

United States Vs. Bailey

United States Vs. Bailey

SooperKanoon Citation : sooperkanoon.com/79501

Court : US Supreme Court

Decided On : 1835

Appeal No. : 34 U.S. 267

Appellant : United States

Respondent : Bailey

Judgement :

United States v. Bailey - 34 U.S. 267 (1835)

U.S. Supreme Court United States v. Bailey, 34 U.S. 9 Pet. 267 267 (1835)

United States v. Bailey

34 U.S. (9 Pet.) 267

*ON CERTIFICATE OF DIVISION OF OPINION OF THE JUDGES OF THE
CIRCUIT COURT OF THE UNITED STATES OF THE DISTRICT OF KENTUCKY*

SYLLABUS

Kentucky. Indictment upon the Act of Congress of March 3, 1823, for the punishment of frauds committed against the government of the United States.

After the whole case had been laid before the circuit court by the United States, the counsel for the prisoner moved the court to instruct the jury that the evidence did not conduce to prove the offense charged under the acts of Congress, which was opposed by the United States, and on this question the judges were divided and their opinions opposed. The question and disagreement were stated and ordered to be certified to the Supreme Court.

The language of the sixth section of the act to amend the judicial system of the United States, which provides for the removal of cases from the circuit court to the Supreme Court when the judges of the circuit court are opposed in opinion shows conclusively that Congress intended to provide for a division of opinion on single points which frequently occur in the trial of a cause, not to enable a circuit court to transfer an entire cause into the Supreme Court before a final judgment. A construction which would authorize such transfer would counteract the policy which forbids writs of error or appeals until the judgment or decree be final.

The certificate of the judges leaves no doubt that the whole cause was submitted to the circuit court by the motion of the counsel of the prisoner. It has been repeatedly decided that the whole cause cannot be adjourned on a division of the judges, and this is a case of that description.

The defendant was indicted under the Act of March 3, 1823, entitled "An act for the punishment of frauds committed on the government of the United States."

The act provides

"That if any person or persons shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting any deed, power of attorney, order, certificate, receipt or other writing for the purpose of obtaining or receiving, or of enabling any other person or persons, either directly or indirectly, to obtain or receive from the United States or of any of its officers or agents any sum or sums of money, or shall alter or publish as true or cause to be altered or published as true any such false, forged, altered, or counterfeited deed,

power of attorney, order, certificate, receipt, or other writing as aforesaid with

Page 34 U. S. 268

intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or shall transmit to or present at or cause or procure to be presented at any office or offices of the government of the United States any deed, power of attorney, order, or certificate, receipt, or other writing in support of or in relation to any account or claim with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, every such person shall be decreed and adjudged guilty of felony."

On 5 July, 1832, an act was passed entitled "An act to provide for liquidating and paying certain claims of the State of Virginia."

The third section of the act directs and requires the Secretary of the Treasury, to adjust and settle the claims, the payment of which the United States thus assumes, and among them certain claims to half-pay of the officers of the Virginia Line; and to pay the same out of the Treasury.

The defendant and his brothers presented a claim under this act, asserting themselves to be the representatives of John Bailey deceased, a captain in the regiment commanded by Colonel Clark, and received by their attorney, under powers delegated to him, a large sum of money from the United States as and for the half-pay of John Bailey.

The paper presented at the Treasury in support of the claim, was in the following words and figures.

"Commonwealth of Kentucky, county of Bath, to-wit:"

"The affidavit of John Bailey, one of the executors of Captain John Bailey, deceased, states that he is not interested in said estate, that Warren Bailey, Jr., and James C. Bailey, who have joined with him in a power of attorney to the honorable Richard M. Johnson, to draw any moneys that may be due them from the government of the United States, are the residuary legatees, and solely

interested; that he is years of age, and the son of said John Bailey, deceased, who, from his earliest recollection, was reputed a captain in the Revolutionary Army and in the Illinois Regiment; that he has seen his father's commission, and thinks there were two; of that fact he will not be certain, but it is his strongest impression, and is perfectly confident that the commissions, if two, both

Page 34 U. S. 269

were signed by Thomas Jefferson; that his father's papers fell into his hands as executor, and he has made many fruitless searches for them, and can in no wise account for their loss unless they were given to General Thomas Fletcher, deceased, while a member of Congress, to see if he could get anything, as affiant knows that his father applied to said Fletcher to do something for him, and understood afterwards the law had made no provision for cases situated like said John Bailey."

"As witness my hand and seal this ____ day of November, 1832."

"JOHN BAILEY [SEAL]"

"State of Kentucky, Bath County, to wit:"

"The foregoing affidavit was signed and sworn to, before me, by John Bailey, Jr., and I further certify that said John Bailey, Jr., is a man of truth and respectability, and to be strictly relied on when on oath."

"Given under my hand and seal, as a justice of the peace for Bath County, and commonwealth aforesaid, this 25 November, 1832."

"J. REED, J.P. B.C. [SEAL]"

"State of Kentucky, Bath County, to-wit:"

"I, William M. Suddeth, Clerk of the Bath County Court, do certify that the aforesaid Josiah Reed, whose name is subscribed to the foregoing certificate, is a justice of the peace in and for the county aforesaid, duly commissioned and sworn, and the

hand writing is genuine and well known to the aforesaid William M. Suddeth, as witness my hand and seal of office this 26 November, 1832."

"W. M. SUDDETH [SEAL]"

The indictment which set forth this writing contained four counts, charging respectively the false making of the said writing, purporting to be an affidavit, and feloniously causing the jurat of the justice of the peace to be annexed to it -- the uttering as true the whole paper -- the causing it to be transmitted to the Treasury Department -- and causing it to be presented at the department in support of the claim.

