

Twenty Percent Cases

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Twenty Percent Cases - 80 U.S. 568 (1871)

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Twenty Percent Cases

80 U.S. (13 Wall.) 568

APPEAL FROM THE

COURT OF CLAIMS

SYLLABUS

Under the joint resolution of February 28, 1867, increasing by 20 percent the pay of employees in the Department of the interior &c.;, and in the office of the Capitol and Treasury Extension and Commissioner of Public Buildings, neither a commission nor a warrant of appointment is necessary to entitle an employee to the benefit of the provision under consideration, provided he was actually and

properly employed in the office of the Capitol or Treasury Extension or in the office of the Commissioner of Public Buildings, if it appears that he is one of the persons or class of persons described in the joint resolution. Persons so employed are properly in the service if they were employed by the head of the department, or of the bureau, or any division of the department charged with that duty and authorized to make such contracts and fix the compensation of the person employed, even though the particular employment may not be designated in any appropriation act.

A joint resolution of Congress of February 28, 1867, [[Footnote 1](#)] provided:

"That there shall be allowed and paid to the following described persons [whose salaries do not exceed \$3,500] now employed *in the civil service* of the United States, at Washington, as follows: to civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of the compensation received by them, and *employees* male and female, in the Executive Mansion, and in any of the following-named departments, or any bureau or division thereof, to-wit, State, Treasury,

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War, Navy, *Interior*, Post Office, Attorney General's, Agricultural, and including civil officers and temporary, and all other clerks and *employees*, male and female, *in the offices of* the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster General, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, *Capitol and Treasury Extension*, City Post Office, and *Commissioner of Public Buildings*; to the photographer of the Treasury Department, to the superintendent of meters, and to lamplighters under the Commissioner of Public Buildings, an additional compensation of 20 per centum on their respective salaries as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year from and after the 30th day of June, 1866."

I . FITZPATRICK'S AND SEVEN OTHER CASES

This joint resolution being in force, several persons, named respectively Fitzpatrick, Hall, Bohn, Lytle, Holbrook, La Rieu, Richards, and Newman, and whose salaries were all less than \$3,500, filed their petitions, each setting forth facts which, if true, brought him within the act and each claiming the 20 percent additional. By the finding of the Court of Claims, it appeared that Fitzpatrick was an employee in the office of the Commissioner of Public Buildings, as keeper of the western gate of the Capitol; that Hall was an employee in the office of the Commissioner of Public Buildings, in that part of the Capitol called the crypt; that Bohn was an employee in the office of the Commissioner of Public Buildings as a laborer on the public grounds; that Lytle was an employee in the office of the Commissioner of Public Buildings as watchman in the east grounds of the Capitol; that Holbrook was an employee in the office of the Commissioner of Public Buildings as watchman at the stables; that La Rieu was an employee in the same office as watchman in the Smithsonian grounds; that Richards was an employee in the same office as watchman on the Capitol dome, and Newman was an employee in the same office as captain of the Capitol police.

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II . MILLER'S CASE

About the same time, one Miller filed a petition in the Court of Claims, alleging that he had been as clerk and employee in the office of the Capitol Extension, assigned to duty as foreman of construction, receiving a salary of \$1,800; that he was in the civil service of the United States at Washington, and that he was thus entitled to an addition of 20 percent on his salary, under the joint resolution above quoted, and asking judgment against the United States therefor. The United States opposed the demand.

The court found as fact:

1. That the claimant was appointed foreman of carpenters by the Secretary of the Interior Department, March 1st, 1866, at a salary of \$1800 per annum, and was in the service of the United States, *in connection with Capitol Extension*, at Washington, D.C., continuously from June 30th, 1866, to June 30th, 1867, inclusive, at the said salary.

2. That he was paid monthly, as in the case of other salaried officers; that he received materials for the work upon the Capitol building, made up daily reports, had charge of workmen, and performed such duties as were assigned him by the architect of the Capitol Extension, and was paid out of the said fund as the architect of the Capitol Extension, clerks, and others connected with said work, *viz.*, the appropriation for the Capitol Extension.

No other facts than those above mentioned were found by the court. The counsel of the United States, however, after adverting to the fact that the findings contradicted an averment of the petitioner of a matter within his own knowledge, they finding that he was appointed *foreman of carpenters* March 1, 1866, at a salary of \$1,800 per annum, and the counsel stating -- by way of reconciling the discrepancy -- that prior to March 1, 1866, the claimant was employed in the same capacity as thereafterwards, but at a compensation of only \$5 per day of actual employment -- that is, exclusive of Sundays, or about \$1,500 per annum -- and that the Secretary of the Interior, on March 1, 1866, wrote the following letter:

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" *DEPARTMENT OF THE INTERIOR*"

"WASHINGTON, D.C., March 2, 1866"

"SIR: You are hereby authorized, from and after the 1st of the present month, to pay George Miller, timekeeper &c.;, on the Capitol Extension, at the rate of \$150 per month for the time actually employed, until further orders."

