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to Congress, for it is not the province of the judicial department of the government to determine them.

The only remaining point in the case, relates to the rescission by Secretary Cameron of the order of the 9th of March. This proceeding was undoubtedly taken because the supplies needed in Arizona could be either purchased there at cheaper rates, or forwarded more securely from St. Louis. Whether the conduct of the Secretary of War was or was not justifiable, is not a question to be considered in deciding this suit, for the claimant has not shown a state of case on which he could recover if the rescinding order had never been made. The contract entitled him to furnish, at certain prices, all the supplies that might be needed in Arizona until the 20th of March, 1862. To enable him to recover, for a breach of this contract, he should have proved that supplies were needed at the posts in Arizona after the rescinding order was made, and the pecuniary loss he sustained in not being allowed to furnish them. This he has wholly failed to do.

We cannot see that this is a case for even nominal damages; but if it is, the Court of Claims was not instituted to try such a case.

JUDGMENT AFFIRMED.

UNITED STATES *v.* SHOEMAKER.

Prior to the act of June 12th, 1858, providing compensation not exceeding one quarter of *one per cent.* to collectors acting as disbursing agents of the United States in certain cases, such collector, if receiving his general maximum compensation, under the act of March 2d, 1831 (§ 4), and also his special maximum of $400, under the act of May 7th, 1822 (§ 18), could not recover on a *quantum meruit* or otherwise for disbursements made for building a custom-house and marine hospital at the port where he was collector.

ERROR to the Circuit Court for the Eastern District of Michigan.

This suit was brought by the United States on a bond

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executed by Shoemaker and his sureties, the defendants, on the 19th of May, 1857, in a penalty of $20,000, conditioned that said Shoemaker, as disbursing agent for the new marine hospital and custom-house, at Detroit, Michigan, should well and truly disburse all moneys that may come into his hands from the Secretary of the Treasury for the object mentioned, and account for the same.

On the trial, the plaintiff proved that the defendant, Shoemaker, was collector of the customs at Detroit, in 1857 and 1858; that he was instructed by the Secretary of the Treasury to disburse about $200,000, appropriated by Congress, for building a custom-house and marine hospital at that port; and that, between the 1st April, 1857, and *the 12th June*, 1858, and subsequently, the collector made disbursements accordingly.

It was proved, also, that during all the above period he had been allowed and had received his general maximum compensation, under the act of March 2d, 1831, § 4, as collector; and also his special maximum of $400, under the act of May 7th, 1822 (which provides (§ 18), that no collector shall ever receive more than $400 annually, exclusive of his compensation as collector, for any service he may perform for the United States in any other office or capacity), and that he had been allowed one quarter of 1 per cent. upon all disbursements made *after* June 12th, 1858.

The plaintiff then rested; and the defendants, to maintain their defence, gave in evidence, that the balance shown in the treasury transcripts, against the collector, was composed of an excess over the $400 allowed, under the act of 1822, of $2\frac{1}{2}$ per cent. upon his disbursements; and that this *per centum* was but a reasonable compensation for the service.

The act of August 4th, 1854,* authorized the building of a custom-house and marine hospital, at Detroit, and made an appropriation for the same. The duty was devolved upon the Secretary of the Treasury, and a sum equal to 10 per cent. of the moneys appropriated, was also appropriated to

* 10 Stat. at Large, 571, § 2, 3, 4.

cover the compensation of architects, superintendents, advertising, and other contingent expenses.

The act of *June 12th*, 1858,* provided that collectors of customs should thereafter be disbursing agents for the payment of all moneys appropriated for the construction of custom-houses, court-houses, &c., with a compensation not exceeding one quarter of 1 per cent. This act appropriated a small sum for fencing and grading the grounds about the hospital at Detroit. With this exception, no compensation had been allowed to the collector for the disbursement of the moneys made by him.

The court below directed the jury to find for the defendant if they believed his commission to be a reasonable one. Verdict and judgment went accordingly, and the United States brought the case here on error.

