

GALLOWAY V. U.S.

Supreme Court of the United States
319 U.S. 372, 63 S.Ct. 1077, 87 L.Ed. 1458 (1943)

Professor's Note: It should not be any surprise that “different strokes for different folks” also applies to how a case is edited for classroom use. In the 9th edition, the facts were stripped from the text of *Galloway*. Per my note to the authors: “Gone are the critical facts that I use to help illustrate the application that was available until the new 9th ed edit which removed them. * * * What’s left in *Galloway* is fine for Con Law enthusiasts, but why remove the key facts which demonstrate how to *apply* the relevant motion practice?”

Before you read the rest of *Galloway*, p.993, first read the following three pages from the original opinion—closely. Then, peruse the rest of the opinion—and dissent—in the casebook. Certain footnotes have been omitted. The pages numbers in this portion of the edited opinion are mine.

Court's Opinion: Petitioner seeks benefits for total and permanent disability by reason of insanity he claims existed May 31, 1919. On that day his policy of yearly renewable term insurance lapsed for nonpayment of premium.

The suit was filed June 15, 1938. At the close of all the evidence the District Court granted the Government’s motion for a directed verdict. Judgment was entered accordingly. The Circuit Court of Appeals affirmed. Both courts held the evidence legally insufficient to sustain a verdict for petitioner. He says this was erroneous and, in effect, deprived him of trial by jury, contrary to the Seventh Amendment.

The constitutional argument, as petitioner has made it, does not challenge generally the power of federal courts to withhold or withdraw from the jury cases in which the claimant puts forward insufficient evidence to support a verdict. The contention is merely that his case as made was substantial, the courts’ decisions to the contrary were wrong, and therefore their effect has been to deprive him of a jury trial.

* * * Upon the record and the issues as the parties have made them, the only question is whether the evidence was sufficient to sustain a verdict for petitioner. On that basis, we think the judgments must be affirmed.

The contract was issued pursuant to the War Risk Insurance Act and insured against death or total permanent disability. Act * * * promulgated March 9, 1918, provided:

Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed * * * to be total disability. ‘Total disability shall be deemed to be permanent whenever it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. * * *’ .)

Certain facts are undisputed. Petitioner worked as a longshoreman in Philadelphia and elsewhere prior to enlistment in the Army November 1, 1917. He became a cook in a machine gun battalion. His unit arrived in France in April, 1918. He served actively until September 24. From then to the following January he was in a hospital with influenza. He

then returned to active duty. He came back to the United States, and received honorable discharge April 29, 1919. He enlisted in the Navy January 15, 1920, and was discharged for bad conduct in July. The following December he again enlisted in the Army and served until May, 1922, when he deserted. Thereafter he was carried on the Army records as a deserter.

In 1930 began a series of medical examinations by Veterans' Bureau physicians. On May 19 that year his condition was diagnosed as 'Moron, low grade; observation, dementia praecox, simple type.' In November, 1931, further examination gave the diagnosis, 'Psychosis with other diseases or conditions (organic disease of the central nervous system--type undetermined).' In July, 1934, still another examination was made, with diagnosis: 'Psychosis manic and depressive insanity incompetent; hypertension, moderate; otitis media, chronic, left; varicose veins left, mild; abscessed teeth roots; myocarditis, mild.'

Petitioner's wife, the nominal party in this suit, was appointed guardian of his person and estate in February, 1932. Claim for insurance benefits was made in June, 1934, and was finally denied by the Board of Veterans' Appeals in January, 1936. This suit followed two and a half years later. Petitioner concededly is now totally and permanently disabled by reason of insanity and has been for some time prior to institution of this suit. It is conceded also that he was sound in mind and body until he arrived in France in April, 1918. The theory of his case is that the strain of active service abroad brought on an immediate change, which was the beginning of a mental breakdown that has grown worse continuously through all the later years. Essential in this is the view it had become a total and permanent disability not later than May 31, 1919.

[Plaintiff Galloway's evidence then naturally fell into three periods: (1) prior to 1923; (2) the interval from then until 1930; and (3) the period following 1930. It consists in proof of incidents occurring in France to show the beginnings of change; testimony of changed appearance and behavior in the years immediately following petitioner's return to the United States as compared with those prior to his departure; the medical evidence of insanity accumulated in the years following 1930; and finally the evidence of a physician, given largely as medical opinion, which Galloway uses in hopes of tying together all the other evidence as his foundation for the conclusion, expressed as of 1941, that petitioner's disability was total and permanent as of a time not later than May of 1919--thus triggering insurance policy coverage.]

* * *

II.

This, we think, is the crux of the case and distinguishes it from the cases on which petitioner has relied. His burden was to prove total and permanent disability as of a date not later than May 31, 1919. He has undertaken to do this by showing incipience of mental disability shortly before that time and its continuance and progression throughout the succeeding years. He has clearly established incidence of total and permanent disability as of some period prior to 1938, when he began this suit. For our purposes this may be taken as medically established by the Veterans' Bureau examination and diagnosis of July, 1934.

* * *

But if the record is taken to show that some form of mental disability existed in

1930, which later became total and permanent, petitioner's problem remains to demonstrate by more than speculative inference that this condition itself began on or before May 31, 1919 and continuously existed or progressed through the intervening years to 1930.

* * *

Then [after evidence regarding the period until 1922] follows a chasm of eight years. The only evidence we have concerning this period is the fact that petitioner married his present guardian at some time within it, an act from which in the legal sense no inference of insanity can be drawn.

This period was eight years of continuous insanity, according to the inference petitioner would be allowed to have drawn. If so, he should have no need of inference. Insanity so long and continuously sustained does not hide itself from the eyes and ears of witnesses.¹³ The assiduity which produced the evidence of two 'crazy' incidents during a year and a half in France should produce one during eight years or, for that matter, five years in the United States.

Inference is capable of bridging many gaps. But not, in these circumstances, one so wide and deep as this. Knowledge of petitioner's activities and behavior from 1922 or 1925 to 1930 was peculiarly within his ken and that of his wife, who has litigated this cause in his and presumably, though indirectly, in her own behalf. His was the burden to show continuous disability. What he did in this time, or did not do, was vital to his case. Apart from the mere fact of his marriage, the record is blank for five years and almost blank for eight. For all that appears, he may have worked full time and continuously for five and perhaps for eight, with only a possible single interruption.

* * *

The only attempt to explain the absence of testimony concerning the period from 1922 to 1930 is made by counsel in the reply brief: 'The insured, it will be observed, was never apprehended after his desertion from the Army in 1922. It is only reasonable that a person with the status of a deserter at large * * *, whose mind was in the condition of that of this insured, would absent himself from those with whom he would usually associate because of fear of apprehension and punishment. His mental condition * * * at the time of trial * * * clearly shows that he could not have testified. * * * A lack of testimony from 1922 to 1930 is thus explained, and the jury could well infer that only the then (1941?) admittedly insane insured was in a position to know where he was and what he was doing during those years; as he had lost his mental faculties, the reason for lack of proof during these years is apparent.'

The 'explanation' is obviously untenable. It ignores the one fact proved with relation to the period, that petitioner was married during it. His wife was nominally a party to the suit, and obviously available as a witness. It disregards the fact petitioner continued in the status of deserter after 1930, yet produced evidence relating to the period from that time on. It assumes he was insane during the eight years, yet succeeded during that long time in absenting himself from persons who could testify in his favor.

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[Go to casebook p. 993 for rest of case]