"I am, sir, very respectfully, your obedient servant,"

"JAMES HARLAN, Secretary"

"DR. WM. S. MARSH,"

"Disbursing Agent, Capitol Extension"

III . MANNING'S CASE

Near about the same time, one Manning filed a petition with a purpose similar to that with which the others filed theirs. The court found that the claimant was employed as watchman or guard at the jail in Washington for one year at a salary of \$1,200 per year, paid to him monthly by the disbursing officer of the Department of the Interior. His pay was fixed at this rate by the Secretary of the Interior under act of Congress which place the jail under the supervision of the Department of the Interior.

The Court of Claims gave a decree for the claimants in all of the cases, and the United States appealed in all.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court in all the cases, giving it as follows:

I . IN FITZPATRICK'S AND THE SEVEN OTHER CASES

Twenty percent additional pay is allowed by the joint resolution of the twenty-eighth of February, 1867, to certain persons or classes of persons therein described, who are employed in the civil service of the United States in this

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city, whose salaries, as fixed by law, do not exceed three thousand five hundred dollars per annum, to be paid out of any money in the Treasury not otherwise appropriated. [[Footnote 2](#)]

Objection is made in several of the pending cases arising under that resolution that the claimant does not show himself to be an employee in the civil service of the United States, which, it is said is the primary condition and the one required to be shown in every case before the party can lawfully claim the prescribed additional compensation, and the attempt is made by the appellants to restrict the meaning of the term civil service so as to exclude all persons from the benefits of the provision except such as have been appointed to office or hold appointments of some kind in that service. They contend that the words "in the civil service" were not employed merely to contradistinguish the service described from that of the military or naval service of the United States, but also to show that the persons entitled to the benefits of the enactment must be persons filling offices or holding appointments established by law.

Beyond doubt, those words were intended to contradistinguish the service described from that of the military or naval service, but the Court is unable to concur in the proposition that they were also intended to restrict the operation of the resolution to persons in office in the civil service, or to persons holding appointments in that service as salaried officers.

Certain described persons and classes of persons are plainly entitled to the benefit of the provision, whether regarded as officers or as mere employees, and it is no valid argument against that proposition to show that there are or may be other employees or persons in the civil service here who are not within that description, as the terms of the enactment are special and do not extend to every employment in that service, but only to the described persons and classes of persons therein mentioned.

Civil officers whose salaries, as fixed by law, do not exceed

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three thousand five hundred dollars per annum are clearly within the terms of the resolution, and so are temporary and other clerks, messengers, and watchmen, including enlisted men detailed as such, and employees, male and female, in the

executive mansion, and in the State, Treasury, War, Navy, Interior, and Post Office Departments, and the Department of Justice, or in any bureau or division of such a department, including the Agricultural Bureau, and all civil officers, whether permanent or temporary, in the offices of the Coast Survey, Naval Observatory, navy yard, arsenal, paymaster-general, commissary-general of prisoners, bureau of refugees, freedmen, and abandoned lands, office of quartermaster, capitol, and treasury extension, city post office, and commissioner of public buildings, and the other officers and employees described in the same resolution.

By the finding of the Court of Claims, it appears that Fitzpatrick was an employee in the office of the commissioner of public buildings, as keeper of the western gate of the Capitol; that Hall was an employee in the office of the commissioner of public buildings in that part of the Capitol called the crypt; that Bohn was an employee in the office of the commissioner of public buildings as a laborer on the public grounds; that Lytle was an employee in the office of the commissioner of public buildings as watchman in the east grounds of the Capitol; that Holbrook was an employee in the office of the commissioner of public buildings as watchman at the stables; that Richards was an employee in the office of the commissioner of public buildings as watchman on the Capitol dome; and that Newman was an employee in the office of the commissioner of public buildings as captain of the Capitol police. Employees in the office of the commissioner of public buildings being within the very words of the joint resolution, the Court of Claims in each of these cases rendered judgment for the claimant, and the United States appealed to this Court.

