

United States Vs. Freeman

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Respondent : Freeman

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United States v. Freeman

44 U.S. (3 How.) 556

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF

THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Statutes *in pari materia* should be taken into consideration in construing a law. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute.

And if it can be gathered from a subsequent statute *in pari materia* what meaning the legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and will govern the construction of the first statute.

The meaning of the legislature may be extended beyond the precise words used in the law from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed; the limitation of the rule being that to extend the meaning to any case, not included within the words, the case must be shown to come within the same reason upon which the lawmaker proceeded, and not a like reason.

A brevet field officer of the marine corps is not entitled by law to brevet pay and rations, by reason of his commanding a separate post or station, if the force under his command would not entitle a brevet field officer of infantry of a similar grade to brevet pay and rations.

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The act of 1834, chap. 132, does not repeal the 1st section of the act of 1818, regulating the pay and emoluments of brevet officers.

The 5th section of the Act of 30 June, 1834, is a repeal of the joint resolution of the two houses of Congress of 25 May, 1832, respecting the pay and emoluments of the marine corps.

By force of the army regulation No. 1125, authorizing the issues of double rations to officers commanding departments, posts, and arsenals, a brevet field officer of marines is entitled to double rations. But the fact must be shown that he had such a command of a post or arsenal at which double rations had been allowed according to the army regulations.

The fact of appropriations having been made by Congress for double rations does not determine what officers are entitled to them.

A brevet field officer of the marine corps, commanding a separate post, without a command equal to his brevet rank, is not entitled to brevet pay and emoluments. But if such brevet officer is a captain in the line of his corps and in the actual command of a company, whether he is in the command of a post or not, he is entitled to the compensation given by the 2d section of the act of 2 March, 1827.

This case was to test the right of the defendant in error, who was also the defendant below, to certain pay, allowances, and emoluments which he claimed as being an officer of the marine corps. The questions which were certified to this Court were the following:

"1. Whether a brevet field officer of the marine corps is by law entitled to receive the pay and rations of his brevet rank by reason of his commanding a separate post or station, although the force under his command should not be such as would by law, or by such regulations as have in this respect and for the time the force of law, entitle a brevet field officer of infantry of a similar grade to brevet pay and rations."

"2. Whether the provision respecting brevet pay and rations in the third section of the Act of 1818, chap. 117, is repealed by the act of 1834, chap. 132."

"3. Whether by force of the act of 1834, chap. 132, the joint resolution of the two houses of Congress of 25 May, 1832, respecting the pay and emoluments of the marine corps, is repealed."

"4. Whether by force of the army regulation numbered 1125, authorizing the issues of double rations to officers commanding departments, posts, and arsenals, a brevet field officer of marines, commanding a separate post or station, is entitled to double rations."

"5. Whether the additional fact of appropriations having been made by Congress for such double rations, entitles such marine officer to receive the same for the years for which such appropriations are made."

"6. Whether a brevet field officer of the marine corps, commanding a separate post, and receiving his brevet pay and emoluments, but being a captain in the line, is entitled to the ten dollars

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a month additional compensation for responsibility of clothing &c.;, under the act of 1834, chap. ____, applying to the marine corps the act of 1827, chap. 199?"

There was a statement of facts agreed upon in the court below, the only parts of which that bear upon the certified questions are the following:

"It is further agreed that Colonel Freeman was commissioned a captain in the line of the marine corps on 17 July, 1821, and on that lineal rank he was commissioned a lieutenant-colonel by brevet on 17 July, 1831, and on 30 June, 1834, he was commissioned a major in the line of the marine corps."

"Colonel Freeman files an account, in setoff against the United States, of \$1,013.93, for brevet pay and rations while in command on the Boston station, the same being a separate station or detachment, under the provision of the 3d section of an Act of Congress of 16 April, 1814, for the augmentation of the marine corps. Said amount extends from 30 June, 1834, to 1 April, 1842, and has been presented to and disallowed by the fourth auditor."

"Said Freeman files an account also of \$1,669 for double rations while in command on the Boston station, between 30 June, 1834, and 1 April, 1842, under a joint resolution of Congress of 25 May, 1832; which account has also been presented to and disallowed by the fourth auditor."

