transmitting the public moneys to the treasury of the United States. This was originally provided by the act of the 10th of May 1800, ch. 55, § 6. By the act of the 26th of March 1804, ch. 35, § 14, the compensation was increased by an addition of one-half per cent. to the former commission, and also of an annual salary of \$500, with the exception of the land-office *of Marietta, where the annual salary was \$200, only. Then came [*160 the act of the 20th of April 1818, ch. 118, which provided, "that instead of the compensation now allowed by law to the receivers of the public moneys, for the lands of the United States, they shall receive an annual salary of \$500 each, and a commission of one per cent. on the moneys received, as a compensation for clerk-hire, receiving, safe-keeping, and transmitting such moneys to the treasury of the United States ; provided always, that the whole amount which any receiver of public moneys shall receive, under the provisions of this act, shall not exceed for any one year, the sum of \$3000."

The main controversy in the present case, turns upon the meaning of the phrase, "any one year," in the foregoing section. Does it mean "any one year," calculated from the date of the commission of the receiver ? or does mean "any one year," commencing with the calendar year, that is, with the 1st of January of each year ; which is commonly called, in matters connected with the treasury department, the fiscal year ?

The argument addressed to us on behalf of the government, is, that it means the latter. It is said, that all accounting officers (with some unimportant exceptions) are required by law, and the regulations of the treasury department, to render quarterly accounts of the moneys received by them, and of the disbursements made by them, at the end of each quarter of the calendar year (see act of 10th of May 1800, ch. 55) ; and that all the accounts kept at the treasury department are governed by this mode of proceeding ; and that if any other mode of keeping the accounts were adopted, it would introduce endless embarrassment and confusion into the department, and take away the only adequate means of ascertaining, from time to time, the exact financial state thereof, as to debts and credits, and disbursements, which is so essential to the public security, and regular operations of the government. And hence, in order to give full effect to this system, it is

United States v. Dickson.

contended, that it is necessary, in all laws of this character, to construe the year to mean the fiscal year.

Admitting the argument in its full force (and we are not disposed to controvert the propriety of the present mode of keeping the public accounts, as being founded as well in law, as in public *convenience), still it *161] does not appear to us, to justify the conclusion attempted to be drawn from it. In short, we do not perceive what connection the mode of keeping the accounts in the treasury department, has with the compensation allowed by law to any public officer. That compensation is to be ascertained from the terms of the law allowing it; and whenever the amount is once ascertained, according to those terms, it is to be allowed and credited to the officer, whatever may be the form in which the public accounts are kept, or the particular times at which they are required to be rendered and settled. Nor are we able to understand, why the accounts of any public officer may not be made up regularly, at the end of every fiscal quarter, allowing such compensation as he has then earned and is entitled to by law, where his precedent term of service has been less than a full quarter, in consequence of an intermediate appointment to office. The allowance for the fraction of a quarter may just as readily be made at the commencement of his term of service, by reason of such an intermediate appointment, as it may be where his office terminates in the midst of a quarter; in which case (as is admitted), from necessity, the fraction is brought into his closing official account.

It has been also argued, that the uniform construction given to the act of 1818, ever since its passage, by the treasury department, has been, that the act has reference to the fiscal year. The construction so given by the treasury department to any law affecting its arrangements and concerns, is certainly entitled to great respect. Still, however, if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a court of justice. The construction given to the laws, by any department of the executive government, is necessarily *ex parte*, without the benefit of an opposing argument, in a suit where the very matter is in controversy; and when the construction is once given, there is no opportunity to question or revise it by those who are most interested in it as officers, deriving their salary and emoluments therefrom, for they cannot bring the case to the test of a judicial decision. It is only when they are sued by the government for some supposed default or balance, that they can assert their rights. Their acquiescence, therefore, is almost from a moral necessity, when *there is no choice but obedi- *162] ence, as a matter of policy or duty. But it is not to be forgotten, that ours is a government of laws, and not of men; and that the judicial department has imposed upon it by the constitution, the solemn duty to interpret the laws, in the last resort; and however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it.

