

## Statement of the case.

## EX PARTE ZELLNER.

Where an act of Congress gives, as part of the general system of organization of a court, an appeal from *any* final judgment or decree which may *hereafter* be rendered by it, an appeal lies from a judgment rendered under an act which gives the court jurisdiction to pass, in the usual way, and not by any special proceedings, upon a class of cases additional to those of which it already had jurisdiction, even though nothing be said in such act about an appeal.

ZELLNER filed his petition in this court, and moved for a mandamus to the Court of Claims to compel them to allow an appeal from a decree which that court had made against him. The case was this. The relator was the owner of a quantity of cotton, stored at Macon, Georgia. In February, 1866, a special agent of the Treasury Department seized and carried away the same, and it was afterwards shipped by another agent of that department to the city of New York, and there sold by an agent of the government for \$3076, after deducting all charges and expenses. On this state of facts the relator applied to the Court of Claims for a judgment against the government, in his favor, to this amount.

The court, on full consideration, denied the claim and dismissed the petition: whereupon he prayed an appeal from the decree of dismissal, which was refused. The single question presented was, whether or not the relator was entitled to an appeal. And this depended upon the construction to be given to certain statutes, as follows: An act of 24th February, 1855,\* conferred jurisdiction upon the Court of Claims "to hear and determine all claims founded upon any regulation of an executive department, or upon any contract, express or implied, with the government," "and also all claims which may be referred to said court by either house of Congress." An act, of 3d March, 1863,† amending the former act, conferred jurisdiction, in addition to the above cases, "of all set-offs, counter-claims, claims for dam-

\* 10 Stat. at Large, 612.

† 12 Id. 765.

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ages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the government, against any person making claim against the government in said court."

The 5th section of this act of 1863 provided "that either party may appeal to the Supreme Court of the United States from *any* final judgment or decree which may *hereafter* be rendered in any case by said court wherein the amount in controversy exceeds three thousand dollars, under such regulations as the said Supreme Court may direct."

There was yet, however, another act in the case, the act providing for the collection of abandoned property in insurrectionary districts, passed March 12th, 1863, under which the property in question was seized. This statute provided, in the 3d section, that "any person claiming to have been the owner of any such abandoned or captured property may, at any time within two years after the suppression of the rebellion, prefer his claim to the proceeds thereof in the Court of Claims; and, *on proof to the satisfaction of the said court*, of the ownership of said property, of his right to the proceeds thereof, and that he has never given any aid or comfort to the present rebellion, receive the residue of proceeds, after deducting expenses," &c. *The act contained no provision for an appeal from the judgments or decrees of the court.* It was passed by Congress on the same day that the act of 1863, above referred to, was passed, reorganizing the Court of Claims, and authorizing it to render judgments against the government, with the right of either party to appeal to the Supreme Court, as already stated, though it was not approved by the President till nine days afterwards.

It was supposed below, as the act concerning abandoned and captured property conferred upon the Court of Claims a new subject of jurisdiction in addition to those previously provided for, and at the same time made no provision for appeals to the Supreme Court from their judgments or decrees, that no right of appeal existed in respect to either party, and that the general provision in the 5th section of the act reorganizing the court, and conferring what may be called its general jurisdiction, could not be invoked.

## Opinion of the court.

*Mr. Durant, in support of the motion, argued that the Abandoned Property Act left the practice, remedy, and all jurisdictional conditions, to previous legislation about the Court of Claims; and that so an appeal existed under the act of March 3d, 1863, reorganizing that court.*

*Mr. Hale, special counsel of the United States, contra, citing and relying on *United States v. Nourse*,\* and the 1st section of the act of 25th June, 1868, providing for the allowance of an appeal by the government from all final judgments of the Court of Claims adverse to it, whether such judgment shall have been rendered by virtue of the general or any special power of the court—contended that no appeal being specially given by the Abandoned Property Act, and the whole matter in proceedings under that act being referred to the satisfaction of the Court of Claims, the case was not embraced by the general right of appeal given by the previous act of March 3d, 1863, reorganizing the Court of Claims.*

Mr. Justice NELSON delivered the opinion of the court.

