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UNITED STATES v. YALE TODD (U.S. 1794)*

WILFRED J. RITZ†

Docket Book "A" of the Supreme Court of the United States shows that on February 17, 1794, the Court decided *United States v. Yale Tod*,¹ which is described as an "Amicable Action for Money had and received to the plaintiff's use." According to the docket entry, the case and pleadings were drawn and filed on February 17, and on the same day, "The Court having heard the Case argued by counsel and duly considered the same are of opinion and accordingly direct that Judgment be entered for the plaintiff." This entry is followed by a notation written in a different hand and, rather obviously, at a much later date, which says, "Original papers in the above case can not be found. Certified copy can be found in mss. record in case No. 2968. U.S. v. Ferreira, No. 197 of 1851."²

The certified copy referred to, entirely handwritten, is to be found with the papers of *United States v. Ferreira*,³ Appellate Case File No. 2968, now in the custody of the Executive and Justice Section of the National Archives, Washington, D.C. A paraphrase of the record in the case was published as a "Note by the Chief Justice, Inserted by Order

*A John M. Glenn grant from Washington and Lee University made possible the research into the original records of the United States Supreme Court on which this paper is based. The Minute Books and Docket Books of the Court are in the Supreme Court. The case papers for the early years are in the custody of the National Archives. The writer wishes to acknowledge the courteous and helpful assistance given to him by the staff of the U.S. Supreme Court and the National Archives in examining these original documents and papers.

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¹This surname is spelled both as Todd and Tod in the original records. The spelling "Todd" will be used, except in direct and indirect quotations, when the original spelling will be continued.

²It is probable that this notation was made as the result of the researches of Max Farrand in connection with his article on *The First Hayburn Case, 1792*, 13 *Am. Hist. Rev.* 281 (1907). In this article Farrand wrote, "A search through the records of the Supreme Court shows that the original papers of *United States v. Yale Todd* are missing, but an examination of *United States v. Ferreria* papers reveals an attested transcript of the record of the *Yale Todd Case* . . ." *Id.* at 283. According to n. 5 of the article, Farrand was assisted by James D. Mahler in examining the papers.

³13 *How.* 40 (1851).

of the Court" to the opinion delivered by Chief Justice Roger Taney in *United States v. Ferreira*.⁴

United States v. Todd was one of the Supreme Court's earliest decisions on constitutional law, probably the first to hold an Act of Congress unconstitutional.⁵ The point involved in the case may well have been the first constitutional question presented to the Supreme Court.⁶ The nature of the questions presented to the Court in the first years after its organization and the meagerness of the records that have been preserved are such that more exact statements cannot be made concerning the significance of the case.

The note relating to *United States v. Todd*, published in connection with *United States v. Ferreira*, does not purport to be a verbatim account of the original record. It is not possible to tell from the account how much is a part of the original record of 1794 and how much is Taney's own interpretation of the case.

Because of the significance of *United States v. Yale Todd* to American legal history, particularly constitutional history, and its present unavailability in published form, the text of the original records in the case are being published herewith, together with a brief account of events leading up to the decision.

I. THE LEGISLATIVE BACKGROUND

United States v. Todd involves the efforts of Congress to use the federal circuit courts to handle the claims of veterans of the Revolutionary War.

The First Congress, at its first session, provided for the continuance of the payment of military pensions, granted and paid by the states in pursuance of the acts of the Continental Congress, to invalids who were wounded and disabled while serving during the Revolution.⁷ These payments were to be made for one year from March 4, 1789, under regulations prescribed by the President. The Congress at its second session extended the act for another year,⁸ and at its third session did likewise.⁹

A more comprehensive provision for pensions was made by the Second Congress at its first session.¹⁰ Under the statute passed in 1792,

⁴Id. at 52.

⁵The first decision on constitutional law would seem to be *Chisholm, Ex'r v. Georgia*, 2 Dall. 419 (1793), which was decided February 18, 1793.

⁶See 1 Warren, *The Supreme Court in United States History* 77 (Rev. ed. 1935).

⁷Act of Sept. 29, 1789, 1 Stat. 95.

⁸Act of July 16, 1790, 1 Stat. 129.

⁹Act of March 3, 1791, 1 Stat. 218.

¹⁰Act of March 23, 1792, 1 Stat. 243.

claimants were required to attend the circuit courts and produce proofs of service, disability, and mode of life. The circuit courts were directed to examine into the nature and degree of disability and to certify to the Secretary of War the proportion of monthly pay of the applicant that would be equivalent to the degree of disability found by the court. For two years the courts were to remain open at least five days each session so as to give disabled persons full opportunity to make application for pensions. Upon the receipt of the certificate and the opinion of the circuit court, the Secretary of War was directed to place the name of the applicant on the pension list. If the Secretary, however, suspected imposition or mistake, he could withhold the name of the applicant from the pension list and report to Congress at its next session.

Congress found by experience that this procedure was "inadequate to prevent the admission of improper claims to invalid pensions, and not to contain a sufficient facility for the allowance of such as may be well founded."¹¹ As a result, the Second Congress, at its second session, repealed the provisions of the prior act that related to the circuit courts, and instead gave the district judges the limited functions of taking evidence, or authorizing commissions to do so, and forwarding lists of claimants and supporting evidence to the Secretary of War. Congress also required that persons not on the pension list prior to March 23, 1792, should comply with the statute in order to be eligible for pensions, nevertheless saving all rights founded upon legal adjudications under the prior act.

Congress also included the following provision in this Act of February 28, 1793: "But it shall be the duty of the Secretary of War, in conjunction with the Attorney General, to take such measures as may be necessary to obtain an adjudication of the Supreme Court of the United States, on the validity of any such rights claimed under the act aforesaid [Act of March 23, 1792], by the determination of certain persons styling themselves commissioners."¹² This provision came into the bill as the result of an amendment made on the floor of the House of Representatives.¹³ It, along with the preamble,¹⁴ was directed, in part at least, at the reluctance of the judges of the circuit courts, whose membership included the judges of the Supreme Court,¹⁵ to carry out the duties required by the statute.

¹¹Act of Feb. 28, 1793, 1 Stat. 324.

¹²*Id.*, § 3.

¹³3 *Annals of Congress*, 2d Cong., 2d Sess., 803 (Jan. 8, 1793) (1849).

¹⁴See text at note 11 *supra*.

¹⁵Act of Sept. 28, 1789, § 4, 1 Stat. 74, provided for circuit courts consisting of any two justices of the Supreme Court and the district judge.

II. THE JUDICIAL BACKGROUND

A. *In the Circuit Courts*

The federal judges looked upon the procedures set forth in the Act of March 23, 1792, with disfavor. They thought that the provisions of the statute were contrary to the Constitution in that: (1) the business directed by the act was not of a judicial nature, and (2) their judgments were subject to suspension by the Secretary of War and to revision by Congress.

At the circuit court for New York on April 5, 1792, the judges present, Chief Justice John Jay, Associate Justice William Cushing, and District Judge James Duane, expressed their disapproval of the statute. Nevertheless, in order to carry out the benevolent purposes of the act and to show their high regard for the National Legislature they undertook to execute the act in the capacity of commissioners, not as judges. The minute of the court setting forth this action was sent to President Washington for transmittal to Congress.¹⁶

The judges holding the circuit court for the Pennsylvania District declined on April 12, 1792, to act at all upon the application of William Hayburn to be put upon the pension list.¹⁷ The following day Hayburn presented a memorial to the House of Representatives setting forth the denial of his application and asking Congress for relief.¹⁸ The judges for the Pennsylvania circuit court were Associate Justices James Wilson and John Blair, and District Judge Richard Peters. They communicated their reasons for declining to act in the case to President Washington in a letter dated April 18, 1792.¹⁹

Even before an application had been made to the circuit court for North Carolina, the judges sitting in that court wrote the President, under date of June 8, 1792, expressing their then-held views that they

¹⁶Am. St. Papers, Misc. Vol. I, No. 30 (1834); Hayburn's Case, 2 Dall. 409, n. at 410 (1792).