The present question, then, must be decided upon the same principles by which we ascertain the interpretation of all other laws; by the intention of the legislature, as it is to be deduced from the language and the apparent object of the enactment. The object of the act of 1818 manifestly is, to provide a suitable compensation for the receivers and registers of public

moneys for the public lands. The compensation is for services to be rendered by them, officially, during their continuance in office ; and up to a certain point, at least, it is in exact proportion to the extent and duration of those services, and the responsibility incurred thereby. The compensation is measured by years. It is to be by an annual salary, and by a commission not exceeding an annual amount. The words are, that "they shall receive an annual salary of \$500 each." The natural interpretation of these words, certainly is, that the salary is to commence at the time when the service is to commence ; and that they are to be contemporaneous with each other. We believe this to be the uniform interpretation of all laws of this sort ; and that when any person takes office in an intermediate time between one quarter and another, the practice is, to pay him a proportion of the quarter's salary, accordingly ; and if he leaves office before the end of his official year, to pay him for the like proportion of the last quarter. Indeed, it was admitted at the argument, that this is the rule adopted at the treasury department itself, in relation to the salaries of officers, viz : that it is begun and ended with the official year, and not with the fiscal year. Nor was it suggested, that, in this particular, any difficulty arose, as to the mode of keeping and settling the official accounts at the treasury, at the end of each quarter, or of the fiscal year.

If, then, the natural interpretation of the words of the act, as *to the salary, has reference to the official year, and not to the fiscal year ; [*163 what ground is there to presume, that congress, in the subsequent words regulating the commission, did not use the word year in the like sense ? There is nothing in the language, nor in the nature of the compensation, which leads us to the conclusion, that congress had in view the fiscal year or the mode of keeping the accounts in the treasury department, as guides to fix the interpretation of the word year. For aught that appears, it was used in its ordinary sense. The words are, "and a commission of one per cent. on the moneys received, as a compensation for clerk-hire, receiving, safe-keeping, and transmitting such moneys of the United States ; provided always, that the whole amount which any receiver of public moneys shall receive under the provisions of this act, shall not exceed, for any one year, the sum of \$3000." The commission is on the moneys received by any one officer, not by one or more officers, during any one year of his services ; not during any one calendar year, for the service of one of more officers in that year. It is his compensation for clerk-hire, paid by him, and for his responsibilities in receiving, keeping and transmitting the public moneys ; and not for his services and responsibility in connection with other officers. The commission is a compensation attached to the particular officer, for his yearly service, and not to the office itself for a fiscal year. If the intention of the legislature had been, what the argument for the United States supposes, the language of the proviso would have been different ; it would have been, provided that the United States shall not, in any one calendar year, pay more than one per centum upon all the moneys received during that year ; and that the commission for any one year, to whomsoever paid, shall not, in the whole, exceed the sum of \$2500. It need not be said, how entirely different in its scope and legal intendment such language is from that of the present proviso ; and yet the argument is, that the court should give them precisely the same interpretation. We

United States v. Dickson.

cannot but think, that this is to call upon the court, not to expound the act as it is, but to frame its provisions anew, upon a conjecture of what might have been the original intention and object of congress.

*164] It is further urged, that unless we interpret the words to refer *to the fiscal year, great inconveniences may arise ; and the government may, by there being several receivers in office during one and the same fiscal year, each of whom may have received more public moneys than would entitle him to the maximum of commissions, be compellable to pay more than \$2500 in one year ; nay, may actually pay twice or thrice that amount. Suppose it might be so, it would be a case of very rare occurrence ; and to put an extreme case is not a good test of the fair and just interpretation of any statute. In such a case, each successive receiver would only receive his just proportion of the year's salary, and no more commission than congress itself had established to be a reasonable compensation for his expenditures and responsibilities in receiving, safe-keeping and transmitting the public moneys. There is nothing in the reason of the case, why each successive officer, who has incurred the full responsibility, by the receipt of \$250,000, should not receive the whole commission up to that extent. The argument *ab inconvenienti*, therefore, under such circumstances, does not address itself to this court with the force which it has been supposed to possess. It amounts merely to this, that the act is defective in some of its details ; and does not reach all the cases which ought to be provided for.

