

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.

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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.¹

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,² 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

¹ 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.

² See 4 W. C. C. 628.

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unknown." The opinions of the judges of the court below being divided upon this motion, the case was certified to this court for determination.

March 9th, 1826. The cause was submitted, without argument, by the *Attorney-General*, for the United States—no counsel appearing for the prisoners.

March 10th. WASHINGTON, Justice, delivered the opinion of the court.—This case comes before the court upon a certificate of a division of opinion of the judges of the circuit court for the eastern district of Pennsylvania, upon the following point assigned by the defendants as a reason in arrest of judgment, viz., "that the act of congress does not define the offence of endeavoring to make a revolt, and it is not competent to the court to give a judicial definition of an offence heretofore unknown."

This court is of opinion, that although the act of congress does not define this offence, it is, nevertheless, competent to the court to give a judicial definition of it. We think, that 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 her 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 [*419] from the lawful commander to some other person.

Certificate accordingly.

UNITED STATES v. TAPPAN and others.

Duties on imports.

The words "true value," in the 11th section of the duty act of the 20th of April 1818, c. 361, mean the actual cost of the goods to the importer, at the place from which they were imported, and not the current market value of the goods at such place.

If the collector, in fact, suspect that the goods are invoiced below the current market value thereof, at the place from which they were imported, but do not suspect that they were invoiced below the true and actual cost thereof to the importer, he has no right to direct an appraisement.

But whenever, in the opinion of the collector, there is just ground to suspect that the invoice does not truly state the actual cost of the goods, he may direct the appraisement, and is not bound to disclose the grounds upon which he forms that opinion, whether it is formed from his knowledge or information of the current market price of the goods, or other circumstances affording ground to suspect the invoice to be fraudulent.

Certificate of Division from the Circuit Court of Massachusetts.¹

March 7th, 1826. This cause was argued by the *Attorney-General* and *Blake*, for the plaintiffs; and by *Webster*, for the defendant.

March 13th. THOMPSON, Justice, delivered the opinion of the court.—*This is an action of debt upon a duty bond, under the act of the 20th of April 1818. Upon the trial of the cause in the circuit court of Massachusetts, the following questions arose: [*420]

¹ See s. c. 2 Mason 393, where the case appears to have been brought before the circuit court, by writ of error from the district court. It is difficult to perceive, how there could have

been division of opinion in such a case, as the district judge could not sit in the circuit court. *United States v. Lancaster*, 5 Wheat. 434.