¹⁷The minute of the circuit court is given in Farrand, *The First Hayburn Case*, 1792, 13 Am. Hist. Rev. 281, 283 (1907). Farrand considers the action taken by the circuit court on this date to be the first instance in which any court declared an Act of Congress unconstitutional.

¹⁸3 Annals of Congress, 2d Cong., 1st Sess., 556 (April 13, 1792) (1849). The name is spelled "Haburn" in the Journal of the House. The Journal of the Senate for the same day does not mention any similar memorial being presented to that body. *Id.* at 122. A committee of five was appointed by the House to inquire into the facts of the case and report. *Id.* at 557. On April 18, Elias Boudinot of New Jersey made a report from this committee, which was read and ordered to lie on the table. *Id.* at 559.

¹⁹Am. St. Papers, Misc. Vol. I, No. 31 (1834); Hayburn's Case, 2 Dall. 409, n. at 411-12 (1792).

could not constitutionally execute the statute as judges and doubted the propriety of their acting as commissioners. This communication from Associate Justice James Iredell and District Judge John Sitgreaves was laid before Congress on November 7, 1792.²⁰

In this series of letters all the justices of the Supreme Court had expressed their views that they could not constitutionally act as judges in executing an Act of Congress. The question was now to be presented to these same justices sitting as the Supreme Court of the United States.²¹

B. *In the Supreme Court*

1. *Hayburn's Case*. August Term 1792 of the Supreme Court was held at Philadelphia, beginning on Monday, August 6, with Chief Justice John Jay and Associate Justices William Cushing, James Wilson, John Blair, James Iredell, and Thomas Johnson present. The last-named justice took his seat on this day. Edmund Randolph was serving as Attorney General for the United States.

At this opening session, according to the Minutes of the Court, "The Attorney General of the United States informs the Court that on Wednesday next he intends moving for a mandamus to be directed to the circuit court for the district of Pennsylvania, commanding the said Court to proceed in a certain petition of William Hayburn applying to be put on the pension list of the United States, as an invalid Pensioner."

On the following Wednesday, August 8, "Agreeably to his motion of monday last the Attorney General proceeded to shew cause why a mandamus should issue to the Circuit Court for the Pennsylvania district for the purpose expressed in the said motion. The Court doubted of the authority of the Attorney General to make this motion *ex officio*. The argument on this point is adjourned."

On the 10th, "The Court proceeded to hear the Attorney General in relation to the powers and extent of his office." The next day, Saturday, August 11, "The Court being divided in their opinions on the subject of the Attorney Generals authority *ex officio* to move the Court for a mandamus to the circuit Court for the Pennsylvania district,

²⁰Am. St. Papers, Misc. Vol. I, No. 32 (1834); *Hayburn's Case*, 2 Dall. 409, n. at 412-14 (1792); 3 *Annals of Congress*, 2d Cong., Appendix, 1319-22 (1849).

²¹The justices of the Supreme Court did not like their circuit court duties. See representation by the judges to Congress forwarded through the President in a letter dated August 9, 1792. Am. St. Papers, Misc. Vol. I, No. 32 (1834); 3 *Annals of Congress*, 2d Cong., Appendix, 1317-19 (1849).

to correct the error complained of in the case of William Hayburn the writ prayed for cannot issue."

