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Milnor Vs. Metz

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Court : US Supreme Court

Decided On : 1841

Appeal No. : 41 U.S. 221

Appellant : Milnor

Respondent : Metz

Judgement :

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Milnor v. Metz

41 U.S. (16 Pet.) 221

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

M. was discharged by the insolvent laws of Pennsylvania, after having made, according to the requirements of the law, an assignment of "all his estate, property, and effects for the benefit of his creditors." After his discharge, be

presented a petition to Congress for a compensation for extra services performed by him as United States gauger before his petition for his discharge by the insolvent law. As gauger, he had received the salary allowed by law, but the services for which compensation was asked were performed in addition to those of gauger, by regauging wines, which had become necessary by an act of Congress reducing the duties charged upon them. Congress passed an act giving him a sum of money for those extra services. *Held* that the assignee under the insolvent laws was entitled to receive from the Treasury of the United States the amount so allowed.

Cited, *Comegys v. Vasse,* 1 Pet. 193; *United States v. McDaniel,* 7 Pet. 1; *United States v. Fillebrown,* 7 Pet. 50; *Emerson v. Hall,* 13 Pet. 409.

The appellants, Milnor and Thompson, were, during the years 1836 and 1837, United States gaugers for the port of Philadelphia, and as such received the full compensation allowed by law for that period. The duties having been rendered unusually laborious during the year by the operation of the Act of July 4, 1836, reducing the duties on wines, under which they were required to regauge them, they appealed to Congress for extra compensation to the amount of their full ordinary fees for these additional services.

Their memorial to Congress was presented in January, 1838, and in May, 1840, an act was passed for their relief, by which the sum of

"two thousand seven hundred and fifty-seven dollars and twenty-three cents, being the amount of fees due to them for extra services as gaugers in the port of Philadelphia after the passage of the Act of 4 July, 1836, reducing the duty on wines."

George W. Metz made no claim before Congress, as the assignee of Robert Milnor.

In December, 1838, the appellant, Robert Milnor, applied at

Philadelphia for the benefit of the insolvent laws of Pennsylvania, and he was discharged in January 1839, having executed the usual assignment for the benefit of his creditors. The appellee, George W. Metz, was duly qualified and became the sole assignee. After the act of 1840 had passed, he applied at the Treasury Department, claiming the amount of the sum allowed by the same to Robert Milnor, being one-half of the whole sum allowed, the other portion belonging to John Thompson. This application was rejected, and this suit was instituted against the appellants. The court made a decree in favor of the appellee, and the appellant, Robert Milnor, prosecuted this appeal.

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CATRON, JUSTICE, delivered the opinion of the Court.

The question in this cause is whether a claim on the United States passed by an assignment, made by Milnor, an insolvent, by force of an act of Pennsylvania, where the insolvent resided, and where the assignment took place. The application was made to the Court of Common Pleas of Philadelphia County, 24 December 1838. According to the requirements of the insolvent act, there was presented, "a statement of all the estate, effects and property of the petitioner, wheresoever situate and of whatsoever kind." He says "your petitioner has no property of any kind except the following claim, *viz.,* A claim on the government of the United States for about $3,774.50." Assignees were appointed by the court, to whom the following assignment was made.

"Know all men, by these presents, that I, Robert Milnor, the above-named petitioner, have assigned, transferred and set over, and by these presents do assign, transfer and set over unto George W. Metz and Aaron Ross, their heirs and assigns, all my estate, property and effects whatsoever, to, for and upon the uses, trusts and purposes designated by the act entitled 'an Act relating to insolvent debtors,' passed 16 June A.D. 1836. Witness my hand and seal this 11 January, A.D. 1839."

"ROBERT MILNOR [L.S.]"

Ross refused to serve, and was discharged by the court, leaving Metz the sole trustee. On the same day, Milnor was discharged.

On 2 May 1840, Congress passed an act for the relief of Robert Milnor and John Thompson, ordering the Secretary of the Treasury to pay to them $2,757.23,

"being the amount

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of fees equitably due to said Milnor and Thompson for extra services rendered by them as gaugers at the port of Philadelphia after the passage of the act of 4 July 1836, reducing the duties on wines, then in custom stores in said port and commencing with the provisions of said act."

Several petitioners had been presented on the subject, the first in February 1838; the claim was pending before Congress, when the assignment was made, and the insolvent discharged. He claimed the money as then due from the United States, and the act of Congress admits the fact. Nevertheless, the answer insists, "that the remuneration was asked as a boon, and respondent has understood and believed, was advocated and granted as a gratuity."

