

Syllabus.

Assuming this to be so, the question is presented upon the whole testimony as offered, taken in connection with the documents read, whether the plaintiffs had thereby presented such a case as, in the absence of all other testimony, would have justified a verdict in their favor. The evidence on the subject contained in the depositions did not tend to establish any possession of the premises in dispute later than the year 1835. At that time Garcia himself had died, his daughter had married in the year 1833, and from the year 1835 the mother and daughter, with the husband of the latter, had left Texas and gone into Mexico, where they have ever after remained. There is no evidence whatever that after the year 1835 they exercised any dominion or control over this property in San Antonio, or were in possession of it through tenants or agents. The proof, therefore, does not satisfy the rule as stated by the authorities cited, for, although it shows that the possession on the part of the plaintiffs had been originally acquired under color of title, it does not show that that possession had been continuous and had not been abandoned. On the contrary, so far as the proof extends, it leaves a period of time, from 1835 to 1843, when, it is alleged in the petition, that the defendants, or those under whom they claim title, entered into possession, entirely unaccounted for, and during which, so far as the plaintiffs are concerned, the possession appears to have been vacant and abandoned. It follows, therefore, that the court committed no error in rejecting the offered proof of a prior peaceable possession under color of title. The judgment is accordingly

*Affirmed.*UNITED STATES *v.* BOND.

APPEAL FROM THE COURT OF CLAIMS.

Submitted January 9, 1888. — Decided January 23, 1888.

Claimant was a private in the Marine Corps, and one of the marines who composed the organization known as the Marine Band. He performed on the Capitol grounds and on the President's grounds under proper

Opinion of the Court.

order. *Held*, that he was entitled to the additional pay provided for by Rev. Stat. § 1613.

THIS was an appeal from a judgment against the United States in the Court of Claims.

Mr. Attorney General, and *Mr. Felix Brannigan* for appellant.

Mr. James E. Padgett for appellee.

MR. JUSTICE MILLER delivered the opinion of the court.

This is an appeal from a judgment of the Court of Claims awarding to John Bond, the appellee, the sum of \$72.27.

The following facts were found by that court, upon which this judgment was rendered in favor of the claimant, and from which the present appeal is taken :

“ Claimant enlisted in the United States Marine Corps at the Marine Barracks, Washington, D. C., October 29, 1879, as a private, was assigned to duty with the Marine Band at the time of his enlistment, and remained and performed duty with the band as a private from that time until May 1, 1881, when he was rated as a musician. Prior to this last mentioned date he was at no time rated as a musician, although playing in the band.

“ Between the date of enlistment and May 1, 1881, the organization known as the Marine Band performed, under proper order, on the Capitol grounds and on the President’s grounds. Prior to May 1, 1881, claimant received no additional compensation for such service.”

Section 1613 of the Revised Statutes reads as follows:

“ The marines who compose the corps of musicians known as the ‘Marine Band’ shall be entitled to receive at the rate of four dollars a month each in addition to their pay as non-commissioned officers, musicians, or privates of the Marine Corps, so long as they shall perform, by order of the Secretary of the Navy or other superior officer, on the Capitol grounds or the President’s grounds.”

Statement of the Case.

In the opinion of the Court of Claims it is said that—

“The claimant was a ‘private of the Marine Corps.’ He was one of ‘the marines who composed the organization known as the ‘Marine Band.’’ He performed on the Capitol grounds and on the President’s grounds, under proper order, and, thus falling within the phraseology of the statute, he should have received the additional pay.”

In this statement we entirely concur, and see no reason to disturb the judgment of the court, which is accordingly

Affirmed.

UNITED STATES *v.* MOUAT.

APPEAL FROM THE COURT OF CLAIMS.

Submitted December 14, 1887. — Decided January 23, 1888.

A paymaster’s clerk, appointed by a paymaster in the navy with the approval of the Secretary of the Navy, is not an officer of the navy within the meaning of the act of June 30, 1876, 19 Stat. 65, c. 159, so as to be entitled to the benefit of the mileage allowed by that act.

THE petition of the defendant in error in the Court of Claims was as follows:

“The claimant, David Mouat, respectfully showeth as follows:

“I. That on the 16th day of November, 1885, he was appointed a paymaster’s clerk in the United States Navy, on board the United States receiving ship ‘Vermont,’ subject to the laws and regulations governing the United States Navy. That the said appointment was approved by Capt. A. P. Cooke, commanding the ‘Vermont,’ and by D. B. Harmony, Acting Secretary of the Navy. That on the 19th day of November, 1885, he accepted by letter said appointment, and on the same day took an oath to comply with and be obedient to such laws, regulations, and discipline of the navy as were then in force, or that might be enacted by Congress, or established by other competent authority. Copies of the said appointment, the