

United States Vs. Gill

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Court : US Supreme Court

Decided On : 1874

Appeal No. : 87 U.S. 517

Appellant : United States

Respondent : Gill

Judgement :

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United States v. Gill

87 U.S. (20 Wall.) 517

APPEAL FROM THE

COURT OF CLAIMS

SYLLABUS

1. When, without any express contract founded on advertisement or on military exigency, subsistence stores have been received into custody by army officers in frontier parts of the country, and subsequently, the use of them becoming

necessary or convenient, have been in part used, in part destroyed through carelessness of the army subalterns, and in part become useless from natural causes -- the original owner having left (but not with a purpose of abandoning) that part of the country, where, had he remained, its disturbed state would have prevented him taking care of the stores except in the government posts -- the government is properly charged with the value of all the stores except of the part which had spoiled through natural causes -- that is to say, is chargeable with that which it got benefit from or suffered to be carelessly destroyed.

2. But it is chargeable only at the value of the stores when they were received by it, and not with the value at the time when they were used, the value having risen between the two dates.

I. In November, 1864, A. J. Gill was owner of five hundred and thirty-six tons of hay, at Point of Rocks, near Fort Fillmore, in the Territory of Colorado. On the 27th November, 1864, he applied to Lieutenant Dunn, the commanding officer at the fort, to purchase the same for the use of the United States. Dunn declined to make any such purchase, stating that he was not authorized to do so, but he gave to Gill his receipt in writing, wherein it was stated that he had "received of A. J. Gill five hundred and thirty-six tons of hay, in good order and well ricked, for the use of the government," and he at the same time referred Gill to the commander of the district and to the quartermaster at Denver, who could purchase the hay if they saw fit. The commander of the district was applied, to, but declined to purchase it that time. During the same month, the military inspector of the District of Colorado, anticipating a short supply of hay for the winter, ordered the quartermaster of Fort Lyon "to take the hay belonging to A. J. Gill and use it for government stock." After this Gill exercised no control

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over the hay. He left Colorado on the 4th February, 1865, on business of his own, and did not return until the summer of 1866. In consequence of Indian troubles then existing, it was unsafe for small parties to remain outside of government posts, and he was compelled to leave the hay without anyone in charge of it; but in

July, 1865, his agent visited the place and found the entire five hundred and thirty-six tons gone. The claimant did not abandon or intend abandonment of the hay, and at the time he left the territory it had gone into government use, as set forth in what is now next stated.

In December, 1864, and during the winter 1864-1865 the quartermaster and foragemaster at Fort Lyon directed government trains to go to the hay and quarter there. A military expedition having about two thousand horses was also quartered there, and used the hay. In the spring, about one-half of the hay had been given to government animals, about one-quarter had been thrown out of the ricks, trampled down, wasted, and destroyed and about one-quarter remained in the ricks, though in a worthless condition.

After Lieutenant Dunn was relieved at Camp Fillmore, his successor, Lieutenant Dennison, assumed the responsibility of the custody of the hay, and in June, 1865, the post commander at Fort Lyon ordered the quartermaster there to receive the rest of the hay remaining, so as to relieve Lieutenant Dennison from responsibility. A board of survey being demanded, it was found that the rest was spoiled and worthless, and no receipt was given or responsibility assumed by the post quartermaster.

II. The value of the hay in November, 1864, was \$38.50 per ton, and during the winter, at the time it was used, \$45 a ton.

Upon the foregoing case the Court of Claims decided, as a conclusion of law:

That there being no valid express contract founded upon advertisement or military exigency for the sale and purchase of the hay, the government was not liable for the entire quantity sold in November, 1864, at \$38.50 per ton; but was

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liable for the hay taken and used, at its fair and reasonable value at the time of taking; and responsible for the wasteful and destructive manner in which it was taken and used; and that Gill should recover for three-fourths of the entire quantity

ricked, at the rate of \$45 a ton. It accordingly gave judgment in his favor for \$18,090. The government brought the case here.

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THE CHIEF JUSTICE:

Upon the facts found, we think the judgment should have been for the value of the hay in November, 1864, to-wit: \$38.50 per ton, instead of \$45, its value during the winter. To this extent the Court of Claims erred. The judgment is therefore

Reversed and the cause remanded with instructions to enter a new judgment in accordance with this opinion.

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