

Reeside Vs. Walker

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 52 U.S. 272

Appellant : Reeside

Respondent : Walker

Judgement :

Reeside v. Walker - 52 U.S. 272 (1850)

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Reeside v. Walker

52 U.S. (11 How.) 272

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF COLUMBIA

SYLLABUS

According to the practice in Pennsylvania, where a defendant pleads setoff, the jury are allowed to find in their verdict the amount that the plaintiff is indebted to the defendant, and according to their mode of keeping records this result is

entered by way of note, e.g. "new trial refused and judgment on the verdict"

Although this may be a good record in the courts of Pennsylvania, it does not follow that it is so in the courts of the United States.

The effect of such a judgment, that the plaintiff is indebted to the defendant, is merely to lay the foundation for a *scire facias* to try this new cause of action.

Where the United States were the plaintiffs, and a verdict was rendered that they were indebted to the defendant, and an application was made for a mandamus to compel the Secretary of the Treasury to credit the defendant upon the books of the Treasury with the amount of the verdict, and to pay the same, the mandamus was properly refused by the circuit court. For a mandamus will only lie against a ministerial officer to do some ministerial act where the laws require him to do it and he improperly refuses to do so.

Besides, there was no appropriation made by law, and no officer of the government can pay a debt due by the United States without an appropriation by Congress.

To sanction a judgment under a plea of setoff would virtually be allowing the United States to be sued, which the laws do not allow.

James Reeside, in his lifetime, was one of the contractors with the Post Office department for the transportation of the mail, and claimed sundry extra allowances, which were not allowed

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by the department. In consequence, thereof, a dispute arose between the parties, and in October, 1839, the United States brought an action in the Circuit Court for the Eastern District of Pennsylvania against Reeside, for the sum of \$32,709.62, which they claimed to have overpaid him.

The whole history of this suit is summed up in the following transcript of the record:

"In the circuit court of the United States, in and for the Eastern District of Pennsylvania, in the Third circuit, October Session, 1839."

" *THE UNITED STATES OF AMERICA v. JAMES REESIDE*"

"Summons case. -- Real debt \$32,709.62, as per statement of account from Auditor Post Office Department, as late mail contractor. Exit 5 Sept. 1837."

"1837, Oct. 11. -- Returned, 'Served.'"

"1840, January 25. -- Interrogatories filed and ruled for comm'n e.p. defendant to Bedford, Pennsylvania, sec.reg."

"1840, February 4. -- Rule on plaintiffs to declare, sec.reg.; 18 interrogatories filed and rule for comm'n e.p. defendants to Hollidaysburg, Pennsylvania, sec.reg."

"1840, March 2. -- Narr. filed; 6th, defendant pleads payment; replication *non solvit*, and issues and rule for trial by special jury and ca."

"1841, March 2. -- Agreement for taking the deposition of Richard M. Johnson a witness for defendant at the City of Washington, on forty-eight hours' notice to the Auditor Post Office department, filed."

"1841, August 4. -- Agreement taking deposition of R. M. Johnson at Frankfort, Kentucky; and interrogatories filed; deposition of R. M. Johnson filed."

"1841, October 22. -- Defendant pleads *nonassumpsit* and setoff and issues and ca.; and now [a] jury being called, come, to-wit, Edward C. Biddle, S. M. Loyd, Thomas Connell, George McLeod, Michael F. Groves, John C. Martin William C. Hancock, Joseph Harrison, Jr., Joseph Parker, William Parker, William Gibson, and Thomas Cook, who are respectively sworn or affirmed &c.; deposition of Pishey Thompson filed."

"1841, December 6. -- And now the jurors aforesaid, on their oaths and affirmations aforesaid, respectively do say, that they find for the defendant, and certify that the plaintiffs are indebted to the defendant in the sum of \$188,496.06;

judgment *nisi*. On motion of Messrs. Read & Cadwallader, for plaintiffs, for a rule to show cause why a new trial should not be granted, and for leave to move for such new trial, on exceptions to the ruling of the court on questions of evidence and matters of

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law, embraced in the charge of the court, without such motion being deemed a waiver thereof, the motion is received; notice thereof to be given to the opposite counsel; returnable 1st Monday in January next."

"1841, December 9. -- Reasons for a new trial filed."

"1842, May 12. -- Motion for new trial overruled; new trial refused, and judgment on the verdict; copy of assignment, James Reeside to John Grey; and copy of notice, James Reeside to Postmaster General, filed."

"1842, July 27. -- Praecipe for writ of error filed."

" *UNITED STATES, Eastern District of Pennsylvania, sct.* "

"I certify the foregoing to be a true and faithful transcript of the docket entries in the above-named suit."

"In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at Philadelphia, this 4th day of January, A.D. 1847, and in the seventy-first year of the independence of the said United States."

"GEORGE PLITT"

In September, 1842, James Reeside died, and Mary Reeside, his widow, became his executrix.

