Syllabus.

Within this principle there can be no question as to the correctness of the action of the Supreme Court of the District. Its judgment is, therefore,

Affirmed.

COFFEY *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

Argued December 10, 1885.—Decided January 18, 1886.

On a writ of error to review a judgment of forfeiture, entered after a trial by a jury and a general verdict for the United States, on an information *in rem*, filed in a Circuit Court of the United States, after a seizure of the *res* on land, for a violation of the internal revenue laws, there was no bill of exceptions, and no exception to the overruling of a motion for judgment *non obstante veredicto* and of a motion to set aside the verdict and in arrest of judgment: *Held*, That questions arising on demurrers to counts in the information, and as to the jurisdiction of the Circuit Court, could be reviewed.

The Circuit Court had jurisdiction of the suit.

A general verdict on several counts in such an information, which proceeds only for the forfeiture of specific property, will be upheld, if one count is good.

An information *in rem*, founded on section 3257 of the Revised Statutes, is sufficient if it follows the words of the section, and alleges that the person named was engaged in carrying on the business of a distiller and defrauded the United States of the tax on part of the spirits distilled by him; and it is not necessary it should set forth the particular means by which he defrauded the United States of the tax, or specify the particular spirits covered by the tax, or aver that the spirits seized were distilled by him, or were the product of his distillery, or that the distillery apparatus was wrongfully used.

Rule 22 of the Rules in Admiralty prescribes regulations for the form of informations and libels of information on seizures for the breach of the laws of the United States, on land or water; and the general rules of pleading in regard to Admiralty suits *in rem* apply to a suit *in rem* for a forfeiture, founded on a violation of the internal revenue laws, brought by the United States, after a seizure of the *res* on land.

The answer of the claimant set up a prior judgment, and sentence to pay a fine, on a plea of guilty by him to a criminal information founded on the same violations of law alleged in the information in this suit: *Held*, That no reply

Statement of Facts.

to the answer was necessary to raise an issue of fact thereon, and such issue must be regarded as having been found against the claimant, by the general verdict; and that no question in regard to such defence could be raised on a writ of error, in the absence of a demurrer to the answer, and of a bill of exceptions raising specific questions.

This was an information filed by the attorney of the United States for the District of Kentucky, on behalf of the United States, in the Circuit Court for that District, against one copper still and worm and other distilling apparatus, one distillery, with all its appurtenances, consisting of boiler, engine, copper doubler complete, with 65 tubs, also 22 barrels and 2 pieces of apple brandy, estimated at 850 gallons, said to be the property of John W. Coffey, and under seizure on land, by a deputy collector of internal revenue, as being forfeited to the United States. The original information alleged that Coffey "did have said still and worm, and distillery, engine, boiler, and other distilling apparatus, under his control and set up, and was engaged in carrying on the business of a distiller, and did then and there change and alter the stamps, marks, and brands on certain casks and packages containing distilled spirits, and did put into certain casks and packages spirits of greater strength than was indicated by the inspection mark thereon, and did fraudulently use casks and packages having inspection marks and stamps thereon, for the purpose of selling other spirits, and spirits of different quantity and quality from the spirits previously inspected therein, and then and there attempted to defraud, and did defraud, the United States of the tax on the spirits distilled by him." Under a monition and attachment the marshal arrested the property and gave the notice required by law. Coffey filed a claim to all the property as owner, and all of it except the apple brandy was released to him on a bond. He answered the information, admitting the seizure, and denying the other allegations, except that as to his having under his control and set up the property in that behalf alleged. The notice published stated that the property was seized for a violation of Rev. Stat. §§ 3257 and 3326.

