

Ware Vs. United States

Ware Vs. United States

SooperKanoon Citation : sooperkanoon.com/81404

Court : US Supreme Court

Decided On : 1866

Appeal No. : 71 U.S. 617

Appellant : Ware

Respondent : United States

Judgement :

Ware v. United States - 71 U.S. 617 (1866)

U.S. Supreme Court Ware v. United States, 71 U.S. 4 Wall. 617 617 (1866)

Ware v. United States

71 U.S. (4 Wall.) 617

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

1. Where, on a suit by the United States against a deputy postmaster for damages in not paying over moneys which came to his hands during the six months next preceding the discontinuance (March 13, 1862) of the office to which he was

appointed, the defendant's rejoinder (demurred to), by its whole context and by its introductory allegations

Page 71 U. S. 618

that the office was never supplied with mails after it was discontinued, shows that it means nothing more than that such defendant was wrongfully prevented from earning commissions, such rejoinder presents a claim for damages merely.

2. To such a claim it is answered:

(1) That postage commissions, as ascertained by the quarterly accounts of deputy postmasters and the receipts from boxes during the term in question in this suit, were the only sources of compensation to those officers allowed by law.

(2) That the claim being for damages, and not for commissions or receipts from boxes as ascertained in a quarterly account, it could not be sustained as a credit unless it appeared affirmatively that it had been presented to the Auditor of the Post Office Department and had been by him disallowed in whole or in part, or that the defendant had been prevented from so presenting it by some unavoidable accident.

3. By the legislation of Congress, the Postmaster General has the power to "establish *post offices* " as well where the commissions of the office amount to or exceed one thousand dollars as where they do not.

4. Unless there is some provision in the acts of Congress restraining its exercise, the power to establish post offices, as interpreted by usage coeval with the creation of the Post Office Department and recognized in Congressional legislation, infers a power to discontinue them. And deputy postmasters occupy their offices subject to the contingency that such offices may be so discontinued.

5. Possessing thus the power to discontinue post offices, the Postmaster General may exercise the power notwithstanding that the deputy postmasters have been appointed by the President, by and with the advice and, consent of the Senate and under a statute which enacts that the appointee shall hold his office for the term of

four years unless sooner removed by the President.

6. If he do exercise it, the office of deputy postmaster is in such cases gone. There is no longer a deputy postmaster at that place.

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania to reverse a judgment of that court affirming the judgment of the district court in an action of debt instituted by the United States on the official bond of one Ware as deputy postmaster at Kensington, in the County of Philadelphia, for \$8,000.

The declaration alleged that there was due to the United States from the said postmaster, according to his quarterly accounts of receipts and expenditures for the last quarter of the year 1861 and the first quarter of the year 1862, a balance of \$3,380.43.

Page 71 U. S. 619

The only question in the cause arose upon the defendant's *second* plea, which alleged that the defendant, Ware being postmaster at Kensington and still continuing to exercise that office, and *not having been lawfully removed* therefrom, held and retained in his possession the sum of \$3,450, part of the sum demanded by the United States, as and for his commissions on the postages collected at that office and for rent of office during the space of eighteen months commencing April 1, 1862, and ending September 30, 1863.

The *replication* of the United States was a *special traverse* of this plea, averring in the *inducement* that on March 13, 1862, the Postmaster General of the United States discontinued the post office at Kensington, and that afterwards no letters were deposited in or forwarded by mail from that office, but that all such letters &c.; as had previously been deposited in and mailed at the Kensington office were, after the date aforesaid, deposited in and mailed at the Philadelphia post office, and that the said Ware, since the 19th of March, 1862, had collected no postages at the said late post office at Kensington, and, since his quarterly account for the

first quarter of the year 1862, had rendered no accounts of receipts and expenditures at the said Kensington post office, and, concluding:

" *Without this*, that the said Samuel Ware for the space of eighteen months, from the 1st day of April, 1862, to the 30th day of September, 1863, was deputy postmaster at Kensington, in the manner and form,"

&c.;

The defendants, in the rejoinder filed to this replication, averred that after the said unlawful discontinuance of the post office at Kensington, the postmaster at Philadelphia received and delivered letters and other mailable matter which, *but for the said discontinuance, would have passed through the Kensington post office sufficient in quantity to authorize and justify an allowance of commissions to the said Ware* over and above expenditures, at the rate of \$2,000 per annum, which said commissions so wrongfully withheld from him, exceed in amount the balance claimed by the United States.

