United States Vs. Macdaniel

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Decided On : 1833

Appeal No. : 32 U.S. 1

Appellant : United States

Respondent : Macdaniel

Judgement :

United States v. MacDaniel - 32 U.S. 1 (1833)
U.S. Supreme Court United States v. MacDaniel, 32 U.S. 7 Pet. 1 1 (1833)

United States v. MacDaniel

32 U.S. (7 Pet.) 1

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR

THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

The United States instituted a suit to recover a balance charged on the books of the Treasury Department against the defendant, who was a clerk in the Navy Department upon a fixed annual salary, and acted as agent for the payment of

moneys due to the navy pensioners, the privateer pensioners, and for navy disbursements, for the payment of which funds were placed in his hands by the

government. He had received an annual compensation for his services in due payment of the navy pensioners, and for fifteen years he had received, in preceding accounts, commissions of one percent on the moneys paid by him for

navy disbursements. He claimed these commissions at the Treasury, and the claim bad been there rejected by the accounting officers, and if allowed the

same, he was not now indebted to the government. The United States, on the trial of the case in the circuit court, denied the right of the defendant to these commissions, as they had not been allowed to him by any department of the government, and asserted that the jury had not power to allow them on the trial.

The rejection of the claim to commissions by the Treasury Department formed no objection to the admission of it as evidence of offset before the

jury. Had the claim never been presented to the department, it could not have been admitted as evidence by the court. But as it had been made out in form and presented to the proper accounting officers and had been rejected, the circuit court did right in submitting it to the jury if the claim was considered as equitable.

This Court will not sanction a limitation of the power of the circuit court in cases of this kind to the admission of evidence to the jury on a trial only to such items of offset against the claims of the government as were strictly legal and which the accounting officer of the Treasury should have allowed. It is admitted that a claim which requires legislative sanction is not a proper offset either before the Treasury officers or the court. But there may be cases in which the services having been rendered, a compensation may be made within the discretion of the head of the department, and in such cases the court and jury will do not what an auditor was authorized to do, but what the head of the department should have done in sanctioning an equitable allowance.

The Act of 27 March, 1804, by which the President of the United States was authorized to attach to the navy yard at Washington a captain of the navy for the performance of certain duties, was correctly construed by the head of the Navy Department, until 1829, allowing to the defendant commissions on the sums paid by him as the special agent of the Navy Department in making the disbursements.

By an act passed 10 July, 1832, Congress authorized appointment of a separate and permanent navy agent at Washington and directed the performance of the duties "not only for the navy yard in the City of Washington, but for the Navy Department under the direction of the Secretary of the Navy in the payment of such accounts and claims as the Secretary may direct." These duties would not have been so specially stated in this act if they had been considered by Congress as coming within the ordinary duties of an agent for the navy yard at

Washington under the act of 1504. But independent of this consideration, it is enough to know that the duties in question were discharged by the defendant under the construction given to the law by the Secretary of the Navy.

It will not be contended that one secretary of a department has not the same power as another to give a construction to an act which relates to the business of his department.

A practical knowledge of any one of the great departments of the government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law, but it does not follow that he must show a statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance of the subject. Whilst the great outlines of its movements may be marked out and limitations imposed on the exercise of its powers, there are numberless things which must be done

that can neither be anticipated nor defined and which are essential to the proper action of the government. Hence, of necessity, usages have been established in every part of the government which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits, and no change of such usages can have a retrospective effect, but must be limited to the future.

Usage cannot alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions.

That the duties in question were discharged by the defendant during office hours can form no objection to the compensation claimed. They were required of him by the head of the department, and being a subordinate, he had no discretion to decline the labor and responsibility thus imposed. But seeing that his responsibility would be greatly increased, and perhaps his labor, the Secretary of the Navy increases his compensation, as in justice he was bound to do.