But there would be inconveniences, not to say apparent hardships, upon the receivers, in adopting the construction contended for on behalf of the government. Thus, suppose, a receiver should die, or be removed from office, without any default on his own part, during the fiscal year, and after he had received and become responsible for public moneys exceeding \$250,000 ; in such a case, the extent of the act would seem fairly to entitle him to the full commission of \$2500 ; and yet, according to the argument, he would be compelled to submit to an apportionment, which might reduce it to a quarter part thereof.

There is another consideration, not unimportant in the construction of the act ; it is, that the limitation of the compensation which any receiver is to receive for any one year, is not, including his salary, to exceed the sum of \$3000. So that here we have both salary and commissions united together in the ascertainment of the amount ; and, of course, the year *with reference to each, must have the same period of commencement *165] and termination. If, therefore, the salary is to be ascertained by the official year, as has been already suggested, it would seem to be an irresistible conclusion, that the same period must be assigned for the commissions.

Passing from these considerations to another, which necessarily brings under review the second point of objection to the charge of the court below ; we are led to the general rule of law, which has always prevailed, and become consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and takes no case out of the enacting clause which does not fall fairly within its terms.¹ In short, a proviso carves special exceptions only out of the

¹ Ryan v. Carter, 93 U. S. 83.

Levy v. Fitzpatrick.

enacting clause ; and those who set up any such exception, must establish it as being within the words as well as within the reasons thereof. Applying this rule to the circumstances of the present case, how does it stand ? The enacting clause gives to each receiver a commission of one per cent. upon all the public moneys received by him. This was precisely in conformity to the antecedent laws. The proviso limits that per-centage to an amount not exceeding \$2500 for one year. Until, then, the per-centage of the particular receiver has reached that amount, in whatever period of the year it may arrive, the proviso, according to its very terms, has no operation ; and when that maximum is reached, the per-centage ceases, whether any more public moneys are received by that officer or not. The case, then, of the present receiver falls directly within the enacting clause. He seeks only the maximum commissions upon the moneys actually received by him, during his continuance in office ; and the proviso either does not touch his case, or it only operates to cut off all subsequent commissions from him, for other moneys received during his continuance in office. The proviso contains no limitations of his per-centage, by connecting it with, or making it dependent upon, the commissions, or the receipt of public moneys by his successor in office. The proviso is, that he shall receive no more for any one year ; not that any other receiver may not receive a like compensation accruing from his subsequent appointment and *receipts in office, [*166 for the portion of any year which is then unexpired.

Upon the whole, we are of opinion, that there is no error in the charge and opinion of the court below ; and therefore, the judgment is affirmed.

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

*BARNETT and ELIZA LEVY, Plaintiffs in error, v. EDMUND and DAVID FITZPATRICK, Defendants in error. [*167

Error.—Final judgment.—Jurisdiction of the circuit court.

Mortgagees, in Louisiana, filed in the circuit court, their petition, stating the non-payment of the debt due on their mortgage, and that, by the laws of Louisiana, the mortgage imported a confession of judgment, and entitled them to executory process, which they prayed for. Without any process requiring the appearance of the mortgagors, one of whom resided out of the state, the judge ordered the executory process to issue ; two of the defendants, who were residents in the state, prosecuted a writ of error on this order, to the supreme court of the United States : *Held*, that the order for executory process was not a final judgment of the circuit court, on which a writ of error could issue.

By the 11th section of the judiciary act of 1789, no civil suit shall be brought before the courts of the United States, against an inhabitant of the United States, by any original process, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ. The construction given to these provisions, by this court, is, that no judgment can be rendered by a circuit court against any defendant, who has not been served with process issued against his person, in the manner pointed out ; unless the defendant waive the necessity of such process, by entering his appearance to the suit. Toland & Sprague, 12 Pet. 300, cited.