Mr. W. A. Moore, in support of the judgment, contended, that, prior to the act of June 12th, 1858, the disbursing of these moneys was no part of the official duty of the collector of customs. There was no law on the subject; and the Secretary of the Treasury had no right to require any such duty of the collector. The appointment was, therefore, in the nature of an agency of the Treasury Department. It might as well have been conferred upon any other person. And, unless restrained by some statute, Shoemaker was entitled to the same compensation that any other agent would have been.

Mr. Ashton, Assistant Attorney-General, contra.

Mr. Justice NELSON delivered the opinion of the court.

The question is, whether or not there is any law affording compensation for the service performed by the collector in this case.

The argument in support of it is, that before the act of 1858, which imposed this duty, and prescribed a compensation, the Secretary of the Treasury had no right to require

* 11 Stat. at Large, 327, § 17.

any such duty of the collector, and might as well have appointed some other person to perform it; and, hence, having appointed the collector, who accepted the appointment, and has performed the service, he is entitled to the same compensation as any other agent.

It may be that the collector might have refused the duty, and compelled the secretary to appoint another person. But this does not advance the argument, unless there can be shown some law providing for a compensation to be allowed such agent. No such provision is made in this act, nor are we aware of any authority in any other.

The question here, however, is—the collector having accepted the appointment and performed the service—is there any authority of law entitling him to retain, out of the moneys received, the $2\frac{1}{2}$ per cent. as compensation for the disbursements. It is admitted that there is no act of Congress authorizing it. The claim must rest, therefore, in a *quantum meruit*. This might, under some circumstances, present a strong case against the government for the allowance of a reasonable compensation. But the difficulty here is, that there is not only no law providing for compensation, but the collector is forbidden to receive it. The act of May 7th, 1822, § 18, provides that "no collector, &c., shall ever receive more than $400, annually, exclusive of his compensation as collector, &c., for any services he may perform for the United States in any other office or capacity." And the act of 3d March, 1839,* that "no officer in any branch of the public service, or any other person, whose salaries, or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money, or the performance of any other service, unless the said extra allowance or compensation be authorized by law." This act was substantially re-enacted 23d August, 1842,† with this addition: "And the appropriation therefor explicitly set forth that it is for such additional pay, extra

* § 3, 5 Stat. at Large, 349.

† § 2, Ib. 510.

allowance, or compensation." This act was noticed and commented on in *Hoyt* v. *United States*.* The court there observe, that it cuts up by the roots these claims of public officers for extra compensation on the ground of extra services; that there is no discretion left in any officer or tribunal to make allowance, unless it is authorized by some law of Congress. This construction of the acts of 1822 and 1839 was affirmed in the case of *Converse* v. *United States*.† In that case a compensation was allowed for an extra service rendered by the collector, but it was allowed, for the reason that the service was rendered in pursuance of existing laws, and the appropriation for a compensation was made by law. The principle settled in that case is decisive against the allowance in the present one.

JUDGMENT REVERSED.

THOMSON *v.* DEAN.

1. The rule laid down in *Forgay* v. *Conrad* (6 Howard, 204), as to what constitutes a final decree for the purpose of an appeal, recognized as the true rule on the subject.
2. Hence, where a bill related to the ownership and transfer of certain stock, a decree was held to be final when it decided the right to the property in contest, directed it to be delivered by the defendant to the complainant by transfer, and entitled the complainant to have the decree carried immediately into execution; leaving only to be adjusted accounts between the parties in pursuance of the decree settling the question of ownership.

THIS was a motion to dismiss an appeal from the Circuit Court for West Tennessee, on the ground that the decree from which it was taken was not final.

The record showed that the controversy related to the ownership and transfer of two hundred and four shares of the stock of the Memphis Gaslight Company, and to the rights of the parties under contracts relating to the purchase, sale, and transfer of the stock.

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* 10 Howard, 141. † 21 Id. 478.