This action of assumpsit has been brought, by the government to recover from the defendant the exact sum which in equity it is admitted he is entitled to receive for valuable services rendered to the public in a subordinate capacity under the express sanction of the head of the Navy Department. This sum of money happens to be in the hands of the defendant, and the question is whether he shall, under the circumstances, be required to surrender it to the government and then petition Congress on the subject. A simple statement of the case would seem to render proper a very different course.

It would he a novel principle to refuse payment to the subordinates of a department because their chief, under whose direction they had faithfully served the public, had given an erroneous construction to the law.

The Secretary of the Navy, in authorizing the defendant to make the disbursements on which the claim for compensation is founded, did not transcend those powers which, under the circumstances of the cases. he might well exercise.

This section was brought on 14 August, 1829, in the circuit court by the United States to recover from the defendant the sum of $988.94, alleged to have been found due on a settlement of his accounts by the accounting officers of the Treasury Department. The case was tried in May, 1831, and a verdict and judgment rendered for the defendant, to reverse which judgment the United States prosecuted this writ of error.

Before the verdict was given, the district attorney of the

United States filed the following bill of exceptions. After stating that the United States gave in evidence an account against the defendant, settled at the Treasury, upon which they claimed from the defendant a balance of $988.94 with interest from August 3, 1829, the bill of exceptions proceeded:

"The defendant then examined a witness, to prove that the said defendant was a clerk in the Navy Department, at an annual salary of $1,400, and while he was so acting, he was engaged and acted as the agent for the payment of the money due to the navy pensioners, the privateer pensioners, and acted also as a special agent for the navy disbursements, and the moneys which were applied to the use of those objects were placed in his hands by the government, to be disbursed by him. That he was allowed for his services in the payment of pensions, the annual sum of $250, but he has no knowledge that any annual sum was ever allowed him for his services as a special agent for the navy disbursements. The witness stated that he was also a clerk in the Navy Department, and was in the habit of stating the defendant's accounts as special agent, and he knows that a commission of one percent was always allowed him, to his knowledge, for ten or fifteen years past, until the settlement of the present account, upon his disbursements as special agent for the navy disbursements. The witness further stated that the services of this special agent in these disbursements were similar to those performed by other navy agents, such as the navy agent of Boston, &c.; That they amounted, during the period that he acted as agent as aforesaid, to from fifty to one hundred thousand dollars a year; that the defendant gave no bond or security,

to his knowledge, for the performance of these duties."

"The defendant then gave in evidence to the jury the certificate of B. W. Crowninshield, then Secretary of the Navy, of 3 May, 1817, and his account against the United States, allowed by Smith Thompson, then Secretary of the Navy."

"Navy Department, May 3, 1817"

" George McDaniel, as agent of the navy pension fund, upon

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all expenditures by him heretofore made, is entitled to the same commissions as have been allowed to other agents."

"B. W. CROWNINSHIELD"

" *Secretary of the Navy* "

" The navy pension fund to George McDaniel:"

" For compensation as clerk of the navy pension accounts from 1 July to the 31 December, 1818, inclusive, at the rate of two hundred and fifty dollars per annum, $125.00."

" Respectfully submitted,"

"G. MACDANIEL"

" Upon which account are the following endorsements: 'To be allowed,'"

"SMITH THOMPSON"

"Received payments in account,"

"G. MACDANIEL"

"The defendant set up against the claim made against him by the United States in this case a charge for a commission of one percent as special agent of the Navy Department on the expenditure of $11,789.20, amounting to $117.89, and a like commission of $692.30, upon the expenditure of $69,229.92, which commissions had been disallowed by the Navy Department, and if now disallowed upon this trial, would leave the defendant indebted to the United States in the sum of $810.19, exclusive of the other items of claim made against him in this case."

"The witness who gave testimony for the defendant proved that the services performed by the defendant as special agent as aforesaid were performed during office hours, and occupied from one-third to one-fourth of his time."

