Statement of the case.

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.

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Argument for dismissal.

The decree directed that Dean, the defendant below and appellant here, transfer forthwith upon the books of the company one hundred and ninety-four shares of the stock to one of the plaintiffs below, who are appellees here, and ten shares to another. It directed further, that account be taken and stated as to the amount paid and to be paid for the stock, and as to dividends accrued, and to be credited under the contracts between the parties. This decree was rendered on the 12th of March, 1868, and appeal was allowed on the same day. Bond was given on the 23d.

Mr. Phillips, in support of the motion:

It is, perhaps, not quite easy to reconcile all the decisions of this court on the question as to what is a "final decree" upon which an appeal will lie.

In *Forgay* v. *Conrad*,* Taney, C. J., delivering the opinion, says:

"Where the decree decides the right to the property in contest and directs it to be *delivered up*, or directs it to *be sold*, and the complainant is entitled to have it *carried into immediate execution*, the decree must be regarded as final *to that extent*, although it may be *necessary by a further decree to adjust the account* between the parties."

The principle thus laid down indicates that there may be more than one "final decree" in a cause. But later decisions seem not to sustain what is said in that case.

In *Beebe* v. *Russell*† the case of Forgay is referred to with the evident intent that it should not be regarded as establishing a principle. "The fact is," say the court, "that the order of reference to the master was *peculiar*, making it doubtful if it could in any way qualify the antecedent decree."

So far from sustaining the principle announced in Forgay's case, the court reiterates the decision in the case of *The Palmyra*,‡ where restitution, with costs and damages, had

* 6 Howard, 204. † 19 Id. 284. ‡ 10 Wheaton, 502.

been decreed, but the damages had not been assessed. This was held on appeal not to be a final decree. The ground of the holding was, that an appeal would lie on the decree awarding damages, and that the cause *could not be divided so as to bring up distinct parts of it.*

Again, it was decided that the term "final decree" is to be construed as it was understood in England and this country at the date when Congress acted upon the subject, and that at the date named, a decree was regarded as interlocutory whenever an inquiry as to matter of law or fact is directed preparatory to a final decision; while it is true that a decree may be final, although it directs a reference to the master, provided all the consequential directions depending on the master's report are contained in the decree, so that no further decree will be necessary to give the parties the full benefit of the previous decision of the court.

The latest case is *Humiston* v. *Stainthorp.** The bill here was for infringement of a patent; the decree, a *permanent injunction*, with reference to the master to take an account of profits. The cases were fully discussed at the bar. But the court dismissed the appeal "according to a long and well-settled class of cases," which are referred to in a note.

No counsel appeared against the motion.

The CHIEF JUSTICE delivered the opinion of the court.

The question is whether the decree in this case was final for the purpose of appeal?

The eighth rule of the court, prescribing the practice of the United States courts in equity, directs that "if the decree be for the performance of any specific act, it shall prescribe the time within which the act shall be done, of which the defendant is bound to take notice," and that, "on affidavit by the plaintiff of non-performance within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which he shall not be discharged

* 2 Wallace, 106.

unless on full compliance, or by special order enlarging the time."

In this case the decree directs the performance of a specific act, and requires that it be done forthwith. The effect of the act when done is to invest the transferees with all the rights of ownership. It changes the property in the stock as absolutely and as completely as could be done by execution on a decree for sale. It looks to no future modification or change of the decree. No such change or modification was possible after the term, except on rehearing or by bill of review in the Circuit Court, or through appeal in this court.

So far as the court below was concerned, the decree in the case determined the principal matter in controversy between the parties. And since the decree could not be changed except through a new and distinct proceeding, it determined that matter finally.

Why, then, must it not be regarded as a final decree within the meaning of the acts of Congress providing for appeals?

The eighth rule of practice to which we have referred certainly regards such a decree as that now under consideration as final in respect to the act to be performed.

But it is insisted that this court has held that no decree which does not completely dispose of the whole cause is final, and that this decree, though disposing completely of the controversy as to the ownership of the stock, is not final, because it directs certain accounts to be taken.

It is true that this court has always desired that appeals be taken only from decrees which are not only final but complete; and has, upon one occasion, at least, directed the attention of the Circuit Courts to the expediency and importance of refraining from making final decrees on any part of a cause, however important, until prepared to dispose of it completely. Such a course would undoubtedly save much inconvenience, both to the Circuit Courts and this court, and diminish largely the expense of litigation to suitors.

And it may be true, that under the influence of these considerations the degree of finality essential to the right of ap-

peal has been sometimes pushed quite to the limit of construction. But we think that the current of decisions fully sustains the rule laid down by the late Chief Justice in the case of *Forgay* v. *Conrad*, and which we again declare in his own language: "When the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by further decree the accounts between the parties pursuant to the decree passed."

The reasoning in the case just cited fully vindicates this rule, in our judgment, as a sound construction of the acts of Congress relating to appeals, and is sustained by the authority of several decisions.*

And it is quite clear that the appeal under consideration is within this rule. The decree for which it was taken decided the right to the property in contest, directed it to be delivered by defendant to complainant by transfer, 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.

It follows that the motion to dismiss must be

DENIED.

* Ray *v.* Law, 3 Cranch, 179; Whiting *v.* Bank United States, 13 Peters, 6; Michoud *v.* Girod, 4 Howard, 505. See also Orchard *v.* Hughes, 1 Wallace, 657; Milwaukie and Minnesota Railroad Co. *v.* Soutter, 2 Id. 440; Withenbury *v.* United States, 5 Id. 821.