

Minis Vs. United States

Minis Vs. United States

SooperKanoon Citation : sooperkanoon.com/79759

Court : US Supreme Court

Decided On : 1841

Appeal No. : 40 U.S. 423

Appellant : Minis

Respondent : United States

Judgement :

Minis v. United States - 40 U.S. 423 (1841)

U.S. Supreme Court Minis v. United States, 40 U.S. 423 (1841)

Minis v. United States

40 U.S. 423

ERROR TO THE CIRCUIT

COURT OF GEORGIA

Page 40 U. S. 424

The United States, at August term 1838, presented a petition to the District judge of the district Court of the district of Georgia, stating that Philip Minis was indebted

to the United States in the sum of \$13,589.05, exclusive of interest, for money lent, money paid by the United States for the use of the defendant, and for money had and received and found due by him to the United States.

The claim of the United States was on a Treasury transcript, duly certified, of the account of the United States with the defendant, Philip Minis, surgeon and military district agent, dated January 15, 1838, showing the amount claimed to be due by him to the United States. Against this demand, the defendant claimed certain allowances which had been submitted to the Treasury, among which was a charge of two and one-half percent commissions for disbursing \$514,237.61, the same sum having been paid by him as the agent of the United States for removing and subsisting the Cherokee Indians. This was disallowed at the Treasury of the United States, under the Act of 3 March, 1835, which prohibits the allowance of any percent or additional pay in any form on account of disbursing any public money unless authorized by law.

On the trial of the cause, the counsel for the defendant prayed the court to give the following instructions to the jury.

"1. That the clause in the Act of Congress of 3 March, 1835, and which is relied upon as the authority by which the defendant's claim for commissions was rejected does not apply to defendant's case, because it expressly refers to moneys appropriated during that session of Congress, and therefore the second auditor erred in disallowing the charge for commissions. "

Page 40 U. S. 425

2. That Dr. Minis was entitled to the commissions charged by him, as well from the long established practice of the government, as from the law of the land, there being no law, prior to 3 March, 1839, disallowing commissions on moneys disbursed for the government.

3. That the charge for commissions should be allowed, because the charge is made for the disbursement of moneys appropriated during the session of 1836 and 1837, and therefore neither the act of 1835 nor of 1839 is applicable.

4. That the amount of West's account should have been allowed as a credit to Dr. Minis, because the same was paid in good faith by him, and that the United States should not discredit the act of their own agent.

5. That as Dr. Minis' duty was to pay money upon the requisitions of the superintendent and commissioners, he was fully authorized to pay West's account to anyone who had possession of the account thus passed and certified to by the superintendent, and that this case was still stronger, because John W. West was the acknowledged attorney of Jacob West, and had before received money from Doctor Minis, as disbursing agent.

Which instructions the court refused to give, but instructed the jury

"That in the relation which the defendant had stood to the United States as an officer in the army, he had no claim by law for commissions on the sum disbursed by him, whatever interpretation might be given to the concluding proviso of the Act of 3 March, 1835, and admitting that such proviso was limited to a prohibition of percent, additional pay, extra allowance or compensation, on account of disbursing any public money appropriated by law during the session of Congress when the act was passed containing the proviso, that said proviso could not be interpreted to give commissions or percent upon disbursements of antecedent or subsequent appropriations of money by Congress, unless the same were authorized by law, and that no law authorized the defendant to charge commissions, and therefore that the second auditor had not erred in disallowing commissions to the defendant. The defendant excepted to the opinion of the court, and a verdict and judgment having been rendered for the United States, the defendant prosecuted this writ of error. "

Page 40 U. S. 443

STORY, JUSTICE, delivered the opinion of the Court.

The original suit was brought by the United States against Doctor Philip Minis (the plaintiff in error), to recover the balance of \$13,589.05, due from him to the United States. At the trial of the cause upon the general issue, a transcript of the account

from the Treasury Department establishing the balance was given in evidence, and the sole question in controversy between the parties was, whether Doctor Minis was entitled to credit for certain items which had been disallowed by the Treasury Department. The principal item, and the only one now in controversy, was a claim by Doctor Minis, who was a surgeon in the army and was appointed military disbursing agent for removing and subsisting the Cherokee Indians, of two and a half percent commissions on the sum of \$514,237.61, actually disbursed by him in the course of his agency, in 1836 and 1837. No evidence was offered on the part of Doctor Minis of any contract or of any usage of the government for the allowance of any such commission in cases of this sort. The counsel for Doctor Minis, among other things (not material in the present state of the case), prayed the court to instruct the jury:

"1. That the clause in the Act of Congress of 3 March, 1835, ch. 303, which was relied upon as the authority by which the defendant's claim for commissions was rejected, did not apply to the defendant's case, because it expressly refers to moneys appropriated during that session of Congress, and

Page 40 U. S. 444

therefore, that the second auditor erred in disallowing the charge for commissions."