On 4 November, 1848, Mary Reeside filed a petition in the Circuit Court of the United States for the District of Columbia, in and for County of Washington. The petition stated the above facts, and with it was filed the transcript of the record as it has been set forth. It concluded as follows:

"Wherefore, your petitioner does respectfully pray that your honors, the premises considered, will award the United States writ of mandamus to be directed to the said Robert J. Walker, Secretary of the Treasury Department of the United States, commanding him -- "

"First. That he shall enter or cause to be entered upon the books of the Treasury Department of the United States, under date of May 12, 1842, a credit to the said James Reeside of the sum of \$188,496.06."

"Second. That he shall pay to your petitioner, as executrix as aforesaid, the said sum, with interest thereon from the said 12th day of May, 1842."

"And your petitioner shall ever pray &c.;"

"MARY REESIDE"

The circuit court ordered that the motion for a mandamus be overruled, and the prayer of the petitioner rejected. Whereupon Mary Reeside sued out a writ of error, and brought the case up to this Court.

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MR. JUSTICE WOODBURY delivered the opinion of the Court.

The mandamus was asked for by the plaintiff, as executrix of James Reeside, to direct the defendant, as Secretary of the United States Treasury, to enter on the books of the Treasury Department to the credit of said James the sum of \$188,496.06, and pay the same to the plaintiff as his executrix. The grounds for the petition, as set out therein, were, that the United States had sued Reeside in the Circuit Court of the United States for the Eastern District of Pennsylvania, on certain post office

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contracts, and on 22 October, 1841, he pleaded a large setoff, and the jury, on 6 December ensuing, returned a verdict in his favor on the several issues which had

been joined, and certified that the United States were indebted to him in the sum of \$188,496.06; and that on 12 May, 1842, final judgment was rendered in his favor on this verdict, which has never been paid, but still remains in full force.

On an examination of the record, the first objection to the issue of a mandamus seems to be, that no judgment appears to have been given, such as is set out in the petition, in favor of Reeside for the amount of the verdict.

Certain minutes were put in of the proceedings in that suit, beginning with the writ in 1837, including the verdict, and coming down to May 12, 1842, when it is said, "New trial refused, and judgment on the verdict."

But these seem to be the mere waste docket minutes, from which a judgment or a record of the whole case could afterwards be drawn up. They do not contain a judgment *in extenso*, nor are they a copy of any such judgment. But if, by the laws or practice of Pennsylvania, these minutes may be used instead of a full record, it is difficult to see a good reason for allowing them to control the forms and the principles of the common law applicable to them in the courts and records of the United States, and certainly they could not, unless private rights were involved in having them thus considered, so as to come under the 34th section of the Judiciary Act, 1 Stat. 92. Or unless, as a matter of practice, it was well settled in this way as early as the process law of 1789. See 1 Stat. 93.

But without going into this point further -- means to do it not having been furnished by the petitioner, who relies on it, and was therefore bound to furnish such means -- there is another objection to it paramount to this, and sufficient for barring its use to support the present proceeding. In a case like this, in Pennsylvania, where a setoff is pleaded and a balance found due to the defendant, the judgment entered, if well proved by such minutes, is not, as the petitioner supposes, that the United States was indebted to Reeside in the amount of the verdict and should pay it, but it merely lays the foundation for a *scire facias* to issue, and a hearing be had on that if desired. Penn.Laws by Dunlap, ch. 20, 2. The petitioner and her husband have neglected to pursue the case in that way to a final judgment, and hence have offered no evidence of one, on the verdict of indebtedness to Reeside by the

United States. The judgment so far as regards that action would be, when no *scire facias*

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was sued out, that the defendant go without day; and so these minutes should be drawn up, when put in a full and due form.

In *Ramsey's Appeal*, 2 Watts 230, Ch.J. Gibson explains this fully. "The reference," says he,

"was under the act of 1705, by the first section of which the jury are directed, when a setoff has been established for more than the plaintiffs demand, to find a verdict for the defendant, and withal certify to the court how much they find the plaintiffs to be indebted or in arrear to the defendant. The certificate thus made is an appendage to the verdict, but no part of it or of the premises on which the judgment is rendered; for the judgment is not *quod recuperet*, but that the defendant go without day. On the contrary, it is expressly made a distinct and independent cause of action by a *scire facias*; and though a debt of record, it is not necessarily a lien, as was shown in *Allen v. Reesor*, 16 Serg. & Rawle 10, being made so only by judgment on a *scire facias*. "

The gist of the prayer for a mandamus therefore fails. Because, though this application is in form against the person who was Secretary of the Treasury, November 4, 1848; yet it is to affect the interests and liabilities alleged by the plaintiff herself to exist on the part of the United States.

Furthermore, the judgment sought to be paid is one claimed to have been rendered in form, as well as substance, against the United States.

Now under these circumstances, though a mandamus may sometimes lie against a ministerial officer to do some ministerial act connected with the liabilities of the government, yet it must be where the government itself is liable, and the officer himself has improperly refused to act.

It must even then be in a case of clear, and not doubtful right. [Kendall v. United States](#), 12 Pet. 525; [Life & Fire Ins. Co. v. Wilson's Heirs](#), 8 Pet. 291. But here, as no judgment of indebtedness existed against the United States, the whole superstructure built on that must fall.