To this rejoinder the United States demurred, and the demurrer was sustained by the district court. A jury having

Page 71 U. S. 620

been called to assess the damages found for the plaintiffs in the sum of \$2,366.22, for which the court entered judgment.

This judgment was affirmed on writ of error by the circuit court.

To understand the matter more completely it may be well to state the facts, not disputed, of the case and also to mention certain acts of Congress in reference to the subject of postmasters.

I. *The facts were these:*

Previous to 1854, Kensington was a district adjoining the municipality of Philadelphia proper, possessing a distinct municipal organization. In 1854, it was

consolidated with the City of Philadelphia under an act of assembly of the State of Pennsylvania. The post office established at Kensington, before the consolidation of the districts, continued to be maintained there until March, 1862, when it was discontinued by the Postmaster General in the manner stated in the plaintiff's replication.

At the time of this order, the accounts of Ware had not been finally adjusted at the department.

After this, the mails were no longer supplied to or distributed through the Kensington office, but through the Philadelphia office and its sub-offices. No postages were collected or received thereafter by the postmaster of Kensington, and no accounts were rendered by him, after the abolition of his office, to the department at Washington.

II. *As respected the acts of Congress:*

1. The Constitution confers upon Congress power "to establish post offices and post roads." An Act of March 3, 1825, [[Footnote 1](#)] provides that the Postmaster General

"shall establish post offices and appoint postmasters at all such places as shall appear to him expedient on the post roads that are or may be established by law."

This act was changed by an Act of July 2, 1836, [[Footnote 2](#)] which authorized the *President*, by and with the consent of the Senate, to appoint a deputy postmaster at

Page 71 U. S. 621

each office at which the commissions amounted to or exceeded one thousand dollars a year. And this law (*under which Ware had been appointed*) declares that the appointee *"shall hold his office for the term of four years, unless sooner removed by the President."* But no other repeal of the act of 1825 was made by this act of 1836.

2. By an Act of June 22, 1854, [[Footnote 3](#)] the compensation authorized or allowed by law during the period mentioned in the defendant's second plea to deputy postmasters was certain commissions on the postages collected at their respective offices in each quarter of the year.

By an Act of March 3, 1847, [[Footnote 4](#)] no compensation in addition, excepting the receipts from boxes, could be given to deputy postmasters by the Postmaster General.

Page 71 U. S. 625

MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Deputy postmasters, where the commissions allowed to the office amount to or exceed one thousand dollars, are appointed by the President, by and with the advice and consent of the Senate, and hold their offices for the term of four years unless sooner removed by the President. [[Footnote 5](#)]

Principal defendant was, on the sixteenth day of July, 1861, duly appointed in that manner deputy postmaster at Kensington, in the County of Philadelphia; and the record shows that he was in the performance of the duties of that office on the thirteenth day of March, 1862, when the same was decided to be unnecessary by the Postmaster General, and was discontinued. When appointed, he gave bond with sureties as required by law for the faithful performance of his duties, and that he would render a quarter-yearly account of receipts and expenditures, and pay over to the proper officer the balance of all moneys which should come to his hands for postages in the manner prescribed by the department.

Substantial charge against the defendant was that he had neglected and refused to pay over certain moneys received for postages, as exhibited in his quarterly accounts for the

Page 71 U. S. 626

last two quarters next preceding the discontinuance of the office. Refusing to pay over those sums, the United States sued him in an action of debt, declaring on his official bond against him and his surety.

Defendants appeared and pleaded several pleas, but it is unnecessary to refer particularly to any one of them except the second, as all the others resulted in issues of fact and present no question for decision in this record. Second plea of the defendants alleged that the postages annually received at that office amounted to a sum which authorized an annual allowance to him of two thousand dollars, and entitled him to retain that sum, as and for commissions, to his own use, besides the rent of his office, from and out of the moneys so collected and received for postages, and they also averred that the principal defendant was never lawfully removed from his office and that the moneys not paid over, as set forth in the declaration, were properly retained by him for rent of his office and as commissions for postages from the first day of April, 1862, to the thirtieth day of September in the following year. Replication of the plaintiffs alleged that the office was discontinued by the Postmaster General as unnecessary on the thirteenth day of March, 1862; that the incumbent of the office was duly notified of that fact; that proper directions were given that the public property, keys, and books of the office should be transmitted to the Post Office Department; that letters and all other mailable matter then ceased to be delivered through or by that post office, and that the defendant thereafter never collected any postages or rendered any quarterly accounts.