"2. That the defendant was entitled to the commissions charged by him, as well from the long established practice of the governments as from the law of the land, there being no law prior to the Act of 3 March, 1839, disallowing commissions or moneys disbursed for the government."

"3. That the charge for commissions should be allowed, because the charge is made for the disbursement of moneys appropriated during the sessions of Congress of 1836 and 1837, and therefore that neither the act of 1835 nor of 1839 was applicable."

These instructions the court refused to give, but instructed the jury

"That in the relations which the defendant had stood to the United States, as an officer in the army, he had no claim by law for commissions on the sum disbursed by him, whatever interpretation might be given to the concluding proviso of the Act of 3 March, 1835, ch. 303, and admitting that such proviso was limited to a prohibition of percent, additional pay, extra allowance or compensation, on account of disbursing any public money appropriated by law, during the session of Congress when the act was passed containing the proviso; that said proviso could not be interpreted to give commissions or percent upon disbursements of antecedent or subsequent appropriations of money by Congress, unless the same were authorized by law; and that no law authorized the defendant to charge commissions, and therefore that the second auditor had not erred in disallowing commissions to the defendant."

To this opinion of the court the defendant excepted. The jury found a verdict for the United States, after deducting certain other disallowed items, and judgment was rendered accordingly for the United States, and the present writ of error is brought to revise that judgment.

It is certainly true, as has been suggested at the bar, that the case is, as to the evidence necessary to raise some of the questions, very imperfectly and defectively stated, and therefore some of the instructions might on this account have been well refused. It is, however, much more satisfactory to us to be able to dispose of the case upon its true merits.

The first instruction asked embraces the question what is the true construction of the first section of the Act of 3

Page 40 U. S. 445

March 1835, ch. 303, entitled

"an act making certain additional appropriations for the Delaware Breakwater, and for certain harbors, and removing obstructions in and at the mouth of certain rivers, for the year 1835."

That act, after making the specific appropriations, contains the following proviso:

"Provided that no officers of the army shall receive any percent or additional pay, extra allowance, or compensation, in any form whatsoever, on account of the disbursing any public money appropriated by law, during the present session, for fortifications, execution of surveys, works of internal improvement, building of arsenals, purchase of public supplies of any description, or for any other service or duty whatsoever, unless authorized by law."

The argument on behalf of the United States is that this proviso, although found in a mere appropriation law of a limited nature, is to be construed, by reason of the words "or for any other service or duty whatsoever, unless authorized by law," to be permanent in its operation and applicable to all future appropriations, where officers of the army are employed in such service or duty; and that it appears from the record that this was the very ground on which the Treasury Department rejected the claim of Doctor Minis for commissions. The same question has been made and fully argued in the case of *Gratiot v. United States*, at the present term (*ante*, [40 U. S. 336](#)), and we have given it our deliberate consideration. We are of opinion that such is not the true interpretation of the terms of the proviso, and that it is limited exclusively to appropriations made at the session of 1835.

It would be somewhat unusual to find engrafted upon an act making special and temporary appropriations any provision which was to have a general and permanent application to all future appropriations. Nor ought such an intention on the part of the legislature to be presumed, unless it is expressed in the most clear and positive terms and where the language admits of no other reasonable interpretation. The office of a proviso generally is either to except something from the enacting clause or to qualify or restrain its generality or to exclude some possible ground of misinterpretation of it, as extending to cases not intended by the legislature to be brought within its purview. A general rule, applicable to all future cases, would most naturally

be expected to find its proper place in some distinct and independent enactment.