"The defendant further proved that witness had had occasion in the discharge of his duties in the Fourth Auditor's office to examine the accounts of defendant, and reported the accounts in question; that the same commission was claimed by defendant in these accounts as had been charged and allowed in all his previous accounts, so far as witness had examined them; that

the service had then been rendered and the moneys disbursed when the exception was taken; that witness knows that the accounts of public disbursements, including all these allowances of commissions upon disbursements, are annually submitted to Congress and inspected by a committee specially appointed for that purpose; that said committee attends at the different offices, where the books are open for their inspection; that the accounts embracing defendant's claims and allowances are regularly so submitted and inspected, and that no objection, as witness has ever heard, was taken by any committee or any individual to such allowances until defendant's final account, after leaving office, was settled by the Fourth Auditor. Defendant promptly paid over all the moneys in his hands when the amount was adjusted, reserving only the sums claimed by him, which appear in the accounts exhibited, and if they are allowed him, he has no public money in his hands. Defendant further offered in evidence a report from the Secretary of the Treasury to Congress, 1 March, 1831. Doc. 126, H.R. 21st

Cong. 2d Sess."

"Upon the evidence so given to the jury, the counsel for the United States prayed the court to instruct the jury that if it should believe the same to be true, that still the defendant had no right by law to the commissions which he claims in this case, and that, as the sum so charged as aforesaid, as commissions had never been allowed to him by any department of the government, it was not competent for the jury to allow them upon this trial. Which instruction the court refused to give, to which refusal the United States by its attorney excepted."

The account exhibited on the trial by the district attorney of the United States, by which the balance alleged to be due was shown, was as follows:

To balance due the United States per his account current,

rendered on 5 June, 1829 . . . . . $ 688.33

This sum disallowed, as per reconciling statement of his

navy expenditure account herewith. 228.14

Commission on $69,229.92, paid over to the Treasurer of the

United States, at one percent as debited in his account

as late special agent of the Navy Department, marked A.

Recorded on 5 June, 1829. Not allowed 692.32

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Compensation as agent for paying pensions from March to

31 May, 1829. Not allowed 62.50

Error in statement No. 141 (previous report), in payments

of Fall's pension. 6.00

$1,677.29

By this sum deposited to the credit of the Treasurer of the

United States, 3 August 1829 . . . . . 688.33

Balance due the United States, by statement examined by

Comptroller, 12 August, 1829 . . . . . $ 988.96

"THOMAS H. GILLIES, *Act. 4th Aud.* "

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MR. CHIEF JUSTICE Mc LEAN delivered the opinion of the Court.

The action was brought by the government to recover from the defendant a balance charged against him on the books of the Treasury Department amounting to the sum of $998.94. In his defense, the defendant proved that he was a clerk in the Navy Department, upon an annual salary of $1,400, and that he also acted as the agent for the payment for the moneys due to the navy pensioners, the privateer pensioners, and for the navy disbursements. That the moneys

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applied to the use of these objects, were placed in his hands by the government. That he received the annual sum of $250 for his services in the payment of pensioners, but that for ten or fifteen years he received one percent on moneys paid by him for navy disbursements. That these disbursements amounted from the sum of fifty to a hundred thousand dollars a year, and that no security was

required from him. He claimed the usual allowance of one percent upon certain sums of money disbursed by him, which had been rejected by the Treasury officers, but which, if allowed, would show that he was not indebted to the government.

Upon this state of facts, the attorney for the United States prayed the court to instruct the jury that if it should believe the same to be true, that still the defendant had no right by law to the commissions which he claims, as the sum charged had never been allowed to him by any department of the government, and that it was not in the power of the jury to allow the commissions on the trial. But the court refused to give the instructions, and a bill of exceptions was taken.

Two questions are made by the bill of exceptions, for the decision of this Court. 1. Whether the defendant has a right to compensation for the services charged? 2. Whether, if such right existed, it should have been allowed on the trial, as the proper department had decided against it?

As to the second ground, it may be proper to remark that the rejection of the claim of the defendant by the Treasury Department formed no objection to the admission of it by the court as evidence of setoff to the jury. Had the claim never been presented on the department for allowance, it would not have been admitted as evidence by the court. But as it had been made out in form, and presented to the proper accounting officer and was rejected, the circuit court did right in submitting it to the jury if the claim was considered to be equitable.

