

PHILLIPS *v.* UNITED STATES.<sup>1</sup>

*District Court, E. D. Pennsylvania.*

December 20, 1887.

UNITED STATES COMMISSIONERS—DOCKET FEES.

United States commissioners are impliedly authorized to keep a docket, and entitled to docket fees therefor.

At Law.

*Henry Hazlhurst*, for plaintiff.

*John K. Valentine*, U. S. Dist. Atty., for defendant.

BUTLER, J. I find the following facts: The plaintiff is a commissioner of the circuit court of this district, and has been during all the time covered by the claim. From the beginning he has kept a docket in which is entered the names of parties, and all proceedings in each case,—a docket such as is kept by justices of the peace and similar magistrates. It has been the uniform custom of commissioners in this district to keep such dockets. Nothing has been paid for the service, nor was any demand made until April 23, 1887, when a claim was inserted in a general account then presented. The claim was not allowed. Suit is now brought under the statute of March 3, 1887, which confers jurisdiction over the subject on this court.

On the foregoing facts, and in view of the decision in *U S. v. Wallace*, 116 U. S. 398, 6 Sup. Ct. Rep. 408, I think the plaintiff should recover. I see no sufficient ground for a distinction between this case and the one just cited. It is true that in the latter the docket was kept under an order of court, while here no such order was made. The duties of commissioners are defined by statute, and I am not aware of any authority in the court to increase or diminish them. The duty of keeping a docket seems to be a plain implication from the authority conferred to issue process and hear cases. The commissioner is a magistrate, similar in character to justices of the peace and aldermen. The latter magistrates are required to keep dockets, not only by statute, but by force of common usage. A commissioner could not properly discharge his functions without keeping a record of his proceedings. I can, therefore, see no reason for a distinction as respects “docket fees” between commissioners who have kept such a record under order of court, (granted that the order is authorized,) and those who have performed the duty without such prompting.

Judgment will therefore be entered in plaintiff’s favor for \$255, the sum due for services on this account rendered within six years. The balance of the claim is barred by the limitation named in the statute.

<sup>1</sup> reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.