

PHILLIPS v. UNITED STATES.¹

(District Court, E. D. Pennsylvania. December 20, 1887.)

UNITED STATES COMMISSIONERS—DOCKET FEES.

United States commissioners are impliedly authorized to keep a docket, and entitled to docket fees therefor.

At Law.

Henry Hazelhurst, for plaintiff.

John K. Valentine, U. S. Dist. Atty., for defendant.

BUTLER, J. I find the following facts: The plaintiff is a commissioner of the circuit court of this district, and has been during all the time covered by the claim. From the beginning he has kept a docket in which is entered the names of parties, and all proceedings in each case,—a docket such as is kept by justices of the peace and similar magistrates. It has been the uniform custom of commissioners in this district to keep such dockets. Nothing has been paid for the service, nor was any demand made until April 23, 1887, when a claim was inserted in a general account then presented. The claim was not allowed. Suit is now brought under the statute of March 3, 1887, which confers jurisdiction over the subject on this court.

On the foregoing facts, and in view of the decision in *U. S. v. Wallace*, 116 U. S. 398, 6 Sup. Ct. Rep. 408, I think the plaintiff should recover. I see no sufficient ground for a distinction between this case and the one just cited. It is true that in the latter the docket was kept under an order of court, while here no such order was made. The duties of commissioners are defined by statute, and I am not aware of any authority in the court to increase or diminish them. The duty of keeping a docket seems to be a plain implication from the authority conferred to issue process and hear cases. The commissioner is a magistrate, similar in character to justices of the peace and aldermen. The latter magistrates are required to keep dockets, not only by statute, but by force of common usage. A commissioner could not properly discharge his functions without keeping a record of his proceedings. I can, therefore, see no reason for a distinction as respects "docket fees" between commissioners who have kept such a record under order of court, (granted that the order is authorized,) and those who have performed the duty without such prompting.

Judgment will therefore be entered in plaintiff's favor for \$255, the sum due for services on this account rendered within six years. The balance of the claim is barred by the limitation named in the statute.

¹Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

*In re HERRES.*¹

(Circuit Court, D. Minnesota. December 16, 1887.)

1. EXTRADITION—REQUISITES—PRELIMINARY MANDATE.

In proceedings for the extradition of a fugitive from justice, a preliminary mandate from the executive department of the government is not necessary under the extradition treaty of 1842, between the United States and Great Britain; the act itself containing no provision to that effect, and because no extradition can be consummated without action by the executive in the last instance.

2. SAME—AUTHORITY FOR PROCEEDINGS—EVIDENCE OF.

A complaint filed before the United States commissioner for the extradition of an alleged fugitive from justice did not disclose the fact that the proceedings were initiated by the Canadian government, or that the party filing the same was acting other than in his private capacity; but it appeared from the testimony taken before the commissioner that the complaining witness was acting under direct authority from the officials of the Canadian government. *Held*, that it is sufficient if such fact appear elsewhere in the proceedings than in the complaint.

3. SAME—PROOF OF CRIME—MEASURE.

Depositions for the extradition of an alleged fugitive from justice showed that a forgery had been committed by one John K. Herres, and a witness testified to have seen prisoner in Toronto, where the crime was charged to have been committed. When arrested, prisoner denied his name, claiming it was Walker, but subsequently he swore to and signed an affidavit for change of venue as John K. Herres. On *habeas corpus*, petitioner objected that the evidence failed to show that he was guilty of the offense charged against him in Canada. *Held*, that extradition proceedings are like preliminary examinations, and if it appear that a crime has been committed, and that there is probable reason to believe that the defendant is guilty of that crime, substantial justice requires that he should be put upon trial.

4. SAME—DEPOSITIONS—AUTHENTICATION.

On *habeas corpus* for the discharge of a prisoner, held under extradition proceedings, it was insisted that the depositions of complaining witness were not properly certified and authenticated. 22 St. U. S. 216, provide that depositions shall be received if they be properly and legally authenticated, so as to be entitled to be received for similar purposes before tribunals of the foreign country from which the accused shall have fled. *Held*, that the authentication was in the very language of the statute, and these depositions were as such entitled to be received for similar purposes.

5. SAME.

Rev. St. U. S. § 1674, define "vice-consul" as follows: "'Vice-consuls' and 'vice-commercial agents' shall be deemed to denote consular officers who shall be substituted, temporarily, to fill the places of consuls general, consuls, or commercial agents, when they shall be temporarily absent, or relieved from duty." Depositions for the extradition of an alleged fugitive from justice of Ontario, Canada, having been authenticated by the vice-consul of the United States, *held*, that prisoner's claim that a vice-consul is a deputy, and not the principal diplomatic consular officer authorized to authenticate such papers, is unfounded.

Petition for Writ of *Habeas Corpus*. On appeal from the district court.

John Karl Herres, an alleged fugitive from justice of the province of Ontario, in the dominion of Canada, held in custody under extradition proceedings, applied for a writ of *habeas corpus*, upon the return of which

¹Reversing 32 Fed. Rep. 583.