On the part of the government it is contended that, in a case like the present, the court, in admitting evidence of setoff against the claim of the government, is limited not only to

such items as were exhibited to the auditor, but to such as were strictly legal and which he should have allowed. This limitation on the power of the court cannot be sanctioned. It is admitted, that a claim which requires legislative sanction is not a proper setoff either before the Treasury officers or the court. But there may be

cases in which, the service having been rendered, a compensation may be made within the discretion of the head of the department, and in such cases the court and jury will do not what an auditor was authorized to do, but what the head of the department should have done in sanctioning an equitable allowance.

It being clear that the circuit court did not err in allowing the setoff of the defendant if he had a right to compensation for the services rendered, the validity of this right will be the next point for inquiry. On the part of the government it is contended that the head of a department may vary the duties of the clerks in his department so as to give dispatch and regularity to the general business of the office, but that by such changes no clerk or other officer of the department has a right to an increase of compensation. That it appears in the present case there was no increase of labor as to time, as the services for which compensation is charged were rendered during office hours. And it is also insisted that the duties discharged belonged to another officer of the government, and that it is not competent for any officer of the government, even the President himself, to take from one officer certain duties which the law has devolved upon him and require another to discharge them.

By the Act of 27 March, 1804, the President was authorized to

"attach to the navy yard at Washington City, and to frigates and other vessels laid up in ordinary in the eastern branch, a captain of the navy, who shall have the general care and superintendence of the same and shall perform the duties of agent to the Navy Department."

Under this law, the Attorney General contends, it was the duty of the commandant at the navy yard to make the disbursements which were made by the defendant, and consequently no compensation for such services can be allowed to the defendant.

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Whatever may now be the construction of this act as it regards the duties of the commandant, it appears he was not required to make the disbursements which were made by the defendant, and consequently they could not have been

considered at that time as forming a part of the duties of commandant of the navy yard.

By the Act of 10 July, 1832, Congress authorized the appointment of a separate and permanent agent at Washington, who shall be entitled

"to the same compensation, and under the same responsibilities, and to be governed by the same laws and regulations which now are or may hereafter be adopted for other navy agents,"

and it is made his

"duty to act as agent not only for the navy yard in the City of Washington, but for the Navy Department, under the direction of the secretary thereof, in the payment of such accounts and claims as the secretary may direct."

By this act, that part of the act of 1804 which required the commandant of the navy yard at the City of Washington to act as agent is repealed.

Until the defendant was removed from office in 1829, he continued to discharge the duties as special agent for the navy disbursements. But after that period, it is stated that, a new construction of the act of 1804 being given, those duties were required to be performed by the commandant of the navy yard, who continued to discharge them until an agent was appointed under the act of the last session. Until this time, the act of 1804 seems never to have been construed by the head of the Navy Department as providing for the special services performed by the defendant, and it would seem from the provision of the late act, which requires the agent to act not only for the navy yard, but for the Navy Department and to "pay such accounts and claims as the Secretary may direct," that the former construction was correct, and the Court is of this opinion. These duties would not have been so specially stated in the act of last session if they had been considered by Congress as coming within the ordinary duties of an agent for the navy yard. But independent of this consideration, it is enough to know that the

duties in question were discharged by the defendant under the construction given to the law by the Secretary of the Navy.

It will not be contended that one Secretary has not the same power as another to give a construction to an act which relates to the business of the department. And no case could better illustrate the propriety and justice of this rule than the one now under consideration. The defendant having acted as agent for navy disbursements for a great number of years under different Secretaries, and having uniformly received one percent on the sums paid as his compensation, he continues to discharge the duties and receive the compensation until a new head of the department gives a different construction of the act of 1804, by which these duties are transferred to the commandant of the navy yard. By this new construction, whether right or wrong, no injustice is done to the defendant, provided he shall be paid for services rendered under the former construction of the same act. But such compensation has been refused him.