To save future expense and litigation in this case, with a view to obtain the desired judgment, it seems proper to make a few remarks on the other objections to the mandamus, resting on other and distinct grounds.

A mandamus will not lie against a Secretary of the Treasury, unless the laws require him to do what he is asked in the petition to be made to do. But there is no law, general or special, requiring him either to enter such claims as these on the books of the Treasury Department, or to pay them.

The general statutes, cited by the counsel for the petitioner,

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in no case require the secretary to enter claims like these on his books, or to pay them, when there has been no appropriation made to cover them. This last circumstance seems overlooked by the plaintiff, or sufficient importance is not attached to it, and it will be further considered before closing.

Nor is any special law pretended directing the entry of this claim on the books, or the payment of it either before or after entry. The case of [Kendall v. United States](#), 12 Pet. 524, was one of a special law regulating the subject.

Again, a mandamus, as before intimated, is only to compel the performance of some ministerial, as well as legal duty. [Kendall v. United States](#), 12 Pet. 524; *Rex v. Waterworks Company*, 1 Nev. & Perry 493.

When the duty is not strictly ministerial, but involves discretion and judgment, like the general doings of a head of a department, as was the respondent here, and as was the case here, no mandamus lies. [Decatur v. Paulding](#), 14 Pet. 497; [Brashear v. Mason](#), 6 How. 92.

It is well settled, too, that no action of any kind can be sustained against the government itself, for any supposed debt, unless by its own consent, under some special statute allowing it, which is not pretended to exist here. [Briscoe v. Kentucky Bank](#), 11 Pet. 321; [45 U. S. 4](#) How. 288; [50 U. S. 9](#) How. 389.

The sovereignty of the government not only protects it against suits directly, but against judgments even for cost, when it fails in prosecutions. [45 U. S. 4](#) How. 288.

Such being the settled principle in our system of jurisprudence, it would be derogatory to the courts to allow the principle to be evaded or circumvented.

They could not, therefore, permit the claim to be enforced circuitously by mandamus against the Secretary of the Treasury, when it could not be directly against the United States, and when no judgment on and for it had been obtained against the United States.

As little also would be the propriety of allowing by *scire facias*, or otherwise, a judgment to be entered against the United States on a setoff, when it could not have been allowed in an action against them on the subject matter of the setoff.

To permit a demand in setoff against the government to be proceeded on to judgment against it would be equivalent to the permission of a suit to be prosecuted against it. And however this may be tolerated between individuals, by a species of reconvention, when demands in setoff are sought to be recovered, it could not be as against the government except by a mere evasion, and must be as useless in the end as it would be

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derogatory to judicial fairness. A setoff or reconvention is often to be treated as a new suit by the defendant, and the pleadings and judgment are to be made to correspond. See Louisiana Code of Practice, 374, 371-377. In *Perry v. Gerbeau*, 5 Martin N.S. 18, the court said, "The claim set up in the answer was one in reconvention, and too general. Such demands should have the same certainty as

a petition."

It would present also the inconsistency of the officers of a government issuing precepts against it, and seizing and selling the property under their own charge and protection.

Or it would present the other alternative, of entering a judgment against a party which it could not enforce by execution, and which none of its officers had been authorized to discharge.

This last consideration is one of peculiar importance in this proceeding, and in the proper measures to be adopted under our political and fiscal system, as to a claim like this.

No officer, however high, not even the President, much less a Secretary of the Treasury or Treasurer, is empowered to pay debts of the United States generally, when presented to them. If, therefore, the petition in this case was allowed so far as to order the verdict against the United States to be entered on the books of the Treasury Department, the plaintiff would be as far from having a claim on the secretary or Treasurer to pay it as now. The difficulty in the way is the want of any appropriation by Congress to pay this claim. It is a well known constitutional provision, that no money can be taken or drawn from the Treasury except under an appropriation by Congress. See Constitution, art. 1, 9 1 Stat. 15.

However much money may be in the Treasury at any one time, not a dollar of it can be used in the payment of anything not thus previously sanctioned. Any other course would give to the fiscal officers a most dangerous discretion.

Hence, the petitioner should have presented her claim on the United States to Congress, and prayed for an appropriation to pay it. If Congress after that make such an appropriation, the Treasury can, and doubtless will, discharge the claim without any mandamus. But without such an appropriation it cannot and should not be paid by the Treasury, whether the claim is by a verdict or judgment, or without either, and no mandamus or other remedy lies against any officer of the Treasury Department, in a case situated like this, where no appropriation to pay it has been

made. The existence of this other and ordinary mode of redress, by resort to Congress, may be another reason against a mandamus, as that lies only

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when no other adequate remedy exists. [Marbury v. Madison, 5 U. S. 137](#) ; [Kendall v. United States, 12 Pet. 525.](#)

But, independent of this last consideration, which as a remedy may not come within the usual meaning of another remedy, the grounds for the petition are not sufficient, and the judgment below dismissing it must be

Affirmed.

ORDER

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 now here ordered and adjudged by this Court, that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed, with costs.

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