Statement of the case.

TWENTY PER CENT. CASES.

1. The *Twenty per Cent. Cases* (13 Wallace, 576) affirmed, and the liberal view there taken of the *joint resolution* of 28th February, 1867, allowing to certain persons in the civil service of the United States at Washington, an additional compensation of twenty per centum upon their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay respectively, for one year from the 30th of June, 1866, declared to be the true view and applied to other cases essentially like those.
2. But not applied to the case of a person hired at Washington to do service out of Washington, nor to a contractor who contracted to deliver finished work, and who employed another to do it for him.
3. An act passed on the 12th of July, 1870, repealing "all acts and *joint resolutions*, or parts thereof, and all resolutions of either house of Congress granting extra pay," the act "to take effect on the 1st day of July, 1870," did not affect the rights given by the joint resolution abovementioned.

APPEALS in fourteen cases from the Court of Claims; the case being thus:

On the 28th of February, 1867, Congress passed this joint resolution:*

"That there shall be allowed and paid . . . to the following described persons, now employed in the *civil service of the United States, at Washington*, as follows: To civil officers, temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them; and *employés*, male and female, in the executive mansion, and in any of the following named departments, or *any bureau* or *division thereof*, to wit: state, treasury, war, navy, interior, post-office, attorney-general, agricultural, and including civil officers, and temporary and *all other clerks and employés, male and female*, in the offices of the coast survey, naval observatory, navy yard, arsenal, paymaster-general, including the division of referred claims, commissary-general of prisoners, bureau of refugees, freedmen, and abandoned lands, quartermaster's, capitol and treasury extension, city post-office, and commissioner of public buildings, to the photographer and assistant photographer of the treasury de-

* 14 Stat. at Large, 569.

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partment, to the superintendent of meters, and to lamplighters under the commissioner of public buildings, *an additional compensation of twenty per centum on their respective salaries as fixed by law, or where no salary is fixed by law, upon their pay respectively, for one year from and after the 30th day of June*, 1866. *Provided*, That this resolution shall not apply to persons whose salaries, as fixed by law, exceed $3500 per annum."

On the 12th of July, 1870,* Congress passed an act in these words:

"All acts and joint resolutions, or parts thereof, and all resolutions of either house of Congress granting extra compensation or pay, be, and the same are hereby repealed, to take effect on the 1st day of July, 1870."

Under the said joint resolution of 28th of February, 1866, fourteen different persons filed at different times—some of them after the passage of the repealing act—claims in the court below for the twenty per cent. given by the statute.

The first was employed by the bureau of yards and docks, as a machinist in the navy yard at Washington, upon daily wages at the agreed sum and price of $3.25 per day.

The second and third as coppersmiths on the treasury extension, upon daily wages. Under specific appropriations for the construction of the treasury extension, contracts were entered into for finished work, comprehending both materials and labor—materials separately, and labor by the day separately. The services in these two cases were rendered under the latter contracts.

The fourth and fifth as watchmen upon the capitol extension, at daily wages, their compensation changing during the year.

The sixth as a laborer upon monthly wages in the quartermaster's department in the city of Washington.

The seventh was employed in the treasury extension as a laborer upon daily wages; working for part of the time at $1.75 per day, and for another part at $2 per day.

The eighth by the authority of the surgeon-general of

* 16 Stat. at Large, 250, § 4.

the army, as a carpenter at the depot for receiving and distributing medical supplies in Washington.

The ninth was a watchman, laborer, and teamster by the quartermaster's department at Washington.

The tenth was a laborer by the commissary department at Washington.

The eleventh was a laborer, upon daily wages, at the Washington arsenal.

The twelfth was in the secret service division of the Treasury Department, in the capacity of detective, at a monthly salary of $150 per month.

The thirteenth, one Hoffman, was employed by one of the quartermasters on duty in the department at Washington, by the day, as sexton *at the Arlington Cemetery, near Washington, but in Virginia, and there rendered his services.*

The fourteenth, one Bell, was a plate-printer in the bureau of engraving and printing in the Treasury Department. He was paid the market price for his work, the price being neither a salary nor a *per diem* compensation, but a fixed rate for the work done; that is to say, per one hundred sheets of face printing and per one hundred sheets of back printing. In the performance of his duties he employed and paid an assistant, but the pay of the assistant was received directly from the disbursing officers of the treasury, and was deducted by them from the amount earned by the claimant. The amount paid him after such deduction was $1184.30, for twenty per cent. of which the court below entered judgment.