Afterwards, an amended information was filed, by leave of the court. It stated that the attorney of the United States

"amends his information herein, and gives the said judges further to know," that Coffey was engaged in carrying on the business of a distiller, and did "defraud, and attempt to defraud, the United States of the tax on part of the spirits distilled by him," and that the said distillery and distillery apparatus were used by him, and that the said 22 barrels and 2 pieces of barrels of apple brandy, to wit, distilled spirits, were found on his distillery premises. It stated, in a second count, that the said distilled spirits were subject to a tax imposed by law, which had not been paid, and were found in the possession, custody and control of said Coffey for the purpose of being removed and sold by him in fraud of the internal revenue laws, and with design of avoiding the payment of said tax. It stated, in a third count, that said Coffey was an authorized distiller, and did "knowingly and wilfully omit, neglect and refuse to do or cause to be done certain things required of him by law in the carrying on and conducting of his said business, to wit, did knowingly and wilfully omit, neglect and refuse to stamp and brand, and cause and require to be stamped and branded, as required by law, a large number, to wit, two certain packages of distilled spirits, containing more than twenty gallons each, before removing the same from the warehouse where the same were stored and deposited, and before selling and disposing of the same, and did sell and dispose of and remove from said warehouse the said spirits before the tax had been paid thereon or the said packages had been properly branded and stamped," and that he owned and was interested in the said 22 barrels and 2 pieces of barrels of distilled spirits.

The claimant demurred to the first count in the amended information, as insufficient in law and fact. He demurred to the second count, as presenting no cause of forfeiture of either the distillery or distilled spirits, and as insufficient in law. He demurred to the third count, as insufficient in law and not authorized, because a specific penalty other than forfeiture is provided for the act therein charged, to wit, in section 3296 of the Revised Statutes. The court overruled the demurrers.

The claimant then answered the amended information, denying the allegations of the first count; denying the allegations

of the second count, except the one that the distilled spirits seized were subject to a tax imposed by law, which tax had not been paid; and denying the allegations of the third count, except the one as to the ownership of the distilled spirits seized.

There was a trial by a jury in October, 1881, in which the jury failed to agree on a verdict. The claimant then filed an amendment to his answer, as follows: "The claimant, John W. Coffey, amends his answer herein to the information and amendments thereto, and states that the custody, possession, and control of the articles or objects on which a tax was by law imposed, and complained of in the information of plaintiffs, and found in his possession, to wit, twenty-two barrels (22) and two pieces of barrels of brandy, distilled spirits, and charged to have been in his possession for the purpose of selling the same in fraud of the internal revenue laws, and with design to avoid the payment of the taxes thereon, or sold or removed by him in fraud of the internal revenue laws, and the various assignments of breaches and violations of law now considered, are the same goods and wares and objects, or commodities and distilled spirits, named and set out in an information filed against him, the said John W. Coffey, at the February term of this court, 1881, and prior to the filing of the information herein. That all of the said twenty-two barrels and two pieces of barrels of brandy, distilled spirits, found in his custody, control, and possession, are the same found in his control and possession, prior to the information filed against him at the February term, 1881, of this court, and that all the acts complained of in plaintiffs' information herein might have been established, if said allegations be true, under the said information, either upon the counts in said information based upon sections 3450 or 3452 or 3257. That all the evidence which would be necessary to establish, and competent under, the various assignments of breaches and of intended frauds in plaintiffs' information herein, would be competent under and would tend to establish the allegations of said information at said February term, 1881. That the various assignments [of] frauds and attempts or intents to defraud the United States of the tax imposed upon said distilled spirits, to wit, the 22 barrels and two pieces of barrels

of apple brandy, relate to the same subject-matter and are based upon the same transaction as the various allegations in said information at the February term, 1881, contained, so far as they relate to offences under sections 3452, 3453, and 3257, or either of them, and that at the time when the said information at the February term, 1881, was drawn, considered, and presented by the attorney for the United States, all the facts which would be competent to sustain the allegations of plaintiffs' information herein were known to and within the possession of the representatives of the United States. And the claimant, John W. Coffey, says that the United States ought not to maintain this action for the penalty, punishment, and forfeiture, or either of them, claimed in sections 3450, 3453, 3457, or 3257, for, at the February term, 1881, an information was found, as recited above, in the district of Kentucky, at Louisville, and in this court, against this claimant, John W. Coffey, the claimant named herein, the counts of said information alleging that he had in his possession a large quantity of distilled spirits upon which a tax was by law imposed, and had not then been paid, with intent to defraud, or for the purpose of defrauding, the United States of the tax thereon, and with design to avoid the payment of the tax thereon, on a part of said spirits, or on the spirits so in his possession. That at said term of said court the defendant plead guilty to the charges and counts in said information, and was adjudged and sentenced to pay a fine of five hundred dollars ($500), which judgment was the full penalty and punishment for the violations of law imposed on him for the alleged offences charged in said information, which were the same violations and charges, offences, and allegations of fraud, design to avoid the payment of the taxes due and imposed on said spirits, and allegations of intent to sell the same in fraud of the internal revenue laws of the United States, and he pleads and relies on the facts herein set forth as a bar to plaintiffs' claim herein, and asks the same to be dismissed, with all proper relief, &c."

