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Keyes Vs. United States

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Court : US Supreme Court

Decided On : Nov-26-1883

Appeal No. : 109 U.S. 336

Appellant : Keyes

Respondent : United States

Judgement :

Keyes v. United States - 109 U.S. 336 (1883)
U.S. Supreme Court Keyes v. United States, 109 U.S. 336 (1883)

Keyes v. United States

Submitted November 13, 1883

Decided November 26, 1883

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APPEAL FROM THE COURT OF CLAIMS

SYLLABUS

The President has the power to supersede or remove an officer of the army by appointing another in his place by and with the advice and consent of the Senate.

Such power was not withdrawn by the provision in 5 of the Act of July 13th, 1866, c. 176, 14 Stat. 92, now embodied in 1229 of the Revised Statutes, that

"No officer in the military or naval service shall, in time of peace, be dismissed from service, except upon and in pursuance of the sentence of a court-martial to that effect or in commutation thereof."

Where a court-martial has cognizance of the charges made and has jurisdiction of the person of the accused, its sentence is valid when questioned collaterally although irregularities or errors are alleged to have occurred in its proceedings in that the prosecutor was a member of the court and a witness on the trial.

No opinion is expressed as to the propriety of such proceedings.

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The appellant brought a suit against the United States in the Court of Claims on the 2d of February, 1880, claiming to recover the sum of $4,236.36 for his pay as a second lieutenant in the 5th regiment of cavalry in the army of the United States from the 28th of April, 1877. That court dismissed his petition, on the following facts found by it:

In February, 1877, the appellant was tried on four charges and specifications before a general court-martial composed of ten officers. One of them, Col. Merritt, was the colonel of the 5th cavalry. They were all present. The appellant being before the court, and the order appointing it being read, he was asked if he had any objection to any member of the court present, named in the order, to which he replied in the negative. The oaths were then administered to the members of the court in the presence of the appellant. The first three of the charges and specifications were preferred by the lieutenant colonel of the fifth cavalry and the fourth by Col. Merritt. The appellant was represented by counsel of his own selection. He pleaded not guilty. Col. Merritt was sworn as a witness on the part of

the government, and gave testimony in support of the charge and specifications preferred by him, but gave no testimony in regard to the other charges and specifications. The day after the appellant pleaded not guilty, he withdrew, by leave of the court, his plea of not guilty of the second charge and its specifications, and entered a plea of guilty thereto. Col. Merritt continued to sit as a member of the court throughout the trial, and participated in rendering the final judgment. At the close of the evidence, the appellant submitted, in writing, a statement of his defense, which was read to the court. It contained no objection or reference to the participation of Col. Merritt in the trial as a member of the court or to his having been so sworn and examined as a witness on behalf of the government. The court found the appellant guilty of all the charges and specifications and sentenced him to be dismissed from the service. The proceedings, findings, and sentence of the court were approved by the President of the United States, who ordered that the sentence should take effect on the 28th of April, 1877. On the 27th of June, 1877, the Senate not being in session,

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the President appointed Henry J. Goldman to be a second lieutenant in the 5th regiment of cavalry, and on the 15th of October, 1877, he nominated Goldman to the Senate for appointment as second lieutenant in said regiment in the place of the appellant, dismissed, to date from June 15, 1877. The Senate advised and consented to the appointment of Goldman, and he was accordingly commissioned and still holds the office of such second lieutenant.

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MR. JUSTICE BLATCHFORD delivered the opinion of the Court. He recited the facts in the language used above, and then said:

So far as regards the time after June 15, 1877, the fact that Goldman was appointed by the President, by and with the advice and consent of the Senate, a second lieutenant in the fifth cavalry in the place of the appellant from June 15, 1877, and was commissioned as such, and accepted and held the appointment, is

a bar to the suit of the appellant. It was held by this Court in *Blake v. United States,* 103 U. S. 227 , that the President has the power to supersede or remove an officer of the army by the appointment of another in his place, by and with the advice and consent of the Senate, and that such power was not withdrawn by the provision in 5 of the Act of July 13, 1866, c. 176, 14 Stat. 92, now embodied in 1229 of the Revised Statutes, that

"No officer in the military or naval service shall, in time of peace, be dismissed from service, except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof."

It was held that this provision did not restrict the power of the President, by and with the advice and consent of the Senate, to displace officers of the army or navy, by the appointment of others in their places.

In regard to the rest of the time covered by the suit, it becomes

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necessary to decide the question raised as to the validity of the sentence of the court-martial. It is contended for the appellant that the court-martial had no jurisdiction to try him; that the fact that he made no objection to any member of the court was not a consent upon his part which conferred jurisdiction on the court-martial, and that the fact that Col. Merritt was prosecutor, witness, and judge rendered the proceedings of the court-martial void. The position is taken that although there is no statute or regulation which forbids what was done in this case, the sentence of a court-martial in which one of the judges is prosecutor and witness is absolutely void, and that neither what the appellant said nor what he omitted to say at the time can cure the defect in the organization of the court.

That the court-martial, as a general court-martial, had cognizance of the charges made and had jurisdiction of the person of the appellant is not disputed. This being so, whatever irregularities or errors are alleged to have occurred in the proceedings, the sentence of dismissal must be held valid when it is questioned in this collateral way. *Thompson v. Tolmie,* 2 Pet. 157; *Voorhees v. Bank of United*

States, 10 Pet. 449; *Cornett v. Williams,* 20 Wall. 226, 87 U. S. 249 . This doctrine has been applied by this Court to the judgment and sentence of a naval general court-martial, which was sought to be reviewed on a writ of habeas corpus. *Ex Parte Reed,* 100 U. S. 13 .

Where there is no law authorizing the court-martial, or where the statutory conditions as to the Constitution or jurisdiction of the court are not observed, there is no tribunal authorized by law to render the judgment. Of that character are the authorities cited and relied on by the appellant, but they do not apply to the present case.

Under the foregoing views, we express no opinion as to the propriety of the proceeding of the court-martial in the respects in which they are assailed.

The judgment of the Court of Claims is affirmed.

MR. JUSTICE FIELD did not sit in this case or take part in its decision.

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