Most of the defenses to the several claims have already been considered in the remarks preceding the statement of the case, but there are also certain special objections which

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deserve some consideration, as for example it is insisted that the question whether the claimant was or was not an employee in the office of the commissioner is a question of law, and not a question of fact, and that being a question of law, it may

be reexamined in this Court.

Whether the claimant was or was not employed by the commissioner of public buildings is certainly a question of fact, but the question as to what relation he sustained to that office may perhaps be a question of law, as assumed by the United States. What they contend is that the words of the act "in the office of" have respect to another class of employees, that those words refer to the clerks and messenger and the like, but the Court is of a different opinion, as clerks and messenger are specially mentioned in the same enactment, which shows that the words "employees in the office of" were intended to embrace a class of persons other and different from the persons having appointments as officers in the building assigned to the commissioner. Such an interpretation would be too restricted to comport with the general scope and object of the resolution or with any of the canons of construction usually applied in ascertaining the meaning of a remedial law.

Offices may be and usually are divided into two classes -- civil and military. Civil offices are also usually divided into three classes -- political, judicial, and ministerial. Political offices are such as are not immediately connected with the administration of justice or with the execution of the mandates of a superior, as the President or head of a department. Judicial offices are those which relate to the administration of justice, and which must be exercised by the persons appointed for that purpose, and not by deputies. Ministerial offices are those which give the officer no power to judge of the matter to be done, and which require him to obey some superior, many of which are merely employments requiring neither a commission nor a warrant of appointment, as temporary clerks or messengers. [[Footnote 3](#)]

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Neither a commission nor a warrant of appointment is necessary to entitle an employee to the benefit of the provision under consideration, provided he was actually and properly employed in the executive mansion, or in any of the

departments, or in any bureau or division thereof, or in the office of the Capitol or Treasury Extension, or in the office of the commissioner of public buildings, or in any other of the offices therein mentioned if it appears that he is one of the persons or class of persons described in the joint resolution. Persons so employed are properly in the service if they were employed by the head of the department or of the bureau or any division of the department charged with that duty and authorized to make such contracts and fix the compensation of the person employed, even though the particular employment may not be designated in an appropriation act.

Many persons not employed as clerks or messengers of a department are in the public service by virtue of an employment by the head of the department or by the head of some bureau of the department authorized by law to make such contracts, and such persons are as much in the civil service within the meaning of the joint resolution as the clerks and messengers employed in the rooms of the department building. [[Footnote 4](#)]

Tested by these rules, it is clear that each of the eight claimants whose cases are under consideration were employees in the office of the commissioner of public buildings, and that the judgment of the Court of Claims in each case was correct.

Judgment in each case affirmed.

II . IN MILLER'S CASE

Judgment for the claimant was rendered in this case by the Court of Claims under the joint resolution of Congress

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giving additional compensation to certain employees of the government in the civil service in this city. Preceding the entry of the judgment is a finding of the facts, which is also agreed to by the counsel of the parties, as follows:

(1) That the claimant was appointed foreman of carpenters by the Secretary of the Interior, at a salary of eighteen hundred dollars, and that he was in the service of

the United States, in connection with the Capitol Extension, continuously for one year at that salary.

(2) That he was paid monthly, as in the case of other salaried officers; that he received materials for the work upon the Capitol building, made up daily reports, had the charge of workmen, and performed such duties as were assigned him by the architect of the Capitol Extension, and that he was paid out of the same appropriation as the architect, clerks, and others connected with that work.

Several defenses were set up by the appellants, as follows:

(1) That he is not an appointee of the Secretary of the Interior, and that he was not an employee in the civil service.

(2) That he does not show himself to have been an employee in the office of the Capitol Extension.

(3) That he was not an employee in any of the departments specified in the joint resolution.

Support to first proposition is supposed to be derived from the fact alleged in argument, which is not found by the Court, that the claimant was employed in the first place at a compensation of five dollars per day, exclusive of Sundays, and from the copy of a letter not introduced in evidence, addressed by the Secretary of the Interior to the disbursing agent of the Capitol Extension, in which he gives authority to that agent to pay the claimant from that date as timekeeper &c., on the Capitol Extension, at the rate of one hundred and fifty dollars per month for the time he actually worked until further orders.

Two remarks will afford a sufficient reply to those suggestions:

(1) That such evidence cannot be received in this Court to contradict the finding of the Court of Claims.

(2) Suppose it could, it would constitute no defense to the claim,

as it only shows a mistake in the appellation given by the government to the employment.

Enough appears in the letter to show that he was employed by authority of the Secretary of the Interior, and that his compensation was fixed as alleged, by the head of that department. Grant that the letter does not amount to a warrant of appointment, still if it be admitted as evidence it clearly shows that he was employed by the authority of the secretary, which, instead of contradicting, actually fortifies the finding of the court.