"Said Freeman files also an account of \$354.69 for the responsibilities of clothing &c.;, while a captain in the line of the marine corps, and in command of the marines on the Boston station, from 17 July, 1831, to 30 June, 1834, under an act of Congress of 30 June, 1834, making certain allowances &c.;, to the captains and subalterns of the marine corps, as to officers of similar grades in the army, under an act of 2 March, 1827; which account has likewise been presented to and

disallowed by the fourth auditor of the Treasury, on the ground that the defendant received the pay of a grade higher than that of captain."

"It is further agreed that double rations have been paid heretofore and up to 30 June, 1834, to the officers of the marine corps, in the manner and as stated in the letter of the fourth auditor of date 27 April, 1842, and marked B, and annexed; also that estimates and appropriations were made, as stated in said letter, since 1834."

"Upon the foregoing facts, the case is submitted to the court; the accounts of the said several claims of the said Freeman to be adjusted hereafter by the officers of the Treasury, if the same, or any portion of them, are found by the court to be legally due."

"FRANKLIN DEXTER, U.S. Dis. Att'y"

"W. H. FREEMAN"

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The laws will be stated which bear upon each of the three items into which the account is divided, *viz.*, 1, Pay; 2, Rations; 3, Clothing.

1. As to pay.

On 6 July, 1812, 2 Story 1278, Congress passed an "act entitled an act making further provision for the army of the United States, and for other purposes," the 4th section of which was as follows:

"That the President is hereby authorized to confer brevet rank on such officers of the army as shall distinguish themselves by gallant actions, or meritorious conduct, or who shall have served ten years in anyone grade, provided that nothing herein contained shall be so construed as to entitle officers so breveted to any additional pay or emoluments except when commanding separate posts, districts, or detachments, when they shall be entitled to and receive the same pay and emoluments to which officers of the same grade are now, or hereafter may be,

allowed by law."

On 16 April, 1814, Congress passed an act, 2 Story 1414, "authorizing an augmentation of the marine corps and for other purposes," the 3d section of which was exactly similar to the above, except that "officers of the marine corps" were substituted for "officers of the army," and that in the proviso the words "commanding separate stations or detachments" were substituted for "commanding separate posts, districts, or detachments."

On 16 April, 1818, an act was passed, 3 Story 1672, "regulating the pay and emoluments of brevet officers," the 1st section of which was as follows:

"Be it enacted &c.;, that the officers of the army who have brevet commissions shall be entitled to, and receive, the pay and emoluments of their brevet rank when on duty and having a command according to their brevet rank, and at no other time."

In 1825, regulations for the army were issued; the 1124th section was as follows:

"Brevet officers shall receive the pay and emoluments of their brevet commissions, when they exercise command equal to their brevet rank; for example, a brevet captain must command a company; a brevet major and a brevet lieutenant-colonel, a battalion; a brevet colonel, a regiment; a brevet brigadier-general, a brigade; a brevet major-general, a division."

On 30 June, 1834, Congress passed an act "for the better organization of the United States marine corps," 4 Story 2383. After increasing the number of officers and privates, the 5th section enacted:

"That the officers of the marine corps shall be entitled to, and receive, the same pay, emoluments, and allowances, as are now, or hereafter may be, allowed to officers of similar grades in the infantry of the army, except the adjutant and inspector, who shall,"

&c.;

The 7th section provided that "the commissions of the officers now in the marine corps shall not be vacated by this act," &c.;

The 9th section repealed so much of the 4th section of the act of the 6th of July as authorized the President to confer brevet rank on such officers of the army or of the marine corps as shall have served ten years in anyone grade.

The 10th section repealed all acts or parts of acts inconsistent therewith.

In 1836, another set of army regulations was issued, the forty-eighth article of which contained the following:

"Officers who have brevet commissions shall be entitled to receive their brevet pay and emoluments, when on duty, under the following circumstances: "

"A brevet captain, when commanding a company."

"A brevet major, when commanding two companies, or when acting as major of the regiment."

"A brevet lieutenant-colonel, when commanding at least four companies, or when acting as lieutenant-colonel of the regiment."

"A brevet colonel, when commanding nine companies of artillery, or ten of infantry or dragoons, or a mixed corps of ten companies, or when commanding a regiment."

"A brevet brigadier-general, when commanding a brigade of not less than two regiments or twenty companies."

"A brevet major-general, when commanding a division of four regiments or at least forty companies."

"A brevet officer, when assigned by the special order of the Secretary of War to a particular duty and command, according to his brevet rank, although such command be not in the line, provided his brevet allowances are recognized in the order of assignment."