It is admitted that Milnor was entitled, separately, to one-half of the money ordered to be paid by the act of Congress, and Thompson to the other half. Milnor applied to the Treasury for one-half of the money, as did Metz, the trustee. The department refused to examine the equities of the parties or look beyond the act of Congress. Metz filed his bill enjoining Milnor from receiving the money, and had a decree for a perpetual injunction.

The case relied on to sustain the assumption that the money awarded by Congress was gratuity is that of *Emerson v. Hall,* 13 Pet. 409. It was this: Emerson, Chew and Lorrain libeled a slave ship and caused her to be condemned, and claimed half the proceeds of the ship and cargo, which was awarded to them below, but the decree was reversed by this Court on the ground that Emerson, Chew and Lorrain, as surveyor, collector and naval officer of the

port of New Orleans, had no right as captors, and that they stood on the footing of an officer who made a military seizure. Emerson died, and in 1831, Congress passed an act bestowing on his legal representatives, and on Chew and Lorrain, the one-half of the condemnation money. Hall, as a creditor of Emerson, filed his petition in the probate court at New Orleans against Byrne, the curator of the heirs of Emerson, for payment of his debt out of the moneys received under the act of Congress. The Probate Court and the Supreme Court of Louisiana, on appeal, gave judgment for Hall, and on

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a writ of error prosecuted to this Court, the judgment was reversed on the ground that the act of Congress gave the money to Emerson's heirs, as a gratuity because of the meritorious conduct of their father. Said the Court,

"He acted under no law, nor by virtue of any authority; his acts imposed no obligation, either in law or equity, on the government. Had he been sued for a debt due to it, he could not have set up these services either as an equitable or legal setoff."

They are declared to be like those where an individual, by timely exertion, saves the public property from destruction by fire, or where a pension is given to heirs for military services of the ancestor.

The services performed by Milnor were at the instance of the government and necessary to execute the act of 1836. But being a second measurement, no express law or regulation of the Treasury Department fixed the fees; and the demand was rejected by the accounting officers, because they had no discretion to go beyond the law or an express regulation founded on it. The equity of the claim was free from doubt. The gaugers only received fees for specific services actually performed, and could not receive double compensation, and in this respect the equity was more prominent than in *Macdaniel's Case,* 7 Pet. 1. Macdaniel was a regular clerk in the navy department, and received a salary. He was ordered by his superiors to perform and did perform the extra duties of paying

(1) the navy pensioners; (2) the privateer pensioners; and (3) to act as agent for navy disbursements, so that all his time may have been devoted to this extra service, and none to the regular office duties of clerk. Because of his regular salary, the accounting officer refused to allow additional compensation. To cover his claim for this, Macdaniel had retained $980, and was sued for it by the United States. The defendant's claim was allowed as an equitable setoff. The case of *Fillebrown,* 7 Pet. 50, is to the same effect. These cases have been constantly followed where services had been performed at the instance of the government for which by the strict rules of accounting no credit could be given by the Treasury.

The ground that the government was the debtor, and the claim rested on its discretion, or in other words, that it was as uncertain

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as the pleasure of Congress, and until the act of 1840 was passed, no claim existed against the United States which could be judicially recognized as "property or effects" of the insolvent, we think is decided to the contrary by this Court, in *Comegys v. Vasse,* 1 Pet. 193. Vasse assigned under the bankrupt law of 1800. He had been an underwriter on polices of insurance on vessels seized and condemned by the government of Spain. The owner had abandoned for a total loss, which the insurer had paid, and was the successor to the rights of the assured. The sentences of the Spanish prize courts were conclusive as to the right to the things condemned, and no claim existed on part of the insurer that did not depend on the discretion and pleasure of the Spanish government. The equity was as remote, to say the least of it, in that case as in the one before us. By the treaty of 1819, Spain stipulated with this government to pay $5,000,000 in full discharge of the unlawful seizures, leaving the United States to distribute the indemnity. Vasse had awarded to him $8,846. Comegys was the surviving assignee of the bankrupt. Vasse instituted suit against him to try the right to the money. This Court held, that although the illegal sentences of the Spanish prize courts were irreversible, the party had not lost all right to justice, or claim, upon principles of international law, to remuneration; that he had a right both to the justice of his own and the foreign sovereign, and that this right passed by the general assignment of

the bankrupt. The treaty in that case (as the act of Congress in this) operated on a preexisting claim on a government. It follows, if the doctrine of donation did not apply in that case, neither can it in this.

Had a similar claim on the part of Milnor existed against an individual, instead of the government, then there can be no doubt, he could have recovered by suit, or it would have been the subject of setoff; or could have been assigned. So it would have passed to his administrator, in case of death. As the government was equally bound to do its debtor justice in a different mode, with an individual, we think no sound distinction exists in the two cases, and therefore order the decree to be affirmed.

Decree affirmed.

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