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Gordon Vs. United States

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 188

Appellant : Gordon

Respondent : United States

Judgement :

Gordon v. United States - 74 U.S. 188 (1868)
U.S. Supreme Court Gordon v. United States, 74 U.S. 7 Wall. 188 188 (1868)

Gordon v. United States

74 U.S. (7 Wall.) 188

APPEAL FROM THE

COURT OF CLAIMS

SYLLABUS

1. An act of Congress referring a claim against the government to an officer of one of the executive departments to examine and adjust does not, even though the claimant and government act under the statute and the account is examined and

adjusted, make the case one of arbitrament and award in the technical sense of these words and so as to bind either party its by submission to award.

Hence, a subsequent act repealing the one making the reference (the claim not being yet paid) impairs no right and is valid. *De Groot v. United States,* 5 Wall. 432, affirmed.

2. *Semble* that the Court does not sanction the allowance of interest on claims against the government.

The legal representatives of George Fisher, deceased, by petition represented to the court just named that during the lifetime of the said George, and in the year 1813, a large amount of his property in Florida was taken or destroyed by the troops of the United States. That before his

Page 74 U. S. 189

decease, the said Fisher made application to Congress for compensation for the loss and destruction of his property. That after his decease this application was renewed by his legal representatives. That after a delay of several years, Congress, in 1848, passed an act for the relief of such representatives, authorizing and requiring the Second Auditor of the Treasury Department to examine and adjust their claims on principles of *equity and justice,* having due regard to the proofs, for the value of the property taken or destroyed, providing that the said representatives should be paid for the same out of any money in the Treasury not otherwise appropriated. This law also enacted that if it should be found impracticable for the claimants to furnish distinct proof as to the specific quantity of property destroyed by the troops and by the Indians, respectively, it should be lawful for the accounting officer to apportion the losses caused by the two respectively in such manner as the proofs should show to be just and equitable, so as to afford a *full and fair indemnity* for all losses occasioned by the troops, but nothing was to be allowed for property destroyed by the Indians.

That this act of Congress was accepted by the claimants, and that the auditor proceeded to examine and adjust the claims under it. That the auditor refused to

receive and consider certain depositions presented by the claimants because he did not consider them properly authenticated. That the auditor made what the petition states to be "an award" on the 22 April, 1848, allowing one-half of the value of such property as he considered the proof established had been destroyed, assuming, as is alleged, that one-half of the destruction was occasioned by the Indians, and not by the troops. This award amounted to $8,873, and did not, as was alleged, include interest or compensation for the losses and injuries sustained.

That in December, 1848, the auditor (at whose instance did not appear) reconsidered the case, corrected an error in calculation of $100 in favor of the claimants in his former report, and allowed *interest* on the amount as corrected by

Page 74 U. S. 190

him, being $8,973, from 1832, the date of the first application for relief, to the date of the allowance in 1848, which interest amounted to $8,997.94. Not satisfied, the complainants demanded interest from the time of the loss until the award, at the rate of interest allowed in Florida. What that rate was did not appear. This renewed controversy was submitted by the auditor and the claimants to the attorney general of that day, who gave an opinion that *interest at the rate of 6 percent should be allowed* from the date of the loss to the time of the allowance. Upon this a further allowance of interest was made by the auditor amounting to $10,004.89. All which allowances were granted under the original Act of April 12, 1848, and were paid to the claimants as fast as the auditor furnished his statements.

The claimants, still feeling aggrieved, renewed their application to Congress and asked relief from the ruling of the auditor, complaining that he had excluded certain depositions which he deemed not properly authenticated. Thereupon, on December 22, 1854, Congress passed a supplemental act directing the auditor to reexamine the case and to allow the claimants the benefit of the depositions theretofore rejected, provided they were then legally authenticated, the adjustment under this supplemental act to be made in strict accordance with the previous act.

What steps, if any, were taken under this supplemental act by the auditor was not stated.

On the 3d of June, 1858, a joint resolution was passed devolving upon the Secretary of War the execution of the supplemental act above referred to, directing him to proceed *de novo* to execute the act and its supplement according to their plain and obvious meaning, but to deduct from any amount which might be found *justly and equitably due* to the claimants all sums which had been previously paid.

The Secretary of War proceeded to examine the case, and estimated the value of the property destroyed at a sum higher by $158 than the auditor had done, but he also found that all the property had been destroyed by the troops, and none of it by the Indians. Thereupon he allowed for the

Page 74 U. S. 191

entire value of the property, instead of half its value, and added *interest from the date of the destruction,* making a further sum of $39,217.50. This sum was also paid to the claimants.

Still dissatisfied, another petition was presented by the claimants to Congress, and on the 1st of June, 1860, another joint resolution was passed authorizing and requiring the Secretary of War to revise his execution of the supplemental act aforesaid, and on such revision to give effect to all the testimony filed, including the depositions formerly rejected by the auditor, and to restate and resettle the account and to make such corrections in his former statement and settlement and such further allowances, if any, as, in his opinion *justice to the claimants* should require. The Secretary of War (then Mr. Floyd) did revise his statement and resettle the account, and on the 23d November, 1860, stated his conclusions in favor of the claimants, making a further allowance of $66,519.85. [Footnote 1]

The object of the petition now filed in the Court of Claims was to obtain from this Court a judgment for this further allowance of $66,519.85.

It appeared, however, that on the 2d of March, 1861, Congress had passed a joint resolution declaring the resolution of the 1st of June, 1860, under which the Secretary of War had made the last allowance, rescinded, and pronounced the same and all the proceedings under it null and void.

But the petitioners averred that this repealing resolution was passed without their knowledge or consent and without notice to them. By reason of it, they had not been paid.

The petition was demurred to by the United States.

