

SCHAUMBURG v. UNITED STATES.

1. *United States v. Eckford* (6 Wall. 484) reaffirmed.
2. Where matters of set-off are pleaded by the defendant in a suit brought by the United States, the refusal of the court below to direct the jury to certify the amount which they may find due to him from the plaintiff will not be reviewed here.

ERROR to the Circuit Court of the United States for the Eastern District of Pennsylvania.

Mr. George W. Biddle and *Mr. Charles Henry Jones* for the plaintiff in error.

The Solicitor-General, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The judgment in this case is affirmed on the authority of *United States v. Eckford*, 6 Wall. 484. Claims for credit can be used in suits against persons indebted to the United States to reduce or extinguish the debt, but not as the foundation of a judgment against the government. In the present case the court instructed the jury as matter of law that the plaintiff in error, from July 1, 1836, until March 24, 1845, was in the military service of the United States as a first lieutenant of dragoons or cavalry; and that he was entitled as such to credit for the pay and emoluments that accrued during that period, and this was admitted to exceed the debt sued on by the United States. The jury thereupon brought in a verdict for the defendant. Had the jury gone further and struck the balance that would be due from the United States, no judgment could have been rendered for it. Any verdict, therefore, beyond the one actually given would have been fruitless. The court itself decided that the plaintiff in error was entitled to his pay and emoluments from July 1, 1836, to March 24, 1845. While sometimes the jury have been permitted to certify to a balance they find to be due from the government in cases of this kind, and under some circumstances it may be proper they should do so, a refusal of the court to direct that it be done cannot be reviewed here.

Judgment affirmed.