

**United States Vs. O'Grady**

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**Court :** US Supreme Court

**Decided On :** 1874

**Appeal No. :** 89 U.S. 641

**Appellant :** United States

**Respondent :** O'Grady

**Judgement :**

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**United States v. O'Grady**

**89 U.S. (22 Wall.) 641**

*APPEAL FROM THE COURT OF CLAIMS*

## **SYLLABUS**

When the government means to set up any counterclaim to the claim of a party suing in the Court of Claims, as *ex. gr.*, when, on a suit under the Captured and Abandoned Property Act, to recover the proceeds of cotton sold under that act, it means to set up a tax, such as what is known as the "cotton tax," it must plead that tax by way of setoff or counterclaim to the suit, as is contemplated by the Act

of March 3, 1863, or move for a new trial under the provisions of the Act of June 25, 1868. It cannot, after judgment has been given for the amount claimed by the petitioner, irrespective of such counterclaim and without any motion for a new trial having been made, set up and deduct at the Treasury the counterclaim when the amount awarded by the decree of the court is asked for there.

By the act organizing the Court of Claims, A.D. 1855, power was given to it to hear and determine all claims *against the United States* founded upon any law of Congress or upon any regulation of an executive department or upon any contract, express or implied, with the government of the United States. [ [Footnote 1](#) ]

Doubts, however, were suggested immediately upon the act's going into practical operation and on suits being brought against the United States whether the act meant to allow the United States to file setoffs in such suits and to give jurisdiction to the court to hear and determine them in the

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way usually practiced in suits between private parties. If the act did thus mean, its meaning was not clearly expressed. Congress accordingly, by an act passed March 3, 1863, [ [Footnote 2](#) ] enacted that:

"In addition to the jurisdiction now conferred by law, the court shall also have jurisdiction of all setoffs, counterclaims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the government against any person making claim against the government in said court, and upon the trial, it shall hear and determine such claim and demand, both for and against the government and the claimant, and if upon the whole case it finds the claimant is indebted to the government it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases,"

&c.;

A still subsequent act -- one passed June 25, 1868 [ [Footnote 3](#) ] -- enacted:

"That the said Court of Claims, at any time while any suit or claim is pending before or on appeal from said court or within two years next after the final disposition of any suit or claim, may on motion of the United States grant a new trial in any such suit or claim and stay the payment of any judgment therein upon such evidence as shall reasonably satisfy said court that any fraud, wrong, or injustice has been done to the United States."

These two acts being in force, one O'Grady sued the United States in the said Court of Claims to recover the proceeds of certain cotton, confessedly his, which had been seized and sold under the Captured and Abandoned Property Act and which proceeds were now in the Treasury of the United States. That act, provides [ [Footnote 4](#) ] that the owner of such property shall be entitled to receive the residue of the proceeds thereof

"after the deduction of any purchase money which may have been paid, together with the expense

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of transportation and sale of said property, and any *other lawful expenses* attending the disposition thereof."

The United States appeared, pleaded various pleas, but no plea in the nature of setoff, nor did it make any claim for or allusion to any sum as due for a "tax" on the cotton under any act of the United States, approved June 30th, 1864, or any other act, or as due otherwise for any tax.

The Court of Claims having heard the case and allowed to the United States a deduction from the gross proceeds for its outlay of purchase money, expense of transportation, sale, and other lawful expenses as claimed, decreed in favor of O'Grady for \$72,450.

On O'Grady's presenting his claim as thus fixed for payment at the Treasury, the Secretary refused to pay it without the deduction of \$4,181, which sum he alleged that he had a right to retain as a tax under acts of Congress, in force at the time of

the capture of this cotton, one of which did confessedly assume to impose a tax of two cents a pound upon all cotton produced or sold and removed for consumption, and upon which no duty had been levied, paid, and collected, the tax being made by the act, until paid, a lien upon the cotton in the possession of any person whomsoever, [ [Footnote 5](#) ] and another of which [ [Footnote 6](#) ] enacted that "whenever any cotton &c.;, shall arrive from any state in insurrection against the government, the assessor shall immediately assess the taxes due thereon."

This deduction was submitted to under protest, and an agreement was entered into "that the rights of the several parties in respect to this tax are reserved, and remain subject to the decision of the Supreme Court."

To bring the question to this Court under this agreement, a petition was filed -- the petition in the present case -- praying judgment for \$4,181.40, the amount of the tax claimed. The government pleaded that the government "is not indebted to the claimant in the said sum of money or in any part thereof."

