

Cases Omitted in the Reports.

UNITED STATES *v.* MORGAN.

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

No. 258. October Term, 1878.—Decided May 5, 1879.

An adjusted account of an Internal Revenue Collector at the Treasury, showing the exact amount finally allowed him as extra compensation, is conclusive evidence on that question.

The Secretary of the Treasury may fix the amount of an extra allowance to a Collector of Internal Revenue in advance of the service rendered.

THE case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We find no error in this record. The objection to the admissibility of the testimony of Curtis and the defendant Morgan was not because it was insufficient to prove an arrangement between the Secretary of the Treasury and Morgan, by which Morgan was to be allowed his extra compensation, but because the Secretary of the Treasury might make the allowance at any time, and as the adjusted account showed the exact amount finally allowed, this account was conclusive evidence on that question. As the case stands upon the record it is to be presumed there was evidence tending to prove that the letter of the Commissioner of Internal Revenue was authorized by the Secretary of the Treasury. Upon the objection as made we think the ruling of the court was right. There is nothing in the act of Congress which precludes the Secretary of the Treasury from fixing the rate of extra compensation to be allowed in advance of the service rendered, and if he does, it becomes binding on the government and may be enforced in the settlement of accounts thereafter.

The allowance of a commission upon the sum of \$13,619.85, as part of the compensation of the collector for the year ending June 30, 1864, was also right. The money was all collected before the expiration of that year, and ten thousand dollars was actually paid into the treasury. As to the allowance of commissions for this there can be no doubt. It is a matter of no consequence that advices of the payment did not reach the accounting officers of the Treasury Department, so as to be entered on the books there, until after the year expired. No unnecessary delay occurred in paying over the remainder. It was actually collected in a distant part of

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the collection district, and did not in the ordinary course of transmission reach the collector so that it could be paid into the treasury before June 30. The collector was accountable for it when it was collected, and since he paid it over as soon as he could, we think he was entitled to his compensation as for services rendered during the year.

The objection to the claim for express charges paid was not made below and cannot be considered by us. We hear the case upon the rulings contained in the bill of exceptions and not upon the evidence.

The same is true as to the claim now made that compensation has been given by the jury in their verdict in excess of the maximum limit fixed by the statute for the year. It does not appear from the bill of exceptions that this point was taken below.

No error is assigned upon that part of the charge of the court which related to the payment of the bills of the assistant assessors.

The judgment is

Affirmed.

Mr. Attorney General for plaintiff in error. *Mr. W. W. Morrow* for defendants in error.

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ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

No. 705. October Term, 1878. — Decided January 6, 1879.

The contract of marriage is not a contract within the meaning of the provision in the Constitution prohibiting States from impairing the obligation of contracts.

MOTION TO DISMISS. The case is stated in the opinion.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

In the *Dartmouth College Case*, 4 Wheat. 629, it was expressly said by Chief Justice Marshall, in delivering the opinion of the court, that the provision of the Constitution prohibiting States from passing laws impairing the obligation of contracts "had never been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate upon the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has