

United States Vs. Shoemaker

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Court : US Supreme Court

Decided On : 1868

Appeal No. : 74 U.S. 338

Appellant : United States

Respondent : Shoemaker

Judgement :

United States v. Shoemaker - 74 U.S. 338 (1868)

U.S. Supreme Court United States v. Shoemaker, 74 U.S. 7 Wall. 338 338 (1868)

United States v. Shoemaker

74 U.S. (7 Wall.) 338

ERROR TO THE CIRCUIT COURT FOR

THE EASTERN DISTRICT OF MICHIGAN

SYLLABUS

Prior to the Act of June 12, 1858, providing compensation not exceeding one quarter of *one percent* to collectors acting as disbursing agents of the United States in certain cases, such collector, if receiving his general maximum

compensation under the Act of March 2, 1831 (4), and also his special maximum of \$400, under the Act of May 7, 1822 (18), could not recover on a *quantum meruit* or otherwise for disbursements made for building a custom house and marine hospital at the port where he was collector.

This suit was brought by the United States on a bond

Page 74 U. S. 339

executed by Shoemaker and his sureties, the defendants, on the 19th of May, 1857, in a penalty of \$20,000, conditioned that said Shoemaker, as disbursing agent for the new marine hospital and custom house at Detroit, Michigan, should well and truly disburse all moneys that may come into his hands from the Secretary of the Treasury for the object mentioned and account for the same.

On the trial, the plaintiff proved that the defendant, Shoemaker, was collector of the customs at Detroit, in 1857 and 1858; that he was instructed by the Secretary of the Treasury to disburse about \$200,000 appropriated by Congress for building a custom house and marine hospital at that port, and that, between the 1st April, 1857, and *the 12th June, 1858*, and subsequently, the collector made disbursements accordingly.

It was proved also that during all the above period he had been allowed and had received his general maximum compensation, under the Act of March 2, 1831, 4, as collector; and also his special maximum of \$400, under the Act of May 7, 1822 (which provides (18), that no collector shall ever receive more than \$400 annually, exclusive of his compensation as collector, for any service he may perform for the United States in any other office or capacity), and that he had been allowed one quarter of 1 percent upon all disbursements made *after* June 12, 1858.

The plaintiff then rested; and the defendants, to maintain their defense, gave in evidence, that the balance shown in the Treasury transcripts, against the collector, was composed of an excess over the \$400 allowed, under the act of 1822, of 2 1/2 percent upon his disbursements; and that this *percentum* was but a reasonable compensation for the service.

The Act of August 4, 1854, [[Footnote 1](#)] authorized the building of a custom house and marine hospital, at Detroit, and made an appropriation for the same. The duty was devolved upon the Secretary of the Treasury, and a sum equal to 10 percent of the moneys appropriated, was also appropriated to

Page 74 U. S. 340

cover the compensation of architects, superintendents, advertising, and other contingent expenses.

The act of *June 12, 1858*, [[Footnote 2](#)] provided that collectors of customs should thereafter be disbursing agents for the payment of all moneys appropriated for the construction of custom houses, courthouses &c.;, with a compensation not exceeding one quarter of 1 percent. This act appropriated a small sum for fencing and grading the grounds about the hospital at Detroit. With this exception, no compensation had been allowed to the collector for the disbursement of the moneys made by him.

The court below directed the jury to find for the defendant if they believed his commission to be a reasonable one. Verdict and judgment went accordingly, and the United States brought the case here on error.

MR. JUSTICE NELSON delivered the opinion of the Court.

The question is, whether or not there is any law affording compensation for the service performed by the collector in this case.

The argument in support of it is, that before the act of 1858, which imposed this duty, and prescribed a compensation, the Secretary of the Treasury had no right to require

Page 74 U. S. 341

any such duty of the collector, and might as well have appointed some other person to perform it, and hence, having appointed the collector, who accepted the appointment, and has performed the service, he is entitled to the same

compensation as any other agent.

It may be that the collector might have refused the duty, and compelled the secretary to appoint another person. But this does not advance the argument, unless there can be shown some law providing for a compensation to be allowed such agent. No such provision is made in this act, nor are we aware of any authority in any other.

The question here, however, is -- the collector having accepted the appointment and performed the service -- is there any authority of law entitling him to retain, out of the moneys received, the 2 1/2 percent as compensation for the disbursements. It is admitted that there is no act of Congress authorizing it. The claim must rest, therefore, in a *quantum meruit*. This might under some circumstances present a strong case against the government for the allowance of a reasonable compensation. But the difficulty here is that there is not only no law providing for compensation, but the collector is forbidden to receive it. The Act of May 7, 1822, 18, provides that

"No collector &c., shall ever receive more than \$400 annually, exclusive of his compensation as collector &c., for any services he may perform for the United States in any other office or capacity."

And the Act of 3 March, 1839, [[Footnote 3](#)] that

"No officer in any branch of the public service or any other person whose salaries or whose pay or emoluments is or are fixed by law and regulations shall receive any extra allowance or compensation in any form whatever for the disbursement of public money or the performance of any other service unless the said extra allowance or compensation be authorized by law."

This act was substantially reenacted 23 August, 1842, [[Footnote 4](#)] with this addition: "And the appropriation therefore explicitly set forth that it is for such additional pay, extra

allowance, or compensation." This act was noticed and commented on in *Hoyt v. United States*. [[Footnote 5](#)] The Court there observed that it cuts up by the roots these claims of public officers for extra compensation on the ground of extra services; that there is no discretion left in any officer or tribunal to make allowance unless it is authorized by some law of Congress. This construction of the acts of 1822 and 1839 was affirmed in the case of *Converse v. United States*. [[Footnote 6](#)] In that case, a compensation was allowed for an extra service rendered by the collector, but it was allowed for the reason that the service was rendered in pursuance of existing laws and the appropriation for a compensation was made by law. The principle settled in that case is decisive against the allowance in the present one.

Judgment reversed.

[[Footnote 1](#)]

11 Stat. at Large 571, 2, 3, 4.

[[Footnote 2](#)]

11 Stat. at Large. 327, 17.

[[Footnote 3](#)]

3, 5 Stat. at Large 349.

[[Footnote 4](#)]

2, *ib.*, 510.

[[Footnote 5](#)]

[51 U. S. 10](#) How. 141.

[[Footnote 6](#)]

[62 U. S. 21](#) How. 478.