Each of the fourteen claimants was paid the highest rate of wages commonly paid for services such as his.

The Court of Claims gave judgment, *pro formâ*, in all the cases, for the claimants, and the government brought the cases here.

The meaning of the joint resolution of February 28th, 1867, it may be well here to state, had been a matter of question in this court on a previous occasion in the cases known as *The Twenty per Cent. Cases;** and the court then said that

* 13 Wallace, 576.

persons are "properly in the civil service, if they were employed by the head of the department, or of the bureau, or any division of the department charged with that duty, and authorized to make such contracts, and fix the compensation of persons employed, even though the particular employment may not be designated in any appropriation" act. It added, that "many persons not employed as clerks and messengers of the departments are in the public service by virtue of an employment by the head of the department or by the head of a bureau of the department authorized by law to make such contracts, and such persons are as much in the service, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the department building."

Mr. John Goforth, Assistant Attorney-General, for the United States:

In *The Twenty per Cent. Cases*, already reported, the salary or pay was fixed directly or limited indirectly by law; and was a fixed and arbitrary rate of compensation; and the person employed had no part in naming the amount to be paid him. In the cases now here, the compensation was not fixed or limited by any law or by the head of any department or division, but was the highest ruling rate in the market for similar labor, and was fixed by the person employed, and changed by him as the market changed. The wages were under the restriction of no statute, and the services were such as might be rendered to any employer.

In the former *Twenty per Cent. Cases*, this court, in its opinion, said:

"Certain described persons and classes of persons are plainly entitled to the benefit of the provision, whether regarded as officers or as mere employés, and it is no valid argument against that proposition to show that there are or may be other employés or persons in the civil service here who are not within that description, as the terms of the enactment are special and do not extend to every employment in that service, but only to the described persons and classes of persons therein mentioned."

The claimants in the present cases belong to classes different from those in the case cited. Some are connected with the military service, and not with the civil at all.

The last two claimants are clearly excluded. One, Hoffman, performed his work outside the limits of Washington; and one, Bell, was a contractor for finished work.

The repeal of the joint resolution of February 28th, 1867, prevented the officers of the treasury after its passage from paying the twenty per cent., and left the Court of Claims without jurisdiction of any action for the recovery of anything thereunder. It is true that statutes in general apply only to cases that may hereafter arise. Such an act as this—an act repealing other acts, &c.—cannot in its nature operate on future acts. It applies to existing acts.

Messrs. N. P. Chipman, J. Daniels, and A. P. Culver, contra, relied on *The Twenty per Cent. Cases*, and the language showing its intended scope, as conclusive.

As for the act of July 12th, 1870, they argued that the real purpose of that act was to cut off a general class of extra compensation which had crept into various statutes; the cutting off of which *in future*, Congress thought advisable; and, for obvious reasons, that it could have no reference to a case where the compensation had been allowed, and where presumably (as in the great majority of cases in fact) it had been received three years before.

Mr. Justice CLIFFORD delivered the opinion of the court.

Additional compensation is claimed by the respective appellees, as employés in the civil service of the United States in this city, by virtue of the joint resolution of the 28th of February, 1867, which provides that twenty per cent. additional compensation shall be allowed and paid to certain classes of such employés in Washington, as therein designated.

Civil officers, whose annual salaries do not exceed $3500, and all clerks, whether temporary or permanent, and messengers and watchmen, are specifically named in the resolution,

including enlisted men detailed as such, and the provision is that the additional allowance shall be computed upon the gross amount of the compensation received by such employé as fixed by law, or where no salary is fixed by law, upon the pay of the employé for that fiscal year, and that the benefit of the resolution shall extend to employés, male and female, in the executive mansion and in any of the following named departments, or any bureau or division thereof, to wit: state, treasury, war, navy, interior, post-office, attorney-general, and agricultural, and including civil officers and all clerks and employés, male and female, in the offices of the coast survey, naval observatory, navy-yard, arsenal, paymaster-general, bureau of refugees, freedmen, and abandoned lands, quartermasters, capitol and treasury extension, city post-office, and commissioner of public buildings; to the photographer and assistant photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the commissioner of public buildings.

