

Statement of the case.

he had any other purpose than to acquiesce in the decision which was made. If his purpose were different, why the long delay in instituting suit? It is hard to believe that the course subsequently taken was not the result of an after-thought.

The recent cases in this court of the *United States v. Adams* and the *United States v. Child* are like this in principle, although they contain some elements not applicable here.

JUDGMENT REVERSED and the cause remanded to the Court of Claims, with instructions to DISMISS THE PETITION.

UNITED STATES *v.* HUNT.

In construing the third section of the act of March 3d, 1865, increasing the commutation price of officers' subsistence, by fixing it at fifty cents per ration, "provided that said increase shall not apply to the commutation price of the rations of any officer above the rank of *brevet* brigadier-general"—a brigadier-general is to be regarded as above the rank specified.

APPEAL from the Court of Claims; the case being thus: The third section of the act of March 3d, 1865,* enacts:

"That from and after the first day of March, 1865, and during the continuance of the present rebellion, the commutation price of officers' subsistence shall be fifty cents per ration: *Provided*, That said increase shall not apply to the commutation price of the rations of any officer above the rank of *brevet* brigadier-general, or of any officer entitled to commutation for fuel or quarters."

Under this enactment, Hunt, a brigadier-general of volunteers, filed a petition in the Court of Claims claiming commutation pay. The United States demurred; thus admitting, of course, that the petitioner was a brigadier-general during

* 13 Stat. at Large, 497.

Argument for the brevet officer.

the recent civil war, and was not entitled to commutation for fuel and quarters. He was then entitled to the increased commutation for subsistence if his rank of brigadier was not above the rank of brevet brigadier. The question was, was it such?

The Court of Claims gave judgment in favor of the petitioner, and the United States appealed, assigning as error that a brigadier-general is above the rank of a brevet brigadier-general, and therefore not entitled to the benefit of this provision.

Mr. T. J. D. Fuller, in support of the ruling below :

The solution of the question turns upon the word "rank," as used in the proviso, and the equality of rank of a brigadier with a brigadier *by brevet*. The Court of Claims held that the rank of each is the same, and consequently that the one is not above or below the other. Its construction of the act was that the proviso should be read as though the word "brevet" were not there.

Now we submit that in *rank* there is no difference between a brevet brigadier, or, more accurately speaking, a brigadier-general *by brevet* and a brigadier-general without a brevet; that the one may command the other, by virtue of the priority of the date of their respective commissions when thrown together, under circumstances contemplated by the usage of the service and the Articles of War. What is rank in the army? The grades of rank in the army, as known and recognized by law at the present time, are—

1. General.
2. Lieutenant-general.
3. Major-general.
4. Brigadier-general.
5. Colonel.
6. Lieutenant-colonel.
7. Major.
8. Captain.
9. Lieutenants—first and second.

The law knows no intermediate rank, or grade of rank,

Opinion of the court.

between the enumerated grades or ranks. There is but one rank of brigadier-generals. There are not two ranks of brigadier-generals, the one inferior or the other superior; but one grade, one rank. There are two kinds of rank *in tenure*, but nevertheless equal. "Rank" by brevet is rank in the army generally, as contradistinguished from rank in some one of the divisions of the army. Campbell's Dictionary of Military Science defines "*brevet*" to be "a rank in the army higher than the regimental commission held by an officer. In garrison and brigade duties it confers precedence according to seniority."

Mr. C. H. Hill, Assistant Attorney-General, contra.

The CHIEF JUSTICE delivered the opinion of the court.

Our duty in construing acts of Congress is to give the meaning to words which Congress obviously intended. It may be that in the strict sense of the military term the rank of brigadier and brevet brigadier is the same, but it is well known that practically they are by no means identical, and that the position of the former is, in many respects, better than that of the latter. Brevet rank is conferred, in theory at least, for special and meritorious services by commission from the President, under authority of an act of Congress. It does not entitle the holder to corresponding pay or command, except under special circumstances defined by law. When an officer holding rank by brevet receives a regular commission of the same grade, he is said to be promoted and to become a full officer of that rank. These circumstances make it evident that there is a difference of military position between an officer by brevet and an officer by regular commission, and that the one is less eligible than the other. And Congress seems to have referred to this distinction of position rather than to technical rank in the provision under consideration. If they did not, why employ the word brevet at all? Why use the term brevet brigadier when it was so easy to say brigadier, and thus avoid all ambiguity? We think that Congress had in view the distinc-

Statement of the case.

tion between brevet rank and regular rank, to which we have referred, and regarded the latter as above the former. The practice of the Department of War, as we understand, and of the accounting officers, has been in accordance with this view, and seems to us correct.

JUDGMENT REVERSED.

TURNER v. SMITH.

1. Under the act of 6th February, 1863 (12 Stat. at Large, 640), "to amend an act entitled 'An Act for the Collection of Direct Taxes in Insurrectionary Districts, &c., approved June 7th, 1862,'" which said amendatory act was intended to be a *substitute* for the seventh section of the said previous act of June 7th, 1862 (Ib. 422), the commissioners of taxes, though "*authorized*" to bid off property to the United States "at a sum *not exceeding* two-thirds of its assessed value," are not bound so to bid it up so as to make it bring in all cases that much.
2. Under these acts the tax commissioners are not bound to hunt up the real owners. The tax laid is a direct tax on the land and on all the estates, interests, and claims connected with or growing out of it.
3. A rent charge is accordingly cut off and destroyed by a sale of the land.

ERROR to the Supreme Court of Virginia; the case being this:

Hannon being owner in fee simple and free from lien of a house and lot in Alexandria, granted out of it by an old-fashioned formal ground-rent deed, with clause of right of re-entry, &c., in 1819, a rent charge of \$224 to Moore, with right of distress, re-entry, &c. In 1821 Hannon died insolvent, and the rent not being paid, Moore "took possession" of the house again, though in what mode or whether with any of the requisites of a common law re-entry did not appear.

In 1825 being still in possession he conveyed the rent charge, describing it in form, to one Irwin, and Irwin in 1854 conveyed it *with the lot on which it was charged* to R. M. and J. M. Smith; Irwin and Smith, each respectively, being