It is insisted that as there was no law which authorized the appointment of the defendant, his services can constitute no legal claim for compensation, though it might authorize the equitable interposition of the legislature. That usage, without law or against law, can never lay the foundation of a legal claim, and none other can be set off against a demand by the government. A practical knowledge of the action of any one of the great departments of the government must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law, but it does not follow that he must show statutory provision for everything he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out and limitations imposed on the exercise of its powers, there are numberless things which must be done that

can neither be anticipated nor defined and which are essential to the proper action of the government. Hence of necessity usages have been established in every department of the government which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits. And no change of such usages can have a retrospective effect, but must be limited to the future. Usage cannot alter the law, but it is evidence of the construction given to it, and must be considered binding on past transactions.

That the duties in question were discharged by the defendant during office hours, can form no objection to the compensation claimed. They were required of him by the head of the department, and being a subordinate, he had no discretion to decline the labor and responsibility thus imposed. But seeing that his responsibility would be greatly increased, and perhaps his labor, the Secretary of the Navy increases his compensation, as in justice he was bound to do. In discharging the ordinary duties of clerk, the compensation of the defendant was fixed at $1,400, but when the duties of agent for navy disbursements were superadded to those of clerk, there is an adequate augmentation of pay given to him. Is there anything unreasonable or unjust in this?

But it is said there was no law authorizing such an officer to be appointed. That the duties performed by the defendant were necessary for the public service has not been denied, nor it is pretended that the commissions allowed him were higher than the amount paid for similar services elsewhere. The payments by him were legal, and being made under the immediate direction of the Secretary of the Navy, errors were avoided which might have occurred under other circumstances. It must be admitted that there was no law authorizing the appointment of the defendant, nor was it considered necessary that there should be a special statutory provision on the subject. For the convenience of the officers of the navy and others who were engaged in the service of the department, certain disbursements became necessary, and as no law

specially authorized the appointment of an agent for this purpose, they were required to be made by a clerk. In this manner were these payments made for fifteen years, under different Secretaries of the Navy, and the same rate of compensation as now claimed was allowed. The charge was sanctioned by the accounting officers of the Treasury Department, and no objection was ever made to it by the committees of Congress who annually inspected the books of the department. It would seem, therefore, whether the claim of the defendant be weighed in reference to the services performed or to the long sanction which has been given to them by the Navy and Treasury Departments, its justice is unquestionable. The government does not deny the performance of the services by the defendant, nor that they do in equity entitle him to compensation, but as his appointment was without legal authority, it is insisted he can obtain compensation only by application to Congress.

An action of assumpsit has been brought by the government to recover from the defendant the exact sum which, in equity, it is admitted he is entitled to receive for valuable services rendered to the public in a subordinate capacity under the express sanction of the head of the Navy Department. This sum of money happens to be in the hands of the defendant, and the question is whether he shall under the circumstances be required to surrender it to the government and then petition Congress on the subject. A simple statement of the case would seem to render proper a very different course.

If some legal provision be necessary to sanction the payment of the compensation charged, application should be made to Congress by the head of the department who required the service and promised the compensation. But no such provision is necessary. For more than fifteen years, the claim has been paid for similar services, and it is now too late to withhold it for services actually rendered. It would be a novel principle to refuse payment to the subordinates of a department because their chief, under whose direction they had faithfully served the public, had mistaken his own powers and had given an

erroneous construction of the law. But the case under consideration is stronger than this. It is not a case where payment for services is demanded, but where the government seeks to recover money from the defendant to which he is equitably entitled for services rendered. This Court cannot see any right, either legal or equitable, in the government to the sum of money for the recovery of which this action was brought. It thinks that the Secretary of the Navy, in authorizing the defendant to make the disbursements, on which the claim for compensation is founded, did not transcend those powers which, under the circumstances of the case, he might well exercise. And it therefore thinks that the circuit court did not err in refusing to give the instructions to the jury as prayed by the attorney of the United States. The judgment of the circuit court is therefore

Affirmed.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.