This same day, "The Court proceeded to hear the Attorney General as counsel for William Hayburn on a motion for a mandamus directed to the circuit Court for the Pennsylvania district, to command the said Court to proceed on the petition of the said William Hayburn. The Court informed the Attorney General that they will hold his motion under consideration, until the next term," and thereupon the Court adjourned.²²

No decision seems to have ever been made on this motion, since Congress provided a different way for handling the applications of pensioners.²³

2. *Motion of August Term 1793.* Pursuant to the direction contained in the Act of February 28, 1793, requiring the Secretary of War and Attorney General to obtain a Supreme Court adjudication of the validity of pension claims approved by the judges acting as commissioners, Henry Knox, the Secretary of War, and Edmund Randolph arranged for seeking such a determination. Randolph reported to the Secretary of War the results of his efforts in a letter dated August 9, 1793.²⁴

At August Term 1793, Randolph moved the Supreme Court for a mandamus directed to the Secretary of War commanding him to put on the pension list an applicant whose claim had been approved by the judges acting as commissioners. Two of the judges of the Supreme Court, Randolph reported, expressed a disinclination to hear a motion in behalf of a man who had not employed the Attorney General for that purpose. Since he was "unwilling to embarrass a great question with little intrusions," he waived his motion "until some of the invalids themselves should speak to counsel." Actually a qualified invalid was present at the time of Randolph's motion, but failed to apprise the Attorney General of this fact until the Court had risen and it was

²²For a fuller account of the argument on this motion see 1 Warren, *The Supreme Court in United States History* 77-78 (Rev. ed. 1935), where the author quotes a newspaper account carried in several newspapers of the period. In the same work, at 79, the author quotes a letter written by Randolph to Madison, under date of Aug. 12, 1792, originally published in Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph* 145 (1888).

²³According to Dallas, "no decision was ever pronounced, as the Legislature, at an an [sic] intermediate session, provided, in another way, for the relief of the pensioners." *Hayburn's Case*, 2 Dall. 409-10 (1792). This is not strictly accurate since February Term 1793 began on Feb. 4 and ended on Feb. 20, whereas the Act of Congress did not become law until Feb. 28.

²⁴*Am. St. Papers*, Misc. Vol. I, No. 47 (1834).

too late. Randolph suggested to the Secretary of War the propriety of the Secretary's writing the invalids who had been certified for pensions, intimating to them the turn the affair had taken.

3. *Chandler's Case*.²⁵ The next effort to obtain a Supreme Court adjudication was made at February Term 1794, which began on the 3d, with William Bradford serving as Attorney General for the United States. The Minutes of the Court show that on the 5th, "Mr. Edmond of counsel for John Chandler a citizen of the State of Connecticut this day moved for a mandamus to the Secretary of War for the purpose of directing him to cause the said John Chandler to be put on the Pension List of the United States, as an invalid pensioner, conformably to the Order and Adjudication of the Honorable James Iredell and Richard Law Esquires Judges of the Circuit Court of the United States. The Court informed Mr. Edmond that when the trial of the Cause now before the Court should be finished they would hear him in support of his motion." On the 7th, "The Court proceeded to hear Mr. Edmond on the subject of his motion made on the 5th instant and agreed to hold the same under advisement." Again on the 13th, "The Court proceeded to hear argument of counsel on the motion of Mr. Edmond for a mandamus to the Secretary of War made on Wednesday the 5th instant." On the 14th, "The Court having taken into consideration the motion of Mr. Edmond of the 5th instant, and having considered the two Acts of Congress relating to the same, are of opinion that a mandamus cannot issue to the Secretary of War for the purposes expressed in the said motion."²⁶

4. *Todd's Case*. The final effort to obtain an adjudication was made on February 17, three days later, when a decision was obtained in *United States v. Yale Todd*. The result was communicated by William Bradford to the Secretary of War in a letter of the same date in which Bradford said, "I have to report, that, in consequence of measures taken 'to obtain a decision of the Supreme Court of the United States upon the validity of the adjudications of certain persons styling themselves commissioners under the act of the 23d of March 1792,' that court

²⁵See also Sherman, *The Case of John Chandler v. The Secretary of War*, 14 Yale L.J. 431 (1905). The quotations that follow were copied directly from the original Minute Book. The same extracts are published in 12 Annals of Congress, 7th Cong., 1st Sess., 904 (1851), with a somewhat different punctuation and capitalization. Sherman quotes the minutes as published in the Annals of Congress.

