

## Counsel for Parties.

court to the Secretary of the Treasury, and such certificate was to be final and conclusive.

The case resembles in some aspects that of *Ex parte Atocha*, 17 Wall. 439. It differs from *Vigo's case: Ex parte United States*, 21 Wall. 648, because the original claim was never referred to the Court of Claims for such judicial action as should terminate in a judgment, but it was only referred to it by Congress for the purpose of receiving what is termed its advisory conclusions, upon which Congress would proceed in its discretion.

But aside from either of the above cited cases, the nature of the original claim and the manner in which it has been treated by Congress, and the language of the appropriation, as contained in the act of 1894, all clearly lead to the conclusion that Congress intended the decision of the Court of Claims to be final, and that the Secretary of the Treasury should pay upon receipt of the certificate provided for in the act.

The motion to dismiss the appeal is, therefore, granted, and the

*Appeal dismissed.*

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UNITED STATES *v.* HEWECKER.

CERTIFICATE OF DIVISION IN OPINION FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 547. Submitted October 13, 1896. — Decided October 26, 1896.

Sections 651 and 697 of the Revised Statutes, relating to certificates of division in opinion in criminal cases were repealed by the judiciary act of March 3, 1891, 26 Stat. 826, both as to the defendants in criminal prosecutions, and as to the United States; and certificates in such cases cannot be granted upon the request either of the defendants or of the prosecution. *Rider v. United States*, 163 U. S. 132, on this point adhered to.

MOTION to dismiss. The case is stated in the opinion.

*Mr. Abram J. Rose* for the motion.

*Mr. Assistant Attorney General Dickinson* opposing.

## Opinion of the Court.

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

Hewecker was indicted for the murder of one Miller, on January 17, 1892, in the bay of Havana, off the island of Cuba, on board an American vessel, within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, in the Circuit Court of the United States for the Southern District of New York, that district being the district in which he was found and into which he was first brought. To the indictment he entered a special plea in the nature of a plea in abatement, to the effect that the indictment was not found until March 10, 1896; that Miller died January 21, 1892, in Cuba, without the United States, and that under and by virtue of section 1043 of the Revised Statutes of the United States he could not be prosecuted or tried; that from January 17, 1892, until the date of the finding of the indictment he had not fled from justice but had been confined in a prison at Havana, Cuba, upon a charge of assault inflicted in that city; and that therefore the offence with which he was charged by the indictment was barred by the statute of limitations. To this plea the United States interposed a demurrer and argument was had thereon, whereupon the judges of the Circuit Court, the court being held by a Circuit Judge and a District Judge, announced that they were divided in opinion upon certain questions of law arising on the demurrer, and the points upon which the judges disagreed were at the request of the United States certified to this court. The case was submitted on a motion to dismiss.

By the judiciary act of March 3, 1891, it was provided that this court should not have appellate jurisdiction by appeal, by writ of error, or otherwise, over the Circuit Courts, except according to the provisions of the act; and jurisdiction was specifically given in "cases of conviction for a capital or otherwise infamous crime."

In *Rider v. United States*, 163 U. S. 132, we decided that sections 651 and 697 of the Revised Statutes in relation to certificates of division of opinion in criminal cases were repealed

## Opinion of the Court.

for the reasons given therein. It is true that in that case the defendants had been found guilty and that the certificate of division was on a motion for new trial. The general rule was that this court could not, upon a certificate of division of opinion, acquire jurisdiction of questions relating to matters of pure discretion in the Circuit Court, and, therefore, that a certificate on a motion for new trial would not lie, but where the questions presented went directly to the merits of the case it had been held that jurisdiction might be entertained. *United States v. Rosenburgh*, 7 Wall. 580. And accordingly we did not dismiss the certificate because made on a motion for new trial, since the maintenance of the information at all depended on the points certified.

In this case it is contended that the right of the United States to proceed upon a certificate of division was not brought before us in that case and that the reasons assigned by us for that decision are not clearly applicable here. But we are unable to arrive at any other conclusion and see no reason for a different opinion on the general question than there expressed.

By the act of March 3, 1891, appellate jurisdiction on error was given in all criminal cases either to this court or the Circuit Court of Appeals in favor of the accused, and, as to them, sections 651 and 697 of the Revised Statutes did not remain in force. And if the sections were repealed so far as defendants were concerned, we think it follows that this was so as to the United States, and that a certificate which could not be granted upon the request of the defendants could not be granted on the request of the prosecution.

In *United States v. Sanges*, 144 U. S. 310, it was held that the act of 1891 did not confer upon the United States the right to sue out a writ of error in any criminal case, and as that right was given in favor of the accused in all such cases, and review by certificate done away with without any specific saving in favor of the United States, we are of opinion that the reasoning in *Rider v. United States* applies, and that the act furnishes the exclusive rule. The appellate jurisdiction was increased in many respects by that act and was curtailed in others, and while enlarged in criminal cases in favor of



## Statement of the Case.

defendants, it was at the same time circumscribed as to the United States by the specific provisions relating to the particular subject, conceding that under the Revised Statutes the remedy by certificate was open to be availed of by the United States.

*Certificate dismissed.*

## UNITED STATES v. KURTZ.

## APPEAL FROM THE COURT OF CLAIMS.

No. 530. Submitted October 13, 1896. — Decided October 26, 1896.

A clerk of a Circuit Court who is directed by the court to keep a criminal final record book, in which are to be recorded indictments, informations, warrants, recognizances, judgments and other proceedings, in prosecutions for violating the criminal laws of the United States, is not entitled, in computing folios, to treat each document, judgment, etc., as a separate instrument, but should count the folios of the record as one instrument continuously from beginning to end.

A clerk's right to a docket fee, as upon issue joined, attaches at the time such issue is in fact joined, and is not lost by the subsequent withdrawal of the plea which constituted the issue; and this rule applies to cases in which, after issue joined, the case is discontinued on *nol. pros.* entered.

When a list of the jurors, with their residences, is required to be made by the order or practice of the court, and to be posted up in the clerk's office or preserved in the files, and no other mode of compensating the clerk is provided, it may be charged for by the folio.

The clerk is also entitled to a fee for entering an order of court directing him as to the disposition to be made of moneys received for fines, and for filing bank certificates of deposit for fines paid to the credit of the Treasurer of the United States.

This was a petition by Kurtz, who was clerk and commissioner of the Circuit Court for the Eastern District of Wisconsin, for fees alleged to have been earned by him in both capacities.

The case resulted in the allowance of a large number of disputed items, and a final judgment in favor of the petitioner in the sum of \$165.10. The government appealed, and