Judgments rendered by the Court of Claims, involving controversies of a like character, were removed into this court by appeal on a former occasion,* when it became the duty of this court to examine the joint resolution in question and to determine what, in the judgment of the court, is its actual scope and true intent and meaning, as applied to the several cases then before the court.

Attempt was then made in argument to convince the court that the words of the resolution, "in the civil service of the United States," as there employed, should be restricted to persons filling offices or holding appointments established by law, but the court rejected that narrow construction of the phrase and unanimously decided that neither a commission nor a warrant of appointment is necessary to entitle an employé to the benefits of the joint resolution, provided he was actually and properly employed in the executive mansion, or in any of the departments, or in any bureau or division thereof, or in any of the offices specifi-

* Twenty per Cent. Cases, 13 Wallace, 576.

cally designated in the said joint resolution; that persons so employed here are properly to be regarded as employés in the civil service of the United States within the true intent and meaning of that phrase as there used, if they were employed by the head of the department, or of the bureau or any division of the department, charged with that duty and authorized to make such contracts and fix the compensation of the person or persons employed, even though the particular employment may not be designated in an appropriation act.

Such was the unanimous opinion of the court as to the true construction of the joint resolution under consideration on that occasion, and the court, with equal unanimity, adheres to that conclusion in the cases before the court.

Many persons, not employed as clerks or messengers of a department, are in the public service by virtue of an employment by the head of a department, or by the head of some bureau of a department or division thereof authorized to make such contracts, and such persons are as much in the civil service of the United States, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the department building.*

Much discussion of that topic, however, is unnecessary, as the question was explicitly determined in our former decision, to which reference is made for a full exposition of the present views of the court upon that subject.

Grant all that, still it is insisted that the joint resolution has been repealed since that decision was made, and that the effect of the repealing act is to bar the right of recovery in all of the cases under consideration; in support of which proposition reference is made to the fourth section of the Appropriation Act of the 12th of July, 1870, which enacts that all acts and joint resolutions or parts thereof, and all resolutions of either house of Congress granting extra com-

* United States *v.* Belew, 2 Brockenbrough, 280; Graham *v.* United States, 1 Nott & Huntington, 380; Commonwealth *v.* Sutherland, 3 Sergeant & Rawle, 149.

pensation or pay, be and the same are hereby repealed, to take effect on the 1st day of July in the same year.*

Two propositions are submitted by the United States, based upon that repealing act, to show that the respective appellants in these cases cannot recover: (1.) That the repeal of the joint resolution prevents the officers of the treasury from paying the additional compensation after the date of its passage. (2.) That the repealing act, even if the resolution created an implied contract and gave jurisdiction to the Court of Claims to enforce it, divested the Court of Claims of all jurisdiction in such controversies.

Both of the propositions, as it seems to the court, overlook the material facts of the case, all of which are undisputed. They are as follows: (1.) That the joint resolution ceased to be operative at the end of the fiscal year in which it was enacted. (2.) That such additional compensation is allowed only for that year. (3.) That the claims in these cases are only for such additional compensation during that fiscal year. (4.) That the joint resolution ceased to be operative at the close of that fiscal year. (5.) That the right to such additional compensation became fixed and vested when the year's services were faithfully performed. (6.) That the repealing act, which it is supposed constitutes a bar to the cause of action in these cases, did not become a law until more than three years after the right to the additional compensation had become fixed and vested, and the joint resolution had ceased to be operative in respect to prospective services.

Viewed in the light of these suggestions grave doubts arise whether the repealing act in question applies at all to the joint resolution, as it is difficult to believe that Congress would deem it necessary to repeal a provision which had expired by its own limitation more than three years before they acted upon the subject.