Four months after this amendment to this answer was filed, the case was tried by a jury, which rendered a general verdict for the plaintiffs. The claimant thereupon moved for a judg-

ment, notwithstanding the verdict, and at a later day moved to set aside the verdict and in arrest of judgment, on these grounds: "(1) The verdict is not authorized by law and the facts in the case. (2) Because the defendant has been tried for the same offence herein charged, in a former proceeding, a criminal information, and this court has no jurisdiction in forfeitures. (3) That the information itself is insufficient in law to sustain the action." The court overruled the motions, and entered a judgment condemning as forfeited the property attached, "for the reasons and causes in the information and amended information specified," and awarding costs against the claimant. To reverse this judgment the claimant sued out a writ of error.

Mr. Gabriel C. Wharton, *Mr. Samuel McKee*, and *Mr. T. T. Wharton* for plaintiff in error submitted on their brief.

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

Mr. Justice Blatchford delivered the opinion of the court. After stating the facts in the language reported above, he continued:

There is no bill of exceptions in the record, and no exception to the overruling of the motions; but the questions arising on the demurrers to the counts of the amended information, and the question as to the jurisdiction of the Circuit Court, are open for consideration.

The objection to the jurisdiction is not well taken. By § 629 of the Revised Statutes, subd. 4, original jurisdiction is given to the Circuit Courts "of all causes arising under any law providing internal revenue." In Title XXXV. of the Revised Statutes, concerning "Internal Revenue," § 3213 provides that "all suits for fines, penalties and forfeitures, where not otherwise provided for, shall be brought in the name of the United States, in any proper form of action, or by any appropriate form of proceeding, *qui tam* or otherwise, before any Circuit or District Court of the United States, for the district within which said fine, penalty or forfeiture may have been incurred, or before

any other court of competent jurisdiction." By § 563, subd. 1, jurisdiction is given to the District Courts "of all suits for penalties and forfeitures incurred under any law of the United States." By subd. 8 of § 563 jurisdiction is given to the District Courts of all seizures on land, and it is enacted that such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such seizures is given to the Circuit Courts. By subd. 4 of § 629, jurisdiction is denied to the Circuit Courts of suits for penalties and forfeitures arising under any act providing for revenue from imports and tonnage; but they have it in suits for penalties and forfeitures arising under the internal revenue laws.

Although, in practice, suits *in rem* for forfeitures for violations of the internal revenue laws are more frequently brought in the District Courts, yet cases are to be found of such suits originally brought in the Circuit Courts, where jurisdiction was taken and was not questioned. Such cases are *United States* v. *Two Tons of Coal, &c.*, 5 Blatchford, 386, in the Eastern District of New York, in 1867, before Judge Benedict; *United States* v. *One Still, &c.*, 5 Blatchford, 403, and *United States* v. 508 *Barrels of Distilled Spirits*, 5 Blatchford, 407, and *United States* v. 6 *Barrels of Distilled Spirits*, 5 Blatchford, 542, in the same district in 1867, before Mr. Justice Nelson and Judge Benedict; *United States* v. 7 *Barrels of Distilled Oil, &c.*, 6 Blatchford, 174, in the same district, in 1867, before Judge Benedict; and *United States* v. 200 *Barrels of Whiskey*, 2 Woods, 54, in the District of Louisiana, in 1874, before Mr. Justice Woods, then Circuit Judge. Like jurisdiction of a suit *in personam* for a violation of the internal revenue laws was taken in 1877, by the Circuit Court for the Eastern District of Missouri, held by Mr. Justice Miller and Judge Dillon, in *United States* v. *McKee*, 4 Dillon, 128.