We cannot agree to the view that the general provision in the 5th section of the act of March 3d, 1863, reorganizing the Court of Claims, and conferring what may be called its general jurisdiction, cannot be invoked in this case. The language of that section is general: "Either party may appeal to the Supreme Court of the United States from any final judgment or decree which may hereafter be rendered in any case by said court." This court was organized as a special judicial tribunal to hear and render judgment in cases between the citizen and the government; the subjects of its jurisdiction were defined in the act, and, generally, the mode of conducting its proceedings, subject, of course, to such alterations and changes as Congress from time to time might see fit to make. The subjects of its jurisdiction could be enlarged or diminished, but this would not disturb or in any way affect the general plan or system of its organization.

\* 6 Peters, 470, 494.

## Opinion of the court.

If new or additional subjects of jurisdiction were conferred the effect would be, simply, to increase the labors of the court, the cases to be heard and determined under the existing organization.

In the regulation of the jurisdiction of the United States Circuit and District Courts, by the Judiciary Act of 1789, the 22d section of that act, together with the 2d section of the act of 3d March, 1803, provided for writs of error and appeals from all final judgments or decrees of the District to Circuit Courts, and from all final judgments and decrees of the Circuit to the Supreme Court. The jurisdiction of both these courts has been enlarged, from time to time, since this organization; and it has never been doubted but that the judgments or decrees founded upon these new subjects of jurisdiction were liable to the operation of these general provisions in respect to writs of error and appeals. The case of *United States v. Ferreira*,\* illustrates the principle.

The power to hear and adjudicate upon certain claims under the treaty of 1819, between this government and Spain, was conferred upon the District Judge of the United States for the Northern District of Florida. In a case before him he rendered a decision against the government, from which the United States District Attorney appealed to the Supreme Court, which, it was admitted, would have been regular if the adjudication had been rendered by the judge as a court, and the decree, *that* of the District Court. But, it was held, that the power was not conferred upon the judge in his judicial capacity, sitting as a court, but upon him as a commissioner; and hence, an appeal under the 22d section of the Judiciary Act would not lie. The same principle is stated in *United States v. Circuit Judges*.†

The case of *United States v. Nourse*, relied upon against this motion, was a case of special and summary jurisdiction, under the act of 15th May, 1820, in which the mode of proceeding is particularly pointed out, and in which a special mode of taking an appeal is prescribed, and in respect to the

\* 13 Howard, 40.

† 3 Wallace, 675.

## Syllabus.

proceedings before the district judge they could be taken at chambers as well as in court.

As it respects the act of Congress in question, no special proceedings are prescribed to the Court of Claims or to the claimant. Any person claiming to be the owner of abandoned or captured property within the meaning of the act may, at any time within two years after the suppression of the rebellion, present his claim for the proceeds to the Court of Claims, and they are to proceed, in the usual way, to hear and adjudicate upon the question of ownership and right to the proceeds, according to the proofs and law of the case.

We are referred to the 1st section of the act 25th June, 1868,\* as bearing upon this motion, which provides for the allowance of an appeal by the government from all final judgments of the Court of Claims adverse to it, whether such judgment shall have been rendered by virtue of the general or any special power of said court. We can only say that in the view the court have taken of this case this section has no application to it. The judgment has not been rendered by the court under any special power conferred; and it is not pretended that the effect of it is to take away the right of the claimant to appeal from a judgment under the general jurisdiction of the court.

MOTION GRANTED.

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BARNEY *v.* SCHMEIDER.

1. It is not sufficient to sustain a verdict for the plaintiff, that the testimony on which it was founded was known to the court by whom the jury was charged to find such a verdict. The evidence must be submitted to the jury, or the charge is erroneous.
2. The question, whether certain imported goods were similar to certain other goods described in the revenue law, for the purposes of customs duties, is a mixed question of law and fact, and cannot, by the mere charge of the court, be wholly withdrawn from the jury.

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\* 15 Stat. at Large, 75.