

UNITED STATES V. GORHAM.

[6 Blatchf. 530.]¹

Circuit Court, N. D. New York. Aug. 11, 1869.

CLERK OF COURT—EXPENSES OF OFFICE.

Under the act of February 26, 1853 (10 Stat. 166), moneys paid by the clerk of a district court, during his clerkship, for expenses incurred by him, as clerk, for board and lodging at hotels, while attending, as clerk, at terms of the court held away from the place where he is required to keep his office, are not allowable to him as “necessary expenses of his office.”

This suit was commenced in the district court [case unreported], and was removed into this court under the provisions of the act of March 3, 1821 (3 Stat. 643), on the ground that the judge of that court was so related to or connected with the defendant, as to make it improper for him to sit on the trial of the suit. The defendant [George Gorham] was the clerk of the district court, from June, 1861, to January, 1867. He was required to reside at Buffalo and keep his office there. The terms of the court were held at Albany, Utica, Auburn, Rochester, and Buffalo, and the clerk was required to attend at those terms. During his clerkship, the defendant paid out \$577.25, for expenses incurred by him as such clerk, for board and lodging at hotels, while attending at terms of the court held away from Buffalo. In accounting to the government for the moneys received by him, as clerk, in excess of his maximum allowance, he withheld the \$577.25. The government, in adjusting his account for services, as clerk, withheld \$265.61 due to him for such services, and claimed that the defendant, as clerk, still owed to it \$311.64. Under the act of January 25, 1828 (4 Stat. 246), the government withheld from the defendant the sum of \$311.64, due

to him for services rendered to the government as a United States commissioner. This suit was brought at the request of the defendant, made before he knew of the withholding by the government of the \$311.64. The object of the suit was to recover the \$311.64 claimed by the government to be due from the defendant, as clerk, and to determine the question, whether the defendant, as clerk, was entitled to be allowed that amount, so paid by him for board and lodging, as being "necessary expenses of his office," within the meaning of the act of February 26, 1853 (10 Stat. 166). The case was tried before the court, without a jury.

William Dorshemer. U. S. Dist Atry.

George Gorham, in pro. per.

THE COURT (NELSON, Circuit Justice) held, that the expenses in question were not allowable, and directed a judgment to be entered for the plaintiffs.

¹ [Reported by Hon. William Cranch, Chief Judge.]

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