"To entitle officers to brevet allowances while acting as field officers of regiments according to their brevets, they must be recognized at general headquarters as being on such duty, and the fact announced accordingly in general orders."

The laws relating to rations are the following:

2. Rations.

On 3 March, 1797, 1 Story 460, Congress passed an act to amend and repeal, in part, the act entitled "An act to ascertain and fix the military establishment of the United States," the 4th section of which declared that "to each officer, while commanding a separate post, there shall be allowed twice the number of rations to which they would otherwise be entitled."

On 16 March, 1802, 2 Story 831, an act was passed "fixing the military peace establishment of the United States," the 5th section of which designated the number of rations to which each officer should be entitled, and then added as follows, *viz.:*

"to the commanding officers of each separate post, such additional number of rations as the President of the United States shall, from time

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to time, direct, having respect to the special circumstances of each post."

On 25 May, 1832, 4 Story 2333, Congress passed a joint resolution as follows:

"Resolved &c.;, that the pay, subsistence, emoluments, and allowances of officers, noncommissioned officers, musicians, and privates of the United States marine corps, shall be the same as they were previously to the 1st of April, 1829, and

shall so continue until they shall be altered by law."

In 1834, the act was passed which has already been mentioned under the head of "Pay."

3. Clothing.

On 2 March, 1827, Congress passed an act, 3 Story 2057, the 2d section of which was as follows:

"That every officer in the actual command of a company in the army of the United States shall be entitled to receive \$10 per month, additional pay, as compensation for his duties and responsibilities, with respect to the clothing, arms, and accoutrements of the company, whilst he shall be in the actual command thereof. "

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MR. JUSTICE WAYNE delivered the opinion of the Court.

Several questions occurred upon the trial of this cause in the court below, upon which the opinions of the judges were opposed, and they were certified to this Court for decision.

From a careful examination of all the acts of Congress relating to the pay and emoluments of brevet officers, and those acts establishing and organizing the marine corps, we are of the opinion, whatever may have been a different practice, that the brevet officers of the marine corps have always been by law upon the same footing with other officers of the military establishment of the United States in respect to the circumstances which entitle them to pay and emoluments, and that they continue to be so. Brevet pay and emoluments were originally given by the act of 1812, 2 Story Laws 1278, and by the act of 1814, 2 Story Laws 1414, when breveted officers commanded separate posts, districts, stations, or detachments. But an act was passed in 1818, 3 Story Laws 1672, regulating the pay and emoluments of brevet officers, the 1st section of which is that

"The officers of the army who have brevet commissions, shall be entitled to and shall receive the pay and emoluments of their brevet rank when on duty and having a command according to their brevet rank, and at no other time."

The 2d section is "that no brevet commission shall hereafter be conferred, but by and with the advice of the Senate." By the acts of 1812 and 1814, they were conferred by the President alone. By the 1st section of the act of 1818, it will be perceived that pay and emoluments were attached to command, and not, as they had been, to the command of separate posts, stations, districts, or detachments. That the act of 1818 repealed the 4th section of the act of 1812 no one doubts. But it is said it is not a repeal of the 3d section of the act of 1814, because the act, in terms, speaks of the officers of the army who have brevet commissions, and not of such officers of the marine corps. It may be well to state that the 3d section of the act of 1814 is a transcript of the 4th section of the act of 1812, except that it has in it the words "officers of the marine corps," instead of "officers of the army," and that the

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words "stations or detachments" were substituted for "posts, districts, or detachments." The first point for consideration is was the act of 1818 a repeal of the 4th section of the act of 1812, and of the 3d section of the act of 1814, as to the condition upon which brevet officers were to have additional pay and emoluments? It is conceded that it repealed the 4th section in the act of 1812. We are of opinion that it repealed also the 3d section of the act of 1814. It cannot be denied that the marine corps is an addition to the "military establishment of the United States." It is declared to be so in the act by which it was organized. Now though neither that fact nor the words "military establishment," as they are used in the acts of Congress, will of themselves authorize the inclusion of officers of the marine corps, within the words "officers of the army," yet considering the subject matter of the act of 1818; the application of the 2d section of the act to all breveted officers, and the assimilation of the marine corps, by the act of 1814, to the army, to give to its officers brevet commissions, and pay, exactly, too, in the same way as they were given to the officers of the army, by the act of 1812; we do not see

