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Report : Petition of Reps. A. Gibbs and B. Dowell

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1887.—Ordered to be printed.

Mr. WILSON, of Iowa, from the Committee on the Judiciary, submitted the following

REPORT:

[To accompany bill S.3110.]

The Committee on the Judiciary, to which was referred the bill (S. 3110) for the relief of the heirs or the legal representatives of A. C. Gibbs and of B. F. Dowell, attorneys-at-law, for defending Lieut. George A. Goodale, commanding Fort Klamath, Oregon, under charges of false imprisonment and loss of property in two cases, has considered the same, and submits the following report:

The character of the services rendered by the parties in whose behalf this bill was introduced is disclosed by the following abstract of the cases in which the services recited in it were rendered, viz :

In the circuit court of the United States for the district of Oregon.

[James Barclay v. Lieut. G. A. Goodale. Action at law to recover \$10,000.]
 [T. M. Rouse v. Lieut. G. A. Goodale. Action at law to recover \$7,500.]

ABSTRACT OF THE CASES.

The Barclay case was an action for false imprisonment, commenced in the State circuit court of Oregon, sitting at Jacksonville.

The complaint charges that the plaintiff was imprisoned by the defendant, in the guard-house at Fort Klamath, from the 11th day of May, 1871, to the 14th day of June, 1871, and claims damages for the same in the sum of..... \$5,000
 And for loss of health, caused by imprisonment..... 1,000
 Also for loss of property, caused by imprisonment..... 3,000
 Cruelty and neglect during confinement..... 1,000

Total..... 10,000

Defendant denied the damages, but admitted the imprisonment, and justified the same on the grounds that the defendant, at the time, was a lieutenant of the United States Army and in command of Fort Klamath. The answer contains four separate pleas, substantially alleging that plaintiff was guilty of introducing spirituous liquor, and attempting to introduce spirituous liquors at two places on the Klamath Lake Indian Reservation. And that the defendant, on the 29th of May, 1871, was superseded in the command of the post by Maj. James Jackson, and that the defendant had no control over the plaintiff excepting for thirteen days, and that his superior officer imprisoned the defendant for the balance of the time.

The replication denied all the new matter set up in the answer. The case, on motion of the defendant, was transferred from the State court to the United States circuit court, on the grounds that the defendant was a citizen of the State of New York. The case was tried before a jury at the July term, 1872, of the United States circuit court, at Portland, Oreg.

The proof showed the defendant to be first lieutenant of Company K, of the Twenty-third Regiment United States Infantry; and that he was at the time of the arrest in command of Fort Klamath, and that he was superseded in the command by Major Jackson, as stated in the answer; and that the defendant destroyed all the liquor of the plaintiff outside of the Indian reservation, but very close to the line. The proof was conflicting as to the guilt of the plaintiff of the crimes charged in the answer against him, and also as to the treatment of the plaintiff by defendant and the sickness of plaintiff and the damages sustained by him, but tended to show that the defendant did nothing excepting what he thought it his duty as an officer to do. The jury, under the charge of the court, rendered a verdict against the defendant for the sum of one dollar. This verdict prevented the plaintiff from recovering more than one dollar costs, as the rules of the court prohibited the recovery of more costs than damages in such cases.

In the case of T. M. Rouse against the same defendant the record shows the plaintiff was arrested and imprisoned by the defendant at the same time for the same offenses, and the complaint claims damages in the sum of \$7,500.

The complaint, answer, and replication are in other respects the same as the case of Barclay. It was also removed from the State court to the United States circuit court, and after the verdict in the Barclay case the plaintiff failed to prosecute his action, and it was dismissed on motion of defendant.

The record shows Mr. B. F. Dowell appeared as attorney for the defendant in both cases in the State court, and had the case transferred to the United States circuit court. He and Mr. A. C. Gibbs appeared in the last-mentioned court, and defended the cases successfully with skill and ability. The distance from the residence of Mr. Dowell to where the case was tried in the United States circuit court is about 300 miles.

The grand jury found a bill of indictment against Barclay for the crime charged in the answer, and he has been tried by a jury and convicted, and sent to the penitentiary for one year. The grand jury failed to find a bill against Rouse, and he has been discharged.