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Judgment was recovered by the claimants for the whole amount of the net proceeds of the cotton in the original suit, and it is not even suggested that the United States filed any setoff or counterclaim in that case, nor would it now make any difference if the claim of setoff or counterclaim had been filed in that case, for if filed and rejected, the appropriate remedy of the United States was by appeal to the Supreme Court. Appeal to this Court in such a case undoubtedly would lie; nor was that the only remedy left to the United States, as the Court of Claims, on motion, might grant a new trial in such a case if it appeared that any fraud, wrong, or injustice had been done to the United States. [ [Footnote 7](#) ]

But the United States did not appeal from the judgment of the Court of Claims, nor does it appear that any application in their behalf was made to that court for a new trial, as expressly authorized by an act of Congress. On the contrary, it appears

that the United States acquiesced in the

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judgment and claimed to deduct from it the amount now in controversy as due to the government for the internal revenue tax. Such a power is not vested in the Secretary of the Treasury nor in any other executive officer of the government, even if it could be, and it is clear that the judgments of this Court, rendered on appeal from the Court of Claims, if no such power is conferred by an act of Congress, are beyond all doubt the final determination of the matter in controversy, and it is equally certain that the judgments of the Court of Claims, where no appeal is taken to this Court, are, under existing laws, absolutely conclusive of the rights of the parties unless a new trial is granted by that court as provided in the beforementioned act of Congress. [ [Footnote 8](#) ]

By the Act of the 3d of March, 1863, it was provided that no money shall be paid out of the Treasury for any claim passed upon by the Court of Claims till after an appropriation therefor *shall be estimated for* by the Secretary of the Treasury, which provision was of course as applicable to the judgments on appeal, rendered by this Court, as to the original judgments rendered by the Court of Claims, as the subject matter of the suit in either case is one "passed upon by the Court of Claims." [ [Footnote 9](#) ]

Either party by virtue of that act was allowed an appeal to the Supreme Court, but the Supreme Court declined to take jurisdiction of such appeals, chiefly for the reason that the act practically subjected the judgments of the Supreme Court rendered in such cases to the reexamination and revision of the Secretary of the Treasury. [ [Footnote 10](#) ]

Subsequently Congress repealed the provision conferring that authority upon the Secretary of the Treasury, and since that time no doubt has been entertained that it is proper that the Supreme Court should exercise jurisdiction of appeals in such cases. [ [Footnote 11](#) ]

Judicial jurisdiction implies the power to hear and determine a cause, and inasmuch as the Constitution does not

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contemplate that there shall be more than one Supreme Court, it is quite clear that Congress cannot subject the judgments of the Supreme Court to the reexamination and revision of any other tribunal or any other department of the government.

Opposed to that is the suggestion that the internal revenue tax is a lien upon the property taxed, and that the lien, when the property is sold, is transferred to the proceeds of the sale, as in the case of a maritime lien when the *res* is sold and the proceeds of the sale have been paid into the registry of the court. Whether that is so or not is not a question in this case, but suppose the question is presented, it is a sufficient answer to the suggestion that the United States, if they desire to enforce such a right, must seek some other remedy than the one pursued in the case before the Court, as it is clear that when such a claim as that preferred by the claimants in the original petition passes into judgment in a court of competent jurisdiction, it ceases to be open, under any existing act of Congress, to revision by anyone of the executive department or of all such departments combined. Remedies such as have been suggested, if seasonable, may be pursued in a proper case, but it will be time enough to decide the question whether any remedy now remains when the question is properly presented.

Should it be suggested that the judgment in question was rendered in the Court of Claims, the answer to the suggestion is that the judgment of the Court of Claims, from which no appeal is taken, is just as conclusive under existing laws as the judgment of the Supreme Court until it is set aside on a motion for new trial.

*Judgment affirmed.*

[ [Footnote 1](#) ]

Act of February 24, 1855, 10 Stat. at Large 612.

[ [Footnote 2](#) ]

12 Stat. at Large 765.

[ [Footnote 3](#) ]

15 *id.* 75.

[ [Footnote 4](#) ]

12 Stat. at Large 820, Act of March 12, 1863.

[ [Footnote 5](#) ]

13 Stat. at Large 16.

[ [Footnote 6](#) ]

Act of June 30, 1864, 177, *ib.* 305.

[ [Footnote 7](#) ]

15 Stat. at Large 75.

[ [Footnote 8](#) ]

[\*Ex Parte Russell\*](#), 13 Wall. 664.

[ [Footnote 9](#) ]

12 Stat. at Large 768.

[ [Footnote 10](#) ]

[\*Gordon v. United States\*](#), 2 Wall. 561.

[ [Footnote 11](#) ]

14 Stat. at Large 9.