In the record the following case was stated, and the division

Page 34 U. S. 270

of the judges of the court on the same, in the circuit court.

The attorney of the United States read in evidence to the jury the paper set out in the indictment, purporting to be the affidavit of the prisoner and the certificates of Josiah Reed and William Suddeth thereto attached, and proved that the signature of John Bailey, to the writing purporting to be his affidavit, was in the handwriting of him, the prisoner; that the signature to the certificate of Josiah Reed was in his handwriting, and that he was a justice of the peace of Kentucky, for the County of Bath, at the date thereof; that the certificate of William Suddeth was made and signed by him, and that he was clerk of the County Court of Bath, as he certifies, and then gave satisfactory evidence that John Bailey, the father and testator of the prisoner, was not the John Bailey who was a captain in the Illinois Regiment, as represented, and gave evidence conducing to prove that the prisoner had signed the paper purporting to be his affidavit, and aided in procuring the said Reed to sign his certificate without he, the prisoner, ever having been sworn by the said Reed; that said Bailey fraudulently signed the said paper, and aided in procuring the certificate of Reed, and caused the said paper to be transmitted and presented at the Treasury Department of the United States, and there used in support of the claim, fraudulently made by the prisoner, as executor of his father, for the half-pay

due to John Bailey, as a captain in the Illinois Regiment under the Act of Congress of 5 July, 1832; that on this paper presented and received at the Treasury, as the affidavit of the prisoner, and other documents, the claim was allowed, and the money paid to the attorney of the prisoner, and a part thereof paid over to him, this being all the evidence given on the part of the prosecution, the counsel for the prisoner moved the court to instruct the jury that the evidence did not conduce to establish the offense denounced by the first section of the Act of Congress of 3 March, 1823, entitled "an act for the punishment of frauds committed on the government of the United States," nor any other act of Congress under which the indictment was framed, which motion the attorney of the United States opposed, and on this question the judges were divided, and their opinions opposed. Whereupon, on motion

Page 34 U. S. 271

of the attorney of the United States, the said question and agreement are stated and ordered to be certified to the Supreme Court.

Page 34 U. S. 272

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is a case certified to this Court from the Circuit Court of the United States for the Seventh Circuit and District of Kentucky on which the judges of that court were divided in opinion.

An indictment had been found against John Bailey upon the Act of March 3, 1823, for the punishment of frauds committed against the United States.

After the attorney for the prosecution had laid his whole case before the court and jury, the counsel for the prisoner moved the court to instruct the jury that the evidence did not conduce to establish the offense denounced by the first section of the Act of Congress of 3 March, 1823, entitled "An act for the punishment of frauds committed on the government of the United States," nor any other act of Congress under which the indictment was framed, which motion the attorney for the United

States opposed, and on this question the judges were divided and their opinions opposed. Whereupon,

Page 34 U. S. 273

on motion of the attorney for the United States, the said question and disagreement were stated and ordered to be certified to the Supreme Court.

The 6th section of the act "to amend the judicial system of the United States" enacts

"That whenever any question shall occur before a circuit court upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party or their counsel, be stated under the direction of the judges, and certified under the seal of the court to the Supreme Court at its next session to be held thereafter, and shall by the said Court be finally decided."

The act also contains a provision that

"nothing herein contained shall prevent the cause from proceeding if, in the opinion of the court, farther proceedings can be had without prejudice to the merits."

Story 856.

The language of the section shows, we think, conclusively that Congress intended to provide for a division of opinion on single points which frequently occur in the trial of a cause, not to enable a circuit court to transfer an entire cause into this court before a final judgment. A construction which would authorize such transfer would counteract the policy which forbids writs of error or appeal until the judgment or decree be final. If an introductory judgment or decree could be brought into this Court, the same case might again be brought up after a final decision, and all the delays and expense incident to a repeated revision of the same cause be incurred. So if the whole cause, instead of an insulated point, could be adjourned, the judgment or decree which would be finally given by the

circuit court might be brought up by writ of error or appeal, and the whole subject be reexamined. Congress did not intend to expose suitors to this inconvenience, and the language of the provision does not, we think, admit of this construction. A division on a point in the progress of a cause on which the judges may be divided in opinion, not the whole cause, is to be certified to this Court.

The certificate of the judges leaves no doubt that the whole cause was submitted to the circuit court by the motion of the counsel for the prisoner. The whole testimony in support of the prosecution had been submitted to the court, and

Page 34 U. S. 274

upon this whole testimony the counsel for the prisoner moved the court to instruct the jury that the evidence did not conduce to establish the offense denounced by any act of Congress under which the indictment was framed. This instruction necessarily embraced the whole cause. Had it been given, the prisoner must have been acquitted. Had the court declared that the testimony did support the indictment, the whole law of the case would have been decided against the prisoner, and the jury must have convicted him or have disregarded the instruction of the court.

It has been repeatedly decided that the whole cause cannot be adjourned on a division of the judges, and as this is, we think, a case of that description, we cannot decide it in its present form. The case is

Remanded to the circuit court, this Court not having jurisdiction over the question as stated.

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 Kentucky and was argued by counsel, on consideration whereof it is the opinion of this Court that the whole case has been certified to this Court, and as it has been repeatedly decided by this Court that the whole case cannot be adjourned on a division of the judges, the Court cannot decide this case in its present form. Whereupon it is ordered and adjudged by this Court that this case be and the same is hereby remanded to the said circuit

court for further proceeding to be had therein according to law and justice, this Court not having jurisdiction over the question as stated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com