

Barnes v. Williams.

respecting the mode of designating the said slaves so to be delivered to the United States, whether the same should be made by lot, or upon proof on the part of the Spanish claimant, it is ordered to be certified to the said circuit court of Georgia, that in executing the said mandate, the Africans to be delivered must be designated by proof made to the satisfaction of that court.

WILLIAMS, Plaintiff in error, v. The PRESIDENT, DIRECTORS and COMPANY OF THE BANK OF THE UNITED STATES, Defendants in error.

*Error to joint judgment.*

Where there is a joint judgment against several defendants, and one only sues out the writ of error, without joining the others, it is irregular; but if the others refuse to join in it, *quare?* whether the plaintiff may not have summons and severance?<sup>1</sup>

March 8th, 1826. In this case, in which *Wright* was for the \*plain- [415  
tiff in error, and *Webster*, for the defendants:—

MARSHALL, Ch. J., stated, that the writ of error must be dismissed, it having issued irregularly. The judgment in the circuit court of Ohio was a joint judgment, upon a joint action for money lent, against three defendants; and the writ of error was sued out by one of the defendants, in his own name only, without joining the others. The court was of opinion, that the writ of error ought to have been in the name of the three; and if the others should refuse to join in it, that it would deserve consideration, whether the present plaintiff might not have summons and severance.

Writ of error dismissed.

BARNES and others v. WILLIAMS.

*Special verdict.*

Where, in a special verdict, the essential facts are not distinctly found by the jury, although there is sufficient evidence to establish them, this court will not render a judgment upon such an imperfect special verdict, but will remand the cause to the court below, with directions to award a *venire facias de novo*.<sup>1</sup>

February 6th, 1826. This case was argued by *Wickliffe* and \**Talbot*, for the plaintiffs; and by *White* and *Isaacks*, for the [416  
defendant.

MARSHALL, Chief Justice, stated, that, upon inspecting the record, it had been discovered, that the special verdict found in the case was too imperfect to enable the court to render a judgment upon it. The claim of the plaintiffs being founded upon a bequest of certain slaves, it was essential to a recovery at law, that the assent of the executor to the legacy should be proved. Although, in the opinion of the court, there was sufficient evidence in the special verdict from which the jury might have found the fact, yet they have not found it, and the court could not, upon a special verdict,

<sup>1</sup> *Wilson v. Life and Fire Ins. Co.*, 12 Pet. 140; *Wend.* 621; *Thompson v. Valarino*, 3 Den. Todd v. Daniel, 16 Id. 521; *Fotteral v. Floyd*, 179.  
6 S. & R. 315. See *Fenner v. Bettner*, 22 <sup>2</sup> *McArthur v. Porter*, 1 Pet. 626.

United States v. Kelly.

intend it. The special verdict was defective in stating the evidence of the fact, instead of the fact itself. It was impossible, therefore, that a judgment could be pronounced for the plaintiff. So, as to the defendant's defence under the statute of limitations, the special verdict did not find any facts by which the court could ascertain at what time the right of action accrued. It was not stated, that the plaintiff and defendant were ever resident in the same state, at the same time. Although it was found, that E. D. Barnes, one of the plaintiffs, came into the state of Tennessee, after he arrived at the age of twenty-one years, and more than three years before the suit was brought, yet it was not found, that during any part of that time, the defendant, Williams, was resident in that state. The case was, therefore, too \*417] imperfectly \*stated to enable the court to decide the questions upon which the opinions of the judges of the circuit court were opposed and the cause was remanded to that court, with directions to award a *venire facias de novo*.

Ordered accordingly.

## UNITED STATES v. KELLY and others.

*Endeavoring to make a revolt.*

Although the crimes act of 1790, c. 36, § 12, does not define the offence of "endeavoring to make a revolt," it is competent for the court to give a judicial definition of it.

The offence consists in the endeavor of the crew of a vessel, or any one or more of them, to overthrow the legitimate authority of the commander, with intent to remove him from his command, or against his will to take possession of the vessel, by assuming the government and navigation of her, or by transferring their obedience from the lawful commander to some other person.<sup>1</sup>

CERTIFICATE of Division from the Circuit Court of Pennsylvania. The defendants, Kelly and others, were indicted in the circuit court for the district of Pennsylvania, for that the defendants, on the 24th of December 1824, being seamen on board a merchant vessel of the United States, called the Lancaster, on the high seas, feloniously endeavored to make a revolt in the said vessel, contrary to the act of congress of the 30th of April 1790, c. 36, § 12.

The defendants were found guilty,<sup>2</sup> and moved the court in arrest \*418] of judgment, upon the ground, "that the act of congress does not define the offence of endeavoring to make a revolt, and that it was not competent to the court to give a judicial definition of a crime heretofore

<sup>1</sup> United States v. Smith, 1 Mason 147; United States v. Sharp, Pet. C. C. 118; United States v. Smith, 3 W. C. C. 78. A combination among the seamen to refuse to do duty on board, under a new master, duly appointed, is an endeavor to make a revolt. United States v. Haines, 5 Mason 272; United States v. Cassidy, 2 Sumn. 582; United States v. Nye, 2 Curt. 225. So, if they combine to refuse to do duty, until the master comply with some improper request on their part. United States v. Gardner, 5 Mason 402. If the crew combine together not to do

duty, it is an endeavor to make a revolt, though no orders be afterwards actually given. United States v. Barker, 5 Mason 404; United States v. Borden, 1 Sprague 374. A preconceived plan, however, is not necessary to bring a case within the act. United States v. Morrison, 1 Sumn. 448. But it is necessary that there should be some effort or act, to stir up others of the crew to disobedience. United States v. Savage, 5 Mason 460.

<sup>2</sup> See 4 W. C. C. 628.