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estate, contrary to his oath or affirmation, "he shall not only be liable to the pains and penalties of wilful perjury, but shall receive no benefit from said oath or affirmation." Conviction is a technical term, applicable to a judgment on a criminal prosecution, not to a proceeding on this bond. The act contemplates a prosecution on which the party may be adjudged to suffer the penalties of perjury, in addition to which he is to be deprived of all benefit from the oath or affirmation. If this section has any influence, it would be to show that, in the contemplation of the legislature, such conviction is necessary, previous to the establishment of the absolute nullity of the oath or affirmation. The court, however, does not mean to indicate that the effect of the oath and of the discharge granted by the magistrates might not be controverted, in any proceeding against the parties, either in law or equity, other than in a suit on the bond for keeping the prison-rules.

CERTIFICATE.—This cause came on to be heard on the transcript of the record from the circuit court for the district of Rhode Island, containing the *462] points on which the judges of that court were divided in opinion, and was argued by counsel. On consideration whereof, this court is of opinion, that the replication of the plaintiff is insufficient to avoid the plea of the defendant. All which is ordered to be certified to the said circuit court.

Certificate for the defendant.

JONES *et al.* v. SHORE's Executor *et al.*

UNITED STATES v. JONES *et al.*

Distribution of penalties.

A bond was given to T. S., the collector of the district of Petersburg, under the 2d section of the embargo act of the 22d of December 1807, and a suit was afterwards brought by him, on the same bond, in the district court, and pending the proceedings, to wit, on the 30th of October 1811, J. S., the collector, died; and judgment was recovered in favor of the United States, on the 30th of November 1811. On the 26th of the same November, J. J. was appointed collector of the same district, and entered on the duties of his office, on the 14th of December 1811; until which time T. S., who was deputy-collector under J. S., at his decease, continued, as such, to discharge the duties of the office. The judgment of the district court was subsequently affirmed by the circuit court. When the bond was taken, A. T. was surveyor of the district, and continued in that office, until his death, which was after the commencement of the suit on the bond, and before judgment thereon, and was succeeded by J. H. P., who was appointed on the 30th of March 1811, and entered on the duties of his office, on the 16th of the same *463] month. It was held, that the personal representatives of the deceased collector and surveyor, and not their successors in office, were entitled to that portion of the penalty which is, by law, to be distributed among the revenue-officers of the district where it was incurred. There being no naval officer in the district, the division was adjudged to be made in equal proportions between the collector and surveyor. United States v. Jones, 1 Brock. 285, affirmed.

THE material facts of these cases are as follows:—On the 23d of November 1808, a bond was executed at the custom-house of Petersburg, in Virginia, to the United States, by Thomas Pearse, master of the ship Sally, of Philadelphia, and Robert McAdam, Daniel Filton and George Pegram, jun., in the penal sum of \$46,300, upon condition, that if the cargo of said vessel, consisting of 830 hogsheads of tobacco, intended to be transported in said vessel from the port of Petersburg to the port of Boston, in Massachusetts,

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should be re-landed in the United States, the danger of the seas excepted, then the obligation to be void, otherwise, to remain in full force. The bond was, in fact, given to John Shore, the collector of the district of Petersburg, in pursuance of the second section of the embargo act of the 22d December 1807, ch. 5.