Rejoinder of the defendants denied that the office was ever lawfully discontinued and averred that letters and other mailable matter addressed to the office and which, but for the unlawful discontinuance of the same, would have passed through it were received and delivered by the postmaster at Philadelphia, sufficient in number and quantity to justify the annual allowance to the defendant as commissions of two thousand dollars, and that the commissions so wrongfully withheld from the defendant exceeded in amount the alleged

balance due to the plaintiffs, and tendered an issue to the country. Plaintiffs demurred to the rejoinder of the defendants, and the defendants joined in demurrer. Parties were heard, and the court rendered judgment for the plaintiffs for the damages as found by the jury. All of the foregoing proceedings took place in the district court, but the judgment was affirmed, on writ of error, in the circuit court, and the defendants removed the cause into this Court.

I. Theory of the defendants is that the discontinuance of the post office, even if it was the exercise of a lawful authority, did not carry with it the removal of the postmaster; and inasmuch as he was never removed by the President, they contend that he continued to be the postmaster *de jure* at that office, and that as such he was entitled to the commissions which the office would have earned if it had been regularly supplied with the mails as theretofore, and the defendant had performed all the duties which were devolved upon him prior to its discontinuance. Suppose all that could be admitted, still it is obvious that it would not, without more, establish a valid defense to the action, as it would yet be incumbent upon the defendant to show that he had a right to retain the amount which came to his hands before the office was discontinued, and to set off against that sum the damages he sustained by the subsequent refusal of the Postmaster General to allow him a credit equal to the commissions for the year and a half next following the time when the order of discontinuance was carried into effect.

Demand of the plaintiffs is for damages for not paying over moneys which came to the hands of the incumbent of the office during the six months next preceding its discontinuance, and they insist that he had no right to retain the amount so received for any purpose, but was bound by law to pay it over under the regulations to the department. On the other hand, the defendants insist, in argument, that he properly retained it, and might lawfully and as matter of right prove his supposed claim for commissions in setoff as an answer to the action of the plaintiffs. Nothing of the

kind was alleged in the rejoinder, and nothing of the kind, therefore, was admitted by the demurrer. All that the rejoinder alleged was that the commissions of the office, if it had not been unlawfully discontinued, would have been sufficient to justify an allowance to the incumbent of two thousand dollars per annum, and that the commissions were wrongfully withheld from him by the department.

Taken separately from the other averments of the rejoinder, those allegations might afford some countenance to the proposition that the demurrer admitted away the plaintiffs' case; but the whole must be considered together, and when so considered, it is evidence that the pleader, when he alleged that the commissions were wrongfully withheld from the incumbent of the office, meant nothing more than that he was wrongfully prevented from earning commissions, as the clear and indisputable inference from the introductory allegations of the rejoinder are that the office was never supplied with the mails after it was discontinued.

II. Commissions are allowed to deputy postmasters, at prescribed rates, on the postage collected at their respective offices in each quarter of the year, or in due proportion for any period less than a quarter, and they are required by law and the regulations of the department to render accounts quarter-yearly of the receipts and expenditures of their offices, which are expected to show the extent of their liability and the amount of the commissions to which they are entitled. [[Footnote 6](#)]

Viewed in the light of these suggestions, it is undeniable that the real claim of the principal defendant, as exhibited in the pleadings, was not for commissions in the sense in which that word is employed in the acts of Congress and the regulations of the department, but was in truth and fact a claim for damages based on the assumption that he had been wrongfully prevented from earning such commissions by the neglect and refusal of the Postmaster General to supply his office with the mails and by its unlawful discontinuance. Assuming such to be the character

of the claim as described in the rejoinder, then it follows as a necessary consequence that there are at least two difficulties in the way of the theory of the

defendants which cannot be overcome.

1. Where a deputy postmaster collects no postages, there can be no commissions allowed under the acts of Congress in force during the period embraced in this controversy, and as the office was not supplied with the mails, there could be no receipts from boxes, as there were no letters or other mail matter to be delivered. Postage commissions, as ascertained by the quarterly accounts of deputy postmasters and the receipts from boxes during that period, were the only sources of compensation to those officers allowed by law, and those sources having entirely failed in this case -- yielding nothing -- the department possessed no authority whatever to make any other allowance. [[Footnote 7](#)]