how, consistently with a correct judicial interpretation, the conclusion can be resisted that Congress did intend, in passing the act of 1818, to place the officers of the marine corps and the officers of the army upon the same footing in respect to brevet pay and emoluments. Though what has been differently done is binding upon the government, and cannot be recalled, to the pecuniary disadvantage of any officer, who may have received brevet pay and emoluments, not according to the act of 1818, no erroneous practice under it, of however longstanding, can justify the allowance of a claim, contested by the government, in a suit contrary to what is the true meaning and intent of that act. The error of the accounting officers of the Treasury, and of the officers of the marine corps, in the construction of the act of 1818 arose from that act's having been considered by itself, without any reference to other statutes relating to brevet commissions and pay and without any examination whether the words "officers of the army," as used in the 1st section of the act of 1818, though they are descriptive of a particular class, were not intended, from their connection with the subject matter of the act, to comprehend all officers of the military establishment of the United States who, when the act was passed, were only under like circumstances entitled to brevet pay and emoluments.

The correct rule of interpretation is that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing anyone of them, and it is an established rule of law that all acts *in pari materia* are to be taken together, as if they were one law. Doug. 30; 2 T.R. 387, 586; 4 Mau. & Sel. 210. If a thing contained in a subsequent statute be within the reason of a former statute, it shall be taken to be within the meaning of that statute; Ld.Raym. 1028; and if it can be gathered from a

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subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. *Morris v. Mellin*, 6 Barn. & C. 454; 7 *id.* 99. Wherever any words of a statute are doubtful or obscure, the intention of the legislature is to be resorted to, in order to find the

meaning of the words. *Wimbish v. Tailbois*, Plowd. 57. A thing which is within the intention of the makers of the statute, is as much within the statute, as if it were within the letter. *Zouch v. Stowell*, Plowd. 366. These citations are but different illustrations of the rule, that the meaning of the legislature may be extended beyond the precise words used in the law, from the reason or motive upon which the legislature proceeded, from the end in view, or the purpose which was designed -- the limitation of the rule being, that to extend the meaning to any case not included in the words, the case must be shown to come within the same reason upon which the lawmaker proceeded, and not only within a like reason.

This Court has repeatedly, in effect, acted upon the rule, and there may be found, in the reports of its decisions, cases under it, like the cases which have been cited from the reports of the English courts. In [4 U. S. 4](#) Dall. 14, "The intention of the legislature, when discovered, must prevail, any rule of construction declared by previous acts to the contrary notwithstanding." In [6 U. S. 2](#) Cranch 33, "A law is the best expositor of itself -- that every part of an act is to be taken into view for the purpose of discovering the mind of the legislature," &c.; In the case of the *United States v. Fisher, Assignees of Blight*, in the same book, the Court said,

"It is undoubtedly a well established principle in the exposition of statutes, that every part is to be considered, and the intention of the legislature to be extracted from the whole,"

&c.; In [27 U. S. 2](#) Pet. 662,

"A legislative act is to be interpreted according to the intention of the legislature, apparent upon its face. Every technical rule, as to the construction or force of particular terms, must yield to the clear expression of the paramount will of the legislature."

In Paine 11,

"In doubtful cases, a court should compare all the parts of a statute, and different statutes *in pari materia*, to ascertain the intention of the legislature."

So in 1 Brock. 162. In the construction of statutes, one part must be construed by another. In order to test the legislative intention, the whole statute must be inspected. No one of the cases cited will justify, nor have they been cited to sanction an equitable construction of statutes beyond the just application of adjudicated cases. They have been brought together upon this occasion, for the purpose of showing how many authorities there are to sustain the conclusion, that the act of 1818, regulating the pay and emoluments of brevet officers, repealed the act of 1814, upon which the defendant relies to support his claim to brevet pay. Our answer to the first question

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then is that a brevet field officer of the marine corps is not entitled by law to brevet pay and rations by reason of his commanding a separate post or station if the force under his command would not entitle a brevet field officer of infantry, of a similar grade, to brevet pay and rations. We will add to our exposition of the law upon this point that brevet officers of the marine corps, in respect to pay and emoluments, were included under the Army Regulation 1124, sanctioned on 1 March, 1825; were included also in the regulation upon the subject of brevet pay sanctioned by the President December 1, 1836, and that they may claim brevet pay and emoluments under the regulations of 1841, when they exercise a command, according to the provisions regulating brevet pay, in page 344, Army Regulations of 1841. This right to brevet pay results from the marine corps having been subjected, by the act of 1798, 1 Story Laws 542, and by other acts of Congress, to the same rules and articles of war "as are prescribed for the military establishment of the United States," and from the exception in the 2d section of the Act of 30 June, 1834, taking them out of the regulations which might be established for the navy, when detached for service with the army, by order of the President of the United States.