Mere supererogation, however, it is said, cannot properly be imputed to the National legislature, and there would be

* 16 Stat. at Large, 250.

much force in the suggestion if the joint resolution had at that time been in operation and had been the only provision of the kind to which the descriptive words of the repealing act would apply, but the fact is plainly otherwise, as there are several acts of corresponding import which were in full force at that date, and which, it must be admitted, are unquestionably included within those descriptive words.*

Enough appears in the repealing act itself to show that Congress did not intend to give it any retroactive effect, except as therein provided, as the act expressly enacts that the provision in question shall take effect on the 1st day of July next before the day it was approved, which affords a demonstration that Congress never intended that it should retroact to any other or greater extent.†

Courts of justice agree that no statute, however positive in its terms, is to be construed as designed to interfere with existing contracts, rights of actions, or with vested rights, unless the intention that it shall so operate is expressly declared or is to be necessarily implied, and pursuant to that rule courts will apply new statutes only to future cases, unless there is something in the nature of the case or in the language of the new provision which shows that they were intended to have a retroactive operation. Even though the words of a statute are broad enough in their literal extent to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms.‡

Such a law, if passed by a State, and construed to have the effect claimed for it in this case by the appellants, would be unconstitutional and void; but it is not necessary to discuss any such proposition in this case, as there is not a word in the repealing act to support the conclusion that Congress

* 12 Stat. at Large, 587; 14 Id. 206; 15 Id. 77. † 16 Id. 250.

‡ Potter's Dwarris, 161; Wood *v.* Oakley, 11 Paige, 403; Butler *v.* Palmer, 1 Hill, 325; Jarvis *v.* Jarvis, 3 Edwards, 466; McEwen *v.* Bulkley, 24 Howard, 242; Harvey *v.* Tyler, 2 Wallace, 329; Blanchard *v.* Sprague, 3 Sumner, 535; United States *v.* Heth, 3 Cranch, 399.

intended to rescind any antecedent contract, or to enact any bar to the right of recovery in such cases where the service had been faithfully performed before the repealing act was passed.

Apply those rules to the cases before the court and it is clear the appellees in the first twelve are entitled to recover, as the finding of the court below shows that the claimant in each of those cases is included within the joint resolution as construed and defined by this court.

But the other two claimants, to wit, Hoffman and Bell, are not entitled to recover, the former because he was employed as sexton at the Arlington Cemetery, in the State of Virginia, and not "in Washington," and because, consequently, his claim is not within the words of the joint resolution. Nor is the latter, because he was not in the civil service of the United States within the meaning of that provision, as he was a plate-printer, working under a contract at an agreed rate "per one hundred sheets of face printing and per one hundred sheets of back printing." He employed an assistant, for whose compensation he was responsible; but the finding of the subordinate court shows that the assistant was paid directly by the disbursing officer, and that the sum thus paid was deducted from the gross earnings of the claimant. Suffice it to say that the claimant was a contractor, and that he employed another to do most or all of the work, and in the judgment of the court such a contractor is not entitled to the additional compensation allowed and directed to be paid by the joint resolution under consideration.

JUDGMENT AFFIRMED IN THE FIRST TWELVE CASES.

JUDGMENT REVERSED IN THE LAST TWO CASES, and the causes remanded, with directions to dismiss the respective petitions.

Mr. Justice SWAYNE, in whose opinion concurred the CHIEF JUSTICE, and Mr. Justice DAVIS, dissenting from the judgment in the first twelve cases:

I dissent from the judgment of the court in these cases in

favor of the claimants, and will give my views as briefly as may be. When the resolution giving the twenty per cent. was passed, nearly eight months of the year to which the allowance related had elapsed. The allowance was a mere gratuity. Hence there was no vested right arising from the resolution, and there could be none. But the resolution was operative in each case until the claimant was paid. When repealed, the gratuity which it gave fell with it. The repeal necessarily had that effect. I see no reason for giving the repealing section a more limited construction. It was intended to take away from all those who had not then been paid, the right to be paid thereafter. I think, therefore, that the judgments of the Court of Claims should be reversed.

PAHLMAN *v.* THE COLLECTOR.

Under the act of July 20th, 1868, imposing taxes on distilled spirits, the assessor and his assistant, in estimating the true producing capacity of a distillery, are empowered to fix as the true fermenting period such period as they, after examination and calculation, may deem the true one. They are not bound to take as such the period which the distiller, in the notice which the sixth section of the act requires him to give, has declared that he would use for fermentation, and which, subsequently, he actually did use.

ERROR to the Circuit Court for the Northern District of Illinois.

Pahlman & Co., distillers in the district of Illinois just named, sued Raster, a collector of internal revenue in the same district, to recover of him certain money which they had paid to him under protest, as tax upon distilling from February to July, inclusive, in 1871, the amount sued for being, as was asserted by them, so much *in excess* of what was really due.

The only question involved was one of law, and came up on demurrer to special counts in the declaration. That