A suit was afterwards brought by the said collector, on the same bond, in the district court for the district of Virginia, and pending the proceedings in said court, to wit, on or about the 30th of October 1811, John Shore, the collector, died; and judgment was finally recovered on the same bond, in favor of the United States, on the 30th of November 1811. On the 26th of the same November, John Jones was duly appointed and commissioned by the president as collector of the *same district, and he qualified as such, and took upon himself the discharge of the duties of the office, on [*464 the 14th of December 1811; until which time, Thomas Shore, who was deputy-collector under John Shore, at the time of his decease, continued, as such deputy-collector, to discharge the duties of the office. Mr. Pegram sued out a writ of error from the said judgment, to the circuit court for the district of Virginia, and Mr. Pegram having died, pending the proceedings, the suit was revived by his administrator, and the judgment of the district court was, at May term 1814, affirmed by the circuit court. At the time when the bond was taken by the collector, Andrew Torborn was the surveyor of said district for the port of City Point, and continued in that office until his death, which happened after the commencement of the suit on said bond, and before the rendition of judgment thereon, and was succeeded in his office by John H. Peterson, who was appointed and commissioned, on the 3d of March 1811, and qualified and entered upon the discharge of the duties of that office, on the 16th of the same month. At the May term of the circuit court 1814, the whole debt and costs recovered by the judgment, were paid into court by the administrator of Mr. Pegram. Cross-petitions were thereupon filed by the district-attorney, in behalf of the United States, praying the whole sum to be paid to him, or deposited in the bank of Virginia, to the credit of the treasurer of the United States, by the present collector and surveyor of the district of Petersburg, and by the representatives of the deceased collector and surveyor, *praying a payment over, and distribution of, the sum so recovered, according to the rights respectively [*465 claimed by them. A bill was also filed on the chancery side of the circuit court, by the representatives of the deceased collector and surveyor, against the present collector and surveyor, and the clerk of the court, praying a moiety to be paid over to them, or such other portion as they were entitled to by law, and also for general relief.

Upon the hearing of the cross-petitions, the circuit court overruled the prayer of the motion of the district-attorney; the court being of opinion, that the United States were entitled only to a moiety of the money, and that the same ought to be paid to the collector of the district, and ordered the clerk of the court, accordingly, to pay the same to John Jones, the present collector, after deducting therefrom one-half of one *per centum* for his commission. And the court being divided in opinion, whether the other moiety should be paid to the said collector, to be distributed by him according to law, as this court should direct, or without any direction on the subject, certified the same question to the supreme court. Upon the hearing of the

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suit in chancery, on the bill, answer and proofs, in which none of the facts were controverted, a question occurred before the court, whether the representative of the late surveyor, in right of his intestate, was entitled to receive the moiety of that portion of the penalty which is, by law, to be distributed among the several revenue-officers of the district wherein the penalty was incurred ; upon which *question the court was divided, and the same *466] question was certified to this court.

Swann, for Jones *et al.*—The whole body of embargo laws shows, that the collector is, *ex officio*, to receive penalties and forfeitures ; and that he who is to receive, is to have his distributive share, as his property, of right, and to make the division among the other persons entitled. The term collector means the officer of the law, invested with legal immortality. Official obligations do not attach to the person of the individual, but to the office. *Streshley v. United States*, 4 Cr. 171. The penalty may be released by the treasury, at any time before the collector receives it.

Wirt, for Shore's executor *et al.*—The question is, whether, of these two officers, he who supports all the labor and inconvenience shall be entitled to the reward. The death of Mr. Shore did not discontinue his office ; his deputy exercised the duties, as by law he was authorized to do, until the rendition of the judgment. The reason of the law is its soul ; the intention of the legislature must be regarded ; it must have been their motive to stimulate the zeal and exertions of the officers of the customs by an adequate incentive. Policy rendered it more essential in the embargo laws, than in the ordinary revenue laws, and the reward was, therefore, attached to the incumbent who detected the offence, and prosecuted. The question is *stricti* *467] *juris*, and must be determined *by the letter of the law. It does not require the collector to live on, till the reward is reaped, but the right descends to his representatives. If there be a private information, the common informer gets half the moiety of the officers. If there be no informer, they are entitled, upon the ground of like merit. The title of the informer vests upon the information, and the collector takes his place. The law provides that a person entitled to a share, who shall desire to become a witness, must release ; he must renounce and lay down his title, in order to qualify himself as a witness. Where the forfeitures are recovered, in consequence of information by the officers of a revenue-cutter, a share is given to them, but nobody pretends, that their successors would take. It is conceded, that the title may be defeated, by a remission of the penalty ; but that is a condition originally attached by law. The collector dies ; but he lives in his deputy, for whose conduct his estate is responsible.

