

Statement of the Case.

is entitled since his appointment as professor of mathematics (as before this appointment) is that of ensign only, that having been "the lowest grade, having graduated pay, held by such officer since last entering the service," within the meaning of the statute.

Judgment reversed, and case remanded for further proceedings in conformity with this opinion.

UNITED STATES *v.* STAHL.

APPEAL FROM THE COURT OF CLAIMS.

No. 886. Submitted January 8, 1894. — Decided January 22, 1894.

United States v. Alger, ante, 362, followed.

In a suit in the Court of Claims for longevity pay, alleged by the claimant, and denied by the United States, to be due him, "after deducting all just credits and offsets," a sum previously paid him for longevity pay to which he was not entitled may be deducted from the sum found to be due him.

This was a claim for \$1000, alleged to be due for longevity pay as an assistant engineer in the Navy from June 10, 1882, to August 10, 1887. The petitioner alleged that he was entitled to this amount, "after deducting all just credits and offsets." The answer was a general traverse.

The findings of fact by the Court of Claims were as follows: "Claimant entered the Naval Academy, September 14, 1876; graduated June 10, 1880; and was commissioned assistant engineer June 10, 1882. On August 10, 1887, he resigned his commission as assistant engineer. On August 11, 1887, he was duly appointed and commissioned an assistant naval constructor. Claimant has never received any credit upon his commission as assistant engineer for his service in the Navy from his entry into the Naval Academy, September 14, 1876, till the date of his said commission, June 10, 1882. On December 30, 1888, claimant was given credit, for his prior service at the Naval Academy and as assistant engineer, upon the commission then held by him of assistant naval constructor. The amount due claimant is \$1000, as unpaid longevity pay."

Opinion of the Court.

Upon these facts, the Court of Claims decided, as a conclusion of law, that the claimant was entitled to recover the sum claimed, and gave judgment accordingly. The United States appealed to this court.

Mr. Assistant Attorney General Dodge and Mr. Felix Brannigan for appellants.

Mr. John Paul Jones for appellee.

MR. JUSTICE GRAY, after stating the case, delivered the opinion of the court.

The claimant, as is implied in the facts found, and is admitted by the counsel of the United States, was continuously in active service in the Navy from September 14, 1876, to August 10, 1887, first in the Naval Academy as a cadet midshipman, then, it would seem, as a midshipman or a cadet engineer, and then as assistant engineer. See Rev. Stat. §§ 1512, 1521-1525, 1536 *ad fin.* On August 10, 1887, he resigned his commission as assistant engineer; and on August 11, 1887, he was appointed an assistant naval constructor. While the pay of a cadet midshipman, of a midshipman, or of a cadet engineer is not, the pay of an assistant engineer or of an assistant naval constructor is, graduated by length of service. Rev. Stat. § 1536. The claimant's whole service, from the time of his entering the Naval Academy, and notwithstanding his resignation of one commission the day before he received another, must be considered a continuous service, for the reasons stated in the opinion just delivered in *Alger v. United States*, *ante*, 362. He has been given credit, for his whole prior service, upon his last commission, upon which he was not entitled to it; and has been allowed no credit upon his commission as assistant engineer, upon which he was entitled to it. The Court of Claims, applying the same rule that it did in *Alger v. United States*, apparently considered him entitled to both.

As this court holds him to be entitled to longevity pay as

Syllabus.

assistant engineer only, there should be deducted, from the sum due him for such pay, the sum which has been mistakenly and improperly paid to him. *McElrath v. United States*, 102 U. S. 426; *United States v. Burchard*, 125 U. S. 176.

Judgment reversed, and case remanded for further proceedings in conformity with this opinion.

MERCHANTS' COTTON PRESS AND STORAGE
COMPANY *v.* INSURANCE COMPANY OF NORTH
AMERICA.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 807. Submitted January 8, 1894. — Decided January 22, 1894.¹

A railroad company agreed with a cotton compress company that the latter should receive and compress all the cotton which the railroad might have to transport in compressed condition, and that it should insure the same for the benefit of the railroad company, or of the owners of the cotton, for a certain compensation which the railroad company agreed to pay weekly. It was further agreed that the compress company, on receiving the cotton, was to give receipts therefor, and that the railroad company, on receiving such a receipt, was to issue a bill of lading in exchange for it. Cotton of the value of \$700,000, thus deposited with the compress company for compress and transportation, was destroyed by fire. That company had taken out policies of insurance upon it, but to a less amount, in all of which the compress company was named as the assured, but in the body of each policy it was stated that it was issued for the benefit of the railroad company or of the owners. The various owners of the cotton further insured their respective interests in other insurance com-

¹ The opinion in this case is also entitled in No. 808, *National Fire Insurance Company v. Insurance Company of North America*; No. 809, *Mutual Fire Insurance Company v. Insurance Company of North America*; No. 810, *Continental Insurance Company v. Insurance Company of North America*; No. 811, *Fire Association of New York v. Insurance Company of North America*; No. 812, *Liverpool and London and Globe Insurance Company v. Insurance Company of North America*; No. 813, *Royal Insurance Company v. Insurance Company of North America*. All these cases were brought from the Supreme Court of the State of Tennessee by writs of error, and all were submitted at the same time with No. 807, and on the same briefs.