Now the language of the present proviso is perfectly satisfied by confining its operation to appropriations to be made during the then existing session. It seems clear that the words of the proviso ought to receive this interpretation, if the last clause, "or for any other service or duty whatsoever, unless authorized by law," were left out. The proviso would then, in legal effect, read that no officer of the army shall receive any percent or additional pay, extra allowance, or compensation in any form whatever on account of the disbursing any public money appropriated by law during the present session for fortifications, for execution of surveys, for works of internal improvement, for building of arsenals, for the purchase of public supplies of every description. What difficulty, then, is created by the addition of the subsequent clause? In our judgment, none whatsoever. The preceding enumeration is of special services in disbursing public money on account of particular appropriations for fortifications, &c.; But it was foreseen by Congress that other appropriations might be made, during the same session, for other objects not comprehended in the preceding enumeration, and therefore, *ex industria*, the subsequent clause was added, to supply any defect of this nature, and to cut off all claims for extra pay, allowance, or compensation for disbursements connected with such objects. The whole clause in this view would read precisely as if it had been introduced immediately after the words "for fortifications." It would then be that no officer of the army shall receive any percent, &c., on account of disbursing any public money appropriated by law during the present session, for fortifications, or for any other service or duty whatsoever. This too is the grammatical sense of the words of the whole proviso in the order in which they stand. On the other hand, the interpretation put upon the proviso on behalf of the United States requires the court to read it as if the last clause were wholly independent of the preceding enumeration, and permanently prohibited any extra allowance or compensation, "for any other service or duty" than disbursements, but prohibited it for disbursements only, under appropriations made during that session. This would seem obviously to be inconsistent with the policy

upon which the supposed permanency of the proviso is made to rest. The prohibition would then be utterly inapplicable to disbursements of future appropriations, which in most cases is the leading item of charge, and would be confined to "any other service or duty." Such an interpretation certainly ought not to be adopted in a proviso to an act making appropriations for certain specified objects, unless it be unavoidable. And to make the proviso apply to disbursements under future appropriations generally, the court would be driven to interpolate into it the words "or at any future session," a liberty which, consistently with the known limits of judicial duty, could never be properly assumed.

The subsequent legislation of Congress, even if it could be brought in aid of the argument, rather tends to confirm than to impugn the interpretation which we have given to the proviso. It was not until the Act of 3 March, 1839, ch. 82, that Congress made a general provision on the subject, and enacted, by a distinct section, that no officer, in any branch of the public service, or any other person, whose salaries, or whose pay or emolument, is or are fixed by law, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money, or the performance of any other service, unless the said extra allowance or compensation be allowed by law. The generality of this section would seem to show, that until that period, no law existed on the subject, which was permanently applicable to any branch of the public service. We think, then, that according to the natural meaning of the words, and the order in which they stand, the true interpretation of the whole proviso is that it is limited to appropriations made during the session of 1835. If, therefore, the disallowance of Dr. Minis' claim to commissions depended upon the act of 1835 (as was the construction of the Treasury Department), the instruction asked on this point ought to have been given by the circuit court.

But we are of opinion that his claim was properly disallowed upon another and distinct ground. No evidence of any contract or usage was offered to sustain it, and the case appears to us to fall directly within the provisions of the Act of 30 June, 1834, ch. 162, for the organization of the Department of Indian affairs. The

4th section of that act provides that "it shall be competent

Page 40 U. S. 448

for the president to require any military officer of the United States to execute the duties of an Indian agent." The 13th section further provides, that "the duties required by any section of this act, of military officers, shall be performed without any other compensation than their actual traveling expenses." Dr. Minis being a surgeon in the army, was appointed disbursing agent for removing and subsisting the Cherokee Indians, and has been allowed a compensation for his traveling expenses, under the agency, of five dollars *per diem*, amounting, in the whole, to the sum of \$1,420. It is not pretended that this sum was not a reasonable compensation.

It has been suggested at the argument that no other agents are within the purview of the act of 1834 than such Indian agents as are to be appointed under that act, as general Indian agents, and that Dr. Minis was not in that predicament. But looking to the whole scope and object of that act, contemplating, as it does, that military officers might be called upon to perform duties, in connection with the general Indian agents, by the direction of the president, we cannot but entertain the opinion that the terms of the act were designed to exclude such military officers from any other compensation than their traveling expenses, as in truth, when detached upon such special service, they were still entitled to their ordinary military pay and emoluments.

It has also been suggested that the disbursements in the present case were not properly of public money, because it was money stipulated by treaty to be paid to the Cherokees upon their removal and the cession of their lands. But we think this objection is unmaintainable. The payments made were properly public money, and the disbursements thereof were on account of the United States, and for their use and benefit, in fulfillment of the obligations of the treaty.

Upon the whole, therefore, we are of opinion, that the circuit court, rightfully, under all the circumstances of the case, refused the instructions prayed for and gave the

very instruction which was required by law. The judgment is therefore affirmed.

Judgment affirmed.

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