It has been adjudged by this court, that informations under the revenue laws for the forfeiture of goods, which seek no judgment of fine or imprisonment against any person, though civil actions and not strictly criminal cases, are so far in the nature of criminal proceedings as to come within the rule, that a general verdict, upon several counts, seeking in different

forms one object, must be upheld if one count is good. *Clifton* v. *United States*, 4 How. 242, 250; *Snyder* v. *United States*, 112 U. S. 216.

In this case, the first count in the amended information is good. It is founded on § 3257 of the Revised Statutes, which provides as follows: "Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits . . . found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years." The counts of the amended information are amendments of and additions to the original information, and the allegations of the latter as to the seizure of the property, on land, by the deputy collector, and as to the fact of forfeiture, and the prayer for process, and for a decree of forfeiture, form part of the amended information and apply to the counts therein. The language of the first count of the amended information follows that of § 3257, and is, we think, sufficient, against the general objection taken by the demurrer, that it is insufficient. In *United States* v. *Simmons*, 96 U. S. 360, an indictment founded on § 3281 of the Revised Statutes, alleged that the defendant "did knowingly and unlawfully engage in and carry on the business of a distiller, within the intent and meaning of the internal revenue laws of the United States, with the intent to defraud the United States of the tax on the spirits distilled by him, against the peace," &c. Section 3281 provides that every person who engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, shall be fined and imprisoned. This court held that the indictment was sufficient to authorize judgment, and that it was not necessary to state the particular means by which the United States were to be defrauded of the tax. So, in this case, it was not necessary, under § 3257, to set forth the particular means by which the claimant defrauded and attempted to

defraud the United States of the tax, or to specify the particular spirits covered by the tax. The first count of the amended information is in substantial compliance with Rule 22 of the Rules in Admiralty. That Rule prescribes regulations for the form of informations and libels of information on seizures for the breach of the laws of the United States on land or water; and the general rules of pleading in regard to Admiralty suits *in rem* apply to a suit *in rem* for a forfeiture, brought by the United States, after a seizure on land. *The Sarah*, 8 Wheat. 391; *Union Ins. Co.* v. *United States*, 6 Wall. 759, 765; *Armstrong's Foundry*, 6 Wall. 766, 769; *Morris' Cotton*, 8 Wall. 507, 511. It was not necessary to aver, in the information, that the distilled spirits found on the claimant's distillery premises, and seized, were distilled by him, or were the product of his distillery, or that the distillery apparatus was wrongfully used; because § 3257 does not make these facts elements of the causes of forfeiture denounced by it. The only necessary elements are, that the person shall be engaged in carrying on the business of a distiller, and that he shall defraud, or attempt to defraud, the United States of the tax on the spirits distilled by him. The answer admits that the claimant owned the property seized.

As to the plea of a former conviction, the proceedings being kindred to those in a suit in Admiralty *in rem*, so far as the pleadings are concerned, no reply or replication to the answer was necessary to raise an issue of fact on the matters averred in it. New matter in an answer is considered as denied by the libellant. Rule 51, in Admiralty. The issue of fact as to the former conviction must be held to have been found against the claimant, by the general verdict; and no question in regard to the defence set up can be raised, in the absence of a demurrer to the answer, and of a bill of exceptions raising specific questions.

Judgment affirmed.

COFFEY *v.* UNITED STATES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

Argued December 10, 1885.—Decided January 18, 1886.

A judgment of forfeiture, on an information *in rem*, for a violation of the internal revenue laws, filed by the United States, in a Circuit Court of the United States, after a seizure of the *res* on land, was rendered after a general verdict. On a writ of error by the claimant, there being no bill of exceptions: *Held*, that questions as to the sufficiency of the information, and the regularity of the proceedings, not having been formally raised in the Circuit Court, could not be raised in this court.

After a specific denial, by answer, of the allegations of the information, the claimant cannot, in a court of error, on such a record as that above mentioned, be heard to say that he did not know the charge made in the information and could not defend against it.