The court below, considering that there was no cause of action set up in the petition save that founded upon the finding of the Secretary of War under the resolution approved June 1, 1860, styled an award, and holding that that resolution,

Page 74 U. S. 192

and all action under it, became null by the repeal of March 2, 1861, sustained the demurrer and dismissed the petition.

The only question therefore presented here was whether the court below gave a proper construction to the repealing resolution of March 2, 1861. It was, however, asserted by the claimant that if this construction was erroneous, this Court ought to give the same judgment which the court below should have given, to-wit, a judgment for the amount of the award with interest. The whole subject of interest, as allowed in the awards, was also made a matter of discussion.

Page 74 U. S. 193

MR. JUSTICE GRIER delivered the opinion of the Court.

The case of *Ferreira* [Footnote 2] was the first to bring before us these claims, under the Treaty with Spain in 1819. This was in 1857, more than thirty years after the date of the treaty. In the opinion of the Chief Justice in that case [Footnote 3

] will be found a concise history of the previous legislation of Congress on this subject. That case was brought here by way of appeal as from the judgment of the District Court of Florida. And this Court was importuned to give some utterance by which the Secretary of the Treasury might be justified in a departure from the rule adopted on the subject with regard to the allowance of interest. In the argument of the case, the Attorney General said, stating the matters as historical facts:

"The first of these claims was presented to the Secretary of the Treasury for payment in the year 1825, and others have been constantly and successively presented from that time to the present. The number of claims thus presented was about two hundred, and the amount paid has exceeded one million of dollars. But from the first, and in every case where interest has been allowed by the Florida judge, the principal only was paid, and the interest disallowed by the Secretary of the Treasury. For the last twenty-five years this has been the unvaried and uniform course of decision and action by every successive Secretary of the Treasury who has acted on the subject, sustained by the official opinions of several attorney generals, without the express dissent of any one of them officially declared."

But notwithstanding the persistent importunity of the parties who brought forward those stale claims to obtain some dictum or hint of an opinion that interest for more than thirty years should be paid, this Court refused to take jurisdiction and pronounce any opinion on the subject.

Page 74 U. S. 194

Since that time, it appears that the Treasury has been thought to labor under the very unusual disease of a *plethora,* and the Attorney General, unwilling to "follow in the footsteps of his predecessors," has discovered a mode of relief for its *depletion* by allowing forty years' interest to these claimants as a reward for their *laches* in not pursuing them in proper time.

As respects the effect of the repealing statute of March 2, 1861, the whole argument urged on behalf of the appellants is founded on a false assumption. It is asserted that this is a case of arbitrament and award, and was binding as such on

the government, and that the repeal of the resolution of Congress could not affect or invalidate rights vested by the award previously made under it. But the Secretary of War was not an *arbitrator.* An arbitrator is defined [Footnote 4] as "a private extraordinary judge *chosen by* the *parties who have a matter* in dispute, invested with power to decide the same." The Secretary of War acted *ministerially.* The resolution conferred no judicial power upon him. [Footnote 5] In order to clothe a person with the authority of an arbitrator, the parties must agree to be bound by the decision of the person chosen to determine the matter in controversy. The resolution under which the secretary assumed to act did not authorize him to make a final adjustment of the matter embraced in it. It did not bind the appellant to an acceptance of the amount reported by the Secretary, or that he would cease to clamor for *more,* after being a *fifth* time paid the amount of damages awarded to and *accepted by him.*

The joint resolution of June 1, 1860, was the *fourth* resolution which had been passed for the adjustment of the claim of the legal representatives of George Fisher against the United States for injuries done to his property by the United States troops in 1813. In pursuance of the first three of these resolutions, *five* different allowances were made in favor of and paid to the appellant, amounting in all to *sixty-six*

Page 74 U. S. 195

thousand eight hundred and three dollars and thirty-three cents. If the finding of the Secretary of War, under the joint resolution of June 1, 1860, was final and conclusive, so also must have been the finding and allowance of the Second Auditor of the Treasury under the joint resolution of April 12, 1848. Yet the appellant insisted that he was not concluded by the finding of the Second Auditor. He claimed and received after this allowance *four* additional allowances.

An arbitrament and award which concludes one party only is certainly an anomaly in the law. The various acts and resolutions of Congress in this case emanated from a desire to do justice, and to obtain the proper information as a basis of action, and were not intended to be submissions to the arbitrament of the

accounting officer. They were designed as instructions to the officer by which to adjust the accounts, Congress reserving to itself the power to approve, reject, or rescind or to otherwise act in the premises as the exigencies of the case might require. In other words, these references only require the officer to act in a ministerial, not a judicial, capacity.

The joint resolution of June 1, 1860, gave the appellant a tribunal before which his claims might be investigated. The repeal of that resolution only deprived him of *that* tribunal. It was competent for Congress to abolish the tribunal it created for the adjustment of the appellant's claims, or it might have committed them to some other authority. In either event, the claimant's right would not have been violated, only his *remedy* for the enforcement of those *rights* would have been taken away or changed. The power that created this tribunal might rightfully destroy it unless some rights had accrued which were the result of the creation of such tribunal and inseparable from it. Here no such rights had resulted from the passage of this resolution. The appellant was left where that resolution found him. His right to importune Congress for *more* was not at all impaired by its repeal.

Judgment affirmed.

[Footnote 1]

The entire sum thus allowed, it was said by the court below, was composed of interest. But this statement was alleged by the claimant to be a mistake -- REP.

[Footnote 2]

54 U. S. 13 How. 40.

[Footnote 3]

Page 54 U. S. 45 .

[Footnote 4]

Bouvier's Law Dictionary, title "Arbitrator."

[Footnote 5]

De Groot v. United States, 5 Wall. 432.

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