Pinkney, in reply.—The argument drawn from an equitable construction, according to relative merit, is unsatisfactory. The law holds out a contingent prospective reward ; if the officer dies, it is gone, and the policy of the law is sufficiently satisfied. But the letter of the law is clear and peremptory ; the penalty is given to the officer, where it was incurred, and not to the seizing officer. At what epoch will you stop, in fixing the character of the person entitled ? At the seizure ? the prosecution ? or the rendition of the judgment ? At neither : for the word *"recovered" is the emphatic *468] expression, and it is recovered, when adjudged and received. Every

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other construction is arbitrary and fictitious. The president's power of pardoning is a conclusive argument; if the right vested, it could not be thereby divested. The provision, as to officers wishing to become witnesses, signifies nothing. They have an interest; not a vested and absolute interest, but contingent upon the recovery, and if they think fit to sacrifice it, they may be witnesses. The collector did not live in his deputy; the law merely casts the responsibility upon his estate as to the acts of the deputy.

STORY, J., delivered the opinion of the court, and after stating the facts, proceeded as follows:—As the United States have not asserted any claim, the first question for the decision of the court is, whether the present collector and surveyor, the actual incumbents in office, or the representatives of the late collector and surveyor, in right of their testator and intestate, are entitled to the moiety of the money received in satisfaction of the judgment above stated, and now in the custody of the circuit court.

By the express provisions of law, all penalties and forfeitures accruing under the embargo acts, with a few exceptions, not applicable to this case, are to be distributed and accounted for in the manner prescribed by the collection law of the 2d of March 1799, ch. 122. To this latter act, therefore, the arguments of counsel have been chiefly directed; and upon the true construction of the 89th section of the act, the decision of this cause must principally rest. *The 89th section enjoins the collector, within [469 whose district a seizure shall be made, or forfeiture incurred, to cause suits for the same to be commenced, without delay, and prosecuted to effect; and authorizes him to receive from the court, within which a trial is had, or from the proper officer thereof, the sums so recovered, after deducting the proper charges, and on receipt thereof, requires him to pay and distribute the same, without delay, according to law, and to transmit, quarterly, to the treasury, an account of all the moneys received by him for fines, penalties and forfeitures, during such quarter. The 91st section declares that all fines, penalties and forfeitures, recovered by virtue of the act, and not otherwise appropriated, shall, after deducting all proper costs and charges, be disposed as follows, viz: "one moiety shall be for the use of the United States, and be paid into the treasury thereof, by the collector receiving the same; the other moiety shall be divided between, and paid, in equal proportions, to the collector and naval officer of the district, and surveyor of the port, wherein the same shall have been incurred, or to such of the said officers as there may be within the same district; and in districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer." Then follow provisions referring to the distribution, in cases where the recovery has been had in pursuance of information given by any informer, or by any officer of a revenue-cutter.

It is argued on behalf of the present collector and surveyor, that upon the true construction of these *clauses, no title to a distributive share of penalties and forfeitures vests, until the money has been actually [470 received by the collector from the officer of the court; and that upon such receipt, it vests in the proper officers of the customs who are then in office. And in support of this argument, it is further asserted, that until this epoch, the claim is a mere expectancy and not a right, the interest being in abeyance, uncertain and contingent. An attempt has been made, to press the

language of the act into the service of this argument. But it certainly will not support it: the language of the act, in its most obvious import, does not seem to have contemplated any change in the officers of the customs, between the time of the accruing and the receipt of the penalty or forfeiture. It seems principally to have been adapted to cases of the most ordinary occurrence, and it is only by an equitable construction, that it can, in aid of the legislative intention, be brought to reach the present case. The act must receive the same construction in relation to forfeitures *in rem*, as in relation to personal penalties. Both are distributable in the same manner, and subject to the same rules. The case, therefore, will be first considered, in reference to forfeitures *in rem*.