After a general verdict, one good count in the information is sufficient to uphold the judgment, on such a record.

The Circuit Court had jurisdiction of the suit.

The claimant set up, by answer, a prior judgment of acquittal on a criminal information against him by the United States, in the same Circuit Court, founded on the same sections of the Revised Statutes sued on in this suit, and alleged that such criminal information contained charges of all of the violations of law alleged in the information in this suit. There was a general demurrer to the answer. After the general verdict for the United States, the claimant moved for judgment *non obstante veredicto*. The motion was denied. There was no bill of exceptions. On a writ of error: *Held*, That, although one section counted on in the information declared, as a consequence of the commission of the prohibited act (1) that certain specific property should be forfeited, and (2) that the offender should be fined and imprisoned, yet, as the issue raised as to the existence of the act or fact had been tried in a criminal proceeding against the claimant, instituted by the United States, and a judgment of acquittal rendered in his favor, that judgment was conclusive in his favor in this suit; and that the judgment of the Circuit Court must be reversed, and the case be remanded, with a direction to enter a judgment for the claimant, dismissing the information, and to take proper proceedings in regard to restoring the property attached.

This was an information filed by the attorney of the United States for the District of Kentucky, on behalf of the United States, in the Circuit Court for that District, against 10 barrels of apple brandy, 1 apple mill, 37 tubs, and 2 copper stills, said

to be the property of A. G. Coffey, and under seizure, on land, by a deputy collector of internal revenue, as being forfeited to the United States. The first count of the information alleged that Coffey, being engaged in carrying on the business of a distiller, defrauded, and attempted to defraud, the United States of the tax on part of the spirits distilled by him, and that the two copper stills and other distillery apparatus were used by him, and the distilled spirits were found on his distillery premises. The second count alleged that the distilled spirits, in respect of which a tax was imposed by law, and which tax had not been paid, were removed, deposited and concealed with intent to defraud the United States of part of such tax, and that the two stills and other distilling apparatus, vessels, and utensils were proper, and intended to be made use of, for and in the making of such distilled spirits. The third count alleged that the distilled spirits, on which a tax was imposed by law, were found in the possession of Coffey for the purpose of being sold and removed by him in fraud of the internal revenue laws, and with the design to avoid the payment of said tax, and that the two copper stills, and other tools and property, so seized, were in the place, yard, and enclosure where the distilled spirits were found.

The first count was founded on § 3257 of the Revised Statutes, which provides as follows: "Whenever any person engaged in carrying on the business of a distiller defrauds, or attempts to defraud, the United States of the tax on the spirits distilled by him, or of any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits . . . found in the distillery and on the distillery premises, and shall be fined not less than five hundred dollars nor more than five thousand dollars, and be imprisoned not less than six months nor more than three years."

The second count was founded on § 3450 of the Revised Statutes, which provides as follows: "Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, are removed, or are deposited or concealed in any

place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited. . . . And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than five hundred dollars. . . ."

The third count was founded on § 3453 of the Revised Statutes, which provides as follows: "All goods, wares, merchandise, articles, or objects, on which taxes are imposed, which shall be found in the possession or custody, or within the control, of any person, for the purpose of being sold or removed by him in fraud of the internal revenue laws, or with design to avoid payment of said taxes, may be seized by the collector or deputy collector of the proper district . . . and shall be forfeited to the United States; . . . and all tools, implements, instruments, and personal property whatsoever, in the place or building, or within any yard or enclosure, where such articles . . . are found, may also be seized by any collector or deputy collector, as aforesaid, and shall be forfeited as aforesaid. The proceedings to enforce such forfeitures shall be in the nature of a proceeding *in rem*, in the Circuit Court or District Court of the United States for the district where such seizure is made."

Under a monition and attachment the marshal arrested the property and gave the notice required by law. Coffey filed a claim to all the property except one barrel of the distilled spirits, as owner, and an answer to the information. The answer denied the allegations of the three counts of the information, and in a fourth paragraph set up the following defence: "Fourth. And further answering, the said claimant states, that the alleged removals and concealments of distilled spirits set forth in the various assignments and charges of fraud, and attempts at and intent of fraud, in carrying on and engaging in the business of a distiller, and in removals, disposing, and concealing of distilled sprits, alleged against him

and now answered, are the same removals, concealments, and depositing, and same carrying on of business of a distiller, as are recited in a criminal information filed against him, at the October term of this court, 1881, and that all of said 'removals,' 'concealments,' 'depositing,' and 'intents to defraud,' the same complained of in plaintiffs' information herein, might have been established, if said allegations be true, under sections 3450, 3452, 3296, or 3257, upon which or some one or more of which the counts in said criminal information were based; that all of the evidence which would be necessary to establish, and competent, under the various assignments and charges of fraud set out in plaintiffs' libel herein, would also be competent and would tend to establish the allegations of said criminal information; that the various charges of fraud and causes of forfeiture alleged by plaintiffs herein relate to the same subject-matter, and are based on the same transactions, as the various allegations in said criminal information contained, so far as they relate to alleged offences under sections 3450, 3452, 3453, 3296, or 3257; and that, at the time when said criminal information was drawn by the attorney for the United States, and at the time it was considered by him, all of the facts which would be competent to sustain the allegations of plaintiffs' libel herein were known to and within the possession of the representative of the United States. And he avers and says, that the United States ought not to maintain its action herein for the penalty denounced in sections 3257, 3450, and 3453, for, at the October term, 1881, in this circuit and district and in this court herein, a criminal information, the same above referred to, was found against him, the counts of which were based on sections 3257, 3256, 3450, 3453, and 3296, or on some one or more of them, alleging the carrying on the business of a distiller with intent to defraud the United States, and that he was concerned in depositing, concealing, and removing a large quantity of distilled spirits, with intent to defraud the United States of the taxes imposed thereon, and having had in his custody a large quantity of distilled spirits, with the design to avoid the payment of the taxes imposed thereon; that the counts in said criminal information contained the same charges,

in substance and effect, and are the same allegations of offences and frauds, and attempts at frauds, and are founded on the same sections of the statutes of the United States, as the matters and things herein alleged in plaintiffs' libel; and he says that all and singular of said matters at said term and in this court were tried and inquired into and fully heard, and, on the hearing thereof, the jury, duly empanelled and sworn, found this defendant not guilty, and the court rendered a judgment acquitting this defendant of the charges of frauds and attempts at frauds therein alleged; and all of which are the same frauds now set out by plaintiffs and herein answered by this defendant."

The sections referred to in this fourth paragraph of the answer, other than those above set forth, are as follows:

"SEC. 3256. Whenever any person evades, or attempts to evade, the payment of the tax on any distilled spirits, in any manner whatever, he shall forfeit and pay double the amount of the tax so evaded or attempted to be evaded."

"SEC. 3296. Whenever any person removes, or aids or abets in the removal of, any distilled spirits on which the tax has not been paid, to a place other than the distillery warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or aids or abets in the removal of any distilled spirits from any distillery warehouse, or other warehouse for distilled spirits, authorized by law, in any manner other than is provided by law, or conceals or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than two hundred dollars, nor more than five thousand dollars, and imprisoned not less than three months, nor more than three years."

"SEC. 3452. Every person who shall have in his custody or possession any goods, wares, merchandise, articles, or objects on which taxes are imposed by law, for the purpose of selling the same in fraud of the internal revenue laws, or with design to avoid payment of the taxes imposed thereon, shall be liable to a penalty of five hundred dollars, or not less than double the amount of taxes fraudently attempted to be evaded."

The United States filed a demurrer to the fourth paragraph of the answer, "because it does not state facts sufficient to constitute a defence."

Eight days afterwards the issues of fact were tried by a jury, which found a general verdict for the United States. The claimant then moved the court to set aside the verdict, alleging as grounds, among others, that the court had no jurisdiction, and that the information was insufficient. He also moved for judgment on the pleadings, notwithstanding the verdict. The court made an order denying the motions, and entering a judgment condemning the property as forfeited to the United States, and awarding costs against Coffey. There was no bill of exceptions, but the claimant sued out a writ of error to review the judgment.

