

United States Vs. Jones

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Appeal No. : 134 U.S. 483

Appellant : United States

Respondent : Jones

Judgement :

United States v. Jones - 134 U.S. 483 (1890)

U.S. Supreme Court United States v. Jones, 134 U.S. 483 (1890)

United States v. Jones

No. 1554

Submitted March 3, 1890

Decided March 24, 1890

134 U.S. 483

APPEAL FROM THE COURT OF CLAIMS

SYLLABUS

The decision of a commissioner of a Circuit Court of the United States upon a motion for bail and the sufficiency thereof, and his decision upon a motion for a continuance of the hearing of a criminal charge, are judicial acts in the "hearing and deciding on criminal charges" within the meaning of Rev.Stat. § 847, providing for a *per diem* compensation in such cases.

The approval of a commissioner's account by a Circuit Court of the United States is *prima facie* evidence of its correctness, and, in the absence of clear and unequivocal proof of mistake on the part of the court, should be conclusive.

This was an appeal from a judgment rendered by the Court of Claims against the United States in favor of Richard M. Jones, for services rendered by him as a commissioner of the Circuit Court of the United States for the Western District of North Carolina.

The material facts of the case, as found by the court upon the evidence, were that the claimant had been a commissioner of the said court from 1883 to the bringing of the action; that from December 3, 1885, to June 30, 1886, as such commissioner, he issued warrants in six cases in which issue was joined and testimony taken; in three cases in which issue was joined and no testimony was taken, and in three cases in which issue was not joined, the defendants discharged, and no testimony taken, and that he duly made his docket entries in each and all of those cases by order and authority of the court, and in the manner required by its rules.

His accounts for fees and for keeping his dockets were verified by oath, and presented to the court in the presence of the district attorney, and approved by the court in due form. For those accounts thus approved he was allowed a fee of three dollars in each case where issue was joined and testimony taken, two dollars where issue was joined but no testimony taken, and one dollar where issue was not joined,

and the defendant discharged. His account also showed charges on eleven different days from March 12, 1884, to September 15, 1887, in as many criminal cases, each of which charges was either "for hearing and deciding on criminal charges, in deciding on amount of bail and sufficiency thereof," or "for hearing and deciding on criminal charges, in hearing and deciding on motion for continuance." These charges were approved by the Circuit Court, but not paid.

The court found as a conclusion of law that the claimant was entitled to \$55 for these last eleven cases, and entered a judgment in his favor for \$76. From that judgment, the United States brought this appeal.

The only assignment of error presented by the government in this appeal was that the court erred in finding that claimant is entitled to \$55 for hearing and deciding on amount of bail and sufficiency thereof in four cases, and for hearing and deciding on motion for continuance in seven cases.

Page 134 U. S. 486

MR. JUSTICE LAMAR, after stating the facts as above, delivered the opinion of the Court.

A brief reference to the powers and duties of a commissioner as an examining and committing magistrate will be sufficient to dispose of the only question presented by this appeal. Section 1014 of the Revised Statutes of the United States provides that

"for any crime or offense against the United States, the offender may, by . . . any commissioner of the circuit court to take bail, . . . be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case,"

etc.

By section 1015 it is further provided that "bail shall be admitted" by such commissioner "upon all arrests in criminal cases, where the offense is not punishable by death."

By section 1982, such commissioner are vested with the power to institute proceedings against persons violating any of the provisions of chapter 7 of the title "Crimes."

Section 1983 provides for the increase of the number of commissioners, "so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section."

By section 1984, these officers are vested with other important powers, and by section 1985 every marshal and deputy marshal is required to obey and execute all warrants or other process that the commissioners may issue in the lawful performance of their duties.

By other sections, numerous duties of a purely clerical and ministerial character are attached to this office. The compensation of a commissioner is clearly prescribed and classified by section 847 of the Revised Statutes according to the character of the services performed. For acts purely clerical and ministerial, such as administering oaths, taking acknowledgments, taking and certifying depositions to file, or furnishing a copy

Page 134 U. S. 487

of the same, specific fees are provided, and for issuing writs or warrants or other services he has the same compensation as is allowed to clerks for like service. For acts not merely clerical, but which are performed by the commissioner in his judicial capacity, his fees are regulated on a basis of *per diem* compensation. Among the provisions of this kind is the one upon which this controversy has arisen, viz.: "For hearing and deciding on criminal charges, five dollars a day for the time necessarily employed."

It is admitted that from March 12, 1884, to June 20, 1888, the period covered by the claim in dispute, there came before the appellee, in his capacity as commissioner, on eleven different days, eleven separate cases to be heard and decided against various persons, each charged with a crime against the laws of the United States; that in four of these cases, he heard and decided motions upon bail and the sufficiency thereof, and in the other seven, motions for continuance were heard and decided by him.

There can be but one answer, in our opinion, to the question whether the commissioner should be allowed a fee of five dollars a day for his services on those eleven days. The decision upon a motion for bail and the sufficiency thereof is a judicial determination of the very matter which the statutes authorize and require him "to hear and decide," to-wit, whether a party arrested for a crime against the United States, when brought before him for examination, shall be discharged, or committed on bail for trial, and in default thereof imprisoned. With respect to motions for continuance, the granting or refusal of them is unquestionably a necessary incident to and a part of the hearing and determining of criminal charges, and the exercise of that power in such criminal proceedings is indispensable to the right of the accused to have a fair and full investigation of the offense charged against him and to a sufficient time for the summoning of his witnesses, as well as for employing and consulting with counsel to aid him in his defense.

It is contended by the Assistant Attorney General that the *per diem* fee in such case is not only intended for the service specified, but that the "time actually employed is also an element

Page 134 U. S. 488

to be considered." A sufficient answer to this objection is furnished in the findings of the court below that the account of the commissioner for the fees charged for the services in question was verified by oath and presented to the United States court of which he was the commissioner in open court, in the presence of the district attorney, approved by the court, and an order approving the same, as

being in accordance with law, and just, was entered upon the records of the court. The approval of a commissioner's account by a circuit court of the United States, under the Act of February 22, 1875, 18 Stat. 333, is *prima facie* evidence of the correctness of the items of that account, and in the absence of clear and unequivocal proof of mistake on the part of the court, it should be conclusive.

We think the authorities cited by the attorney for the appellee in support of the claim in question are directly in point.

The judgment of the Court of Claims is

Affirmed.