2. Claim of the principal defendant being for damages, and not for commissions or receipts from boxes as ascertained in his quarterly accounts, the court below, if the case had been tried on the merits, could not have sustained the claim as a credit unless it had appeared affirmatively that it had been presented to the Auditor of the Post Office Department and had been by him disallowed in whole or in part, or that he had been prevented from so presenting it by some unavoidable accident. Such has been the rule in respect to credits claimed by individuals at the Treasury Department almost from the foundation of the government, and the original provision upon that subject is still in full force. [[Footnote 8](#)]

Same rule, substantially, has been prescribed by Congress in the trial of suits against delinquent postmasters and mail contractors, except that the party claiming the credit is required to present the claim to the Auditor of the Post Office Department. No claim not having been so presented and disallowed in whole or in part can be sustained at the trial unless it appear that the defendant is then in possession of

Page 71 U. S. 630

vouchers not before in his power to procure and that he was prevented from presenting the claim for credit to the auditor by some unavoidable accident. [[Footnote 9](#)]

Testing the rejoinder by these requirements, it is too plain for argument that it is defective in substance, as the facts shown in the allegations are in several respects insufficient to constitute a defense to any part of the plaintiff's claim. Plain inference from the facts, as alleged in the rejoinder, is that the defendant had neither collected any postages nor earned anything as receipts from boxes, and there is no pretense even in argument that he ever, during the period embraced in this controversy, rendered any quarterly account. Neglecting to allege those facts or any of them, he utterly fails to show any claim to commissions, and having omitted to allege that his claim for credit on account of damages sustained was ever presented to the auditor and disallowed, he fails to make a case in which any such credit can be sustained in a federal court.

III. But suppose it were otherwise, still we are of the opinion that the plaintiffs must prevail because, in our judgment, the post office at Kensington was lawfully discontinued. A general post office was established on the twenty-sixth day of July, 1775, the year before the Declaration of Independence. [[Footnote 10](#)] By that ordinance it was directed that a line of posts be appointed under the direction of the Postmaster General from Falmouth, now Portland, to Savannah, with as many cross-posts as he shall think fit, and he was authorized to appoint as many deputies as to him might seem proper and necessary. Amendments were made to that ordinance from time to time to the twenty-eighth day of October, 1782, when it was repealed, and a supplemental ordinance was adopted in its place, conferring substantially the same powers upon the Postmaster General. Those powers were continued, with certain alterations and additions, until the Constitution of the United States was

Page 71 U. S. 631

adopted. Congress, on the twenty-second day of September, 1789, made provision for the appointment of a Postmaster General and enacted that his powers and salary, and the compensation to the assistant or clerk and deputies which he may appoint, and the regulations of the post office, shall be the same as they last were under the regulations and ordinances of the late Congress. [[Footnote 11](#)]

Throughout that period, post routes were established by Congress, but the deputy postmasters were invariably appointed by the Postmaster General, and they were required to receive and distribute the mails at the places designated by the appointing power. When the last-named act was passed, it was entitled "An act for the temporary establishment of the post office," but it was continued in force from time to time without any material alteration until the twentieth day of February, 1792, when the act was passed to establish the post office and post roads within the United States. [[Footnote 12](#)] Authority was conferred upon the Postmaster General by the third section of that act, "to appoint an assistant and deputy postmasters where such shall be found necessary." [[Footnote 13](#)] Same authority was continued in the same terms in the act of the eighth of May, 1794, with the further provision that where there was more than one road between the places mentioned in the act, he might direct the route to be considered the post road. [[Footnote 14](#)] Express authority was conferred upon the Postmaster General by the Act of the second of March, 1799, to establish post offices and appoint postmasters at all such places on the post roads that are or may be established by law, as shall appear to him expedient. [[Footnote 15](#)] Like power was conferred upon that officer by the first section of the Act of the thirtieth of April, 1810, which also enacted that he should provide for the carrying of the mail on all post roads that are or may be established by law, and as often as he, having regard to the productiveness thereof, and other circumstances, shall think proper. [[Footnote 16](#)]

Page 71 U. S. 632

Power to establish post offices and post roads is conferred upon Congress, but the policy of the government from the time the General Post Office was established, has been to delegate the power to designate the places where the mails shall be received and delivered to the Postmaster General. Sufficient evidence of that fact is seen in the references already made to acts of Congress, but if more be needed it will be found in the first section of the Act of the third of March, 1825, entitled "An act to reduce into one the several acts establishing and regulating the Post Office Department." [[Footnote 17](#)] Provision is there made that the Postmaster

General

"shall establish post offices and appoint postmasters at all such places as shall appear to him expedient, on the post roads that are or may be established by law."

