

Opinion of the Court.

to a removal if his petition had been filed in time, we affirm the order to remand on the ground taken by the circuit judge, that the application for removal was not made "before the trial" within the meaning of the term as used in the act of 1875.

Affirmed.

UNITED STATES *v.* BELL & Another.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

Submitted April 2d, 1884.—Decided April 21st, 1884.

Evidence.

A transcript from the books of the treasury, certified to by the Fourth Auditor, showing the account of the Treasury Department with a paymaster of the navy, accompanied by a certificate of the Secretary of the Treasury that the certifying officer was the Fourth Auditor at the time of the certificate, is competent evidence in a suit upon the paymaster's bond.

Mr. Assistant Attorney-General Maury for plaintiff in error.

Mr. Charles F. Benjamin and *Mr. Richard M'Allister, Jr.*, for defendants in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court. This was a suit upon the bond of a purser in the navy, and at the trial a transcript from the books and proceedings of the Treasury Department was offered in evidence, authenticated in the following form :

"TREASURY DEPARTMENT, FOURTH AUDITOR'S OFFICE,
"WASHINGTON, D. C., *Feb'y 11, 1881.*

"Pursuant to section 886 of the Revised Statutes of the United States, I, Charles Beardsley, Fourth Auditor of the Treasury Department, do hereby certify that the annexed is a transcript of the books and proceedings of the Treasury Department in account with Miles H. Morris, late paymaster in the U. S. Navy, under bond of April 9, 1858.

"CHARLES BEARDSLEY, *Auditor.*

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“Be it remembered that Chas. Beardsley, Esq., who certified the annexed transcript, is now, and was at the time of doing so, Fourth Auditor of the Treasury of the United States, and that full faith and credit are due to his official attestations.

“In testimony whereof, I, John Sherman, Secretary of the Treasury of the United States, have hereunto subscribed my name and caused to be affixed the seal of this department, at the city of Washington, this eleventh day of February, in the year of our Lord 1881.

“[Seal of Department.]

“JOHN SHERMAN,
Secretary of the Treasury.”

An objection to the admission of the evidence on the ground that the “transcript was not certified as required by law,” was sustained by the court, and that is assigned for error here.

In our opinion the certificate was sufficient. Sec. 886 of the Revised Statutes provides that “when suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the register and authenticated under the seal of the department, or, when the suit involves the accounts of the War and Navy Departments, certified by the auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and the court trying the cause shall be authorized to grant judgment and award execution accordingly.”

This suit involved the accounts of the Navy Department. The fourth auditor is charged by law with the duty of examining all accounts accruing in that department. Rev. Stat., sec. 277, subdivision fifth. He has certified under his hand that the paper offered in evidence “is a transcript of the books and proceedings of the Treasury Department in account with” the purser whose bond is in suit, and the Secretary of the Treasury has certified, under the seal of the department, to the official character of the auditor, “and that full faith and credit are due to his official attestations.” What more need be done to authenticate the transcript under the seal of the

Statement of Facts.

department we are at loss to determine. The certificate of the proper auditor is attached and his certificate attested by the Secretary of the Treasury under the seal of the department. The form of the certificates and the mode of affixing the seal correspond exactly with what appears in *Smith v. United States*, 5 Pet. 292, where it was held, more than half a century ago, that the seal affixed in this way was sufficient for the purposes of evidence under a statute, of which sec. 886 is a re-enactment. The transcript is certified by the auditor, and authenticated under the seal of the Treasury Department affixed by the Secretary, its lawful custodian.

The judgment is reversed and the cause remanded, with instructions to set aside the verdict and grant a new trial.



ANDERSON, Receiver, v. PHILADELPHIA WAREHOUSE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued April 3d, 4th, 1884.—Decided April 21st, 1884.

National Banks.

A pledgee of shares of stock in a national bank who in good faith and with no fraudulent intent takes the security for his benefit in the name of an irresponsible trustee for the avowed purpose of avoiding individual liability as a shareholder, and who exercises none of the powers or rights of a stockholder, incurs no liability as such to creditors of the bank in case of its failure.

This suit was brought by the receiver of the First National Bank of Allentown, an insolvent national bank, to recover an assessment made by the Comptroller of the Currency on the shareholders to pay debts, and the only question presented for determination is whether, upon the facts the Philadelphia Warehouse Company was in law a shareholder of the bank at the time of its failure, and as such liable to creditors. The facts, as shown by the undisputed testimony, or found by the jury, are these: