

Statement of the Case.

plaintiff's counsel that the requests would not be given, and there was no opportunity for counsel to except to the failure of the court to charge as requested until the instructions were given to the jury. The exceptions, therefore, contained in Nos. 1, 2, 3 and 4 were not taken or noted during the trial." But the bill of exceptions also states: "V. The court instructed the jury to return a verdict for the defendant. VI. The jury returned a verdict in accordance with said instructions, and judgment was thereupon entered up in behalf of defendant in pursuance of said instructions; and to said instructions, verdict and judgment, the plaintiff, by his counsel, excepted and now excepts, during the term at which said case was tried and while said term is still in session, and assigns the same as error, and prays the court to sign and certify this exception."

We understand from this language, taken together, that the general instruction of the court to find for the defendant was excepted to at the proper time; and while greater accuracy of expression should have been used, we are not inclined by too technical a construction to preclude ourselves from correcting the error we hold was committed. The judgment is

Reversed and the cause remanded, with directions to grant a new trial.

UNITED STATES v. HAYNES.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF TEXAS.

No. 273. Submitted April 24, 1889. — Decided May 13, 1889.

An action on the official bond of a collector of customs is not one of which this court has appellate jurisdiction, under § 699 of the Revised Statutes, without regard to the sum or value in dispute.

THIS was an action brought by the United States against the principal and sureties on the official bond of a collector of customs, to recover the sum of \$634.60, which he had refused

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to pay over, and claimed the right to retain as part of the emoluments of his office. The Circuit Court gave judgment for the defendants, and the United States sued out this writ of error, which the defendants in error moved to dismiss for want of jurisdiction.

Mr. Solicitor General for plaintiff in error.

Mr. Charles W. Ogden for defendants in error.

MR. JUSTICE GRAY delivered the opinion of the court.

The motion to dismiss must be granted. The amount in dispute is less than \$5000; and the case does not come within any of the classes specified in § 699 of the Revised Statutes, in which this court has appellate jurisdiction without regard to the sum or value in dispute. The only subdivisions which could possibly be supposed to cover this case are the second and third.

The second subdivision relates to judgments "in any civil action brought by the United States for the enforcement of any revenue law thereof;" and, as was directly adjudged in the recent case of *United States v. Hill*, 123 U. S. 681, a suit upon an official bond is not an action for the enforcement of a revenue law of the United States.

The third subdivision relates to judgments "in any civil action against any officer of the revenue, for any act done by him in the performance of his official duty, or for the recovery of any money exacted by or paid to him which shall have been paid into the Treasury." This applies only to suits, whether sounding in tort or in contract, brought by individuals or corporations against officers of the revenue acting on behalf of the United States, and does not include any suit brought by the United States against one of those officers. It has regard to actions in which the interest of the United States is as defendants, not as plaintiffs.

Writ of error dismissed for want of jurisdiction.