The usual prices for prosecuting and defending suits in this State vary from 10 to 20 per centum. Under all the circumstances I am of the opinion a thousand dollars each for the services of Mr. Dowell and ex-Governor Gibbs for both cases reasonable and a just compensation.

MATTHEW P. DEADY,
United States District Judge, Oregon.

PORTLAND, OREG., December 3, 1872.

Claim was made for payment of the amount stated by the court as a reasonable compensation for the services rendered. The action taken by the Attorney-General in respect thereof is explained by a letter, which he addressed to the President *pro tempore* of the Senate, and which is as follows, viz :

DEPARTMENT OF JUSTICE,
Washington, May 6, 1874.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate, dated the 30th ultimo, in the following words:

Resolved, That the Attorney-General be requested to furnish the Senate with a copy of correspondence in the case of James Barclay against Lieut. G. A. Goodale, United States Army, late in command of Fort Klamath, Oregon, for false imprisonment and the action of T. M. Rouse against same, and how much has been paid and what is still unpaid of the expenses of Lieutenant Goodale."

In compliance therewith I transmit copies of all the correspondence on the files and records of this Department in relation to said cases of Barclay *v.* Goodale and Rouse *v.* Goodale, and have to state that the sum of \$1,000 has been paid by this Department to A. C. Gibbs, esq., the then United States attorney for Oregon, for his services in these cases. I am not advised as to whether or not there are any other expenses in the cases remaining unpaid. Mr. B. F. Dowell assisted the district attorney in these cases, but under existing laws I was unable to allow him compensation, and in my letter to Mr. Gibbs, of the 15th day of May last, a copy of which accompanied the papers, I informed him that the Department would make no compensation to Mr. Dowell, but, as the fee to him (Gibbs) was, in my opinion a liberal one, I presumed he would be willing to share it with Mr. Dowell for his services.

Very respectfully,

GEORGE H. WILLIAMS,
Attorney-General.

Hon. M. H. CARPENTER,
President pro tempore United States Senate.

Subsequently to the resolution of the Attorney-General of the amount of compensation to be allowed, as stated in the foregoing letter, Mr. Gibbs addressed to that officer the following communication, viz :

UNITED STATES DISTRICT ATTORNEY'S OFFICE,
Portland, Oreg., April, A. D. 1873.

HON. GEORGE H. WILLIAMS:

DEAR SIR: I have just got a letter from B. F. Dowell, in which I understand him to say you have concluded to allow us one-half our fee in the two cases against Captain Goodale, of Fort Klamath, and that the draft will be sent to me, one-half of which is for him and the other half for me. I don't understand this. Am I to pay him half of the draft to me when it comes? I have not seen it yet.

If there was power to pay half, I don't see why not all. The fee was not high for such cases, and it was certified to as reasonable by the court.

* * * * *

To this letter the following reply was sent, viz :

DEPARTMENT OF JUSTICE,
Washington, May 15, 1873.

SIR: I have received your letter in regard to your compensation and that of Mr. Dowell in the cases against Goodale.

When Mr. Dowell was here I informed him that, as he was not retained by this Department in the cases, no compensation would be made to him by the Department, but that a fee of a thousand dollars would be allowed to you, and that, as the allowance was a very liberal one, I presumed you would be willing, as he had assisted in the case, to divide the fee with him.

The draft will be sent to you, and it will be optional with you to allow Mr. Dowell anything as his own compensation. I did not tell him that you would be instructed to divide the fee with him, but, as I before said, I suppose some arrangement would be made between you and him with regard to the matter.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

A. C. GIBBS, Esq.,
United States Attorney, Portland, Oreg.

It does not appear from anything presented to the committee whether or not Mr. Gibbs did allow and pay part of the compensation made to him to Mr. Dowell, but as no complaint in this regard has been presented, and the bill proceeds upon the theory that the amount certified by the judge of the court in which the cases were tried ought to be appropriated for, the presumption fairly arises that the amount allowed and paid by the Department of Justice was divided as suggested by the Attorney-General.

The bill is herewith reported to the Senate, with a recommendation that it be indefinitely postponed.