²⁶See *Marbury v. Madison*, 1 Cranch 137, 171-72 (1803), for John Marshall's explanation of the Court's action on this motion.

has this day determined (in the case of Yale Todd) that such adjudications are not valid."²⁷

While categorical statements regarding the significance of *United States v. Todd* can only be made with caution, the following conclusions seem warranted:

a. The case involves what is probably the first constitutional question presented to the Supreme Court of the United States.

b. The judgment of the Supreme Court of the United States in the case is its first declaration that an Act of Congress was unconstitutional.

c. The decision in the case is the only one obtained in the Supreme Court as the result of an Act of Congress directing that such an adjudication should be obtained.

d. The United States Supreme Court in the case exercised an original jurisdiction, not provided for in the Constitution, in order to hold invalid an Act of Congress imposing duties on the federal judiciary other than those provided for in the Constitution.

III. THE ORIGINAL RECORD IN *United States v. Yale Todd*

The following is a transcript of the certified copy of the record in *United States v. Yale Todd*, as found in the papers of *United States v. Ferreira*, Appellate Case File No. 2968, in the National Archives. As in the case of most handwritten documents the exact texture of the original cannot be reproduced in printing. This is especially true of abbreviations, punctuation, and capitalization, the exact style of which is sometimes in doubt.

In the Supreme Court of the United States:
United States sct.

Be it remembered that on the fifteenth day of February in the year of our Lord one thousand seven hundred and ninety four before the Honorable John Jay Esquire Chief Justice and his associates, Justices of the Supreme Court of the United States, cometh William Bradford Esq. Attorney General of the said United States, and giveth the court here to understand and be informed.

That Yale Todd of the town of North-Haven in the District of Connecticut on the first day of May in the year of our Lord one thousand seven hundred and ninety three was indebted to the said United

²⁷Am. St. Papers, Misc. Vol. I, No. 47 (1834).

States in the sum of one hundred & seventy two dollars and ninety one cents lawful money of the said United States, for so much money before that time had & received to the use & behoof of the said United States, in consideration whereof the said Yale Tod undertook & then and there upon himself assumed to pay the said United States the said sum of one hundred and fifty dollars whenever after he should be thereunto requested.

Nevertheless the said Yale Tod, intending & fraudulently contriving, the said United States to defraud in this behalf, the said sum of one hundred & fifty dollars, nor any part thereof, hath paid to the said United States, altho to pay the same to the said United States, he the said Yale Todd, afterwards, to wit on the first day of June in the year aforesaid, & District afs^d and often afterwards, was requested, but to pay the same to the said United States, the said Yale hath hitherto altogether refused & still doth refuse, to the damage of the said United States, in the sum of three hundred dollars & thereupon they bring suit.

Wm. Bradford
Atty Genl.

And here also on the said fifteenth day of February in the year aforesaid, cometh the Defdt by John Hallowell his attorney and defends the force & injury &c when &c & saith that he did not assume upon himself to pay to the said United States the sum of money aforesaid or any part thereof, in the manner & form as the said United States have above declared against him. And this he prays may be enquired by his country.

John Hallowell.

United States	}	Action on the Case for money had & received. Plea non assumpsit.
vs		
Yale Todd		

Case

It is agreed that Yale Todd the present defendant was a soldier in the late American Army and disabled by wounds received in the actual service of the United States, and that on the 3rd day of May in the year 1792 he appeared before the Honble John Jay William Cushing and Richard Law Esq^{rs} then being Judges of the Circuit Court held at New Haven within and for the District of Connecticut on the day and year afores^d and then sitting and claiming to be Commissioners under an act of the Congress of the United States entitled an Act to

provide for the settlement of the claims of widows and orphans barr'd by the limitations heretofore established and to regulate the claims to invalid Pensions" and not as a Circuit Court and did shew cause why he should be placed on the Pension list therein mentioned and did produce the exhibits and vouchers provided in s^d Act as by s^d exhibits and vouchers at large on file may appear and s^d Commissioners having examined the same did thereupon certify in the words following (vizt.)