Whenever a forfeiture *in rem* accrues, it is, by the act, made the duty of the collector, to seize the thing, and to prosecute a suit therefor to final judgment. The law contemplates that he may seize, upon probable cause of seizure, not simply in cases of personal knowledge, but upon the information of others. He seizes, however, at his peril, and if the act be not *471] justifiable, he is subject to a personal responsibility *for all damages. He is placed, therefore, in a situation in which he is bound to act, and yet is not protected against the legal consequences of his acts. It is, unquestionably, with a view to stimulate his vigilance, and reward his exertions, that the law has given him a share of the forfeitures recovered by his enterprise and activity. And yet it would follow, upon the argument which has been stated, that the collector who seizes might be liable to all the responsibility of the act, in case of a failure, without receiving any of the fruits of his toil, if crowned with success. This certainly would seem to be against the policy of the legislature, as well as against the plainest rules of equity. It is a maxim of natural justice, *qui sentit commodum sentire debet et onus*; and the words of a statute ought to be very clear, that should lead to a different determination.

But the case is not left to the result of general reasoning upon the intent and policy of the legislature. It is not true, that the right of a seizing officer to a distributive share, is a mere expectancy. By the common law, a party entitled to a share of a thing forfeited, acquires by the seizure an inchoate right, which is consummated by a decree of condemnation, and when so consummated, it relates back to the time of the seizure. This principle is familiarly applied to many cases of forfeitures to the crown; and even in respect to private persons entitled to forfeitures, the interest which is acquired by seizure has been deemed a sufficient title to sustain an action *472] of detinue for the property. And it is very clear, that the legislature steadily kept in view this principle of the *common law; for the act has expressly provided, that any officer entitled to a part of the forfeiture may be a witness at the trial; and in such a case, he shall lose his share in the forfeiture. The law, therefore, deems him a party having a real substantial interest in the cause, and not a mere expectancy—"a fleeting hope that only keeps its promise to the ear, but breaks it to the sense." It is true, that the act, in making distribution of forfeitures, speaks of the parties entitled to them, by the description of their office; but it cannot with any color of reason, be argued that this designation of office meant to exclude a *designatio personæ*. On the contrary, it is most manifest, that the act meant to point out the person entitled, by a description of his office.

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The question then recurs, who is the person meant under this description of office? Is it the person who happens to be in office when the forfeiture is received? Or the person who was in office when the seizure was made, and who thereby acquires an inchoate right, which the subsequent judgment ascertained and fixed? The words may be literally applied indifferently to either; but in point of law, they can be properly applied only to him who has, under the same description of office, already acquired a vested title inchoate or consummate, in the forfeiture. This construction is fortified by a recurrence to other provisions in the 91st section of the act. It is, in the first place, provided, that in all cases of forfeitures, recovered in pursuance of information given to such collector (pointing to the collector entitled to a distributive share), a moiety of the moiety shall be given to the [*473] *informer. The grammatical connection of the words, as well as the obvious exposition of the clause, supposes, that the collector who receives the information, and commences the suit, is the person entitled to the distributive share of the forfeiture. In the next place, it is provided, that when the forfeitures are recovered, in consequence of any information given by any officer of the revenue-cutter, one moiety thereof shall be distributed among the officers of such cutter. Can there be a doubt, that the persons who were officers, at the time of the information, and not those who were officers at the time of the receipt of the forfeitures, are the parties entitled to this moiety? Yet the same reasoning applies here, with equal force, as in the case of the collector. So, by the embargo act of the 9th January 1809, ch. 72, § 12, forfeitures recovered, in consequence of any seizure made by the commander of any public armed vessel of the United States, are to be distributed according to the rules of the navy prize act of the 22d April 1800, ch. 33; and it is clear, beyond all doubt, that the parties so entitled are the officers and crew, at the time of the seizure. The analogous rule, in cases of captures, *jure belli*, is here expressly alluded to, and adopted by the legislature, and that rule stands on the same general foundation with that of the common law. The right of captors to prizes is but an inchoate right, and until a condemnation, no absolute title attaches. But when condemnation has passed upon the property, it relates back to the capture, and although the parties have died in the [*474] *intermediate time, the title vests *in proprio vigore* in their representatives.

