county courts. By the 27th section, there was an appeal to the governor from the sentence of the commissary-general. By the 34th section, the deputy-commissaries had power to pass, audit and allow all such accounts as should come before them "relating to dead men's estates," not exceeding 50*l.*, provided there were no controversy thereon; but if any person claiming any interest in such estates should object to any articles of the account, the deputy-commissary was to send it, with all papers, &c., to the commissary-general, "before *whom all parties are to appear and defend their interest." By the 40th section, the prerogative court (which was the commissary-general's court) had like authority in enforcing obedience to its process, orders, interlocutory sentences and decrees, as the high court of chancery had.

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By the act of 1718, c. 5, the person entitled to the residue of an estate may, after twelve months from the date of the letters of administration, sue "for such residuary part as shall appear to be due by such accounts as shall then be made up."

This jurisdiction over accounts appears also in the practice of the commissary's court, as stated in the Deputy Commissary's Guide, p. 45–49, which shows also that the settlement of the account by that court was always holden to be conclusive upon the county courts. In the Appendix, p. 198, is the form of a special commission to pass an account. It appears also, that all the vouchers are to be surrendered and filed, upon passing the account. This shows that it must be conclusive; for nothing could be more unjust, than to oblige a man to be always ready to account and to support his account, after taking from him all his vouchers.

Duvall, J.—The account was only binding upon the representatives of the estate, the distributees; and they might still open it in the general court. But the creditors are no parties to the settlement of the account, and cannot be bound by it. There can be no doubt, that the judgment against the administratrix, the inventory and two first accounts were conclusive evidence of a *devastavit.*

Marshall, Ch. J.—I believe that is the law throughout the United States. The court is unanimously of opinion, that the settlement of the account by the orphans' court is not conclusive evidence for the defendant, upon the issue joined.

Judgment affirmed.

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*285] *United States *v.* John Tyler.

Criminal law.— Verdict.

Upon an indictment for putting goods on board a carriage, with intent to transport them out of the United States, contrary to the act of 9th January 1809, the punishment of which offence is a fine of four times the value of the goods, it is not necessary that the jury should find the value of the goods.

This case having been submitted, without argument—

Livingston, J., delivered the opinion of the court, as follows:—The defendant was indicted under the act to enforce the embargo laws, passed the 9th January 1809, for loading on carriages, within the district of Ver-

mont, nineteen barrels of pearl-ashes, with intent to transport the same without the United States, to wit, into the province of Canada.

On the plea of not guilty, the jury returned the following written verdict, which was recorded: "The jury find that the said John Tyler is guilty of the charge alleged against him in said indictment, and that the said pot-ashes were worth two hundred and eighty dollars."

The defendant moved in arrest of judgment, because the verdict was not sufficiently certain as to the value of the property charged in the indictment, the same having found the value of pot-ashes, whereas, the defendant was indicted for the intention of exporting pearl-ashes. Upon this motion, the judges being opposed in opinion, the same has been certified unto this court for its direction in the premises.

The law which creates this offence provides that the party shall, upon conviction, be adjudged guilty of a high misdemeanor, and fined a sum by the court before which the conviction is had, equal to four times the value of the property, so intended to be exported. The court, then, is of opinion, that, under this law, no valuation by the jury was necessary to enable the circuit court to impose the proper fine; and therefore, *that that part of the verdict which is objected to, is regarded as surplusage, and cannot deprive the United States of the judgment to which they became entitled by the defendant's conviction of the offence laid in the indictment. [*286

It must, accordingly, be certified to the court below, that it proceed to render judgment for the United States, on the verdict aforesaid.