To the second question we reply, that the act of 1834, ch. 132, does not repeal the first section of the act of 1818, regulating the pay and emoluments of brevet officers. That section of the act is still in force, and upon it rests the army regulations, in relation to brevet pay and emoluments. The act of 1834 only

repeals those sections in the acts of 1812 and 1814, and in the act of 1818, by which the President was authorized to confer, and the Senate was permitted to confirm, brevet commissions conferred upon officers of the army, or officers of the marine corps, for ten years' service in anyone grade, excepting such officers as had, before the passage of the act, acquired the right to have brevet rank conferred by ten years' service in anyone grade, if the President should think fit to nominate them to the Senate for brevet commissions.

To the third question we reply that the 5th section of the Act of the 30 June, 1834, is a repeal of the joint resolution of the two houses of Congress of 25 May, 1832, respecting the pay and emoluments of the marine corps.

The fourth question involves the charge made by the defendant for double rations. Additional rations are provided for by the 5th section of the act of 1802, 2 Story Laws 831,

"To the commanding officer of each separate post, such additional number of rations as the President of the United States shall, from time to time, direct, having respect to the special circumstances of each post,"

is the language of a part of the section. It is the authority for the 1125th paragraph in the Army Regulations of 1825. The President sanctioned those regulations, and by doing so delegated his authority,

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as he had a right to do, to the Secretary of War. The Army Regulations, when sanctioned by the President, have the force of law, because it is done by him by the authority of law. The Regulations of 1825, then, were as conclusive upon the accounting officer of the Treasury, whilst they continued in force, as those of 1836 afterwards were, and as those of 1841 now are.

When, then, an officer presents, with his account, an authentic document or certificate of his having commanded a post or arsenal, for which an order has been issued from the War Department, in conformity with the provisions of the

Army Regulations, allowing double rations, his right to them is established, nor can they be withheld, without doing him a wrong, for which the law gives him a remedy. But as the question in this case must be decided upon the agreed statement of facts in the record, between Colonel Freeman and the district attorney of the United States, we have no hesitation in answering it adversely from the claim of the defendant, for double rations, as the fact does not appear in the record that he had such a command of a post or arsenal, at which double rations had been allowed, according to the Army Regulations which were in force, from the time his account begins, or according to those subsequently sanctioned by the President. To the fifth question, we reply, that the fact of appropriations having been made by Congress for double rations, does not determine what officers in command are entitled to them. The sixth question relates to the charge of the defendant for compensation for his duties and responsibilities, "with respect to clothing, arms, and accoutrements," while he was a captain in the line of the marine corps, and in command of the marines on the Boston station. The question, as it is put, makes it necessary for us to repeat what has been already said in a previous part of this opinion, that a brevet field officer of the marine corps, commanding a separate post, without a command equal to his brevet rank, is not entitled to brevet pay and emoluments. But if such brevet officer is a captain in the line of his corps, and in the actual command of a company, whether he is in command of a post or not, he is entitled to the compensation given by the 2d section of the act of 2 March, 1827, 3 Story Laws 2057. We cannot give any other answer to this question, because the first part of it attaches brevet pay and emoluments to the command of a separate post, for which it is not allowed by law, and cannot therefore influence any right to compensation which may have accrued to a captain in the line under the 2d section of the act of 2 March, 1827. That act is in full force, unrepealed in any way by the act of 1834, for the better organization of the marine corps. 4 Story 2383. And captains and subalterns of that corps are as much entitled to its provisions, as any other captains or subalterns in the military establishment of the United States. If there was any doubt of this, before the act of 1834 was passed, the 5th section of that act must be considered

as having put an end to it. It is

"that the officers of the marine corps shall be entitled to, and receive the same pay, emoluments, and allowances, as are now, or may hereafter be allowed to similar grades in the infantry of the army,"

subject to the exception in the section following the words just cited.

We shall direct the foregoing answers to the questions, upon which the judges in the court below were opposed in opinion, to be certified to that court.

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