No part of that provision has been repealed except the clause as to the appointment of postmasters for offices where the commissions amount to or exceed one thousand dollars. Such appointments must be made by the President, by and with the advice and consent of the Senate, but in all other cases, the power of appointing postmasters is still vested in the Postmaster General, and his power *to establish post offices*, as there conferred, is neither repealed nor modified. We concur with the plaintiffs that the power to discontinue post offices is incident to the power to establish them unless there is some provision in the acts of Congress restraining its exercise. [[Footnote 18](#)]

Undoubtedly Congress might discontinue a post office which they had previously established by law, and it is difficult to see why the Postmaster General may not do the same thing when acting under an act of Congress expressed in the very words of the Constitution from which Congress derives its power. Strong necessity exists that the power of the Postmaster General in this behalf should be upheld so long as the offices are established by his authority. New facilities for transportation may call for change of location, or it may appear that the location was unadvisedly selected,

Page 71 U. S. 633

either from want of proper information or through misrepresentation. Some of these causes must be constantly operating in a sphere of action so vast and diversified as that of the Post Office establishment. Probably it was such reasons and others of a like character that gave rise to the practice which is believed to have been coeval with the creation of the department. Such a practice, which it is understood has been in constant exercise for more than three-fourths of a century, is certainly entitled to weight in the construction of an act of Congress appertaining to the powers of a department of the government. Much support to that view of the

subject is also derived from the acts of Congress recognizing the power as one subsisting in the Postmaster General. Section eleven of the Act of the second of July, 1836, requires the Postmaster General to cause to be certified to the auditor of the department "all establishments and *discontinuances of post offices*, and all appointments, deaths, resignations, and removals of postmasters," and the second section of the Act of the third of March, 1851, provides that no post office now in existence shall be discontinued in consequence of any diminution of the revenues that may result from that act. [[Footnote 19](#)] When weighed in connection with the immemorial usages of the department, those acts of Congress recognizing the existence of the power, may well be regarded as a legislative interpretation of the provision authorizing the Postmaster General to establish post offices and as sanctioning a construction in conformity to that well known usage.

Possessing that power, it was lawful for the Postmaster General to exercise it notwithstanding the postmaster had been appointed by the President, by and with the advice and consent of the Senate, because the incumbent accepted the appointment subject to the legal contingency that the post office might be discontinued. Congress therefore, by necessary implication, authorized the Postmaster General to discontinue any such post office whenever it should appear

Page 71 U. S. 634

to him to be expedient and proper, and having exercised that discretion it is not possible to hold that the discontinuance was unlawful.

Learned counsel will hardly contend that Congress might not have discontinued that office, and our conclusion is that the same effects flow from the discontinuance in this case as if it had been directly declared by an act of Congress.

Defendant, when the post office was discontinued, ceased to be postmaster at Kensington because there was no longer any post office at that place. He was never entitled to any compensation except commissions and receipts from boxes, and those sources of compensation were extinguished when the post office was

discontinued, and he lost nothing to which he was entitled.

The judgment of the circuit court is therefore

Affirmed.

[[Footnote 1](#)]

1; 4 Stat. at Large 102.

[[Footnote 2](#)]

33; *ibid.*, 87.

[[Footnote 3](#)]

1; 10 Stat. at Large 298.

[[Footnote 4](#)]

13; 9 *id.* 145.

[[Footnote 5](#)]

5 Stat. at Large 84.

[[Footnote 6](#)]

4 Stat. at Large 102, 105; 10 *id.* 298.

[[Footnote 7](#)]

9 Stat. at Large 202; 10 *id.* 298.

[[Footnote 8](#)]

1 *id.* 515; [United States v. Giles](#), 9 Cranch 212.

[[Footnote 9](#)]

5 Stat. at Large 83.

[[Footnote 10](#)]

1 Laws of the United States, ed. 1815, p. 649.

[[Footnote 11](#)]

1 Stat. at Large 70.

[[Footnote 12](#)]

1 *id.* 178, 218.

[[Footnote 13](#)]

Ibid., 234.

[[Footnote 14](#)]

Ibid., 357.

[[Footnote 15](#)]

Ibid., 733.

[[Footnote 16](#)]

2 *id.* 593.

[[Footnote 17](#)]

4 Stat. at Large 102.

[[Footnote 18](#)]

[*Ex Parte Hennen*](#), 12 Pet. 261.

[[Footnote 19](#)]

5 Stat. at Large 82; 9 *id.* 590.

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