Much stress has been laid upon the clauses in the 89th and 91st sections of the collection law of the 2d March 1799, which authorize the collector to receive from the proper officer of the court the moneys recovered in suits for penalties and forfeitures, and which require him to pay and distribute the same, according to law, among the officers of the customs, and other parties entitled thereto. But these provisions are merely directory to the collector, and do not vest in him any personal right to the money received, which he did not before possess; much less do they authorize the supposition that, until the receipt, no title vested in any person. It might, with as much force and propriety, be urged, that, until the same epoch, no right to the other moiety vested in the United States; for the statute is equally mandatory and precise in this case as in the other. It would, however, be quite impossible to contend, upon any legal principles, that the title of the United States was not, to all intents and purposes, consummated by the judgment.

The same reasoning which has been used in respect to forfeitures *in rem*,

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applies to personal penalties ; and it is unnecessary to repeat it. The court are clearly of opinion, that the right of the collector to forfeitures *in rem* attaches on seizure, and to personal penalties on suits brought, and in each case it is ascertained and consummated by the judgment ; and it is wholly immaterial, whether the collector die before or after the judgment. And *475] they are further *of opinion, that the case of the surveyor is not, in this respect, distinguishable, in any manner, from that of the collector. They are, therefore, of opinion, that the representatives of the deceased collector and surveyor, and not the present incumbents in office, are entitled to the distributive shares of the moiety of the money now in the registry of the circuit court.

The next question is, as to the proportions in which this moiety is to be divided between the representatives of the collector and surveyor. Whatever may have been the practice in the district of Petersburg, the words of the act admit of no reasonable doubt. The moiety is to be divided in equal proportions between the collector, naval officer and surveyor, or between such of the said officers as there may be in the district. There was no naval officer in the district of Petersburg, and consequently, the division must be, in equal proportions, between the collector and surveyor.

It is the unanimous opinion of this court, that it be certified to the circuit court, that it is the opinion of this court :

1st. In the case of the United States against Joseph Jones and others, that the moiety of the money now remaining in the custody of the circuit court, in the proceedings in the case of the United States, appellants, against Joseph Jones and others, mentioned, should be paid to the said Joseph Jones, collector of the district of Petersburg, to be, by him, divided in equal proportions between Thomas Shore, as he is executor of the last will and *476] testament of *John Shore, deceased, and Reuben M. Gillian, as he is administrator of the goods and effects of Andrew Tarbone, deceased.

2d. In the case of Thomas Shore and another against Joseph Jones and others, that the representative of the late surveyor, in right of his intestate, was entitled to receive one moiety of that portion of the penalty in the proceedings mentioned, which is by law to be distributed among the several revenue officers of the district wherein the penalty was incurred.

PATTON'S LESSEE v. EASTON.

Statute of limitations.

Under the act of the legislature of Tennessee, passed in 1797, to explain an act of the legislature of North Carolina, of 1715, a possession of seven years is a bar, only when held under a grant, or a deed founded on a grant.

The act of assembly vesting lands in the trustees of the town of Nashville, is a grant of those lands, and when the defendant showed no title under the trustees, nor under any other grant, his possession of seven years was held insufficient to protect his title, or bar that of the plaintiff, under a conveyance from the trustees.

ERROR to the Circuit Court for the district of West Tennessee. This was an ejectment for one moiety of a lot of land lying in Nashville.

The cause was argued at February term 1815, by *Humphries* and *477] **Jones*, for the plaintiff in error, and by *P. B. Key*, and *Swann*, for the defendant, and was continued for advisement to the present term.