Mr. G. C. Wharton Mr. T. T. Alexander and *Mr. Samuel McKee* for plaintiff in error submitted on their brief.

Mr. Solicitor-General for defendant in error.

Mr. Justice Blatchford delivered the opinion of the court. After stating the facts in the language reported above, he continued:

The assignment of errors filed in this court asserts these propositions: (1) that the information is not sufficient in law; (2) that the Circuit Court had no jurisdiction of the subject-matter of the action, or of the property seized, or of the person of the claimant; (3) that there was no sufficient monition, attachment or seizure of the property, and no legal publication and notice of the seizure, and no valuation of the goods, as required by law; (4) that it was error to submit the case to the jury before the demurrer to the fourth paragraph of the answer was disposed of; (5) that it was error to overrule said demurrer.

In regard to the 1st, 3d and 4th assignments, the questions presented by them were not formally raised in the Circuit Court, and are not presented by a bill of exceptions, and cannot be considered here.

As to the 1st assignment, that respecting the insufficiency of the information, it is supposed, by the claimant, that his motion for judgment, notwithstanding the verdict, raises that question. But there is no exception to the order of the court denying that motion. There is an exception to the written opinion of the court overruling a motion for a new trial, and to an order made, after judgment, overruling a motion made, after judgment, for a new trial. But, there is no other exception in the record. Assuming, however, that the point as to the information can be raised here, it is urged that the first count, that founded on section 3257, is insufficient because the count does not set forth the facts from which the court can infer that Coffey defrauded or attempted to defraud the United States. It is a sufficient answer to this objection to say, that the claimant, in his answer, denies the allegations of the first count, specifically, as they are made. After that, he cannot, in a court of error, on such a record as this, be heard to say that he did not know the charge made, and could not defend against it, although, if he had excepted or demurred to the count, the objection might have been presented for consideration. After a general verdict for the United States, one good count in the information is sufficient to uphold the judgment. *Coffey* v. *United States*, *ante*, 427.

The objection to the jurisdiction of the Circuit Court is overruled, in accordance with the decision in *Coffey* v. *United States*, *ante*, 427.

The principal question is as to the effect of the indictment, trial, verdict and judgment of acquittal set up in the fourth paragraph of the answer. The information is founded on §§ 3257, 3450 and 3453; and there is no question, on the averments in the answer, that the fraudulent acts and attempts and intents to defraud, alleged in the prior criminal information, and covered by the verdict and judgment of acquittal, embraced all of the acts, attempts and intents averred in the information in this suit. The question, therefore, is distinctly presented, whether such judgment of acquittal is a bar to this suit. We are of opinion that it is.

It is true that § 3257, after denouncing the single act of a dis-

tiller defrauding or attempting to defraud the United States of the tax on the spirits distilled by him, declares the consequences of the commission of the act to be (1) that certain specific property shall be forfeited: and (2) that the offender shall be fined and imprisoned. It is also true that the proceeding to enforce the forfeiture against the *res* named must be a proceeding *in rem* and a civil action, while that to enforce the fine and imprisonment must be a criminal proceeding, as was held by this court in *The Palmyra*, 12 Wheat., 1, 14. Yet, where an issue raised as to the existence of the act or fact denounced has been tried in a criminal proceeding, instituted by the United States, and a judgment of acquittal has been rendered in favor of a particular person, that judgment is conclusive in favor of such person, on the subsequent trial of a suit *in rem* by the United States, where, as against him, the existence of the same act or fact is the matter in issue, as a cause for the forfeiture of the property prosecuted in such suit *in rem*. It is urged as a reason for not allowing such effect to the judgment, that the acquittal in the criminal case may have taken place because of the rule requiring guilt to be proved beyond a reasonable doubt, and that, on the same evidence, on the question of preponderance of proof, there might be a verdict for the United States, in the suit *in rem*. Nevertheless, the fact or act has been put in issue and determined against the United States; and all that is imposed by the statute, as a consequence of guilt, is a punishment therefor. There could be no new trial of the criminal prosecution after the acquittal in it; and a subsequent trial of the civil suit amounts to substantially the same thing, with a difference only in the consequences following a judgment adverse to the claimant.