We the subscribers Judges of the Circuit Court now sitting at New Haven in and for Connecticut District as Commissioners designated in and in pursuance of the Act entitled "An Act to provide for the settlement of the claims of widows & orphans barr'd by the limitations heretofore establish'd & to regulate the claims to invalid pensions do certify that Yale Todd of North Haven & District afores^d yeoman did personally appear before us at the Courthouse at New Haven aforesaid on the third day of May instant and did shew cause in the manner directed by the s^d act why he should be placed on the Pension List therein mentioned. It appears to us that in the year 1775 he was a private in the Regiment then commanded by the late General David Wooster in Capt Peck's Company, was with the rest of s^d regiment ordered into Canada where by the hardships to which he was exposed he contracted a lameness which terminated in a fever sore or ulcerated leg for which on the 31st of Dec^r 1782 being certified as an invalid he was discharged by his Excellency the Commander in Chief as appears by his discharge of that date. It also appears that his s^d leg is still greatly affected thereby and to such a degree as almost entirely to disqualify and disable him from pursuing his usual employment and day labor. It also appears that at the time of his s^d discharge he was a [undecipherable word] in the Artillery Regiment of New York.

We are of opinion that he ought to be placed on the Pension List that he ought to be paid at the rate of two third parts of his former monthly wages which we understand to have been Eight dollars & one third per month and the sum of one hundred & fifty dollars for arrears. Dated at New Haven this 3rd day of May 1792.

John Jay
Wm Cushing
Rich^d Law

As by s^d certificate ready in Court to be produced appears in which said certificate afterwards (vizt.) on the fifth day of May 1792 was transmitted to Henry Knox Esq^e then and still being Secretary of War

and by means thereof he the s^d Yale Todd the present defendant was placed on the Pension List of the United States and in consequence of such order and certificate did have and receive of and from the s^d United States the sum of one hundred and fifty dollars arrears aforesaid and also the sum of twenty two dollars and ninety one cents, claimed for his pension aforesaid said to be due on the second of Sept. 1792.

Now it is agreed if this Court shall be of opinion that the said judges of s^d Circuit Court sitting as Commissioners and not as a Circuit Court had power & authority by virtue of s^d Act so to order and adjudge of and concerning the premises that then judgement shall be given for the defendant. Otherwise for the United States for one hundred & seventy two dollars & ninety one cents damage and six cents cost.

Wm. Bradford
Atty Genl of the U.S.
William Hillhouse
Counsel for the s^d Yale Todd.

(Extract from the minutes of the Supreme Court of the United States.)

Monday, 17th February 1794.

Pursuant to adjournment the Court this day met at the City Hall

Present

The Honorable John Jay Esquire Chief Justice

The Honble	{	William Cushing James Wilson John Blair & William Paterson Esqs	}	Associate Justices
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United States	}	Amicable Action on the Case.
vs	}	
Yale Tod	}	

The pleadings, and argument of the Attorney General of the United States and the Attorney for the defendant being read and filed, and the Case argued, the Court having also taken the same into consideration are of opinion that Judgement be entered for the plaintiff in the above suit.

The Court adjourned until tomorrow at 11 o'clock.

I, William Thomas Carroll, clerk of the Supreme Court of the United States do hereby certify that the preceding six pages are truly copied from the original papers on file in this office, and that the seventh page is a true extract from the minutes of said Supreme Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court at the City of Washington this 8th day of March A.D. 1852

(s) Wm. Thos Carroll
Clerk Sup. Court U.S.

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