Sufficient has already been remarked in disposing of the first defense set up by the appellants to show that the second cannot be sustained, as the claimant does show that he was employed in the public service on the Capitol Extension. Employed as he was by the authority of the Secretary of the Interior, it is clear that he was an employee in the civil service in that department, as neither a commission nor a warrant of appointment is required to evidence such an employment.

Argument to show that the work designated by the words "Capitol Extension" was under the supervision of the Secretary of the Interior is unnecessary, as the act of Congress of the sixteenth of April, 1862, provides that the supervision of the Capitol Extension and the erection of the new dome be and the same is hereby transferred from the War Department to the Department of the Interior.

None of the errors assigned can be sustained, and they are accordingly overruled.

Judgment affirmed.

III . IN MANNING'S CASE

Persons to act as watchmen or guards at the jails in this District are usually selected by the warden of the jail, subject to the approval of the head of the department, but their number and the amount of their compensation are fixed by the Secretary of the Interior, as they are paid out of the judiciary fund, over which

he exercises control.

By the Act of the twenty-seventh of February, 1801, the

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custody of the jails was entrusted to the marshal of the District, and he was made accountable for the safekeeping of the prisoners. [[Footnote 5](#)]

Congress, however, on the twenty-ninth of February, 1864, created the office of warden of the jail, and enacted that he should have all the power and should discharge all the duties previously exercised and discharged over the jail and the prisoners by the marshal. [[Footnote 6](#)]

Supervisory power over the accounts of marshals is given by the act of Congress upon the subject to the Secretary of the Interior, and the express provision is that the warden shall annually, in the month of November, make a detailed report to the Secretary of the Interior. [[Footnote 7](#)]

Judgment was rendered for the claimant, and the court below made the following finding of facts:

(1) That the claimant was employed as watchman or guard at the jail in this city for one year, at a salary of twelve hundred dollars per year, paid to him monthly by the disbursing officer of the Department of the Interior, and it is conceded by the appellants that the pay of such employees was fixed at that rate by the secretary of that department.

(2) That he made application to the First Comptroller of the Treasury for the additional compensation, which is the subject of controversy, and that his application was refused.

1. Objection is made in this case, as in those previously decided, that the claimant does not show that he was an employee in any one of the departments, or in any bureau or division thereof or in any office named in the joint resolution. His appointment, it is said, is not authorized by statute, nor is his compensation

prescribed by any appropriation act, and the argument is that inasmuch as neither his employment nor his compensation is directly known to any act of Congress, he cannot be regarded as an employee in the civil service of the United States, but the Court is entirely of a different opinion, as the office of warden is an

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office created by law, and the appointee of the office is required to report to the Secretary of the Interior.

Guards at the jail are selected by the warden, but their compensation is fixed by the Secretary of the Interior and they are paid by him, and it makes no difference whether the pay is charged to the appropriation for the department or to the judiciary fund, as the fact remains that the whole subject is under the supervision of the head of that department; whether their pay is charged to the one fund or to the other, the charge for their services must be approved by the warden and must be included in his report to the Secretary of the Interior, where the same is subject to a further revision. Evidently they are employees in a bureau or division of the Interior Department, as their compensation is fixed by the head of that department, and the officer by whom they are employed is required annually to make a detailed report to that department of all his official acts.

Persons employed in a bureau or division of a department are as much employees in the department, within the meaning of the joint resolution, as the messengers and others rendering service under the immediate supervision of the secretary, or those specially named in the provision as entitled to its benefits. Unquestionably guards of the jail are employees of the warden, and the office of warden of the jail is a bureau or division of the Department of the Interior.

Viewed in that light, as the case must be, it is clear that the claim is well founded, and we are all of the opinion that the judgment should be

Affirmed.

[[Footnote 1](#)]

14 Stat. at Large 569.

[[Footnote 2](#)]

14 Stat. at Large 569.

[[Footnote 3](#)]

Mallory's Case, 3 Nott & Huntington 257; *Kirby's Case, ib.*, 265.

[[Footnote 4](#)]

United States v. Belew, 2 Brockenbrogh 280; *Graham v. United States*, 1 Nott & Huntington 380; *Commonwealth v. Sutherland*, 3 Sergeant & Rawle 149.

[[Footnote 5](#)]

2 Stat. at Large 106.

[[Footnote 6](#)]

13 *id.* 12.

[[Footnote 7](#)]

13 *id.* 12; 9 *id.* 395.