When an acquittal in a criminal prosecution in behalf of the Government is pleaded, or offered in evidence, by the same defendant, in an action against him by an individual, the rule does not apply, for the reason that the parties are not the same; and often for the additional reason, that a certain intent must be proved to support the indictment, which need not be proved to support the civil action. But upon this record, as we have already seen, the parties and the matter in issue are the same.

Whether a conviction on an indictment under § 3257 could

be availed of as conclusive evidence, in law, for a condemnation, in a subsequent suit *in rem* under that section, and whether a judgment of forfeiture in a suit *in rem* under it would be conclusive evidence, in law, for a conviction on a subsequent indictment under it, are questions not now presented.

The conclusion we have reached is in consonance with the principles laid down by this court in *Gelston* v. *Hoyt*, 3 Wheat., 246. In that case Hoyt sued Gelston, the collector, and Schenck, the surveyor, of the port of New York, in trespass, for taking and carrying away a vessel. The defendants pleaded that they had seized the vessel, by authority of the President, as forfeited for a violation of the statute against fitting out a vessel to commit hostilities against a friendly foreign power, and that she had been so fitted out and was forfeited. At the trial it was shown, that, after seizure, the vessel was proceeded against by the United States, by libel, in the United States District Court, for the alleged offence, and Hoyt had claimed her, and she was acquitted, and ordered to be restored, and a certificate of reasonable cause of seizure was denied. The defendants offered to prove facts showing the forfeiture. The trial Court excluded the evidence. In this court, the question was presented whether the sentence of the District Court was or was not conclusive on the defendants, on the question of forfeiture. This court held that the sentence of acquittal, with a denial of a certificate of reasonable cause of seizure, was conclusive evidence that no forfeiture was incurred, and that the seizure was tortious; and that these questions could not again be litigated in any forum.

This doctrine is peculiarly applicable to a case like the present, where, in both proceedings, criminal and civil, the United States are the party on one side and this claimant the party on the other. The judgment of acquittal in the criminal proceeding ascertained that the facts which were the basis of that proceeding, and are the basis of this one, and which are made by the statute the foundation of any punishment, personal or pecuniary, did not exist. This was ascertained once for all, between the United States and the claimant, in the criminal proceeding, so that the facts cannot be again litigated between

them, as the basis of any statutory punishment denounced as a consequence of the existence of the facts. This is a necessary result of the rules laid down in the unanimous opinion of the judges in the case of *Rex* v. *Duchess of Kingston*, 20 Howell's State Trials, 355, 538, and which were formulated thus: The judgment of a court of concurrent jurisdiction, directly upon the point, is, as a plea, a bar, or, as evidence, conclusive, between the same parties, upon the same matter, directly in question in another court; and the judgment of a court of exclusive jurisdiction, directly upon the point, is, in like manner, conclusive upon the same matter, between the same parties, coming incidentally in question in another court for a different purpose. In the present case, the court is the same court, and had jurisdiction, and the judgment was directly on the point now involved, and between the same parties.

In a case before Mr. Justice Miller and Judge Dillon, *United States* v. *McKee*, 4 Dillon, 128, the defendant had been convicted and punished under a section of the Revised Statutes, for conspiring with certain distillers to defraud the United States, by unlawfully removing distilled spirits without payment of the taxes thereon. He was afterwards sued in a civil action by the United States, under another section, to recover a penalty of double the amount of the taxes lost by the conspiracy and fraud. The two alleged transactions were but one; and it was held that the suit for the penalty was barred by the judgment in the criminal case. The decision was put on the ground that the defendant could not be twice punished for the same crime, and that the former conviction and judgment were a bar to the suit for the penalty.

There ought to have been a judgment for the claimant on the demurrer to the fourth paragraph of the answer, notwithstanding the verdict, and, as the facts set forth in that paragraph were admitted by the demurrer, and constituted a defence to the suit,

The judgment of the Circuit Court is reversed, and the case is remanded to that court, with a direction to enter a judgment for the claimant, dismissing the information, and to take such proceedings in regard to restoring the property attached as may be proper and not inconsistent with this opinion.