

**Case Vs. Terrell**

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**Court :** US Supreme Court

**Decided On :** 1870

**Appeal No. :** 78 U.S. 199

**Appellant :** Case

**Respondent :** Terrell

**Judgement :**

Case v. Terrell - 78 U.S. 199 (1870)  
U.S. Supreme Court Case v. Terrell, 78 U.S. 11 Wall. 199 199 (1870)

**Case v. Terrell**

**78 U.S. (11 Wall.) 199**

*APPEAL FROM THE CIRCUIT COURT*

*FOR THE DISTRICT OF LOUISIANA*

*Syllabus*

1. No judgment for the payment of money can be rendered against the United States in any court other than the Court of Claims without a special act of Congress conferring jurisdiction.
2. A receiver of a national bank whose operations have been suspended by the Comptroller of the Currency for causes specified in the national Currency Act in no sense represents the government, and cannot subject it to the jurisdiction of the courts.
3. Nor can the Comptroller of the Currency, though he be sued himself and submit to it, subject the government to the jurisdiction of the ordinary courts to determine the conflicting claims of the United States and other creditors in the funds of such a bank.

Page 78 U. S. 200

4. It is doubtful if he has a right to submit himself to the control of the courts in the discharge of duties specially entrusted to him by law.

Terrell and others, creditors of the First national Bank of New Orleans, which had failed and been put into liquidation, brought this bill in chancery in the court below

against one Case, who on the failure of the bank had been appointed receiver of it, Hurlburd, Comptroller of the Currency of the United States, and one May and Beauregard, citizens of Louisiana.

The prayer for relief was that a certain admitted debt due to the United States from the bank be ascertained; that they (*the United States*) be charged with certain sums and required to account for them, and that a writ of injunction issue restraining the Comptroller from making a dividend of the funds of the bank until this account be adjusted.

Case and Hurlburd, the receiver and Comptroller as aforesaid, appeared and answered, the answer of the latter being put in for him by the district attorney, and neither signed by Hurlburd nor sworn to by him. In it,

"He submits, on behalf of the United States, to the decision of the court the claims of the United States *to priority of payment* over the allowed claims of the creditors of said bank that are not disputed."

The final decree, besides making a general order on the Comptroller to distribute the funds of the bank in his hands ratably among its creditors as the law directs, decreed against the United States in favor of the creditors of the bank for the sum of \$206,039.91, and that no claim of the United States shall have any priority in the distribution of the funds of the bank except as to the bonds pledged to secure its circulation.

From this decree, Case, the receiver, and Hurlburd, the Comptroller, appealed.

Page 78 U. S. 201

MR. JUSTICE MILLER delivered the opinion of the Court.

It is seen from the bill and decree that while the United States was not made a defendant, and while it is well settled that it could not be sued in the court below, the only relief prayed by the bill was relief against the United States, and the only decree rendered which was not merely formal was a decree against the United States for over \$200,000, and a further decree barring the right to assert her priority as a creditor of the bank in the distribution of its funds.

It is strange that in any court professing to administer the English system of equitable jurisprudence, such a decree could be rendered against anyone not made a party to the suit, and who had in no manner appeared in the case; and it is almost incredible that in any federal court of this Union, except the Court of Claims, a moneyed judgment could be rendered against the United States.

The contrary has been so repeatedly decided that it is a waste of time to reargue the proposition, which will be found fully asserted in the recent cases of *De Groot v. United States*, [ [Footnote 1](#) ] *United States v. Eckford*, [ [Footnote 2](#) ] *The Siren*, [ [Footnote 3](#) ] and *The Davis*. [ [Footnote 4](#) ] In the case of *United States v. Eckford*, it was held that although in a suit in which the United States was plaintiff, a setoff could be pleaded and allowed, yet no judgment could be rendered for a balance found to be due to the defendant by the verdict of the jury, either in the circuit court, where the case was tried, or in the Court of Claims, where suit had been brought on the verdict.

It is true that in the two last cases cited above it was held that in a case in admiralty, where the *res* was rightfully before the court and was taken into possession by its officer without the necessity of suit or process against the United States, it could be subjected to certain maritime liens though the ownership was in the government. But in these cases, the government came into court of its own volition to assert its claim to the property,

Page 78 U. S. 202

and could only do so on condition of recognizing the superior rights of others.

We are quite at a loss to know on what principle the jurisdiction in the present case is asserted, for the briefs for the appellees are devoted wholly to the merits of the controversy. But we must suppose that it is claimed on the ground that the receiver and Comptroller, both of whom appeared and answered the bill, represent the United States, and can subject the government to the jurisdiction of the court.

As to the receiver, the claim, if any such be made, is not worth serious consideration. He represents the bank, its stockholders, its creditors, and does not in any sense represent the government.

Nor can such authority be conceded to the Comptroller of the Currency. It may very well admit of doubt whether it is within his competency to submit himself, in the exercise of duties specially confided to him by acts of Congress, to the control of the courts, and especially of those which can assert no such jurisdiction by reason of their territorial limits. We are not called upon here to decide this question. But we have no hesitation in holding that however he may submit himself to the jurisdiction of those courts and consent to be governed in his official action by their decrees, so far as they affect rights of parties who may come into court and be impleaded in the same suit, he has no authority to subject the United States to such jurisdiction, and to submit the rights of the government to litigation in any court, without some provision of law authorizing him to do so.

There is no analogy in the case before us to suits against officers of the customs or of the internal revenue to recover for illegal assessments or collections of taxes or duties, for they are suits against the officer for a tort or for money had and received, and when a judgment is rendered against him, the government protects him by paying it, because the money was received for its use. But this is by virtue of statute, and the mode of proceeding is pointed out and well defined, and the remedy is limited to cases where the mode is strictly pursued.

Page 78 U. S. 203

In the answer filed for the Comptroller in this case, he says, or is made to say (for it is neither signed nor sworn to by him) that he

"submits, on behalf of the United States, to the decision of the court the claims of the United States to priority of payment over the alleged claims of the creditors of said bank that are not disputed."

We have already said that the Comptroller has no power to subject the United States to such jurisdiction.

But he here seems only to submit the question of the government's claim to priority of payment, while the court not only decides against this priority, but renders a further decree requiring repayment of money had and received from the bank, and the payment of money which the United States is supposed to have assumed to pay in a contract with private parties not before the court. If the government is liable to the bank or its receiver or its creditors for either of these claims, it would seem that it would be, in the first case, on an implied contract for money had and received, and in the second, on the express contract to pay as alleged. When such liability is denied or payment is refused, the Court of Claims has jurisdiction, and no other court has. The United States cannot be subjected to litigation growing out of its relations to these banks in all the various courts in which their affairs may be the subject of judicial controversy.

But it is useless to pursue the matter further. The only substantial relief asked by the bill or granted by the decree is against the United States. The manifest purpose of the proceeding was to subject the government to a tribunal which could rightfully exercise no jurisdiction in the premises. It was no party to the suit, nor did any party represent its interests who had authority to bind it.

*Decree reversed with directions to the court below to dismiss the bill.*

[ [Footnote 1](#) ]

[72 U. S. 5](#) Wall. 419.

[ [Footnote 2](#) ]

[73 U. S. 6](#) Wall. 484.

[ [Footnote 3](#) ]

[74 U. S. 7](#) Wall. 152.

[ [Footnote 4](#) ]

[77 U. S. 10](#) Wall. 15.